SENATE—*Thursday, February 21, 1991*

(Legislative day of Wednesday, February 6, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by a guest chaplain, Father Dan Hopkins, the Church of the Holy Redeemer, Denver, CO.

Father Hopkins.

PRAYER

The Reverend Father Dan Hopkins, Church of the Holy Redeemer, Denver, CO, offered the following prayer.

Let us pray:

Almighty God, stir up Your power and come among us who offer to You this prayer of thanksgiving and who seek Your guidance in each of our endeavors for, Lord, we know that it is from You that all good gifts and all perfect desires do proceed.

We give You thanks, O God, for the beauty and majesty of this great land which bears Your fruit to feed and nourish Your people. We pray that You will give us the wisdom to use it rightly for the welfare of all persons.

Teach us not to exploit or misuse the great resources of this land, either human or natural, but to be removed from our prejudice, fears, and greed; that we might show forth Your love throughout the world.

We pray particularly for the Members of the U.S. Senate assembled, that they might enact laws that work toward the welfare of all persons and glorify You in this world; for the leaders of this Nation and all the nations of the world, particularly those in conflict in the Middle East, that You will guide their deliberations and their actions and move them toward decisions that will show forth Your justice and peace throughout the world; for the men and women of our Armed Forces, that You will surround them with Your love, defend them from all peril, and keep them from hurt and harm, for it is in Your powerful and loving name that we pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning following the time reserved for the two leaders, there will be a period for morning business until 11:15 a.m. Senator REID will be recognized for up to 20 minutes and Senator BENTSEN will be recognized for up to 10 minutes. The time between 10:15 a.m. and 11:15 a.m. will be under the control of the Republican leader or his designee.

Once morning business closes at 11:15 a.m., the Senate will proceed to the consideration of Calendar No. 20, S. 347, the Defense Production Act.

It is my hope, Mr. President, that we can complete action on that legislation today. It is also my hope that we will be able to get unanimous consent to proceed to consideration and disposition of the amendments to the Soldiers' and Sailors' Relief Act without amendment and that we will be able to complete action on that today.

As the Members of the Senate will recall, we sought to gain such consent prior to the recess. We were unable to do so. Now that the only matter which was then indicated as an amendment to that legislation has been disposed of in connection with other legislation, it is my hope that the Senate can proceed to act promptly on that measure.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time and all of the leader time of the distinguished Republican leader.

The PRESIDENT pro tempore. Without objection, the time of the two leaders will be reserved.

ORDER OF PROCEDURE

The PRESIDENT pro tempore. Is it the wish of the majority leader that other than the time set aside for Mr. REID and Mr. BENTSEN, that Senators during morning business be permitted to speak for not to exceed a certain amount of time?

Mr. MITCHELL. It is. It is my understanding that that was included in the previous order of last evening but, if not, I now ask unanimous consent that it be so ordered.

The PRESIDENT pro tempore. Very well. Without objection then, the time during the next 40 minutes will be under the control of Mr. BENTSEN in the amount of 10 minutes and under the control of Mr. REID in the amount of 20 minutes, with other Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. BENTSEN is recognized for not to exceed 10 minutes.

THE NATIONAL ENERGY STRATEGY

Mr. BENTSEN. Mr. President, early this week the administration released its long-awaited, eagerly anticipated national energy policy. The fact we have a half million American men and women fighting a war in the Persian Gulf, the fact that it costs up to $1 billion a day suggests to me that our country desperately needs an energy strategy. We need to look to conservation, to alternative sources of energy, and a decreased reliance on imported OPEC oil.

However, the only remarkable aspect of the administration's energy policy is that so many people worked so long on an issue of urgent national importance and produced such a hollow, shallow, timid approach in their policy recommendations.

The result is not an energy strategy. It is a bureaucratic retreat to the lowest common denominator—a loose amalgam of palliatives and platitudes that evade the real issues, ignores the tough choices.

This administration's attitude toward energy is like President Reagan's head-in-the-sand approach that we saw for so many years. It is the kind of easy-answer, content-free approach to problem solving that produced deficits exceeding trillions of dollars into the future.

Mr. President, many people think that energy policy has a mystique like foreign policy. There is a notion that you have to be an expert to understand all the complexities of that issue and to try to avoid the kinds of pitfalls that are there.

That may be true when it comes to predicting future prices or events like Iraq's invasion of Kuwait, but the fundamental energy realities that are confronting America this year are really very straightforward. I am sure it does not take 18 months to understand these realities.

It is a fact that our domestic oil production in this country has gone down by 16 percent between 1985–1990. It is a fact that this country has enormous natural gas resources that are not being utilized. It is a fact that we have over a 400-year supply of coal and we know how to burn it and burn it clean. It is a fact that the price of oil is determined in cartel meetings and by countries like Saudi Arabia, not by the magic of the marketplace or the invisible hand of supply and demand. It is also a fact that you have major industrial nations like Germany and Japan

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

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with far fewer domestic energy resources than we have in this country that have nevertheless been able to insulate themselves from the frequent trauma of reliance on foreign oil through aggressive promotion of energy conservation and greater efficiency in energy usage.

The basic purpose of any energy strategy is to recognize these facts and determine how we can make better use of our assets while diminishing our vulnerabilities. If there were easy answers on the margins, we would have found them a long time ago.

When the White House and OMB took the policy ax to the national energy strategy's original recommendations on energy conservation, they presented us with a two-legged stool. To suggest conservation has no place in a national energy strategy I think is totally illogical, totally lacking in courage.

Secretary Watkins clearly understood this problem. He understood the central role of conservation in an effective energy policy as he drafted the national energy strategy. His original plan included measures to encourage not only conservation, but efficiency as well. But by the time the White House had worked its will, nothing of any significance concerning conservation or efficiency remained.

Reduced to its most basic elements, America's energy equation during the 1980's had three factors. We have produced less. We have consumed more. And we have made up the difference in imports.

You simply cannot balance the equation that way. You cannot come up with a strategy that makes sense without a major, sustained program of conservation.

America has demonstrated we can become more energy efficient. We made major strides in that direction in the late 1970's when we had an energy policy. Sure, that policy was far from perfect. But even with its imperfections, it demonstrated what could be done.

We increased efficiency by 12 percent. We increased the average gas mileage of our cars by 15 percent. Oh, I know we had to drag some of the automobile manufacturers kicking and screaming to do that. They said it just could not be done. But the Congress imposed it, it was effective, and it was done.

Today, we use a lot less gasoline per mile than we did in the 1970's. We decreased our dependence on imported energy from 47 to 27 percent. But those efforts at conservation were mocked and abandoned by the Reagan administration when energy became cheap and plentiful during the 1980's.

Today, we are seeing how risky and expensive it is to opt out of an energy policy. We can chart that dangerous drift toward more dependence on oil from the Persian Gulf and the Middle East. In 1985, we imported 425,000 barrels a day from the region, about 3 percent of our total consumption. That was just in 1985. By 1990, our imports were up to 2.1 million barrels a day, 12 percent of our consumption, an increase of 400 percent.

During the late 1970's, we learned important lessons about conservation, about which programs worked and which ones did not. One of the lessons we learned was that tougher CAFE standards have a significant positive impact on our energy security and balance of trade. Tighter CAFE standards must be an integral part of an energy policy in the 1990's. That is not popular with the big auto manufacturers; that is true—but essential, I think, to the future security of our country.

Any comprehensive national energy strategy has to appreciate that American people have a prodigious appetite for gasoline. On a per capita basis we use 484 barrels a year, which is more than twice as much as Sweden, the second highest consuming country. The average American consumed more gasoline than his Japanese, Italian, and British counterparts combined. Higher CAFE standards can help us close that gap and become more efficient users of energy.

The strategy must also encourage production of our still substantial domestic energy assets. I mentioned a few moments ago that our production of oil has dropped by 16 percent since 1987. There are many reasons for that falloff, but none is more important than the lack of price stability.

During the past 5 years, we have seen wild gyrations in the price of oil from a low of $10 to a high of almost $40 during the fall of last year. Those fluctuations are brought about by OPEC quotas, Saudi production, rivalry among producing foreign states, and upheavals like the current war.

We have very little control over those kinds of variables. It is not a free marketplace deciding that kind of a price.

The notion that we ought to retreat from conservation and let the market do the job just does not make any sense. It is the last thing we need to do. There is no free market in OPEC oil. There is only manipulation, spike, and plunge price patterns. And that jeopardizes any energy security in this country.

Mr. President, there are thousands of domestic producers who want to get back into the business of drilling for oil and gas. Last year, during the process of deficit reduction and budget reconciliation, we were able to provide them some modest incentives in key areas like tax credits for nonconventional fuels, enhanced oil recovery, and alternative minimum tax relief for independent producers. That was an important start. And the initiative came from Congress.

But that was not enough. Incentives can help. But price is still the primary determinant of domestic energy production.

Today the prices are attractive. Most producers can make money at $20 a barrel. But most of them also remember when the price was $10, and trying to get the banks to finance with that kind of instability in prices is almost impossible.

Floor price proposals are controversial and unpopular in some parts of the country. It would be a tough call for any administration and for many Members of the Senate. But if you want to encourage domestic production of oil and gas, a price floor is surely the most important policy weapon at our disposal. But it will never happen without the enthusiastic support of the administration, and there is no reason to believe that support might be forthcoming.

I realize there are reasons why the President does not want to support a floor price for oil. But what I can't understand is why the administration would shy away from significant production incentives and then quick-kick on conservation.

Take away those two pillars and you have an energy strategy that is ineffective by definition; you have a policy that nibbles at the margins rather than attacking a problem that has brought us to war.

If the administration is serious about looking for a national energy strategy, they would be well advised to look at the energy security act recently proposed by the distinguished chairman of the Energy Committee, Senator JOHNSTON, and his ranking Republican Member, Senator WALLOP. It steps up to the key issue of conservation, accepts the importance of tougher cafe standards, and provides a much more comprehensive approach to the whole problem of energy security.

Mr. President, there is no reason for America to remain at the mercy of OPEC when it comes to energy security. We have major energy assets, and we can decrease our dependence by using them more effectively and efficiently.

Conservation—tighter cafe standards—have to be a central element in any energy policy.

But America also has a 400-year supply of coal, and the know-how to make it burn cleaner.

We have abundant stocks of clean-burning natural gas; it is time to get serious about finding new ways to use it.

We need to invest more in public transportation so we can rely less on OPEC oil.

All options should be on the table—and that includes nuclear power. Look around the world, and you will see countries like France and Japan relying heavily—and successfully—on safe nuclear power. Those countries have settled on a reactor model, satisfied

their safety conerns, and made nuclear power work for them. The nuclear option is one that can give us a greater energy self-sufficiency and greater control over our own destiny.

We should be encouraging greater efforts in enhanced oil recovery, because two-thirds of all the oil ever discovered in America is still under the ground.

At today's prices, much of that oil can be recovered with new techniques.

For most of this century, people with credentials have been predicting the demise of America's energy reserves. And time after time, they have been proven wrong. It would be naive to think America can ever become self-sufficient in energy, but it is equally important to understand that we have major, untapped energy assets and options that can cushion our dangerous reliance on oil from the Persian Gulf. And Mr. President, when you realize that in 1990 America spent $65 billion on imported energy, it is obvious that there are powerful economic and security incentives for policies that emphasize conservation and greater domestic production.

The administration has had a year and a half to ponder the options on energy policy. They have undertaken a mighty labor and produced a mouse. There has probably never been a time when the importance of energy policy has been so apparent to all Americans. I hope that this crisis will compel us to move forward, together, beyond the tight, artificial, politically benign constraints of the administration's national energy strategy and seek some honest answers to the urgent energy problems facing our Nation.

So they are holding back, unwilling to commit their capital in such an uncertain price environment.

Of course there is a way to provide price stability to encourage conservation over the long run and possibly to generate new revenues. We could enact a price floor for oil, enforced with a variable import fee. Prof. Bill Fischer, the highly respected energy authority at the University of Texas in Austin, has done studies that suggest a $20 floor price will increase domestic production by 520,000 barrels a day over 5 years. That additional production would save us $10 million a day on imports and make a substantial contribution to America's energy security.

The PRESIDENT pro tempore. The Senator from Nevada [Mr. REID] is recognized for not to exceed 20 minutes, under the previous order.

THE AMERICAN MINING INDUSTRY

Mr. REID. Mr. President, yesterday the American mining industry was attacked. Using a western term, "bushwhacked"—we were ambushed.

I am here today to defend one of America's finest industries. But I guess, using the words of Will Rogers, I think we can put this in the proper perspective.

Will Rogers said, "There is no credit to being a comedian when you have the whole Government working for you. All you have to do is report the facts. I don't even have to exaggerate," he said. Today I do not even have to exaggerate. I am going to report the facts.

From 1980 to 1984, the United States imported about 7 billion dollars' worth of gold for jewelry, electronic equipment, the defense industry, medical supplies. From 1985 to 1989, the United States had dropped its imports to only $2 billion. From 1990 to 1994, part of which, 1 year, is gone, it is estimated we will have an $8 billion surplus.

So we have gone, in a period of a decade, from a deficit of $7 billion to a net exporter of $8 billion—a favorable balance of payments, Mr. President. This is refreshing.

Is not it great that we have an American industry which is now exporting? It is not an industry that is part of a great decline of American industry. No. It is a new exporter. During the 1980's, gold production increased nine times.

Mr. President, this is an industry that has not come as a result of the Japanese putting money into America. It is not a result of the Germans taking our technology like they did magnetic levitation. No. It is something which has been done with American ingenuity, figuring a better way to get the minerals out of the land. There has been great progress made.

I can remember a young man that I went to high school with, someone who is now a Ph.D. who developed a new method of extracting gold from ore. As a result of that, the value of the gold has so significantly increased that you can mine profitably. That is why this industry is so important—because American ingenuity is again coming to the forefront. It is an industry where we are using Americans to develop an American product, namely our ore.

In the 1990's we are going to pass the Soviet Union in gold production. Right now the United States is third in order of production, South Africa, Soviet Union, and the United States. We are going to pass the Soviet Union, and very quickly.

Let us talk about jobs in this industry that was so maligned yesterday. In 11 years we have gone from 6,000 people directly employed in the mining industry to well over 20,000 directly employed. Indirect employment has gone from 15,000 to about 80,000. This is a huge industry we now have in America today.

These jobs, Mr. President, are not like the jobs being created by McDonald's, Arby's, Burger King, and service-type jobs.

These are good jobs, jobs that the Presiding Officer understands are trying to be hung onto in his own State, jobs that are skilled jobs. Most people who are not familiar with mining think that miners are unskilled people. Some of the most skilled workmen we have in America are miners. That is true, Mr. President, in this tremendous increase in the minerals industry in recenty years. These are good jobs. These are skilled jobs. These are good paying jobs.

People not only work to get the gold out of the ground, but people have to provide equipment for them to get gold out of the ground. When my father worked in the mines, even then in underground small mines, you needed good equipment, such as jackhammers and compressors. But now the equipment is much bigger. You have trucks that you could not get two of in this Chamber, huge trucks. You have earth-moving equipment that is necessary, huge hoists, huge compressors, cranes. All this equipment is now being manufactured for use in the American mining industry.

There was talk yesterday about the taxpayers that get nothing. Well, there could not be anything further from the truth. We hear a lot now about the Patriot missiles. But you know, Mr. President, we need metals and minerals to make the Patriot missile. Just two that I mentioned are gold and titanium. But for those, we could not have Patriot missiles, the space program, the computer industry, or the building industry.

There is also a more direct royalty, if you want to talk about royalties, paid the taxpayers. These are in the form of taxes paid by the mining industry. These taxes levied against the precious metals industry include property taxes, mining specific taxes; for example, severance taxes, net proceeds taxes, sales and use taxes, State income taxes. We have talked about the taxes that must be paid on the equipment used in these mines. These taxes, in just the five largest producing States, amounted to approximately $130 million in 1990 alone, Mr. President, which is not a bad royalty for the precious metals industry.

I think it is also important to elaborate on a statement that I made yesterday, and following with the esteemed chairman of the Finance Committee, a man who has dedicated his life to try to make the United States a competitive country. The chairman of the Finance Committee just finished a statement on this floor, talking about a long-term energy policy of this country. I could not agree more with the statement of the finance chairman, that we need to have a long-term, reasonable energy policy. But, Mr. President, I can remember coming back here in 1974. I had never seen a long gas line. I saw it in 1974 when I came to Washington. They were lined up for blocks. We finally got them in Nevada a few months later. Since that time, we still

have done nothing to develop a long-term energy policy.

Well, it is important, Mr. President, that we recognize that we also need a long-term mineral policy in this country. We do not have one, and we should have one. As I mentioned with the Patriot missile, that is only one weapon system that the minerals industry is critical to.

We need to do something about establishing a long-term mineral policy and, in effect, we are trying to do that. I have worked in the other body, and now in this body, and I am happy to report that the President, in his budget this year, has finally given some recognition to the National Critical Materials Council that was established several years ago. In this year's budget, the administration has requested money for that program. Congress has put money in it, but it has always been over the objections of the President.

We now have the executive branch of Government agreeing that we need a long-term mineral policy, and they are going to do it through the National Critical Materials Council. What the Council is doing is trying to establish a long-term mineral policy, because we need one. We are too dependent, according to the Council, on foreign countries. Let me run over some of the things that we have to import into this country. For example, we have to import some 75 percent of the chromium that is used in this country. This is a mineral essential to the construction and manufacture of automobiles, aircraft, furnaces, and even stainless steel. Cobalt; 95 percent of all cobalt is imported. Cobalt is crucial to many different things, such as jet engines, tool building, and oil refining. The town where I went to high school in Nevada is a community that was developed during the war because of the manganese that was used there. Many of our weapons systems need manganese. One hundred percent of it is now imported. Platinum, which is vital to chemical processing and petroleum refining; 92 percent is imported. Most of it, Mr. President, comes from the Soviet Union and from South Africa.

We have, I think, for once in the recent history of this country, a program to get our minerals industry in line. Yet, we have a statement made by the senior Senator from Arkansas yesterday demeaning the mining industry, and that is wrong. You see, if we take gold as an example, gold is produced in large quantities in 11 States, the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, South Carolina, South Dakota, Utah, Washington, and there are other States that produce almost 40,000 ounces of gold each year. This is an industry that in the year 1990 produced almost 10 million ounces of gold. That does not take into consideration the large amount of silver that was also produced.

There were statements made on this floor, and the word "scam" was used yesterday. Let us not go into a lot of detail, but just to show you that we should do a better job of checking the facts when we talk about things like scams. The Sierra Club; I think you can say what you want about them, but I do not think anyone would question the credentials of the Sierra Club being an environmental group. They recently presented an award to a company in Nevada, Viceroy Gold, for constructing a great gold separation process. It is also important to note that Viceroy Gold has received numerous other awards. Why? Because, for example, the senior Senator from Arkansas spent hours on this floor talking about preserving battle sites during the Civil War. We in Nevada do not have Civil War battle sites, but we have historical things that we want preserved. However, in Nevada, we were not able to get Congress to appropriate many millions of dollars to buy these sites; but we did get Viceroy Gold to preserve an institution we are proud of, and that is the home of Rex Bell and Clara Bow, probably the most famous actress ever in the history of the United States. Clara Bow had a ranch 7 miles from my hometown of Searchlight. Viceroy Gold made this part of the national historic monuments. People go there without paying and visit this very unique ranch house that was built during the 1930's, during the heyday of Rex Bell and Clara Bow. In addition to that, they have been instrumental in preserving an endangered species called the desert tortoise, a turtle, as many refer to them. They have made available a large area of land, thousands and thousands of acres, in which to place these desert tortoises to preserve them. This is Viceroy Gold, one of the "scam artists" as referred to yesterday.

Echo Bay Mines is in or near Hawthorne, NV. Here in this Congress we are familiar with Hawthorne because it is the largest ammunition storage depot in the world. While it may not have had that distinction during the last few years, for 50 years it was the largest ammunition depot in the world. But right outside Hawthorne, NV, is a mine, the Borealis mine. The parent company, Echo Bay Mines, recently received a Governors award for restoration of an area back to almost new. It is difficult to determine if, in fact, there has ever been a mine there. It was a big open-pit mine.

I could go on with other examples of how the mining industry has done their job, and they are, in fact, not scam artists.

Nevada, California, all these States that I have mentioned that are mining States have strong reclamation projects and reclamation laws. But I would like to think, and say a word, that in listening to the senior Senator from Arkansas yesterday, I was struck by his indignation over what he considered the giveaway of taxpayers' dollars under the 1872 mining law. He claims this law costs the American public.

Mr. President, when we were debating the 1990 Agriculture Act last year, I did not sense the same indignation at the $55 billion cost of the agricultural bill. That cost the American taxpayers, and my friend, the senior Senator from Arkansas, voted in favor of that legislation.

In fact, when I offered my amendment to take away subsidies from the fat-cat farmers of this country, that is 14,000 farmers whose average income is almost $800,000 a year, some 14,000 farmers, when I offered an amendment to not allow those fat-cat farmers Government subsidies—welfare payments—my friend voted against that amendment. This amendment would have eliminated subsidies—I repeat—to the richest one-half of 1 percent of the farmers in this country.

While the Senator is outraged that maybe miners in Nevada are not paying enough for the opportunity to explore and produce minerals, it does not seem to bother him that some of the richest farmers in Arkansas received direct subsidy payments from the American taxpayer.

Another irony of the argument is that while the Senator from Arkansas thinks we should increase the barrier for exploration of production by America's hard-rock miners, he supports programs that pay American farmers, including Arkansas farmers, not to produce.

I am not going to go into some of the other problems we have in the agricultural industry because of time not permitting, but I have not forgotten about the action taken on this floor as it relates to chicken farmers and how, in fact, the accounting laws of this country were changed by Congress to protect big chicken farmers.

Let us talk also about land patents. We had a debate here last year about land patents. The good guys won, but only by two votes. But there is a hue and cry that mineral patents are somehow bad.

There must be an education take place as to land patents. Mineral patents, for those that exist, we can take care of those. Let us look at how much it costs. It takes an average of over 4 years to get a mineral patent. The costs are significant. The average cost per acre to get a land patent is over $3,000. This is made up of $50,000 for mining claims recordation. The patent process then goes for over $100,000. And then, remember, finding minerals on land, you must prove it to the agency, the Forest Service, BLM. You must prove there are minerals on that land. You cannot just go out and say there

are minerals on that land. Exploration must have taken place.

As I indicated, the average cost per acre on a patent mining claim—that is low, low—is $1,000 to $5,000 an acre. Just over half of the estimated cost per acre comes up to over $3,000.

So, it costs a lot of money to get a mineral patent. But it is interesting to note that mineral patents are only a small part of the patents given by this country. Since we have been a country, 3 percent of public lands have been patented. There have been agricultural patents, and I have no objection to that. But let us talk facts. Agricultural patents make up 25 percent of all the patents that have been given on land; railroads, 8 percent; States, 29 percent. Again, I repeat, mineral patents are 3 percent; by far the smallest.

You see, when you are talking about a mineral patent, you are talking about a business decision. You are talking about a decision as to processing a resource. You need heavy capital investment, and you also have to borrow money. And it is tougher to borrow money if you do not own the land, and that is in fact what a patent does.

My friend from Arkansas said yesterday it is the attitude of the mining company that determines the extent to which the environment is protected. That is simply not factual. The BLM is controlled by FLPMA, the Federal Land Policy Management Act, and NEPA, the National Environmental Policy Act. These laws require mineral exploration and development to be conducted in an orderly manner that ensures the protection of nonmineral values.

The BLM has a bonding process. They were late in developing one, but they have one. States have requirements, as I have already indicated. For example, there are now Federal and States laws requiring cyanide and other leachates to have 100 percent bonding—it is mandatory—of the estimated costs of the cleanup.

My friend from Arkansas harps on the GAO about these outlandish things.

Mr. President, there were statements made yesterday about GAO and their report. But the General Accounting Office reported illegal occupancy as 0.24 percent. That means 99.76 percent of the occupancies on these lands are OK. We are talking about a problem which relates to 0.24 percent of all that work done.

And if there is a problem with that 0.24 percent, we can fix it without violating this law, which is now making us a net exporter of gold and is also allowing the National Critical Materials Council to develop a long-term process with chrome, platinum, cobalt, and manganese.

In 1990, I talked about the tremendous contribution in taxes that the States have obtained as a result of the mining industry. Now, it seems that my friend from Arkansas wants more taxes.

Mr. President, there are some people who have never seen a tax they did not like. But I think we have to recognize that the mining industry in this country is a great industry. It is an industry that allows us to be competitive on a worldwide basis.

And we have to also understand that we cannot take for granted that the mining industry is going to remain strong. Because of what States are doing, and what the Federal Government is doing with the mischievous stuff, like my friend from Arkansas, we now have mining companies looking at other places, such as Indonesia and South America. And they are, in fact, now processing large amounts of minerals in those other countries. Why? Because it is cheaper to operate. There may not be the richness of the ore, but it is cheaper to operate, so they are willing to take those chances.

So if there are problems, Mr. President, in the mining industry, let us fix them; let us not destroy one of America's great businesses.

I yield the floor.

A DESERT STORM

Mr. LEAHY. Mr. President, hanging in a local National Guard office in my State is a very moving poem written by a young Vermonter, 16-year-old Sarah Amell.

Millions of us watch this war on television day after day. Few have put into words the feelings we have about the pictures we see as effectively as this young Vermonter.

I ask unanimous consent that this poem be printed in the RECORD.

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

A DESERT STORM

(By Sarah Amell, age 16)

Like a cyclone rolling across the sand,
Your voice is heard throughout the land.
You broke on a dark and fateful morn;
You are the thunder of a desert storm.

Electric fire, ballistic light
Illuminates the Persian night.
Out of technology you were born;
You are the lightning of a desert storm.

In a deluge red rain will fall
Your losses are deeply felt by all.
The price of peace is bloodily borne;
You are the flood of a desert storm.

You carry destruction in your gale,
Ironically insuring that peace will prevail.
Your gusts are keeping freedom warm;
You are the winds of a desert storm.

You've been building up strength for five months now,
We knew it would happen but we didn't know how.
Even though we had all been warned;
We were still surprised by the desert storm.

You are the finest, the best of the best;
Now you are facing the ultimate test.
Always remember the red, white and blue,
America is proud of you.

THE MURDER OF DAN HOTZ: A 1-YEAR RETROSPECTIVE

Mr. DURENBERGER. Mr. President, 19 months ago, today, a young man lost his life in Washington, DC. Dan Hotz refused to yield to an armed robber outside his Capitol Hill home. The impact of Dan's death is still being felt; by his family and friends in Nebraska and Minnesota; his neighborhood in Washington, DC, and the Senate community. Dan's death is a reminder to all of us of our own responsibility to find solutions to society's ills.

In a recent issue of St. John's magazine, the publication of the alumni office of St. John's University, Collegeville, MN, Dan was remembered by Michael Holscher. I ask unanimous consent that the article be printed in the RECORD as notice that Dan's life and death have not been forgotten.

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

ALUMNUS DAN HOTZ'S MURDER: A 1-YEAR RETROSPECTIVE

(By Michael Holscher '89)

On July 21, 1989, Washington, D.C. recorded its 243rd murder of that year. It was a grim milestone down Washington's bloody road to a record 438 homicides.

The victim was 23-year-old Daniel Hotz, a native of Omaha, Neb., who had moved to Washington only 10 days earlier, just weeks after graduating from Saint John's in May. He went to Washington to begin his post-college career with a commercial real estate firm, and had taken up residence on Capitol Hill in a house owned by his 31-year-old brother Tom '82, who also worked in commercial real estate. Dan Hotz still had boxes to unpack that fateful Friday, when he was gunned down in front of his new home during a street robbery.

Around 9 p.m. that evening, after finishing his first week on the job, Hotz was at home readying himself for an evening out with his brother and several friends, including his roommate Mike McFadden, 27, an Omaha native who moved to the District only days after Dan.

According to Tom Hotz, his brother had invited a young woman friend who was arriving on the subway around 9:15, and since Dan didn't want her to have to walk the several blocks from the station to his house, he offered to pick her up. He left home shortly after 9, hopped into his 1985 Mazda, and took off for the subway station. At the time, Tom was upstairs unpacking his own belongings, which he was in the process of moving from another of his properties, an apartment a short distance away. McFadden was downstairs in the living room with four others waiting for Dan to return.

Ten minutes after he left Dan was back with his friend. As they turned onto his street, according to police, both noticed two black youths, wearing baseball caps and dark clothing sitting on the front steps of a house next to Dan's. Dan parked his car across the street from his house. He and his friend finished the conversation they were having, opened their doors and stepped out.

No sooner had they emerged from the car, when the two youths approached them and demanded their money—one confronting Dan, the other his friend. The friend, whose name has been withheld by police, looked

quickly to Dan to see how he would respond. When the youth facing him asked again for his money, Dan said, "No way," and tried to brush off the would-be robber.

Suddenly, two shots rang out.

Police say Dan's friend threw her wallet to the ground instantly, and one of the two assailants grabbed it before fleeing with the other down a dark alley. Dan's friend rushed into the house and screamed, "Dan's been shot!" McFadden scrambled to the phone to report the shooting to the 911 emergency operator, while Tom and the others ran to the street.

They found Dan lying face-up near the curb in front of his house, where he had collapsed after struggling across the street from his car. He was lapsing in and out of consciousness.

"There were already 100 people standing around outside trying to find out what had happened," remembers Tom Hotz. "When I got out there, I thought [Dan] was dead. He was laying on his back, his face white, and he was unconscious. then he started shaking, having convulsions and gurgling . . . His lungs were already filing with blood.

"It was a nightmare . . . It was as if nature had been disturbed. There was no order to anything."

When McFadden came outside and saw Dan, he was shocked. "I remember kneeling down next to Dan's body and saying a prayer, and I had this really sick feeling. It's hard to describe," anid McFadden. "It was an overwhelming feeling of sorrow and sadness, but not just for Dan. I had a feeling of sorrow for whoever it was that shot him. I remember thinking, 'They don't even understand the pain they've caused a huge number of people. They don't even know the number of people they've affected' ".

Within minutes the ambulance arrived. Dan had regained consciousness, and while paramedics lifted him into the ambulance, Tom climbed into the front seat to ride with him to D.C. General Hospital, an inner-city hospital specializing in gunshot wounds. On the way, Tom talked with his brother and asked frequently how he was feeling. Dan muttered replies to the questions, until paramedics were forced to place an oxygen mask over his mouth.

As doctors rushed Dan through the crowded emergency room into surgery, Tom telephoned his family in Omaha to break the news. Two of his brothers and one sister were having dinner with his parents that evening, and were present when Tom's mother answered the phone. "There was no easy way to say it," recalls Tom. "I didn't say anything except, 'Mom? Tom. Dan's been shot." There's absolutely no other way to do it."

As he waited with his girlfriend, Karen, in the hospital waiting room, Tom continued to telephone his family once every hour or so, despite the fact there was little information about his brother's condition. When McFadden finished helping homicide investigators at the scene of the shooting, he and other friends joined Tom at the hospital.

"I was really bummed out for Tom," McFadden says. "Dan was my friend . . . but he was Tom's brother. And I couldn't even begin to think how Tom must have been feeling."

Doctors worked for hours trying to repair the damage done by the two bullets. One of the bullets had passed through Dan's stomach—a serious, but not always mortal, wound. But the other bullet smashed through both his heart and his lungs, making the doctors' chances of saving him all but impossible.

At about 2:30 a.m. on Saturday morning, after Dan had been in surgery for five hours, Tom knew his brother had died. Nobody had told him; he just knew it.

"I was sitting in the waiting room and at one certain moment I knew Dan had died," Tom recalls. "I turned to Karen and said, 'Dan just died. He's dead.' A few minutes later the nurse came in and said, 'Dan's not doing very well.' And I said, 'It's all right. I already know he's died."

Later Saturday morning, after returning home, Tom and McFadden faced a steady stream of newspaper and television reporters pursuing the murder story. But McFadden admits being perplexed about why there was so much interest in it. "I asked them, 'Why do you even care? This is the 243rd murder of the year. Why do you care about this one?' [*Washington Post* reporter] Michael York said that Dan's death was unusual. He said there were certain things that shock the conscience."

Meanwhile, D.C. homicide investigators continued pursuing leads provided by the friend who witnessed the shooting, as well as neighborhood residents. Information was also received from others who were held up at gunpoint on the same evening and in the same neighborhood as Hotz.

Within days, the clues led them to Daniel "Stink" Kinard, an 18-year-old who lived only a block from where the shooting occurred. Kinard eventually implicated Shawn Blair, 19, another local who had a substantial police record, including drug offenses and other felonies. Both were youths from broken homes, high school drop-outs without a steady job.

After making written confessions to D.C. homicide investigators, Kinard and Blair were charged with felony murder and held without bail. Police said it was Kinard who fired the shots, although Blair was said to have had a gun as well.

One of those who helped identify the two assailants was Karin Hope, a 23-year-old Minnesota native and graduate of Bethel College who worked in the Washington office of Minnesota Senator Dave Durenberger '55. One hour before Hotz was shot, Hope and her roommate were robbed by Kinard and Blair in the parking lot behind Hope's apartment building as she and her roommate returned from grocery shopping.

Details of Hope's ordeal are similar to Hotz's. According to Hope, she and her roommate saw Kinard and Blair riding bicycles in front of the apartment building before parking their car. And like Hotz and his friend, Hope and her roommate were accosted as they emerged from their car—Kinard confronting Hope, Blair her roommate.

Perhaps the critical difference was that Hope and her roommate could clearly see the guns being wielded by their assailants. They both handed over their cash. "I was in an unreal state of mind," remembers Hope a year later. "I kept thinking, 'This is a dream. This isn't happening'."

Hotz's death sent shock waves through his neighborhood across the District and through much of the country. For the people in his neighborhood—only blocks from the U.S. Capitol, but an even shorter distance from an economically depressed area where serious crimes are a nightly occurrence—the murder was a frightening indicator of how close they were living to a virtual war zone. For citizens throughout the District, who read about the senseless killing on the front page of *The Washington Post* and watched the aftermath on the television news, it was a startling reminder of just how bad the violence in their city had become. And in many places around the country—where stories appeared in *USA Today* and many other newspapers—many Americans read with dismay the grim truth about their nation's capital.

Few places were as shocked and saddened by Hotz's death as Omaha, where he was born and raised as the youngest of nine children, and Saint John's, where he had left his mark as an outgoing, caring, honest, and gregarious young man who was as thoughtful as he was energetic. He has at various times been described as a "real go-getter," a "good guy," and a "great friend." Jay Cutrara '89, who lived with Hotz for two years at SJU, said he always "[made] everyone part of the crowd."

Within days of his death, more than 1,000 people flocked to St. Leo's Catholic Church in Omaha to attend Hotz's funeral, presided over by the bishop of Omaha and Hotz's brother Bob, a Jesuit priest. In Minnesota more than 250 mourners gathered in St. Paul to remember Hotz at a separate service attended by many of his classmates, teachers and administrators from Saint John's. Hotz's neighbors in Washington held candlelight vigils and neighborhood meetings, and other memorial services were held around the city.

Among those offering their condolences were President George Bush, who telephoned Hotz's parents within days of the murder, and Rep. Peter Hoagland (D-Neb), a friend of the Hotz family who later met with the residents on Capitol Hill to discuss their concerns in the aftermath of the killing. Sen. Durenberger sent a personal letter to the Hotz family in which he wrote: "I have been moved by the impact your son's death has had on the D.C. community. It is real. His loss to you and many is enormous. But neither his life nor his death has been in vain."

Durenberger also made mention of Karin Hope. "One of my staff was held up just before Dan," he wrote. "She identified the killer. We are all involved now and will remain so."

Not everyone in the Washington community, however, regarded Hotz's murder as unusual and worthy of the extraordinary attention. Some blacks, noting that most of those killed in Washington are black residents in predominately black neighborhoods, were outraged that Hotz's killing caused an uproar in the District.

These feelings were given expression in a letter from a District woman appearing in *The Washington Post* two weeks after the murder. She wrote: "Don't misunderstand me. What happened to Daniel Hotz is tragic. But it never ceases to amaze me, the deafening outcry when a crime victim is white. . . Mindless killings have taken hundreds of innocent lives in . . . predominately black neighborhoods. I speak for these citizens. We have always been outraged. [But] suddenly, in the aftermath of the Daniel Hotz killing, street crime is intolerable. We need more police, more protection, more jails, more money, more government."

"[Crime and drugs] have become an unfortunate part of life that we native Washingtonians have always fought and have learned to live with. It is ludicrous and racist to try to relegate these problems to a particular segment of the community . . . I too was robbed at gunpoint in a . . . parking lot two years ago, but I am alive to tell about it because I did not foolishly resist or try to be a hero. Some people come to this city and expect to be able to walk around as though they were in Norman Rockwell land.

"Do you think Washington should be a 'shining city on the hill' just becasue it is

the nation's capital?" the letter continued. "Grow up. Anyone anywhere is a potential victim . . . When someone points a gun in your face, you cooperate. People must choose their fights carefully.

"Daniel Hotz has his posthumous honor. I have my life."

The writer of that letter wasn't the only person who complained. Anger surfaced on television shows and in street conversations as well. And one Georgetown law student recalls a class in which Georgetown professor and longtime civil rights activist Eleanor Holmes Norton, who was recently elected as District delegate to Congress, used reaction to the Hotz murder as "a perfect example" of racism among the media and the criminal justice system.

Dr. Bill MacDonald, professor of sociology and deputy director of the Institute for Criminal Law and Procedure at Georgetown University, believes that Hotz's response to his robber had as much to do with the attention paid to his murder as anything else.

"That kind of response—to sort of stand up and stand for your principles—can get you killed real quickly, and people in this city know that," MacDonald says. "People around [Washington] make a point of carrying mugging money with them. You don't go out without enough money to satisfy a person that might mug you. People who have this urban mentality are surprised by what happens to people who respond the way Dan did."

"None of this is to say we condone crime or are complacent about it," MacDonald explains. "But that's what we live with here. You never accept a wrongful death, but living in the urban areas, you come to expect things as part of the price you pay for living there."

Today more than 500 days and 570 homicides later, there are still those who have differing perspectives about Dan Hotz's murder and the outrage it caused. Even though many have forgotten Hotz's name, there are many others who still recall "that young guy from Omaha." For Tom Hotz, Mike McFadden and Karin Hope, however, the killing remains an inexplicable tragedy.

Two weeks after Hotz's funeral, McFadden returned to Washington to begin classes at Georgetown University Law Center, but he arrived at the house he had shared with Hotz to discover that it had been burglarized while he was gone. His television, a stereo and watch his grandfather had given him were all missing. "I just thought, 'Nothing like kicking a guy when he's down'," he says.

That was only the beginning. Within days of his return, during a bike ride through his neighborhood, McFadden witnessed two men shoving an elderly man into the man's home during a robbery. McFadden jumped off his bicycle and ran toward the house. But when he got to the doorway, he froze.

"I don't think I would have stopped if Dan hadn't been killed," McFadden says. "I doubt I would've even thought about guns."

McFadden left the house and called police from a neighbor's home, but the police didn't arrive in time. The robbers escaped and the elderly man had been beaten.

After that incident, McFadden decided he had enough of Capitol Hill and moved to northwest Washington, to a safer neighborhood. But the crimes didn't stop. Less than a week later, McFadden's mountain bike was stolen from in front of the Georgetown Law Center.

"I talked to Tom a lot in the weeks after the funeral, and it seems like every time he called I told him about a robbery or some crime I'd seen," McFadden recalls humorously. "He started calling me 'Taint'. Every time I'd talk with him he'd say, 'Well, what happened today?"

Out of frustration, McFadden decided to write a letter to his fellow law students in an effort to do whatever he could to increase their awareness of crime. "Of the 2,000 students at the Law Center, it seemed like no one had ever had anything worse than a car theft," McFadden explains. "Many of them felt as if they had a shield of invincibility."

McFadden says he wanted to use the letter to make the threat more personal.

"I had a bad day today," he wrote. "First my bike got stolen from in front of the Law Center. I then walked to my Capitol Hill residence to find an ambulance bill addressed to my old roommate Dan Hotz. Dan Hotz was the 243rd murder victim in DC this year.

". . . This letter isn't easy to write, but it would be harder on me not to write it. In trying to make sense out of things, I have come to the conclusion that I will never know why Dan was shot. But I do know that I have responsibility to do whatever I can to ensure that tragedies like Dan's don't happen again."

McFadden has since moved back to Capitol Hill and is living only blocks away from his former home there. He says Hotz's murder has deepened his social convictions. "I've gained a much better understanding of why things happen here . . .," McFadden explains. "Not necessarily an understanding of Dan's death, but about the city in general."

"It's amazing how much [the old neighborhood] has changed. It's strengthened the bond. They now have occasional meetings and there's much more dialogue there."

On the other hand, McFadden says there hasn't been enough change in the city in ways that really matter. He notes there are nearly 90 more murders in Washington this year than at this point last year. And he is frustrated by continuing racial tensions like the ones that surfaced after the Hotz killing.

"What's alien to people here is a sense of community—the sense of community we have in Nebraska."

Karin Hope agrees. A year after her own ordeal, she continues living in Capitol Hill in an apartment only a few blocks from where she was robbed. (Her roommate has since moved to the Virginia suburbs.) Hope says she's remained in the neighborhood because she's stubborn and doesn't want anything to force her to leave.

"I want to be part of the solution instead of simply a victim of the problem," Hope says. The daughter of a Baptist minister, she has become more active in a non-denominational church near her home, where she works as a tutor in the church's neighborhood learning center. "I've always had those religious roots and religious commitments," she explains. "If anything, my incident cemented that."

Like McFadden, Hope wishes Washington would discover the sense of community she left behind in Minnesota, and insists that real change will only come when it does. "It's tough. I think it's difficult to legislate a sense of community or caring, so I think it's going to have to be one kid at a time, one family at a time," Hope says. "Part of the sense of community is people taking an interest in other people's kids . . . And part of the problem among the youth is that they want shortcuts to everything. In some cases, that means crime or drug-dealing."

When asked about her feelings regarding Blair and Kinard, Hope responds with forgiveness. "I'm not angry," she explains. "I'm a bit confused about how I should feel, really. I have a religious commitment to forgiving people no matter what they do. But I don't want them free to hurt other people. If I knew somehow they'd changed, I'd want them to be free. But I don't know how I could ever know that."

In early October, Shawn Blair stood before a judge in D.C. Superior Court and pled guilty to second degree murder in the death of Hotz, and to armed robbery in the case of Hope. He is scheduled to be sentenced in January 1991, when he faces a maximum of life imprisonment without parole. Kinard's trial, slated to begin in late October, has been delayed until March 18, 1991. Both men remain in jail. Blair declined to be interviewed for this story.

Tom Hotz was present in the courtroom, along with the friend who witnessed Dan's murder, when Blair entered his guilty plea. "When I sat in the court room, I felt sorry for him," Hotz says. "He's only 20 years old and he's going to jail for a long, long time."

Today, however, Tom has other things on his mind as well. After selling a few of his District properties including the house his brother had lived in, he and his fiancee were married and have moved to a house in Alexandria, Virginia. Tom, who has lived in Washington since 1984, continues to work at a commercial real estate firm in Virginia.

He admits the past year has not been easy, but says he has finally gotten back into a daily routine. "The first three months were like being lost in the clouds," he explains. "I didn't do anything but work. There's no way to describe what I went through. I was just stunned. I'd lived here a long time, and it was tough being without Dan—whether here or anywhere else.

"Dan and I were best buds. I asked him to be best man at my wedding before I asked Karen to marry me."

Reflecting on the past year, Tom says he isn't quite sure how he's dealt with the loss of his brother, but he does know it hasn't been a cerebral process. "You don't make these choices," he says. "You're overwhelmed with sadness and then you start to get back into your daily life. It's like riding out a storm when the sail's torn. You just ride it out and hope you make it."

In Omaha, the Hotz family has used a memorial fund set up after Dan's death to sponsor an "employability program" at Sacred Heart High School, a Catholic school in Omaha's inner city which has a predominately black student population. The program trains minority students in job skills with the goal of preparing them for the job market both during and after high school.

If tragedy is, as playwright Tom Stoppard once wrote, when "the bad ends unhappily, the good unluckily," then what happened to Dan Hotz is unquestionably a tragedy. He made his trek from Omaha to the nation's capital for the same reason most young college graduates do: to pursue career and personal opportunities that promise eventual financial security and personal satisfaction.

He came full of hope, looking for the good life. He left less than two weeks later on an operating table at D.C. General Hospital, after five hours of surgery failed to repair the punishment he endured for refusing to give up his wallet—a wallet containing only eight dollars.

If Dan Hotz's death produced any silver lining in an otherwise dark and sorrowful cloud, it is surely that this death served to remind Washingtonians that there is still a part of America where crime is not accepted

as a part of life, where murder is still met with outrage.

It is the part of the country where Dan Hotz was born. It is where he was raised and educated. And now, in a quiet cemetery not far from his home, it is where he rests in peace.

(Mike Holscher '89 is director of research for Cornerstone Associates, Inc., a strategic issues management firm in Washington, DC.

TRIBUTE TO DR. FRANK ROSE

Mr. HEFLIN. Mr. President, I rise today to remember one of my dear friends, Dr. Frank Rose, who recently died following a long bout against cancer. Some of you may remember Frank Rose from his days with Cassidy & Associates and University Associates here in Washington, but he is best known for his outstanding work as the president of the University of Alabama from 1958 to 1969.

Dr. Rose provided the university with truly outstanding leadership through the tumultuous period during which the school was successfully integrated. His calm head and inspiring presence helped the university avoid what could have been an extremely violent time. Frank Rose's courage in standing up against powerful State leaders aligned against integration deserve him a chapter in the annals of this Nation's "profiles of courage."

In 1954, Frank was named by the National Chamber of Commerce as one of the 10 Outstanding Young Men of America for his accomplishments as president of Transylvania University. Bobby Kennedy was also a recipient of the award that year. The friendship that Frank developed with U.S. Senator Robert Kennedy and President John F. Kennedy helped make the integration of the University of Alabama proceed more smoothly.

Although Frank is remembered for this transition, he also provided the catalyst for the unprecedented period of growth the university experienced under this presidency. One of the most important results of this 10-year expansion was the improvement in the faculty pay scale and the university's endowment. At the same time, the school's facilities expanded and academic standards rose. This building program also included the development of the Birmingham and Huntsville campuses of the University of Alabama. The University of Alabama as it is today serves as a lasting legacy to Dr. Frank Rose's vision of an impressive educational institution.

Many others remember Frank Rose for hiring Paul "Bear" Bryant to coach the football team. The football team achieved athletic success parallel to the academic success seen in the entire university. During Dr. Rose's tenure as president, the university won three national football championships.

Frank was truly a southern gentleman. He talked with equal ease to awkward freshmen, polished professors, or world leaders and made each feel comfortable. Perhaps this was because Frank truly cared about each of his students and each of his professors.

Born in Meridian, MS, Frank Rose graduated from Transylvania University in Lexington, KY. Soon after earning his doctorate from Lynchburg College, Frank became the youngest college president in the country when he was selected to head Transylvania.

Dr. Rose's activities here in Washington are far too numerous to list here but I want to mention a few of them. He founded an extremely important, nonprofit consulting firm called University Associates. This firm helped historically black schools obtain Federal assistance. He also was a senior consultant with Cassidy & Associates. He gave freely of himself to numerous charities and worthy causes and his contributions will be greatly missed.

Mr. President, Dr. Frank Rose was an oustanding man and a good friend whose accomplishments will long bear testimony to his devotion and his vision.

Mr. President, I ask unanimus consent that articles about Dr. Rose be inserted in the RECORD.

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

[From the Birmingham News, Feb. 2, 1991]

FORMER UA PRESIDENT FRANK ROSE DIES AT 70

(By Robin DeMonia)

Former University of Alabama president Frank Rose, whose time on campus spanned integration and the arrival of Coach Paul "Bear" Bryant, died Friday at the age of 70.

Rose took the reins at UA in 1958, when he was only 38 years old and morale at the university was low after an unsuccessful attempt to bring black students onto the campus, friends said. He left the university in 1968 to start a consulting business.

"Frank Rose came in and created a new excitement," said John Blackburn, who was dean of men under Rose and recently retired as a vice president.

Rose was also optimistic, even though he knew what lay ahead for the university, friends said.

"He was very ambitious, and I don't think he had any doubts at all," said Frank Moody, a retired Tuscaloosa banker.

In 1963, the school was successfully integrated. Rose's leadership in the face of state leaders' resistance drew praise.

What may have helped was Rose's personal relationship with President John Kennedy, an acquaintance that sprang from an honor that had been bestowed upon Bobby Kennedy and Rose together in 1954.

"The president of the United States had confidence in the president of the University of Alabama," Blackburn said.

Alabama's political leaders, from Gov. George Wallace to the legislators of the day, did not always share the same affinity for Rose.

"He got along very well with them under the circumstances," said Moody. "They clashed—I started to say many times—but they clashed continuously."

David Mathews, who was a student and administrator under Rose and later succeeded him, said Rose had an inner moral compass and the courage to follow its lead.

"Without being heavy-handed or moralistic, he had a keen sense of what was right," Mathews said.

When Bear Bryant was accused of fixing a game early in his career with the Crimson Tide, Rose jumped to Bryant's defense without hesitation.

Later, according to Mathews, Bryant told Rose, "I don't know if it's wrong for one man to say to another man 'I love you.' But I really do love you for what you did."

In later life, friends recall that Rose, bound to a wheelchair and an oxygen tank, continued to enjoy his favorite leisure pursuit: bird hunting.

"How he managed not to blow himself to kingdom come, I do not know," Mathews said.

Rose left Alabama in 1969 for Washington, D.C., where he formed University Associates, a firm that helped colleges, particularly historically black schools, get federal assistance, said Mathews.

He also worked with communities nationwide that were in the process of integrating, Mathews said.

Rose was born in Meridian, Miss., in 1920. He graduated from Transylvania University and the Lexington Theological Seminary, and had worked as pastor and teacher.

At age 30, be became the youngest college president in the country, at Transylvania. In 1954, he was named, along with Bobby Kennedy, one of the 10 outstanding young men in America by the National Chamber of Commerce.

When he made the ambitious leap to the University of Alabama four years later, he proved among other things to be an outstanding fundraiser.

Roger Sayers, the current UA president, said of Rose: "His leadership of this university spanned a decade of unparalleled growth and transformation. During this period . . . enrollment and financial resources multiplied, the university's plant underwent a significant expansion, and numerous faculty positions were added."

Citing the "singular impact" Rose had on the school, Sayers directed that the university's flags be flown at half-staff until the funeral.

The funeral will be Monday at 1 p.m. at Central Christian Church in Lexington, Ky. The family will also receive friends Sunday from 5–8 p.m. at Morrison Hall at the Transylvania University campus in Lexington. Milward Funeral Directors is directing.

Rose is survived by his wife, Tommye Rose; two sons, Frank A. Rose, Jr. of Mobile and Julian Rose of Texas; two daughters, Susan Rose Dabney of Lexington, Ky., and Elizabeth Barr Rose of Pensacola, Fla.; a brother, Ramon C. Rose of Dallas; and eight grandchildren.

[From the Washington Post, Feb. 3, 1991]

FRANK ROSE, FORMER PRESIDENT OF UNIVERSITY OF ALABAMA, DIES

Frank Anthony Rose, 70, a Washington consultant who had served as president of the University of Alabama from 1958 to 1969, died Feb. 1 at Georgetown University Hospital. He had pneumonia and cancer.

He was president of Alabama in 1963 at the tense moment when that university was racially integrated. As the nation watched, Alabama's governor, George C. Wallace, pledged that the university would never be integrated, and that he would stand in the

doorway of the university if anyone tried to enroll blacks.

The federal government announced that the university would be integrated, even if federal troops had to be used to accomplish the task. Dr. Rose, a political opponent of Wallace's, announced that the law would be maintained, along with some semblance of dignity and civility. Southern-born and educated, the 6-foot-2-inch educator took on the unenviable task of middleman between federal authorities and Wallace.

Dr. Rose seemed careful not to take sides on racial issues, saying he was neither a segregationist nor an integrationist, but a realist. He devoted his attention to maintaining peace at the university.

Due in no small part to his tact and diplomatic skills, some observers said, integration took place amid relative calm. Although Wallace stood in his doorway and had his say, federal authorities enrolled black students and Dr. Rose was able to resume his usually quiet and effective work as a university president.

During his years at Alabama, the university's physical plant, faculty size and endowment all grew, and academic standards increased. However, some voiced opinions that Dr. Rose, who was more the dynamic administrator than professional scholar, devoted too much attention to sports.

He told critics that "character is not built by a losing team," and brought back the legendary Paul "Bear" Bryant as head football coach.

Dr. Rose left Alabama in 1969 to become president of General Computing Corp. in Washington. A short time later, he founded the nonprofit consulting firm, University Associates, whose clients included black colleges. At the time of his death, he was a senior consultant with the public affairs firm of Cassidy and Associates here. Cassidy had been affiliated with University Associates since 1984.

Over the years, he also had been active in the Salk Institute for Biological Studies, and had served on the executive committees of the National Association of State Universities and Land Grant Colleges and Reading Is Fundamental. He also had chaired the board of visitors of the U.S. Military Academy at West Point and was on the board of the March of Dimes.

Dr. Rose, who had homes in Washington and Lexington, Ky., was a native of Meridian, Miss. He graduated from Transylvania University in Lexington in 1942, and received a bachelor's degree in divinity from Lexington Seminary in 1946. He held honorary doctorates from several schools.

Ordained by the Disciples of Christ, he was a pastor in Kentucky. He was on the staff at Transylvania as a philosophy professor before serving as that school's president from 1951 to 1958.

Survivors include his wife of 48 years, the former Tommye Stewart of Lexington and Washington; four children, Susan Rose Dabney of Lexington, Frank Anthony Rose of Daphne, Ala., Julian Rose of Dallas and Elizabeth Rose of Milton, Fla.; and a brother, Ramon, of Dallas.

[From the Montgomery (AL) Advertiser, Feb. 2, 1991]

FORMER UA PRESIDENT DR. FRANK ROSE DIES

(By Mary Orndorff)

Former University of Alabama president Dr. Frank A. Rose, an instrumental force in the push for racial integration at the university, died Friday morning in Washington, DC.

Dr. Rose, 70, had been battling cancer.

Dr. Rose was president of the university from 1958–1969. His administration dealt with former Gov. George C. Wallace and his famous stand at the schoolhouse door in 1963. Dr. Rose successfully integrated the school later that year, avoiding the violence that occurred during a previous integration attempt in 1957.

"He was a leader for the University at the right time," said Dr. John L. Blackburn, retired Alabama vice president for development. Dr. Blackburn was hired by Dr. Rose in 1958 as Dean of Men.

"When he came in 1957, the University had just gone through its first attempt at integration and morale and funding were low. And the football team had lost all its games the previous year," Dr. Blackburn said. "He brought us spirit, which was really needed."

Dr. Rose had a close relationship with U.S. Senator Robert Kennedy and President John Kennedy that aided in the university's integration. Dr. Blackburn said.

Dr. Rose and Robert Kennedy were elected as two of the 10 Outstanding Young Men of America in 1954, enabling him to become friends with John Kennedy while he was still a senator.

Financial growth and expansion were prevalent under Dr. Rose, who instituted a ten-year building program under which campuses at Huntsville and Birmingham were developed and added in 1966. With private donations and increased funds from the federal government, Dr. Rose improved the faculty pay scale, emphasizing that faculty performance decides the excellence of an institution.

"Buildings, machines, books, and even budgets are only instruments to enhance the faculty's effectiveness," Dr. Rose once said.

Dr. Rose suggested a joint effort with other state universities to approach the state legislature for increased funding, Dr. Blackburn said.

"The key was that he brought leadership. He was the right person for the '60s."

Paul "Bear" Bryant was hired by Dr. Rose to coach the Alabama football team. He led the Crimson Tide to three national football championships during the Rose administration.

"The spirits and morale of the school really improved" when Mr. Bryant was hired, said Dr. Blackburn.

An administration building on campus, a married-student residence hall, and a scholarship bear Dr. Rose's name.

In a 1989 editorial, The Montgomery Advertiser wrote about Dr. Rose ". . . a streak of down home humor allowed him to keep a common touch which could put the shyest freshman at ease."

During his tenure, the university's assets nearly tripled and student enrollment grew by about 8,000, according to Mrs. Janet Griffiths, Alabama's news services director.

Dr. Rose was born in Meridian, Miss., and graduated from Transylvania University in Lexington, Ky. He became an ordained Christian minister his sophomore year and went on to teach religion and philosophy. He received his graduate-level bachelor of divinity degree from Lexington Theological Seminary in 1946 and a doctorate from Lynchburg College in Virginia. He was a pastor at a Kentucky church until 1951, when he became president of Transylvania University at age 30.

When Dr. Rose resigned from the post at Alabama in 1969, he became president of the General Computing Corp. in Washington, DC, where he later founded a non-profit organization.

He lived in Lexington with his wife Tommye Anita, and is survived by her and four children, Susan, Frank Anthony (Tony), Julian and Elizabeth. Funeral arrangements are being handled in Lexington.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business has expired.

ORDER OF PROCEDURE

The PRESIDENT pro tempore. The time for the next 1 hour will be under the control of the Republican leader.

Mr. COCHRAN. Mr. President, may I inquire if it would be appropriate to proceed with the use of the 1 hour under the control of the Republican leader without the Republican leader personally being here?

The PRESIDENT pro tempore. If the Republican leader would so designate Senators to take the time, that, of course, is under his jurisdiction.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. 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. COCHRAN. Mr. President, I ask unanimous consent that the Senator from Mississippi be permitted to proceed under the order reserved for the Republican leader.

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

THE LEGISLATIVE AGENDA

Mr. COCHRAN. Mr. President, the purpose for taking this time on the floor of the Senate this morning is to talk about some of the items on the legislative agenda from the perspective of the Republican conference.

The Republican Senators, of course, are operating at somewhat of a disadvantage politically because we are not in the majority. What that means is sometimes overlooked, at least not fully understood, by those who observe the proceedings of the U.S. Senate. We understand, as Members of this body, that the majority party controls the chairmanships of all the committees and thereby establishes the agenda, determines what hearings are held and when they are held, and what subjects are explored at the hearings.

The majority leader, in consultation with our side of the aisle, through our Republican leader, decides on the agenda for the floor of the Senate, what bills are called up, when they are called up, and, to a large extent, this is

not understood very well by the American public.

One of the things that happens necessarily in all of this is that the alternatives that might be suggested by Republican members of committees, for legislation, for hearings, for witnesses who would testify at these hearings, may not be a matter of public information. So our purpose in taking this time this morning is to talk about some of the initiatives that are being recommended to the Senate this year by Republican Senators; to describe some of the ideas that are being brought forth by Republicans in the Senate.

The PRESIDENT pro tempore. There will be order in the Senate. Senate aides will have seats.

The Chair apologizes to the Senator for the interruption. The Senator will proceed.

Mr. COCHRAN. I thank the Chair.

The fact is, Mr. President, that this year, for example, we have seen the Senate begin its business with an emphasis on a few bills that have been introduced largely under the sponsorship of Democratic Senators, which gives the impression to those who may not understand how the Senate works as an institution that the Republicans are not in favor of some of these initiatives.

I give one example. The first bill that was taken up and passed this year was at the top of the so-called Democratic Policy Committee list of priorities. It was a cost-of-living adjustment for veterans, and a bill that dealt with claims for disability benefits arising as a result of contact with agent orange. This has been a very controversial subject, as everybody knows, and Republicans have been very actively involved in helping to craft legislation that would deal effectively with that problem. In the Veterans' Affairs Committee and in the administration, Republicans have been very much involved with that. But the bill was, I think, listed as S. 1, or at least one of the top five initiatives of the Democratic Policy Committee this year.

The impression then could be drawn that, had it not been for the fact that it had that degree of priority, it would not have been dealt with. But we think it would have been. Republicans were certainly in favor of it, and I think the legislation was passed without a dissenting vote.

Another illustration is S. 2. It is a bill described as a literacy bill; it deals with education. There are 21 sponsors of S. 2, all Democrats. Not one Republican was invited to sponsor this bill, and it includes a wide variety and wide range of education issues. The impression is created when that bill is introduced, and with that degree of visibility and priority, that only Democrats are in favor of education reform.

But if we look at what S. 2 is, it is largely the bill that was passed by the Senate last year with not only the sponsorship of Republican Senators, but with the help of the administration in crafting the language that was approved by the Senate.

What I am hoping by my remarks today, Mr. President, is to emphasize the fact that this Senate operates in a bipartisan way when it is effective. When legislation is passed and signed by this Republican President, it has to have the active support of Republican Senators.

So I am hoping that, as we begin our work this year, maybe we concentrate a little less on the politics of some of these legislative initiatives and concentrate a little bit more on the practicalities of getting something done; being effective legislators so that we do have a work product at the end of this 102d Congress that we can all be proud of as Americans, not just as Democrats, not just as Republicans; and that we not just embark on a year of politics as usual—what I see, Mr. President, really is more politics than usual. I hope we learn from the experience we have all had in this body and we realize we need to put education ahead of politics this year, just as we are right now in the Persian Gulf putting national defense ahead of politics by all uniting to support our troops as we did when we approved a resolution the other day expressing that formally as the sense of the Senate.

We need another sense-of-the-Senate resolution right about now saying that we are all in favor of improving education. Not just because we are Democrats but because we are U.S. Senators and we have a responsibility to all of the citizens of this country to improve our education system. It was all of the Governors who joined with President Bush to establish the six goals for our country on education. These are not Democratic goals, Mr. President. These are American goals.

I challenge the U.S. Senate this year, and I particularly challenge the Democratic majority to put more emphasis on cooperation; bipartisan efforts to work together to achieve these goals rather than to achieve some sort of imagined benefit for a political party in the process.

The PRESIDENT pro tempore. Who yields time?

Mr. COCHRAN. Mr. President, under the unanimous-consent arrangement I ask unanimous consent that the time on this side be controlled by the distinguished Senator from Oklahoma [Mr. NICKLES].

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

Mr. NICKLES. Mr. President, the Senator from Kentucky wishes——

Mr. McCONNELL. Ten minutes. I will probably use less.

Mr. NICKLES. Mr. President, I yield to the Senator from Kentucky 10 minutes.

The PRESIDENT pro tempore. The Senator from Kentucky [Mr. McCONNELL] is recognized for not to exceed 10 minutes.

CAMPAIGN FINANCE REFORM

Mr. McCONNELL. Mr. President, both the majority and minority parties here have affirmed through the introduction of bills by both the Democratic and Republican leaders, that campaign finance reform remains a top priority of all of us to improve the system.

The problem, Mr. President, is what is the goal of each of the respective parties? We could go through yet another exercise in which the majority, through sheer force of numbers, pushes through a partisan bill. We had that experience last year. That will not become law. The President will not sign it and we will be back where we have been, unfortunately, for the last 3 years.

Some people may like it that way. There are some, for example, who feel that the majority prefers it that way. They continue to benefit from the status quo, all the while screaming for reform and blaming it on the Republicans.

Citizen activist groups also, arguably, benefit from that approach. They continue to rake in direct mail solicitations by beating up on Congress and calling for reform. That is what has happened in the past.

We have an opportunity, Mr. President, to try to do it differently and I hope we will. We could decide at the outset what this Senator has argued for the last 3 years, that we could pass a bill containing real reform that does not tilt the playing field one way or the other. Real reform, of course, is not going to benefit either party at the expense of the other.

We could start, Mr. President, on those areas upon which we agree and devise a bill to reduce campaign costs, thus reducing spending and time spent raising money. We could reduce special interest influence through a ban on PAC's and limits on independent expenditures, bundling, and 501(c)'s, in other words nonmoney and soft money, through gaping loopholes through which unregulated funds are spent in great quantities every year.

To some extent those elements are already addressed in both the Democratic and Republican proposals. But, Mr. President, if the majority refuse to compromise by putting aside roadblocks to reform and by putting up roadblocks to reform such as spending limits and public finance, there just cannot be a campaign finance reform bill.

In that case, we can go through the exercise that we went through before

on several other occasions. Let me repeat, Mr. President, that virtually every scholar in America, almost without exception, opposes spending limits.

S. 3, the new version of the majority, is clearly unconstitutional and will not make it through the courts for one principal reason: It seeks to bludgeon people into submitting to a spending limit, unlike the Presidential system which entices people into it by the supplying of a very generous public subsidy, a subsidy so generous that only one candidate for President since 1976 has been able to resist it. That is the way, of course, entitlement programs work.

Given the budgetary constraints under which we currently operate, the majority seeks to hold down the exposure of Treasury funds and, in effect, punish people into voluntarily accepting this kind of limit. That is what makes it unconstitutional.

S. 3, nevertheless, has some enticing public funds, broadcast vouchers, best called food stamps, for politicians. Of course, S. 3 should also be labeled the lawyer bureaucrat relief act.

The FEC would be micromanaging all of our races. It would require an army of functionaries. As I said in last year's debate, the FEC would soon be the size of the Veterans' Administration. Once congressional races dip into public funds, then the necessary audits begin to unfold.

Finally, of course, the system simply will not work. We have the Presidential example of that. It is rife with abuse and it is seeking to skirt the rules with massive amounts of soft money. Everybody who has studied it knows it simply does not work.

The justification for the wrong kind of reform, Mr. President, probably will be argued once again. How many times have we heard about the money chase?

I think it is interesting, Mr. President, that once again campaign spending went down in the last cycle. In 1990, Senate spending was down 10 percent from 1988 and, of course, 1988 was down 5 percent from 1986. Clearly, the spending increases earlier associated with congressional races has capped out and begun to decline.

The other argument that was made time and time again—and we all heard—it is that the Senators are out everywhere for 6 years raising money; they do not do anything but raise money. Everybody just gets wound up around here tight as a tick, spun loose and we all go out and raise money for 6 years.

We ought to have some kind of truth requirement on the floor of the Senate. There is absolutely no evidence of that and never has been. I pointed out on the floor last summer and would like to again today that in the 1986 and 1988 classes and the Senate class of 1990, it is all the same.

Over 80 percent of the funds raised for political campaigns are raised in the last 2 years. Any Senator who is prepared to be competitive, may think he has a challenge, is probably likely to gear up in the last 2 years. It is the sensible thing to do. That is what happens. There is no evidence that Senators are out raising money for 6 years. They do in the last 2 years and they are raising less than ever and spending it going down.

So when the debate comes, Mr. President, like a little truth in packaging, particularly from the majority, let us talk about the facts; let us not create things that do not exist. Let us start out with a spirit of bipartisan cooperation and deal with the things that really need doing.

Let me close by pointing out once again what really needs to be done more than anything else is a reduction in broadcast advertising costs. There are lawsuits springing up all around the country already against broadcasters for not complying with the existing broadcast discount that is supposed to be supplied to candidates.

The FTC did a study last year of five markets, Mr. President. It was interesting that in those five markets they studied, not only were the broadcasters not giving us the discount entitled under present law, they were charging more than commercial customers. Immediately, a race for political spots began to decline, and now there are lawsuits being filed all across America. I suggest every candidate who ran last year ought to consider this.

I expect there will be massive refunds for violation of existing law. Existing law does not go far enough. There ought to be a real discount, not only for the commercials that are typically run by candidates, as all other advertisers—30-second, 60-second commercials—but also, Mr. President, we ought to require a certain amount of free time. This is the peoples' business we are talking about.

This kind of reform of the broadcast industry providing us some relief will not hurt that industry. Political advertising amounts to three-fourths of 1 percent of broadcast advertising revenue. If we could just get a little break in that three-fourths of 1 percent, the money chase, if it ever existed at all, would be over.

So, Mr. President, my hopes are high again that we can approach this issue in a bipartisan way. But if we cannot, many on this side, including this Senator, intend to aggressively pursue the right kind of reform one more time.

Mr. President, I yield the floor.

Mr. NICKLES. Mr. President, I wish to compliment my friend and colleague, Senator MCCONNELL from Kentucky, for his speech and also for his homework and his leadership on this issue.

The Senator from New Hampshire requests 7 minutes.

Mr. President, I yield 7 minutes to the Senator from New Hampshire.

The PRESIDENT pro tempore. The Senator from New Hampshire [Mr. SMITH] is recognized for not to exceed 7 minutes.

WHICH ROAD WILL AMERICA CHOOSE

Mr. SMITH. I thank the Senator from Oklahoma for yielding.

Mr. President, over the next several months, the American people will be witnesses to a debate in this body, and that debate will be over which road America will choose during the last decade of the 20th century and into the 21st century.

The choices are very startling. The liberal agenda will consist of increased taxes, more spending, and the reduced right of the American people to choose how to manage their money and their lives. Those who are promoting this agenda have a vision, and their vision is on the wallet of the American taxpayer.

Their liberal agenda for 1991 consists of little more than huge spending programs which will bust last year's budget agreement, dismantle our Nation's defenses, and ensure record deficits for the foreseeable future.

First, there is S. 2, the education boondoggle. In 1989, President Bush proposed a modest program to emphasize excellence and choice in Federal education assistance. Although small in cost, this program, had it been enacted, could have had a huge impact on declining educational standards.

As a price for President Bush's modest $50 million program, liberals on the Senate Labor and Human Resources Committee demanded $750 million in spending for more of the same failed programs which have brought our educational system to the sorry state that it is today. Fortunately, this nightmare died at the end of the 101st Congress.

Unfortunately, this bill seems to be coming "the bad idea that would not die." As just one example of the cost of this bill, S. 2's increase from 8 percent to 40 percent of the Federal share for educating disabled children would increase Federal spending by $7 billion a year. Even if we had $7 billion, the cost of this expenditure would be more Federal intrusion and less local control, the same policies which have led to escalating illiteracy and declining test scores over the last 40 years.

Mr. President, the choice in education is clear. It is a choice between more local control, more parental choice, and return to basics versus more Federal intrusion, throwing more money at the problem and less local control.

Another liberal Democrat idea for spending lots of Federal tax dollars is S. 4, the so-called Democrat child welfare proposal. This relatively stingy bill would spend $2 billion over a 5-year period. This is an area in which we are currently spending $274 million a year without having had much impact at all. S. 4 overlooks an alarming 180-percent increase in administrative costs, Mr. President, under Federal foster care programs. It weakens the family and, worse, it does not remedy the role of the Federal Government in destroying families. It does nothing to address the fact that the net effect of all Federal Government programs is to make intergenerational transfers which take money away from kids.

In short, S. 4 blindly throws more money at a problem which existing Federal money has done nothing to solve already. In addition to these programs, the Democrat agenda is awash with ideas to impose burdensome costs on business. These proposals include such things as parental leave, a quota bill, and the prohibition of striker replacement, and on and on.

Taken as a whole, these ideas represent more of the tired old formula which have failed, failed, failed in the past. It is instructive to note that as recently as 1960, total Federal human resources spending was $26 billion. That was at a time when inflation and unemployment were below 5 percent, when black youth unemployment was below 10 percent, and when our schools did an effective job of teaching our young people.

In 1990, human resources spending was $619 billion, and even under the President's request, that figure is slated to increase to $956 billion by 1996. This represents a thirty-sixfold increase in 36 years, ironically.

What has our thirty-sixfold increase achieved? Unemployment is now permanently stuck at 1½ times the 1960 level,

Black youth unemployment is four times as high as it was in 1960, and our educational system is marked by plunging test scores. In addition, despite last year's "deal to end all deals," the deficit will almost centainly be at least $310 billion this year and probably will be higher than that. The Federal debt is rapidly reaching $4 trillion.

The one segment of the Government work force which would receive little compassion from the liberal agenda, ironically, is the contingent of men and women serving in the Persian Gulf. The proposed 250,000 soldier manpower reduction would throw many of these troops onto the umemployment rolls. In essence, we are saying "Thank you for your service. Here is 26 weeks of umemployment, I hope you find a job."

Mr. President, the American people are going to be faced with a very clear choice over the next 2 years: Which agenda is their agenda, the agenda of higher taxes, more Government, more spending, or the agenda of choice, lower taxes and more self-reliance.

In the opinion of this Senator, the last thing we need is another series of budget-busting, big-spending programs to suck the tax dollars from the wallets of the American people. This is not to say the Federal Government does not have a legitimate role to play in improving the lives of Americans.

Let me quickly say a couple of things the Federal Government should be doing. It ought to be removing Federal impediments so we can make our streets safe by putting dangerous criminals behind bars. That is one thing we should be doing.

Second, we ought to be eliminating Federal policies which destroy the American family and impoverish America's children and keep people in the welfare cycle year after year. We ought to be creating incentives for the private sector to produce rather than the disincentives which drain the life blood out of American economy.

In conclusion, Mr. President, this Democrat agenda is not America's agenda; it is a policy of failure which for some perverse reason we seem to be compelled to visit year after year.

I yield back the remainder of my time.

The PRESIDENT pro tempore. Who yields time?

Mr. SIMPSON. Mr. President, on behalf of the manager of this time, I yield 7 minutes to the Senator from Oklahoma.

The PRESIDENT pro tempore. The Senator from Oklahoma is recognized for not to exceed 7 minutes.

THE REPUBLICAN AGENDA

Mr. NICKLES. I thank the Chair. Also, Mr. President, I want to compliment Senator SIMPSON for his leadership in assembling a lot of Republicans to express ideas that are very important to them and to our country as well.

NATIONAL ENERGY STRATEGY

Mr. President, the Bush administration submitted its energy proposal yesterday and it was received with a lot of criticism throughout the country. A lot of people said, well, it did not do enough. A lot of people said, well, it emphasized production instead of conservation. Some people said, well, wait a minute, this is the first new program we have had in energy in 10 years; or, we have not had one for 10 years.

Coming from an energy State, serving on the Energy Committee for the last 10 years, Mr. President, let me say we spent the better part of the last 10 years trying to undo some of the mistakes that were made in the previous decade, primarily by the Carter administration and by Congress at that time.

Congress passed an energy program in 1978, 1979, and 1980 which at least in this Senator's opinion left a lot to be desired, as a matter of fact, not just in my opinion, but by the majority of Members of Congress, because we repealed most of the actions that were taken by Congress during that 3-year period of time.

The Carter administration proposed and the Congress passed a windfall profits tax that raised $79 billion from the domestic oil industry. It did not raise it from oil imports, only from the domestic oil industry. So, it discouraged domestic production and it encouraged foreign imports. That makes no sense. Congress finally realized that. We repealed that law in 1988.

The Carter administration proposed a massive Federal Government corporation called the Synthetic Fuels Corporation to produce and subsidize synthetic fuel production. I want synthetic fuels. I just do not want the Federal Government writing billions of dollars in checks in subsidies. So Congress in its wisdom repealed that law beginning in 1982.

The Carter administration passed a Fuel Use Act. It said we are running out of natural gas, and so we will not sell natural gas to industrial plants and to electric utilities. We repealed that act as well in 1981 and 1987.

Finally, the Carter administration passed the Natural Gas Policy Act of 1978 which had 28 different price categories for one commodity, natural gas. Mr. President, a year and a half ago we passed our bill to deregulate natural gas.

So we spent the better part of the 1980's undoing the mistakes of the Carter administration in the 1970's.

Yes, I want to see an energy policy and an energy package, but I want it to be a fruitful one, a positive one, one we do not have to spend the next 10 years undoing. we do not want to make a bunch of serious, expensive, mistakes.

I think the proposal by the Bush administration took too long to put together; it took 18 months. I personally think we could have done it in a much shorter period of time. But finally it is before us and I think Congress needs to act upon it. I hope Congress will act upon it, and I also hope that Congress will strengthen it and improve it.

I will tell you, from a producing State, we do not see much in the proposal to encourage domestic oil production and so likewise I hope we will make some tax changes to encourage domestic production in the lower 48 in addition to taking a balanced approach on OCS and allowing environmentally sound production from ANWR.

CAMPAIGN FINANCE REFORM: THE DIFFERENCES BETWEEN REPUBLICANS AND DEMOCRATS

Mr. President, I suppose every Republican and every Democrat on Capitol Hill is in favor of reforming our campaign finance laws. Later this year, on this floor, we will have an oppor-

tunity to test the merits of the various proposed reforms.

We do not lack for proposals. Seven comprehensive campaign finance reform bills, and one constitutional amendment, were introduced in the Senate on the first day that bills were introduced in 102d Congress:

We have S. 3, the Senate Election Ethics Act of 1991. This is the bill that is sponsored by the Democratic leadership.

We have S. 6, the Comprehensive Campaign Finance Reform and Ethics Act of 1991 and S. 7, the Fairness in Politics Act of 1991. These bills are sponsored by the Republican leadership.

We have S. 53, Senator DECONCINI's Senate Election Reform Act of 1991.

We have Senator DOMENICI's S. 91, the Grassroots Campaigning and Election Reform Act of 1991.

We have S. 128, the Senate Election Campaign Ethics Act of 1991, which is the Kerry-Biden-Bradley bill for public financing.

And, we have S. 143, the Comprehensive Campaign Finance Reform Act of 1991. This is a McConnell-Dole bill based on the initiative from last Congress that received the unanimous support of Senate Republicans.

When the bills were introduced, several Senators spoke of bipartisan progress during the 101st Congress. Indeed, there was some bipartisan progress last year, but deep partisan differences remain: Of the seven omnibus bills introduced on the first day, four were introduced by Republicans and three were introduced by Democrats, but none of the Republican bills has a Democratic cosponsor and none of the Democratic bills has a Republican cosponsor.

Of course, there are narrower initiatives that do have broad bipartisan support. For example, last year when the Senate was debating campaign finance reform, my amendment restricting franked mass mailings was adopted by a vote of 98 to 1, 136 CONGRESSIONAL RECORD S11207 (daily ed. July 31, 1990), and all major Senate bills of this Congress have provisions restricting mass mailings. For example, sections 403 and 404 of S. 3; sections 411–417 of S. 6; and section 204 of S. 143.)

But, Mr. President, Republicans and Democrats continue to have vastly different views about politics and money, particularly public money mixing with partisan politics. Most Republicans oppose the kind of spending limits that Democrats continue to push, and nearly every Republican in America opposes using taxpayers' money to subsidize congressional campaigns. Too many Democrats have no such qualms.

A. SPENDING LIMITS: THE DIFFERENCES BETWEEN REPUBLICANS AND DEMOCRATS

Every Republican who was in the Senate last year voted for the idea of "flexible fundraising targets." These targets place caps on contributions: First, from the candidate's personal funds; second, from individuals living out of State if the contribution is more than $250; and third, from PAC's—if PAC's survive. Contributions from individuals within the candidate's State and small contributions made by persons living outside the State would not be capped; indeed, they would be encouraged and welcomed. A fundamental belief behind this Republican proposal is that persons living within a particular State should not be prevented from giving to a campaign being waged within their State.

Democrats, on the other hand, continue to press for spending limits based on a State's voting age population, as shown below for S. 3:

STATE SPENDING AND AGGREGATE PAC LIMITS UNDER S. 3

State	General	Primary	Cycle
Alabama	$1,271,200	$851,704	[1] $2,122,904
Alaska	950,000	636,500	1,586,500
Arizona	1,093,600	732,712	1,826,312
Arkansas	950,000	636,500	[1] 1,586,500
California	5,481,250	2,750,000	8,231,250
Colorado	1,110,100	743,767	1,853,867
Connecticut	1,125,400	754,018	1,879,418
Delaware	950,000	636,500	1,586,500
Florida	2,807,500	1,881,025	[1] 4,688,525
Georgia	1,679,500	1,125,265	[1] 2,804,765
Hawaii	950,000	636,500	1,586,500
Idaho	950,000	636,500	1,586,500
Illinois	2,709,000	1,815,030	4,524,030
Indiana	1,597,900	1,070,593	2,668,493
Iowa	1,033,300	692,311	1,725,611
Kansas	950,000	636,500	1,586,500
Kentucky	1,210,900	811,303	2,022,203
Louisiana	1,337,800	896,326	2,234,126
Maine	950,000	636,500	1,586,500
Maryland	1,388,500	930,295	2,318,795
Massachusetts	1,714,500	1,148,715	2,863,215
Michigan	2,251,250	1,508,337	3,759,587
Minnesota	1,316,200	881,854	2,198,054
Mississippi	950,000	636,500	[1] 1,586,500
Missouri	1,510,600	1,012,102	2,522,702
Montana	950,000	636,500	1,586,500
Nebraska	950,000	636,500	1,586,500
Nebraska	950,000	636,500	1,586,500
Nevada	950,000	636,500	1,586,500
New Hampshire	950,000	636,500	1,586,500
New Jersey	2,880,000	1,929,600	4,809,600
New Mexico	950,000	636,500	1,586,500
New York	3,953,500	2,648,845	6,602,345
North Carolina	1,766,500	1,183,555	[1] 2,950,055
North Dakota	950,000	636,500	1,586,500
Ohio	2,567,750	1,720,392	4,288,142
Oklahoma	1,113,100	745,777	[1] 1,858,877
Oregon	992,800	665,176	1,657,976
Pennsylvania	2,844,000	1,905,480	4,749,480
Rhode Island	950,000	636,500	1,586,500
South Carolina	1,127,500	755,425	[1] 1,882,925
South Dakota	950,000	636,500	[1] 1,586,500
Tennessee	1,459,300	977,731	2,437,031
Texas	3,493,000	2,340,310	[1] 5,833,310
Utah	950,000	636,500	1,586,500
Vermont	950,000	636,500	1,586,500
Virginia	1,665,500	1,115,885	2,781,385
Washington	1,368,700	917,029	2,285,729
West Virginia	950,000	636,500	1,586,500
Wisconsin	1,447,300	969,691	2,416,991
Wyoming	950,000	636,500	1,586,500

[1] States with primary run-offs—allowed a higher spending limit in the primary equal to 20 percent of the general election limit.

Note.—Threshold: 10 percent of the general election limit raised in contributions of $250 or less (50 percent must be from in-state individuals). General election add-on: General election limit may be increased by up to 25 percent of the spending limit if that amount is raised in contributions of $100 or less from in-state individuals.

Republicans, as I have said, generally oppose spending limits. Why? Prof. Larry Sabato of the University of Virginia has summarized the case against limits as well as I have seen, and his position bears repeating:

(1) Expenditure ceilings, in most circumstances, will favor incumbents and make it even more difficult for challengers to defeat entrenched legislators. While some * * * electorally threatened [Members of Congress] may disagree, our political and governmental system is heavily weighted toward incumbents—too much so, in my opinion. With more than 92 percent of incumbent U.S. House members regularly reelected (98 percent in 1986), discouraging competition ought to be the last thing we do.

(2) Ceilings will not stop or even slow campaign expenditures; they will merely redirect the flow and channels of money. Specifically, I would expect an increase in independent expenditures—the least accountable and often most negative form of election spending. Once again, an unintended, undesirable consequence will result from well intended campaign finance reform.

(3) Inevitably, ceilings will lead to creative accounting practices and other methods that will have the effect of "stretching" the ceilings. We have already seen this occur at the presidential level. The effect is to undermine respect for the campaign finance system generally. Why build into the law artificial devices that almost unavoidably lead to barely-legal cheating and encourage non-compliance?

(4) Designed to reduce special interest influence on government, ceilings may actually increase the power of some interests at the expense of others. Ceilings would favor the large, organized interests which are in a position to contribute early in an election cycle, before the ceiling for a given candidate is reached. Smaller or later-organizing groups that lack capital early in the election cycle may be forbidden from contributing directly to a candidate. Since officeholders are especially likely to give access to those who have donated money to their election campaigns, spending ceilings may also have the unintended consequence of granting more access to the "haves" and less to the "have nots."—136 CONGRESSIONAL RECORD S11621 (daily ed. Aug. 1, 1990).

B. USING TAX DOLLARS TO ENFORCE SPENDING LIMITS: THE DIFFERENCES BETWEEN REPUBLICANS AND DEMOCRATS

Most Republicans object to the kind of spending limits that Democrats are proposing because we believe spending limits are counterproductive and even dangerous to the health of the Republic. But we also oppose spending limits because we reject the idea of using tax moneys to entice, to encourage, or to enforce participation in any scheme that uses spending limits. Of all the things in the world that are said to require a Federal subsidy, political campaigns for the U.S. Senate or the U.S. House of Representatives are at the very bottom of most Republican lists.

In S. 3, a qualifying candidate who agrees to the spending limits will receive the following five benefits; these benefits are going to cost big money, and they are going to be paid for—if Democrats have their way—by the American taxpayer:

First, broadcast vouchers "amounting 50 percent of the general election limit would be provided to purchase television advertising in segments of between 1 and 5 minutes." (137 CONGRESSIONAL RECORD S478, daily ed. Jan. 14, 1991)—remarks of Senator FORD. Last year, the vouchers in the Democrats' bill were worth 20 percent of the general election limit; now they are

worth 50 percent. The taxpayers of the United States are going to be required to pay for the dubious honor of having candidates for the Senate and House buy more air time.

CBO estimated that last year's Democratic campaign reform bill would cost the Federal Government about $30 million in 1992 just for Senate elections. (S. Rpt. 101-353, 101st Cong., 2d Sess. 23 (1990).) If we attribute two-thirds of these costs, $20 million, to the general election then a 50-percent voucher for television advertising would add another $10 million to the bill we hand the taxpayers.

Second, low cost mail rates. "First-class mail would be available at one quarter the regular rate for candidate mailings. Third-class rates would be 2 cents lower than first class. Candidates would be permitted to spend up to 5 percent of the general election limit on such mailings." (137 CONGRESSIONAL RECORD S478, daily ed. Jan. 14, 1991)—(remarks of Senator FORD).

Mail rates have just been raised. A first-class stamp now costs 29 cents, so when Mr. or Mrs. American Stamp Buyer mails a letter it costs 29 cents. Mr. and Mrs. Stamp Buyer do not get reduced rates, but the Democrats' bill will allow candidates to mail a first-class letter for 7.25 cents and a third-class letter for 5.25 cents. Frankly, I don't think American stamp buyers will stand for it. They will be especially upset when they learn that candidates for Congress will be able to send out mail at a rate far below that which is available even for nonprofit organizations. Postal rate structures can be complicated, but the average second-class rate for nonprofit organizations is 12.3 cents, and the average third-class rate for nonprofit organizations is 9.5 cents.

S. 3's postal subsidies will not be paid for by taxpayers, per se, but by stamp buyers. According to CBO, "The provisions of (the Democratic bill) that would mandate lower postal rates for eligible candidates would not affect net Federal spending. The Postal Service, which is required by law to break even, would have to raise overall rates to offset the lost volume." (S. Rpt. 101-253, 101st Cong., 2d Sess. 24 (1990).)

Third, reduced broadcast rates. Under S. 3, broadcasters would be required "to charge eligible candidates during the general election no more than 50 percent of the lowest unit charge for the same amount of time for the same time of day and day of week. Eligible candidates would be entitled to the lowest unit charge during the 45-day period prior to a primary." (137 CONGRESSIONAL RECORD S478, daily ed. Jan. 14, 1991)—(remarks of Senator FORD). As I read S. 3, political candidates would be entitled to one-half of the lowest rate charged to any other advertiser, whether for-profit or not-for-profit, whether big or small.

Fourth, under S. 3 "eligible candidates would receive public funds to respond to independent broadcast ads exceeding $10,000 from any source during the general election period." Id. These are "public funds" which come from the Treasury of the United States, and under S. 3 they will be used to counter private funds that have been given voluntarily to a private political organization for the purpose of making a lawful political statement.

Fifth, "eligible candidates would receive additional public funding if an opposing candidate exceeds the spending limits." Id. Again, "public funding" will be used to counter funds that have been contributed voluntarily for a political purpose. This benefit and the benefit that allows a participating candidate to get public money to counter independent expenditures raise important constitutional questions.

S. 3 does not say where the money will come from to pay for the benefits it bestows on candidates for political office. In part, it is said, that silence is in deference to the House's constitutional prerogatives on taxation. In part, that silence is intended to obscure the fact that taxpayers are about to be told to pick up the tab for our political campaigns.

Last year, Senator MCCONNELL offered an amendment that would have struck from the Democratic campaign reform bill all public subsidies to political campaigns. Unfortunately, by a three vote margin, the Senate defeated the McConnell amendment—but not one Republican voted against it. (136 CONGRESSIONAL RECORD S11100, daily ed. July 30, 1990). In contrast, 49 of 51 Democrats voted against the McConnell amendment.

When it comes to public money and political campaigns, the difference between Republicans and Democrats is neither theoretical nor free. Democrats are willing and ready—and some appear eager—to spend money collected from the taxpayers of the United States on political campaigns. Republicans, on the other hand, are nearly unanimous in thinking that public funds should not be diverted to political campaigns for the Senate and House of Representatives. And on this issue, Mr. President, Senate Republicans will not be budged.

There are significant differences, as Senator MCCONNELL pointed out, between the Republicans' philosophy on campaign finance reform and the Democrats'.

For example, most Republicans—I believe all Republicans—are opposed to the taxpayers subsidizing congressional campaigns, and the bill introduced by the Democratic leadership has massive Federal subsidies for campaigns.

In my State of Oklahoma, if I were to participate, I would receive $556,000 from the taxpayers to go out and purchase broadcast time. I think that is ridiculous. I do not think the taxpayers are clamoring to help subsidize congressional campaigns.

Also, in the Democratic leadership bill, postal rates for participating candidates would be one-fourth that of normal taxpayers. Where normal taxpayers have had their postal rates go up to 29 cents for a stamp, if you are in a campaign, you can mail a first class letter for 7.25 cents. That is lower than the rate we give nonprofit charitable organizations for third class mail. Again, that is ridiculous. That is a massive subsidy because most of us involved in campaigns know we mail a lot.

The big difference between the Democrats' proposal and the Republicans' proposal is not on the PAC's because, frankly, in the Senate we are going to pass a bill to eliminate PAC's or reduce them, to the $1,000 that an individual can contribute.

There is some agreement, but where we disagree fundamentally, totally, completely, is in the area of public financing. I do not believe Republicans will support a bill, I do not believe the President will support a bill, that has massive taxpayer subsidies to Federal campaigns.

Again, I thank my friend and colleague, Senator SIMPSON from Wyoming, for his assistance this morning.

Mr. SIMPSON. Mr. President, I would now yield 7 minutes of the time to Senator HEINZ of Pennsylvania.

The PRESIDENT pro tempore. The Senator from Pennsylvania [Mr. HEINZ] is recognized for not to exceed 7 minutes.

THE SOCIAL SECURITY EARNINGS TEST FAILS OUR SENIORS

Mr. HEINZ. Mr. President, once again this year the Senate is going to have an opportunity to take a stand on an issue of principle. The issue is the elimination of the Social Security earnings test since the earnings test is nothing less than an unfair tax that discourages Americans between ages 65 and 69 from continuing to work. The principle centers around a policy that discriminates against people who simply want to work; a policy in direct contradiction with the work ethic that our Nation believes in, which singles out just one group of people, those between 65 and 69, for discriminatory treatment.

Mr. President, those principles are worth fighting for. What we have is age discrimination. It amounts to nothing less than the callous, unfeeling, short-sighted, and unfair punishment of millions of older Americans who simply want to continue to work for mental, physical, emotional, or fiscal health reasons.

It is also important to point out that in addition to this matter of principle, the earnings test is a direct cause of 60

percent of all the overpayments made by the Social Security Administration.

So for these and the other reasons I have described I am pleased to have cosponsored S. 10, introduced by the distinguished Republican leader from Kansas, Senator DOLE.

On the one hand we support our seniors against age discrimination in the workplace. We have ended age discrimination by eliminating forced retirement at age 70. We say that our older workers should be allowed to work as long as they want to and that they should be treated like any other worker. Yet, the Social Security earnings test is nothing less than a reverse means test. It punishes rather than encourages seniors age 65 to 69 who want to be productive members of the work force—retired Americans of all ages and incomes.

What an irony. Our older workers have a wealth of experience and skills that are needed to guarantee our continued success as a world leader, yet we keep them relegated to the sidelines or we simply ask them to give up a part of what they have rightfully earned.

Mr. President, I think most of us in the Senate understand that as our population ages and the pool of today's workers fails to keep pace with the increasing demand for labor, older workers are needed in the work force more than ever. We have to do everything we can now to reduce age discrimination, to remove employment barriers and eliminate Government-enforced disincentives for older people to work. But unfortunately, Mr. President, the administration and Congress as a whole are guilty of perpetuating a double standard. The Social Security earnings test not only dissuades older workers from pursuing a paycheck, but it also causes the country to lose the valuable perspective, the skills, the wisdom, and the judgment of some of our most experienced workers. That is why we need to stop sending contradictory messages to our older citizens. Eliminating the earnings test would send a clear signal to our seniors that we unequivocally support and welcome them as members of our country's work force.

The earnings test is grossly unfair because it imposes another form of discrimination as well. The earnings test creates two classes of beneficiaries—those with earned income and those with unearned income. And it treats each class differently. Therefore, it ends up being a reverse means test. The earnings test discriminates against those who must work to supplement their retirement benefits. Senior citizens who have stocks and bonds, private pensions, and other forms of invested income receive full Social Security benefits. Only the Nation's working parents and grandparents between 65 and 69 open their Social Security envelopes to find that their checks are reduced $1 for every $3 they have earned. I think it is both unfair and unjust to treat investment income more favorably than earnings, which are needed for self support. It is time to create a level playing field for seniors of all income sources.

The Democratic majority of the House and Senate continue to frustrate our efforts to encourage our older workers to contribute their valuable contribution to our Nation's economy. The Congress must end this double standard and end this injustice. We must take up this issue and vote to end the earnings test which falls unfairly on just one group of elderly wage earners. This, Mr. President, is the matter of principle that the Senate must face this year.

Mr. President, the Social Security earnings test is also the single largest cause of overpayments to Social Security beneficiaries. In order to police the earnings levels of our seniors, the Social Security Administration [SSA] spends more than $200 million to administer the earnings test. It is unconscionable that after spending $200 million to monitor income levels, the earnings test is responsible for 60 percent of all SSA overpayments.

Elimination of the earnings test would mean less frustration and inconvenience for Social Security beneficiaries, and would substantially reduce millions of dollars of administrative waste.

Pennsylvanians tell me the explanations of the earnings test provided by SSA are very confusing. Such misunderstandings create emotional and financial hardships when overpayments must be recovered—especially from beneficiaries who rely upon Social Security to meet day-to-day living expenses.

Take for example the case of my constituent, John Rooney, of Phoenixville. Income earned by Mr. Rooney early in 1990 exceeded the earnings test limit by $560. However in December when the Social Security Administration came around to recover the overpayments it had made to Mr. Rooney, his wife and their four children, the agency withheld benefits totaling around $1,600 or nearly three times as much as Mr. Rooney's $560 of earnings over the earnings test amount. It is understandable that when Mr. Rooney contacted me in early December that he was extremely concerned about his family's Christmas.

Mr. President, we must encourage our older workers to contribute their valuable contribution to the Nation's economy. We must treat our senior citizens who must work to supplement their Social Security benefits with equity and respect. And we must ensure that once our citizens retire, their retirement benefits are not unexpectedly withheld due to previous earnings.

The earnings test is failing our seniors—it is yet another form of age discrimination. It must be eliminated.

Mr. SIMPSON. Mr. President, I yield 7 minutes of the remaining time to Senator BOND of Missouri.

The PRESIDENT pro tempore. The Senator from Missouri [Mr. BOND] is recognized for not to exceed 7 minutes.

FEDERAL-STATE PARTNERSHIP BLOCK GRANT

Mr. BOND. Mr. President, I thank the Chair, and I thank my distinguished colleague from Wyoming.

I rise today to discuss a small, but I think significant, part of President Bush's budget proposals for 1992—the Federal-State partnership block grant. This proposal seeks to give States and possibly localities funds and flexibility rather than mandates and lip service for them to carry out their service to their constituents.

Just so my colleagues can be aware of what we mean by the burden of mandates, let me point out some figures that come from the National Governors Association.

Some States, my State in particular, the State of Missouri, will in the coming year see that mandates, such as Medicaid and other programs which involve Federal spending but require State funds to go along with it, will absorb a very large portion of the new funds coming into the State for the following year.

In my State I think it is going to be about 85 cents of every additional dollar which will be used to pay for Federal mandates. Since most States would be paying a large percentage of the new dollars out for education and higher education, which I think all of us agree are very high priorities, that means, in the State of Missouri, rather than having a dollar to divide up, with perhaps 50 cents going to education and higher education, there is only 15 cents left out of that dollar to be divided up. Thus only 7.5 cents might go to improve elementary, secondary, and higher education programs.

And these mandates, such as Medicaid, which we expanded again last year, continue to grow. We expand the mandates, demanding the States must cover more, the caseloads also grow, as do the number of people eligible, and the costs of servicing these patients. As a result, we are actually commanding from this body how our States spend their money.

This proposal, which has been articulately described by the President as an opportunity for the Nation to recognize more fully the potential of States as laboratories, has caused quite a bit of stir. In fact, Mr. President, yesterday, the Senate Budget Committee held a hearing on just this one issue. As a member of the committee, I must say I was pleased that we were address-

ing the subject, but I only wish that the chairman could have waited until after March 9 when the Governors will have unveiled their fleshed-out views on the program, specifically which of the many categorical grants should be included. Perhaps then we could have spent more time discussing how to make it work instead of listening to a few mayors tell us how it cannot work.

As a former Governor, whose second term began just as Federal revenue-sharing ended and who inherited a $270 million budgetary shortfall as well, I am deeply aware of and sympathetic toward the many cities and States who are facing budget crises. Like Missouri, many of these units of government have balanced-budget requirements, and thus, unlike us in Congress, are forced to deal with their deficits. However, I must say that I don't believe concern for cash should cloud judgment. Unfortunately, I believe that is what we were seeing in some of the highly emotional partisan complaints about the proposed block grant.

The Federal Government has a long and cherished tradition of passing the buck of shifting responsibility, and being unwilling to stand up and say no. Instead, for example, Members will continue to try and solve our health care crisis by placing more requirements, and therefore more budgetary outlays, on States through Medicaid or on businesses by additional mandates. Then we can pat ourselves on the back for doing all this "at no cost to the Treasury." There is a cost. The cost is to the economy; the cost is to other entities—in many instances, to States and localities.

Mr. President, that is why the administration's proposal is such a breath of fresh air. It says that sometimes Washington does not know best. Sometimes Washington can let someone else set the priorities, or even, in this instance, more particularly, carry out the programs which have already been mandated.

Unfortunately, there are always those who question motives and doubt explanations. In this case, certain big-city mayors have taken on that role, while the National Governors Association, Republicans and Democrats alike, as well as, I hope, bipartisan Members of this Congress, have said it looks good; let us see if we can make it work.

In yesterday's hearing in the Budget Committee, the only mayors who testified were opposed to the proposal, arguing what is needed for cities is more dollars, not block grants to States.

I did not have time to ask one of the mayors yesterday what his hometown newspaper was talking about when it said: "This mayor and his administration have made grave fiscal mistakes, especially by negotiating costly labor contracts. They have produced an unrealistic spending plan that will be difficult to carry out, and have yet to cut programs enough or to weigh structural changes."

Mr. President, in contrast I point out that the mayor of our city, Washington, DC, Mayor Dixon, has already indicated that she is willing to take the hard steps and begin cutting employees and services to try to get the budget back in balance.

Getting back to the question before us on the block grants to the State, when I pressed the mayors who were before the Budget Committee as to why cutting red tape between the feds and the States should be a worry, much less should be any of the business of the mayors, their response was a steady chorus of: Cities have lost Federal dollars, and this will mean more lost funds.

I went back and reasked the question: Why increased State flexibility, lower administrative burdens, and costs for programs now run solely by States should be opposed by anyone, much less big city mayors? Once again, the answers did not address the question. Instead, they restated their problems and that cities want more Federal dollars.

Unfortunately, this type of discourse is not too helpful in understanding whether anything can be done to make the proposal workable, short of ponying up $20 billion additional per year, which is what the mayors want, but which we in this body know is precluded by the budget agreement entered into by Congress and the administration last year.

We must explore the block grant proposal. Opportunities to make Government more efficient and better able to deliver quality service should not be allowed to fall by the wayside simply because some mayors cannot balance their books without a bigger check from Uncle Sam.

I hope we can review the 450 or so categorical grant programs and see which ones make sense to block grant, and which ones do not. I am encouraged that Congress has shown their willingness to consider these types of proposals, as last year we consolidated several housing programs into a block grant as well as created a new childcare block grant. In addition, we have been steadily expanding the State and local law enforcement assistance grant since it was created in the 1986 Drug bill.

Mr. President, I ask if my time is running out; if I might have 90 seconds.

Mr. SIMPSON. Mr. President, 60 seconds would be more appropriate.

The PRESIDENT pro tempore. The Senator is recognized for an additional 60 seconds.

Mr. BOND. To sum up, Deputy OMB Director Diefendefer testified that the number of Federal Register pages shrunk from 905 to 31 when the first big block grant was created in 1981, and that the 11 large programs used in the administration's example grant now consumed 1,028 pages.

I can assure you, we will get more bang for the buck. I can assure you that the local officials and State officials will be better able to do the job, if they do not have to comply with Federal rules, regulations, and redtape, and fill out reports as to what they are doing. I hope we are willing to give this breath of fresh air a chance.

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

Mr. SIMPSON. Mr. President, I yield 6 minutes to Senator GORTON from Washington.

SOCIAL SECURITY EARNINGS

Mr. GORTON. Mr. President, much has been written and spoken about the "fairness" issue in recent months. In this Republican's opinion, the higher effective taxation of earnings solely on the basis of age is an issue of fairness which dwarfs all others. I fail to understand the continued support of that form of taxation by so many Democrats.

The current Social Security earnings test mandates benefit reductions for all seniors who choose to remain productive between the ages of 62 and 72. Current regulations cause a $1 reduction in benefits for every $3 earned by seniors over a ceiling of $9,700 a year. This 33⅓ percent tax is on top of all other taxes which seniors must pay on their earned income.

I remind my colleagues that Social Security, unlike most other entitlement programs, is designed to be social insurance, very much like private insurance. Benefits are paid in part on the basis of money paid into the system over a lifetime of working. If a private insurer decided that the insured really did not need as much money as the insured contracted and paid for over the life of the policy, he would be thrown in jail for failing to live up to his agreement. It would be jail or fine for being unfair to the client.

Mr. President, it is blatantly unfair for the Federal Government to insist that our seniors pay for a social insurance policy and then to renege on its promise to pay solely because the beneficiary continues to work.

Every study shows that millions of the "young" old, those between the ages of 62 and 72, want to continue to contribute to the productive base of this society. Why is our Government's policy designed to penalize them for continued productivity? Again, Mr. President, I am talking about fairness.

How can anything be fair which compels an individual to participate in the name of protecting his future, but restricts his ability, positively and productively, to contribute to his well-being once that future has arrived? In my view, it is only fair for us to allow

all of our citizens the full use of every bit of productive capacity they possess.

But, Mr. President, beyond the fairness issue lies a question every thoughtful Member must instinctively ask about any piece of legislation. Is it good public policy? Every current demographic projection shows it is not good public policy to penalize valuable workers, thereby encouraging them to withdraw their labor from our economy.

Mr. President, these studies show that not only is it unfair for the Federal Government to have a policy which asks them to forego some of the most potentially productive years of their lives, but that we will need these educated, experienced, and motivated workers in the years to come.

We need these workers for two reasons. First, the longer a citizen stays productive, the more he adds to our economy and tax base. We currently have enough workers who are not retired to support the retiring workers for the near future. As the baby boomers approach retirement, however, the problem of too few workers supporting too many retirees will become a major challenge to society. We should start to encourage, not discourage, the voluntary extension of working years past the traditional limit of 65 years of age.

Second, we on this side of the aisle realize that to penalize, and therefore to discourage, the continued participation of workers who are educated and experienced in the face of a nationwide labor shortage is bad public policy. In the immediate future, we face a shortage of labor at virtually every level of skill. Our public policy should be to encourage it. Whether it is using the experience of a lifetime to start a second career, or taking a part-time job at a local retail store for extra income, we need these workers in our work force, not on the economic sidelines.

Not only is continued productivity a behavior which adds to our tax base; it also promotes a positive sense of well-being and importance to our seniors. It connects them to their communities. We should not lock out or penalize seniors who get satisfaction and fulfillment from contributing to our economy.

Mr. President, it runs counter to every Republican instinct to discourage the productive performance of any American. That policy is especially important with respect to Americans who are among the most highly trained and motivated workers our society can call upon. For our Federal Government to penalize and discourage the active participation in our work force of any willing segment in our society runs counter to the most basic instincts of all Americans.

The Social Security earnings tax should be repealed.

The PRESIDING OFFICER. (Mr. ROBB). The Chair recognizes the Senator from Wyoming, who controls 6 minutes and 16 seconds.

EXTENSION OF MORNING BUSINESS

Mr. SIMPSON. Mr. President. I ask unanimous consent that the period for morning business be extended not to exceed 11:30 a.m.

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

Mr. SIMPSON. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 5 minutes.

MILITARY PREPAREDNESS

Mr. SEYMOUR. Mr. President, Saddam Hussein's days are numbered. We know it, he knows it, and the rest of the world knows it. I believe it will only be a matter of time when Kuwait is liberated and war ends. When that day comes I am also confident we will hear the siren songs of those who want America to beat a hasty retreat into a new isolationism. There will be those who, as they did in the 1980's in the time before the gulf crisis turned into the gulf war, will call for reduced spending for our Armed Forces.

Such an action would be the only way in which our ultimate victory in the gulf could be turned into an eventual defeat. There is no getting around it. In the future peace can only be achieved and sustained by a strong defense today.

Given the situation in the Soviet Union, we are the world's only superpower. We lead the world in standing for a world order everywhere else, and shrinking from this leadership is the response that would only promote world instability. Liberals have often been quick to accuse our military leadership or preparing to fight the last war, but they are just as quick to deny the necessary funds and equipment to effectively defend vital interests should that day ever come.

As the whole world has seen, it is the equipment which is so critical to success. Many of the most effective weapons currently winning the war in the gulf were the result of bitter partisan battles in the Congress. In war, technology does not cost; it saves. Our high technology weapons not only furthered our objectives in the gulf, but has saved lives; American lives, Israeli lives, the lives of our allies in the gulf and, yes, innocent Iraqi lives as well. The weapons which have proven so effective in the war are there only because of Ronald Reagan's leadership and vision, as President Ronald Reagan never allowed the budget to dictate his military strategy. He insisted that his strategy dictate the budget.

As Charles Krauthammer pointed out in a recent article in Foreign Affairs magazine, taxes have remained steady as a portion of the GNP over the last 30 years while the defense budget has gone down and spending on welfare and other entitlements have doubled.

Let us not fool ourselves, Mr. President, more taxes and skyrocketing spending at home will not cure our economic ills and the Defense Department has not caused them. We need to control our own excesses by requiring a balanced Federal budget and instead of reacting to congressional impulses, give the President what he needs to run the Government, a line-item veto.

After a decade of experimenting with budget summits and continuing resolutions we now know what works and what does not. Budgetary restraint chiseled in law works; new taxes and paper legislating to control spending do not.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming [Mr. SIMPSON].

PARTICIPATION IN DECISIONS

Mr. SIMPSON. Mr. President, I thank the majority leader for the extension of time and I think we can proceed even before that. But it was an opportunity for those on our side of the aisle to present some of their views on the Government and things that they believe should be considered by the Congress; some presenting a Republican alternative if you will, some speaking on things that are of great bipartisan interest, but principally showing that we have a unique group of people who are ready to try to participate in the heavy decisions that confront the country.

I think that is good. We propose to do that periodically. I thank the Chair for courtesies.

MEDICARE AND THE BUDGET

Mr. SIMPSON. Mr. President, my comments will be on Federal spending on mandatory or entitlement programs. This is a harrowing area to be in. I have done it before, to my great pain sometimes. But those programs are growing faster than any other portion of our Government or of the budget. Unlike discretionary programs, for which Congress must decide how much to spend each year, the entitlements just grow automatically based on factors such as benefit levels, population size, and inflation. Entitlements are now 52 percent of all Federal spending. That means over half of the budget is not subject to even the imperfect scrutiny of the appropriations process, but just grows. I am sure that is just as disturbing to the previous occupant of the Chair, our distinguished senior Senator from West Virginia, the chairman of

the Appropriations Committee. It is just there; the Appropriations Committee does not even get to scrutinize it. It just grows.

In truth, we probably do not want to subject entitlements, our most important social welfare programs, to the political whims and the vagaries of the budget and the appropriations process. That could produce some very bad results. But neither can we afford to let those programs continue to grow at their present rate—unchecked and in the direction of providing crucial dollars to more and more people who are not genuinely needy. We would not be doing our duty as trustees of the public coffers or as makers of public policy.

The President's budget takes a farsighted approach to the tax, spend, and distributional issues that are raised by unchecked growth in entitlement spending. His proposal is fair, it is prudent, and it is timely. In essence, he proposes to restore the original mission of Government entitlement programs. That is: reliable assistance directed to individuals who are most in need. We have forgotten that completely. In the school lunch program—students loans, agriculture, veterans dependency benefits—in all of these worthy programs, the President's budget proposes to restore some rational relationship between publicly subsidized assistance, which I heartily support, and genuine need, and what it really is.

This year the Health and Human Services budget for the United States is $525 billion, about one-third of the total $1.4 trillion budget. Social Security, an entitlement program, accounts for almost half of that, and Medicare, another entitlement program, for half of what is left over. Medicare will consume $115 billion in 1992. That is a major chunk of the total $1.4 trillion budget.

The administration proposes to slow the exponential growth of program outlays. Otherwise, before the turn of the century, Medicare will cost more than Social Security.

There are three ways to slow the growth in Medicare outlays; all require changes in the statutory entitlements. One way would be to seek all savings from cuts in provider benefits for reimbursements, or to restrict the services for which Medicare will reimburse at all. We have been on that course for years now, and the providers are telling us they cannot take much more without compromising services to Medicare patients.

Second, we could require greater cost sharing from beneficiaries in the way of increased copayments and deductibles. But increased cost sharing at the point of service too frequently discourages people from seeking appropriate medical attention. In addition, that is a very regressive way to finance savings.

Finally, Medicare's subsidy to individuals could be adjusted to reflect income status. That is, rather than curtailing services, we will curtail the public subsidization on behalf of individuals who can pay more of their own freight. That is what the President's budget proposes.

So the proposed budget is to reduce growth, and get this, to reduce growth from 13 percent to 11 percent and that will be referred to as a cut. I hope that the American people will figure that one out before we get into the anguish of a debate like we had last October. We are going to reduce growth from 13 percent to 11 percent, and that is in no way a cut. It is still an 11-percent increase.

Most of the reductions come from adjustments and refinements in provider payments; establishing fee schedules for certain procedures, adjusting the timing of billing payments, and so on. No cuts in benefits.

Part B, (physician) premiums increased from $29.90 to $31.80—a relatively modest jump—necessary to keep premiums payments apace with inflation.

Premiums used to make up 50 percent of part B program costs. The rest was financed through general revenues—taxes paid by the workers. Today, the proportional financing burden has shifted. Beneficiary premiums now constitute just 25 percent of part B program costs. When we talk about the future dependency ratio of baby boom retirees to workers, we usually are thinking in terms of Social Security retirement burdens.

It is important to remember that Medicare is a part of that equation as well.

Under the administration's proposal, for individuals earning over $125,000 per year, $150,000 for couples, premiums would go up. The subsidy would slip to 25 percent of program costs, with wealthy individuals then paying 75 percent of the value of their benefits, or $90 a month. Few would argue that individuals earning above $125,000 would have difficulty in managing that increase.

This, to me, seems a very welcome and very logical extension of sound public policy changes we adopted over the past 2 years. Specifically, we have finally begun to recognize in our policies that "the elderly" are not a homogenous group. Those over the age 65 are not all poor and decrepit; neither are they all vigorous and affluent. This is the reality—quite new to some, admittedly—and I am encouraged by signs that it has taken hold.

For example, we recently enacted a requirement that Medicaid pay Medicare premiums on behalf of those who are dually eligible. That is, we recognized and responded to the fact that some seniors are simply economically unable to pay the freight for Medicare.

Similarly, there are those who are capable of paying more than current law requires, and the President's budget asks them to do so. The President and his budget director argue these changes in terms of targeting. We will hear other terms about that procedure. I would use another word: with changes such as these, we are modernizing our entitlement programs. We are finally bringing them into alignment with the economic and demographic realities of the nineties and beyond. Those realities have changed markedly since the 1960's, when most of our major public welfare programs were conceived and enacted.

On June 30, 1966, the day before Medicare was enacted—and needed to be done, at that point, at least in the national consciousness and the consciousness of Congress—nearly 45 percent of the elderly lacked any form of health insurance whatsoever, and the poverty rate among seniors was 30 percent. Today, of course, the economic status of the elderly very nearly mirrors that of the general population.

Let me also add, in conclusion, that even under the President's proposed changes to the Medicare Program, beneficiaries above the $125,000 income threshold will still receive an effective Medicare part B subsidy of $363 a year, compared with their current subsidy of $1,113 a year which all beneficiaries below the threshold will continue to receive.

In my mind, this is highly responsible and appropriate policy. Entitlement spending—that is, Federal payments to individuals—over the past quarter century has been gradually but definitely tilting toward individuals who simply are not needy. Total payments to individuals have risen to 45 percent of the budget, most of which does not go to the poor. In fact, last year—and please hear these statistics—last year, less than half of Federal transfer payments went to households with incomes in the bottom fifth of income distribution. However, $26 billion of those benefits went to households in the top fifth of income receipts.

Reducing, where possible, Federal subsidies to those who are clearly not needy is the only way we can preserve a responsible safety net for those who are.

These changes, while they will not be warmly received by the beneficiaries, and will be politically hot to deal with, are so necessary if we want to keep the rest of the Health and Human Services programs intact. If you really want to keep child care, Meals on Wheels, maternal and child health money, immunizations, home care, it is either back off some of these programs—and I do not want to do that—or continue to get what you can from the edges of the big one, and the big one is Medicare.

So these proposals will affect only half a million wealthy seniors, will

save $1.2 billion, and will set an important principle for the future of the entitlement programs.

A final note. Medicare will be on the books for the next 100 years or more. Baby boomers as retirees will be able to dictate anything they want. That is a political reality, a political fact against which no middle-aged backlash will stand a chance.

Our challenge then, as it is now, is to reconcile demography, economics, and politics in a way that can adapt entitlement programs to the future without bankrupting the future work force. We have to provide alternatives and allow truly creative discussion over the next 10 years or so. This must involve the public, seniors, their advocacy groups, and their children. That takes real leadership. This is a hard and tough area in which to exercise political leadership because the penalties are so vivid and powerful and final. They are called defeat in the election process. And they can be well manipulated by the special interest forces. The mantle of responsibility is heavy, but it is ours. The President is to be commended for his farsighted and principled leadership. With $1.2 billion we can do a lot of good for people who really do need the help of a generous Congress.

I thank the Chair.

The PRESIDING OFFICER. Does any Senator seek recognition?

THE DEMOCRATS' PARTISAN LEGISLATIVE AGENDA

Mr. SYMMS. Mr. President, I devoutly hope the 102d Congress is not a repeat of the 101st—a series of confrontations between Congress and the President generating great amounts of heat but little light. At one point last year, politically charged veto-bait filibuster items became so predominant on the Senate schedule that four such items were simultaneously locked into unanimous-consent agreements in a single week.

Thus far, the Senate has been given little reason to hope the situation will be much changed in the 102d Congress. Of the five top-priority items introduced by Senate Democrats at the beginning of the session, at least one—the Orwellian parental leave bill—was subject to a veto battle last year, and will almost certainly be subject to another veto fight. Ironically, hearings have already been held on this piece of legislation.

The second item on the House Democrat agenda—the quota bill—was also vetoed by President Bush last year.

The so-called campaign finance reform bill, S. 3, was never vetoed because its blatantly political nature provoked a filibuster supported by virtually every Senate Republican.

The child welfare bill, S. 4, would bust the budget summit agreement by spending over $2 billion over 5 years—much of it in entitlements—to deal with problems against which similar, existing Federal programs have been largely ineffectual.

In the area of education, President Bush last year proposed a series of initiatives constituting a first step toward reasserting competence and choice in the Nation's education systems. Senate Democrats took the President's $50,000,000 program, added $750,000,000 of Democratic sweeteners, and attempted to send the bill to the President's desk. But that bill was stopped by the objections of several Senators concerned about some of its most controversial provisions.

Now, the bill is back, bloated with more Federal funds than ever but stripped of any of President Bush's proposals. In other words, the Democrats are proposing to spend all the tax dollars the President asked for and way, way more, but those dollars aren't buying any of the reforms the President had proposed to get the Nation's educational system back on track.

What the American people want from their schools is not forced busing and a curriculum emphasizing the latest liberal ideological fad. What they want are schools that teach their kids to read and write, test standards to help monitor what kind of job the schools are doing, and teacher competency requirements to help ascertain the qualifications of teachers. The Democrats' bill will not address any of these issues.

In short, the Democrats' agenda is just a tired retread of three decades of failed social experimentation with the taxpayers' money.

Missing from the liberals' legislative program are issues of the greatest importance to working men and women, issues that will make or break our American way of life: Where is the tax policy to promote rather than smother economic growth, where is the regulatory reform to encourage rather than discourage American entrepreneurs, and where is the criminal law reform to attack the crime and drugs turning our city's streets into combat zones?

So, Mr. President, there are priorities and then, there are priorities. America has needs which are unmet, but if we continue servicing the parts at the expense of the whole, we will reach a point where the engine of American life fails to run at all. I hope this Congress will stick to the real problems of the Nation and focus its attention on enacting some effective solutions.

Mr. SIMPSON. Mr. President, I yield back the remainder of the time. I again thank the majority leader for his consideration.

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

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

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that there be a period for morning business, not to extend beyond 12 noon, with Senators permitted to speak therein for up to 5 minutes each, with the privilege of asking for further time if no other Senator is requesting time.

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

PUERTO RICO REFERENDUM

Mr. MOYNIHAN. Mr. President, I rise in a mood of dismay the likes of which I have never before encountered in what is now my 15th year in the Senate.

Yesterday, the Energy Committee, under its distinguished and fearless chairman, the distinguished senior Senator from Louisiana [Mr. JOHNSTON] took up, once again, as it did in the 101st Congress, legislation that would provide for a referendum in Puerto Rico to choose one of three statuses that have been offered Puerto Rico by American Presidents, without exception, since Harry S. Truman, which is to say the choice of Commonwealth—which it now has—statehood, or independence.

Without exception, our Presidents have said that Puerto Ricans were free to choose their status. Without exception that I am aware of, and I doubt there is one, from the time of Henry Cabot Lodge at the United Nations under President Eisenhower, through my own service under President Ford, to our able and inspiring representative, Ambassador Pickering, who is now there under President Bush, we have repeated to the United Nations that this is a choice freely open to the people of Puerto Rico. We have told the Cubans, who have perenially wanted to raise the issue of Puerto Ricans' right of self-determination, to keep out of a question of American citizens exercising their free rights as American citizens.

In his first address as President to a joint session of Congress on February 9, 1989, President Bush asked the Congress "to take the necessary steps to allow the people [Puerto Rico] to decide in a referendum."

Why had he done it? The heads of the three major parties representing these three choices in Puerto Rico had said

we are ready, let us vote. Vote, the American way to do things; vote. The President said: Let there be a vote.

Well, we waited. We did not fulfill that commitment in the 101st Congress. Senator JOHNSTON did. His committee reported out in the summer of that first session in 1989 a bill. I went down to San Juan as an observer from the Finance Committee to see how things were going and to hear what was going on.

We waited 1 year in the Finance Committee before we got around to the subject, and the Senate never did anything in the end. The House hurriedly passed a very different bill, a very spare bill, which merely set the procedures for a referendum, without attempting to delineate what the three statuses imply. The effort over here was to say specifically what they would imply. Senator BENTSEN wanted to do that. So did I, but the Senate never completed its work.

Now, sir, yesterday, in the Committee on Energy and Natural Resources, we saw the most shameful display of nativism I have yet to encounter in 15 years in the Senate. One Senator after another took occasion to say he was not sure Puerto Ricans belong in American society.

Mr. President, they sure as hell belong in the gulf, the Persian Gulf, with some 15,000 of them on ships and planes; in the sands, in tanks, as they were in Vietnam, as they were in Korea. I do not take any pleasure in citing competitive statistics about whose State had the most persons killed or wounded. Neither would the Presiding Officer, who was there in one of those wars. But let no one doubt that high on each of those lists has been Puerto Rico. They are American citizens. They are drafted. They volunteer.

Mr. President, I see I am about to be told my 5 minutes are up. I ask unanimous consent for 5 additional minutes.

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

Mr. MOYNIHAN. I would like to spend another 5 hours on this; 5 hours.

Those Americans in Vietnam had been drafted, in Korea had been drafted, in the Persian Gulf they volunteered. They are citizens, but they cannot vote for anybody in this body. They cannot vote for President.

That has been a choice that has been made, and that may be a choice they continue to make. But it is not a choice we can deny them. And yesterday in the Committee on Energy and Natural Resources, it became very clear that many on that committee are prepared to deny them. It is nativism, the close associate of racism, that lived in this body for a century and a half, in this Chamber and the one to the left down the hall, the nativism that all of us have acquired.

Not all of us, but most of us, at one time or another, in the history of American society, encountered the experience of newcomers not being very much appreciated, sounding different, looking different, being, yes, different, and very quickly finding themselves part of this society.

Now, Puerto Ricans did not ask to be in this situation. As a matter of fact, Puerto Ricans up until now have not been asked much of anything. They were a prize of an imperialist war, that "splendid little war," as Theodore Roosevelt called it, the War of 1898, the Spanish-American War, which began with the explosion of the battleship *Maine* in Havana Harbor.

It may be of interest to the Senate to know that the U.S. Navy has now concluded, contrary to its finding at the time, that the *Maine* blew up because its coal bunkers exploded. Admiral Rickover points this out in his book "How the Battleship Maine Was Destroyed." Coal was new to battleships at that time, and people did not know that if it got hot inside of a coal bunker, it would explode.

But, all right; one of the prizes was Puerto Rico. We took Puerto Rico; we grabbed it. We took Guantanamo. That was how the world worked in those days. But every year for 40 years we have told the world Puerto Rico is free to choose.

And, oh, sir, how President Gorbachev must enjoy even now receiving the report from the New York Times by Martin Tolchin, that able and accurate journalist, that says that "Hopes Wane on Bill for Puerto Rico Referendum"; or from the Washington Times, by J. Jennings Moss, a journalist I do not know, but I am sure I look forward to meeting, "Senators Leery of Puerto Rico as 51st State."

Mr. President, Senators may be leery, but what is this talk of they do not fit culturally? They sure as hell fit culturally in the 82d Airborne Division, sir. They fit culturally in the troops that fought alongside you, sir, in Vietnam. They fit fine enough to be killed in Korea.

But, sir, this is not, in my view, an option the Senate has. We have committed ourselves to the world. I stood on the floor of the General Assembly and said that the American Presidents have told the world this island is free to choose, and the Cubans can keep their hands off American citizens exercising their rights.

I knew Munoz Marin; I knew Ted Moscoso. I came to Washington 30 years ago, sir, in the Kennedy administration, and was an Assistant Secretary of Labor involved with Puerto Rico in the Alliance for Progress. The Commonwealth Party was very much then the party of populares.

Mr. President, I see the ever diligent timekeeper looking at you. I observe that the minority has not appeared on their side of the aisle to take up the pending legislative business. And if the distinguished Senator, the manager of the bill, has no objection, I ask for another 5 minutes, as in morning business.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, the Senator from New York is recognized for an additional 5 minutes.

Mr. MOYNIHAN. I do thank the Chair. I do thank Senator DIXON, who is very generous.

Sir, the point is, to resume, that we have told the world that Puerto Rico is not in a colonial status, that it is in the status of a freely chosen relationship. We cannot undo that fact.

We cannot undo that "splendid little war" that Roosevelt spoke of. But we can resolve the matter of the aftermath of the 19th century in the 20th century, and we said we would. Now we are breaking our word.

Sir, I do not know whether I ought to amend the term "breaking our word." We never as a body gave any such commitment, but we never objected to the recurring Presidential commitment. We never objected to our Representative in the United Nations saying this is what we will do. Now we are talking about people who do not fit culturally. That will come as a great surprise to the people of my State.

I believe New York City now has 178 recognized ethnic groups. At the fear of bringing down the delayed thunder of some of those Senators of the early 19th century, I believe I can point out that the Roman Catholic Church, the archdiocese of New York and the diocese of Brooklyn, conduct Mass on Sundays in about 30 languages in New York City.

There is no majority in the world. This country represents the world. This feature of our national identity has been important to us, and the world knows it. That is why people come here. And for us to act this way now is inexplicable.

The leaders of this body have a responsibility—every Member of this body has a responsibility—to see that President Bush's commitment is kept. The Members on that side of the aisle have a commitment to see that it is kept. They have an obligation. I correct that. I do not strike it from the record. Commitment is one thing and obligation is another. They have not made that commitment but I feel they are obliged to give a choice—just to let people vote. That is how we decide things in our country.

I see the distinguished Presiding Officer is a member of our newest State, Hawaii. I cannot doubt, sir, that there were people on this floor who were not sure whether the residents of Hawaii would fit culturally. I am sure someone said it. I do not doubt people thought it. But we had the good sense to know better. We had the good sense to recog-

nize people who had paid—I do not like to speak of blood, but when people fight for a country, they get a claim on a country. They do. And when Spark Matsunaga and DANNY INOUYE fought for this country, even as their fellow Americans were interned in California, they made claims and they were acknowledged, and a good thing, too.

I do not take a position on statehood. It seems to me that you could with good reason choose commonwealth. I have heard good arguments for many years now, going back to Ted Moscoso and the Alliance for Progress. I know the commonwealth status may mean different things for Puerto Ricans than it does for us. There are some ambiguities, in the term. We speak of the Commonwealth of Virginia and we think of a State.

In Puerto Rico, the term "commonwealth" is often translated back into Spanish as estado libre asociado, which is not the same thing. An "associated free State" is not a commonwealth. But that was an accommodation reached in that time, 1952, if I am correct.

Mr. President, once again there being no other Senator seeking recognition, I ask unanimous consent that I might continue for an additional 5 minutes.

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

Mr. MOYNIHAN. I thank you, sir.

As regards statehood, I have known distinguished Governors elected on that platform, including Gov. Romero Barcelo and that magnificent gentleman, former Governor Ferre, who is the benefactor of the arts and all good things, in his Commonwealth and elsewhere. No less distinguished is Gov. Hernandez Colon, a leader of the Populares Party and an advocate of the Commonwealth States. I have known some very impressive representatives of the independence movement, a point of view very much in evidence in the University of Puerto Rico in San Juan; and a legitimate view. I have found the statements of Senator Ruben Berrios-Martinez, the president of the Puerto Rican Independence Party, a very important contribution to the debate.

What do we do about differences of opinion in our country? We vote. Two of the status options would in fact be irreversible or close to it. A vote for statehood when it was finally consummated would make you a State. That is irreversible. Independence is not irreversible, but nearly so. It is pretty serious when you become independent. You can always merge somehow later. Commonwealth continues the status quo, which is also subject to modification.

I am very much aware that the people who conceived Commonwealth status did not see it as an interim arrangement. You can hear different views, sir, from people like Munoz Marin, who was kind of a New Yorker too, lived much of his youth as a poet in Manhattan. You can hear it both ways, but it does not matter. We have what we have.

What we never expected was this kind of raw nativism. But what pleasure this must give the black berets in Vilnius. With what joy they must learn that we, too, deny the right of a plebiscite. With what extra energy they can crank up their tanks in the morning—if need be, that afternoon—to run over with their tread another person, with another placard, asking for the right to vote.

The Lithuanians did, of course, vote. There was a plebiscite on February 9, despite the murders. Overwhelmingly, the Lithuanian people voted for independence. Latvia will vote now, I believe, and Estonia cannot be far behind. We see in Yugoslavia also the inevitable demands for a new arrangement. I read this morning that the Slovenes overwhelmingly voted for independence, and Ljubljana is a more than credible capital. If I did not live in New York and have Albany, I could think of living in Slovenia and having Ljubljana. But that kind of issue will arise with greater and greater frequency; especially in the Soviet Union.

Twelve years ago, I wrote in Newsweek magazine that the 1980's will see the breakup of the Soviet Union, and it began then and continues now.

We, who declared a Declaration of Independence and spoke of the rights of men to dissolve relations with the central authority when they become intolerable, it is hardly for us to now intervene on behalf of the Red army or what remains of Mr. Gorbachev's regime. I do not mean to speak one way or the other about that. But Mr. Gorbachev must enjoy the prospect of the U.S. Senate saying "No." That is what he says, "No." He says it with tanks; we say it with unworthy arguments, sir, unworthy arguments.

Mr. President, I do not wish to keep the Senate, but I wish I would be heard in Puerto Rico saying that this matter is not concluded. The conscience of the Senate has not yet been aroused, and it has not yet spoken. I cannot believe that we will not give the right of self-determination, a right pledged by President after President, pledged before the world, the United Nations, in the face of that miserable dictator in Havana, who himself said we would never allow the Puerto Rican people to choose. We said, "what do you know of choice, Fidel Castro?"

Well, I can imagine Fidel Castro has read the press with interest today. I can imagine it being reported by the Communist-controlled media, from Havana and elsewhere, that the United States is denying people the right of self-determination. And why? Because of their language and their color, sir. Because of their language and their color. At this time, in our Nation, in this age, you could want to weep. You could want to pray for this body. I should ask the Chaplain to be on hand and think about that in our next session.

I say again, sir, that the conscience of the Senate has not been aroused. We are involved with many things, such as the war, but there was no war in the last Congress, and we did nothing with very little arousal.

I want to ask, sir, if I may have printed in the RECORD at this time, the report in the New York Times by Martin Tolchin; in the Washington Times by J. Jennings Moss, of yesterday's events, along with a very able, eloquent letter that also appears in this morning's New York Times by that most distinguished public person, Rafael Hernandez Colon, who is Governor of Puerto Rico, describing the commitments made at the United Nations, in this case by then representative George Bush, who spoke of the Puerto Rican people, when establishing the commonwealth relationship, as having "freely entered into a compact with the United States and freely adopted their own constitution."

Finally, Mr. President, in the closing days of the last Congress I gave an address on this subject which included a sequence of statements, documents and such, saying, all right, we did not do it in the 101st Congress, we will get to it in the 102d right away. I ask that that be printed in the RECORD as well, sir.

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

[From the New York Times, Feb. 21, 1991]

HOPES WANE ON BILL FOR PUERTO RICO REFERENDUM

(By Martin Tolchin)

WASHINGTON, February 20.—The prospects for Congressional approval of a referendum on Puerto Rico's political status dimmed today as most members of a crucial Senate committee expressed serious misgivings about the legislation.

After a hearing in which only 3 of the 19 members of the Energy and Natural Resources Committee expressed support for the referendum, Senator J. Bennett Johnston, the committee chairman and chief sponsor of the measure, said, "I don't know whether we'll be able to pass this legislation."

To appease critics, Mr. Johnston, a Louisiana Democrat, agreed to delete from the measure an assurance that Congress would make a "moral commitment" to be guided by the results of the referendum, which would give Puerto Ricans the choice of statehood, independence or enhanced commonwealth status. Supporters said the assurance gave muscle to the legislation.

The three Senators supporting the measure were Bill Bradley of New Jersey, Paul Wellstone of Minnesota and Daniel K. Akaka of Hawaii, all Democrats.

Jaime B. Fuster, Puerto Rico's resident commissioner who represents the island in Congress and supports enhanced commonwealth status, said: "I'm very disappointed about what happened today. I realize that many members have serious reservations about statehood, but giving us a plebiscite

that binds Congress in no way is a cruel hoax."

Mr. Johnston said he hoped for final committee action next Wednesday. Even if some committee members opposed to the measure vote to send it to the Senate floor out of courtesy to Mr. Johnston, their misgivings darkened the prospect of Congressional approval. Last year the House passed a bill by voice vote that called for a referendum issue.

SIMPLER BILL PROPOSED

Although President Bush supports statehood for Puerto Rico, a growing number of Republicans in Congress fear that a Puerto Rican state would send an overwhelmingly Democratic delegation to Congress. And in the Senate, both Democrats and Republicans fear the expense of a Puerto Rican state in which a majority of the population would qualify for welfare benefits.

Carlos Romero Barcelo, a former Governor of Puerto Rico who is president of the New Progressive Party, which supports statehood, said today's committee session persuaded him that "we have to look at a much more simple bill."

After today's session, Mr. Romero Barcelo wrote Senator Johnston proposing that the bill be modified to authorize a plebiscite, coupled with Congress's agreement to consider a petition for statehood, in the event that the voters chose the statehood option.

Several Senators criticized the bill, saying it unwisely hastened Puerto Rico's road to statehood. "Let Puerto Rico make a decision, and vote and petition us, and then we'll decide whether to accept them," said Senator Wendell H. Ford, Democrat of Kentucky. He noted that Puerto Rico was a separate culture, and added, "Separate cultures everywhere are demanding their independent status."

[From the Washington Times, Feb. 21, 1991]

SENATORS LEERY OF PUERTO RICO AS 51ST STATE

(By J. Jennings Moss)

The bill authorizing a referendum on Puerto Rico's future appears to be in critical condition.

During a Senate Energy and Natural Resources Committee hearing yesterday a majority of the members present said it was either opposed to the bill or had serious concerns. Several members said they feared if such a bill passes, Congress could be forced to make Puerto Rico the 51st State.

The committee is scheduled to vote next Wednesday.

Key to the senators' qualms is how Puerto Rico, a U.S. commonwealth since 1952, would fit into the rest of the nation.

"Nationalism cannot be stamped out. . . . It can be surpressed, in my opinion, for the moment, but it is going to rise again," said Senate Majority Whip Wendell H. Ford, Kentucky Democrat. He predicted that if Puerto Rico became a state, Congress could at some point be faced with the question of what to do with a state that wants to secede.

Last year, the committee voted 11–8 to send a similar bill to the Senate floor. But committee Chairman J. Bennett Johnston, Louisiana Democrat and chief sponsor of the bill, pulled it from consideration because of differences with the House.

Under the bill, the people of Puerto Rico would vote in a plebiscite either statehood, independence or an enhanced commonwealth status. The legislation lays out how each choice would be implemented but Congress would still have to pass a bill after the plebiscite making it into law.

"They are not children. They are not colonial appendages to this country. They are entitled to an answer, a choice," Mr. Johnston said.

Even though the bill would not force Congress to follow the wishes of Puerto Ricans, Mr. Johnston has said he would support the plebiscite's outcome.

"If we have no serious intent of allowing one of the three options, then we're really engaging in a cruel hoax on the people of Puerto Rico," said Sen. Kent Conrad, North Dakota Democrat. Mr. Conrad said he had no intention of voting for statehood for Puerto Rico, saying that could create a situation similar to French-speaking Quebec province's attempts to leave Canada.

Language is one objection to statehood because 60 percent of Puerto Ricans do not speak English. Economics is another because although Puerto Rico has the highest per capita income in the Caribbean Basin, it would be the poorest state and could end up costing the U.S. Treasury. Fairness is a third as the citizens of the state of Puerto Rico would receive a lower level of welfare benefits than residents of other states.

Sen. Malcolm Wallop of Wyoming, the ranking Republican on the committee, said he would propose an alternative next week that would allow a plebiscite but not require a specific congressional action after the vote. Instead, leaders of the winning movement would be able to negotiate the terms of Puerto Rico's future.

Supporters of the bill said Congress should be morally bound to the plebiscite's outcome.

[From the New York Times, Feb. 21, 1991]

PUERTO RICO WILL CHOOSE, DESPITE WHITE HOUSE

To the Editor:

The Department of Justice's challenge of enhanced commonwealth status as an option for Puerto Ricans to vote on (news article, Feb. 8) is yet another attempt by the Bush Administration to load the dice for statehood in Puerto Rico's referendum.

Testifying before the Senate Energy and Natural Resources Committee, Attorney General Dick Thornburgh tried to disqualify commonwealth status as a legitimate alternative, stating that "an area within the sovereignty of the United States that is not included in a state must necessarily be governed by or under the authority of Congress." He cited the territorial clause of the Constitution, to imply that Puerto Rico is nothing but a colony of the United States. As became evident in an exchange with Senator Bennett Johnston, this statement runs afoul of longstanding Federal court precedents.

It also contradicts the United Nations understanding of the commonwealth relationship, particularly General Assembly Resolution 748 (VIII) of 1953, which found commonwealth to be a new noncolonial self-governing political status for Puerto Rico. As United States representative at the United Nations in 1971, Mr. Bush himself told the General Assembly that in establishing the commonwealth relationship, the Puerto Rican people "freely entered into a compact with the United States and freely adopted their own constitution."

Mr. Thornburgh's statement is just the latest of a series of crass breaches of neutrality and objectivity for partisan reasons by the Bush Administration. Last May, Andrew Card and Chase Untermeyer, two White House officials, flew to Puerto Rico to attend pro-statehood rallies and Republican fund raisers, giving repeated statements to the local press on the benefits of statehood and the allegedly unstable and undemocratic nature of commonwealth status. Every Bush Administration witness before a Congressional committee on referendum bills has tried to impugn commonwealth status and promote statehood, disregarding a longstanding Federal policy of respect for Puerto Rico's self-determination.

Commonwealth status remains the commonsensical political expression of the two essential aspirations of the Puerto Rican people: their allegiance to the United States and their United States citizenship; and their will to maintain their sense of identity as a people in their own right, with a distinct heritage, culture and the Spanish language. This is why the pro-commonwealth party I preside over has held a majority of the seats in the Legislature and a majority of the Island's mayoralties since 1980, and the governship and office of resident commissioner since 1984.

Congress has worked with Puerto Rico's political leadership for two years to define mutually acceptable terms and transitions for each status alternative. However, self-determination means that the ultimate choice lies with the people of Puerto Rico. We must repudiate the Bush Administration's repeated attempts to skew the process in favor of statehood, unabashedly violating the principle of government by consent and the right of Puerto Ricans to self-determination.

RAFAEL HERNÁNDEZ COLÓN,
Governor of Puerto Rico.

SAN JUAN, PR, *February 11, 1991.*

[From the CONGRESSIONAL RECORD, Oct. 27, 1990]

THE THIRD QUESTION: THE LEAST UNDERSTOOD

Mr. MOYNIHAN. Mr. President, in the final hours of the last day of the 101st Congress, I rise to discuss the last of the three questions on American foreign policy which I spoke of yesterday morning.

The subject may come as a surprise to some Senators; possibly an unwelcome surprise. If this should be the case, however, I would plead that it will not be the first such occasion. In the CONGRESSIONAL RECORD of April 27, 1990, and again, of May 24, 1990, I addressed the same subject. On both occasions my remarks were given the same heading in the RECORD: "The Decolonization of Puerto Rico."

This question has been with us from the outset of the 101st Congress. In his address to the joint session of February 10—his first address as our new President—President Bush summoned us to a large undertaking:

"There is another issue I decided to mention here tonight. I have long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I favor statehood. But I ask the Congress to take the necessary steps to let the people decide in a referendum."

That was at the beginning of the Congress: we are now at the close; we have done no such thing.

The House has passed a bill, albeit a perfunctory one. Two committees of the Senate have reported bills, or portions of bills, but none has reached the floor, and none has passed. In the meantime, the administration has been silent, save for the occasional aide dispatched to the island to urge that the new State vote Republican.

In fairness, we have worked hard, if intermittently on the matter here in the Senate. Even so we failed to finish our work. This

does not speak well of the Senate for the simple fact that we failed to do our duty in a situation where we could accurately be described as irresponsible. That is to say the citizens of Puerto Rico do not have a vote in the U.S. Senate. No one represents them. None of us is reponsible to them.

The more then ought we, as a matter of principle rather than politics, to have responded to the President's summons—1989 and 1990 were the years that saw the end of the cold war and the reestablishment in Eastern and Central Europe of the effective sovereignty of the nations established there after the First World War.

Those events of 1917—when the Republic of Czechoslovakia was proclaimed in Pittsburgh—to 1920 were, in effect, the first great wave of decolonization of this century. It was not a matter of breaking away of one colony or another, but rather of the acceptance by the international community of the right to independence of former colonies. There was a relapse under Hitler, then Stalin, but the principle has emerged triumphant once more.

That principle, enunciated by Woodrow Wilson in an earlier address to a joint session of Congress, applies no less to American colonies than to those of the Hapsburgs or the Hohenzollerns, or their assorted "cousins" in other capitals of Europe. It applies to Puerto Rico. Which is what President Bush acknowledged in his first address to the Congress.

On April 27 I asked on the Senate floor: "Is Puerto Rico a colony today?" I had asked the same question at hearings of the Committee on Energy and Natural Resources in San Juan in 1989. And I gave the same answer.

"Most obviously, not. In July 1952 Puerto Rico became a full self-governing commonwealth."

Even so, the issue of status, as the islanders correctly term the matter, remains unresolved.

Commonwealth is one option. There are two others. Statehood. Independence. Every President since Harry S. Truman has asserted that the people of Puerto Rico were and are free to choose any of the three. In 1952 Commonwealth status was achieved. As I have more than once stated during this nondebate, commonwealth status was not seen by those who conceived it as a way station to statehood, the position or an applicant or candidate for full membership in the Union. To the contrary, statehood was seen as a plenitudinous condition, comparable to that of commonwealths in other devolving empires. Or such is my understanding; I do not claim to speak in any sense for present day advocates of commonwealth status, nor yet to represent the views of the predecessors. I can claim to have known two generations of commonwealth leaders in Puerto Rico, but no more. Similarly, I have known two generations of statehood leaders. I can claim to understand their position with some confidence simply because statehood is a clearly understood concept within the American Union. Similarly, I assume that I can understand the position of those who advocate independence. I cannot claim any close acquaintance, which is surely a fault of mine, yet I have met "independistas," and have been most impressed with their presentations at Senate hearings.

What this Senator knows or does not know is of small consequence. What matters is that at the outset of the Congress, Puerto Rico was given to understand that it would have the opportunity to choose; but here we are at the end of the Congress having, in effect, denied that opportunity.

Let me be clear. I have to assume that we will get to work on this matter first thing in the next Congress. We have now, mercifully, finished with the endless work of the Summit. We have a 5-year budget plan. It will last at least until next April. The more then should we be about the business of Puerto Rico before next April.

The plain fact is that the Senate does not see this subject in the light that the rest of the world sees it, or would do if attention were called to it. This does us no discredit. Puerto Ricans are fellow citizens. As many live on the mainland today as live on the island itself—more properly, the islands. They fight in our wars, contribute to our affairs, add to our lives the special attributes of an Hispanic culture. No matter. Puerto Rico remains a place of undetermined status. As a matter of honor, the Senate, the Congress must permit our fellow citizens there to choose. As a matter of elemental prudence, we ought to do so directly we return to Washington next January.

If the Senate would indulge me, I would ask that a series of statements I have made on this subject in this Congress be placed in the RECORD.

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

"[From the CONGRESSIONAL RECORD, July 14, 1989]

"POLITICAL STATUS OF PUERTO RICO

"Mr. MOYNIHAN. Mr. President, early last spring Senators JOHNSTON, MCCLURE, and SIMON introduced S. 712, a bill "to provide for a referendum on the political status of Puerto Rico." This is a bill of the uttermost importance to the people of the commonwealth, and of no less moment to the American union.

"The bill provides for a referendum to be held in 1991 presenting the choice of statehood; independence; or commonwealth status. In the event that no status option obtains a majority, there will be a runoff.

"In his State of the Union Message, President Bush indicated his firm support of statehood, as does the just previous Governor of Puerto Rico, Romero Barcelo. The present Governor of Puerto Rico, the Honorable Rafael Hernandez Colon, is a supporter of "enhanced" commonwealth status. There are, of course many supporters of independence.

"There are many considerations involved. Obviously. Absolutely central, however, will be the tax provisions associated with the respective choices. I need not spell out for the Senate the importance, for example, of section 936 of the Internal Revenue Code which provides extraordinary tax incentives for manufacturing firms located on the island. Perhaps a third of Puerto Rican employment is attributable to "936" benefits. There is a great variety of tariff questions to be dealt with, maritime statutes, excise taxes, and the like. The Social Security law and related social welfare measures are of transcendent importance to Puerto Ricans as they are to all American citizens. Each of the three options that are to be presented to the people of Puerto Rico will entail different provisions with respect to these matters.

"With these decisions in the offing, I have been assembling materials that I hope will be of use to the Finance Committee when we settle down to fill in the blanks having to do with the duration of present statutes and such like matters which will be referred to us by the Committee on Energy and Natural Resources.

"Imagine our consternation, then, when the Treasury Department, testifying before the Energy Committee yesterday morning, stated that it saw no reason why our plebicite bill should be "encumbered at this stage" by any specifics concerning the tax and financial provisions that would accompany the three options.

"We are evidently to ask the people of Puerto Rico to make their decision in the dark. They are evidently not to know in advance whether, for example, statehood would mean the end of section 936 tax benefits or not; not to know whether "enhanced" commonwealth status will bring equal social welfare benefits to Puerto Rico, or perhaps yet further restricted ones. They are not to know anything about the very questions which will be most on the minds of the voters.

"If the Treasury Department's position was not so transparently untenable, one would be forced to suspect that it is deliberately perverse. That somewhere in the upper echelons of the Department there are persons determined to thwart the President's state of the Union commitment.

"This is not something the Congress can settle. But one would surely advise the President do so, and quickly, on his return from Paris. For obviously no plebiscite can go forward if the Treasury position remains that of the executive branch.

"Mr. President, I ask to reproduce the opening portion of the testimony of Kenneth W. Gideon, Assistant Secretary—Tax Policy, U.S. Department of the Treasury, before the Senate Energy Committee.

"The excerpt follows:

"TESTIMONY OF KENNETH W. GIDEON

"Mr. Chairman and Members of the Committee: It is a pleasure to be here today on behalf of the Administration, to discuss S. 712, a bill "To Provide for a Referendum on the Political Status of Puerto Rico." This bill would give the people of Puerto Rico an historic opportunity to vote upon the status of that island. The bill would provide for a referendum, to be held in 1991, in which the Puerto Rican people could decide among the options of statehood, independence, or commonwealth status.

"The Administration strongly supports the right of the people of Puerto Rico to decide for themselves on the status of the island. Further, as the President has noted a number of times, he favors the admission of Puerto Rico to the Union as a state, thereby assuring the people of Puerto Rico an equal standing with other United States citizens. However, by providing for a status referendum, the United States Government would be assisting the Puerto Rican people to exercise the basic political right to determine the nature of their government.

"The choice facing the people of Puerto Rico is fundamentally a political one, with long-term implications for their rights and obligations as citizens. Each voter must determine relationship that should exist between Puerto Rico and the United States. By its very nature, a status referendum determines a people's political future. Individual voters must weigh the implications of their vote not only for themselves but also for future generations.

"The Administration firmly believes that the Puerto Rican people should be given an opportunity to express their will in a manner that recognizes the historic and fundamentally political nature of their decision of self-determination. The importance of the

decision they face as people transcends any narrow concern about specific aspects of economic or fiscal structures.

"For this reason, the Administration believes that the discussion of Puerto Rico's future status should not be encumbered at this stage by the tax and financial provisions in the current bill. The selection among the possible status options should be a choice made by the people of Puerto Rico unaffected by the bias which specific economic costs and benefits could bring to the process. After that choice has been made, appropriate tax and financial relationships between Puerto Rico and the United States could be formed consistent with the choice of the Puerto Rico and the United States could be formed consistent with the choice of the Puerto Rican people.

"The Administration recognizes the difficulty of isolating the impact of tax and financial issues from the question of Puerto Rico's future status. Appropriate transition mechanisms will ultimately have to be developed to minimize economic disruption to Puerto Rico resulting from any change from the current commonweatlh status. In addition, we believe that a transition to statehood can be structured so that the Puerto Rican government, after making appropriate use of its own resources, would not be forced to incure a new revenue loss during this transition. The Administration would support a "transition grant" to Puerto Rico to assist in achieving that result. The budgetary treatment of a transition to statehood should be consistent with sound budget discipline. Finally, we believe that there should be a level economic playing field among options.

"The development of provisions which will properly achieve these goals will require a careful cooperative analysis by the Administration, Congress, and the government of Puerto Rico. The resulting package would probably consist of interrelated provisions affecting Puerto Rico's own tax system, the Federal tax system, and direct Federal grants. Accordingly, depending on the specific alternatives chosen, many will be involved in the process, including, for example, the tax-writing committees of the Congress.

"The Administration looks' forward to working with your committee at the appropriate time in fashioning an integrated economic package which meets the Administration's commitments to Puerto Rico and which is fully acceptable to both Congress and the Puerto Rican government. To lay a foundation for that process, I would like to review with you today some of the technical issues which are presented by the provisions in the current bill. While not intended as either an endorsement or rejection of these provisions, my comments will hopefully highlight particular problems which the current language raises.

"Each of the political options covered by the bill—statehood, independence, and commonwealth status—raises special issues that affect the tax systems of both Puerto Rico and the United States. The following comments are limited to those issues. They are not intended to reflect any views on the desirability of any of the status options.

"Regardless of the status option under consideration, we believe that a primary goal of the bill in question should be to ensure that the tax implications of the option are clearly defined. Certainty in the application of the tax law is always a goal of tax policy, and we believe that it is especially important to strive for that certainty in these circumstances, where the Puerto Rican people are facing the possibility of fundamental changes to their government's structure. The focus of my testimony, therefore, will be to identify the tax results of this bills provisions as drafted, to note those ambiguities which the bill raises, and to highlight those issues which the bill's tax revisions do not currently address.

"I. GENERAL REVENUE EFFECTS OF S. 712

"It is difficult to present very precise estimates of the Federal revenue consequences of the various options described in the bill, but it may be helpful for purposes of this discussion to consider some rough guidelines.

"Both the independence and the statehood options assume some form of reduction of the tax incentives currently provided under Internal Revenue Code ("Code") section 936. It should be noted that even under the commonwealth option, Congress can continue to review and revise section 936 and other tax benefits as necessary.

"We estimate that in FY 1989 the tax benefits received by section 936 corporations amount to about $1.9 billion. If section 936 benefits are phased out, some section 936 corporations may choose to leave Puerto Rico. However, the nature of most section 936 company operations makes it unlikely that they could find a good substitute for Puerto Rico in some low-tax foreign location. Thus, if companies do leave the island, it is most likely that they would move back to the mainland where they would be subject to U.S. tax.

"A phase-out of section 936 benefits would cause economic dislocation on Puerto Rico, at least in the short run. Employment in 936 companies now accounts for about 12 percent of total Puerto Rican employment. However, it is very difficult to project the extent to which Federal tax collections would be affected by this dislocation. Under the statehood option, collections of personal income tax may be somewhat reduced for a time; but as discussed below, fully phased-in Federal personal income tax collections from Puerto Rico can be expected to be relatively modest.

"The statehood option presents the issue of how a newly-imposed Federal income tax will interact with a Puerto Rican state tax system. The effects of this change must be considered for both individual and business tax revenues.

"[From the CONGRESSIONAL RECORD, Aug. 4, 1989]

"PUERTO RICO STATUS REFERENDUM ACT

"Mr. MOYNIHAN. Mr. President, the Senate Committee on Energy and Natural Resources has now reported the Puerto Rico Status Referendum Act which has been referred to the Finance Committee for consideration of the taxation and social welfare aspects of the three options set forth which are, of course, independent statehood, or as the term as come to be used "enhanced commonwealth."

"In anticipation of this consideration by the Finance Committee and the Senate's fuller debate on the whole matter. I asked the Congressional Research Service to analyze the effect on selected programs of each status option and also to assess how the Federal tax relationship with Puerto Rico would change under these various options. The first of the these analyses was completed earlier this week, and the other a month ago.

"I am placing them in the Record today in order that the discussion of this hugely important matter may go forward on the basis of relevant facts, which is to say that we might, to some extent at least, know what we are talking about and ultimately voting about.

"I would call attention to the important findings concerning social welfare programs under statehood, under the statehood option. I now cite the CRS studies.

"Under statehood, extension of the earned income tax credit to Puerto Rico where it is not currently available inasmuch as the Federal income tax does not apply in Puerto Rico, could be a significant new program expenditure and a new social welfare benefit, it having had its origin for that precise purpose. If I may say, it is beginning to be the basis of an American family.

"The Congressional Research Service estimates that the earned income tax credit could cover up to 65 percent of all families with children in Puerto Rico, two-thirds of the population which are families with children. That is a cash return, and as we expect it will be at the end of this Congress, a refundable tax refund.

"It needs to be refundable in the case of Puerto Rico in particular because the relevance of Puerto Rico is that under the 1986 tax legislation we put an end to the taxation of families with children with incomes under the poverty line.

"Mr. President, under statehood, the second finding, replacing the nutrition assistance block grant with the food stamp program, including open-ended funding, would greatly reduce Puerto Rico's program design flexibility and could expand the case-load and program costs by one-third or more.

"The third finding, Mr. President, under statehood, replacing the program of aid to the aged, blind, or disabled with the supplemental security income program, an open-ended funding which is the case, would significantly expand the eligibility of the population in Puerto Rico for increased benefits to recipients by as much as tenfold, and consequently greatly increase Federal costs, but also greatly increase social welfare benefits.

"I might add that the supplementary security income is the one provision of the family assistance plan that was sent to Congress in 1969 to be extended to the four income-determined, noncontributory, programs under Social Security: Aid to Families with Dependent Children, aid to the blind, aid to the permanently and totally disabled, and aid to old-age assistance.

"It was the intention of that proposal that the benefits be nationwide and openended. So the great disparities, for example, in the program and benefits to AFDC would not continue. Well, the only group for whom that provision was to adopted were the children. But the other three programs were incorporated into SSI and now would make their way to the commonwealth under statehood.

"Last of the findings, Mr. President, under statehood, the capital and Medicaid funds that currently apply to Puerto Rico would be removed, and a more generous Federal matching formula would be used. As a result, Federal spending for Medicaid in Puerto Rico would more than double. In addition, Puerto Rico would become subject to new requirements for furnishing more extensive coverage to some classes of individuals, while cutting off coverage to others, and Puerto Rico would no longer be able to restrict Medicaid providers to public facilities.

"Mr. President, the analysis of the tax relationship that I shall include in the RECORD this afternoon is not as extensive as that concerning social welfare programs, as much as a further study from the staff of the Joint Committee on Taxation is, now in preparation. It should be available in little more than a week's time, and I would inform Senators that my office will have copies, should any of them wish to obtain them.

"However, on the basis of what we already have, and indeed what we have some time known, I call attention at this time to a major central fact. The tax benefits associated with section 936 of the Internal Revenue Code now account for about one-third of the total employment in the Commonwealth of Puerto Rico. I should make explicit, Mr. President, that this is direct and indirect employment, but a third of the jobs there come from 936 industries—the multiplier effect, as economists call the further benefits from wages earned and then spent.

"The legislation reported by the Energy and Natural Resources Committee provides for phaseout of section 936 benefits under statehood ending in 1998, obviously something such would be required under the uniformity laws of the Constitution.

"I emphasize that by present reckoning, the majority of Puerto Rican families have incomes below the Federal poverty line, as I mentioned. In our 1986 tax legislation, we went to great lengths to see that no such family pays Federal income taxes. Hence, the majority of Puerto Rican families would, for the immediate future at least, be free of Federal income tax, while they would have available a very considerable range of Federal social welfare programs.

"It would thus appear that statehood offers Puerto Ricans the prospect of immediate social welfare benefits, but long-term economic losses, the losses being those to be associated with the disappearance, at least as much as we know, the inevitable disappearance of section 936 benefits, and the assumed decline in those economic activities.

"By contrast, the Commonwealth promises long-term economic gains, the continued availability of the very considerable tax incentives associated with 936, such that a third of the island's employment comes from that section, a section originally designed to promote economic investment by American firms in the Philippines, if I may say.

"By contrast, the Commonwealth promises long-term economic gains, I say again, but with no immediate social welfare enhancements, or none in the legislation we have before us, and which we will take up in an openminded manner in the Finance Committee.

"These are serious matters and will be seriously debated. A minimum responsibility here in Washington is to ensure that, as much as possible, the facts be made available to those who wish to make informed choices. Imagine our consternation when the Treasury Department testified before the Energy Committee on July 13, stated that it saw no reason why the referendum bill should be "encumbered at this stage" by any speculation concerning the tax and economic consequences of the three options. It cannot be that they would wish the people of Puerto Rico to make their decisions in the dark, but certainly they had not shed any light on those decisions. The people of the Commonwealth want, and should have, the facts necessary to make an informed choice.

"Mr. President, earlier this year, the distinguished chairman of the Committee on Energy and Natural Resources, and the distinguished ranking member, held hearings in San Juan on this subject. I was asked to join as an observer from the Finance Committee, which I did, and I think it was probably the case that during our 3 days of hearings, something like half the adult population of Puerto Rico was attacking us on television. It was an extraordinary event in the evenings to walk about the old city and be recognized not just by the occasional viewer of the evening news, but by everyone. This is central to the lives of the people of the Commonwealth, as it ought to be.

"Of course, it is very much in the mind of President Bush, who proposed this referendum to us in his State of the Union message and stated that his preference—very clear, and it has been well understood—was statehood. I am sure if President Bush were aware of the Treasury Department's view that there is no need to encumber this decision with facts, "do not trouble me with the facts" point of view, that he would be of a different view, and perhaps Treasury would respond.

"In any event, Mr. President, the reports I now place in the RECORD are a beginning—I believe a good one. I would like most especially to express my appreciation to Carolyn Merck of the Congressional Research Service, which is a branch, of course, of the Library of Congress, and who headed the study on the effects of the proposal for a referendum on the status of Puerto Rico. I express my appreciation also to David Brumbaugh, of the CRS, who did the analysis of Federal taxes and Puerto Rico under statehood, independence, and commonwealth options.

"Mr. President, may I say that I am aware that I place a large document in the RECORD on this concluding day, as we hope or expect, of this portion of the session of the 101st Congress, but I do so because we are at exactly the point where the issue of the consequences in terms of social welfare benefits and taxation of the three options to be considered by Puerto Rico comes before us.

"The Senate Finance Committee will hold hearings, I am sure, in the autumn. Before we do, it is well that the public should have available the analysis of what the choices before us entail.

"Mr. President, I ask unanimous consent to have two memoranda prepared by CRS printed in the RECORD at this time.

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

"MEMORANDUM

"CONGRESSIONAL RESEARCH SERVICE,
"Washington, DC, July 6, 1989.

"To: Hon. Daniel P. Moynihan. Attention: Ted Zukoski.

"From: David L. Brumbaugh, Analyst in Public Finance, Economics Division.

"Subject: Federal Taxes and Puerto Rico under the Statehood, Independence, and Commonwealth Options of S. 712, 101st Congress.

"This memorandum responds to your request for an explanation of how the Federal tax relationship with Puerto Rico would change under each of the options that S. 712 would present to the people of Puerto Rico for referendum. The discussion that follows begins by explaining how current Federal tax laws apply to Puerto Rico. Under S. 712's Commonwealth option, these laws would generally remain in place. The memorandum continues by looking at the changes the particular statehood and independence options contained in S. 712 would bring.

"CURRENT LAW

"Puerto Rico's current tax relationship with the Federal Government is best understood by looking at how the United States defines its jurisdiction to tax and how Puerto Rico fits into that jurisdiction. In general, the United States asserts its tax jurisdiction on the basis of both the source of income and the identity of the person of firm earning the income. If income has its source in the United States, the United States generally taxes that income, regardless of who earns it. Thus, all individuals and corporations are generally subject to U.S. taxes on income earned in the United States, regardless of their nationality. On the other hand, if an individual is a U.S. citizen, the U.S. taxes the person's income regardless of the country in which it is earned; U.S. citizens are taxed on their foreign as well as domestic income. To alleviate double-taxation, however, the U.S. permits foreign taxes to be credited against U.S. taxes on foreign-source income.

"As with U.S. citizens, the United States taxes corporations that are chartered in the United States on their worldwide income but permits the crediting of foreign taxes. Thus, if a firm conducts its foreign operations through a foreign branch of the U.S. parent corporation, its foreign income is subject to U.S. taxes on a current basis. At the same time, however, foreign-source income of foreign corporations is beyond the U.S. tax jurisdiction. Thus, if a U.S. firm conducts its foreign operations through a subsidiary corporation chartered in a foreign country, income the subsidiary earns is exempt from U.S. taxes until it is remitted to the U.S. parent corporation as intra-firm dividends. U.S. taxes on foreign-source income can thus be postponed indefinitely. This characteristic of the U.S. tax code is usually referred to as the deferral principle.

"Puerto Rico fits into this structure much like a foreign country but with some very important differences. U.S. corporations and firms, for example, are generally permitted to claim Puerto Rican taxes as foreign tax credits.[1] Also, Puerto Rico is not considered part of the United States for tax purposes.[2] For firms, the result is that corporations chartered in Puerto Rico are treated like foreign corporations and are not subject to U.S. taxes on income earned outside the mainland United States. As in foreign countries, then, the deferral principle is generally available in Puerto Rico for U.S. firms that wish to use it.

"Instead of deferral, however, more firms that invest in Puerto Rico use the possessions tax credit: an alternative tax benefit that is not available in foreign countries. The credit, provided by section 936 of the Federal tax code, provides a full exemption from Federal taxes rather than mere postponement and is widely used by U.S. firms with operations in Puerto Rico. Under its terms, qualifying U.S. corporations can receive a tax credit equal to the Federal income taxes they would otherwise owe on income from active business operations and certain financial investments in Puerto Rico. Thus while section 936 technically provides a tax credit, the credit is, in effect, a tax exemption for income earned in Puerto Rico. To qualify for the credit, a firm must be incorporated in the United States (a subsidiary corporation cannot therefore qualify for both deferral and the possessions tax credit), must earn at least 80 percent of its income in the possessions, and must derive at least 75 percent of its income from the active conduct of a business in the possessions. Firms with extensive operations in the mainland United States and elsewhere ordinarily meet these requirement by setting up separate subsidiary corporations for their Puerto Rican operations.[3]

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[1] U.S. Internal Revenue Code, Section 901(b).

[2] U.S. Internal Revenue Code, Section 7701(a).

[3] For further information of the possession tax credit see: U.S. Library of Congress, Congressional Research Service. "The Possessions Tax Credit (IRC Section 936): Background and Issues." Report No. 88-

"Section 936 generally provides a more generous tax benefit than the deferral principle. Under deferral, U.S. firms can invest in Puerto Rico, through corporations chartered in Puerto Rico, and, as long as the subsidiaries' earnings are not repatriated to the U.S. parent corporations, they are exempt from Federal taxes. When the earnings are repatriated, however, they are subject to Federal taxes in the hands of the U.S. parent corporation. Under section 936, possession-source business income of qualifying U.S. corporations is exempt from Federal taxes. Further, since parents can deduct from taxable income dividends received from subsidiary U.S. (but not foreign) corporations, the possessions-source income is also not taxed upon repatriation to the parent corporation.

"Turning now to individuals, Puerto Ricans are citizens of the United States and, as noted above, U.S. citizens are subject to U.S. taxes on their worldwide income. Normally, then, Puerto Rican citizens would be subject to Federal taxes on their worldwide income just like other U.S. citizens. Special provision is made for Puerto Rico, however, by section 933 of the Internal Revenue Code. Under its terms, year-long residents of Puerto Rico are exempt from Federal taxes on income from Puerto Rican sources. Puerto Rican residents, however, are subject to Federal taxes on income from any other geographic source, including the mainland United States. Also Puerto Rico levies its own individual income tax on residents of Puerto Rico.

"The tax code also makes special provision for Puerto Rico with regard to excise taxes. Under section 7652 of the Internal Revenue Code, revenues from Federal excise taxes on goods manufactured in Puerto Rico generally are rebated or "covered over" to the treasury of Puerto Rico. Since 1984, however, certain limitations have been imposed on the rebates. With respect to distilled spirits, rebated taxes are limited to those imposed on rum. Rebate of taxes on other items is prohibited unless more than 50 percent of the value of the taxed items is actually added in Puerto Rico.[4]

"STATEHOOD

"The statehood option specified by S. 712 generally provides that Puerto Rico will ultimately be treated like the fifty States for purposes of Federal income taxes. Individuals residing in Puerto Rico would be subject to Federal taxes on their worldwide income. And at least in the long run, corporations would be subjected to full Federal taxation on income earned in Puerto Rico; neither the possessions tax credit nor deferral would apply. But while the bill provides that "Provisions of the Internal Revenue Code concerning Federal Income Taxes shall immediately apply to Puerto Rico" (section 16 of the bill), S. 712's statehood language also contains important transition provisions designed to "expedite the adjustment of the Commonwealth of Puerto Rico from the tax structure of the territory to the fiscal and economic system of the State" (section 16(a)).

"Among the transition provisions is a general statement that "Provision shall be made by Congress so that economic and fiscal exceptions of the Internal Revenue Code, already granted" would temporarily remain in effect. The possessions tax code is explicitly listed by the bill as one of the tax code's "exceptions." The bill would continue the full application of section 936 for an unspecified period of time before gradually phasing the credit out, also over an unspecified time period.

"Section 993's tax exemption for individuals residing in Puerto Rico would certainly be construed as an "exception" to normally applicable tax treatment in the case of Puerto Rico. The nature of the deferral of taxes on income earned by corporations chartered in Puerto Rico is less certain, but could also be considered an exception. Still, neither of these tax provisions are explicitly listed as exceptions by S. 712. Whether they would be temporarily continued is thus uncertain."

Another transition provision relates to tax revenue. The statehood language of S. 172 provides that the existing income tax laws of Puerto Rico would stand repealed upon admission of Puerto Rico as a State, a measure that would deprive the State government of an important source of revenues. Under the statehood provisions, however, proceeds from the application of Federal income taxes to Puerto Rico are to be transferred into Puerto Rico's treasury in gradually diminishing amounts for an unspecified number of years.

Finally, the statehood language provides that an "omnibus act" will be enacted by Congress "to ensure that the people of Puerto Rico attain equal social and economic opportunities with the residents of the several States" (section 16(c)).

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

I wish to state my growing sense that by the close of this session of Congress, and accordingly, of the 101st Congress itself, we will not have sent to the President a bill providing for a plebiscite on the status of Puerto Rico.

This would not be my wish. To the contrary. What I am about to say is sensitive. I have a limited, but I dare to hope, sufficient sense of just how sensitive. I mean no offense to anyone and devoutly hope that in the end I shall not have given any offense.

We recall with what great expectations this matter came before us at the outset of the first session of this Congress. On January 17 the Majority Leader received a letter from the heads of the three principle political parties of Puerto Rico (identical letters having been addressed to the Speaker of the House and to the President) asking for a "resolution of the status issue" through a vote of the people of the Commonwealth. The text is as follows:

"In the past election held on November 8, 1988, all three political parties, which represent the three alternatives for the ultimate political status of the People of Puerto Rico, included the need for the resolution of the status issue in the platforms they presented to the electorate.

"In accordance with the platform of the Popular Democratic Party, the Governor of Puerto Rico announced in his Inauguration the intention of the Government of Puerto Rico to pursue the resolution of the status question with the Government of the United States of America and convened a meeting of the leadership of the three political parties that represent the three formulas.

"As a result of this meeting we, the Presidents—of the Popular Democratic Party, representing Commonwealth, the New Progressive Party, representing Statehood, and the Independence Party, representing Independence—have agreed to express to the President and to the Congress of the United States of America, that the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.

"Towards the formulation of such an act of Congress and related policies, we request to meet with you at your earliest convenience.

"Conscious that since Puerto Rico came under the sovereignty of the United States of America through the Treaty of Paris in 1898, the People of Puerto Rico have not been formally consulted by the United States of America as to their choice of their ultimate political status, and in the understanding that we are taking a momentous decision in Puerto Rican history and confident of the commitment of the United States of America and of the People of Puerto Rico to the principles of self-determination and government by the consent of the governed, we remain.

"Cordially yours,

"Baltasar Corrada del Rio, President, New Progressive Party, Rafael Hernandez Colon, President; Popular Democratic Party; Ruben Berrios Martinez, President, Puerto Rican Independence Party."

Some weeks thereafter, in an address to a Joint Session of the Congress on February 9, 1989, President Bush endorsed this proposal. He said:

"There's another issue that I've decided to mention here tonight. I've long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the necessary steps to allow the people to decide in a referendum."

The response in Puerto Rico was one of great satisfaction and even greater interest. In June a year ago I accepted the kind invitation of the Committee on Energy and Natural Resources to take part in a hearing on the issue held in San Juan. I think it likely that a third of the population of the island watched our televised hearings all day long, and two-thirds watched the reruns during the evening. That same evening, I could not walk anywhere in town without being greeted by name, usually with some apt comment on the (few) questions which I had asked that day. The Energy Committee went forward with deliberate dispatch, and on August 2nd reported out the bill which is now before the Finance Committee.

That was three-quarters of a year ago. Nothing much has happened. It begins to look as if nothing might. On April 10, the chairman of the House Insular and International Affairs Subcommittee, Ron de Lugo, stated:

"The House is still waiting for legislation from the Senate that was promised last year. At some time soon, we will cross a point when it will become impossible to pass a bill in the House."

Here I must declare, indeed assert, the limits of my knowledge, still more my understanding. I am no stranger to Puerto Rico. I first was there in the Navy near to half a

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200 E. by David L. Brumbaugh. Washington, 1988, p. 9.

[4]For additional information on the cover-over of excise taxes. See: Hoff, Karla, "U.S. Federal Tax Policy Toward the Territories: Past, Present, and Future." Tax Law Review. v. 37. Fall, 1981, p. 56-7. For information on the 1984 limitations, see: U.S. Congress, Joint Committee on Taxation. "General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984." Joint Committee Print., 98th Cong., 2d Sess. Washington, U.S. Govt. Print. Off. 1984. p. 1222, 1226.

century ago. (And, come to think, before that had spent more time than my mother knew in a pool hall called Los Muchachos in the original Manhattan barrio just north of 96th Street where the tracks come above ground on Park Avenue.) In the Kennedy years I came to know and to admire Luis Munoz Marin, and, indeed, worked with many of his lieutenants and associates. I did not fail to note that for them the English term "Commonwealth" was rendered "Estado Libre Asociado" with the further provision in one of the party conferences that the latter never be translated back in English.

At the United Nations I came upon the fierce accusations from Cuba and other elements of the so-called nonaligned nations that Puerto Rico was held in colonial captivity. On behalf on President Ford I answered back with, I hope, equal fierceness that it was the fixed policy of the United States that the people of Puerto Rico were free to choose any relationship with the United States that they wished: commonwealth, statehood, independence.

Shortly thereafter I came to the Senate and am now in my fourteenth year on the Finance Committee. During this time I have recurrently found myself dealing with matters affecting Puerto Rico in the most direct and important ways. I think it fair to say that my colleagues have assumed my interest in these matters reflects the large number of Puerto Rican residents in New York State, which it surely does. But it also reflects my experience at the United Nations and generally with the process of colonization and decolonization. For make no mistake: in the first instance Puerto Rico was the spoil of a colonial war. It became an American colony. It has since evolved into much more than that, yet no one should doubt the explosive nature of the original relationship.

Morever, I began to sense how precarious the situation of Puerto Rico was in the Congress. Puerto Rico had friends; it had no fully empowered member. A nonvoting resident commissioner in the House; no one at all in the Senate. Thus, in November 1984 the Reagan administration announced a wholesale revision of the Internal Revenue Code. The first version, known as Treasury I, simply abolished Section 936 of the Code, the economic cornerstone of the whole development policy conceived by Munoz and those of his time. We managed to block this; but only just. Treasury I was the work of the permanent government; it would be back.

This experience only confirmed my view that statehood would come sooner than anyone seemed to think. I had presented this view in a speech on the Senate floor the previous August.

"Having known Luis Munoz Marin, and being a friend and admirer of so many Puerto Rican leaders who carry on in his tradition, I must say that I have always assumed that this tradition views Commonwealth status as interim, as transitional.

"Temporary economic advantages can help prepare a society for statehood but can never indefinitely outweigh the civil advantage of full citizenship, which only statehood can confirm.

"I look to a Puerto Rico that appears at our portals asserting that the obligation of citizenship can never be fully met by a citizenship that is incomplete. In a word, I look to the day when a Puerto Rican sense of equality will animate a sense of the shared responsibility of equals.

"What I dread is a Puerto Rico coming to us in frustration and resentment at what it considers unequal treatment, looking to statehood as a remedy for grievances rather than a call to duty. Do these terms seem archaic, idealized? Perhaps. Yet I believe they would be recognized by the founders of this Republic, who have nothing to apologize for as regards to the realism of their ideals."

I might add that on that occasion I was defending the right of Puerto Rico to receive back excise taxes paid on liquor produced there. Nothing new in this. The second bill enacted by the first Congress imposed a tariff on Caribbean rum. I concluded:

"I urge the Senate to give consideration to this measure, and especially hope that it will come to the attention of our distinguished majority and minority leaders, who will one day, they or their successors, stand on the floor of this Senate and deal with the application by the Commonwealth of Puerto Rico for entry into the American union, asking that a pledge repeatedly made to the people of Puerto Rico be honored."

In the course of the years my views have not changed. They are known in Puerto Rico, and ought to be made known in the present debate. But I would make an important point in this regard. I have no quarrel with commonwealth status. To the contrary I have come to sense that too many of Munoz's time, and those who follow him, commonwealth was not a way station, an interim period prior to statehood. It was, to the contrary, the closest economically viable option to independence. Or at least, it was something this side of absorption into the union of the mainland.

I respect that. Just as I respect those for whom independence is the only acceptable outcome. My concern is that the process of making a viable choice should continue.

Leaving aside independence, where neither consideration arises, those who would choose between statehood and commonwealth status face a basic dilemma.

It is this.

Statehood automatically brings a huge increase in social welfare benefits. By an order of magnitude! Consider Supplementary Security Income. The current benefit in the commonwealth is about $32 a month for the blind, disabled, and aged who have insufficient Social Security or other benefits. The day statehood becomes effective, this benefit rises to $386, a tenfold increase, thereafter automatically indexed to inflation. Similar results occur across what is now a very wide range of programs. In the 1950s and later these benefits in the United States either did not exist or varied greatly from state to state. In the past 30 years, however, we have more and more tended to national benefits standards.

The impact of statehood on perhaps half the population of the island would be instantaneous and profound. And yet, at the same time, statehood means the loss of Section 936 benefits to industry, such that the economy loses a stimulus which has been absolutely central to economic growth in the past two generations. (Section 936, incidentally, was a program begun in the 1920s to encourage investment in the Philippines.)

By contrast, commonwealth status retains—for a period at least—the economic stimulus of Section 936. But it probably means a continued low level of social welfare benefits. And the absence of a considerable range of Federal taxes. Given those perplexities, I would offer a number of suggestions.

First of all, the executive branch and the Congress have got to undertake as much analysis as the remaining time allows. With no intent to criticize, I must state that some of the departments of the executive branch have been fair to mute on this subject. The Treasury, at least, has come before us and "endorsed' S. 712 as reported out by the Energy Committee, and offered a number of suggestions and reservations. Other departments with programs affected have simply come up here with no views and less data.

Second, the parties in Puerto Rico should try to avoid taking positions that cause anxieties here in the Congress. Those supporting statehood should be most careful about advertising its welfare attractions. Members of Congress altogether friendly to the people of Puerto Rico—they are, after all our fellow citizens—could very well not wish them to fall into the "welfare trap", as it is called, and not without reason. Take the Food Stamp program, as an example. This began in early 1975. By 1982 fully 60 percent of the Puerto Rican population was receiving food stamps. This cost the Federal government some $.9 billion a year. But what did it cost the people of Puerto Rico? I have to report that my impression from travels in the interior that it virtually destroyed Puerto Rican agriculture. As is well known, the Congress thereupon cut back on the program.

Similarly, those supporting continued commonwealth status should take great care that the present seeming preference for statehood, as reflected in opinion polls, not persuade them that the best course is to put off a plebiscite. It is now common to read of this in the Puerto Rican press. I would presume to suggest, for example, that there is no reason the House of Representatives should be waiting on the Senate for a bill.

Let them write their own bill, and we will go to conference with them. This is the normal way in which we do business. One could wish that voices were heard in San Juan asking why the House seems to be running out the clock. For there will be no winners in such an eventuality, or at all events, that is my view. As for "enhanced" commonwealth status, that is surely a matter the Finance Committee will want to consider. I will make proposals. I hope others will do so as well. But time presses.

In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity? Of, but not in, the American union. This could be a perfectly intelligent choice, and of course, the option of eventual statehood or independence remains.

But to say again, the Congress must act. It is almost a century now since William Graham Sumner composed his bitter epitaph on the Spanish American War entitled, "The Conquest of the United States by Spain." His thesis, of course, was that by entering the colonial lists, we would become like other imperial nations, and suffer all their decadence and decline. Well, that hasn't happened. But we won't know until it is made perfectly clear that our offer to Puerto Rico of choice is in fact a fair-minded and efficacious offer. Which is to say, an offer which will shortly issue in an actual choice being made.

I ask that two important editorials one from the New York Times, the other from the Washington Post, be appended to this statement.

[From the New York Times, Apr. 1, 1990]

THE 51ST AND 52D STATES

Puerto Rico is not America's Lithuania, but it is unhappy with its status as a highly dependent commonwealth. An overwhelming majority of 3.3 million islanders are agreed that they want change. But as Congress is learning, agreement stops there. What adds to the perplexity is a parallel but unrelated campaign to grant statehood to the District of Columbia.

A Senate bill supported by the Bush Administration would offer Puerto Ricans a chance to choose, by a binding vote next year, statehood, improved commonwealth status or independence. The problem is to assure a fair choice. If one or another side has plausible reasons for charging bad faith, the referendum could prolong the argument it is meant to end.

Polls for the first time show a narrow majority of Puerto Ricans now favors statehood. As sentiment has shifted, so has the tone of a longstanding debate. Statehood supporters now join with advocates of independence in decrying colonialism. Those clamoring for enhanced commonwealth status contend that the Senate bill is front-loaded unfairly in favor of statehood.

The argument springs from a complicated history. The U.S. acquired Puerto Rico from Spain almost incidentally in 1900. In 1917, Puerto Ricans became U.S. citizens, but not until 1947 did they elect a Governor. Five years later, Congress approved an ingenious commonwealth arrangement, giving a Spanish-speaking island home rule and exemption from Federal taxes but no vote in federal elections.

Economically, the plan made sense. Using an additional tax break known as Section 966 of the revenue code, Puerto Rico has provided generous incentives for mainland investors. But politically, the island has been virtually a ward of Congress, without the clout it would wield with two senators and six or seven representatives, plus a Presidential vote.

The sense of being second-class citizens has given potent impetus to the statehood campaign. As statehood sentiment has waxed, so has uncertainty about Puerto Rico's tax exemptions, causing investors to hold back. To end the debate once and for all, Gov. Hafael Hernandez Colon, a commonwealth advocate, proposed a binding referendum.

But he now faults the Senate will as "terribly, dangerously unbalanced." It would phase in Federal taxes and phase out Section 936 over four years. Meanwhile, says the Congressional Budget Office, statehood could cost other U.S. taxpayers as much as $9.4 billon in additional Federal social spending; more than half the island's population remains below the national poverty line.

A very different view is taken by former Gov. Carlos Romero Barcelo, a statehood proponent. He persuasively cites similar preferential treatment granted other incoming states. Congress can redress the balance by rewording the commonwealth choice to give its proponents more of what they seek: an increased international role, an open port for air carriers, a voice in Federal appointments and jurisdiction over natural resources.

What is unarguable and fundamental is Puerto Rico's right to self-determination. The choice is primarily between two forms of association with the United States. Even the minority favoring independence relies on reason rather than passion. Congress can reciprocate by specifying clearly and fairly what Puerto Ricans can expect, whichever way they vote.

[From the Washington Post, Apr. 24, 1990]

PUERTO RICAN STATEHOOD

A game is being played in a mostly indifferent Congress with the people and the future of Puerto Rico. The issue is the recurrent one in island politics of statehood or independence versus the present mixed status of commonwealth.

The last election on the island in 1983 was won by the commonwealth party, but it was close. In hopes of taking the distracting status issue away from the statehood advocates nipping at their heels, the commonwealthers decided to ask Congress to authorize a binding referendum. Puerto Ricans would choose among the three broad relationships with the United States, and Congress would agree in advance to give effect to the result.

The other Puerto Rican parties also supported the idea, as did the administration, on record as favoring statehood. Then came the problem, which persists, of defining the alternatives that would be voted on. The administration wanted to leave them vague. The Senate Energy and Natural Resources Committee rightly resisted, on grounds that the voters should know what they were voting for. But the committee then produced a seriously misshapen bill, titled sharply in favor of statehood. The legislation front-loaded the statehood option by providing that benefits would go up right away and taxes only later. Opinion polls on the island picked up an instant pro-statehood shift.

Now the Congressional Budget Office has done a study of the likely economic effects of statehood as outlined in the committee bill. From what might be called a welfare standpont the island would gain (and the Treasury lose). Benefits would rise not just earlier than taxes, but as much as $2 billion to $3 billion a year more. But the Puerto Rican economy is dependent on a special provision in the U.S. tax code exempting from tax part of the income of U.S. companies that invest there. As a condition of statehood the exemption would be phased out. CBO says that would mean loss of jobs and calculates that within 10 years this loss on the job side would be greater than the gain in benefits. Puerto Rico would be both more dependent and worse off.

The bill has now gone to the Finance Committee, whose chairman ordered the CBO study. Finance, which has jurisdiction over taxes and many benefit programs, is scheduled to hold a hearing this week. The Agriculture Committee, which has jurisdiction over the food stamp program, an island mainstay, must also be heard from before the legislation can go to the floor. Then the whole process would have to be repeated in the House. There isn't time, and therefore there isn't likely to be a bill. The way the idea has been abused and managled thus far, that would be merciful result. But in the meantime the people of Puerto Rico have been badly jerked around.

[From the Congressional Record, Apr. 27, 1990]

THE DECOLONIZATION OF PUERTO RICO

Mr. MOYNIHAN. Mr. President, the decolonization enterprise initiated by President Woodrow Wilson in his Fourteen Points speech is still very much with us. What was once known as the Mandatory Territory of South-West Africa has just become the independent nation of Namibia. The headlines are dominated by what is, in fact, a decolonization struggle between the Soviet Union and its colony, Lithuania. The Senate has just voted to appropriate funds for earthquake victims in another Soviet colony: Armenia. The decolonization of the Soviet empire is an issue which will occupy our attention for, perhaps, decades to come.

I rise today, however, to remind my colleagues that the United States has not been immune to the attractions of empire building. We once lived in the era of Admiral Mahan and the age of coal-fired ships of the line and the strategic need for a global string of coaling stations. American strategists wrote of the vital American need for stepping stones across the Pacific: Hawaii, Guam, the Philippines. The Hearst press whipped up a war hysteria against Spain over its treatment of Cuba. Then on February 15, 1898 the battleship *Maine* went to the bottom of Havana harbor with the loss of 266 American lives. The warhawks claimed that Spain was responsible and demanded revenge and America went to war with the cry "Remember the *Maine!*"

Mr. President, we now know that it was not a Spanish mine which sank the *Maine*. In a masterful investigation headed by Adm. Hyman Rickover the U.S. Navy concluded in 1976 that "In all probability, the *Maine* was destroyed by an accident which occurred inside the ship." But no matter.

We went to war with Spain ostensibly over its treatment of our neighbors in Cuba and the sinking of the *Maine* in Cuba, but it was in the Philippines that Admiral Dewey first struck, sinking the Spanish fleet handily and gaining for the United States an empire with an afternoon's work. We, therefore, invaded Cuba, defeated the Spanish forces and acquired, in the process, the island of Puerto Rico. At the close of the war and as a result of the Treaty of Paris, America became a transoceanic empire. America's imperial phase had all the trappings of the colonialist, paternalistic mentality. Many Americans snicker over the Frence mission civilitrice, but they forget William Howard Taft's commitment to look after "our little brown brothers" in the Philippines.

Most of this empire has now been shed, but we are still grappling with the problem of the island of Puerto Rico. For 2 years Puerto Rico was governed by the military and from 1900 to 1952 the island was governed, frankly, as a possession of the United States. It was "non-self-governing" in the language of the Charter of the United Nations.

Is Puerto Rico a colony today? Most obviously, not. In July 1952, Puerto Rico became a full self-governing Commonwealth. Its constitution was approved by nearly 82 percent of those voting. Repeatedly, its citizens have had the opportunity to express their opnion through free and open elections. In 1967 only 0.6 percent of its voters opted for independence.

And yet, Mr. President, it would be folly to ignore the island's colonial legacy. It was a colony. This fact requires a special sensitivity on the part of the United States, a sensitivity which I am not at all sure we are today demonstrating. If we do not pay attention to Puerto Rico's colonial legacy, the world does. Resolutions calling for investigations of Puerto Rico's status became standard fare in the U.N. Decolonization Committee during the early 1970's. Only the most intensive lobbying effort in 1975 prevented a similar resolution from being adopted, an event which the New York times hailed as "a victory for comonse sense." I am happy to report that since that time the United States has successfully resisted resolutions condemning the U.S. role in Puerto Rico.

Mr. President, will this situation continue? We cannot be sure. It is a matter of the utmost delicacy. We are in the process of considering arrangements for a plebiscite there and I fear that too little attention is being paid here to this important process. I ask unanimous consent that a statement which I made yesterday in the Committee on Finance and an article from the San Juan Star concerning a congressional visit to the island in June 1989.

I hope that my colleagues will pay close attention to this situation. Mr. President, I urge my colleagues to work diligently to ease the United States through this final stage of its own "decolonization" process.

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

[From the San Juan Star, June 17, 1989]

SENATORS COOL TO PDP "SPECIAL TREATMENT" PLAN

(By Carlos Galarza)

The Popular Democratic Party's proposal for special federal policy treatment contintued to get the cold shoulder from U.S. senators during status hearings in Old San Juan Friday.

When PDP Vice President Miguel Hermandez Agosto defended the party's key proposal of getting special legislative treatment from Congress, the idea got the same rebuff as when Gov. Hernandez Colon made the proposal in Washington two weeks ago.

Sen. J. Bennett Johnston, D-La., Chairman of the Senate Energy and Natural Resources Committee, and ranking Republican Sen. James McClure of Idaho, rejected giving Puerto Rico the power to challenge the applicability of federal laws to Puerto Rico.

Hernandez Agosto contended such a policy would cut litigation because Puerto Rico then could not challenge any federal law which Congress deemed to have "overriding national interest."

The senators, who were joined by Sen. Daniel P. Moynihan, a New York Democrat and member of the Finance Committee, did not appear to buy the argument.

Johnston offered Hernandez Agosto a counter-proposal, suggesting that unless Congress mentioned Puerto Rico in federal legislation, it would not apply to the island.

"It's a good idea, but we like our idea better." Hernandez Agosto said later during an interview. "I see a very positive attitude on their part of trying to understand our proposal and it all boils down to negotiations on this issue."

Hernandez Agosto was one of the main speakers during the daylong hearings at the Government Reception Center that saw a parade of island political leaders address the senators about status and a proposed plebiscite.

PDP Resident Commissioner Jaime Fuster, who preceded Hernandez Agosto on the stand, also made a defense of the federal policy proposal. "We are sensitive to the issue of federal policy as applied to Puerto Rico," he said.

Johnston and the other senators had a rough moment when they confronted the radical left of the island's independence movement.

Puerto Rican Socialist Party Secretary-General Carlos Gallisa pointed his finger at them and said, "You represent the colonial power and cannot be judge and player in this process."

Gallisa was followed to the witness stand by former PSP Secretary-General Juan Mari Bras, who predicted that the senators would see "thousands of independentistas" turn out for a demonstration today.

"You'll see that the people will not assimilate," Mari Bras told the senators.

The PIP-sponsored demonstration will begin with a 10 a.m. rally in front of the El Escambron sports complex and conclude with a march to the site of the hearings.

Former Resident Commissioner Jaime Benitez made a pitch in favor of enhanced Commonwealth.

"If the PDP had not made the mistake of losing the elections in 1976, we would have had enhanced Commonwealth by now because that's what the people of Puerto Rico want," he said.

The other key PDP proponent to testify during the morning session was House Speaker José "Rony" Jarabo, who greeted the senators by saying, "Welcome to the marvelous world of Puerto Rico status politics, where everything is black and white, good and evil . . ."

Former NPP President Baltasar Corrada del Rio was one of four members of the pro-statehood faction who testified in the morning.

He attacked Commonwealth status, corporate tax exemption under Section 936 of the Internal Revenue Code. Corrada said that without statehood, Puerto Ricans would have "second-class citizenship."

Sen. Oreste Ramos, NPP-San Juan, said Puerto Rico is defined by U.S. law as an unincorporated territory and contended that Commonwealth status does not exist and thus cannot be enhanced.

Sen. Rolando Silva, NPP-San Juan, adding a personal touch to his testimony, said he is a Vietnam War veteran who fought for the United States and now wants the right to equal representation.

Sen. Nicolas Nogueras, NPP-at-large, proposed to the senators that Commonwealth status go alone in a referendum. He said that if it fails to garner 51 percent of the votes, then statehood and independence should go alone in a plebiscite run-off.

During the afternoon session development administrator Antonio J. Colorado was submitted to tough questioning on Section 936. He and representatives of the islands business sector said that without 936 benefits Puerto Rico's economy would collapse.

However, their testimony was disputed by prostatehood tax expert Luis Costas Elena who said 936 could be eliminated immediately without affecting the island's economy.

He quoted a U.S. Treasury report that said 936 tax breaks in Puerto Rico cost the Treasury $1.641 billion in 1983. However, Colorado had told the senators that 936 does not cost the United States anything.

Moynihan, who is a member of the Senate Finance Committee, said 936 is not safe from attempts by Congress to eliminate it as has been attempted in the past.

Today's hearings are scheduled from 9 a.m. to 12 p.m. After a day off Sunday, the hearings will conclude Monday with a session scheduled from 8:30 a.m. to 11:30 a.m.

SENATOR CALMS FEARS STIRRED BY MEMORANDUM

(By Manny Suarez)

Sen. J. Bennett Johnston, D-La., said categorically Friday that Puerto Ricans' U.S. citizenship could not be revoked by Congress under either commonwealth or statehood.

"Citizenship should not, will not and cannot be changed under statehood or commonwealth. Citizenship should not, will not and cannot be modified in any way under statehood or commonwealth. It is guaranteed," said Johnston in his opening statement at the Senate Energy and Natural Resources Committee hearings on status here.

Johnston's statement helped ease a controversy over Puerto Ricans' U.S. citizenship sparked at the start of June by a Library of Congress memo.

In the news conference before the hearings started at the Government Reception Center in Old San Juan, Johnston also said:

He did not have an opinion about the size of a majority that would be needed to permit Puerto Rico to become a state.

He did not consider that Puerto Rico was a colony under commonwealth.

That there was growing support in Congress for a "self-executing" bill that would enact whatever status preference the people select without more congressional legislation.

That the island's three parties would share equally in a $1.5 million federal appropriation to help them carry out their plebiscite campaigns.

The committee will not be able to extend the hearings in Puerto Rico as Gov. Hernandez Colon had requested.

Johnston addressed the citizenship issue at a morning news conference, helping defuse the uproar sparked by a Library of Congress staff member. A memo from the staffer released during June 1-2 status hearings said Congress might be able to revoke Puerto Ricans' U.S. citizenship if the island became independent.

Johnston's comments that the memo was only concerned with the effects of Puerto Rican independence were praised by Hernandez Colon, president of the proautonomy Popular Democrats.

Johnston's reassurance, however, had little impact on former Gov. Carlos Romero Barceló, leader of the pro-statehood New Progressive Party.

"The only way to guarantee citizenship is under statehood," he said. "Under commonwealth there will always be doubts, uncertainty and fear."

Also taking issue with Johnston were Dr. Myriam Ramirez de Ferrer, president of the pro-statehood Citizens in Civic Action, and by former Secretary of Justice Blas Herrero.

Ramirez de Ferrer said, "A little of what Johnston had to say was to resolve the hysteria that arose over the issue. But although we may not have it revoked under the present version of commonwealth, we do not know what would happen if the island became an 'associated republic.'"

"Associated republic" is used by the NPP to describe PDP plans for Puerto Rico's relations with the United States. NPP members contend it is a plan for independence.

Herrero said he had been studying the matter and found that citizenship legislation was contradictory.

"The matter is not as clear as Johnston presents it," he said. "I'll have my study done in about two weeks."

Johnston was also asked about another memo to the committee that said the island would have to vote overwhelmingly for statehood before Congress would grant it.

The memo pointed to such offshore states as Alaska and Hawaii that had several prostatehood referendums in which the people voted 90 percent in favor before they were accepted into the union as examples of the "super majority" required.

"The question of the majority needed is not one to be decided right at this moment," Johnston said.

When asked for a reaction, Romero Barceló said the "super majority" issue was raised by Hernandez Colon and the PDP.

"If you must have a super majority it should be for commonwealth which deprives you of representatives and senators and sovereignty," he said. "To be able to participate as a state all you would need is a majority."

Aida Montilla, who attended the news conference as an analyst with WPAB radio on Ponce, asked if the committee truly intended to resolve the island's colonial status.

"That's a loaded question," Johnston responded. "To answer yes or no is to say I believe that Puerto Rico's status is colonial and I do not believe that."

Montilla, a retired University of Puerto Rico professor, is an outspoken advocate of independence and is scheduled to address the committee Monday.

Johnston said there were three bills submitted to deal with the plebiscite, one of which was "self-executing." That means Congress would spell out the terms under which statehood or independence would be granted depending on which alternative won or what enhancement would be given if commonwealth won.

[From the Washington Post, June 2, 1989]

SENATE COMMITTEE OPENS HEARINGS ON PUERTO RICO

(By Judith Havemann)

With impassioned testimony televised live to Puerto Rico, a Senate committee opened hearings yesterday aimed at the permanent settlement of the Puerto Rican question: should the island seek to become the 51st state, an independent nation, or an "enhanced commonwealth" of the United States?

The Senate Committee on Energy and Natural Resources, which has jurisdiction over territories, began consideration of legislation calling for Puerto Ricans to decide their fate in a referendum in 1991.

The issue is nearly 100 years old, and sentiments have run so strong in Puerto Rico that extremists attempted to assassinate President Harry S. Truman in 1950 and shot up the House of Representatives in 1954 in the cause of independence. The question of status has dominated politics on the island since the Spanish American War.

But with the strong support of President Bush, committee chairman J. Bennett Johnston (D-La.) and the three major Puerto Rican political parties, a referendum seems more likely now than it has in decades.

Details of the three alternatives have been submitted to the Senate for consideration in hearings in the energy, finance, judiciary, commerce and armed services committees.

"I can assure you that Congress will make substantial changes to all three definitions, and I fully expect that the advantages of each option will be reduced from what the parties have proposed," Johnston said. "Congress will make budget neutrality an objective." The island receives about $6 billion annually in federal funds.

Former governor Carlos Romero Barcelo argued for statehood. "We are U.S. citizens with a difference: we are second class citizens who have no voice in our nation's future, who have no vote in Washington."

When Americans attacked Libya, "a Puerto Rican Air Force Commander was in the eye of the raid, and [Capt. Fernando L.] Ribas-Dominicci gave his life for his country," Romero Barcelo testified. "His mother did not vote for the president who gave the order to take action against Libya. She has no right to vote—she lives in Utuado, Puerto Rico."

Ruben Berrios Martinez, the Oxford-educated president of the Puerto Rican Independence Party, countered with testimony echoing claims that usually garner 4 percent to 7 percent of the vote in island elections.

The U.S.-Puerto Rican relationship "by whatever name, and whether by imposition or consent, contradicts the principle of representative democracy, is inconsistent with the values and principles of the American people and constitutes a growing source of embarrassment to the United States in the international community," he said.

Gov. Rafael Hernandez Colon, speaking for what he called the "real world" solution of an "enhanced commonwealth," called independence "impracticable," saying it "would wreck the Puerto Rican economy and it runs counter to the unswerving desire of the people of Puerto Rico to maintain their American citizenship."

"Statehood was and is unworkable because it would also disrupt the Puerto Rican economy and does not take into account an-other given: the fact that Puerto Ricans form a people, a distinct society with its own culture, ethos and language," Hernandez Colon said.

He was the only panel member to testify in detail, with the others scheduled to answer questions today.

Hernandez Colon explored several major problems: the official language, whether Puerto Ricans should continue to be exempt from federal taxes, and whether the commonwealth can be legally enhanced to allow Puerto Rico the degree of autonomy it seeks.

The pro-commonwealth forces want tariffs on selected foreign imports; bilateral air transportation agreements with foreign countries; a non-voting commissioner in the Senate; recovery of excess federal lands; block grant funding from federal agencies; Spanish-language testimony in U.S. courts if requested; and the power to enter international organizations and agreements.

The existing commonwealth was established in 1952. In a 1967 plebiscite on Puerto Rico's status, 60 percent of the voters chose the commonwealth, 30 percent backed statehood and the Independence Party received less than 1 percent of the vote after boycotting the process.

[From the San Juan Star, June 2, 1989]

RHC STATUS PROPOSAL RAKED

(By Harry Turner)

WASHINGTON.—Gov. Hernandez Colon and his vision of an enhanced Commonwealth ran into a buzzsaw of objections Thursday from Sen. J. Bennett Johnston, D-La., who found fault with nearly all the pro-autonomy proposals during a torturous afternoon for the governor.

One by one, Johnston picked apart the commonwealth provisions, suggested some be taken out of the plebiscite bill, said others should be sharply modified and contended still others were unworkable.

Johnston's unrelenting criticisms appeared to shake Hernandez Colon, who looked worried and huddled with his advisers during breaks in the first day's plebiscite hearings by the Senate Energy and Natural Resources Committee.

To those with long memories, the attack was remindful of other occasions over the past 30 years when Popular Democratic Party leaders came enthusiastically to Congress with autonomy proposals, only to have their hopes shattered.

Johnston's views are all the more important because he is committee chairman and the driving force behind the plebiscite. It was to him that Hernandez Colon first appealed late last year to get the plebiscite process moving.

Hernandez Colon was the first witness to undergo extensive questioning by the committee. Puerto Rican Independence Party President Ruben Berrios and New Progessive Party President Carlos Romero will appear today.

The hearings are the start of the legislative process that is supposed to end in 1991 when Puerto Rico residents vote in a plebiscite between enhanced Commonwealth, statehood and independence and settle Puerto Rico's status turmoil for a long time, if not forever.

Johnston, although mild-mannered, was especially harsh with the centerpiece of the Popular Democratic Party's proposals—the creation of a federal policy that, in effect, would allow the Puerto Rican government to reject most federal laws and regulations.

This proposed policy mandates that almost all federal laws and regulations must take into consideration Puerto Rico's special economic, cultural, ecological and other conditions.

If a law doesn't, then Puerto Rico could either go to court to block its applicability or ask the president to declare it nonapplicable if Congress doesn't act.

"I think this (allowing the president to declare a law nonapplicable) would violate the separation of powers." Johnston told the governor. "This is probably not a good way to do it * * *. It may not be a good policy and it may not be workable."

The Louisiana Democrat also complained at several points that the proposed federal policy would result in "endless litigation."

He seemed more sympathetic, however, to giving Puerto Rico some kind of control over federal regulations and their administration on the island.

In what appeared to be a warning to all three statuses, Johnston said he believed that Congress, given the budget deficit situation, wouldn't pass a plebiscite bill that led to a further drain on the U.S. Treasury.

"It is certain that if a [status] definition includes an increased benefit, then Congress will be looking for a way to offset the cost of that benefit * * *. Congress will make budget 'neutrality' an objective during its consideration of these definitions."

Johnston backed up his words by telling Hernandez Colon that the Commonwealth proposals of forcing Congress to treat Puerto Rico equally in all federal programs—worth between $850 million and $1 billion a year—were not feasible.

Johnston suggested that the mandatory provision be replaced with watered down language in which Congress would adopt equal treatment as a "goal" to be sought sometime in the future.

Although he didn't spell out his objections, Johnston also seemed disturbed by the PDP leadership's use of "autonomy" when describing the enhanced Commonwealth it seeks.

In the face of the committee chairman's steady objectives, Hernandez Colon appeared to backtrack on most issues during what must have been a long afternoon for him.

However, Johnston indicated in an opening statement that the other two statuses will also take their share of criticism from him and the rest of the committee.

"I can assure you that Congress will make substantial changes to all three definitions,

and I fully expect that the advantages of each option will be reduced from what the parties have proposed," he said.

The Thursday hearings began in the morning with brief statements from Hernandez Colon, Romero and Berrios on their status goals. The three then sat together to take preliminary questions from committee members as a crowded hearing room audience, mostly from Puerto Rico, watched.

The political spectrum of those present ranged from San Juan attorney Jorge Farinacci, accused as a Maschetero terrorist in a Hartford, Conn., armed robbery, to former Gov. Luis Ferre, 85, who recounted for the committee how he had first tesitified in Congress on behalf of statehood in 1936.

The morning session stayed pretty much on track until Romero and Hernandez Colon got off on a tangent of why so many Puerto Ricans can't speak English.

A sizable number of committee members were on hand for the morning session, but in the afternoon usually only Johnston and Sen. James McClure, R-Ida., were present.

Berrios, in his testimony, made a strong plea to the committee to establish safeguards for the plebiscite campaigning so that neither the federal nor the Commonwealth government could skew the process.

Asked later whether he thought the Hernandez Colon administration would use government resources to win the plebiscite, he snorted and said, "Of course."

Here are other major Commonwealth plebiscite proposals and Johnston's reaction to them:

The transfer to the Puerto Rican government of the power to negotiate with foreign countries over air routes. "It seems to me that that would be a burden for Puerto Rico," Johnston said, suggesting that Puerto Rico have some other kind of "input" on air routes.

The empowerment of Puerto Rico to license tuna boats, as part of its proposed jurisdiction 200 miles out to sea.

"We'd probably be better off not to accept that [tuna licensing]," the Senator remarked.

[From the Congressional Record, May 24, 1990]

THE DECOLONIZATION OF PUERTO RICO

Mr. MOYNIHAN. Mr. President, yesterday's Washington Post carried an important article by Mr. Ruben Berrios-Martinez, the president of the Puerto Rican Independence Party. It is entitled, "Puerto Rico—Lithuania in Reverse?" It appears to me to raise many of the issues I addressed here on the Senate floor on April 27 in a statement which appears in the Record under this title. "The Decolonization of Puerto Rico."

May I first say that Mr. Berrios-Martinez' views deserve a most respectful hearing. Puerto Rico was acquired as a U.S. colony almost a century ago—91 years to be exact—in a classic colonial war. Nothing is more normal in our time than for colonies acquired in the 17th, 18th, or 19th century to demand independence in the 20th century. Indeed, all but tiny remnants have done so in what must now be called the aftermath of the age of decolonization. Puerto Rico is a singular exception.

The doctrine, for it is nothing less, of American exceptionalism leads us to think otherwise. We will note, for example, that since 1917 Puerto Ricans have been citizens of the United States. What is one to say? Algerians were free to be citizens of France. The cause of independence marches to a different drummer. In truth, when the Senate Committee on Energy and Natural Resources held hearings in San Juan a year ago June, by far the most impressive demonstration came on a Saturday morning when some 40,000 independence supporters peacefully marched passed the site of our hearings—I was present as a guest of the committee—chanting, "Yankees go home."

I have related before, and will not dwell on it here, my own involvement with this subject. In the Kennedy years I came to know the advocates of Commonwealth status—Estado Libre Asociado, as the term is in Spanish. I acquired them, and still held the impression, it can be little more given my very limited knowledge, that Monoz and his followers were at heart nationalists. They did not see Commonwealth as a kind of way station on the road to full statehood. To the contrary, many saw it as an acceptable variation of independence. Later, as U.S. Representative to the United Nations, I had to deal with a Cuban resolution in the United Nations Decolonization Committee dealing with the "inalienable right of the people of Puerto Rico to self-determination and independence." Our view, stated with some force to the members of the Decolonization Committee, was that every President since Harry S. Truman had affirmed that right and that we needed no advice from a Communist dictator on the subject of our political arrangements. Yet, note that it was thought a considerable "victory for common sense," as the New York Times observed in an editorial, when a motion not to take up the resolution carried by 11 votes to 9. For the word is made up of ex-colonies. Not least of which of course, is the United States itself.

May I restate my own view that our relationship has, in fact, changed over the course of 91 years. On June 17 last year, the final day of our hearings, the issue of Puerto Rico's status was raised. I offered the comment "Is Puerto Rico a colony? We can say it was a colony * * * but have things not changed?" This remark was widely reported and, I believe, is legitimate.

Even so, I quite understand the position of the independentistas who hold that there is no alternative save to establish Puerto Rican nation. Mr. Berrios-Martinez writes:

"[W]hat is wrong with statehood, the traditional solution for dealing with territories peopled with settlers moving west, or with ethnic minorities coalescing around the American way of life?

"Just this: Puerto Rico, a distinct Latin American nationality 60 percent of whose people do not speak English, presents a radically different situation. We Puerto Rican independentistas will never give up our inalienable right to struggle for independence, even under statehood. Minorities and majorities come and go; but nationalities remain. The United States is a unitary, not a multinational, country, and statehood was made for Americans, not for Puerto Ricans or other distinct nationalities."

Then this, with a touch of sarcasm not undeserved:

"A recent study by the Congressional Budget Office has calculated the additional cost to the American taxpayer of Puerto Rico as a state at $25.6 billion in the first nine years. That is why the Puerto Rican statehooders' battle cry is 'Statehood is for the poor'—a far cry from 'Give me liberty or give me death!' Not to be outdone, Commonwealth leaders have petitioned the U.S. Senate for parity with the states in federal funding, but without Puerto Ricans paying federal taxes."

That is why in an opening statement at the Finance Committee hearing on April 26, I pleaded that at the rate we were moving—especially with no action in the House whatever—we were not going to get a bill to the President by the end of this Congress. Without intending we were going to break his promise of a free plebsicite in 1991, I reviewed the assorted economic forecasts and analyses. But concluded:

"In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity? Of, but not in, the American union. This could be a perfectly intelligent choice, and of course, the option of eventual statehood or independence remains.

"But to say again, the Congress must act. It is almost a century now since William Graham Sumner composed his better epitaph on the Spanish American War entitled, 'The Conquest of the United States by Spain.' His thesis, of course, was that by entering the colonial lists, we would become like other imperial nations, and suffer all their decadence and decline. Well, that hasn't happened. But we won't know until it is made perfectly clear that our offer to Puerto Rico of choice is in fact a far-minded and efficacious offer. Which is to say, an offer which will shortly issue in an actual choice being made."

Since then, things have got both better and worse. Better in the House where at long last there is some legislative activity. Worse on the island, where a recent visit of White House representatives produced a storm of controversy, having evidently given the appearance that statehood was the cause of the Republican Party in the United States. Whereupon Gov. Hernandez Colon accused "President Bush * * * of wanting self-determination for Puerto Rico the way the Soviet Premier Mikhail Gorbachev wants self-determination for Lithuania" (The San Juan Star, May 17, 1990).

As for the Senate, the Finance Committee will shortly be reporting our section of the plebiscite legislation which deals with taxes, tariffs, and social welfare benefits. In this respect, I believe three general observations are possible.

First, under independence, there will be none of the above. A parting gift, to be sure. A continuing relationship of some kind—Mr. Berrios-Martinez suggests some form of "sovereign free association option, as defined by international law." But no taxes, no tariffs, no Social Security benefits, save those already earned.

Second, under statehood, there will be full taxes, no refunding of tariffs—as is now partially the case—and full Social Security and other benefits. There may be a symmetrical phase-in of taxes and benefits, but at the end of the decade, the situation of Puerto Rico will be indistinguishable from that of Idaho, with just possibly—and why not—a few tax benefits such as Hawaii still enjoys.

It is inevitable that statehood will bring a huge increase in per capita Federal transfers to Puerto Ricans. I have recently received from the Congressional Budget Office an estimate of this increase.

"CBO estimated Federal transfers in 1995, as specified in S. 712, for four entitlement programs—Food Stamps, Aid to Families with Dependent Children, Medicaid, and Supplemental Security Income (Aid to the Aged, Blind, and Disabled under commonwealth status). These are the major federal entitlement programs funded by general revenues. CBO estimates that per capita federal spend-

ing for these programs under commonwealth status would be about $400. Under statehood, this figure would rise * * *."

Mr. MOYNIHAN. On the very last day of the 101st Congress, on Saturday, October 27, I rose to say:

Mr. President, in the final hours of the last day of the 101st Congress, I rise to discuss the last of the three questions on American foreign policy which I spoke of yesterday morning.

I had spoken of three questions of foreign policy. The first was the new world order; the second was ethnic conflict; and the third question was what I termed "the least understood"—the question of commonwealth, statehood, or independent status for Puerto Rico.

I say, one last time, with great appreciation for the patience and the careful attention of the Presiding Officer, that this issue will not go away. I will not let it go away. We will debate and vote on a bill reported from the Committee on Energy and Natural Resources, or we will vote up or down on an amendment offered on whatsoever vehicle is necessary on this floor, about the right of the people of Puerto Rico to choose their status. Right here from this desk, there will be amendment offered, after amendment offered, after amendment offered. Let nobody on the Committee on Energy and Natural Resources think that they can speak of cultural differences and all the other shorthand, for you know very well, sir—and I will not repeat the name—nativism is the closest perhaps acceptable terms. If they will not report the bill from the committee, they will have multiple opportunities to vote for it up or down in this Chamber offered as an amendment to whatever legislation comes by. We know the rules of this body, sir; they make that possible. I promise that, Mr. President.

Mr. President, thank you for your great courtesy. Observing that no Senator is seeking recognition, 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. DIXON. Mr. President, I ask unanimous consent that the order for the qourum call be rescinded.

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

NATIONAL ENERGY STRATEGY

Mr. AKAKA. Mr. President, yesterday, the Bush administration unveiled its long-promised national energy strategy—a proposal to provide for the Nation's energy needs through the year 2000 and beyond. Nineteen months ago, the President requested that the Energy Department prepare a national energy plan. Yesterday's proposal is the product of 15 separate hearings at various sites around the country, including 1 hearing at which I testified in Hawaii. Unfortunately, the energy plan unveiled yesterday falls short of what this country needs—and deserves—to achieve true energy security.

As I examined this energy plan, I was reminded of the fairy tale Rip Van Winkle. It is the story of a man who falls into a deep, deep sleep and awakes 20 years later, having missed all the profound changes that took place while he was snoozing. My colleagues, the energy plan we received yesterday is a "Rip Van Winkle energy strategy." It appears that the Bush administration has missed the events of the past 20 years which shaped the energy problems we face today.

There is no other way to explain an energy policy that continues to promote energy consumption at the expense of conservation. As has been pointed out in analysis after analysis, the problem with our country is that we are addicted to cheap oil.

Unfortunately, our addiction is linked to supplies from this very dangerous neighborhood—the Middle East. Our service men and women are now preparing for a ground offensive against Iraq. They are about to find out just how dangerous the Middle East can get.

The administration's energy plan barely scratches the surface in two vital areas—conservation and renewable energy. Although often overlooked, energy conservation is America's greatest untapped source of energy. And, while improvements in energy efficiency have yielded real savings since the oil crisis of the 1970's, the United States has not come close to exhausting the full potential for savings through conservation.

Conservation makes sense not merely for economic, environmental, and energy security reasons. Utilities, businesses, government, environmental and consumer groups must come to recognize that conservation is in their best interests, too. In many cases, we are not talking about dramatic transformations. Significant savings are attainable through subtle but sustained changes in our habits or life styles. The administration is beginning to wake up to renewable energy, but this newfound appreciation follows a long period of neglect.

The Federal Government's commitment to renewable energy research and development reached its peak in 1980. Since then, the Federal support for renewable energy has fallen sharply. Over the past decade, renewable energy research has been cut by 80 percent! Low oil prices throughout the same period have only been a wolf in sheep's clothing, lulling Americans into complacency about their energy security. Unfortunately, the budgets of the past decade have simply failed to advance a credible agenda for meeting this challenge. And after 10 years of neglect by the Reagan and Bush administrations, it should come as no surprise that the United States has fallen behind other countries in nearly every area of energy technology.

The national energy strategy is an important first step on the road to achieving real energy security. But it is only a first step. Many proposals which should have been included in yesterday's energy strategy were ommitted from the document.

We face a pressing need to develop a truly comprehensive energy strategy based on increased energy independence and decreased reliance on exhaustible energy sources that threaten our environment. My colleagues and I on the Senate Energy Committee will use the administration's proposal as a starting point as we formulate a comprehensive energy policy bill. I commend Chairman JOHNSTON and Senator WALLOP for the comprehensive proposal they have introduced. I look forward to working on energy legislation that serves the interests of our Nation.

I yield the floor.

SADDAM HUSSEIN'S RADIO SPEECH

Mr. DURENBERGER. Mr. President, what we are learning today is that Saddam Hussein may actually prefer defeat to surrender. If that is the case, the coalition has no choice but to grant him his wish.

We are in the process of reviewing this morning's speech and watching carefully what Tariq Aziz does and says in Moscow. But at this late hour, it would be cause for great surprise if Saddam Hussein were to come to his senses and withdraw from Kuwait. He has shown no respect for the international community, no concern for civilians in his own country or anywhere else, and he showed no compassion for what his 500,000 troops in the Kuwaiti theater are enduring. This is indeed a tragic moment, because it appears that the last embers of hope for a settlement are going cold.

At this important moment, we should as a nation reaffirm that the decisions the President and Congress have made on behalf of the American people have been correct. We are standing up for clear and historic principles. The world community is strongly behind us. The plans we have made for a ground campaign will indeed maximize its effectiveness and minimize our casualties. A more peaceful and stable world order is indeed at stake.

The American people can and should have utmost confidence in those on whom this fateful decision now rests.

SADDAM HUSSEIN'S SPEECH

Mr. D'AMATO. Mr. President, the world waited anxiously today for Saddam Hussein's speech, to hear what he might say. I think the entire world

hoped and prayed that Saddam would finally come to his senses, that he would end the hostilities in Iraq, that he would withdraw his troops unconditionally, that he would undertake to move them out as the President had indicated within that 4-day period.

Once again, Saddam Hussein has chosen the path of war. He alone has chosen that path. I think Saddam Hussein must be deaf, dumb, and blind. His statement is nothing more than a death sentence for the Iraqi army. It is like going to a Milli Vanilli concert: His lips moved, but nothing came out.

So here we are at this critical juncture. The inevitability of a ground war becomes more and more apparent. But it also will be another brutal event made inevitable by Saddam Hussein. I have no doubt that we will be victorious, but obviously we are concerned. We are concerned about our valiant young men and women who are in the desert.

It is my hope that the President will continue the very successful air campaign against the Iraqi forces in Kuwait until the time comes that is absolutely dictated because of military necessity. Then when the Iraqi army is swept away, we should insist that Saddam Hussein is brought to trial for his crimes against humanity.

Saddam Hussein cannot be allowed to rearm and fight another day. The Iraqi military must be told that this will be inevitable; they will be crushed and Saddam Hussein removed from power.

Our men and women in the gulf are America's finest. I am very, very proud of them, but their actions in the gulf cannot be in vain. No reasonable person can now doubt that Saddam will pursue his warmaking in the future if given the chance. That chance certainly should not be given to him.

All Americans today, Mr. President, are praying for the safety of our valiant troops in the gulf. Saddam Hussein's actions today make it probable that they will have to fight a ground war. We must make sure that it will be the last war against Saddam Hussein; we must make sure that our young men and women get the best of support, that the casualties are held to a minimum. I know under the leadership of our President and the commanders in the field that that will be the case.

Finally, Mr. President, I know and I hope and I sense throughout America that there is a different spirit. America's finest, these young men and women, will not return home as they did after the Vietnam war, but they will return home to a grateful America, one that is proud of them, one that acknowledges their sacrifices. Our country will be together in spirit, appreciative of the great sacrifices that these young men and women are undertaking. This will not be another Vietnam. Thank you, Mr. President,

THE SAVINGS AND LOAN BAILOUT

Mr. EXON. Mr. President, I rise today to once again express my concerns regarding the savings and loan bailout passed by Congress some time ago. There have been many reports regarding the progress of that bailout, and I am aware that the Senate may soon be acting on a bill to provide additional billions of dollars to the Resolution Trust Corporation to allow that agency to continue taking over failed thrifts.

I was one of only eight Senators who opposed the bailout when it passed the Senate in April 1989. One of my major concerns at that time was that we had only addressed the tip of the iceberg of the whole affair. I predicted then that the same people would be back requesting additional billions of taxpayer funding. In one aspect, my prediction did not come true. Mr. Danny Wall, who was specifically assured of his position as the chief regulator of the thrift industry, no longer holds that important position.

I bring up Mr. Wall because he testified before the Senate Budget Committee back in October 1988, and I was impressed by his comments. He then said that the cost of the bailout would be between $45 and $50 billion.

In January of this year, Secretary Brady testified, and I quote, "The Board estimated in June 1990 that the final cost of the savings and loan cleanup would be in the estimated range of $90 to $130 billion in present value terms." Secretary Brady then said, "The estimated range is still valid, however, the cost has moved up within the range." If I might restate what Secretary Brady said, this is going to cost about $130 billion.

Mr. President, I have not found the American public to be very pleased with this entire mess. It is not surprising, given the wildly changing and escalating costs of the bailout, that there is not a large amount of confidence in the Government's ability to handle this effort.

Congress needs to restore some of that credibility and one of the ways to do that is make certain that someone is accountable for the expenditure of the billions of dollars that are being provided. If we are going to pour $30 billion more into this effort as has been recommended, then we absolutely must assure our citizens that we are not going to waste any more money than has already been wasted.

On February 7 of this year, my colleague from Nebraska, Senator KERREY, introduced his proposal, Senate bill 389, to help establish some accountability in this process. I am a cosponsor of that legislation along with Senator BUMPERS, Senator DASCHLE, Senator RUDMAN, and Senator PRYOR. A similar proposal was made during the floor debate on the savings and loan bailout but was defeated by a vote of 32 to 66.

Mr. President, I am here today to urge my colleagues to once again consider the merits of this important proposal. In doing so, I urge that they take a look at an article entitled, "How to Hold Down S&L Losses," that was printed in the February issue of Fortune magazine.

The article has much to say about the organizational structure of the bailout effort which is labeled "cumbersome." It adds, "Executive authority is split between an oversight board that sets basic policy and controls funding and a board of directors that conducts operations." Pointing to the fact that members of the oversight board already have full-time jobs, the article adds, "simply arranging meetings is difficult."

The article continues, "the bigger problem is that the board of directors does not cotton to an oversight board, and turf battles erupted nearly as soon as the RTC opened for business. Despite the fact that the RTC was ready to shut down several big thrifts the day it was created, the oversight board restricted major action for months, insisting that it had to formulate a long range policy first. "The fallout: a slower start to the cleanup and lost opportunities to sell thrifts and assets when prices were higher."

The proposal I have cosponsored directly addresses this fundamental flaw. It would collapse the RTC Board of Directors, and the RTC Oversight Board into a single entity of nine members. Five of those members would be from the private sector who would be joined by the Secretary of the Treasury, the Chairman of the Federal Reserve System, the Secretary of HUD, and the chairperson of the Federal Deposit Insurance Corporation.

The new governing body would not be cumbersome, and the problem of turf battles between competing boards would be eliminated. But more importantly, we would have a single board which could be held accountable for its actions. The article that I have mentioned endorses this proposal as a way to enhance the effectiveness of the RTC and to help keep costs of the bailout at a minimum. Restoring some accountability to this effort would go a long way in restoring the public's confidence in our Government's ability to resolve this fiasco.

I noticed that several of the cosponsors of this proposal are former Governors of their States. I was Governor of my State of Nebraska for 8 years before joining this body. If I wanted to get something done and get it done right, I most assuredly would not have done so by first appointing a board of directors and then appointing an oversight board, composed of some of the busiest people in my State, to tell the board of directors how to do their

work. That is surely a formula to conceal accountability and to cause unnecessary delay. Yet, that is just what we have accomplished with the structure of the S&L bailout.

Mr. President, the bailout effort is now nearly 2 years old. It is not too late to admit that some mistakes were made and to make some changes. This was a good proposal when it was made 2 years ago, and it remains a good and greatly needed proposal today.

I am forwarding a copy of the article to the desk and ask unanimous consent that it be printed in the RECORD directly following my remarks.

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

[From Fortune magazine, Feb. 11, 1991]

HOW TO HOLD DOWN S&L LOSSES

(By Terence P. Paré)

Here is a happy thought: If the Resolution Trust Corp., the unwieldy government agency charged with cleaning up the savings and loan mess, closed every sick S&L immediately and sold all the assets tomorrow, the bill for the S&L disaster could be cut by $50 billion plus interest. So says a study by the nonpartisan Congressional Budget Office. To each taxpayer, whose bill for the fiasco averages out to $2,200 plus interest over nine years, prompt action could mean a savings of about $440. That would more than offset the average increase in 1991 personal taxes levied in last year's federal budget agreement.

Don't start spending the money. At the rate the RTC is going now, shutting down and selling off the nation's troubled thrifts will grind on for nine years and chew up every cent of the $250 billion currently estimated on a present value basis. But the cleanup does not have to take that long, and there is plenty that the RTC and the federal government can do right now to save billions.

No one can say how much of that $250 billion can be salvaged. Some $142 billion is gone irretrievably, lost to the real estate slump, bad business decisions by S&L executives, government foot-dragging, and crooks. But at the very least, taxpayers could save $2.5 billion per year if the RTC simply stopped sick S&Ls from paying excessive rates of interest on their deposits. Step up the pace of asset sales, and the savings mount. Close insolvent and weak thrifts quickly, says Robert Litan, senior fellow of the Brookings Institution, and taxpayers could salvage a total of $12 billion to $24 billion.

To realize any of these savings, the RTC must be restructured top to bottom. It is huge, clumsy, and hopelessly slow. Congress and the Bush Administration have to stop playing politics with it and let the agency do its job. It is more than a year into its task of resolving the disaster and, says Henry B. Gonzalez, chairman of the House Banking Committee, "the method and the manners of RTC resolutions are far from being what they ought to be. From every section of the country, including my own, we have reports that reflect deficiencies."

Apologists counter that the thrift mess beggars the financial management skills of banking experts. But even L. William Seidman, the RTC's tough-minded chairman—he is also chairman of the Federal Deposit Insurance Corp.—admits it could be doing a better job: "How well have we done? Not as well as we could have, but a hell of a lot better than people think."

Created in August 1989 by the Financial Institutions Reform Recovery and Enforcement Act, of Firrea, the RTC began life as the Baby Huey of banking—wanting to be helpful, but clumsy, just like the cartoon tyke. The agency started with $104 billion in assets that had once belonged to the Federal Savings and Loan Insurance Corp., which Firrea had dissolved. Now, 17 months later, a mere toddler, the RTC is bursting its buttons with assets of $140.6 billion and an army 5,000 strong, recruited mainly from the Federal Deposit Insurance Corp. Says David C. Cooke, 45, formerly Seidman's deputy at the FDIC and today the RTC's executive director who runs day-to-day operations: "Sometimes I feel a little bit bewildered by it all."

No wonder. A vast government agency has been thrown together with a speed reminiscent of New Deal organizations like the Civilian Conservation Corps. But rather than plant trees and build roads, the RTC's field force of lawyers, accountants, and bookkeepers fans out across the country to audit the financial statements of failed thrifts, bring shoddy loan documentation up to standard, and repossess property from deadbeats. At the agency's main office in Washington, where even the executive director's office is cluttered with cardboard boxes stuffed with papers, Cooke and his crew put in 50-, 60-, and even 100-hour weeks, postpone vacations, and munch brown-bag lunches at their desks to organize the information from the field. The spotlight thrown on the S&L disaster only makes a tough and politically sensitive job harder. Says Cooke: "You're walking on a tightrope, and you've got all these people throwing rocks at you."

The agency's mission seems straightforward: Either sell insolvent thrifts or nurse them until it can shut them and pay off depositors. Shuttered thrifts go into the RTC's receivership ward, where the agency tries to dispose of loans, repossessed property, and other assets. Sick institutions are placed in its conservatorship program, whereby the S&L stays in business while the RTC shrinks it and tries to find buyers for it.

It is possible to hawk an S&L in conservatorship because the customer deposit base can be valuable to commercial banks or sound thrifts that want to expand. Since the value of the assets falls far short of the deposit obligations, the RTC writes a check to the acquirer for the difference—literally paying him to take the failing institution off its hands. This so-called whole bank transaction, experts say, is the cheapest way to effect the cleanup.

Unfortunately, the acquirer typically cherry-picks the best assets instead of taking them all, and still demands bushels of cash from the government to balance the books. The RTC calls this type of arrangement a "clean-thrift sale" or simply a "resolution." Clean-thrift sales cost the taxpayers more than whole bank deals, and they leave unappetizing assets—the ones the buyers turned down—moldering on government shelves.

Since the agency began operations it has inherited 499 sick and dying institutions and taken over assets worth $251 billion. These include properties that the S&Ls foreclosed on as their loan customers went bust and their own foolish direct investments as well. The list reads at times like a catalogue of excess: uranium mines, luxury hotels, a pool hall, and $3.3 billion of junk bonds. At least 594 more S&Ls with $327 billion in assets are ailing. By the end of 1992 the RTC will likely have liquidated or sold 1,000 thrifts—one-third of those in existence in 1987.

The agency has already closed or sold 296 insolvent thrifts, roughly three-fifths the total number of S&Ls it has taken over. But because of the clean-thrift sales, it has unloaded only $113 billion in assets, less than half the total. Some 203 expiring thrifts still wait to be auctioned off or shut.

Buyers are scarce. Commercial banks, which were supposed to help finance asset sales, are not eager to do so. In December the RTC became its own bank, pledging to lend qualified purchasers up to 85% of the cash they need to buy RTC assets. Even so, peddling these damaged goods demands a sleek, limber, aggressive sales organization—exactly what the agency is not. Says Edward J. Kane, an economics and finance professor at Ohio State University: "The RTC does not have the gas, and it is not the right vehicle for the trip it has to take."

Its organizational structure is cumbersome. Executive authority is split between an oversight board that sets basic policy and controls funding and a board of directors that conducts operations. The members of the oversight board, including Treasury Secretary Nicholas Brady, Housing and Urban Development Secretary Jack Kemp, and Federal Reserve Chairman Alan Greenspan, already have full-time jobs. Simply arranging meetings is difficult.

A bigger problem is that the board of directors does not cotton to an oversight board, and turf battles erupted nearly as soon as the RTC opened for business. Despite the fact that RTC was ready to shut down several big thrifts the day it was created, the oversight board restricted major action for months, insisting that it had to formulate a long-range policy first. The fallout: a slower start to the cleanup and lost opportunities to sell thrifts and assets when prices were higher.

Management difficulties multiply further down in the organization, where the RTC must contend with layer upon layer of bureaucracy. For example, six different government bodies monitor the operations of the agency. Says Seidman: "We often go through transactions where there are more auditors than there are participants."

Mircomanagement is the rule. Private asset managers hired by the agency need its approval for all material changes in their budgets. But one contractor complained that it took 18 weeks and 12 revisions to get a two-page budget approved. The RTC's board of directors or various credit committees must okay all sales, and prices have to meet government-set benchmarks. That seems sensible, particularly if the sale is big. But approvals for purchases of distress real estate worth as little as $5,000 must go through the same process, which can take months.

The paperwork that the agency requires from investors interested in buying thrifts is staggering. A potential buyer must provide the RTC with a comprehensive list of everything he owns, for instance. After flipping through the inches-high stack of forms he had to fill out to qualify to purchase a thrift, one deep-pocketed investor dropped the idea, saying, "These people ask for stuff none of my wives know. I'm not telling the government."

The nervous paper shuffling goes beyond the usual red tape that binds any government bureaucracy, and reflects a pervasive anxiety that that agency is going to be ripped off. Given the new magnitude of venality revealed by the S&L mess, the RTC's fear of larceny is understandable. But the as-

sets aren't moving. Says Lowell Bryan, a director of McKinsey & Co.: "They have been acting like they are selling gold."

While it looks over its shoulder, the agency is stumbling into potholes right under its nose. Elaborate selection processes and safeguards to prevent even the appearance of favoritism in hiring outside accountants, appraisers, and assets managers grind slowly and often counterproductively. The agency is prepared to pay about $1.5 billion this year to all its outside contractors, but it selects the contractors from its database of 30,000 real estate agents, accountants, and other experts. To get into the database, one needs only to fill out the inevitable form. The agency checks for ethical improprieties but does not have the resources to evaluate the quality of the contractor's work. Thus the RTC can easily alight on a well-meaning but ill-equipped individual who just happens to tumble through all the right holes in the colander.

Witness the agency's much ballyhooed $300 million real estate auction that was never held. Set to take place last November, the gavel never got off the podium because the RTC claims the auctioneer it hired, Auction Co. of America, failed to put up the $1.8 million promotional money that was required of it by the terms of its contract. Jim Gall, chairman of Auction Co., denies this but admits that his firm had never handled any deal even close to the size of what the RTC proposed.

The agency desperately needs competent outside professionals, particularly bankers. Although the real estate portfolio hogs all the conversation at cocktail parties, 59% of the RCT's assets are loans, most of which are paying interest. Looking after loans requires first-rate banking skills. But acquirers who bought S&Ls from conservatorship complain about the shoddy management techniques used by the RTC's home-grown bureaucrats.

Politics adds to the jumble. Says Charles Schumer, a New York Democrat on the House Banking Committee: "The thrift mess is not an issue where you can be on the side of the angels." And an issue without angels is a devil of a problem for politicians. The sticky wicket is that the S&L mess is largely a failure of the same government that is supposed to be cleaning it up. As a result, everybody is pointing fingers.

Last fall, for example, Congress adjourned without authorizing the funds the agency needed to operate through the end of the year. This was a rebuke to Treasury Secretary Brady, who had asked for more money but failed to appear before the House Banking Committee to explain where the money was going. It was only by slipping through a loophole in Firrea that the agency was able to continue operating. One of the few politically useful mandates that Firrea gave to the RTC requires that low-income citizens get a chance to purchase some of the RTC's housing stock. Congress threatens to continue the RTC's stop-and-start funding as a stick to make sure the agency follows its orders.

What can be done to enhance the effectiveness of the RTC and save some of that $50 billion? After interviews with dozens of experts, Fortune offers the following:

Congress should eliminate the dual boards. A workable proposal from Nebraska Senator Bob Kerrey, a Democrat, would collapse the oversight board and the board of directors of the RTC into a single board of governors modeled on the Federal Reserve. Seidman or his successor would get a seat on the board, but the chairman, appointed by the President, would have to come from outside the government.

Congress should appropriate money annually for the RTC. Instead of being funded by the whim of Congress, as it is now, the RTC should be funded annually like any other government agency. Management should be given a set of objectives and then left to do its job without interference. When the agency comes up for the next year's appropriation, management should be held to account for the money it has already spent. Except for its administrative expenses—about $250 million a year—every penny the RTC spends goes in one way or another to make sure depositors get their money back.

The RTC should impose interest rate caps on sick S&Ls. Right now the thrifts that the RTC has under its wing in conservatorship pay about one-half a percentage point more in interest than healthy thrifts do to hold on to their highest-cost deposits, usually CDs. Bert Ely, a banking consultant in Alexandria, Virginia, estimates that the lofty rates sick S&Ls pay drain $2 billion to $2.5 billion a year out of the taxpayers' pockets. The RTC should put a cap on these rates.

Ely admits that wobbly thrifts would require a huge cash infusion to pay off the depositors who will leave in search of better rates. But the RTC will have to pay off the depositors sooner or later, and the longer bad thrifts pay excessive interest rates, the more taxpayers will have to fork over in the end.

The RTC should negotiate whole bank deals when selling thrifts. Unloading the thrifts in conservatorship will be easier once their interest rates are capped because buyers will know that they are getting stable deposits. While healthy S&Ls and banks are the logical acquirers, private investors should also be encouraged to take advantage of whole bank deals.

The 1988 takeovers by tycoons like Ronald Perelman and Robert Bass sparked a storm of bad press. The problem, however, was not the buyers but the structure of the deals. Purchasers were guaranteed profits through lavish tax incentives, which meant ultimately that taxpayers were guaranteed further losses. Well-heeled investors were not loath to press their advantage with desperate regulators. Today, properly funded and managed, the RTC should be able to press right back and work out sound deals.

AUBURN, WA, CENTENNIAL CELEBRATION

Mr. GORTON. Mr. President, 100 years ago in the newly formed State of Washington, the small town of Slaughter incorporated as the city of Auburn. Originally named after William Slaughter, an Army lieutenant killed during the early Indian conflicts of the region, the town was given a new name by its founders Mary and Levi Ballard. During the fall of 1891, the rich colors of the season, with its shades of red and brown greeted the Ballards as they filed the first plat of land. Thus was the city of Auburn born.

The land was settled in part by Japanese-Americans who farmed the rich terrain as they still do today. Auburn was the site of the Northern Pacific Railroad's main line connection between the two surrounding population centers of Seattle and Tacoma, WA. While cities and industry grew around Auburn, it managed to retain the quality of life which drew Mary and Levi Ballard to the spot over a century ago.

Mr. President, each State has cities like Auburn within its boundaries: cities where children can play in neighborhoods without fear; cities whose high school football stadiums are full on Friday nights; cities that give us noted heroes like Auburn native Dick Scobee, NASA space pilot, lost to America during the tragic explosion of the *Challenger*, as well as the everyday heroes whose sons and daughters look up to them. These are cities where churches are full on weekends and neighbors still watch the house while families vacation; cities which take the time to educate school children about the evils of drug use. And in this time of war, Auburn and other patriotic cities across this Nation are filled with love and support for our troops in the Persian Gulf, proudly displaying American flags and yellow ribbons.

In short, Mr. President, Auburn is an all-American city in which we justly can take pride.

Mr. President, I wish to extend my congratulations to Auburn and its citizens today. It is comforting during these times of uncertainty to know that certain things do not change; that traditional values of 100 years ago continue to be held dear in the city of Auburn. It is my hope that those values will survive and shape the next 100 years, not only for those who live in Auburn, but for all of our citizens as well.

GULF ORPHANS WILL BE WITH US STILL

Mr. HEINZ. Mr. President, for several weeks now, citizens across this country have been struggling to persuade the Pentagon that our war effort demands not just smart bombs but smart and coherent policy as well; that if our respect for human life demands that our soldiers make special efforts to protect the lives of young Iraqi children, then surely it also demands that the military and our Nation do the same thing for our soldiers' young children.

Members of Congress, writers, scholars, civilians, all of these and more, have taken part in that fight. Last night, 38 Members of this body joined together to support a sense-of-the-Senate resolution urging the Pentagon to address, right now before any ground war might begin, the serious threat that assigning sole or single parents to the war zone—or assigning both parents of a military couple—poses to vulnerable young military children.

Mr. President, the Pentagon mounted an all-out effort to defeat this legislation, and some Senators, understandably, became reluctant to support the resolution. It can be difficult to break

with the Pentagon on what may be the eve of a wide-ranging ground war.

Yet the Gulf Orphans proposal that I offered last night would not—indeed it does not—compromise the combat readiness of our troops in the Persian Gulf. And for two reasons: In part, it is because so few of our military under the most extensive of assumptions would be affected.

A maximum of 1 percent would be eligible; a fraction of that 1 percent would likely take advantage of the opportunity provided to request appropriate other duty. Second, the legislation explicitly provided for the Pentagon being able to reject any such request for assignment if, in the Pentagon's judgment, the performance of that duty were militarily critical or essential to carry out the combat mission of the unit to which the person was assigned; the safety of that or other units—in fact, any good, sensible reason to say no.

The resolution, in other words, anticipated that the Pentagon could and would refuse to reassign any service man or woman whose departure would jeopardize the war effort or endanger fellow soldiers. No doubt, the Pentagon's unfortunate failure to address or, I might add, even mention this crucial exception in its letter here to the Senate, to the majority leader, clouded the issue for many.

I have spoken to several of our colleagues today who did not know of the exception in the sense-of-the-Senate resolution. By our actions last night, we of the Senate transmitted a clear signal to the Pentagon that says: All is not well. With the many votes cast in favor of the orphans resolution and, I might add, the overwhelming success of Senator GLENN'S more general, perhaps less focused but nonetheless equally well-intended amendment, which I was pleased to support, the Senate confirmed the seriousness of both the family issues our modern military must confront and the Pentagon's failure, at least to date, to do so.

Having recognized, but not resolved, the problem, we are certain to see it again. If not soon in the midst of a ground war, then later upon the victorious close of the hostilities.

I hope, however, that Senators and those in a position to get things done in the Pentagon realize that there will be an accounting after the war and this Senator hopes that between now and the time that the war ends, the Pentagon will take whatever measures they may require, whether they be public or by stealth, to remove the parents of children who would otherwise be orphaned from the imminent danger area. So when the final accounting comes, I am hopeful that we will be able to say that no American child was needlessly orphaned by an outdated Pentagon, which dug in its heels.

Mr. President, I yield the floor.

GEN. CHARLES HORNER AND SHAW AIR FORCE BASE AT WAR

Mr. HOLLINGS. Mr. President, we are now 5 weeks into the Persian Gulf war, which is to say that we are 5 weeks into the most massive, intensive, and successful air campaign in the history of warfare. Some time back, I heard a military analyst say in reference to the Iraq-Kuwait theater—with its flat, treeless terrain and its mostly cloudless skies—that the gods of war created the Air Force for exactly this kind of environment. In the same vein, it strikes me that the good Lord selected Lt. Gen. Charles Horner as exactly the man to orchestrate this unprecedented air campaign.

General Horner is chief of the 9th Air Force, headquartered at Shaw Air Force Base in Sumter, SC, giving him command of all fighter bases east of the Mississippi. Since early August, he has been in Riyadh, Saudi Arabia, directing the combined air forces of the anti-Iraq coalition—800 United States warplanes and another 450 from Saudi Arabia, Kuwait, Britain, Italy, and France.

At the heart of this air armada is the contingent from Shaw Air Force Base, including 50 F-16 fighters from Shaw's 363d Tactical Fighter Wing and personnel from Shaw's 507th Tactical Air Control Wing. For 5 weeks now, pilots from Shaw have carried out combat missions on a daily—virtually an hourly—basis against Iraq's Republican Guard and other targets in Iraq and Kuwait. Beyond their courage, what impresses me is the sheer competence and professionalism of these men and women from Shaw—the pilots, the ground crews, the controllers, you name it. My hat is off to every one of them, and I join all Americans in praying for their safe and speedy return home. We will welcome them back as the heroes they are.

Sadly, Mr. President, one of those heroes will be returning sooner than his comrades in arms. All South Carolinians were tremendously saddened to learn of Capt. Dale Thomas Cormier's death last Friday when his F-16 crashed while returning from a combat mission. We grieve for his loss, and we stand eternally grateful for the last full measure of devotion which he gave for his country.

I am sure the death of Captain Cormier was felt especially strongly by his superior officer from Shaw, General Horner. Yet dispite this loss, the air campaign continues, as it must until the unconditional surrender of Iraq's forces is achieved.

Mr. President, since January 17, there has been no shortage of high-profile generals and Pentagon officials on our TV screens. But, it is a low-profile Charles Horner, more than anyone else, who has planned an executed the air campaign that has dismantled Saddam's army and brought our coalition forces to the brink of victory. It has been a virtuoso performance—a performance not of words and briefings, but of deeds.

General Horner and his superb staff have coordinated the vast and varied air forces of all the allied nations. They have carried out some 86,000 sorties to date, attacking around the clock for 5 straight weeks. The coalition has lost only 30 aircraft—a loss rate that would be remarkable even under noncombat training conditions, but is nothing less than spectacular considering the stress on men and machines of nonstop combat. This is the ultimate tribute to the readiness and excellence of General Horner's entire team—from top to bottom: Planners, pilots, controllers, ground crews, you name it. They are simply the best, and their dedication to being the best begins with General Horner.

Most impressively, Charles Horner is a thoroughly modern general. He is not one for swagger sticks, pearl-handled Colt 45's, or custom tunics. Desert fatigues will do, plus a diamond-movement IQ, an MBA, and slew of decorations for bravery in air combat over Vietnam. He has left his mark in the rearranged skylines of Baghdad and Basra, and in the shattered ranks of Saddam's armies.

The full story of this historic air campaign has not yet been told. But already General Horner has blown away the conventional wisdom that insists wars can only be won on the ground. Infantrymen may yet be called upon to deliver the coup de grace, but make no mistake about it: It is General Horner and his pilots who have brought Iraq's Army to its knees.

Mr. President, General Horner has set an extraordinary new standard of air generalship—a standard that will be studied and emulated for years to come. Charles Horner began this campaign as a war hero. He will finish it as a war legend.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,168th day that Terry Anderson has been held captive in Lebanon.

HOUSING CRISIS IN HAWAII AND THE PRESIDENT'S HOUSING BUDGET

Mr. AKAKA. Mr. President, I rise today to remind my collegues again of the critical shortage of affordable housing in Hawaii and to express my disappointment with the administration's proposed housing budget.

The details of Hawaii's devastating housing shortage were recently reported in an excellent series of articles written by Vickie Ong for the Honolulu Advertiser.

According to the articles, the average rent for a two-bedroom condo on Oahu is $1,131 a month. The median price for a single family home in Oahu was $355,000 in 1990. Less than 10 percent of Oahu families have the income to qualify for a mortgage.

The Advertiser series also put a human face on these dire numbers. They told of a mother and her two children who are forced to live in a homeless shelter even though she earns $1,385 per month as a clerk-typist at a community college. The articles also described how a young Hawaii family left the State because they could not afford to purchase a two-bedroom condominium.

These articles fully report the misery and anxiety that the people in Hawaii are experiencing because of the lack of affordable housing.

Mr. President, the administration's proposed fiscal year 1992 budget for the Department of Housing and Urban Development does too little to ease that misery and anxiety. Although the administration has proposed increasing the HUD budget, it has misplaced its housing priorities. There is not enough emphasis on the need to increase the supply of affordable housing.

I am disturbed that the administration has proposed no funds for section 8 certificates and instead requested funds only for section 8 vouchers. But, the problem in Hawaii, and elsewhere in this country, is not that people are unable to move into existing housing, which problem vouchers are designed to remedy. Rather, the problem in Hawaii is that there is not enough existing affordable rental housing—the problem certificates are designed to solve. I urge my colleagues to reject the administration's proposal and provide adequate funding for section 8 certificates.

I am also concerned, Mr. President, that the administration's funding request for the Homeownership and Opportunity for People Everywhere [HOPE] initiatives have been made at the expense of efforts to increase the supply of affordable housing.

Authorized last year as part of the National Affordable Housing Act, HOPE grants will enable low-income Americans to buy public housing units, multifamily rental housing and Government-owned single family properties. I remain committed to increasing home ownership, and I supported the enactment of the HOPE initiatives last year.

However, during these times of limited budgets, I think that less emphasis should be given to converting Government housing to private ownership, as proposed by the administration. Rather, greater emphasis must be given to increasing housing opportunities for all people.

The fact is that more housing is needed in Hawaii and many other parts of this country, I urge my colleagues to give greater importance to increasing the affordable housing supply than does the administration. I urge the Senate to remember that many people's hope for a decent home rests with the Government's willingness to stimulate new housing opportunities.

I commend the Honolulu Advertiser for publishing Ms. Ong's series describing Hawaii's housing crisis. I ask unanimous consent that the text of the first of those articles be published in the RECORD.

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

[From the Honolulu Star Bulletin and Advertiser, Feb. 10, 1991]

THERE'S NO PLACE LIKE HOME—IF YOU CAN FIND AND AFFORD IT

(By Vickie Ong)

Islanders are always talking about how expensive it is to rent or buy in Hawaii. Many are calling it a housing crisis.

Here's the view of a top state official:

"Hawaii has had a serious housing problem for many years. Due to inadequate government action and a private industry which is either unable or unwilling to meet the housing needs of the bulk of Hawaii's families, the problem has now become a crisis."

The official was Lt. Gov. Thormas Gill. The year was 1970. He was reporting on "Hawaii's Crisis in Housing."

Fast-forward to 1991. State Senate Housing Chairman Mike Crozier says:

"We have not been able to resolve the problem historically. We let the problem get larger and fester and fester. Now it's pandemic proportions. We have a crisis situation. We have to get going now."

Consider:

Growth in the supply of housing units slightly exceeded demand—that is, the growth in the formation of households—from 1970 to 1980. But in the past decade, supply couldn't keep pace with the demand.

During the 1980s, median family income on Oahu increased 75 percent (from $23,554 in 1980 to $41,200 last year), but median single-family home prices jumped 147 percent (from $143,500 to $355,000).

While home prices were 3½ times above median incomes in 1970, prices last year were eight times median income—pushing home ownership more and more out of reach for average families.

Consumer prices in Honolulu for the first half of 1990 were 35.5 percent above 1982-84, but shelter costs went up a whopping 50.7 percent.

Today's rents—an average $1,131 a month for a two-bedroom condominium on Oahu—make it difficult for a young family to save for a down payment.

Couples who make decent incomes are increasingly frustrated that they can't afford a house for their families. So reluctantly, they begin to scale down their expectations—keep on renting, look for a townhouse or condo, consider moving to the Mainland.

The number of the working homeless continues to grow. As rents escalate, they move in with relatives, camp on the beach or find temporary haven in a government shelter.

Affordable housing has become an overwhelming concern of Island residents. Nearly half of the 800 Hawaii adults surveyed in the Hawaii Poll last August put affordable housing at the top of their list of important problems facing Hawaii today. Poll experts say that rarely, if ever, has one problem so dominated the mind of the public.

"No matter how you look at it or pencil it out, it's pretty tough for the average familiy," said Paul Brewbaker, Bank of Hawaii assistant vice president and economist.

Gov. John Waihee, his administration and the Legislature have worked to get more housing going. With the creation of the state Housing Finance and Development Corporation in 1987—set up specifically to push development of affordable homes and make financing accessible—housing has had a high profile.

It was a centerpiece issue during the governor's race last fall, and images of Waihee proudly showing off home construction at the new second city, Kapolei, endure.

This session, state officials and legislators will be rolling up their sleeves to tackle a related housing issue—making more affordable rental units available. The needs of homeless families, condominium leasehold reform and anti-speculation are among other housing issues that will be aired this session.

In his State of the State Address, Waihee said: "Urban core rental housing is at the top of the state's priority list. We currently have over 900 such units under development. But it will take state, county and private sector partnerships to really do the job."

Crozier, who has worked in the construction industry for years, says "housing is the root of many of our social problems, such as the overcrowding with three generations (and their families) in one house."

"This causes social stress," Crozier said. "Your husband who used to sit around in his shorts cannot do that anymore. You have a baby, but who's the boss—grandma, grandpa or uncle?

"Even the couple, when it comes time to fight, where can they go because mama and papa are sitting at the table choosing sides? The whole fabric of our society is being stretched because of that.

"You hear over and over again how the kids are moving to the Mainland because they can't find a home here."

Home ownership rates have always been low in Hawaii and, in 1989, just 41.6 percent of the housing units here were owner-occupied. (Nationally, the home ownership rate was 63.9 percent.)

These days, Crozier said, a family of four needs to earn $50,000 just to enter the real estate market. But median incomes in Hawaii (or the "middle" of all incomes) are far below that—for Honolulu, $41,200; Maui, $37,700; Kauai, $34,900; and Big Island, $32,000.

Michael Sklarz, director of research at Locations Inc., said a family with an income of $50,000 could buy a $185,000 house or apartment If the family has a $35,000 down payment and IF it could make $1,500 monthly mortgage payments.

And IF the family could find something to buy for $185,000. (In December, the median sales price of a house on Oahu was $390,000 and a condominium was $193,000.)

But most people here don't go out and buy a $390,000 home as their first purchase. That home is usually being purchased with $200,000-plus equity from a previous home or condo.

A survey of lenders here showed the average purchase price in 1990 was $251,430, with a loan amount of $168,936, a down payment of $82,494 and monthly payments of $1,481.

But those who don't have the big down payments have lost one of the dreams of the middle class—"the belief they can own their own home," Crozier said. Without that

dream, "they're not in the middle class, they're part of the poor."

And that, Crozier said, is "not a healthy sign for the whole society."

WHAT HAPPENED?

In the 1970s and '80s, government left housing to private enterprise, Crozier said, but developers targeted the more lucrative upscale market.

Both Crozier and Sklarz say government put the brakes on growth in the 1970s and 1980s, often in the form of bureaucratic "building barriers" in front of developers.

Crozier said lengthy delays added up to 35 percent to the cost of a house and slowed down production. Meanwhile, households were forming at a faster rate than even the population was growing.

While the number of households increased 23 percent from 1980 to 1989, housing wasn't keeping pace: The overall housing stock went up 18 percent and the number of resident units (excluding condos for tourists) expanded by 16 percent.

In short, lots of families wanting housing and not enough homes to go around.

The housing market is now so tight that Oahu had a vacancy rate of 1.5 percent in 1989.

"That's a fantastically low figure," said state statistician Robert Schmitt.

During the Reagan administration, the federal government drastically cut back on funding for low-income and other housing projects. It was left to local and state governments to figure a way out of the housing mess.

HERE COMES GOVERNMENT

Waihee laid out his "housing initiative" in his 1988 State of the State address. Plans identified the need for 64,000 affordable housing units by the year 2000. Waihee felt 95 percent of the need, or 61,000 units, could be met—with 28,000 units built by the state, 5,600 by the counties, 27,000 by the private sector and 2,300 by the military.

Legislators created the housing finance corporation, set up multimillion-dollar funds to spur development of homes for sale and apartments for rent and empowered the state administration to act as master land developer, offer private developers low-cost construction loans and use government's borrowing power to make inexpensive mortgages available.

Government-sponsored housing was targeted at residents who could afford something in the range of $98,000 to $155,000.

But many cannot save the down payment needed even to get in that market. It's hard to save when rents are running $1,000 or more.

"These are the most fragile because it doesn't take much for them to become homeless," Crozier said.

Renters are vulnerable when condominium prices spike, as they did over the past few years. From 1989 to 1990, the median price of a condo on Oahu jumped from $135,000 to $185,000.

"Landlords raise rents and tenants get squeezed out," Crozier said. "We've got to crank up the engines of government to create more rental units."

The 1991 Legislature will be called upon to do just that, by adding money to rental development funds, by allocating more bonds for the purchase of rental buildings.

Those who work with homeless families will also press the Legislature to make affordable rentals a priority. They say many families are working, but they're in homeless shelters simply because they can't afford rents in the private market.

IS THIS CRISIS NEW?

Twenty years ago, Gill said: "The problem has been allowed to develop over a period of three decades and has now reached severe proportions. There is now strong demand for public action. . . ."

Schmitt, who has kept his finger on Hawaii's statistical pulse for decades, said, "Actually, we've had a tight housing situation since the mid-1950s."

The 1970 State of Hawaii Data Book said: "Housing was in short supply through most of the past decade." The words are virtually the same in the newly issued 1991 Data Book.

Housing has "always been unaffordable to varying degrees," Sklarz said. He attributes Hawaii's high prices to the "classic clash between supply and demand."

But in the past few years, the "wild card was the Japanese coming in and having a catalytic effect on the market," Sklarz said.

People who were waiting out the market saw Japanese buying properties. "It prompted local buyers to act, and they acted all at one time, and it amplified the prices," Sklarz said.

The real estate market is stabilizing now, he said. Sklarz said median prices of homes peaked at $392,000 in August, drifted down over the next few months and was up to $390,000 in December, but the overall pattern is a sidewise, "sawtooth" movement. Condo prices from July have held steady at about $200,000, dipping to $193,000 in December.

"When we have price spikes, the assumption is this type of appreciation will go on forever. That isn't sustainable," Sklarz said.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEFENSE PRODUCTION ACT AMENDMENTS OF 1991

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 347, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 347) to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes.

The Senate proceeded to consider the bill.

Mr. DIXON. Mr. President, I urge my colleagues to give swift approval to S. 347, the Defense Production Act Amendments of 1991. Essentially this bill contains the text of the conference report accompanying H.R. 486, the Defense Production Act of 1990 which was approved by the House but not acted upon by the Senate in the closing days of the last Congress.

Mr. President, that conference report represents more than a simple blending of the provisions of H.R. 486 with those of its Senate companion, S. 1379, which I sponsored. Many important concerns were raised by members of the conference committee and by various representatives of the administration. Important accommodations were agreed upon and changes were made to the bill.

By the time the conference report was filed, on October 23, the conference agreement enjoyed strong bipartisan support within the conference committee. The conference report was approved by all but one of the conferees on behalf of the Senate. Among the many House conferees representing four different committees, only three people did not sign the conference report. On October 25, the conference report was unanimously approved by the full House of Representatives and sent over here.

Mr. President, in the hectic last days of the session, final action by the Senate was blocked on behalf of the administration. I want to review the array of concerns giving rise to this action as I understand them and the remedial actions taken to address those concerns, both on the final day of the session and in the bill before us.

One thing I can absolutely assure my colleagues is that the amendments to the Defense Production Act before us today represent the product of a long and a very careful legislative process in both the Senate and the House.

The Senate Banking Committee, Mr. President, held 7 days of hearings on S. 1379. During the hearings we noted the need to modernize the Defense Production Act of 1950 and the declining capability of the Nation's industrial base and technology base to continue to meet national defense requirements.

S. 1379 was reported by the Banking Committee on May 24 without a single dissenting vote. Throughout the Senate's deliberations, the Banking Committee worked with other committees of the Senate to address matters of concern to them.

I see on the floor the distinguished Senator from Utah, who was very much involved in a great deal of these deliberations as the ranking member and former chairman of the Senate Banking Committee.

Substantial modifications were made to the bill to address concerns raised on behalf of the Armed Services Committee and the Antitrust Subcommittee of the Committee on the Judiciary. So two other committees—the Armed Services Committee and the Antitrust Subcommittee of the Committee on the Judiciary—have looked at this bill. That means that three committees of the Senate—Banking, Armed Services, and the Judiciary—and four committees of the House at different times sequentially have considered this bill.

We made certain that administration proposals regarding waivers to the Federal Advisory Committee Act and various conflicts-of-interest statutes were acceptable to the Committee on Governmental Affairs. So that means, in effect, that while they did not exercise any jurisdiction over the work product, actually a fourth committee of the

Senate has looked at it. So, in effect, four different committees from the House and four different committees from the Senate have considered this legislation.

On October 3 of last year, Mr. President, S. 1379 was passed by the Senate by a voice vote. So, essentially, this product passed here once before on a voice vote on October 3, last year.

The House companion to S. 1379 also received a thorough review during both sessions of the last Congress. H.R. 46 was introduced by Representative OAKAR on January 4, 1989, and four hearings on the bill were held by the House Banking Committee's Subcommittee on Economic Stabilization. These hearings were preceded by two hearings held during the 2d session of the 100th Congress on the need to reauthorize and strengthen the Defense Production Act.

The bill was favorably reported by this subcommittee on July 19 of last year and considered by the full House Banking Committee which ordered it favorably reported on September 11. And on September 24 of last year, H.R. 46 was considered by the full House and passed by an overwhelming vote.

To me, Mr. President, last year's conference report on the Defense Production Act of 1990 is worthy of favorable consideration by the Senate. We should have done it then and S. 347 captures that agreement. I feel that we should promptly return it to the House for their consideration.

I would be glad in time to go through the details of this legislation, and, Mr. President, if that becomes necessary, I will. There are, of course, perhaps a half dozen changes that I consider improvements in this bill as contrasted to existing law. I consider this major legislation, particularly in view of what is now happening in the Persian Gulf, where we see once again the tremendous importance of protecting our own defense industrial base, making sure that we have the surge capacity for our industries and producing what is necessary and to protect critical items that we must have for a major war effort.

I just want to give you an example right now of that, Mr. President. This morning, the Secretary of Defense, Dick Cheney, who I think has done a tremendous job in his capacity as Secretary of Defense, and Gen. Colin Powell, who I believe has done a fantastic leadership job as Chairman of the Joint Chiefs, were before the Armed Services Committee.

I happen to chair a subcommittee of the Armed Services Committee known as Readiness, Sustainability, and Support. That subcommittee does a lot of things, some of which are not very exciting. We do not have the big strategic weaponry. We do not do the B-2 in my subcommittee. We do not do the MX in my subcommittee. We do not consider the strategic defense initiative in my subcommittee. We do things like jurisdiction over all the military bases in this country and the world at large; jurisdiction over depot maintenance, Mr. President, such as fixing the tanks, fixing the airplanes, and repairing the ships. And one of the things that has proved so effective, I believe, in the Persian Gulf has been the performance of our equipment.

And then finally we do in my subcommittee ammunition—I hate to use the word dumb, Mr. President, but what is called "dumb ammunition" as distinguished to what they have called "smart ammunition." We do not do the Tomahawk. We do not do the Patriot. We do the iron bombs you drop from the B-52's. We do the artillery shells and the mortar shells that are so important in a land war.

I asked the Secretary of Defense and I asked the general, the Chairman of the Joint Chiefs, this morning, to give me their assurance that we are OK in our ammunition accounts. I just want to tell you something. In 1982, 10 years ago, we spent $3.2 billion on ammunition. It was down last year to $1.4 billion. And it is down this year to $1.2 billion. We are only buying half as much as we bought 10 years ago and we are buying that with those inflation dollars, so we are only getting a third as much for the buck.

I said to them, "Look. I believe in your judgment and your leadership capacity. You know what we need. But are we protecting our industrial base?" Manufacturers of ammunition are going out of business. We are closing this year four of our armed services ammo production facilities. And you literally get to the problem where you are not able to protect the base to produce this stuff if you are not careful. I do not think I need to lecture my colleagues or the public at large at all about the importance of the ammunition. You can have all the finest stuff in the world but if you do not have the bullets to shoot, you have a problem.

This Defense Production Act has existed since 1950. This Defense Production Act, as I recall, is a product of the Korean war. This has been around a long time. We are trying to refine it and improve it.

I would just like to say in conclusion, before I yield the floor, Mr. President, that there could be legitimate differences of opinion between men and women of good faith, honorably motivated, about exactly what ought to be said in this bill.

I understand that some of my friends on the other side have a problem with one of the amendments that was adopted in this bill. My friend, who is here on the floor, the distinguished ranking member of the Banking Committee and I have had a conversation about that. I have talked with the distinguished Senator from Texas [Mr. GRAMM] who has some concerns. I have talked to the minority leader who expressed some concerns from the administration's point of view.

I would be glad to discuss those matters, Mr. President, with the appropriate people. But I think essentially what we are doing here in the improvement of this act is a tremendous improvement over existing law.

I am going to yield the floor now, Mr. President, and give others an opportunity to be heard.

I do not know if my distinguished colleague wants to be heard at this point in time, but let me say I hope we can resolve our differences. I would like very much, Mr. President, to outline, openly, my ambitious hopes about this bill. I would like to have an opportunity, if my colleagues on the other side and the administration have a problem with that one provision of the bill, to have an up or down vote on that provision and whoever wins, wins.

I would like to get this bill to a conference where I pledge to the administration, Mr. President, and to my distinguished colleague—with whom I have had a warm relationship, who is the ranking member on Banking and former chairman of the Banking Committee where I served under him for 6 years when he chaired it, and I think he will confirm our relationship was always a cordial one—I would like to work with the administration to see if we can resolve the differences that exist between the administration and those of us who advocate this bill.

Ultimately I think we can do that in conference, so I hope we are able to proceed to this legislation and pass what I consider to be meaningful and important legislation.

I thank my distinguished colleague from Utah and I yield the floor.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Utah.

PRIVILEGE OF THE FLOOR

Mr. GARN. Mr. President, I ask unanimous consent the privilege of the floor be accorded to Jo-Anne Jackson during the pendency of S. 347.

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

Mr. GARN. Mr. President, today I rise in support of S. 347, the Defense Production Act Amendments of 1991. This bill is the same as the conference report which, at the end of the 101st Congress, passed the House but failed to pass the Senate because of administration and Member objections to several procurement and reporting provisions. The administration is in the process of issuing a policy statement concerning their objections. I hope these objections can be worked out with the administration.

In the meantime, the critical issue for the Congress is to reinstate basic DPA authorities. The authorities that

lapsed in October are needed to ensure full authority for the President to support the war in the Middle East.

I have introduced the administration bill, S. 259, which would extend the DPA with minor modification to October 20, 1991. I understand the House will be reporting this same bill in the near future. We should work out an agreement with the House as soon as possible.

With respect to the substance of S. 347, the bill contains a number of provisions that deserve Senate support. I would like to comment on one in particular. Title IV of the bill is the text of the Fair Trade in Financial Services Act. It is intended to give the Treasury negotiating leverage to open up markets for U.S. financial services companies where they are now being denied national treatment, or equal market access. This is an approach I have long favored, which is badly needed in light of the Treasury's most recent national treatment study.

I hope Congress will restore DPA authorities and act on the broader issues in this bill without delay.

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

Mr. DIXON. Mr. President, if my colleague will withhold?

Mr. GARN. I will be happy to withhold.

Mr. DIXON. I thank my distinguished colleague from Utah.

I see my friend from Texas on the floor.

Mr. President, there had been suggestions by some that they just wanted to do another extension of the existing act. What my colleague from Utah has pointed out is tremendously pertinent to that discussion because there are improvements in this bill of tremendous fundamental importance to people in this country, including that provision my friend has alluded to, largely written by the Senator from Utah, in this bill. That was a provision put in by the chairman of the Banking Committee, the Senator from Michigan, Senator RIEGLE, and the ranking member and former chairman of the Banking Committee, the distinguished Senator from Utah, Senator GARN, in which they in effect open up the world market for our financial institutions to prosper and compete in other lands. Just, Mr. President, as we let those financial institutions come into this country.

The absurdity of it, if I may make a simple explanation, is banks from other nations, Japan, Germany, any place in the world, come in here, do whatever our banks do here. Ours go into their countries and cannot do the same things in their countries that their banks do there.

There are about a half dozen things in this bill that are profound improvements over existing law. I really say in all candor I think there is only one provision in this bill that bothers those who are concerned about the bill very much. My attitude about that is why do we not have an up-or-down vote on that, by amendment, and a healthy debate on that, and then send this to a conference where Senators like the Senator from Utah [Mr. GARN] and the Senator from Illinois [Mr. DIXON] and others, who I think have been pretty accommodating people in their careers here, can work with others to get a bill that is a worthwhile bill, because there are positively things in this bill worth doing.

I do not want to pass a bill the President is going to veto. I am wise enough to know you cannot pass a law here alone. He has the final pen and he makes the final judgment call. I do not have any problem with that, incidentally, and I do not want to change the system. I want to pass a bill that can become a law.

I see my friend from Texas here. That speech was largely directed to his receptivity, because I know he is a warm and gentle person who always is motivated to do kind and thoughtful things in the interests of his colleagues. He is moved to speak now, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me begin by thanking our dear colleague from Illinois for his kind comments. The distinguished Senator from Illinois and I are old and dear friends. Unfortunately, we have convened here today on a subject matter on which we have a lot of fundamental differences.

Mr. President, I did not want to spend my time in the initial statement this afternoon focusing on those differences. Those differences really have to do with how we should rewrite the Defense Production Act. They have to do with what we are trying to achieve with the Defense Production Act. They involve the issue of whether or not we are simply preserving the President's emergency powers or whether we are beginning to channel those powers toward peacetime industrial development. They are concerned with the question of whether America should have an industrial policy as it relates to the defense industry or whether it should not.

I think that is an important debate. While I fundamentally disagree with our distinguished colleague from Illinois on that subject, I think it is a subject that deserves our full attention, and I think it is a subject that ought to be debated. It is a subject on which we ought to see if it is possible—since we are talking about an area where there is a great deal of unanimity, at least in terms of our purpose in providing for the common defense—to see if we can find a vehicle the White House will vigorously support and that will allow us to move together to work for that common purpose.

Rather than focusing on those issues today, I wanted to remind us of the fact we are in the midst of a war in the Middle East. Ground hostilities could begin at any moment. The President has asked that we simply extend existing law.

I have a letter here—I just got it when I got to work this morning—from the Deputy Secretary of Defense.

I have talked to National Security Adviser Brent Scowcroft on this subject. The basic position of the administration is that we are in the midst of a war in which we are in fact putting the defense establishment of the Nation to a test. It is a war in which we have mobilized a fairly substantial amount of our industrial base. I think many people are not aware of the degree to which that has occurred. In the midst of that conflict, rather than institute a major reform of existing law—a reform that in its present form, as it would be presented here today, or as it is in the bill before us, is objected to by the White House—what has been asked for is a simple extension of existing law.

Mr. President, I ask that the letter from Deputy Secretary Atwood be included in the RECORD. It is a letter dated February 20, yesterday.

I also ask unanimous consent that the text of the attached objections to the pending bill be printed in the RECORD.

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

THE DEPUTY SECRETARY OF DEFENSE,
Washington, DC, February 20, 1991.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: We seek your support for S. 259, short-term extension of the Defense Production Act (DPA). An extension is needed so that the DPA authorities, especially those in title I allowing priority performance of defense contracts, are available while negotiations proceed on an acceptable long-term reauthorization of the Act.

We have major objections to several provisions of H.R. 486, as reported by the Conference Committee, and its successor, S. 347. Enactment now of the Administration's Bill, S. 259, will extend the DPA to October 20, 1991, and will provide sufficient time to resolve our differences. While we have a number of concerns with S. 347, Sections 111, 201, and 133 are especially troublesome. Additional concerns are identified in the enclosure.

Section 111 provides authority to limit procurement of critical items to domestic sources. This would increase the cost of our weapon systems, invite retaliation by our allies, adversely impact the U.S. defense industrial base, reduce our long-term international competitiveness, and diminish our ability to sustain technological superiority. Additionally, sufficient authority already exists to restrict procurement of critical items to domestic sources, and this authority is used regularly whenever it is necessary to do so for national security reasons. Section 201 requires establishment of a govern-

ment-wide procurement policy to restrict participation to domestic suppliers in defense contracts for critical items and is opposed for the same reasons as section 111. Section 133 on delegation of authority is unworkable as drafted and should be revised.

We need your support in enacting a suitable short-term extension of the DPA to ensure that the entire range of logistics support presently provided to U.S. Forces in Operation Desert Storm continues without interruption. This extension will allow a reasonable time to pursue a long-term reauthorization of the DPA and provide needed flexibility to resolve the present flaws in S. 347.

Sincerely,

D.J. ATWOOD.

DOD MAJOR OBJECTIONS TO S. 347 ON DEFENSE PRODUCTION ACT AMENDMENTS OF 1991

SECTION 111. STRENGTHENING OF DOMESTIC CAPABILITY

We oppose this section which provides authority to limit procurement of "critical components and critical technology items" to domestic sources.

DoD regularly evaluates the need to restrict procurements to domestic sources in the interest of maintaining a defense industrial base for mobilization purposes. DoD has the authority to restrict procurements to domestic sources for industrial mobilization purposes under 10 U.S.C. 2304(b)(1)(b) or 10 U.S.C. 2304(c)(3). Therefore, the H.R. 486 authority is unneeded. Moreover, the requirements of the proposed Sec. 107 would cause inefficiencies and increased costs in defense procurement and would not strengthen our national defense posture. Sec. 107 might also be perceived as contravening major DoD initiatives (some of which originated in Congress) to increase weapons commonality with our allies. Sec. 107 might be viewed as discriminatory by our allies and result in our allies reducing their purchases of U.S. made arms. This would adversely impact the U.S. defense industrial base, reduce our long term international competitiveness, diminish our ability to sustain technology superiority, and increase the cost of DoD procurements because R&D and other fixed costs would be spread over a smaller production output.

SECTION 133. DELEGATION OF AUTHORITY

We oppose Section 133, as long as this section could be interpreted to mean that a general or flag officer or GS-16 or above must approve the "priority rating" applied to each and every DoD contract. This would create an enormous bottleneck because of the large number of Defense contracts for material which are "rated." The Defense Logistics Agency alone rates over one million contracts a year.

SECTION 201. PROCUREMENT OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS

We oppose this section which provides for the issuance of a government-wide procurement policy to ensure participation of domestic suppliers in contracts for the procurement of designated critical components essential to the production, repair, maintenance, and operation of essential weapons systems and other items of military equipment, and of designated critical technology items.

This section is related to the provisions of the proposed DPA Section 107. The comments about that section also apply here. The proposed policy would duplicate and needlessly constrain industrial mobilization policies. In addition, it would be extremely burdensome and difficult to implement, be ineffectual in achieving the objective of bolstering the domestic defense industrial base for critical items, and be viewed as "protectionist" by our allies and could cause retaliatory trade action. Mandating domestic sourcing for critical components or critical technology items would also impose a considerable burden on the acquisition process and would increase the cost of defense weapon systems.

DOD'S SECONDARY CONCERNS WITH S. 347 ON DEFENSE PRODUCTION ACT AMENDMENTS OF 1991

SECTION 123. OFFSET POLICY

This section codifies the President's policy on offsets for military exports in DPA Section 309 and requires an annual report to Congress on the progress of international consultations to limit the adverse effects of offsets in defense procurement.

Codifying the President's policy would prevent the President from adjusting the policy to meet changing circumstances. Requiring formal reports on consultations impedes the Executive's flexibility in such consultations.

SECTION 124. ANNUAL REPORT ON IMPACT OF OFFSETS

This section amends DPA Section 309 to require the Secretary of Commerce to prepare an annual report to Congress on offsets. U.S. representatives are required to consider the report findings and recommendations during negotiations to reduce the adverse effects of offsets.

As five annual reports based on two comprehensive surveys of industry have already shown, offset-associated military exports provide net benefits to U.S. industry. More reports on offsets are not needed. The notification requirement places an unnecessary and useless burden on industry and the Government.

SECTION 136. INFORMATION ON THE DEFENSE INDUSTRIAL BASE

This section adds a new DPA Section 722, which requires: (1) establishment of a defense industrial base information system; (2) a systematic continuous procedure to collect and analyze defense industrial base information; (3) a report to Congress on a strategic plan for establishing the information system; (4) establishment of a task force to ensure full agency participation in the information system; and (5) a biennial report on shortfalls in domestic industrial capabilities. For the purposes of this section, $10M is authorized.

Establishment and maintenance of the information system required by this section could require tens of hundreds of millions of dollars. Moreover, requirements concerning defense industrial base information and analyses have already been specified by the 1989 Defense Authorization Act. It would be more effective to have DoD incorporate and build on "lessons learned" from these analyses in the existing Defense Industrial Network (DINET) rather than being required to perform additional analyses.

SECTION 202. RECOGNITION OF MODERNIZED PRODUCTION SYSTEMS AND EQUIPMENT IN CONTRACT AWARD AND ADMINISTRATION

This section requires amendments to the FAR to provide for contract solicitation provisions that encourage acquisition of modern industrial facilities and equipment which would increase productivity and reduce costs for government procurements.

Implementation of this section could add burdensome requirements with little value to the acquisition process and would be contrary to the DoD initiative to streamline the acquisition process. Through the Industrial Modernization Incentives Program (IMIP), DoD already provides incentives to contractors to modernize facilities and equipment to achieve increased productivity and reduced costs. In addition, as DoD continues to expand its emphasis on buying "best value," contractors will be rewarded for increased productivity and reduced costs by receiving contract awards.

Mr. GRAMM. Mr. President, to save time, let me just read part of one paragraph:

We have major objections to several provisions * * * of S. 347. Enactment now of the administration's bill, S. 259, will extend the DPA to October 20, 1991, and will provide sufficient time to resolve our differences. While we have a number of concerns about S. 347, sections 111, 201, and 133 are especially troublesome. Additional concerns are identified in the enclosure.

Mr. President, my request is a fairly simple one. We are going to be in session for a year, roughly, after October 20. By October 20, the conflict in the Middle East should be over.

We will have an opportunity before that time to go back and look at what we learned from this conflict. We will get an opportunity to look at the industrial base of the United States and how it responded to the demands of the Defense Department. The White House will have an opportunity to sit down with Senator DIXON and with others who are proponents of these reforms and negotiate with them to see if we can come up with a bill that everyone can support.

The President needs these powers. He has asked for them. The Defense Production Act expired Saturday, October 20. I think it is important we have a temporary extension. The White House and the Department of Defense have asked us to make the extension until October 20, 1991, to give us an opportunity to get through the conflict in the Middle East, and to give them then an opportunity to work with Senator DIXON and with others to try to work out a compromise.

I understand and I greatly appreciate the fact that our distinguished colleague from Illinois has worked long and hard on this bill. I know that he believes that this bill is important and that he believes this as strongly as I believe that some of its provisions are unwise.

I think, however, that the prudent course of action when the country is at war, when the President has asked us simply to extend existing law through October 20, would be to go ahead and do that. Then, let us agree that once the war in the Middle East is over, interested parties, especially the Department of Defense and the White House, can sit down and try to work out the differences they have with Senator DIXON and Senator HEINZ so that we could have a bill that would unify our effort.

I commend that course of action to our colleagues, and I hope that that is the course of action that we follow. I, for my own part, have committed that I would work toward that action. I think it is the prudent thing to do, and I hope that our colleagues will decide to follow that course.

I yield the floor.

Mr. DIXON. Mr. President, I thank my colleague from Texas, who, in his usual and thoughtful manner, has pointed out his views about this. I have great respect for his views. I always enjoy those times when we are together on issues, because I do respect his views. I have some honorable differences with him concerning this legislation. But let me address point by point some of the issues raised by my colleague from Texas.

First of all, a simple extension does not take care of the entire problem. We already have passed in this body an extension until March 18. There is no problem at all with further extensions of existing law until we ultimately are able to iron out whatever differences exist with reference to this piece of legislation in a conference committee, Mr. President.

But there are a lot of things in this bill that are important things that are not part of existing law. I had already talked about the important contribution made by the Senator from Utah, the ranking member of the Banking Committee and the former chairman, a distinguished Republican, who has many thoughtful contributions to make on this and other issues, and who is responsible for one of the titles in this bill, it is a good and important provision.

The Department of Energy is very concerned and supportive about a provision of this bill that is not in the existing Defense Production Act that had existed until time ran out last October.

The Department of Energy is interested in provisions of this bill that would deal with the energy crisis and energy shortages.

I ask my colleagues, Mr. President, what could be more critical? There are a lot of reasons why we are in the Persian Gulf, but I am pretty sure nobody is going to deny that one of the reasons that leads to the problems that we have there is our continued dependence upon foreign energy sources.

The President just yesterday issued a statement reflecting his point of view that has to do with a variety of things: More energy production in the United States, which I am sure my friend from Texas warmly supports, and I do. Incidentally, as the Senator from Illinois, Mr. President, it may surprise some here to know that Illinois is a fairly important oil-producing State, and particularly in southern Illinois, where I come from, oil is a major economic interest. So enhanced domestic productivity certainly is a matter that this Senator supports, as does the Senator from Texas.

The President yesterday talked about additional alternative energy. I support that enthusiastically, Mr. President. My State of Illinois, with Iowa, is the biggest corn producer in the country. There is a contest every year between Iowa and Illinois with corn, which produces ethanol. We have ADM and Staley, the two biggest producers in the world, in my State. So I am surely concerned about alternate energy sources.

I feel like going into another speech about that, Mr. President, because I remember when I ran for the U.S. Senate in 1980, how proud many of us were of the efforts by then President Jimmy Carter to do more to produce alternative energy sources in this country, most of which have been abandoned, I am sad to say, in the last decade. So that part of the problem that exists is the lack of alternative energy sources.

The Department of Energy wants this bill. That is a correct statement.

I want to read a letter, Mr. President, of January 17, 1991. This is a letter from J. BENNETT JOHNSTON, the chairman of the Committee on Energy and Natural Resources, the distinguished senior Senator from Louisiana. I believe even my friend from Texas would recognize him as a man who cares a great deal about adequate energy sources, and certainly he has supported as enthusiastically and as diligently over the years as my friend from Texas the ability of our country to produce adequate oil supplies.

That letter is cosigned by the ranking minority member, the distinguished Senator from Wyoming, Senator MALCOLM WALLOP. What do those two worthy Senators say?

> We are very concerned about the failure of the Congress to have reauthorized the Defense Production Act * * * at the end of the 101st Congress. Expiration of the Act has called into question the President's authority to assure prompt delivery of energy supplies and related goods to meet national security requirements that may arise out of the present crisis in the Middle East.
>
> Of particular concern to our committee is that the Secretary of Energy may lack the authority to meet the Department's own needs. For example, without the DPA the Secretary lacks the authority to demand priority treatment for contracts supplied outside of the United States. It is also vitally important that several changes—

Now listen to this part, Mr. President—

> It is also vitally important that several changes to the energy-related aspects of the DPA be made in whatever DPA extension legislation is adopted by the Congress.

There are two important provisions in this bill. First is repeal of the section of the act which prohibits the use of voluntary agreements to implement international agreements relating to petroleum products. Without the repeal United States oil companies will be reluctant to work together to fulfill oil supply obligations under the North Atlantic Treaty or other international agreements. Also, should damage come to oil fields in other countries—do you think there is a good chance of that, Mr. President? It is a certainty—it is doubtful U.S. oil companies would be able to work together to rebuild the fields.

The second change would clarify that the Defense Production Act's contract priority provisions apply to 'service' contracts. Repairs to the strategic petroleum reserve pipeline and airlifting troops and equipment are examples of the type of services that would be covered. And the letter goes on.

So, Mr. President, Senator BENNETT JOHNSTON and Senator MALCOLM WALLOP are saying that the provisions of this bill, not in existence in any existing law or not in existence in the extension of any existing law, are imperative. I read this line again for my colleagues in the Senate who are in their offices now and ought to know this: "Should damage come to oil fields in other countries, it is doubtful U.S. oil companies would be able to work together to rebuild the fields without the provisions of this bill" before us now, without this legislation.

So, Mr. President, this bill embodies the fruitful efforts of a lot of people. I see my distinguished colleague, the distinguished senior Senator from Pennsylvania, on the floor. There is a provision in this bill which, frankly, I think the administration has some trouble with that is the contribution in its entirety of the Senator from Pennsylvania. I support that provision. I agree with it.

An oversimplification of that provision says that, if we find in our examination of critical items that we need, with respect to some critical item for which we are totally dependent on a foreign nation, we need to do something about it, to present an adequate domestic industrial base to produce that critical item so we are not dependent upon a foreign country.

Why, Mr. President, I tell you, in a time of war I think the contribution of the Senator from Pennsylvania is fundamentally important. Here you have a bill I am talking about that addresses energy provisions. Nothing could be more critical right now. The things I read from that letter are exactly what is happening in the Persian Gulf right now. Critical in this bill is a contribution by the distinguished senior Senator from Pennsylvania on the other side of the aisle, a matter I consider fundamentally important to our national security interests, a matter pertaining to our financial institutions. Mr. President, at a time when our session this year on matters domestic as distinguished from the Persian Gulf will almost be entirely devoted to commercial banking concerns: increased

powers for the banks, risk-based deposit insurance, mandatory annual examinations, an alteration in bad basic motives of the too-big-to-fail theory, limitation of the number of insured accounts, use of the reserves that are held sterile now, to take some of the interest from those reserves held sterile from the standpoint of banks and put in the FDIC to augment the funds; all those issues. There is nothing more important than giving the banks an opportunity to be more competitive in the international markets. The contribution in this bill by the Senator from Utah, Senator JAKE GARN, the ranking member and former chairman of the Banking Committee, and the Senator from Michigan, the chairman of the Banking Committee now, Senator RIEGLE, simply says, "Your banks come into this country from all over the world and do exactly what we do, and all we want to do is be able to come into your country, Japan, Germany, Italy, wherever it is, and do exactly what you do there." All of that, in the view of this Senator, is fundamentally important, treating the basic illnesses of our society as they exist right at this very moment as we are here on the floor of the Senate.

But I say again in conclusion, in response to my dear friend from Texas, we are open to modifications. I understand that when this bill goes out of this place, it goes to a conference. I understand the administration wants to make some changes. We are open to discussing that. I know that you cannot make a bill into law unless the President will sign it or you have a two-thirds majority in both Houses, and I suspect we do not have a two-thirds majority in both Houses. So fundamentally we need the President's signature. My door is open, and I am prepared to do business. But we want to pass this bill. I urge my colleagues to give that very serious consideration.

I thank my friend from Texas for his usual thoughtful remarks. He is a valuable Member and a warm friend, but I feel very strongly that this bill is a uniquely important bill, substantially different than existing law, all of which is absolutely necessary at this critical time.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. KERREY). The Senator from Texas.

Mr. GRAMM. Let me briefly respond to the questions our dear colleague has raised. Again, I hope that at some point in the not too distant future we can come to a resolution.

First of all, let me make it clear that the House has said it is going to take up a simple extension at the subcommittee level today and that that bill will be taken up at the full committee level next week. It will be an extension that will last until September 30.

Let me read to my colleagues a memo that was sent out by the majority subcommittee staff of the Committee on Banking, Finance and Urban Affairs in the House to members of the Subcommittee on Economic Stabilization. I will read just one paragraph:

The subcommittee expects to hold a series of hearings in anticipation of moving a comprehensive DPA reauthorization bill this year. The focus of the hearings will be a review of controversial provisions included in the conference report adopted last Congress and insight into any adjustments required by the Desert Shield and Desert Storm experiences.

My first point, Mr. President, is that the House is moving to do what the President has asked us to do, and that is to move with a simple extension.

Second, while our dear colleague from Illinois talks about the important input of the distinguished Senator from Pennsylvania and others, let me make it clear that, with a war going on, the most important input is that of the Commander in Chief, the input of the President of the United States. The President has asked us to send him a simple extension which will allow us to get through this war period. Then we will have an opportunity to sit down and to work out our differences on the larger issues.

I have just passed out to some of our colleagues here on the floor—and I ask unanimous consent that a copy be put in the RECORD—a Statement of Administration Policy. Let me read the first paragraph:

The Secretary of Defense will recommend that the President veto S. 347 unless the provisions pertaining to industrial policy, delegatory authority, and the Defense Production Act fund's contingency liabilities are deleted.

Mr. President, we have now a clear statement of the intention of the Secretary of Defense to recommend that this bill in its current form be vetoed.

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

[From the Office of Management and Budget, Washington, DC, Feb. 21, 1991]

STATEMENT OF ADMINISTRATION POLICY

(S. 347—Defense Production Act Amendments of 1991—Riegle and 7 others)

The Secretary of Defense will recommend that the President veto S. 347 unless the provisions pertaining to industrial policy, delegatory authority, and the Defense Production Act Fund's contingency liabilities are deleted. In particular, S. 347 would:

Permit or require the limitation of the production and procurement of critical military components and technology to domestic sources, (sections 111 and 201);

Circumvent necessary budgetary controls on spending by authorizing purchase guarantees and other actions that could result in obligations in excess of available budgetary resources (section 122); and

Require that only officers appointed by the President and confirmed by the Senate approve the priority rating applied to each Defense contract, creating an enormous bottleneck due to the large number of Defense contracts that are currently rated (section 133).

In lieu of S. 347, the Administration urges Congress to enact its proposal, S. 259, which would extend the Defense Production Act of 1950 (DPA) until October 20, 1991. S. 259 also contains two amendments which include the provision of contract services and energy aspects of the current Persian Gulf conflict. Enactment of the Administration's proposal would support the defense requirements of Operation Desert Storm.

The DPA authorizes the President to direct materials and facilities from civilian to military use to ensure adequate industrial production and supply for national security purposes. Additionally, the DPA authorizes loans, loan guarantees, purchase guarantees, and antitrust protection to participants in voluntary agreements to assist in production and supply to promote the national defense.

Although S. 347 would extend the essential DPA authorities, it would also establish entirely new industrial policy initiatives, extensive data collection and reporting requirements, procurement restrictions, and protectionist trade practices. These provisions would weaken the Nation's defense industrial base, increase the cost of weapon systems, and invite reprisal among our trading partners and military allies. More specifically, the Administration objects to:

Sections 123, 402, 403, and 404, which would mandate certain diplomatic initiatives and require disclosure to Congress of information relating to the initiatives. These provisions would interfere with the President's exercise of his constitutional authority to conduct foreign affairs and to maintain the confidentiality of the international negotiations.

Section 124, which would require the Secretary of Commerce to prepare, on behalf of the President, an annual report on the impact of offsets that would be unnecessary and burdensome on U.S. industry. Section 124 would also require the Secretary of Commerce to report alternative findings and recommendations submitted by Executive agencies. Such requirements interfere with the management of the Executive branch and violate the President's authority to maintain the confidentiality of the Executive branch deliberative process.

Section 136, which would establish an information system on the defense industrial base that would be burdensome, costly and unnecessary.

Section 138, which would fail to provide proper or adequate conflict of interest and antitrust production for members of the National Defense Executive Reserve.

Sections 202 and 203, which would establish acquisition preference policies before the Executive branch has completed its review of these policies.

Section 301(b), which would require a biennial report on alternative energy fuel sources for supporting the defense industrial base.

Title IV, which would establish a policy of reciprocity in financial services which would be contrary to the historic open investment policy of the United States, which under certain circumstances would violate certain U.S. international obligations, and which would interfere with the President's constitutional authority to conduct foreign affairs.

Mr. GRAMM. The President's National Security Adviser, as well as Deputy Secretary of Defense Atwood in a letter that I have already put in the RECORD, and the President have all asked that we have a simple extension.

Let me say, Mr. President, with regard to the energy-related amendments, the substitute that we are prepared to offer, which extends existing law through October, would include the two noncontroversial energy amendments. Since the House is moving with a simple extension that includes these amendments, I submit that those noncontroversial amendments can become law as part of an extension, and that they will not become law as a part of this bill.

Again I ask my colleagues simply to wait until another day, when the war is over, to have an opportunity to debate a change in policy with regard to the defense industrial base. The President, the Commander in Chief, the Secretary of Defense, the Deputy Secretary of Defense, the National Security Adviser to the President, have all asked that in this period of conflict that we simply extend existing law. They support including the two energy-related amendments that were alluded to by the distinguished Senator from Illinois.

I would ask again that we move ahead with a simple extension, including the two noncontroversial petroleum amendments. That will conform to what the House is doing. We all know this issue is not going away. We are going to have the experience of the conflict in the Middle East. Mr. President, during this period when the President has asked us simply to extend existing law, we must remember that we do not have the Defense Production Act in effect. The Nation is at war. Yet, we do not have this defense legislation in effect. I submit that while we probably can survive and prosper without it, it makes sense to go ahead and extend existing law. We can do it to last through October.

I would be willing to sit down, as I am sure the White House would, and work out another date if that is what is desired to get us through the conflict in the Middle East, to give us the ability to allow the administration to work with members of the Banking Committee, to work with members of the Armed Services Committee, to try to negotiate a compromise. I submit that if we are passing a comprehensive revision of the Defense Production Act while we are carrying out a war, and the President vetos this bill, we will not have well served the purpose that brought us to consider this bill to begin with.

I know we can all argue that we have great and important contributions to make. There is a fundamental difference here. I am not asserting that my position is necessarily right and that the distinguished Senator from Illinois and the distinguished Senator from Pennsylvania are wrong. All I am saying is that we are in a war, and the Commander in Chief has asked that we extend existing law to get us through the war—and I am asking that we give him an opportunity to work out a compromise on the other matters in the days to come. It seems to me, Mr. President, that this is an eminently reasonable request.

I know the distinguished Senator from Illinois has a great proprietary interest in this work and has spent a great amount of time on it. I understand that and respect it. But this issue is not going away. We are simply talking about an extension through October. We are going to be in session a whole year from that time.

There is no way that the desire of the distinguished Senator from Illinois to rewrite this law in a comprehensive way can be delayed or stopped for an entire year.

I urge my colleagues again to remember during a period when we have a war underway that our own inputs are important, but ultimately when we are talking about the defense of the Nation I think the opinion of the Commander in Chief ought to be the dominant factor in the debate. While we can give great arguments as to why some of these reforms are good, important, and serve a noble purpose the bottom line is the Commander in Chief does not want this bill to become law.

The President and his representatives have said they are willing to negotiate, that they are willing to try to work out the differences, but they stand ready to veto this bill. So I renew my request that we go ahead today and pass an unfettered extension of the Defense Production Act. My proposal was to extend it through October. That does not mean we have to wait until October to start the process of negotiating a compromise. Let us extend it through October and let the war end. Then I would urge that the Department of Defense and the White House sit down with the distinguished Senator from Illinois, the distinguished Senator from Pennsylvania, and seek to work out their differences.

I hope that is deemed to be reasonable.

Mr. President, having committed to the Commander in Chief and to the Secretary of Defense my best efforts to try to prevent us from moving ahead with a bill that they are going to have to veto, I think that we can save ourselves a lot of time and wasted energy by working out a compromise. I am certainly willing to try to come to a compromise.

If the distinguished Senator thinks October is too long, I would just say that while I think it is important that we have this act in effect during the war, I am willing to listen and to approach the White House concerning their ability to look at a different timetable.

But their position is perfectly clear. I believe that under these extraordinary circumstances the President's opinion on the area of national defense production ought to be an important factor in our deliberations.

I yield the floor.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I rise this afternoon to join with my distinguished colleague from Illinois, Senator Dixon, to urge prompt passage of the Defense Production Act. Economic decline has sapped the strength of defense industries across the country. And the American firms that manufacture the equipment and the parts essential to our national defense have been left unprotected.

Tens of thousands of small subcontractors have left the defense industry since its peak in the 1980's. We must change that, for unless we do our domestic defense subcontractor base will continue to dwindle and erode, and our dependence on foreign companies for critical component parts will steadily erode.

We must safeguard the Nation's capacity to meet the demands of wartime defense requirements. To count on foreign subcontractors to supply American defense needs is, in this Senator's judgment, to put our national security under the influence of the internal policies of other foreign countries. This is something we must not do. And this much was indeed apparent when we considered the Defense Production Act a few months ago.

Unfortunately, recent reports confirm exactly those risks.

In part, I am referring to an October 1990 report to Congress from the Department of Defense' own Office of Industrial Base Assessments. That report confirms that the U.S. defense industries' competitive edge has been lost or is being threatened in 9 out of 20 key technologies that can be converted for military use.

That report states in part:

> The essential issue is that all nations will exercise sovereignty over their economies and the national interests of our friends and allies will not always be consistent with those of the United States.

Mr. President, it is a fact, a sorry fact, a sad fact, but nonetheless an irresistible fact, that foreign companies and their U.S.-located operations are indeed subject to regulation by their home countries.

And they might be encouraged, they can be encouraged, and they have been encouraged, or at times required by those countries to take actions inconsistent with U.S. national security interests.

We hope, in cases like the Persian Gulf, that many nations' interests will coincide, and we will do our best to persuade everybody of that fact. But even in the Persian Gulf we have seen that even those nations that vote for U.N. security resolutions have very different policies. Some will send troops

to the Persian Gulf; some will not. Some supported the beginnings of military hostilities; others did not. Some said that we should commence hostilities, but not threaten to invade Iraq; some did not. And some decided that they did not want to either send troops or pay any of the costs of Desert Shield or Desert Storm, even though they supported the U.N. resolutions.

In the final analysis, if the Persian Gulf proves anything, it proves that even when nations say they agree on a policy, they do not always act in a fully consistent manner, and national governments therefore will continue, even within a bloc such as the European Community, to decide for themselves. And we will have to live with the consequences of that.

Mr. President, Bernard Schwartz, the chairman and chief executive officer of Loral Corp. noted:

> Shipments could be cut off in a protracted crisis or war, either directly or through political pressure on the source nation, crippling this country's ability to sustain its defense effort.

Mr. President, let me cite that of the French Government, which refused to allow United States planes to fly over France during the Libyan crisis. Japan's slowness in making a commitment to contribute to the United Nations' effort against Iraq, when it is in fact the chief beneficiary of stability in the Middle East is a more recent example.

No other country imports more oil from the Persian Gulf than Japan. The fact that both of those countries are close allies of this country should make us think long and hard about the likelihood of timely support from our allies in other situations where there is less unanimity in the future.

Can we be confident that our allies will always be able and willing to make and deliver something, whenever we need it? I do not think anyone can answer that question. But I am sure of one thing, and that is that this country cannot afford to bet on the answer. It is becoming more difficult to predict, even from month to month, who will be our allies and where their national interests lie.

Following a recent meeting with the U.S. Treasury Department and its officials, some disturbing remarks were made by a high-ranking Japanese official, Makoto Utsumi, the Japanese Vice Finance Minister for International Affairs. He made these comments in response to United States requests for better access to Japanese markets for American financial institutions.

According to the report that I, on a previous occasion, put in the CONGRESSIONAL RECORD, Mr. Utsumi warned that if the United States applied sanctions against his country because of slowness in opening financial markets and failing to provide national treatment to U.S. firms, Tokyo would respond by curbing credit to the United States. Mr. President, I know that sounds incredible, but that is how those remarks were interpreted and reported. Tokyo would respond to our requesting of market liberalization by curbing credit to the United States.

That is what we used to call a threat, Mr. President. And I think that is what it still is.

This incident is significant in the context of this debate, when you consider that we rely upon Japan for many critical component parts used in United States defense systems. Therefore I ask the question, can we be assured that our supply of critical component parts will not be threatened as well, if our credit is going to be threatened, simply because we stand up and demand our rights under international agreements and law?

In a report released by Ernst and Young concerning the key defense issues for the 1990's, a majority of industry and Government representatives agreed that conscious efforts must be made to prevent foreign suppliers from becoming predominant on the component and subcontractor level.

The insufficient domestic productive capacity in the face of foreign manufacturers inroads has reached a crisis point, and as a result a smaller and weaker industrial base is all too evident. The Federal Government, the private sector, and academics all have expressed concern over the increasing trend of procuring products made in foreign countries and in foreign-owned U.S. facilities.

Indeed, the Defense Department's own Office of Industrial Base reports that, "There is a concern that market control over some products critical to our defense needs is becoming concentrated in the hands of a few foreign countries."

The Department's Critical Technology Plan, released in March of last year, concedes that the United States has lost its world manufacturing leadership position. It states:

> The Implications of the decline in technology and manufacturing leadership for the Defense Department include the potential for foreign dependence in critical areas.

I have a list that I intend to read. All of the items on it rely on at least one foreign sourced critical component part. All rely on at least one, and in some cases far more than one, foreign sourced critical component part. Most of these—and they are all missiles—are being used in the gulf war right now. Most rely on several foreign sourced component parts.

First, there is the Apache helicopter's Hellfire antiarmor missile. We all know what that is. It was used just last night.

The Patriot ground-to-air missile, which has done such a splendid job in protecting civilians and military installations; Tomahawk C, sea- or sublaunched cruise missiles; the Sparrow air-to-air missile; the Harpoon antiship missile; the Phoenix air-to-air missile; the Standard sea-to-air missile; the Mark 46 torpedo; the infra-red Maverick air-to-ground missile; the laser-guided Maverick air-to-ground missile; the Skipper air-to-ship or ground missile; the Copperhead artillery round anti-armor weapon; the Tow anti-armor missile; all of the Sidewinder missiles; and the Stinger ground-to-air missile.

Mr. President, what I have just read to the Senate is a list of all the so-called smart weapons, the effects of which we have seen in those amazing photographs from our Wild Weasel F-117's and other aircraft that have been flying over Iraq and conducting these precision strikes with tremendous effect.

It is not a shock to most of the people in this Chamber that every single one of the systems that I have mentioned, indeed, almost our entire inventory of so-called Smart weapons cannot be manufactured in whole in the United States?

We simply do not have the key parts for those missiles in this country any longer. What if, Mr. President, one of the countries upon which we are dependent—and I can think of at least one where we are solely dependent—should have a major foreign policy difference with us on the continuation of the war in the gulf, and due to domestic political pressures in that country might have to say, "I am sorry we cannot sell you the critical component for your Hellfire missile, your Patriot missile, your Phoenix missile, your Maverick missile, your Copperhead missile, your TOW antitank missile?" Where would we be? What would we do? How would we react?

I do not know the answer to that question either, Mr. President, except that that is a position I hope the United States never finds itself in. Yet we are already in that position. We are, indeed, dependent for critical parts used in critical U.S. weapons systems.

So I hope my colleagues will agree with me that we can ill-afford to be dependent on foreign components essential to the operation of these Smart weapons, particularly in the light of their proven necessity and proven effectiveness in Operation Desert Storm so far.

The semiconductor industry, in particular, is one which has been a growing source of concern to defense experts. The semiconductor, as we all know, is an American invention; however, its future in the United States is in serious jeopardy. Some of the most strategic weapons employed by the United States are solely dependent on foreign microchips. These include the Global Positioning System (satellites), Defense Satellite Communication Sys-

tem—major parts and systems—F-16 Fighting Falcon, M-1 Abrams main battle tank and the FIA-18 Hornet.

The Department of Defense's own October 1990 report on the defense industrial base confirms the threat of over dependence on foreign microchips.

If the domestic industry's capability to maintain advances in circuit design and to supply advanced chips diminishes, the necessary leading edge capabilities may be available only from foreign sources, particularly Japan.

The fiscal year 1990 Critical Technologies Plan of the Department of Defense estimates that although the United States leads its NATO allies and the Soviet Union in most aspects of new technology development, Japan has emerged as the world leader in many technologies that are critical to our future defense. National security concerns arising from the offshore movement of both the technology base and the production base have been underscored by the Congressional Budget Office which in their report says:

* * * the deterioration of U.S. semiconductor producers could soon lead to dependence on foreign sources for components for sophisticated weapons systems, or to a decline in the technological base needed to develop and use these components.

A spring 1990 report from Center for Strategic and International Studies and the Massachusetts Institute of Technology published in the Washington Quarterly, contends that—

* * * larger defense contractors have consolidated their leading positions, integrating vertically at the expense of many smaller, entrepreneurial contractors and subcontractors. In an era of increasing competitiveness, U.S. government policies are generating an environment in which industry is less able to compete.

The legislation before us, the amendments to the Defense Production Act, which we are considering, will provide new and adequate incentives to bolster the defense industrial base and at the same time safeguard a section of the U.S. manufacturing base critical to national security.

The former Under Secretary of Defense for Acquisition—he served with great distinction during the Reagan administration—Dr. Robert B. Costello, made the dependency point clear in testimony before our Banking Committee when he said:

The Department of Defense is becoming increasingly dependent on foreign-sourced hardware and technology in the acquisition of the technologically superior weapon systems that are fundamental to our strategy of offsetting numerical inferiority with technological superiority.

America cannot reasonably expect to offset potential adversaries' numerical superiority with only technological equivalence. The United States is rapidly losing its technological superiority to countries that have destroyed our capability to be self-sufficient in critical technology. For example, the November 1989, report of the National Advisory Committee on Semiconductors, "A Strategic Industry at Risk," refers to the notorious book by Sony chairman Akio Morita and former Japanese Minister Shintaro Ishihara, "The Japan That Can Say No." These two men suggest that the change in the world of high technology "highlights the growing issues of Japan's pivotal role in developing leading-edge military electronics technology that contributes to the U.S.-Soviet balance of power. * * *"

They contend that—

* * * the United States could become almost totally dependent on Japan to supply chips for its weapon systems. They go on to point out that if the supply of advanced Japanese chips to the United States were interrupted, and if Japan were to make these chips available to the Soviet Union instead, the balance of power would change dramatically.

I hope everybody will reflect on that for a moment, Mr. President, and do so because it is essential that Congress render assistance to strengthen subcontractor base, especially in the light of critical component shortages which have arisen due to the Persian Gulf crisis. I refer to shortages that have already arisen and have been documented in an article published in the November 26, 1990, Chicago Tribune that said in part:

To get the first wave of U.S. planes into Saudi Arabia last August, Air Force mechanics had to strip hundreds of parts from those left behind because of a parts shortage.

Fears of critical component shortages are not only confined to times of crisis. A report prepared by the Air Force Association states:

The United States has depended for years on uncertain sources overseas for raw materials. Now it is increasingly dependent on other nations for manufactured goods as well. The domestic industrial base is losing its capability to meet defense needs even in peacetime.

Having a healthy defense industrial base is crucial to U.S. national security and is a primary component of the strategy of deterrence, because increasingly in today's world, a nation's strength is defined in economic terms rather than simply military terms. Our ability to project our interests in far corners of the globe is directly related to others' perceptions of our strength, and that strength is defined in economic and technological terms. From that perspective strength means computers and semiconductors as much as it means tanks and missiles. Maintaining a technological advantage is fundamental to the continuation of our status as a world leader and if anybody does not believe that, they have not been watching CNN.

The steady erosion of the U.S. industrial base has raised serious doubts as to whether or not it can meet the criteria for deterrence. In 1988 the then Under Secretary of Defense Costello stated:

* * * the vitality of our manufacturing economy in general ultimately determines the war-fighting power of our nation's force structure. The economy's latent capability to enhance current forces in response to strategic threats is a critical element of our deterrence strategy.

By providing incentives for prime contractors to nurture a domestic subcontractor base, this bill, which is modeled after legislation that was introduced during the latter stages of the 101st Congress, will help restore our manufacturing competitiveness.

The global environment has changed dramatically over the last two decades, and the place of the United States in that environment is at risk as it never has been before. Our continued ability to lead depends on a strong and viable defense industrial base. That base in turn depends on strong subcontractors and components manufacturers. We need to act now to alleviate our current decline.

In closing, Mr. President, I urge my colleagues to adopt this legislation in the present form for the sake of ensuring the continued growth of our defense industrial base.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Missouri.

Mr. BOND. Mr. President, I rise today because I have very grave concerns about the measure before us. I do not know whether it has been pointed out earlier in this debate that when this bill passed the Banking Committee last year there were strong views in opposition attached to it by the Senator from Texas, myself, and others. We also expressed those reservations on the floor when it was brought up at that time.

We have before us today a statement of administration policy coordinated by OMB. It is dated February 21. It refers to S. 347, the Defense Production Act Amendments of 1991. It states: "The Secretary of Defense will recommend that the President veto S. 347 unless the provisions pertaining to industrial policy, delegatory authority, and the Defense Production Act fund's contingency liabilities are deleted."

Mr. President, there are many problems we have with our defense industrial base in this country, and they do not come from a lack of Government regulation and redtape.

There are positive things we can do to help the defense industrial base. I trust that my colleague, Senator DODD of Connecticut, will be introducing an amendment which will strengthen our defense industrial base by encouraging exports to allied countries of defense equipment.

We in the State of Missouri are very proud of our defense production capabilities. We have some of the finest workers in the world at McDonnell

Douglas who are producing the F-15E's, FA-18's, the AV-8B Harrier jets, and the men and women at Southwest Mobile Systems in West Plains, are producing the cannisters for the Patriot missiles. We have good production workers in our State and we do not want to see them cut out of jobs by ill-considered Defense Production Act amendments at this stage of a military action.

Mr. President, I point out our Nation is at war. A major ground offensive may begin at any moment. This is clearly not the time to be making significant changes in the laws governing our purchase of defense items.

What I hope we could do and what the President has asked is to extend the authorization of the DPA to October 20 of this year. Once the conflict is resolved, then we can sit down, review the lessons of the war and, if necessary, pass legislation which addresses any shortfalls that arose during the gulf war.

I do not believe anybody has cited any shortfalls that have come from the current DPA. There are areas where I believe it can be improved.

But even setting aside the fact that we should not be making major policy changes at this time, there are a number of reasons to support an amendment which I understand my colleague from Texas will offer to provide a simple extension through October.

One obvious flaw in this legislation immediately comes to mind. This bill would begin the stockpiling of so-called critical components and technology. Now, had this been in effect over the past decade, I ask my colleagues, would we have been stockpiling items needed for a ground war in Europe with no thought toward a major desert conflict such as the one we now face?

I think there is no evidence to suggest we would be doing anything else.

Although I have no idea which items would have been deemed critical, I would be willing to bet we would not have focused on many of the items that are now in great demand, proving or may prove to be most critical in this conflict—Patriotic missile parts, for example, or even "desert brown" paint, which is in great need in many areas as new equipment is prepared for the Middle East conflict.

I believe there are many other serious problems with the legislation. It goes far beyond the current act, which has served for decades. It expands its breadth. It creates new layers of Government bureaucracy, and it adds new layers of Government control on defense companies, American companies, and their workers.

The bill starts from the premise the defense industrial base is in need of assistance and protection and goes on to assert that assistance can only come from more Government control, more Government regulation and more Government redtape.

I submit very few areas have benefited by such overreaching Government control as is expressed in this measure.

Although I will agree there are times when it is appropriate for Government to be involved in assisting private business, I believe this bill goes too far. It goes in the wrong direction and prescribes precisely the wrong medicine for the ailment in the defense industrial base that its supporters believe exists.

The best thing the Government can do for the companies that make up the defense industrial base and the 40,000 workers in Missouri who are employed in those companies is to reduce the burdens on them, not increase them. This means eliminating unnecessary paperwork and reporting requirements, not increasing them as this bill would do. It means enacting trade laws which facilitate and favor competition in the world marketplace, not enacting trade barriers, as this bill will do. It means providing payment and reimbursement policies which encourage research and development and investment in new plant and equipment, one area which I quite frankly would say this bill does make some positive steps.

The companies and the workers who make up America's defense industrial base would be far better served by less far-reaching and better directed legislation than that before us today. That is why I hope this body will consider, act upon, and adopt a simple measure extending the current provisions of the DPA through October 20, 1991.

I yield the floor.

Mr. DIXON. Mr. President, my good friend, the distinguished senior Senator from Pennsylvania, made some very significant contributions in his remarks that I think are valuable to us all in connection with this issue.

I, of course, appreciate the remarks just made by my friend from Missouri. We share a common border and many of the firms he is referencing in his remarks are firms in which good Illinois folks enjoy sound employment opportunities. I share his concern about those organizations.

One of the things I hope is clear to our colleagues who are watching this in their separate offices, Mr. President, and that I want to stress—because we are talking here about the distinctions between existing law, which has been on the books since 1950, the Defense Production Act, that is essentially a product of the Korean experience, and how we improve that in this bill is that the new changes in this DPA legislation provide a new information system that will for the first time allow the Department of Defense to identify the critical components of vital weapons systems that we are currently forced to buy abroad. Now, think about that. This bill provides for the Department of Defense a new information system so the Department will be able to identify critical components of vital weapons systems we are currently forced to buy abroad.

This is a real problem. I just want to read from a GAO report. I hope my friend from Missouri stays here, because the F/A-18 is talked about in this report.

Here is a report from the U.S. General Accounting Office dated January 1991 on our industrial base problems. This is dated January 10 of this year.

I should point out, this is to the Honorable JEFF BINGAMAN, Senator BINGAMAN, who is chairman of the Subcommittee on Technology and National Security of the Joint Economic Committee of the U.S. Senate. The distinguished Senator from New Mexico, as many here know, is a very fine member of the Armed Services Committee. He chairs an important subcommittee. He is a very well-informed Member concerning our defense needs.

DEAR MR. CHAIRMAN:

This is from the General Accounting Office—

As you requested, we have reviewed several matters relating to the Department of Defense's (DOD) use of foreign sources for critical components of its weapon systems. More specifically, we analyzed (1) the significance of U.S. dependencies on foreign sources, (2) DOD's awareness of foreign dependencies and whether previously identified foreign dependencies still exist for the Abrams tank and F/A-18 Hornet aircraft, (3) the use of buy American restrictions during the procurement of items essential to the production of the Abrams tank and the F/A-18 aircraft, and (4) two major DOD efforts to assess the significance of foreign dependencies on the U.S. defense industrial base: the U.S. defense industrial base information system and revised DOD guidance for assessing foreign dependence throughout the acquisition process.

Now, listen to this. This is the GAO, Mr. President, the General Accounting Office talking. It is not Senator DIXON. It is the GAO.

The overall extent of foreign sourcing and foreign dependency and their significance for national security are unknown—

They are unknown. We do not know—

because, among other things, DOD has only limited information on foreign sources of supply at the lower tiers of the supplier base. Moreover, no criteria have been established for determining what the levels of foreign dependency tolerance should be for various items and what actions DOD could or should take to reduce the associated risks.

That is really something. We do not know. We have weapons systems out there with component parts from foreign sources, and we do not even know what they all are.

I am still quoting from the GAO. This is not Senator DIXON; this is the GAO:

DOD officials have little awareness of the extent of foreign sourcing or dependency in their weapons systems, particularly beyond the prime contractors and their immediate subcontractors. DOD program officials are

not required, and take no special action, to maintain visibility into foreign sourcing/dependency.

Several items for the Abrams tank continue to be foreign dependent. Domestic sources were usually not awarded the work under DOD contracts or subcontracts because of availability, quality and cost considerations. For those items in which cost was the primary consideration, contractors stated that even if DOD were willing to pay the higher prices of domestic suppliers, they would be unable to satisfy DOD's total requirements because of production capacity constraints.

The ejection seat for the F/A-18 aircraft is currently foreign dependent, but plans now exist to develop a second source that will be domestically located.

Program officials and the contractors for the Abrams tank and the F/A-18 aircraft items that we reviewed stated that the use of buy American restrictions has been limited by exceptions that mainly recognize other U.S. policy goals. Such goals include (1) the standardization and interoperability of weapon systems and equipment with North Atlantic Treaty Organization (NATO) allies and (2) the desire for minimizing the cost of weapon systems.

Now I want to go on down here. I quote further down the page, on page 2; GAO still talking.

The concern over foreign sourcing relates to whether a dependency constitutes a risk, or vulnerability, to the United States.

Of course, that is the question. Does a dependency on a foreign source constitute a risk? Well, my goodness gracious, my friend from Pennsylvania, in his speech a while ago, was talking about the fact that from time to time, you do not know who your friends and your enemies are around here.

I do not need to go into ancient history. Let us talk about real recent history. I have been in the U.S. Senate since we favored Iraq in the Iraq-Iran 9-year war. Mr. President, that was not very long ago. We loved them then; we hate them now.

Syria, our ally and a member of the coalition: I am cochairman of the Terrorism Caucus; I can remember when Syria, very recently, was one of the big, bad boys around town.

Dependency on foreign sources can constitute a risk.

Now I read from the GAO report. This is not Senator DIXON; this is the GAO.

Such a risk would exist if the United States were to become so dependent on a foreign source that its ability to produce a critical weapons system and/or secure the most advanced technology for the development of a future weapons system were to become compromised.

I am delighted that Japan is our friend now. I can remember when it was a bitter enemy in my lifetime. I am glad they are our friend now. Some of the checks are still in the mail. Some of the checks are still in the mail.

I already made my speeches about the FSX and some of the bad ideas I thought were inherent in that. But I can think of scenarios where we would not want to be dependent on certain critical items if that were the only source.

I want to go over here to page 4 of the GAO report. Again, I read the GAO report, the General Accounting Office. The title is, "The Significance of Foreign Dependence Is Unknown."

The overall extent—

I am directly quoting—

of foreign sourcing and foreign dependency and their significance for national security is unknown.

This is GAO.

The inadequacy of DOD's data bases and models is cited as a problem hindering effective industrial base planning.

And then they cite citations.

Determining if foreign sourcing results in dependency, and whether this dependency poses a national security threat requires not only collecting and assessing data, but also determining acceptable levels of foreign dependency tolerance.

Mr. President, I ask unanimous consent that this GAO report of January 1991, directed to the Honorable JEFF BINGAMAN, chairman, Subcommittee on Technology and National Security, Joint Economic Committee, U.S. Senate, be printed in the RECORD.

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

[General Accounting Office, Report to the Chairman, Subcommittee on Technology and National Security, Joint Economic Committee, January 1991]

INDUSTRIAL BASE: SIGNIFICANCE OF DOD'S FOREIGN DEPENDENCE

GENERAL ACCOUNTING OFFICE, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION,
Washington, DC, January 10, 1991.

Hon. JEFF BINGAMAN,
Chairman, Subcommittee on Technology and National Security, Joint Economic Committee, U.S. Senate.

DEAR MR. CHAIRMAN: As you requested, we have reviewed several matters relating to the Department of Defense's (DOD) use of foreign sources for critical components of its weapon systems. More specifically, we analyzed (1) the significance of U.S. dependencies on foreign sources, (2) DOD's awareness of foreign dependencies and whether previously identified foreign dependencies still exist for the Abrams tank and F/A-18 Hornet aircraft, (3) the use of buy American restrictions during the procurement of items essential to the production of the Abrams tank and the F/A-18 aircraft, and (4) two major DOD efforts to assess the significance of foreign dependencies on the U.S. defense industrial base: the U.S. defense industrial base information system and revised DOD guidance for assessing foreign dependence throughout the acquisition process.

RESULTS IN BRIEF

The overall extent of foreign sourcing and foreign dependency and their significance for national security are unknown because, among other things, DOD has only limited information on foreign sources of supply at the lower tiers of the supplier base. Moreover, no criteria have been established for determining what the levels of foreign dependency tolerance should be for various items and what actions DOD could or should take to reduce the associated risks. We also found that:

DOD officials have little awareness of the extent of foreign sourcing or dependency in their weapon systems, particularly beyond the prime contractors and their immediate subcontractors. DOD program officials are not required, and take no special action, to maintain visibility into foreign sourcing/dependency.

Several items for the Abrams tank continue to be foreign dependent. Domestic sources were usually not awarded the work under DOD contracts or subcontracts because of availability, quality and cost considerations. For those items in which cost was the primary consideration, contractors stated that even if DOD were willing to pay the higher prices of domestic suppliers, they would be unable to satisfy DOD's total requirements because of production capacity constraints.

The ejection seat for the F/A-18 aircraft is currently foreign dependent, but plans now exist to develop a second source that will be domestically located.

Program officials and the contractors for the Abrams tank and the F/A-18 Aircraft items that we reviewed stated that the use of buy American restrictions has been limited by exceptions that mainly recognize other U.S. policy goals. Such goals include (1) the standardization and interoperability of weapon systems and equipment with North Atlantic Treaty Organization (NATO) allies and (2) the desire for minimizing the cost of weapon systems.

DOD's planned revisions to its acquisition and industrial preparedness regulations would require program managers to assess the capability of the U.S. industrial base to meet production requirements for weapon systems, but concerns remain about the enforcement and coordination of these revisions.

BACKGROUND

In an interdependent global economy, foreign sources of supply, manufacturing, and technology abound in both the commercial and defense sectors. There are economic, political, and military advantages to using foreign sources of supply for military equipment, components, material and technology. The concern over foreign sourcing relates to whether a dependency constitutes a risk, or vulnerability, to the United States. Such a risk would exist if the United States were to become so dependent on a foreign source that its ability to produce a critical weapon system and/or secure the most advanced technology for the development of a future weapon system were to become compromised.

DOD officials have stated that in this global market, domestic manufacturers seek out suppliers based on factors other than location, such as cost, quality, performance, and delivery time. When these factors are considered, a domestic manufacturer may determine that a foreign supplier provides the greatest benefit. Selecting foreign sources has also occurred as a result of cooperative programs with other NATO countries. These programs are designed to encourage participation of NATO manufacturers in the production of U.S. weapons systems to achieve rationalization, standardization, and interoperability. Finally, foreign sourcing could be the result of offset agreements whereby the effect of U.S. prime contractors' sales of equipment to another country are offset by subcontracted parts from that country. Although foreign sourcing does not necessarily mean dependency, many experts agree that

the trend toward increasing foreign sources should be closely monitored to reduce potential national security risks.

A framework for assessing the national security risks that may arise from overseas purchases was established in a National Defense University report.[1] According to the report, foreign sourcing, that is, the use of sources of supply, manufacture, or technology that are located outside the United States or Canada, may result in a foreign dependency, if there are no immediately available alternatives. Not all foreign dependencies will pose a threat to national security and require action. The existence of a threat depends on whether the lack of available alternatives jeopardizes national security by significantly reducing the capability of a critical weapon system.

In December 1984, the Joint Logistics Commanders (JLC) concluded that an investigation into the nature and scope of foreign dependency was needed to provide clear direction for subsequent mission tasking to the military services. In 1986, the JLC issued a report, A Study of the Effect of Foreign Dependency, with recommendations on how DOD could reduce the damage to the U.S. defense industrial base due to existing foreign dependencies and help identify and prevent future foreign dependencies.

Currently, there are legislative mandates and DOD directives that restrict, or allow DOD to restrict, procurement of selected foreign products. Among other things, these restrictions are intended to protect and preserve the U.S. defense industrial base, and are generally referred to as "buy American" restrictions.[2]

THE SIGNIFICANCE OF FOREIGN DEPENDENCE IS UNKNOWN

The overall extent of foreign sourcing and foreign dependency and their significance for national security is unknown. The inadequacy of DOD's data bases and models is cited as a problem hindering effective industrial base planning.[3] Determining if foreign sourcing results in dependency and whether this dependency poses a national security threat requires not only collecting and assessing data but also determining acceptable levels of foreign dependency tolerance.

In an increasingly interdependent global economy, foreign sources of supply are an economic reality. Overseas sources of supply provide economic and political advantages that may include lower costs, better technology, better integration with our allies, and access to an industrial base much larger than our domestic base. However, there are potential disadvantages associated with foreign source procurement that may include (1) dependencies on foreign sources that may be less reliable than domestic ones, (2) questionable or reduced domestic production capabilities because domestic manufacturers may not have sufficient demand to keep lines of production open, and (3) questionable access to advanced technology that may be important to superior weapon systems performance.

Several studies provide valuable information on the benefits and risks associated with foreign sources of supply, the need for collection and analysis of systematic and selective data to demonstrate that a dependency poses a risk to national security, and proposals on how to measure such risks. These studies are discussed in appendix I.

DOD'S AWARENESS OF DEPENDENCIES IS LIMITED AND JLC-IDENTIFIED DEPENDENCIES STILL EXIST

DOD program and procurement command officials for the weapon systems we reviewed stated that, in general, program and procurement officials are not required, and take no special action, to maintain visibility into foreign sourcing or foreign dependency.

We reviewed selected items from two weapon systems, the M1 Abrams tank and the F/A-18 Hornet fighter aircraft, identified as foreign dependent in the 1986 JLC study. These items continue to be foreign dependent as shown in table 1, and the reasons are discussed in appendix II.

(Mr. DODD assumed the chair.)

Mr. DIXON. Mr. President, Adm. Bobby Inman, former Deputy Director of the CIA—here is the former Deputy Director of the CIA, not Senator DIXON talking, here is Admiral Inman; I quote him directly:

Nevertheless, there does not currently exist a systematic method for assessing import dependency in critical items. This was noted in at least two of the major reports on the defense industrial base. The CSIS report concluded that no service has a complete set of analysis on the ability of the defense industry to supply its needs for future conflict situations. The report by the Under Secretary of Defense for Acquisition entitled "Bolstering Defense Industrial Competitiveness" concluded the Department of Defense does not know the extent to which foreign-sourced parts and components are incorporated in the systems it acquires. There is no systematic, established means to identify foreign-sourced parts and components and, hence, no way to determine the extent of foreign dependencies or vulnerabilities.

Admiral Inman says:

We must improve our analytical capabilities in order to do as the Under Secretary for Defense acquisition report proposes and provide visibility of critical foreign-sourced items.

Here is Bernard Schwartz, chairman of the Laurel Corp., and I do believe my friend Senator HEINZ referred to him as well. Bernard Schwartz, testifying before our committee:

The Government needs to systematically collect and analyze data related to foreign ownership and foreign dependency. It is one of the most astounding facts of the computer age that the U.S. Government does not now know the extent of the foreign penetration in our defense marketplace and the degree to which we depend on foreign suppliers for key materials.

Mr. President, we do not advocate what the administration should ultimately do here or make the decisions for the Commander in Chief. He is the Commander in Chief. I support him. All we say is you ought to be able to have an information system that lets you know. I cannot believe that any fair and concerned American would not want to know, and I cannot believe that the administration would not want to know and that the Department of Defense would not want to know the critical component parts of major weaponry that are foreign supplied and, in some cases, could become the kind of critical items that we could not produce in a surge capacity in the United States.

One of the reasons, for instance, that I am not worried about the ammunition supply that much when you get right down to it is because we still have a great surge capacity in our industrial base in this country. But we have seen innumerable instances, Mr. President, in recent years of an absolute erosion or elimination of productive capacity in this country in certain items. If some of those items are critical items in war machinery, we could have a serious problem.

Again, let me say in conclusion, this bill has in it a variety of important things that are not now in existing law. Again, I point out it has the Riegle-Garn provision; Senator JAKE GARN, the distinguished ranking member of the Banking Committee and former chairman, and Senator DON RIEGLE, the chairman of the Banking Committee. Their provision, title IV of the bill, is a fair trade in financial services section which gives the Treasury Department new discretionary leverage to help open foreign financial markets to our U.S. banks that desperately need the opportunity to be competitive in foreign countries.

So there is this new information system that I just discussed and all of the critical information I have given to the U.S. Senate concerning the General Accounting Office, Admiral Inman, and other folks, and their views about that and a variety of other things I will comment upon later. So I hope we can shortly vote on this, Mr. President.

Again, let me say—and I see my dear friend from Missouri here and I see his concerns are similar to those of my friend from Texas—we are open in the conference committee to considering changes in this bill that people think are important changes that ought to be adopted. We are open still to the amendatory process here and later in the conference committee. Again, I stress that this Senator has been in this business a little while. I know the President has to sign this. I do not think that we have a two-thirds majority in both Houses to override him if he does not. So we are open to some modifications.

[1] U.S. Industrial Base Dependence/Vulnerability, a 1987 report of The Mobilization Concept Development Center of the National Defense University.

[2] Buy American restrictions that affect DOD procurement include those mandated by Congress, DOD-wide class restrictions imposed by the Office of the Secretary of Defense to bolster the U.S. defense industrial-mobilization base, those imposed for mobilization requirements on certain defense equipment by the military departments and the Defense Logistics Agency, and those related to the Buy American Act and the DOD Balance of Payments Program that offer price preferences to domestic firms but do not preclude purchases from foreign sources. It should be noted that the Buy American Act applies to end items, and does not generally apply to components or subcontracted items.

[3] Industrial Base: Adequacy of Information on the U.S. Defense Industrial Base (GAO/NSIAD-90-48, Nov. 15, 1989) discusses our evaluation of certain aspects of the federal government's data collection and coordination efforts among agencies that play an important role, including the Department of Commerce and the Federal Emergency Management Agency.

I hope that the Senate will see the value of what sincere people of both political persuasions have tried to do, and I stress again this fact: four committees of the U.S. Senate have had to sign off on this. Four committees in the House have had to sign off on this. Modifications have taken place in great abundance over 4 years now. So we have spent 4 years and taxed the intellectual capacity of four major committees of both Houses to come to this place, and, if there is some little difference of opinion left, we are willing to talk about that.

I even had a note here about something the administration did not like too much that my friend from Texas, who is against this bill did in the Banking Committee, and now the President's people do not like it. I suppose maybe my friend from Texas does not know that. It is some correspondence I received. We are going to do our best to accommodate people to the extent they need to be accommodated. Certainly at the very top of that list would be the Commander in Chief.

I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I am always glad to work with my good friend from Illinois because we do share many interests and we do share employment opportunities for people in both our States. We do share a love for a certain baseball team which will in a few months start its comeback from unnecessary depression in the past year.

But there are several things he said that I would like to follow up on. First, he talked about perhaps working on this in the conference committee. I would certainly appreciate it if he could use his good offices to see that the Senator from Texas and I get on that conference committee. And he did propose several modifications might be in order.

I believe the distinguished Presiding Officer and I have considered a measure which I think could be a very real boost and probably one of the significant additions to this bill, if we are serious about improving our defense production.

Mr. DIXON. Will my colleague yield briefly. I hate to interrupt him.

Mr. BOND. Certainly.

Mr. DIXON. I certainly would be delighted to have both Senators on the conference committee. I really mean that. Senator GRAMM was on the conference committee before. If this lowly Senator, in his insignificant office, can influence opinion sufficiently well to have anything to do with the composition of the conference, I would be more than delighted to have my friend from Missouri on that conference committee on give us the benefit of his deep intellectual understanding of the subject matter and to elighten us further with his good ideas.

Mr. BOND. I thank my colleague. He, unfortunately, belittles his influence in the Senate, but I respect and admire the role that he has played. I know that it is not possible to determine in advance who will be on the conference committee, but I do feel there is significant change needed in this bill. I think specifically, as I have said before, this is not the time to be doing a major rework on the Defense Production Act.

Yes, clearly the President wants the continued authority, the authority he has had before and the authority he has now. That needs to be continued through October 20, 1991. I hope that we could work on this measure after passing a simple extension and deal with some of the questions GAO has raised. I think there are good answers for some of that. I would like to have an opportunity to hear again how the mobilization for Desert Shield and Desert Storm worked and whether there were any shortcomings. I think that would be appropriate. We have a lot more experience now to work on than we did when we last considered this legislation.

I certainly agree with my friend from Illinois when he said that in the past we were friends with Iraq, now we say we are friends with Syria, and they would not be reliable suppliers of defense components.

Mr. President, I have to tell you, if they were supplying something that we badly needed, I, too, would say that we really need to get somebody other than Iraq, Libya, or Syria to supply vital components for our defense materials. As a matter of fact, last year when we were still supposedly friendly with Iraq, I doubt that my colleague will recall it, but when I was arguing for an accidental launch protection system to protect populations from an accidentally launched missile or perhaps a missile launched by a terrorist nation, and I named Libya, Syria, and Iraq, even then we called the attention of this body to the dangers that Iraq might someday launch missiles. We did not know they would be launching scuds at Saudi Arabia and at Israel. Unfortunately, that is one prophecy I wish had not come true. But we do know that there are certain countries on which we would not rely.

We also know there are certain countries on which we do rely every day: Canada, Great Britain, countries that have been our great allies in these efforts. We have worked with them. We have not only bought from them; we have sold to them.

I should like to quote from a letter of February 20 from the Honorable Donald Atwood, Deputy Secretary of Defense. I believe my colleague from Texas has already introduced this letter into the record, so I would invite attention to the third paragraph in which Deputy Secretary Atwood sets forth his objections to this measure. He said:

> Section 111 provides authority to limit procurement of critical items to domestic sources. This would increase the cost of our weapons systems, invite retaliation by our allies, adversely impact the U.S. defense industrial base, reduce our long-term international competitiveness, and diminish our ability to sustain technological superiority.

I do not see much ambiguity there. I tell you, Mr. President, I have had the opportunity to speak with Mr. Cass Williams and other officers of the employee organization representing our good Missouri and Illinois workers at McDonnell Douglas, and they realize with the cutbacks we have made in the defense budget of the U.S. Government we are going to have to depend upon competing worldwide among our trusted allies for the sale of military equipment, if we are to maintain a defense industrial base.

From my discussions with those officers, the men and women of that union, they say we have to be able to sell to Korea, to Switzerland, to Turkey, to other countries which are our strong allies and with which we can deal to provide them a good product and also keep the expense of our production down so that ultimately we save money for the production of goods purchased by the United States military.

So the need to maintain international competitiveness as we sell to our allies is extremely important.

The final quotation I would add follows directly from the one I just gave from the letter from Secretary Atwood. That is directly to the point that GAO has raised. I believe Deputy Secretary Atwood brings a great deal of credibility to his office. I believe he merits at least equal consideration to that of the GAO report, and I suggest it would be appropriate later on this year to have hearings in which we fully explore the questions raised by GAO because it seems to me that Mr. Atwood has answered those. He says:

> Additionally, sufficient authority already exists to restrict procurement of critical items to domestic sources, and this authority is used regularly whenever it is necessary to do so for national security reasons.

It is clear that Secretary Atwood, who has been much written about and who has been commended for a very effective job of managing procurement for the Pentagon, has said they do have sufficient authority, that the authority is used regularly.

That should cause all of us great concern as to why we want to race forward and impose restrictions which the Secretary of Defense, OMB, and ultimately the President may well feel are too burdensome. It is clear from the statement of administration policy issued today that despite the need to continue the provisions of the underlying DPA, the Secretary of Defense will recommend the President veto S. 347.

My friend from Illinois says we do not have the votes to override it—I would certainly hope not—so we would have an opportunity to come back again and vote on a simple extension of the Defense Production Act until October 20, 1991.

Although I enjoy these dialogs and conversations with my good friend from Illinois, I suggest the better part of wisdom, the simpler approach would be to say, yes, we must go ahead and extend the DPA, a simple extension to October 20, 1991, and come back during the year and provide a forum for the Defense Department to answer the questions raised in the GAO report and also to provide us information on the working of the DPA in the Desert Storm and Desert Shield operations.

I thank the Chair, and I yield the floor.

Mr. DIXON. Mr. President, I thank my friend from Missouri for his usual thoughtful remarks. I think this matter has been fairly thoroughly debated. The Senator from Texas has expressed his view and it otherwise engaged presently in a matter of importance but will be back here shortly. The Senator from Missouri has expressed his view. I see no reason to belabor this matter at great length.

My understanding is that the Senator from Texas may want to offer as an amendment essentially what now is S. 259. At least he indicated that he might want to do that in his remarks earlier. And there may be others who want to offer an amendment. I hope they would be germane, although that is not always the case around here, I am sorry to say.

I would like to dispose of this matter. The majority leader has indicated that this is the last item of business of any important magnitude for the balance of this work week and it would not offend, I am sure, many of us if we can conclude it shortly.

I am more than happy to suggest the absence of a quorum briefly while this percolates through the system. Mr. President, I would be delighted to shortly suggest that we ought to advance this to third reading and vote on it, have it over with, if nobody wants to offer an amendment.

Why do not I suggest the absence of a quorum? Perhaps my friend from Missouri, my friend from Texas, the distinguished minority leader, the distinguished Senator from Kansas, and others could confer a little bit to see what we ought to do next. I think this side is prepared to go ahead.

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. BROWN. 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 Colorado is recognized.

Mr. President, I yield the floor.

Mr. BROWN. Mr. President, I ask unanimous consent to speak as if in morning business.

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

The Senator from Colorado is recognized.

Mr. BROWN. I thank the Chair.

(The remarks of Mr. BROWN pertaining to the introduction of S.J. Res. 75 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. (Ms. MIKULSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DIXON. Madam President, I ask unanimous consent to proceed as though in morning business very briefly on a matter.

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

The Senator from Illinois is recognized.

Mr. DIXON. I thank the Chair.

(The remarks of Mr. DIXON pertaining to the introduction of S. 460 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. EXON. Madam President, may I inquire as to the present status? Are we in morning business?

Mr. DIXON. Does the Senator want to offer his amendment?

Mr. EXON. I would first request that I be granted what time I might need for morning business for a brief period of time, or I am prepared to offer an amendmnent as requested by the leader of the bill.

The PRESIDING OFFICER. In answer to the question the Senator from Nebraska asked, we are in legislative business. The pending legislative item is S. 347, the Defense Production Act.

Mr. EXON. May I inquire of the Senator from Illinois, the manager of the bill, whether or not he thinks it would be appropirate for me to offer the amendment that we have discussed at this juncture.

Mr. DIXON. Madam President, the Senator is prepared to offer an amendment that is commonly known as the Exon-Florio amendment by those of us who are familiar with this legislation.

We are prepared to take that amendment, and I am delighted to have the Senator make whatever comments he wants to make and then offer the amendment. The manager over here is prepared to take it.

Mr. EXON. I thank my friend from Illinois.

AMENDMENT NO. 10

(Purpose: To exempt section 721 of the Defense Production Act of 1950 from termination)

Mr. EXON. Madam President, I rise to offer a simple, noncontroversial amendment.

As you will recall, in 1988 as part of the omnibus trade bill, the Congress enacted the Exon-Florio law which gives the President the power to investigate, and if necessary, stop a foreign takeover of an American company when the transaction is determined by the President to threaten the national security.

The Exon-Florio provisions were drafted as an amendment to the Defense Production Act as a result of a negotiation between the Senate Commerce and Senate Banking Committees.

Following the lapse of the Defense Production Act in October 1950, the U.S. Department of Treasury determined that the Exon-Florio law had also lapsed. While there are grounds to disagree with the Treasury Department's conclusion, the safest thing to do at this point would be to explicitly exempt the Exon-Florio law from the Defense Production Act sunset provisions.

This amendment simply makes the Exon-Florio law among the provisions of the Defense Production Act which do not sunset.

I know of no opposition to this amendment.

I appreciate the offer from the manager of the bill to accept the amendment.

Therefore, Madam President, I send the amendment to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. EXON] proposes an amendment numbered 10.

At the appropriate place in the bill insert the following:

SEC. . EXEMPTION FROM TERMINATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "and 719" and inserting "719, and 721."

Mr. EXON. Madam President, the amendment is now before us.

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

Mr. DIXON. Mr. President, may I inquire about the state of the record? My friend, the distinguished senior Senator from Nebraska, had offered the amendment commonly known as the Exon-Florio amendment and the managers on both sides were prepared to take it. I am now advised by staff that that has not yet been adopted. Is that the state of the record?

The PRESIDING OFFICER. The amendment is still pending.

Mr. DIXON. We are prepared to vote on that amendment at any time the Chair is willing to call for the vote.

Mr. GORE. Mr. President, at this point in our deliberations regarding the Defense Productions Act, I would like to take a moment to discuss section 721, the Exon-Florio provision. As our colleagues know, this provision establishes a procedure by which the President can review and, when appropriate, block proposed takeovers of American companies by foreign entities if those takeovers would threaten the national security.

Over the past several months, I have had occasion to look closely at how this administration has implemented the Exon-Florio provision. In particular, in my role as chairman of the Senate's Science Subcommittee I looked at how the administration reviewed one particular case that would have a major adverse impact on one of our country's leading research projects, the Sematech research consortium. I as not pleased with what I saw. In this case, at least, the administration paid little attention to the cumulative impact that this acquisition and other recent acquisitions in the semiconductor equipment industry would have on the ability to meet defense needs; ignored the fact that damaging Sematech, a project which receives half its funding from the Defense Department on national security grounds, also would threaten our security; approved the sale before getting firm, written guarantees from the foreign purchaser that it would protect Sematech's intellectual property; failed to inform Sematech and the appropriate committees of Congress about the sale when it was first proposed; and even went to the extreme of forbidding Government technical experts to make site visits to the U.S. company and to Sematech. It was not an impressive performance by the executive branch.

Out of over 500 proposed sales reviewed since Exon-Florio became law in 1988, the President has blocked only one. Yet many of these cases involved some of the best of our Nation's high-technology firms. At a time when the great success of the Patriot missile and our other weapons systems shows how important advanced technology is to our national defense, the loss of these American firms to foreign entities is a serious matter. It is especially serious when one considers that these foreign companies and countries may see their national interests as very different from ours. Given the way the administration has implemented Exon-Florio, we have no credible guarantees that these foreign entities will help us meet our defense needs. Without high-technology firms, and without research projects such as Sematech, we will lose the American technology and manufacturing know-how needed to build new generations of weapons such as the Patriot.

Mr. President, I believe that the distinguished Senator from Nebraska and I agree on two points. First, our top priority now must be to reauthorize the Exon-Florio provision. We need this important law, and cannot afford to see it lapse for any substantial period of time. Absent the law, this administration is not likely to pay attention to these critical issues.

Second, during the course of this year we need to explore further how the administration is implementing the law and how they could do better. This process of exploration may very well include further hearings in either the Commerce Committee or the Armed Services Committee. This process of exploration could lead to proposals to improve the guidance that Exon-Florio gives to the administration, so that the intent of the legislation is more reliably executed. National security and access to the technology needed to maintain national security are subjects that are too important to neglect.

Mr. EXON. Mr. President, I would like to say that I agree with the Senator from Tennessee on these two points. My highest priority now is to see that Exon-Florio is reauthorized and reauthorized soon, so that we are not left without a formal process for reviewing these proposed takeovers.

I also agree with the Senator that we need to take a further look at how this important law is being implemented. As I have said before, if this administration continues to pay so little attention to the actual effects of these foreign acquisitions, then Congress may very well reconsider its position on this legislation. I look forward to working with the Senator from Tennessee as we consider these issues.

Mr. GORE. I thank the Senator from Nebraska for his comments, and I want to add that I, too, look forward to working together on these issues in the months ahead.

The PRESIDING OFFICER. Is there further debate? If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 10) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DIXON. Mr. President, for the edification of my colleagues in the Senate I now advise them we have achieved an accommodation with the administration and others on the other side concerning this legislation now pending. I will not yet announce that accommodation until we reduce it to writing. But I wish to inform Senators generally that it appears we will dispose of this by some reasonable time this afternoon.

There is a remote possibility of one rollcall. There is a possibility there will be none, but there is a possibility that there could be one and that is still an issue and will not be resolved for a brief period of time. But I think my colleagues can understand that within the next 30 to 40 minutes I could make everything known, including whether there will be the necessity for one rollcall.

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

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

Mr. DIXON. Mr. President, again for the edification of my colleagues in the Senate—I know I always appreciate knowing what is going on with reference to pending legislation—we have achieved an accommodation between the administration and the managers with reference to this bill. We have prepared, and I should correct myself by saying we are presently preparing a unanimous-consent agreement, subject to approval on both sides, which I will have in hand shortly and will read for the information of all Senators. I ask them to have their staff watching to see whether they have any problem with the unanimous-consent request that I will shortly propound.

There will possibly be, and in fact we expect there will be, one rollcall unless it is otherwise worked out, an amendment to be offered by Senators DODD and BOND essentially to be opposed by Senator SARBANES.

We are hoping there can be a very tight time contraint applied to that, but that depends upon the individuals. The proponents have agreed on a very short time period. It depends upon the view of the distinguished senior Senator from Maryland as to whether there will be a time limit and how short that might be. Other than that, I think I can report excellent progress and the probability is that if there is a rollcall vote, there will be one and I

suppose I lean in favor of 60-40 there will be one rollcall vote this afternoon. 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. DIXON. 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 REQUEST

Mr. DIXON. Mr. President, I advise the distinguished acting Republican leader that I am about to propound a unanimous-consent agreement that has been worked out over the last several hours between administration representatives, representatives of the minority leader and of the majority leader, and advocates of the bill on this side.

Mr. President, I ask unanimous consent that the only further amendment in order to S. 347 be an amendment to be offered by Senator DODD and Senator BOND dealing with export financing.

I further ask unanimous consent that following the disposition of the Dodd-Bond amendment, the Senate proceed to third reading and final passage of S. 347, as amended, without any further action or debate.

I also ask unanimous consent that immediately following the disposition of S. 347, Senator HEINZ or his designee be recognized to offer the text of S. 259 with the fair trade in financial services language, and changing the expiration date to September 30, 1991, on which there be 10 minutes of debate to be equally divided in the usual form.

I further ask unanimous consent that following the use or yielding back of time, the Senate proceed to third reading and final passage of the original bill, without any further action or debate.

Mr. SARBANES. Reserving the right to object, I would inquire of the manager of the bill, the Senator from Illinois, whether the Dodd amendment that he is speaking about is the amendment which we have just reviewed. Is that the amendment at issue?

Mr. DIXON. Mr. President, I understand the Dodd amendment to be the one that the distinguished senior Senator from Connecticut is now prepared to offer. Essentially, it is an amendment providing for the Eximbank to make loans for military sales.

Mr. DODD. Mr. President, if the manager will yield, I will respond to my colleague by saying that the amendment we have been formerly discussing is the amendment that I intend to offer.

Mr. SARBANES. So it is as we were looking at it?

Mr. DODD. As we were looking at it.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, just to clarify—if I may have the manager's attention—that the final disposition, if the Dodd-Bond amendment is adopted, it would be included. If it were adopted, then the Dodd-Bond amendment would be a part of the final product as described by the manager?

Mr. DIXON. If the Dodd-Bond amendment prevails, it will be part of S. 347, as amended. That is the understanding of all parties.

If it fails, obviously, the bill in its present form, without that amendment, will be the form of the bill, as amended, with the Exon-Florio amendment already adopted.

Mr. DODD. I thank the Senator.

Mr. DIXON. 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. HEINZ. 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. GRASSLEY. Mr. President, I ask unanimous consent to address the Senate as in morning business for a period of 5 minutes.

The PRESIDING OFFICER. Is there objection?

Hearing none, the Senator from Iowa is recognized.

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 466 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, just this one further clarification of the unanimous-consent request previously propounded by this Senator. I further ask unanimous consent that no amendments or motions to commit be in order with respect to Senator HEINZ' bill referenced in this consent request. That is the unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the request?

Mr. DIXON. Mr. President, I am not going to ask for the unanimous consent to be approved at this time. I suggest instead that we go ahead with the Dodd amendment and we will propound this again at the conclusion of the debate on the Dodd amendment. I thank the Chair.

The PRESIDING OFFICER. The Senator withdraws his request.

Who seeks recognition?

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Connecticut.

AMENDMENT NO. 11

(Purpose: To amend the Export-Import Bank Act of 1945)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself, Mr. BOND, and Mr. LIEBERMAN, proposes an amendment numbered 11.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. EXPORT-IMPORT BANK AUTHORITY.

Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) is amended by adding at the end the following subparagraph:

"(H) Notwithstanding subparagraph (A) of this paragraph and section 32 of the Arms Export Control Act, the Bank in the exercise of its functions may guarantee or insure the commercial sale of defense articles or services to any country which is a member of the North Atlantic Treaty Organization, Japan, Israel, Australia and New Zealand, except that—

"(i) not more than $1,000,000,000 of the loan and guarantee authority available to the Bank in any fiscal year may be used by the Bank to support commercial sales of defense articles and services exclusive of any support provided by the Bank under subparagraph (B); and

"(ii) support for any such sale may only be provided if the Bank determines that loan and guarantee authority available to the Bank in the year of the sale is in excess of requirements for commercial, nonmilitary exports for that year.".

Mr. DODD. Mr. President, let me briefly describe what this amendment is that Senator BOND and I are offering. It is not a new amendment. It has been modified substantially. Basically it is the same proposition that was offered less than a year ago on other legislation that was adopted by this body and by a vote of some 16 to 5 of the Senate Banking Committee. It then went to conference with the House and did not survive the conference. So we are back again this year in a modified fashion offering similar legislation.

Mr. President, I am offering it on this bill, on the Defense Production Act, because, frankly, it deals exactly with the question of industrial base and whether or not we are going to be able to maintain an adequate defense production given the shrinking budget base in this country and inclination, I suppose, to reduce spending in those areas generally while simultaneously our NATO allies and several others I will mention in a moment are still in the market in which we should be actively competitive, and that is really what this is all about.

Briefly, Mr. President, the amendment would amend the U.S. Export-Im-

port Bank Act to enable the U.S. Export-Import Bank to assist U.S. defense industries in meeting the competition it faces in certain foreign markets. Specifically, it would allow the Eximbank to establish a pilot program, it is a pilot program, to provide support for commercial sales of defense articles or services to members of NATO, Japan, Israel, Australia, and New Zealand. It would also permit the Eximbank to use up to $1 billion of its annual guarantee authority for this purpose. The annual guarantee authority runs between $9 and $10 billion. This legislation does not mandate that $1 billion of that guarantee authority be expended; it rather says it "may be" expended. So there is no budgetary impact of this particular amendment.

Mr. President, why is such a program needed at this time and why on this bill? I have explained this is the Defense Production Act. We are dealing here with defense production scarce dollars and a competitive market in NATO and other countries that are almost NATO allies or close allies or fall into the category of nations where there is competition for these sales.

Second, despite the recent outbreak of hostilities in the Persian Gulf, it is fairly clear, I think, to most people that the new international order which emerged in the dismantling of the Berlin Wall seems to lower the demand, in the minds of some, for the spending of enormous sums of dollars on increasingly sophisticated and very costly defense systems; nor can the current sorry state of the Federal budget sustain such spending.

Ironically, the result is these charged circumstances have put to risk the continued viability of the U.S. defense industry as it is currently configured. Plant closings have threatened the livelihoods of millions of American workers and hold out the grim prospect of economic hardships for entire communities across this country. These are the veterans of the cold war. Understandably, corporate planners and strategists throughout the industry have attempted to adjust to the new realities of less U.S. defense spending by seeking out alternative commercial opportunities. The more successful they are in finding commercial alternatives, the greater the cushion to companies and to workers, to communities, and to maintaining an industrial base in these important areas.

Let me be clear about what our amendment does and does not do. With respect to Eximbank and with respect to existing procedures for ensuring that U.S. national security interests would be protected, aside from waiving the two provisions of law which cast doubt on whether Eximbank can legally undertake this effort, the amendment in no way alters any of the other safeguards and standards sets forth in Eximbank's charter, nor would this amendment require the Eximbank approve any and all requests for assistance—it says "may" not "shall"—without regard to the commercial soundness of the sale or its national security implications. The Government review and licensing requirements which currently apply to the export of defense equipment and services would continue to apply to Eximbank-assisted defense exports.

Mr. President, nor is it our intention that this program should come at the expense of other Eximbank activities. In order to reassure the traditional clients of the bank; namely, nondefense exporters, that is not our intention. We have specifically included an annual cap on the level of guarantee authority that can be used during this pilot phase of the program. Since Eximbank has historically never come close to exhausting its $9 billion or more in annual authority, there is clearly ample room for the Eximbank to undertake this new intiative.

Mr. President, I believe it now is the time for Congress to authorize this very modest expansion in Eximbank activities to provide some measure of Government support to the U.S. defense industries as it grapples with the enormous challenges of the coming decade. In my view, Eximbank can and should play a full role in assisting these industries at this critical juncture.

There is the question that the products and services offered by our industries are top of the line and highly sought after by other governments, but they are very expensive, and to be attractive to foreign purchasers, they must be accompanied from time to time by financing packages as attractive as those offered by our competitors.

Mr. President, let me tell you, our competitors offer a very attractive package with major governmental incentives. We go through experience after experience where major allies of ours use some of the most extensive support systems in order to see to it that their industries receive the most attractive packages as they compete for sales in NATO countries.

So, Mr. President, we feel that it is only proper, if we are going to be able to be competitive at all, to be able to offer some incentives and some support, and we wanted to introduce it with this pilot program. There is little dispute that most foreign competitors have available to them well-established, official guarantees in loan programs that improve their prospects for capturing sales.

In most cases, this is done by the very agency that provides credits and guarantees to nondefense exporters. However, since the early 1970's, Eximbank has generally declined to assist U.S. exporters of defense articles and services both as a matter of law and policy. Legislative efforts on my behalf and others over the last several years to alter that policy have until now met resistance by Eximbank and by certain U.S. Government agencies, although I must say some have been sympathetic to the change.

And, by the way, this amendment we are offering, I believe, enjoys the support of the administration. They have a proposal that is virtually identical to this that they may be offering at some later date. So rather than some of the opposition we saw a year ago today, we are receiving very good support from the administration on this change.

Mr. President, this amendment is very similar, as I mentioned at the outset, to a provision that Senator BOND and I offered to a Banking Committee bill last year. That provision was adopted by the committee by a vote of 16 to 5 during consideration of S. 2927, a bill to amend and extend the Export Administration Act of 1979. That bill subsequently passed the Senate without opposition. But for a variety of reasons, as I mentioned, in conference, including administration opposition, the provision never became law.

Since last October when this matter was last considered, it appears that the administration has had a change of heart. I believe that the administration now supports the use of Eximbank guarantees to assist defense-related exports.

In drafting the pending amendment, we attempted to take into account concerns raised last year during consideration of our proposal. For example, our amendment incorporates many of the suggestions made by Eximbank during discussions and includes suggestions made by the distinguished Senator from Pennsylvania, who offered an amendment not entirely dissimilar to the one we are offering today. We also believe this version would allay any fears that the traditional users of the Eximbank may have that they will be crowded out by Eximbank's efforts to assist defense exporters.

Mr. President, I believe that this amendment is long overdue and contains sufficient safeguards to ensure that the Eximbank can play a critical role in assisting our defense industries while not crowding out commercial exporters to compete and not be forced to compete with one hand tied behind its back during this particularly difficult economic adjustment period.

Mr. President, I should also point out, and I want to emphasize, that we are very narrowly limiting the countries that can receive this kind of assistance. It is NATO, it is Israel, it is Japan, New Zealand, and Australia.

Mr. President, I would oppose any amendment that would try to expand the use of the Export-Import Bank to allow defense articles to be sold in developing countries. I think that would be a mistake and be harmful. But to at

least compete with our NATO allies and with Israel, Japan, Australia, and New Zealand seems only appropriate.

So on this particular bill, the Defense Production Act, when we are trying to deal with some of the adjustments, I feel this legislation is appropriate and proper and needed if we are going to protect some of these areas, maintain production lines; maintain research and development, and, at the same time, reducing spending in some of these areas so that we do not look back and wish that we had been more competitive in more markets and some of these industries would have been able to maintain that human intelligence curb, the expertise, the background that is absolutely necessary in this particular field.

Mr. President, I yield the floor at this time.

Mr. BOND. Mr. President, I am very pleased to join my distinguished colleague from Connecticut in proposing this amendment.

We in this body spend a lot of time and effort talking about and passing legislation intended to make U.S. companies more competitive in the international marketplace and ensuring that they will not be at a disadvantage when they compete against foreign companies. Given the growing importance of the world marketplace, this is a very important goal for us to continue to pursue, and I think this amendment gives us an opportunity to do that.

The amendment before us now will serve to help one of our most important exporting sectors to remain competitive by removing an existing disadvantage. Currently, American defense companies which are competing for international sales against foreign companies are at a serious disadvantage when it comes to financing. In an effort to sweeten their offer, companies from France, Japan, the United Kingdom, and Canada can all go to their nation's Export-Import Bank for concessional financing. American companies do not have that option.

I think it is important to point out, as my colleague from Connecticut already has, that this amendment has been carefully drafted to ensure that financing will go only to our closest allies, not to third world nations, and that the current process for approving a foreign military sale will remain in place.

Now my colleagues I see have received, courtesy of our distinguished Senator from Maryland, a copy of a letter addressed to the New York Times and printed February 16, 1991, from a former senior staffer of the Export-Import Bank, which raises some concerns about financing of defense exports to third world countries. The article also may raise some legitimate concerns—indeed, it does—but they are all irrelevant to the proposal that is in this amendment.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BOND. Yes.

Mr. SARBANES. Actually, the letter, if the Senator will read it very carefully, makes reference to a period of time when we used the Eximbank to finance military sales to Australia and to Britain, which of course are two of the very countries that are permitted under this amendment. The author of that letter points out what he sees as the dangers of doing that. The letter is premised not on the sales to the less developed countries but on the very sales that are contained in this amendment.

That is the issue. I just want the Senator to be clear that this letter is not limited in its focus, as the Senator has just indicated, and in fact uses as its focus the sales to Australia and to Great Britain which occurred some 25 years ago, at a time when the Eximbank could be used to finance military sales to such countries.

(Mr. LIEBERMAN assumed the chair).

Mr. BOND. I thank my colleague from Maryland for the explanation. I would only point out that the objections raised in this letter are, No. 1, that the use of Export-Import Bank financing would squeeze out nondefense exports. And there is an addition to the amendment which explicitly provides that support for any such sale may only be provided if the bank determines that loan and guarantee authority available to the bank in the year of the sale is in excess of requirements for commercial, nonmilitary exports for that year. As I read the letter—and obviously my colleague will place whatever interpretation he wishes on it—he goes down to list the horrors of the debts that were piled upon Egypt; he talks about exports to Ghana; and how terrible it is to sell military equipment to most developing countries, where the military equipment will not generate the funds to pay for the loans which have been given.

What we are saying here, by limiting this amendment to the NATO countries and a few others which clearly are our allies, many of whom are engaged with us at this very moment in the activities in the Persian Gulf in the Middle East, we are saying that we will remain competitive in providing export financing to companies who are engaged in selling to our allies who are working with us.

Mr. DODD. Will the Senator yield for a moment?

Mr. BOND. I am happy to yield to my distinguished colleague from Connecticut.

Mr. DODD. I would point out, as well, one of the problems with the letter from Mr. Hamilton is he fails to make any reference to what occurred after the adoption of the Export-Import Bank. And that was, there has been a whole variety of legislation adopted that would preclude the very activities that have been raised by our distinguished friend from Maryland. The Arms Export Control Act and the Export Administration Act requirement and a whole different budget process that is in place, all of that has been in place since the adoption of the Export-Import Bank legislation in 1964.

So, the very concerns that are raised in this letter have been accommodated and dealt with by legislation that was adopted subsequently. So those concerns and objections have been met and addressed and I make that point as well to the argument raised.

Mr. BOND. I thank my colleague from Connecticut. I believe he states his point very well. We believe that this letter is irrelevant. I am sure my colleague from Maryland will have other views to express on it.

Mr. SARBANES. Well, if the Senator will just yield for a moment?

Mr. BOND. I will be happy to.

Mr. SARBANES. Obviously when I get up to speak I will quote the letter and then Members will be able to make their own judgments about the thrust of the letter, but I only point out that in the second paragraph he points out that the bank authorized loans of $134 million to finance military sales to Australia and $110 million for such sales to Britain. And then he goes on to say that there have been articles that expose this thing, and that is when we put restraints upon it.

So the very practice that is going to be permitted under this amendment is a practice that was criticized in this letter. But I am going to, obviously, read it into the RECORD and each Member will make his or her own judgment as to its import.

Mr. BOND. We appreciate the comments of our colleague from Maryland. We are sorry he does not view the letter as we do.

Basically, for my colleagues who may want to read the letter, I suggest that in reading that letter they consider that the points raised by the gentleman who wrote it in the New York Times on February 16, have been addressed by other legislation controlling exports of defense items and also by specific limitation in this measure which will allow the bank to deal only with NATO and other strong, developed country allies, as well as ensuring that export/import financing for defense items does not squeeze out the bank's financing of commercial sales.

To get to the basic reason for this legislation, Mr. President, we can all cite many cases in which American jobs have been lost. That is what we are talking about here, American jobs lost because competitive financing was not available.

Let me cite an example. In 1985, Turkey announced its intention to purchase more than 1,000 armored combat vehicles. The contract was eventually awarded to the FMC Corp. at a San Jose, CA, location, as a joint venture with a Turkish company. However, when FMC went to its banks to secure financing for the deal it was unable to obtain competitive financing. Of course, Export-Import Bank financing was not available at the time so FMC was forced to look to Europe. FMC eventually found financing in Europe supported by the export/import banks of Holland, Belgium, and the United Kingdom. Because of this support, FMC was forced to move a large part of the production work to these countries. Jobs that almost certainly would otherwise have been retained in California went abroad simply because this country would not provide Exim financing.

A second example also happens to involve Turkey. It arose in 1987 when the Turkish Government issued a proposal for a mobile radar for a ground-based defense system. Westinghouse was a finalist in the program along with Thomson, CSF of France. Thomson offered an attractive financing package including a 10-year grace period and a 3.5-percent interest rate. Westinghouse was unable to obtain similar financing in the United States. It decided, therefore, to shift a significant portion of its planned production to Canada in order to obtain Canadian Government financing. Eventually the French company was awarded the contract anyhow. Westinghouse officials attribute their loss to the financing troubles and the fact that they could not get financing from the U.S. Eximbank.

At this time when we are scaling back on our defense purchases, when we are worried about our defense industrial base—and I can assure Senators that we in Missouri are worried about that and I know many other States have the same problem, ensuring we maintain the top quality production that American workers have developed in defense—it only makes sense to give our defense industry, and the skilled workers employed there, every tool possible to make them competitive in the international marketplace.

As the Pentagon buys fewer and fewer products, international sales will become more and more important to the continued health of our defense companies.

This is not to say that I or any other Senator who supports this measure is in favor of indiscriminate weapons sales to any country without limit. Certainly, we are not. That is not the proposal that we have before us. This measure has been carefully crafted to assure that financing would be available only to our close and long-term allies. NATO countries, Israel, and Australia are some examples. The amendment will have no impact on the long-term prohibition on Eximbank financing of defense sales to third world nations.

I also point out to my colleagues that this provision will not alter the current process for considering sales of military equipment. As my colleague from Connecticut has already pointed out, the existing system under which sales are screened and approved by the Departments of State and Defense with congressional oversight would not be affected at all. The only change will be the added involvement of the Export-Import Bank, making a financial decision as to whether or not a particular deal is viable—the same decision they now make on nonmilitary deals.

Mr. President, last week during the President's day recess I traveled back to my home State of Missouri. I met with some of the 40,000 defense workers in my State. Needless to say, they are very proud, and rightfully so, of the tremendous contribution that they have made to our efforts in the Persian Gulf. They are proud of the fact that the fine products they produce are now protecting the lives of our young men and women in the gulf. Despite their pride, however, they all remain concerned about the long-term viability of the companies for which they work. This is not surprising given the fact that almost 10,000 of their colleagues in my State alone have lost their jobs over the past year.

The men and women I talked to understood that their jobs are tied in large part to foreign sales, to foreign sales to our strong allies. They realize that U.S. companies must sell military products to our allies if our defense companies are to stay healthy. They told me, again and again, of the need to win sales to countries such as Korea, Switzerland, Spain, and Italy, because, as they pointed out, these products will either be made in Missouri or they will be made in London and Paris and in other NATO countries.

If we are to keep a defense industrial base, if we are to keep those workers productively and profitably employed in doing what they do best, then we have to provide them the same kind of assistance from our Government that Canada, Great Britain, and France provide their companies involved in defense production.

This amendment is simply one tool to help ensure we keep jobs in this country rather than losing them to the Eximbank financing of companies in Europe. I strongly urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Chair recognizes the Senator from Pennsylvania [Mr. HEINZ].

Mr. HEINZ. Mr. President, I have examined the Dodd and Bond amendment, and of course I recognize it. It is an amendment that was considered during the course of our discussion last year in the Banking Committee on the Defense Production Act. I say I recognize it because one of its key provisions are mine. That is to say, an original Dodd-Bond amendment was offered which I opposed because I took the position then, as I do as a matter of principle now, that the Export-Import Bank should not be used for arms sales, even to NATO countries; that it would be best that those exports were financed as any other military sale is financed.

So I offered an amendment in committee to make sure that normal commercial sales, which are what the Export-Import Bank finances, would be protected. I offered an amendment which provided priority for commercial sales in the event the Export-Import Bank decided and was given the authority to provide financing for sales of military items to authorized destinations in NATO—that those would not ever be at the expense of ordinary commercial sales, from one commercial customer to another.

That amendment lost on a close vote. The Senator from Connecticut has incorporated my amendment into the text of his amendment today, and I commend him for doing so. It is his last paragraph, which reads:

> Support for any such sale may only be provided if the Bank determines that loan and guarantee authority available to the Bank in the year of the sale is in excess of the requirements for commercial nonmilitary exports for that year.

That, I think, is a very clear and unambiguous statement that says that commercial, nonmilitary exports will get priority. If there are excess resources, they can be used for military purposes.

So, Mr. President, I am in the position of meeting myself coming the other way because, frankly, I had not been enthusiastic about the underlying proposition. In the article that the Senator from Maryland has referred to, the New York Times article entitled "Don't Use Export-Import Bank for Arms Sales," I find myself in continuing sympathy with many of the arguments made by Mr. Hamilton. The one that resonates most with me is the point that there is a risk in using Eximbank resources for this purpose and that is taking on the risk of financing nonproductive military exports, along with the associated risk of subsequent political backlash.

So I cannot muster a lot of enthusiasm for the amendment of the Senator from Connecticut and the Senator from Missouri. But at the same time, I am not going to stand here and fight it tooth and nail. I am willing to take it to conference, which I think is probably the most expeditious course for the Senate.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland [Mr. SARBANES].

Mr. SARBANES. Mr. President, the Members of the Senate face a very fundamental judgment. What is being proposed is prospectively a fundamental reorientation of the focus of the Eximbank programs.

Mr. HEINZ. Will the Senator from Maryland withhold for just a second?

Mr. SARBANES. At the request of my dear friend, I will be happy.

Mr. HEINZ. Without losing his right to the floor, so that I might propound a unanimous-consent request.

Mr. SARBANES. I do yield, Mr. President.

UNANIMOUS-CONSENT AGREEMENT

Mr. HEINZ. Mr. President, I ask unanimous consent that the only further amendment in order to S. 347 be the pending amendment.

I further ask unanimous consent that following the disposition of the pending amendment, the Senate proceed to third reading and final passage of S. 247, as amended, without any further action or debate.

I also ask unanimous consent that immediately following the disposition of S. 347, that the Senator from Pennsylvania or his designee be recognized to introduce for immediate consideration a bill which is the text of S. 259 with the fair trade and financial services language and changing the expiration date to September 30, 1991, on which there would be 10 minutes of debate to be equally divided in the usual form; that no amendments or motions to commit be in order in relation to the bill of the Senator from Pennsylvania; and that following the use or yielding back of time, the Senate proceed to third reading and final passage of the bill of the Senator from Pennsylvania without any further action or debate.

The PRESIDING OFFICER. Is there objection? Hearing none, that will be the order.

Mr. HEINZ. I thank my friend and colleague from Maryland for yielding.

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Mr. SARBANES. Mr. President, as I had begun to observe, the amendment before us presents Members of the Senate with a very clear, I think, and basic judgment; and that is whether Exim credits should be used to finance the sale of defense articles and services.

Prospectively, this has the potential of being a fundamental reorientation in the focus of Eximbank programs and I for one believe that the Eximbank programs should not be used to finance military sales.

This amendment is similar to one offered by my colleague from Connecticut last year in the Banking Committee at a markup of the Export Administration Act which, incidentally, is not the act that covers this area of activity. It was, as he noted, adopted in the committee on a divided vote and taken to conference but did not come out of the conference. We now have an effort to add it here to the Defense Production Act, which also does not deal with the subject matter of the amendment.

I simply make the point that no hearings have been held on this proposal. We have not had a chance to have a full-scale hearing and examination of whether it is wise policy, whether it is sensible to make this departure in order to allow the Eximbank now to undertake this financing of defense articles.

We have heard that the administration is considering shifting its position in order to permit a certain amount of this to happen. But that fundamental shift in policy has not been presented to the Congress and no hearings have been held on whether this represents a wise thing to do.

There are several reasons why I oppose this amendment. First of all, as I have just indicated, if we are going to make this kind of change, there ought to be a set of hearings in which we can hear the pros and cons of it and have a chance to examine very carefully the import of this change, particularly when in the past there was a time in the making of national policy when because such use of financing was permitted we, in effect, changed the policy.

This is not an issue that emerges in a sense for the first time historically. It was here before, and at that time a different judgment was made. The practice was going on and the judgment was made that the practice ought not to go on.

Now we have an amendment which seeks to permit the practice and, of course, as I say, we are dealing with it here on the floor without having had the sort of hearings that I think ought to be behind or precede any change of this sort.

The Eximbank, as we all know, is important in financing the export of U.S. commercial products. We, of course, are anxious to do that. It has not engaged in recent years in financing military goods or services. We now confront an amendment which would permit a shift in that policy.

In fact, for now more than 20 years the Eximbank has been prohibited from financing military sales to the developing countries and has as a matter of practice or policy refrained from providing such support for developed countries, thereby enabling it to focus its resources on commercial export financing.

One argument which will be made—and it is a reasonable argument—is that the Eximbank has not fully used all of the financing resources that are available to it, and therefore, having failed to do so, at least some of that gap, if not all of it, should be picked up by financing military sales.

Of course, one answer is we really need them to push harder in financing commercial sales. In fact, it is expected that the demand for such sales will increase dramatically with the evolving of free markets in Eastern Europe, the return of free market economies in Latin America, their new and significant opportunities for American suppliers, but they will need the support of the Eximbank in order to do it.

So you have a situation in which I think a reasonable argument can be made that while not all of its guarantee authority available in the past has been fully used, obviously those resources are not unlimited, and there are opportunities now for their utilization.

That is the direction, in my judgment, in which we ought to be pushing the bank. In fact, that is the area of the bank's expertise. The bank has no expertise in the financing of military sales. The basic judgment on whether military sales ought to take place is essentially not a commercial judgment. It is a security-foreign policy judgment, which is not an area of competence or expertise for the Export-Import Bank.

The Senator from Missouri cited a letter which I have had distributed that appeared in the New York Times about a week ago. It is one of those, from my perspective, happy coincidences that this letter arrived, and fortunately I happened to notice it.

The reason the letter came in apparently is it was the author's concern because he understood the administration was thinking of shifting position. But it in effect anticipates the amendment that is now before us, and I want to now make reference to that letter and quote from it.

Mr. President, I ask unanimous consent that the full letter be included in the RECORD at the conclusion of my comments.

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

(See exhibit 1.)

Mr. SARBANES. This is a letter from a gentleman I do not know, Albert H. Hamilton, who says at the very outset that he was a senior staff employee of the Export-Import Bank from 1964 until 1987, and expressing his concern by reports that the administration is considering requiring the bank to revert to financing exports of U.S. military equipment and services. He says his concern:

> stems from the bank's experience in the fiscal years 1966 through 1968, when it was made a major participant in the export of weapons, in part because of budget constraints caused by the Vietnam war, and in part because of the balance-of-payments problem then.

Of course, we now face budget constraints. We face balance-of-payments problems. We face defense cutbacks which are impacting on defense produc-

tion. And I must say to my colleagues we experience those in my State just as they are experienced in other States. So the real question here is on this basic issue of whether you think the Eximbank ought to be used to finance the sale of arms.

The letter goes on and says:

In fiscal year 1966, the bank authorized loans of $134 million to finance military sales to Australia, $110 million for such sales to Britain, and $237 million for weapons sales to "miscellaneous countries," not otherwise specified.

During the following 12 months the comparable figures were $159 million to Australia—that was compared to $110 million the year before—$435 million to Britain—compared to $110 million—and $353 million to miscellaneous countries. Then he points out in the following year the figures dropped.

He says:

The drop to zero in fiscal year 1968 resulted from a series of articles in the New York Times derived from interviews with Department of Defense officials who were elated that they had been able to tap into the bank's resources to finance these exports, limiting their department's role to a repayment guarantee of the bank's loans.

The articles provoked extended congressional hearings—

Extended congressional hearings.

I repeat again we have had no hearings on this issue. It was first brought up as an amendment in the markup last summer of the Export Administration Act and it is now back before us. But there have been no hearings, none in the course of considering reauthorizing the Export-Import Bank or any legislation specifically applying to the Export-Import Bank.

The letter goes on:

where the technique was referred to as "back-door financing" and an evasion of the appropriations process. The result of these hearings was legislation in March 1968 which imposed a limit on the amount of weapons sales to developing countries, followed that October—

This is October 1968—

by Public Law 90-269 which imposed an outright ban on Export-Import Bank financing of military equipment sales to developing countries.

Much, of course, has changed since 1968, as the letter points out, including the development of a more serious Federal budget crisis. In fact, the bank's authority for dealing with the export of commercial products is not keeping up with the amount of exports.

So I think there is a strong case to be made that there is a real need for these credits for the exporters of commercial goods, even though the bank in past years has not utilized them, partly because of the way they are required to score matters for purposes of budget impact.

Now, in effect what is going to happen here is the Defense Department will provide financing for the sale of military articles and services with respect to resources provided to the Defense Department for that purpose, and in addition now they will find other financing for military articles and services in the Export-Import Bank.

I know my colleague who has offered the amendment makes a point of the countries to which it pertains, but I predict now to the Members of this body that the next step they will face—and I predict it with great assurance because it apparently is not going to happen today, but it might well have happened today—is the Members will be coming, offering other countries to be put into the list so that the Export-Import Bank money can be used to finance military weapons and sales.

The real question is are we going to keep the Export-Import Bank committed to what has been its clearly defined objective in the past, an objective which is very important to our national interests, and objective which if realized will strengthen our competitiveness in the international world economy, provide, as it were, jobs through the export market in the lasting sector of the production of civilian goods? Are we going to move it over into providing financing for military articles?

One of the dangers, of course, is you finance military articles, and then if the payments cannot be met, you get a national security-foreign policy argument for excusing the debt.

That should not come as any surprise to Members of the Senate because we just did that with respect to Egypt in this body to the tune of close to $7 billion.

So, what is happening now is you are going to put an assignment on the Export-Import Bank which is completely outside of its area of competence. I mean this is an institution that analyzes commercial sales, and makes judgments with respect to direct loans and guarantees that pertain to commercial sales.

Military equipment does not generate cash-flow for debt service. The financing of such exports cannot be based on commercial considerations, which are the considerations that governed heretofore for more than the last 20 years the Export-Import Bank.

I think—there is no doubt in my mind—that if you once permit the Export-Import Bank to support military exports to this list of countries, there will be pressures to make the program available to other countries, as well. It will be inevitable. It may well be difficult to resist. It constitutes an open invitation to every country.

Given all the other pressures, the budget pressures that affect the resources available in the Defense Department, the balance of payments pressures, countries will say, "Are we not as much a friend as the country that is on the list? We want to be on the list. We want to be on the list, as well." For that, you are going to have a tremendous demand.

It is true the amendment as written provides some protection on the commercial side by making this, as I understand it, residual. But I think over time, the dynamics for the expansion of this program, both to countries and in amount, will be very strong, and may well be irresistable.

So the basic question comes down to whether you want to now take the Export-Import Bank, which has been performing a very important service, and without a full set of hearings, and put it into the business of financing arms sales. That is what this amendment does. It moves it into the financing of arms sales.

We have a system for financing arms sales. It works its way through the appropriations process. It therefore receives the scrutiny in the Congress that the appropriations process requires, and it enables foreign policy and security and economic judgments to be made as to whether that financing ought to take place.

You permit this in the Eximbank. They operate under a grant of authority. There is not a congressional review of each of the decisions which they make. They are not equipped to deal with military sales.

I assume what this amendment will force them to do is to develop an additional or a supplemental administrative structure within the bank in order to try to be able to handle military sales and develop that competence and expertise. Then I do not know how the Eximbank is going to factor into its judgments the national security foreign policy factors which are currently factored into the judgments as to whether there ought to be the financing of military sales.

Obviously, I feel very strongly that we should not adopt such a fundamental shift in the focus of the Eximbank. Certainly, it is my own view, having looked at it, that it ought not to happen. But I certainly do not think it should happen without the kind of hearings that would enable us to examine the issue in every respect; to take a very careful look at it, and to make the judgment whether this is a sensible way to proceed.

This is a highly controversial issue. The House, in fact, and only recently, has taken a position completely opposite, the House committee, completely opposite; namely, precluding the use of the Eximbank for military sales in any circumstance.

My own preference, obviously, would have been that we go through the hearing process before we reached that point, and then debated this issue. There is not a hearing record to support this amendment.

I appreciate the pressures that bring it forth. They are felt by everyone. But I urge Members to stop and think very

carefully whether they want to put the Eximbank into the arms sales business. Do we want the Eximbank, which has had a clear charter and a clear mandate, to do more with that charter and more with that mandate? Do we now want to push them into the arms sales business?

I submit that we do not want to do so, that we ought to oppose this amendment, because I think it is starting us down the path of great difficulty. It will inevitably, in my judgment, crowd out the traditional functions of the Eximbank. It may not do it immediately.

But before too long, I am prepared to predict here on the floor of the Senate, that if this amendment becomes law it will crowd out the traditional functions of the Eximbank, and the encouragement of commercial sales, which has been the Bank's focus, will be impeded and set back. It makes no sense at a time when the opportunities for such commercial sales are opening up both in Latin America and in Eastern Europe.

Mr. President, I know that the administration may change its posture. Of course, that is a matter that also ought to be subjected to hearings if, in fact, that is the case, and they press that forward. I understand there is a division within the administration about which way to go on this thing.

But, again, that is a matter that I think ought to be examined by the Congress. I think this represents a hasty effort to respond to pressures that exist that all of us feel with respect to defense industries that are confronting difficult production problems.

But the answer to it is not to put the Eximbank in the business of financing arms sales. The Eximbank has been, and ought to be, and should continue to be in the business of financing commercial sales, building up those exports, of improving the American balance of payments through that commitment and should not now be shifted into the financing of military articles and services.

Mr. President, I know that the manager of the bill is anxious to move along, and I am sympathetic to his problems. I say to the manager that I will conclude in just a moment or two. I sense his unease, and I want to respond to it and try to be helpful to him. I indicated to him at the outset that I am prepared for Members to make this basic judgment. Members are going to go on the line, and then they are going to have to in the future, as things develop, live with the judgment they are going to make here now as to whether they are going to put the Eximbank into the arms sales business. That is what it amounts to.

We talk about the new world order, the post cold war international environment, all of the hopes for peace and prosperity, and then we come here, and one of the first things some Members want to do is take the Eximbank and put it in the arms sales business. I submit that the Eximbank ought to stay with its current mission and its current charter, to encourage commercial sales. It ought not to be put into the arms business. Members ought not to vote for an amendment that, in effect, allows the Eximbank to go down the path of being the financier of arms sales, and I very much hope Members will vote against the amendment.

EXHIBIT 1

[From the New York Times, Feb. 16, 1991]

DON'T USE EXPORT-IMPORT BANK FOR ARMS SALES

To the Editor:

As a senior staff employee of the United States Export-Import Bank from 1964 until 1987, where my duties included liaison with other Federal agencies, I am deeply disturbed by reports that the Administration is considering requiring the bank to revert to financing exports of United States military equipment and services. My concern stems from the bank's experience in fiscal years 1966 through 1968, when it was made a major participant in the export of weapons, in part because of budget constraints caused by the Vietnam War, and in part because of the balance-of-payments problem then.

In fiscal year 1966, the bank authorized loans of $134 million to finance military sales to Australia, $110 million for such sales to Britain and $237.7 million for weapons sales to "miscellaneous countries," not otherwise specified. During the following 12 months the comparable figures were $159.7 million, $435 million and $353.1 million. The amounts for fiscal year 1968 were $50 million, $100 million and nil.

The drop to zero in fiscal year 1968 resulted from a series of articles in the New York Times derived from interviews with Department of Defense officials who were elated that they had been able to tap into the bank's resources to finance these exports, limiting their department's role to a repayment guarantee of the bank's loans.

The articles provoked extended Congressional hearings, where the technique was referred to as "back-door financing" and an evasion of the appropriations process. The result of these hearings was legislation in March 1968 (Public Law 90-267), which imposed a limit on the amount of weapons sales to developing countries, followed that October by Public Law 90-269, which imposed an outright ban on Export-Import Bank financing of military equipment sales to developing countries.

Much has changed since 1968, including the development of a more serious Federal budget crisis. In the mid-1960's the bank's authorizations were equal to about 12 percent of United States exports; last year they were equal to less than 2 percent.

With United States exporters of commercial goods desperate for export credit support, the Administration should conserve its severely limited resources to support exports that contribute to development of markets abroad for United States goods and services. If exports of military equipment are deemed to be in the national interest, clearly the responsibility for such transactions should rest with the Department of Defense. After all, that agency is supposed to know about strategy and the legitimate needs for weapons of other countries.

Also, retaining the responsibility for such transactions in the Department of Defense will make the information on amounts, types of weapons and buyers available to Congress and the public through the authorization and appropriation process.

The Export-Import Bank should not now, when commercial goods exports are perhaps the only bright spot in our bleak economy, be used to assume the risks of financing nonproductive military exports, with the associated risks of subsequent political backlash. Debt relating to military procurement is the easiest kind not to pay, particularly when the buyer is asked to join the supplier country in military action, for example, Egypt and the United States, and earlier, Egypt and the Soviet Union.

Since leaving the bank I have been with a consulting organization that analyzes the export credit agencies of other countries—counterparts to the Export-Import Bank. This has enabled me to see how many of these agencies have gotten into serious political and financial difficulties by supporting exports of military equipment. For example, the British export credit agency some years ago was heavily involved in supporting military sales to the Kwame Nkrumah Government in Ghana. When that Government changed, its successor sought to repudiate the arms-related debt, with resulting financial losses and claims payments.

Arms sales, by their nature, are highly political and noncommercial. Military equipment doesn't generate cash flow for debt service, a serious problem in most developing countries. The financing of such exports cannot be based on the commercial considerations that govern export credit agencies, including the Export-Import Bank.

The Export-Import Bank deserves to be supported in its commercial export finance functions; financing military exports is an inappropriate, unprofitable and unpromising role for it.

ALBERT H. HAMILTON,
Senior Associate,
First Washington Associates Ltd.

ARLINGTON, VA, *January 25, 1991.*

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, very briefly, in all fairness, I have to respond to some of the statements made by my good friend from Maryland, and he is a good friend. There are some clarifications that are necessary here.

First of all, this is not unprecedented activity. Let us make it clear that, in fact, years ago the Export-Import Bank was used, as the Senator from Maryland pointed out, in a number of cases for military sales. There were mistakes made, I agree with him, in the Third World developing countries area, and that has been shut down, as it should be.

But the problem is, of course, that we are dealing now with NATO countries, with Israel and Japan, places where our manufacturers are denied the same level playing field to compete for those sales. If I can sell a jet engine for commercial use in England, why can I not also use the Eximbank for the sale of that jet engine for military purposes? That is not to suggest we are dealing with banana republics. We are talking

about Japan, Israel, New Zealand, and Australia; that is it. I oppose any amendment that expands this to include developing nations. But over the last few years, we have already done it.

The Eximbank is allowed for the sale and use the guaranteed authority in narcotics, as in Colombia and in a list of other countries which are approved for that particular purpose. We have approved the Eximbank acts, the use of that authority for the sale of helicopters and other equipment to the Turkish police. It is not as if we are charting an altogether new course here today. This is not unprecedented at all. Hearing requirements and so forth, as suggested, would imply somehow that this is altogether new.

Second, the sales will have to go through the same process they go through without the Exim financing. They would be required to get the export licenses as required by the State Department, the Department of Defense, and others. So this is not somehow allowing these things to go forward. All we are suggesting here is, in a highly competitive market, NATO countries with our allies use guaranteed loan authorities to enhance the ability of their contractors to compete. We would like a level playing field, that is all, within NATO countries, such as Israel, Japan, New Zealand, and Australia, so when we are selling those things, we will be on a level playing field.

I hope this amendment will be adopted. If you are concerned about what is happening to some of your employees and about layoffs, and if you are concerned about research and development, about production lines, here is one way, a small way, to make some difference, with a cap and a pilot program of less than 10 percent of the entire loan authority that is there. So, Mr. President, I urge the adoption of this amendment.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I oppose this amendment. I think we should understand what it is. I was watching this debate. As chairman of the Foreign Operations Subcommittee, I am concerned about a move which would, in effect, create a new military assistance program in the foreign aid budget. Let me tell you that there is a subsidy cost to this military financing program. We are going to be required, if this passes in the foreign aid bill when it comes up, to appropriate an extra $65 million out of the foreign aid budget to subsidize the military exports. We would have to appropriate an extra $65 million or take it out of one of the regular humanitarian programs.

Foreign aid already provides $3 billion in direct military aid and loans for military sales. We have all the things that everybody on this floor wants, and I see several Members on the floor who have asked for various programs, from Eastern Europe, to Israel, to Turkey, to Greece, to everywhere else; and I wonder who is willing to step up here, a proponent, and say they will take the $65 million out of that humanitarian program to pay for this. Maybe some day there should be a new financing facility on commercial military exports. We will have hearings on that issue.

It is true, as the distinguished Senator from Connecticut says, that other nations do directly finance their military exports. The American defense industry does not have a level playing field. He is right on that. Maybe there is an argument for it, but we have not had the hearings, and we do not know. I do not think it is the way to settle this issue. We are going to vote it up or down, I suppose, but I suggest to those who want to vote for it that I hope they will understand when they come to me on the foreign aid bill and say they want help for Poland, or they want help for Greece, or Israel, or Turkey, or Egypt, or Lord knows where else, that we are going to have to find the $65 million in there somewhere to take out to pay for this.

Mr. DODD. Will the distinguished Senator yield on that point?

Mr. LEAHY. I yield the floor.

Mr. DODD. There is no mandate that the money be used. The language says "may," not "shall." So the suggestion that somehow this is going to cost additional money is absolutely untrue. There will be no request for an appropriation here. It is language made within that authority that is provided for this, absolutely no budgetary impact, as my colleague knows, because a similar measure was offered on the appropriations bill and enjoyed his support. I ask for the yeas and nays.

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

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. To answer the Senator from Connecticut, if it is authorized, it is required to be funded under the Exim line in the foreign aid bill.

Mr. LIEBERMAN. Mr. President, I strongly support the amendment of my colleague, the senior Senator from Connecticut. With this amendment, we are creating a program within the Eximbank that would help defense exporters, while not "crowding out" commercial users of the Bank.

The only sales that can be guaranteed by this amendment are to other members of NATO, as well as Japan, Israel, Australia, and New Zealand. It is important to remember that these are not sales to developing countries. These are sales to developed nations that will buy defense related items from the Nation offering them the best terms. With this amendment, we are simply trying to level the playing field for our exporters.

The amendment also limits the total amount of funding available for defense exports. No more than $1 billion of direct loan or guarantee authority can be used for this purpose. In addition, before financial support for a defense sale is approved, the Bank must take into consideration the "likely demand" during a fiscal year for the sale of nondefense articles, consulting with other government agencies during the process. These are important safeguards for commercial exporters.

This language is approximately the same as the language the administration has suggested be used to facilitate the Bank's involvement with military sales. It is a thoughtful, balanced approach designed to help our defense exporters who create so many jobs for our people.

If this amendment is enacted, we will have to revisit the whole issue of the Eximbank's involvement with the financing of defense exports in the context of the Bank's charter renewal, due to come up next year. If we determine that this program is not working the way we want it to, we can eliminate it or otherwise change it during our debate over the charter renewal.

The defense industry is key to my State's economy. We depend on it to create jobs and keep our industrial base strong. It is clear that over the next few years there will be cutbacks in defense spending, despite the war in the gulf. One way to ease the pain of those involved with the industry is to help them with exports to developed nations. It is crucial to remember that this is not simply a program to help big business. There are thousands of subcontractors involved with the defense industry, providing thousands of jobs to the people of Connecticut and throughout the country.

Connecticut is not the only state which relies on defense contracts. The defense industry is a key component of our Nation's manufacturing base. Since defense dollars will not be flowing as freely as they did in the last decade, we must ease the plight of those dependent on this spending. This amendment is an important step in that direction.

I urge my colleagues to support the amendment.

Mr. DIXON. Yeas and nays, Mr. President.

The PRESIDING OFFICER. The yeas and nays have already been granted.

Is there further debate?

The Senator from Maryland.

Mr. SARBANES. Mr. President, I simply underscore, on the basis of what the Senator from Vermont has just pointed out, the pitfalls that are associated with this amendment.

I urge Members to vote against it. If debate is finished, I am going to move to table the amendment.

Mr. President, I move to table the amendment.

Mr. LEAHY. Yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table?

There is a sufficient second on the motion to table.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maryland to lay on the table the amendment of the Senator from Connecticut. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

I also announce that the Senator from California [Mr. CRANSTON] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. BROWN], the Senator from Vermont [Mr. GARN], and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

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

The result was announced—yeas 48, nays 47, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—48

Adams	Gore	Mitchell
Akaka	Gorton	Moynihan
Baucus	Grassley	Nickles
Bentsen	Harkin	Packwood
Boren	Hatfield	Pryor
Bradley	Heinz	Reid
Bryan	Johnston	Riegle
Bumpers	Kassebaum	Rockefeller
Burdick	Kerrey	Roth
Byrd	Kohl	Rudman
Coats	Lautenberg	Sanford
Daschle	Leahy	Sarbanes
DeConcini	Levin	Sasser
Dole	Lugar	Simon
Ford	Metzenbaum	Wellstone
Glenn	Mikulski	Wirth

NAYS—47

Biden	Fowler	Murkowski
Bond	Graham	Nunn
Breaux	Gramm	Pell
Burns	Hatch	Pressler
Chafee	Heflin	Robb
Cochran	Helms	Seymour
Cohen	Hollings	Shelby
Conrad	Inouye	Simpson
Craig	Kasten	Smith
D'Amato	Kennedy	Specter
Danforth	Kerry	Stevens
Dixon	Lieberman	Symms
Dodd	Lott	Thurmond
Domenici	Mack	Wallop
Durenberger	McCain	Warner
Exon	McConnell	

NOT VOTING—5

Bingaman	Cranston	Jeffords
Brown	Garn	

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I support quick action to renew the Defense Production Act of 1950 [DPA]. The failure of the Congress to reauthorize the DPA last year has called into question the President's authority to assure prompt delivery of materials and services to meet national security requirements particularly in the Middle East. Of particular concern to the Committee on Energy and Natural Resources, which I chair, is that the Secretary of Energy may lack the authority to meet the Department's own needs. For example, without the DPA the Secretary lacks the authority to demand priority treatment for contracts supplied outside of the United States.

It is also vitally important that several changes to the energy-related aspects of the DPA be made. First is the repeal of section 708A of the act which prohibits the use of voluntary agreements to implement international agreements relating to petroleum products. For example, the Department will be hindered in its ability to help Kuwait rebuild its oil fields because without the use of voluntary agreements United States oil companies will be unable to work together.

The second change would clarify that the Defense Production Act's contract priority provisions apply to "service" contracts. Repairs to the strategic petroleum reserve pipeline and airlifting troops and equipment are examples of the type of services that would be covered.

S. 347 contains both of these provisions. I commend the members of the Committee on Banking, Housing, and Urban Affairs for including them. However, one of the most important changes needed to be made to the Defense Production Act is not adequately dealt with by S. 347.

A waiver of certain criminal conflict-of-interest statutes, certain ethics provisions and a statutory antitrust waiver for those who serve in the National Defense Executive Reserves is vitally needed by the Secretary of Energy. In times of war or emergencies, the Secretary needs to employ experts from the private sector to assist in meeting its responsibilities. The purpose of the executive reserve is to allow the Secretary to create a group of individuals it can call upon to render such assistance. The individuals are either paid by their company while serving the Government or are paid by the Government but with the expectation of returning to their company when the emergency has passed. Both situations violate existing conflict-of-interest laws and antitrust laws, criminal as well as civil. These laws were not designed to deal with this special circumstance.

In 1973 in response to the Arab oil embargo, the Department of Interior proposed to activate industry members. Conflict of interest and antitrust questions prevented activation. Almost 20 years later and over a month into the war with Iraq, the Government still cannot call upon the executive reservists.

S. 347 does purport to offer protection to the reservists. However, the language used in section 138 of the bill on executive reserves is woefully inadequate.

There are numerous objections to the language, but I will only highlight some of the more significant ones. S. 347 would preclude the President from delegating the new waiver authority. The waiver authority extends only to one of the several conflict of interest statutes that impede use of executive reservists. The description of the purpose for which the Department might seek waivers is too narrow. The requirement of a postemployment report indicating all the particular activities engaged in that, but for the waiver, are "otherwise prohibited by this section," is burdensome and presents a potential chilling effect on attempts to use executive reservists. S. 347 limits the total number of waivers that may be granted by the President to 50. The Department is limited to 25. For the Department to gain benefit from calling up the executive reserves, no less than 50 people are needed. Finally, all of the waivers are to terminate on September 31, 1991.

Even if one believes that the language used by S. 347 grants sufficient legal authority it makes little difference because if industry still refuses to serve, then government will be unable to fulfill its obligations. I remind my colleagues that it is government seeking help from the private sector, and not the private sector seeking help from the government.

In this regard, it is particularly important to note that the National Petroleum Council, in its January 1991 report to the Secretary, entitled "Industry Assistance to Government * * * Methods for Providing Petroleum Industry Expertise During Emergencies," concluded that the conference report on H.R. 486 from the 101st Congress—which is identical to the language used in S. 347—"does not appear to meet the concerns (regarding application of the antitrust and conflict of interest laws to the Executive Reserves) * * * and future enactment of these provisions need not be expected to eliminate the legal obstacles to activation of a petroleum NDER (Executive Reserve). In particular, the waiver provisions for various conflict of interest restrictions are especially inadequate."

Last year the House passed H.R. 486 on September 24. H.R. 486 with a few minor modifications gives the protection the executive reservists need. Mr. President, I would like to see the language used in the House bill included in S. 347.

Mr. RIEGLE. Mr. President, I rise in favor of S. 347, a bill to renew and amend the Defense Production Act of 1950. I am proud to be an original spon-

sor of this legislation along with Senators GARN, DIXON, HEINZ, SARBANES, D'AMATO, DODD, and SASSER, all of whom contributed to its development.

The Defense Production Act [DPA] was originally passed to meet the national emergency caused by the Korean war. Only three titles of the original law—I, II, and VII—were kept in effect after that war. Title I of the DPA provides to the President the authority to require the priority performance of contracts which have been determined to be necessary for the national defense. Title III authorizes the use of a broad range of economic incentives to assure that American industry will be able to provide the broad range of materials and services that are required for the national defense. These incentives include purchase guarantees, loan guarantees and loans. Title VII authorizes the President to encourage joint industry undertakings to improve industrial preparedness and given them protection from antitrust suits. That title also gives the President the authority to suspend or prohibit the acquisition, merger or takeover of a domestic firm by a foreign firm if such action would threaten to impair the national security.

The DPA has been reauthorized and amended numerous times since 1950 and Congress attempted to do that again in the 101st Congress. The bill before the Senate today with minor nonsubstantive technical changes, is the exact same legislation that was developed in a House/Senate Conference last October that was held to reconcile the differing provisions of H.R. 486 and S. 1379 the respective bills developed by the House and Senate to renew and amend the Defense Production Act of 1950. The Senators sponsoring S. 347 are the Senate conferees who signed last year's conference report.

The conference report on H.R 486, found in House Report No. 101-933 printed on October 23, 1990, was taken up by the House on October 25, 1990 and was passed without objection. Let me repeat the conference report on H.R. 486 which we are reintroducing today passed the House without objection. It was held up in the Senate by last minute concerns raised by certain individuals within the Department of Defense. At the exact same time the Department of Energy was actively lobbying for its passage.

Last October we were led by DOD officials to believe that the administration had other authorities that could substitute for the DPA and that it did not need the conference bill. That assertion has turned out not to be accurate. As a result, the Federal Government finds itself without emergency authority to allocate supplies of oil among civilian users and without authority to block foreign takeovers of U.S. firms whose ownership by foreigners could threaten the national security. The President also lacks other authorities in the DPA that are needed to safeguard our Nation's national defense and security.

As further evidence of the administration's need for the DPA authorities I note that it recently submitted to the Congress legislation to renew the Defense Production Act. In its transmittal letter the administration stated that "in light of Operation Desert Shield, there is an urgent need to act quickly" on its proposal. The bill submitted by the administration would not only renew the current DPA law, but would also amend it to give the Department of Energy authorities not found in present law to deal with oil shortages that may be occasioned by the Persian Gulf war. These new authorities sought by the administration were in the DPA conference report passed by the House without objection and they are in the conference report bill which we are introducing today.

We believe it is very important to pass this legislation that will, among other things, renew and amend the Defense Production Act. Both Houses of Congress spent countless hours working on this bill and we should get it on the books as soon as possible. This is much needed legislation as certain actions now being taken by our Government to supply our troops with the goods they need could be subject to legal challenge without it.

I believe very strongly that in addition to renewing the current DPA law we need to pass the changes to it that were developed last year and included in the conference report on H.R. 486. Events in the Persian Gulf have demonstrated how important it is for the United States to have the industrial and technical capabilities to develop and produce high technology weapons systems. These events have made me even more convinced that the legislation we developed last year is needed. Let me explain why.

The steady erosion of America's defense industrial and technology base has been the subject of numerous DOD, industry, GAO and congressional reports. A 1988 Defense Department report entitled "Bolstering Defense Industrial Competitiveness" stated the problem succinctly:

> Many basic industries of importance to defense production have declined, threatening the responsiveness of our industrial base. Left unchecked, such erosion could rob the U.S. of industrial capabilities central to national security.

These views of the Defense Department were echoed by most witnesses at the seven hearings held on this matter by the Banking Committee during the 101st Congress.

The competitive standing of many industries vital to our military industrial base is in decline. Since 1982 two-thirds of the contractors who sell manufactured goods to the Department of Defense have left as suppliers to the DOD. In 1982 there were more than 118,000 companies providing goods to the DOD in relevant defense sectors. In 1987 only 38,000 companies in those sectors provided such goods. This shrinkage is even more remarkable in light of the fact that the defense procurement budget increased almost two-fold during the same 5-year period.

The result of the departure of so many suppliers from the defense business combined with quality and productivity deficiencies in our industrial sector have made us increasingly dependent on foreign suppliers for the procurement of parts, components, and systems critical to U.S. national security. Former Secretary of Defense Frank Carlucci emphasized this point during his July 11, 1989, testimony before the committee by stating "one could single out any number of areas where the Department of Defense is dependent on foreign imports for critical components."

It is my belief that growing dependence on foreign suppliers for critical defense components could be detrimental to the national security of the United States since it raises the risk that foreign interests may gain undue influence over U.S. foreign and domestic policy by leveraging our need for their products and technology against their policy objectives.

Of equal concern is our ignorance regarding the extent of U.S. dependence on foreign suppliers. Although a great number of American industry and Government leaders believe the United States is dependent in certain defense-related industries, there is no precise knowledge of what those areas are or the extent to which we are dependent on foreign suppliers for key weapons technologies. There is no single Government-wide or for that matter DOD-wide system for gathering data that systematically reflects the extent to which defense contractors are dependent on materials provided by foreign sources. Our current knowledge is based on anecdotal information or ad hoc studies of the defense industrial base by Government and non-governmental organizations. This is not acceptable and the provisions of this bill attempt to deal with it.

The amendments to the Defense Production Act in our bill address the problems I have just outlined. To improve the competitive position of domestic defense suppliers, the act provides the President authority to undertake peacetime projects to preserve and enhance the capacity and capabilities of segments of the Nation's overall industrial and technology base essential to the national defense. To achieve this end, our bill establishes a separate revolving fund to act as a stable source of financing for eligible projects which foster development or utilization of critical technologies. A revolving fund

received strong support from both the public and private sectors. This fund is seen as an effective mechanism for reversing a long history of anemic and erratic financing for industrial resource projects.

This bill also modifies the act's current offset reporting requirements. Section 309 of current law requires the President to annually prepare and submit a report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade to the House and Senate Banking Committees. The provisions in the conference report bill are merely designed to improve data gathering procedures so that such reports will better address the effects of offsets on our defense industrial base and nondefense industry sectors, including the effects resulting from technology transfers.

In order to better identify and analyze areas of growing U.S. dependence on foreign suppliers for critical defense components and technology items, which I discussed earlier, the bill establishes a continuous data collection and analysis system with respect to the operations of defense contractors and subcontractors. Such a system has become increasingly necessary as technology development and high technology manufacturing have become global during the 1980's. To the extent the United States builds down its defense posture in response to the thawing of the cold war, our national security will rely increasingly on contingent military capabilities such as our existing industrial and technological potential. It is imperative that we know where our strengths and weaknesses lie in areas of the industrial base that would have to be mobilized to meet a national emergency.

Title IV of S. 347 is designed to ensure that our financial institutions in foreign markets receive national treatment, that is an equality of competitive opportunity to compete with domestic firms. We treat foreign firms in our country the same as our domestic firms. We do not always receive similar treatment in some important foreign markets. We must give our negotiators strengthened authority to open foreign markets now effectively closed to our institutions. Title IV does so in a very nonthreatening way. Under its provisions Treasury and the banking and securities regulators are not required to take any actions against firms from countries that discriminate. They are required to negotiate with such countries. To strengthen Treasury's hand in any negotiations, the bill permits our banking and securities regulators, in consultation with the Treasury, to deny applications for regulatory approval filed by banking and securities firms from countries that discriminate against U.S. firms. Any denials would not force foreign financial firms to shrink their existing operations, but could limit their opportunities for future expansion. Before regulators could exercise their authority, however, the Secretary of the Treasury would have to publish in the Federal Register a determination that discrimination against U.S. financial institutions is taking place in a given foreign country. Let met stress that no action is mandated by this legislation. This is totally discretionary legislation. The Treasury Secretary and the regulators have complete discretion under it whether to use the grant of authority being given to them and the regulators are expected to use this new authority only in full consultation with the Treasury Department.

New evidence of the Treasury Department's need for this type of leverage in negotiating to open financial markets is provided in its most recent national treatment study submitted to the Congress on December 1, 1990, as required by section 3601 of the omnibus trade bill of 1988. In his letter transmitting the 1990 national treatment study to Congress, Secretary Brady noted that Canada and many European countries have made significant progress in removing barriers to full entry of U.S. financial firms but that "only modest progress has been made in many Asian economies [and] numerous Latin American countries still maintain restrictive financial systems." The report itself notes with regard to Japan that "despite modest improvements, a variety of factors have kept the Japanese banking market difficult to penetrate and the slow pace of liberalization and deregulation has provided domestic banks with an unfair competitive advantage over foreign banks both in Japan and globally * * * a number of factors including regulated interest rates, restrictive operating regulations, strong ties among related firms (keiretsu), excessive compartmentalization of financial markets, and lack of transparency effectively reduce foreign banks' competitive opportunities."

That report also noted with regard to Japan's securities market that "foreign firms have been excluded from the $400 billion investment trust (mutual funds) market. * * *

Other restrictions on pension fund managers and securities firms mean, according to Treasury's report, that "full and easy access to the Japanese investor base and entire range of securities activities remains difficult" for foreign firms.

On January 29 the New York Times carried an article on the latest negotiations held between U.S. Treasury and Japanese Ministry of Finance officials about opening Japan's financial markets. According to the Times article the Japanese Vice Minister of Finance warned U.S. officials that if Congress passed the Riegle-Garn Fair Trade in Financial Services Act and Treasury used the authorities provided in that bill to impose restrictions on the operation of Japanese financial firms in this country as leverage to get fair treatment for our firms there, then "Tokyo would respond by curbing credit to the United States." It astounds me that a senior Japanese Finance official believes Japanese banks should continue to enjoy opportunities to grow and expand in our market, where they already control 15 percent of all banking assets, but that our firms should continue to be bottled up in Japan, and that if we seek to give our negotiators more leverage to open up their markets they will drive interest rates up in our country. That sort of threat certainly gives us additional reasons to get our economic house in order. If we were not borrowing from Japan to finance our budget deficits, that country could not use this type of threat. Americans should not be in a position where we have to suffer discrimination without complaining lest if we complain we'll suffer greater mistreatment. This sort of threat makes me even more determined to get this title enacted into law as soon as possible and also makes me more convinced than ever that we must reduce our dependence on foreign capital.

The bill also includes an important study on the interdependence of capital markets. This report will give the Congress and administration needed information about the role of foreign financial institutions in our economy and the impact such growing foreign presence has on our monetary policy and national economic sovereignty. The report will also provide needed information about whether a loss of domestic market share by U.S. financial services firms will have a deleterious impact on certain of our high technology industries such as telecommunications and computers. Having an understanding of the synergies involved in these matters will better prepare us to make good public policy on them.

Let me conclude by saying that the bipartisan cooperation we achieved last year in both Houses of Congress in formulating S. 347 the conference bill we are passing here today signals that there is a strong consensus to deal with the problems it addresses. I am very pleased we are passing this bill and will ask unanimous consent that the January 29 New York Times article I mentioned above be reprinted in full following my statement.

Senators DIXON, HEINZ, and D'AMATO along with Representatives OAKAR and WYLIE did much to develop this bill last year in our conference and can take great pride in it. If properly implemented it will enable us to develop the information we need to determine where we are dependent on foreign suppliers for critical parts and components of essential weapons systems and begin

a process of reversing that dependence where appropriate.

Let me also take this opportunity to commend some of the Senate staff who worked so diligently to help us develop this bill which addresses problems in our defense industrial base, and also provides authority to the administration to end discriminatory treatment of our financial service firms in overseas markets. Bill Montalto, the procurement policy counsel of the Small Business Committee, lent his expertise to our committee in dealing with the amendments to the DPA in this bill. I also want to thank Charle Smith and Bill Mattea of Senator DIXON's staff.

Rick Samans of my personal staff, and Chuck Schneider a PMI fellow who worked with the Banking Committee last year also made major contributions to those DPA portions of the bill. I also want to commend Rick Carnell of our committee staff for his work on title IV of this legislation. Let me also extend my thanks to Patrick Mulloy of my banking committee staff who worked tirelessly on title IV and helped pull together the entire package.

I also want to thank each of the Senate conferees and their staff and particularly Senator GARN the ranking member of our committee and his staffers John Walsh and Ray Natter along with Bill Reinsch of Senator HEINZ' staff.

Let me conclude by saying the bipartisan cooperation we achieved in formulating and passing this conference agreement certainly signals that the problems addressed in it need addressing.

I ask that the article to which I referred earlier be printed in the RECORD.

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

[From the New York Times, Jan. 29, 1991]

JAPAN'S STERN WARNING ON TRADE SANCTIONS

(By Clyde H. Farnsworth)

WASHINGTON, January 28.—A top Japanese Treasury official warned today that if the United States applied sanctions against his country because of slowness in opening financial markets, Tokyo would respond by curbing credit to the United States, creating a "very, very harmful" situation.

The warning by Makoto Utsumi, the Vice Minister of Finance for International Affairs, was considered unusually blunt, underscoring rising tensions in negotiations that Washington and Tokyo are holding over longstanding American demands for better access to Japanese financial markets for American financial institutions.

It has been speculated that American sanctions against Japan could lead to Japanese reprisals in the financial sector. But rarely have Japanese officials spoken so openly about consequences for the United States.

DIFFERENCES NOT NARROWED

After a daylong meeting here, Mr. Utsumi and his American counterpart, David C. Mulford, the Under Secretary of the Treasury for International Affairs, failed to narrow any of their differences over the pace of Japanese financial services deregulation. No date was even set to continue negotiations.

Mr. Utsumi's remarks were delivered at a news conference with Mr. Mulford after the meeting. The meeting was a continuation of talks that began in 1984 to remove barriers in Japan's financial services industry.

The talks have assumed rising importance against the backdrop of a strong Congressional push for legislation that would impose sanctions and Bush Administration plans, expected to be announced soon, for reforming the nation's banking system.

The sanctions bill—introduced by Senator Donald W. Riegle Jr. of Michigan, the chairman of the Senate Banking Committee, and Jake Garn of Utah, its ranking Republican—would authorize regulators to deny bids for expansion on the United States by financial institutions based in countries that bar American companies from comparable competitive opportunities.

The bill is aimed mainly at Japan, which despite some changes over the years, still maintains an elaborate web of laws and practices that Washington believes keeps foreign banks and securities firms from competing on equal terms with the Japanese.

American officials assert, for example, that controls over interest rates allow Japanese banks to compete more successfully for money, giving them substantial advantages when they expand overseas, like in the United States.

NO BUSH SUPPORT

But the Bush Administration opposes the Riegle-Garn legislation, saying that narrow reciprocity as a principle of trade policy would lead to escalating retaliation.

Mr. Mulford told reporters today that the United States was trying to get Japan to "address the changing environment with regard to rising Congressional concerns about deregulation and access in Japan." He spoke of "new forces that could result in a substantial politicization of the process unless there could be very rapid progress in Japan."

Responding to questions about the Riegle-Garn legislation, which almost cleared the last session of Congress and was recently reintroduced, Mr. Utsumi noted pointedly that the United States "is experiencing a credit crunch."

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 amended, as follows:

S. 347

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Defense Production Act Amendments of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

Sec. 101. Declaration of policy.

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

Sec. 111. Strengthening of domestic capability.
Sec. 112. Limitation on actions without congressional authorization.

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

Sec. 121. Expanding the reach of existing authorities under title III.
Sec. 122. Defense Production Act Fund.
Sec. 123. Offset policy.
Sec. 124. Annual report on impact of offsets.

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT

Sec. 131. Small business.
Sec. 132. Definitions.
Sec. 133. Delegation of authority; appointment of personnel.
Sec. 134. Regulations and orders.
Sec. 135. Technical amendments restoring antitrust immunity for emergency actions initiated by the President.
Sec. 136. Information on the defense industrial base.
Sec. 137. Public participation in rulemaking.
Sec. 138. Waivers of certain employment restrictions.

PART E—TECHNICAL AMENDMENTS

Sec. 141. Priorities in contracts and orders.
Sec. 142. Technical correction.
Sec. 143. Investigations; records; reports; subpoenas.
Sec. 144. Employment of personnel.
Sec. 145. Technical correction.

PART F—REPEALERS AND CONFORMING AMENDMENTS

Sec. 151. Synthetic fuel action.
Sec. 152. Voluntary agreements.
Sec. 153. Repeal of interest payment provisions.
Sec. 154. Joint Committee on Defense Production.
Sec. 155. Persons disqualified for employment.
Sec. 156. Feasibility study on uniform cost accounting standards; report submitted.
Sec. 157. National Commission on Supplies and Shortages.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

Sec. 161. Authorization of appropriations.
Sec. 162. Extension of program.
Sec. 163. Exemption from termination.

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

PART A—ENCOURAGING IMPROVEMENT OF THE DEFENSE INDUSTRIAL BASE

Sec. 201. Procurement of critical components and critical technology items.
Sec. 202. Recognition of modernized production systems and equipment in contract award and administration.
Sec. 203. Sustaining investment.

PART B—MISCELLANEOUS

Sec. 211. Discouraging unfair trade practices.

TITLE III—AMENDMENT TO RELATED LAWS

Sec. 301. Energy security.

TITLE IV—FAIR TRADE IN FINANCIAL SERVICES

Sec. 401. Short title.
Sec. 402. Effectuating the principle of national treatment for banks and bank holding companies.
Sec. 403. Effectuating the principle of national treatment for securities brokers and dealers.
Sec. 404. Effectuating the principle of national treatment for investment advisers.

Sec. 405. Financial interdependence study.
Sec. 406. Conforming amendments specifying that national treatment includes effective market access.
TITLE V—EFFECTIVE DATES
Sec. 501. Effective dates.

TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

SEC. 101. DECLARATION OF POLICY.

Section 2 of the Defense Production Act of 1950 (50 U.S.C. App. 2062) is amended to read as follows:

"SEC. 2. DECLARATION OF POLICY.

"(a)(1) The vitality of the industrial and technology base of the United States is a foundation of national security. It provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency. In peacetime, the health of the industrial and technological base contributes to the technological superiority of our defense equipment, which is a cornerstone of our national security strategy, and the efficiency with which defense equipment is developed and produced. In times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency.

"(2) To meet these requirements, this Act affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to maintain and enhance the defense industrial and technological base.

"(b)(1) In view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, our defense mobilization preparedness effort continues to require the development of preparedness programs, domestic defense industrial base improvement measures, as well as provision for a graduated response to any threatening international or military situation, and the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand. Also required is some diversion of certain materials and facilities from civilian use to military and related purposes.

"(2) These activities are needed in order to improve domestic defense industrial base efficiency and responsiveness, to reduce the time required for industrial mobilization in the event of an attack on the United States or to respond to actions occurring outside the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect national defense preparedness of the United States. In order to ensure national defense preparedness, which is essential to national security, it is also necessary and appropriate to assure the availability of domestic energy supplies for national defense needs.

"(c)(1) In order to ensure productive capacity in the event of an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. To ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible.

"(2) In the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch shall apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. However, nothing in this paragraph shall preclude the use of existing industrial facilities.

"(3) To ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition shall continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements. Such assessments shall specifically evaluate the availability of adequate production sources, including subcontractors and suppliers, materials, and skilled labor, and professional and technical personnel.

"(4) It is the policy of the Congress that plans and programs to carry out this declaration of policy shall be undertaken with due consideration for promoting efficiency and competition.

"(5) It is also necessary to recognize that—

"(A) the domestic defense industrial base is a component part of the core industrial capacity of the Nation; and

"(B) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

"(i) the overall competitiveness of the United States industrial economy; and

"(ii) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production.

"(6)(A) The domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for our national defense.

"(B) This dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation.

"(C) The inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain our Armed Forces in combat for more than a few months.

"(D) In the event our Armed Forces must face an adversary with a numerical advantage, in the context of a conventional war, it is imperative to preserve and strengthen the industrial and technological capabilities of the United States.".

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

SEC. 111. STRENGTHENING OF DOMESTIC CAPABILITY.

Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.) is amended by adding at the end the following new section:

"SEC. 107. STRENGTHENING OF DOMESTIC CAPABILITY.

"(a) IN GENERAL.—To assure availability of critical components and critical technology items essential for the execution of the national security strategy of the United States in peacetime and during graduated mobilization, the President shall take action to implement the requirements of subsection (b)(3) within a 5-year period.

"(b) DOMESTIC PRODUCTION OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—

"(1) ESSENTIAL WEAPON SYSTEMS.—

"(A) DESIGNATION.—The President, acting through the Secretary of Defense, shall review the inventory of weapon systems and defense equipment and designate as an essential weapon system those items deemed appropriate.

"(B) MAINTENANCE OF LIST.—The President shall maintain a list of such weapon systems and other items of military equipment.

"(2) CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—

"(A) DESIGNATION.—The President, acting through the Secretary of Defense, shall identify critical components, and critical technology items, including those relating to essential weapon systems, utilizing information from the Defense Industrial Base Information System established pursuant to section 722(a) of this Act and other appropriate sources.

"(B) MAINTENANCE OF LIST.—The President shall cause an unclassified list of critical or emerging technologies to be maintained and published at least annually in the Federal Register.

"(3) RELIANCE ON DOMESTIC SOURCES.—

"(A) IN GENERAL.—To assure adequate domestic sources for critical components and critical technology items to meet national security requirements, including those relating to essential weapon systems, the President is authorized to limit procurement of such items to domestic sources.

"(B) AUTHORITY.—The authority under subparagraph (A) may be exercised pursuant to—

"(i) section 2304(c)(3) of title 10, United States Code;

"(ii) section 303(c)(3) of the Federal Property and Administrative Services Act of 1949; or

"(iii) any other provision of law (including section 201 of the Defense Production Act Amendments of 1990).

"(4) CRITICAL INDUSTRIES FOR NATIONAL SECURITY.—The President shall cause—

"(A) a list to be maintained containing any industry (or industry sector) identified or designated as a critical industry for national security; and

"(B) an unclassified version of such list to be published at least annually in the Federal Register.

"(c) USE OF TITLE III AUTHORITIES TO DEVELOP DOMESTIC CAPACITY.—Pursuant to authorities provided by title III of this Act or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, or expand the productive capacities of domestic sources for critical components, critical technology

items, or industrial resources within an industry essential for national security.

"(d) ASSISTANCE FOR MODERNIZATION.—

"(1) MODERNIZATION OF EQUIPMENT.—Funds authorized under title III may be used to guarantee the purchase or lease of advanced manufacturing equipment, and any related service with respect to such equipment, for purposes of this Act.

"(2) SMALL BUSINESSES.—In providing any assistance pursuant to title III of this Act, the President shall accord a strong preference for projects to be undertaken by business concerns which are small business concerns, in accordance with section 3 of the Small Business Act, who perform as contractors or subcontractors in a critical industry for national security.

"(e) STOCKPILING OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—The President, acting through the Secretary of Defense, is authorized to stockpile appropriate supplies of critical components and critical technology items to meet the needs of the Department of Defense and the production needs of firms furnishing essential weapon systems to the Department during peacetime and various stages of graduated mobilization, whenever it is determined that necessary quantities of such items cannot be obtained from domestic sources.

"(f) REPORT.—

"(1) IN GENERAL.—The President shall transmit to the Congress by January 31 of each odd-numbered year a report on actions taken to preserve and revitalize the domestic defense industrial base, as described in paragraph (2).

"(2) CONTENT.—The report required by paragraph (1) shall contain, in addition to such matters as the President deems appropriate—

"(A) a detailed description of the specific actions taken, or to be taken, to implement the requirements of—

"(i) paragraphs (1), (2), and (3) of subsection (b);

"(ii) subsection (c); and

"(iii) subsection (e); and

"(B) an assessment of the capability of the domestic defense industrial base to meet the requirements of various stages of a graduated mobilization for a period of 6 months.

"(g) COORDINATION WITH MEMORANDA OF UNDERSTANDING.—

"(1) QUALIFICATION FOR PERMITTED EXCLUSION.—Actions taken pursuant to the authority of subsection (b)(3) shall qualify for any exclusion permitted by an existing memorandum of understanding (including memoranda relating to a specific project or the general conduct of procurement activities between the signatories) for the purposes of maintaining defense mobilization capabilities.

"(2) PRESIDENTIAL AUTHORITY.—The President is authorized, at his discretion, to seek to modify any existing or future memorandum of understanding to give effect to any action taken pursuant to the authority of subsection (b)(8).".

SEC. 112. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

Section 104 of the Defense Production Act of 1950 (50 U.S.C. App. 2074) is amended to read as follows:

"SEC. 104. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

"(a) WAGE OR PRICE CONTROLS.—No provision of this Act shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

"(b) CHEMICAL OR BIOLOGICAL WEAPONS.—No provision of this Act shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities except—

"(1) in time of war, or

"(2) in time of national emergency (A) as declared by joint resolution of Congress, or (B) upon the written authorization of the President, which power to authorize may not be delegated.".

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

SEC. 121. EXPANDING THE REACH OF EXISTING AUTHORITIES UNDER TITLE III.

(a) GUARANTEE AUTHORITY.—Section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) is amended—

(1) in subsection (a)(1), by striking "to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense" and inserting "to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential for the national defense";

(2) by amending subsection (a)(3)(A) to read as follows:

"(A) the guaranteed contract or operation is for industrial resources or a critical technology item which is essential to the national defense;";

(3) in subsection (a)(3)(B), by striking "the capability for the needed material or service" and inserting "the needed industrial resources or critical technology item";

(4) in subsection (e)(1)(A), by striking "Except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in subparagraph (D)";

(5) in subsection (e)(1)(C), by striking "$25,000,000" and inserting "$50,000,000"; and

(6) by adding at the end of subsection (e)(1) the following new subparagraph:

"(D) The requirements of subparagraphs (A), (B), and (C) may be waived during periods of national emergency declared by Congress or the President.".

(b) LOANS TO PRIVATE BUSINESS ENTERPRISES.—Section 302 of the Defense Production Act of 1950 (50 U.S.C. App. 2092) is amended—

(1) in subsection (a), by striking "for the procurement of materials or the performance of services for the national defense" and inserting "for the procurement of industrial resources or a critical technology item for the national defense";

(2) in subsection (c)(1), by striking "No such loans may be made under this section, except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in paragraph (4), no loans may be made under this section";

(3) in subsection (c)(3), by striking "$25,000,000" and inserting "$50,000,000"; and

(4) in subsection (c), by adding at the end the following new paragraph:

"(4) The requirements of paragraphs (1), (2), and (3) of this subsection may be waived during periods of national emergency declared by Congress or the President.".

(c) PURCHASES AND PURCHASE COMMITMENTS.—

(1) Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)) is amended to read as follows:

"(a)(1) To assist in carrying out the objectives of this Act, the President may make provision—

"(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale; and

"(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials.

"(2) Purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced except insofar as such domestically produced supply may be purchased for resale for industrial use or stockpiling.

"(3) No commodity purchased under this subsection shall be sold at less than—

"(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower, or

"(B) if no ceiling price has been established, the higher of—

"(i) the current domestic market price for such commodity; or

"(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation as provided in section 407 of the Agricultural Act of 1949.

"(4) No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than one year after the expiration of this section.

"(5) Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

"(A) the industrial resource or critical technology item is essential to the national defense;

"(B) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource or critical technology item in a timely manner;

"(C) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need; and

"(D) the United States national defense demand for the industrial resource or critical technology item is equal to, or greater than the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action.

"(6) Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence. Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to the preceding sentence. If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such indus-

trial resource shortfall to exceed $50,000,000, any such action or actions may be taken only if specifically authorized by law.

"(7) The requirements of paragraphs (1) through (6) may be waived during periods of national emergency declared by Congress or the President.".

(2) Section 303(b) of such Act is amended by striking "September 30, 1995" and inserting "a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made".

SEC. 122. DEFENSE PRODUCTION ACT FUND.

Section 304 of the Defense Production Act of 1950 (50 U.S.C. App. 2094) is amended to read as follows:

"SEC. 304. DEFENSE PRODUCTION ACT FUND.

"(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Production Act Fund (hereafter in this section referred to as 'the Fund').

"(b) MONEYS IN FUND.—The following moneys shall be credited to the Fund:

"(1) All moneys appropriated after October 19, 1990, for the Fund, as authorized by section 711(c).

"(2) All moneys received after October 19, 1990, on transactions entered into pursuant to section 303.

"(c) USE OF FUND.—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

"(d) DURATION OF FUND.—Moneys in the Fund shall remain available until expended.

"(e) FUND BALANCE.—The Fund balance at the close of each fiscal year shall not exceed $250,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If at the close of any fiscal year the Fund balance exceeds such amount, the amount in excess of $250,000,000 shall be paid into the general fund of the Treasury.

"(f) FUND MANAGER.—The Secretary of the Treasury shall designate a Fund manager. The duties of the Fund manager shall include—

"(1) determining the liability of the Fund in accordance with subsection (g);

"(2) ensuring the visibility and accountability of transactions engaged in through the Fund to the Secretaries of Defense, Treasury, and Commerce, and to the Congress; and

"(3) reporting to Congress each year regarding fund activities during the previous fiscal year.

"(g) LIABILITIES AGAINST FUND.—

"(1) IN GENERAL.—When any agreement entered into pursuant to this title after December 31, 1990, imposes contingent liabilities upon the United States, such liability shall be considered an obligation against the Fund. The total amount of such obligations shall be determined for each fiscal year in accordance with paragraph (2).

"(2) DETERMINATION OF LIABILITY.—For purposes of paragraph (1), the total amount of obligations against the Fund is the amount which is equal to—

"(A) the aggregate outlays required by purchase or purchase commitment contracts or financing agreements; minus

"(B) the sum of—

"(i) the anticipated aggregate receipts from resale of materials purchased with moneys from the Fund; and

"(ii) the anticipated receipts from the direct sale of materials by the producer to customers.

"(3) TREATMENT OF ANTICIPATED RECEIPTS AND REDUCTIONS.—Anticipated receipts and anticipated reductions in purchase commitments shall be included under paragraph (2) only if a written plan for sale of materials has been developed, specifying probable customers, amount, time of the sales, and sales price.".

SEC. 123. OFFSET POLICY.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by adding a new subsection (a) as follows:

"(a) OFFSET POLICY.—

"(1) IN GENERAL.—Recognizing that certain offsets for military exports are economically inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States firms to compete for military export sales is not undermined, it shall be the policy of the United States Government that—

"(A) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset arrangement in connection with the sale of defense goods or services to foreign governments;

"(B) United States Government funds shall not be used to finance offsets in security assistance transactions except in accordance with policies and procedures that were in existence as of October 20, 1990;

"(C) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before October 20, 1990; and

"(D) the decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved.

"(2) PRESIDENTIAL APPROVAL OF EXCEPTIONS.—The President may approve an exception to the policy stated by paragraph (1) after receiving the recommendation of the National Security Council.

"(3) CONSULTATION.—The President shall designate the Secretary of Defense, in coordination with the Secretary of State, to lead an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual report on the results of these consultations to the Congress as part of the report required under subsection (b).".

SEC. 124. ANNUAL REPORT ON IMPACT OF OFFSETS.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) (as amended by section 123 of this Act) is amended—

(1) in subsection (b) (as so redesignated by section 123(1) of this part)—

(A) by striking "(b) REPORT REQUIRED.—Not later" and inserting:

"(b) ANNUAL REPORT ON IMPACT OF OFFSETS.—

"(1) REPORT REQUIRED.—Not later";

(B) by striking the second sentence; and

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

"(2) DUTIES OF THE SECRETARY OF COMMERCE.—The Secretary of Commerce shall—

"(A) prepare the report required by paragraph (1);

"(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

"(C) function as the President's Executive Agent for carrying out the requirements of this section.";

(2) by amending subsection (c) (as so redesignated by section 123(1) of this part) to read as follows:

"(c) INTERAGENCY STUDIES AND RELATED DATA.—

"(1) PURPOSE OF REPORT.—Each report required under subsection (b) shall identify the cumulative effects (indirect as well as direct) of offset agreements on—

"(A) the full range of domestic defense productive capability (with special attention to the firms serving as lower-tier subcontractors or suppliers); and

"(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

"(2) USE OF DATA.—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary of Commerce to facilitate the Secretary in executing the Secretary's responsibilities with respect to trade offset and countertrade policy development."; and

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

"(d) NOTICE OF OFFSET AGREEMENTS.—

"(1) IN GENERAL.—If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding $5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

"(2) REGULATIONS.—The information to be furnished shall be prescribed in regulations promulgated by the Secretary of Commerce. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information. Nothing in this paragraph authorizes the withholding of such information from the Congress.

"(e) CONTENTS OF REPORT.—

"(1) IN GENERAL.—Each report under subsection (b) shall include—

"(A) a net assessment of the elements of the industrial base and technology base covered by the report;

"(B) recommendations for appropriate remedial action under the authorities provided by this Act, or other law or regulations;

"(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (c);

"(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (d); and

"(E) a summary and analysis of any bilateral and multilateral negotiations relating to use of offsets completed during the reporting period.

"(2) ALTERNATIVE FINDINGS OR RECOMMENDATIONS.—Each report shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary of Commerce.

"(f) UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.—The findings and recommendations of the reports required by subsection (b), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.".

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT

SEC. 131. SMALL BUSINESS.

Section 701 of the Defense Production Act of 1950 (50 U.S.C. App. 2151) is amended to read as follows:

"SEC. 701. SMALL BUSINESS.

"(a) PARTICIPATION.—Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act.

"(b) ADMINISTRATION OF ACT.—In administering the programs, implementing regulations, policies, and procedures under this Act, requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

"(c) ADVISORY COMMITTEE PARTICIPATION.—Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to the provisions of this Act.

"(d) INFORMATION.—Information about the Act and activities under the Act shall be made available to small business concerns.

"(e) ALLOCATIONS UNDER SECTION 101.—Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101 of this Act, small business concerns shall be accorded, so far as practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to new small business concerns or individual firms facing undue hardship.".

SEC. 132. DEFINITIONS.

Section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152) is amended to read as follows:

"SEC. 702. DEFINITIONS.

As used in this Act—

"(1) CRITICAL COMPONENT.—The term 'critical component' includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment as are identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

"(2) CRITICAL INDUSTRY FOR NATIONAL SECURITY.—The term 'critical industry for national security' means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.

"(3) CRITICAL TECHNOLOGY.—The term 'critical technology' includes any technology that is included in 1 or more of the plans submitted pursuant to section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

"(4) CRITICAL TECHNOLOGY ITEM.—The term 'critical technology item' shall mean materials directly employing, derived from, or utilizing a critical technology.

"(5) DEFENSE CONTRACTOR.—The term 'defense contractor' means any person who enters into a contract with the United States to furnish materials, industrial resources, or a critical technology, or to perform services for the national defense.

"(6) DOMESTIC DEFENSE INDUSTRIAL BASE.—The term 'domestic defense industrial base' means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during war or national emergency.

"(7) DOMESTIC SOURCE.—The term 'domestic source' means a business entity—

"(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such firm under a contract with the United States relating to a critical component or a critical technology item, and

"(B) that procures from entities described in subparagraph (A) substantially all of the components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

"(8) ESSENTIAL WEAPON SYSTEM.—The term 'essential weapon system' shall mean a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

"(9) FACILITIES.—The term 'facilities' includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

"(10) FOREIGN SOURCE.—The term 'foreign source' means a business entity other than a 'domestic source'.

"(11) INDUSTRIAL RESOURCES.—The term 'industrial resources' means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

"(12) MATERIALS.—The term 'materials' includes—

"(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

"(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

"(13) NATIONAL DEFENSE.—The term 'national defense' means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity.

"(14) PERSON.—The term 'person' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

"(15) SERVICES.—The term 'services' includes any effort that is needed or incidental to—

"(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item, or

"(B) the construction of facilities.".

SEC. 133. DELEGATION OF AUTHORITY; APPOINTMENT OF PERSONNEL.

Section 703 of the Defense Production Act of 1950 (50 U.S.C. App. 2153) is amended to read as follows:

"SEC. 703. DELEGATION AND CIVILIAN PERSONNEL.

"(a) DELEGATION OF AUTHORITY.—Except as otherwise specifically provided, the President may—

"(1) delegate any power or authority of the President under this Act to any civilian officer of the Government appointed by and with the advice and consent of the Senate;

"(2) except with regard to title I, authorize redelegation by that officer to an officer or employee of that officer who—

"(A) if a member of the armed forces, is a general or flag officer; or

"(B) if a civilian, is serving in a position in the grade GS-16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees);

"(3) delegate only to an individual described in paragraph (1) the authority to establish policies and procedures for exercising authority under title I; and

"(4) establish such new agencies as may be necessary to manage Federal emergency preparedness programs.

"(b) CIVILIAN PERSONNEL.—Any officer or agency head may appoint civilian personnel without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out the provisions of this Act.".

SEC. 134. REGULATIONS AND ORDERS.

Section 704 of the Defense Production Act of 1950 (50 U.S.C. App. 2154) is amended to read as follows:

"SEC. 704. REGULATIONS AND ORDERS.

"Subject to section 709, the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out the provisions of this Act.".

SEC. 135. TECHNICAL AMENDMENTS RESTORING ANTITRUST IMMUNITY FOR EMERGENCY ACTIONS INITIATED BY THE PRESIDENT.

Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158) is amended—

(1) in subsection (a), by striking "and subsection (j) of section 708A";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) DEFINITIONS.—For purposes of this Act—

"(1) ANTITRUST LAWS.—The term 'antitrust laws' has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

"(2) PLAN OF ACTION.—The term 'plan of action' means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.";

(3) in subsection (c)(1)—

(A) by striking "Except as otherwise provided in section 708A(o), upon" and inserting "Upon"; and

(B) by inserting "and plans of action" after "voluntary agreements";

(4) in subsection (c)(2), by striking the last sentence;

(5) in the 2d sentence of subsection (d)(1)—

(A) by inserting "and except as provided in subsection (n)" after "specified in this section"; and

(B) by striking ", and the meetings of such committees shall be open to the public";

(6) in subsection (d)(2), by striking out "section 552(b)(1) and (b)(3)" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(7) in subsection (e)(1), by inserting "and plans of action" after "voluntary agreements";

(8) in subsection (e)(3)(D), by striking "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(9) in subsection (e)(3)(F)—

(A) by striking "General and to" and inserting "General, the"; and

(B) by inserting ", and the Congress" before the semicolon;

(10) in subsection (e)(3)(G), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(11) in subsections (f) and (g)—

(A) by inserting "or plan of action" after "voluntary agreement" each place such term appears; and

(B) by inserting "or plan" after "the agreement" each place such term appears;

(12) in subsection (f)(1)(A) (as amended by paragraph (11) of this subsection) by inserting "and submits a copy of such agreement or plan to the Congress" before the semicolon;

(13) in subsection (f)(1)(B) (as amended by paragraph (11) of this subsection) by inserting "and publishes such finding in the Federal Register" before the period.

(14) in subsection (f)(2) (as amended by paragraph (11) of this subsection) by inserting "and publish such certification or finding in the Federal Register" before ", in which case";

(15) in subsection (h)—

(A) by inserting "and plans of action" after "voluntary agreements";

(B) by inserting "or plan of action" after "voluntary agreement" each place such term appears;

(C) by striking "and at the end of paragraph (9);

(D) by striking the period at the end of paragraph (10) and inserting "; and"; and

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

"(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action **shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress.**";

(16) in subsection (h)(3), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraph (1), (3), or (4) of section 552(b)"; and

(17) in paragraphs (7) and (8) of subsection (h), by striking "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(18) by striking subsection (j) and inserting the following new subsection:

"(j) DEFENSES.—

"(1) IN GENERAL.—Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

"(A) such action was taken—

"(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; cr

"(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

"(B) such person—

"(i) complied with the requirements of this section and any regulation prescribed under this section; and

"(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

"(2) SCOPE OF DEFENSE.—Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

"(3) BURDEN OF PERSUASION.—Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

"(4) EXCEPTION FOR ACTIONS TAKEN TO VIOLATE THE ANTITRUST LAWS.—The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.";

(19) in subsection (k), by inserting "and plans of action" after "voluntary agreements" each place such term appears;

(20) in subsection (l), by inserting "or plan of action" after "voluntary agreement";

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

"(n) EXEMPTION FROM ADVISORY COMMITTEE ACT PROVISIONS.—Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

"(o) PREEMPTION OF CONTRACT LAW IN EMERGENCIES.—In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.".

SEC. 136. INFORMATION ON THE DEFENSE INDUSTRIAL BASE.

The Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) is amended by adding at the end the following new section:

"SEC. 722. DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.

"(a) ESTABLISHMENT REQUIRED.—

"(1) IN GENERAL.—The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

"(A) meets the requirements of this section; and

"(B) includes a systematic continuous procedure to collect and analyze information necessary to evaluate—

"(i) the adequacy of domestic industrial capacity and capability in critical components, technologies, and technology items essential to the national security of the United States; and

"(ii) dependence on foreign sources for industrial parts, components, and technologies essential to defense production.

"(2) INCORPORATION OF DINET.—The defense information network as established and maintained by the Secretary of Defense on the date of the enactment of the Defense Production Act Amendments of 1990 shall be incorporated into the system established pursuant to paragraph (1).

"(3) USE OF INFORMATION.—Information collected and analyzed under the procedure established pursuant to paragraph (1) shall constitute a basis for making any determination to exercise any authority under this Act and a procedure for using such information shall be integrated into the decisionmaking process with regard to the exercise of any such authority.

"(b) SOURCES OF INFORMATION.—

"(1) FOREIGN DEPENDENCE.—

"(A) SCOPE OF INFORMATION REVIEW.—The procedure established to meet the requirement of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors.

"(B) USE OF EXISTING DATA COLLECTION AND REVIEW CAPABILITIES.—To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

"(C) INITIAL EMPHASIS ON PRIORITY LISTS.—In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of parts and components relating to priority lists such as the Commanders' in Chief Critical Items List and the technologies identified as critical in the annual defense critical technologies plan submitted pursuant to section 2508 of title 10, United States Code.

"(2) PRODUCTION BASE ANALYSIS.—

"(A) TOP-TO-BOTTOM REVIEW.—**Effective on or after October 1, 1991, the analysis of the production base for any major procurement project which is included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—**

"(i) include a review of all levels of acquisition and production, beginning with any raw material, special alloy, or composite material involved in the production and ending with the completed product;

"(ii) identify each contractor and subcontractor at each level of acquisition and production with respect to such project which represents a potential for delaying or preventing the production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a

foreign source or sole source contract and any supplier which is a foreign or sole source for any item required in the production; and

"(iii) include information to permit appropriate management of accelerated or surge production.

"(B) INITIAL REQUIREMENT FOR STUDY OF PRODUCTION BASES FOR NOT MORE THAN 6 MAJOR WEAPON SYSTEMS.—In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2305(5) of title 10, United States Code).

"(3) CONSULTATION REGARDING THE CENSUS OF MANUFACTURERS.—

"(A) IN GENERAL.—The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency with a view to improving the application of information derived from the Census of Manufacturers to the purposes of this section.

"(B) ISSUES TO BE ADDRESSED.—Such consultations shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to facilitate the purposes of this section.

"(c) STRATEGIC PLAN FOR DEVELOPING COMPREHENSIVE SYSTEM.—

"(1) PLAN REQUIRED.—Not later than December 31, 1992, the President shall provide for the establishment of and report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components, technologies, and technology items.

"(2) ASSESSMENT OF CERTAIN PROCEDURES.—In establishing plan under paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b) and shall seek to build upon such procedures as appropriate.

"(d) CAPABILITIES OF SYSTEM.—

"(1) IN GENERAL.—In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate to—

"(A) consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system in a manner which allows the coordinated and efficient entry of information on the domestic defense industrial base into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an on-line interactive basis by the Department of Defense;

"(B) assure access to the information on the system, as appropriate, by all participating Federal agencies, including each military department;

"(C) coordinate standards, definitions, and specifications for information on defense production which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department which the President determines to be appropriate; and

"(D) assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

"(2) TASK FORCE ON MILITARY-CIVILIAN PARTICIPATION.—Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act and chapter 143 of title 10, United States Code.

"(e) REPORT ON SUBCONTRACTOR AND SUPPLIER BASE.—

"(1) REPORT REQUIRED.—At the times required under paragraph (4), the President shall issue a report which includes—

"(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

"(B) an assessment of those subsectors of the economy of the United States which—

"(i) support production of any component, technology, or technology item listed pursuant to paragraph (1); or

"(ii) have been identified as being critical to the development and production of components required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

"(2) MATTERS TO BE CONSIDERED.—The assessment made under paragraph (1)(B) shall consider—

"(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization requirements for various items of supply and services;

"(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

"(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

"(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including stability of defense requirements, acquisition policies, vertical integration of various segments of the industrial base, superiority of foreign technology and production efficiencies, foreign government support of nondomestic sources, and offset arrangements.

"(3) POLICY RECOMMENDATIONS.—The report may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

"(4) TIME FOR ISSUANCE.—The report required by paragraph (1) shall be issued not later than July 1 of each odd-numbered year which begins after 1991, based upon data from the prior fiscal year and such prior fiscal years as may be appropriate.

"(5) RELEASE OF UNCLASSIFIED REPORT.—The report required by this subsection may be classified. An unclassified version of the report shall be available to the public.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President for purposes of this section not more than $10,000,000, to remain available until expended, of which not more than $3,000,000 shall be available for the purposes of subsection (b)(2).".

SEC. 137. PUBLIC PARTICIPATION IN RULEMAKING.

(a) IN GENERAL.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. 2159) is amended to read as follows:

"SEC. 709. PUBLIC PARTICIPATION IN RULEMAKING.

"(a) EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT.—Any regulation prescribed or order issued under this Act shall not be subject to sections 551 through 559 of title 5, United States Code.

"(b) OPPORTUNITY FOR NOTICE AND COMMENT.—

"(1) IN GENERAL.—Except as provided in subsection (c), any regulation prescribed or order issued under this Act shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

"(2) WAIVER FOR TEMPORARY PROVISIONS.—The requirements of paragraph (1) may be waived, if—

"(A) the officer authorized to prescribe the regulation or issue the order finds that urgent and compelling circumstances make compliance with such requirements impracticable;

"(B) the regulation is prescribed or order is issued on a temporary basis; and

"(C) the publication of such temporary regulation or order is accompanied by the finding made under clause (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days of public comment before any regulation or order becomes final.

"(3) All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation or order shall contain written responses to such comments.

"(c) PUBLIC COMMENT ON PROCUREMENT REGULATIONS.—Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act shall be subject to section 22 of the Office of Federal Procurement Policy Act.".

(b) SCOPE OF APPLICATION.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation prescribed or order issued in proposed or final form on or before the date of enactment of this Act.

SEC. 138. WAIVERS OF CERTAIN EMPLOYMENT RESTRICTIONS.

(a) IN GENERAL.—Section 208 of title 18, United States Code, is amended by adding at the end the following:

"(e)(1) The President may grant a waiver of a restriction imposed by this section to a special Government employee if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the special Government employee are critically needed for the benefit of the Federal Government. Not more than 50 special Government employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph, of which 25 may be granted only for special Government employees of the Department of Energy for use in discharging the responsibilities of the Department with respect to ensuring adequate energy supplies during the current crisis in the Middle East. A waiver under this paragraph shall not extend to the negotia-

tion or execution of a Government contract with a private employer of an appointee or with any person—

"(A) in which the appointee has a financial interest within the meaning of this section; or

"(B) with which the appointee has an official relationship.

"(2) Waivers under paragraph (1) may be granted only to special Government employees of the executive branch, other than such employees in the Executive Office of the President.

"(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

"(A) the special Government employee covered by the waiver by name and by position, and

"(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

"(4) The President may not delegate the authority provided by this subsection.

"(5)(A) The designated agency ethics official (as defined in section 109 of the Ethics in Government Act of 1978) of the agency which employs a person granted a waiver under this subsection shall prepare, at the termination of that person's service as a special Government employee (with respect to which the waiver was granted), a report stating whether the person has engaged in activities otherwise prohibited by this section, and if so, what those activities were. Before the report is filed under subparagraph (B), the person with respect to whom the report was prepared shall certify that the contents of the report are complete and accurate, to the person's best knowledge and belief.

"(B) A report under subparagraph (A) shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the date of the termination of that person's service as a special Government employee, but in no event later than November 30, 1991.

"(C) If the report required to be filed under subparagraph (B) is not filed, the person who is the subject of the report shall be ineligible for any Federal Government employment until such report is filed.

"(D) If an agency fails to prepare and file a report under this subsection by the date required by subparagraph (B), no employee of that agency may, after such date, be granted a waiver under this subsection until such report is prepared and filed.

"(6) Any waiver granted under this subsection shall terminate on September 30, 1991.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 710 of the Defense Production Act of 1950 (50 U.S.C. App. 2160) is amended—

(1) by striking paragraph (4) of subsection (b);

(2) by striking the last sentence of subsection (c);

(3) in subsection (d), by striking out "needed; and he is" and inserting "needed."; and

(4) by striking the last sentence of subsection (e).

PART E—TECHNICAL AMENDMENTS

SEC. 141. PRIORITIES IN CONTRACTS AND ORDERS.

Section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071) is amended—

(1) in subsection (a)(2) by striking "materials and facilities" and inserting "materials, services, and facilities";

(2) in subsection (c)(1) by striking "supplies of materials and equipment" and inserting "materials, equipment, and services";

(3) by striking paragraphs (2) and (3) and inserting the following new paragraph:

"(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, service, and facilities in the marketplace, unless the President finds that—

"(A) such materials, services, and facilities are scarce, critical, and essential—

"(i) to maintain or expand exploration, production, refining, transportation,

"(ii) to conserve energy supplies; or

"(iii) to construct or maintain energy facilities; and

"(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection."; and

(4) by redesignating paragraph (4) as paragraph (3).

SEC. 142. TECHNICAL CORRECTION.

Section 301(e)(2)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(2)(B)) is amended by striking "and to the Committees on Banking and Currency of the respective Houses" and inserting "and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives".

SEC. 143. INVESTIGATIONS; RECORDS; REPORTS; SUBPOENAS.

Section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155) is amended—

(1) in subsection (a), by striking "subpena" and inserting "subpoena";

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively;

(3) in subsection (c) (as redesignated by paragraph (2)), by striking "$1,000" and inserting "$10,000"; and

(4) in subsection (d) (as redesignated by paragraph (2)), by striking all after the first sentence.

SEC. 144. EMPLOYMENT OF PERSONNEL.

(a) NOTICE OF APPOINTMENT AND FINANCIAL DISCLOSURE FOR EMPLOYEES SERVING WITHOUT COMPENSATION.—Section 710(b)(6) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)(6)) is amended to read as follows:

"(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

"(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

"(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of such Act with the appointing department or agency.".

(b) TECHNICAL AMENDMENTS.—Section 710(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)) is amended—

(1) in paragraph (7)—

(A) by striking "Chairman of the United States Civil Service Commission" and inserting "Director of the Office of Personnel Management"; and

(B) by striking "and the Joint Committee on Defense Production"; and

(2) in paragraph (8), by striking "transportation and not to exceed $15 per diem in lieu of subsistence while away from their homes and regular places of business pursuant to such appointment" and inserting "reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code".

SEC. 145. TECHNICAL CORRECTION.

Section 711(a)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended by striking "Bureau of the Budget" and inserting "Office of Management and Budget".

PART F—REPEALERS AND CONFORMING AMENDMENTS

SEC. 151. SYNTHETIC FUEL ACTION.

Section 307 of the Defense Production Act of 1950 (50 U.S.C. App. 2097) is amended—

(1) in subsection (b), by striking the 2d sentence; and

(2) by striking subsection (c) and all that follows through the end of the section.

SEC. 152. VOLUNTARY AGREEMENTS.

Section 708A of the Defense Production Act of 1950 (50 U.S.C. App. 2158a) is repealed.

SEC. 153. REPEAL OF INTEREST PAYMENT PROVISIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) by striking subsection (b),

(2) by striking "(a)(1) Except as provided in paragraph (2) and paragraph (4)" and inserting "(a) Except as provided in subsection (c)",

(3) by striking in subsection (a) in the parenthetical "and for the payment of interest under subsection (b) of this section", and

(4) by striking paragraph (2) and redesignating paragraph (3) as subsection (b), and

(5) by striking subparagraph (B) of paragraph (4) and redesignating paragraph (4)(A) as subsection (c).

SEC. 154. JOINT COMMITTEE ON DEFENSE PRODUCTION.

Section 712 of the Defense Production Act of 1950 (50 U.S.C. App. 2162) is repealed.

SEC. 155. PERSONS DISQUALIFIED FOR EMPLOYMENT.

Section 716 of the Defense Production Act of 1950 (50 U.S.C. App. 2165) is repealed.

SEC. 156. FEASIBILITY STUDY ON UNIFORM COST ACCOUNTING STANDARDS; REPORT SUBMITTED.

Section 718 of the Defense Production Act of 1950 (50 U.S.C. App. 2167) is repealed.

SEC. 157. NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES.

Section 720 of the Defense Production Act of 1950 (50 U.S.C. App. 2169) is repealed.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

SEC. 161. AUTHORIZATION OF APPROPRIATIONS.

Section 711(c) of the Defense Production Act of 1950 (as amended by section 143 of this Act) is amended to read as follows:

"(c) There are authorized to be appropriated for each of fiscal years 1991, 1992, and 1993 not to exceed $130,000,000 to carry out the provisions of title III of this Act.".

SEC. 162. EXTENSION OF PROGRAM.

The 1st sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "October 20, 1990" and inserting "September 30, 1993".

SEC. 163. EXEMPTION FROM TERMINATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended

by striking "and 719" and inserting "719, and 721".

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

PART A—ENCOURAGING IMPROVEMENT OF THE DEFENSE INDUSTRIAL BASE

SEC. 201. PROCUREMENT OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.

(a) POLICY REQUIRED.—The President, acting through the Administrator for Federal Procurement Policy, shall issue a procurement policy providing for the solicitation and award of contracts for the procurement of critical components or critical technology items in accordance with the requirements of subsection (b).

(b) PERFORMANCE BY DOMESTIC SOURCES.—Except as provided in subsection (c), any solicitation for the procurement of a critical component or a critical technology item shall—

(1) contain a specification that only domestic sources are eligible for award; or

(2) contain provisions that—

(A) specify the minimum percentage of the total estimated value of the contract that is to be performed by 1 or more domestic sources;

(B) provide for the attainment of such requirement by the firm selected as prime contractor or through subcontractors pursuant to a subcontracting plan submitted with the prime contractor's offer;

(C) specify that offers shall be evaluated for award on a basis reflecting the extent that each offer meets or exceeds the specified percentage, such evaluation factor being accorded significant weight (not more than 10 percent of the total value of all evaluation factors to be considered in making the award decision).

(c) WAIVER.—

(1) IN GENERAL.—The requirements of paragraphs (1) and (2) of subsection (b) may be waived in accordance with regulation specifying circumstances under which the contracting officer may make a determination that such restrictions are likely to result in a significant adverse impact on the national interests of the United States.

(2) PROCEDURE.—The determination of the contracting officer shall be—

(A) supported by a specific written finding which justifies such determination; and

(B) approved by the senior procurement executive of the department or agency (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act) or a designee of such officer.

(3) PUBLIC AVAILABILITY.—Copies of waiver determination approved pursuant to paragraph (1) (including the supporting written justifications and approvals) shall be made available upon request to—

(A) the public, consistent with the provisions of section 552 of title 5, United States Code, or

(B) any member, or duly constituted committee, of the Congress.

(d) ACQUISITION REGULATIONS REQUIRED.—Before the end of the 270-day period beginning on the date of the enactment of this Act, the single Government-wide Federal Acquisition Regulation, referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act, shall be modified to provide for the solicitation, award, and administration of contracts for the procurement of critical components or critical technology items in accordance with provisions of the policy required by subparagraph (A).

(e) DEFINITIONS.—For the purpose of this section, the terms "critical component", "critical technology item", and "domestic source" have the meanings given to such terms in section 702 of the Defense Production Act of 1950.

SEC. 202. RECOGNITION OF MODERNIZED PRODUCTION SYSTEMS AND EQUIPMENT IN CONTRACT AWARD AND ADMINISTRATION.

(a) IN GENERAL.—The single Government-wide Federal Acquisition Regulation, referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)), shall be amended to specify the circumstances under which an acquisition plan for any major system acquisition, or any other acquisition program designated by the Secretary or agency head responsible for such acquisition, shall provide for contract solicitation provisions which encourage competing offerors to acquire for utilization in the performance of the contract modern industrial facilities and production systems (including hardware and software), and other modern production equipment, that increase the productivity of the offerors and reduce the costs of production.

(b) AUTHORIZED SOLICITATION PROVISIONS.—Contract solicitation provisions referred to in subsection (a) may include any of the following provisions:

(1) An evaluation advantage in making the contract award determination.

(2) A provision for a domestic contractor to share in any demonstrated cost savings that are attributable to increased productivity resulting from the following contractor actions not required by the contract—

(A) the acquisition and utilization of modern industrial facilities and production systems (including hardware and software), and other modern production equipment, for the performance of the contract; or

(B) the utilization of other manufacturing technology improvements in the performance of the contract.

(c) DOMESTIC CONTRACTOR DEFINED.—For purposes of this section and section 203, the term "domestic contractor" has the meaning given to the "domestic source" in section 702(7) of the Defense Production Act of 1950.

SEC. 203. SUSTAINING INVESTMENT.

It is the sense of the Congress that, in order to encourage investment to maintain our Nation's technological leadership, to preserve the strength of our industrial base, and to encourage contractors to invest in advanced manufacturing technology, advanced production equipment, and advanced manufacturing processes, the Secretary of Defense as part of his implementation of changes to defense acquisition policies pursuant to the Defense Management Review shall consider—

(1) full allowability of independent research and development bid and proposal costs;

(2) appropriate regulatory changes to increase the progress payment rates payable under contracts; and

(3) an increase of not more than 10 percent in the amount which would otherwise be reimbursable to a domestic contractor as the Government's share of costs incurred for the acquisition of production special tooling, production special test equipment, and production special systems (including hardware and software) for use in the performance of the contract.

PART B—MISCELLANEOUS

SEC. 211. DISCOURAGING UNFAIR TRADE PRACTICES.

(a) SUSPENSION OR DEBARMENT AUTHORIZED.—Subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) shall be amended to specify the circumstances under which a contractor, who has engaged in an unfair trade practice, as defined in subsection (b), may be found to presently lack such business integrity or business honesty that seriously and directly affects the responsibility of the contractor to perform any contract awarded by the Federal Government or perform a subcontract under such a contract.

(b) DEFINITIONS.—For purposes of this section, the term "unfair trade practice" means the commission of any of the following acts by a contractor:

(1) An unfair trade practice, as determined by the International Trade Commission, for a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordinating Committee" for purposes of the Export Administration Act of 1979 or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the department or the head of the agency to which such certificate was furnished.

TITLE III—AMENDMENT TO RELATED LAWS

SEC. 301. ENERGY SECURITY.

(a) CONGRESSIONAL INTEREST MANIFEST IN OTHER LAWS.—The Congress hereby finds that congressional interest in energy security and the availability of energy for defense mobilization, industrial preparedness, and other purposes of the Defense Production Act of 1950 has also been expressed in various statutes enacted since the date of the enactment of such Act, including the provisions of Geothermal Energy Research, Development, and Demonstration Act of 1974, the Biomass Energy and Alcohol Fuels Act of 1980, and the Synthetic Fuels Corporation Act of 1985 which relate to geothermal energy, alcohol, and synthetic fuel projects.

(b) REPORTS REQUIRED.—To assist the Congress in discharging congressional responsibility for energy security and the availability of energy for defense mobilization, industrial preparedness, and other purposes of the Defense Production Act of 1950, the President shall prepare and transmit to the Congress, no less frequently than the end of each odd-numbered year, the projected capacity and potential prospects for the use of alternative and renewable sources of energy for such purposes.

(c) GEOTHERMAL ENERGY PROGRAM.—Section 203 of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1143) (relating to period of guarantees and interest assistance) is amended by striking "1990" and inserting "1993".

TITLE IV—FAIR TRADE IN FINANCIAL SERVICES

SEC. 401. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1990".

SEC. 402. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKS AND BANK HOLDING COMPANIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following:

"NATIONAL TREATMENT

"SEC. 15. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States banks and bank holding companies that operate or seek to operate in those countries,

and thereby end discrimination against United States banks and bank holding companies.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States banks and bank holding companies—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States banks and bank holding companies; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States banks and holding companies.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States banks or bank holding companies.

"(2) ACTION BY AGENCY.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, any Federal banking agency—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) among the factors the agency considers in evaluating any application or notice filed by a person of that foreign country; and

"(B) may, based upon that determination and in consultation with the Secretary, deny the application or disapprove the notice.

"(3) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) PREVENTING EXISTING ENTITIES FROM BEING USED TO EVADE THIS SECTION.—

"(1) IN GENERAL.—If a determination under subsection (d)(1) is in effect with respect to a foreign country, no bank, foreign bank described in section 8(a), branch, agency, commercial lending company, or other affiliated entity that is a person of that country shall, without prior approval pursuant to paragraph (3) or (4), directly or indirectly, in the United States—

"(A) commence any line of business in which it was not engaged as of the date on which that determination was published in the Federal Register; or

"(B) conduct business from any location at which it did not conduct business as of that date.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to transactions under section 2(h)(2) of the Bank Holding Company Act of 1956.

"(3) STATE-SUPERVISED ENTITIES.—

"(A) This paragraph shall apply if—

"(i) the entity in question is an uninsured State bank or branch, a State agency, or a commercial lending company;

"(ii) the State requires the entity to obtain the prior approval of the State bank supervisor before engaging in the activity described in subparagraph (A) or (B) of paragraph (1); and

"(iii) no other provision of Federal law requires the entity to obtain the prior approval of a Federal banking agency before engaging in that activity.

"(B) The State bank supervisor shall consult about the application with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act). If the State bank supervisor approves the application, the supervisor shall notify the appropriate Federal banking agency and provide the agency with a copy of the record of the application. During the 45-day period beginning on the date on which the appropriate Federal banking agency receives the record, the agency, after consultation with the State bank supervisor—

"(i) may include the determination under subsection (d)(1) and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) of this section among the factors the agency considers in evaluating the application; and

"(ii) may issue an order disapproving the activity in question based upon that determination and in consultation with the Secretary of the Treasury.

The period for disapproval under clause (ii) may, in the agency's discretion, be extended for not more than 45 days.

"(4) FEDERAL APPROVAL.—If the transaction is not described in paragraph (3)(A), the entity in question shall obtain the prior approval of the appropriate Federal banking agency.

"(5) INFORMING STATE SUPERVISORS.—The Secretary of the Treasury shall inform State bank supervisors of any determination under subsection (d)(1).

"(6) EFFECT ON OTHER LAW.—Nothing in this subsection shall be construed to relieve the entity in question from any otherwise applicable requirement of Federal law.

"(f) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States banks and bank holding companies if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banks and bank holding companies.

"(g) PERSON OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country, or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(h) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Federal banking agencies shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Federal banking agencies, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States banks and bank holding companies; and

"(ii) whether that country would permit United States banks and bank holding companies already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's banks and bank holding companies; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 403. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES BROKERS AND DEALERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"NATIONAL TREATMENT

"SEC. 36. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States brokers and dealers that operate or seek to operate in those countries, and thereby end discrimination against United States brokers and dealers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States brokers and dealers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States brokers or dealers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States brokers and dealers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States brokers or dealers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, based upon that determination and in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE BROKER OR DEALER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered broker or dealer unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States brokers and dealers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic brokers and dealers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a broker or dealer that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States brokers and dealers; and

"(ii) whether that country would permit United States brokers or dealers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's brokers or dealers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 404. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INVESTMENT ADVISERS.

The Investment Advisers Act of 1940 (12 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

"NATIONAL TREATMENT

"SEC. 223. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States investment advisers that operate or seek to operate in those countries, and thereby end discrimination against United States investment advisers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States investment advisers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States investment advisers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States investment advisers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States investment advisers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section

3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, based upon that determination and in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE INVESTMENT ADVISER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered investment adviser unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States investment advisers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic investment advisers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to an investment adviser that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States investment advisers; and

"(ii) whether that country would permit United States investment advisers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's investment advisers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 405. FINANCIAL INTERDEPENDENCE STUDY.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5341 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.

"(a) INVESTIGATION REQUIRED.—The Secretary of the Treasury, in consultation and coordination with the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), and any other appropriate Federal agency or department to be designated by the Secretary of the Treasury, shall conduct an investigation to determine the extent of the interdependence of the financial services sectors of the United States and foreign countries whose financial services institutions provide financial services in the United States, or whose persons have substantial ownership interests in United States financial services institutions, and the economic, strategic, and other consequences of that interdependence for the United States.

"(b) REPORT.—The Secretary of the Treasury shall transmit a report on the results of the investigation under subsection (a) within 2 years after the date of enactment of this section to the President, the Congress, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and any other appropriate Federal agency or department as designated by the Secretary of the Treasury. The report shall—

"(1) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

"(2) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

"(3) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial services activities conducted by United States financial services institutions;

"(4) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to those countries' domestic financial services institutions;

"(5) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, providing credit or other financial services, or otherwise;

"(6) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

"(7) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

"(8) describe the extent to which United States companies rely on financing by or through foreign financial services institutions, and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

"(9) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

"(10) contain other appropriate information relating to the results of the investigation under subsection (a).

"(c) DEFINITIONS.—As used in this section, the term 'financial services institution' means—

"(1) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

"(2) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

"(3) any depository institution or depository institution holding company (as such terms are defined in section 3 of the Federal Deposit Insurance Act); and

"(4) any other entity providing financial services.".

SEC. 406. CONFORMING AMENDMENTS SPECIFYING THAT NATIONAL TREATMENT INCLUDES EFFECTIVE MARKET ACCESS.

(a) QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in paragraph (3), by striking "and securities companies" and inserting ", securities companies, and investment advisers"; and

(2) by adding at the end the following: "For purposes of this section, a foreign country denies national treatment to United States entities unless it offers them the same competitive opportunities (including effective market access) as are available to its domestic entities.".

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting "effective" after "banking organizations and securities companies have".

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342) is amended—

(1) by striking "does not accord to" and inserting "does not offer";

(2) by inserting "(including effective market access)" after "the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country"; and

(3) by striking "as such country accords to" and inserting "as are available to".

TITLE V—EFFECTIVE DATES

SEC. 501. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect on October 20, 1990.

(b) SPECIAL RULES.—(1) No action taken by the President or the President's designee between October 20, 1990, and the date of enactment of this Act shall prejudice the ability of the President or the President's designee to take action under section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

(2) Title IV of this Act takes effect on the date of enactment of this Act.

(3) The acquisition policies required by this Act shall be incorporated as part of the Federal Acquisition Regulation within 270 days after enactment. Such policies shall apply to solicitations issued 60 days after such regulations are issued.

(4) No report under section 107(f) of the Defense Production Act of 1950 (as added by section 111 of this Act) shall be required before January 31, 1993.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, under the previous order, the Senator from Pennsylvania will now offer the Fair Trade and Financial Services Act. This was S. 259. It is my understanding there is no Member of the Senate who desires a rollcall vote on this amendment. If that is the case, we are going to enact this by voice vote.

We have cleared on both sides the amendments to the Soldiers' and Sailors' Relief Act. If there is no request for a rollcall vote on that, that will be approved by a voice vote.

Thereafter, the Senate will be in recess until tomorrow when there will be a session merely for the reading of the address on Presidents' Day. There will be no votes tomorrow, and the Senate would then not be in session until next Tuesday afternoon.

Unless a Senator requests a rollcall vote on either the amendment which the Senator from Pennsylvania is now about to offer, or the Soldiers' and Sailors' Relief Act amendments, and I am advised by staff that they both have been cleared and that no Senator does wish to have a rollcall vote on those, then the vote we just had will be the last rollcall vote until, at the earliest, next Tuesday afternoon.

Mr. President, I yield the floor and I thank the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

DEFENSE PRODUCTION ACT EXTENSION AND AMENDMENTS OF 1991

Mr. HEINZ. Mr. President, in accordance with the unanimous-consent agreement, I send to the desk a bill and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 468) to amend the Defense Production Act of 1950.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. By previous order, the time on the bill, 10 minutes, is divided equally.

Mr. HEINZ. Mr. President, I will be brief. I hope we can expedite the work of the Senate. Effectively, what I have sent to the desk is the full text of the DPA extension proposed by the administration introduced by Senators GARN and WALLOP as S. 259. That extends the Defense Production Act authority to September 30, not October 20 as proposed by the administration, and this conforms to House committee action.

Mr. President, further, it adds energy amendments that are urgently requested to deal with emergency energy supply problems that may arise due to the gulf war.

Finally, as the majority leader has pointed out, it adds the text of the Fair Trade and Financial Services Act granting discretion to the Secretary of the Treasury to deny national treatment to foreign financial institutions, if necessary, to support U.S. efforts to open foreign markets that are closed to U.S. firms.

Mr. President, I think many of us have spoken on these issues at length today and on other occasions. I have no desire to prolong the discussion in the Senate. I reserve the remainder of my time.

Mr. RIEGLE. Mr. President, I rise in favor of S. 468, a bill to renew and amend the Defense Production Act of 1950.

The Defense Production Act [DPA] was originally passed to meet the national emergency caused by the Korean war. Only three titles of the original law—I, II, and VII—were kept in effect after that war. Title I of the DPA provides to the President the authority to require the priority performance of contracts which have been determined to be necessary for the national defense. Title III authorizes the use of a broad range of economic incentives to assure that American industry will be able to provide the broad range of materials and services that are required for the national defense. These incentives include purchase guarantees, loan guarantees, and loans. Title VII authorizes the President to encourage joint industry undertakings to improve industrial preparedness and give them protection from antitrust suits. That title also gives the President the authority to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if such would threaten to impair the national security.

The bill we are passing today, S. 468, restores those important authorities and also improves the current DPA law by amending it with two important authorities sought by the Department of Energy to deal with oil shortages that may be occasioned by the Persian Gulf crisis. These new authorities, sought by DOE were incorporated in last year's conference bill on the DPA that failed to pass the Senate at the end of last year's session.

I am also pleased that S. 468 also includes as title II the provisions on fair trade and financial services that were in last year's DPA conference bill that passed the House. Let me explain why.

For the last 50 years America has followed a practice of giving foreign financial firms which operate in this country national treatment, that is we treat them the same as we do our domestic firms and they have profited from it. In 1978, the Congress enacted the International Banking Act codifying our national treatment policy in law. At the time we did so we noted our concerns about discriminatory treatment against our banks abroad. The Senate Banking Committee in its report on the 1978 law stated:

European Common Market countries have been most receptive to the benefits of competition brought by American banks to their economies. Japan is a contrast. By the restrictive practices of its officials, American banks are competitively disadvantaged in Japanese banking markets.

Congress hoped in 1978 that discriminatory treatment against U.S. financial firms abroad could be resolved by U.S. negotiators without further congressional action. That was a vain hope. Last November, Under Secretary Mulford of the Treasury who has been negotiating with the Japanese for 6 years to open their market stated:

It is particularly disheartening to see foreign banks and securities firms blocked from offering international proven services and products in Japan. Statutory restrictions and regulatory practices continue to be a firm barrier to full access of foreign firms to the Japanese financial services industry.

Since the passage of the International Banking Act of 1978, foreign banks have dramatically expanded in the U.S. market. Japanese banks alone have 14 percent of the 25-percent market share held by all foreign banks. In contrast the United States share of the Japanese market continues to decline and is now at 1 percent. Foreign banks as a whole have only a 3-percent share of the Japanese market and that too is declining.

Japan's own closed financial market is not unrelated to the ability of their banks to expand here. At our April 5,

1990, hearing on our fair trade bill Under Secretary Mulford told us:

I have always had the view that one of the reasons we're in the business of opening the Japanese markets is that there is a very low cost of capital there * * * Japanese institutions are engaging in a sort of unfair practice because they work off a cheap source of capital at home and use that to expand their position overseas in much the same way that an industrial company might be accused of an unfair trading practice. * * * [They] go after market share by offering highly competitive, possibly in some cases, we fear, submarket terms.

David Silver of the Investment Company Institute who testified for title II made the same point noting that:

Profits gleaned from growth in their protected environment may provide a significant boost for entry into another market such as the U.S.

A witness for the Independent Bankers Association agreed.

As Japanese banks expand market share here by cut-rate prices made possible in part by a closed market at home, United States banks are losing good customers and are compelled to make riskier loans. A vice president of Standard & Poor's told our committee at a September 12 hearing that:

Foreign banks are willing to compete on price, and to go after good quality business, the result of which many U.S. banks have had to seek earnings elsewhere * * * in higher risk areas.

This could create new problems for our deposit insurance fund and our taxpayers who back that fund.

So we must give our negotiators strengthened authority to open foreign markets now closed to our institutions. Title II does so in a very nonthreatening way. Under its provisions Treasury and the banking and securities regulators are not required to take any actions against firms from countries that discriminate. They are required to negotiate with such countries. To strengthen Treasury's hand in any negotiations, the bill permits our banking and securities regulators, in consultation with the Treasury, to deny applications for regulatory approval filed by banking and securities firms from countries that discriminate against U.S. firms. Any denials would not force foreign financial firms to shrink their existing operations, but could limit their opportunities for future expansion. Before regulators could exercise their authority, however, the Secretary of the Treasury would have to publish in the Federal Register a determination that discrimination against U.S. financial institutions is taking place in a given foreign country. Let me stress that no such action is mandated by this legislation. The Treasury Secretary and the regulators have discretion under it whether to use the grant of authority being given to them and the regulators are expected to use this new authority only in full consultation with the Treasury Department.

New evidence of the Treasury Department's need for this type of leverage in negotiating to open financial markets is provided in its most recent national treatment study submitted to the Congress on December 1, 1990, as required by section 3601 of the omnibus trade bill of 1988. In his letter transmitting the 1990 National Treatment Study to Congress, Secretary Brady noted that Canada and many European countries have made significant progress in removing barriers to full entry of U.S. financial firms but that "only modest progress has been made in many Asian economies [and] numerous Latin American countries still maintain restrictive financial systems." The report itself notes with regard to Japan that "despite modest improvements, a variety of factors have kept the Japanese banking market difficult to penetrate and the slow pace of liberalization and deregulation has provided domestic banks with an unfair competitive advantage over foreign banks both in Japan and globally * * * a number of factors including regulated interest rates, restrictive operating regulations, strong ties among related firms (keiretsu), excessive compartmentalization of financial markets, and lack of transparency effectively reduce foreign banks' competitive opportunities."

That report also noted with regard to Japan's securities market that "foreign firms have been excluded from the 400 billion dollar investment trust (mutual funds) market. * * *"

Other restrictions on pension fund managers and securities firms mean, according to Treasury's report, that "full and easy access to the Japanese investor base and entire range of securities activities remains difficult" for foreign firms. Title II is needed to help the Treasury get rid of such restrictions.

Title II also includes an important study on the interdependence of capital markets. This report will give the Congress and administration needed information about the role of foreign financial institutions in our economy and the impact such growing foreign presence has on our monetary policy and national economic sovereignty. The report will also provide needed information about whether a loss of domestic market share by U.S. financial services firms will have a deleterious impact on certain of our high-tech industries such as telecommunications and computers. Having an understanding of the synergies involved in these matters will better prepare us to make good public policy on them.

It is my firm hope that we can get S. 468 enacted into law as soon as possible and that later this year Congress will enact the other DPA legislation, S. 347, which the Senate is also passing today.

I thank Senators DIXON, GARN, GRAMM, and HEINZ for the key roles they played in passing S. 468 today.

The PRESIDING OFFICER. Who yields time?

Mr. HEINZ. Mr. President, if there is no further request for time on either side, which might well be the case since this was a unanimous-consent item, I am about to propose that both sides yield back all their time.

I just want to announce that to see if there is anybody in the Cloakroom who would like time on either side of the aisle.

I will wait a few seconds to see what happens.

Mr. President, hearing no commotion either on the floor or in the Cloakroom, I ask unanimous consent that all time be yielded back on both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. All time is yielded back.

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. 468

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Defense Production Act Extension and Amendments of 1991".

TITLE I: AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

SEC. 101. EXTENSION OF PROGRAMS.—The first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "October 20, 1990" and inserting "September 30, 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. Section 711(a)(4) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(4)) is amended to read as follows:

"(4)(A) There are authorized to be appropriated for fiscal year 1991, not to exceed $50,000,000 to carry out the provisions of sections 301, 302, and 303.

"(B) The aggregate amount of loans, guarantees purchase agreements, and other action under sections 301, 302, and 303 during fiscal year 1991 may not exceed $50,000,000."

VOLUNTARY AGREEMENTS

SEC. 103 Section 708A of the Defense Production Act of 1950 (50 U.S.C. App. 2158a) is repealed.

TECHNICAL AMENDMENTS RESTORING ANTITRUST IMMUNITY FOR EMERGENCY ACTIONS

SEC. 104. Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158) is amended—

(1) in subsection (a), by striking "and subsection (j) of section 708A";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) For purposes of this Act the term—

"(1) 'Antitrust laws' has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

"(2) 'Plan of action' means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.";

(3) in subsection (c)(1)—

(A) by striking "Except as otherwise provided in section 708(o), upon" and inserting "Upon"; and

(B) by inserting "and plans of action" after "voluntary agreements";

(4) in subsection (c)(2), by striking the last sentence;

(5) in the second sentence of subsection (d)(1)—

(A) by inserting "and except as provided in subsection (n)" after "specified in this section"; and

(B) by striking ", and the meetings of such committees shall be open to the public";

(6) in subsection (d)(2), by striking out "section 552 (b)(1) and (b)(3)" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(7) in subsection (e)(1), by inserting "and plans of action" after "voluntary agreements";

(8) in subsection (e)(3)(D), by striking "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(9) in subsection (e)(3)(F)—

(A) by striking "General and to" and inserting, "General,"; and

(B) by inserting ", and the Congress" before the semicolon;

(10) in subsection (e)(3)(G), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(11) in subsections (f) and (g)—

(A) by inserting "or plan of action" after "voluntary agreement" each place such term appears; and

(B) by inserting "or plan" after "the agreement" each place such term appears;

(12) in subsection (f)(1)(A) (as amended by paragraph (11) of this subsection) by inserting "and submits a copy of such agreement or plan to the Congress" before the semicolon;

(13) in subsection (f)(1)(B) (as amended by paragraph (11) of this subsection) by inserting "and publishes such finding in the Federal Register" before the period;

(14) in subsection (f)(2) (as amended by paragraph (11) of this subsection) by inserting "and publish such certification and finding in the Federal Register" before ", in which case";

(15) in subsection (h)—

(A) by inserting "and plans of action" after "voluntary agreements";

(B) by inserting "or plan of action" after "voluntary agreement" each place such term appears;

(C) by striking "and" at the end of paragraph (9);

(D) by striking the period at the end of paragraph (10) and inserting "; and"; and

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

"(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress."

(16) in subsection (h)(3), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraph (1), (3), or (4) of section 552(b)"; and

(17) in paragraphs (7) and (8) of subsection (h), by striking, "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(18) by striking subsection (j) and inserting the following new subsection:

"(j) Defense for violation of Federal or State antitrust laws—

"(1) Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement of plan of action under this section that—

"(A) such action was taken—

"(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

"(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

"(B) such person—

"(i) complied with the requirements of this section and any regulation prescribed under this section; and

"(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

"(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, and approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

"(3) Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

"(4) The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.";

(19) in subsection (k), by inserting "and plans of action" after "voluntary agreements" each place such term appears;

(20) in subsection (l), by inserting "Or plan of action" after "voluntary agreement";

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

"(n) Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

"(o) In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.".

TECHNICAL AMENDMENTS TO PRIORITIES IN CONTRACTS AND ORDERS

SEC. 105. Section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071) is amended—

(1) in subsection (a)(2) by striking "materials and facilities" and inserting "materials, services, and facilities";

(2) in subsection (c)(1) by striking "supplies of materials and equipment" and inserting "materials, equipment, and services";

(3) by striking paragraphs (2) and (3) and inserting the following new paragraph:

"(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

"(A) such materials, services, and facilities are scarce, critical, and essential—

"(i) to maintain or expand exploration, production, refining, transportation,

"(ii) to conserve energy supplies; or

"(iii) to construct or maintain energy facilities; and

"(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection."; and

(4) by redesignating paragraph (4) as paragraph (3).

EFFECTIVE DATE

SEC. 106. (1) This Act shall take effect on October 20, 1990; and

(2) No action taken by the President or the President's designee between October 20, 1990, and the enactment of this Act shall prejudice the ability of the President or the President's designee to take action under section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

TITLE II—FAIR TRADE IN FINANCIAL SERVICES

SEC. 201. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1991".

SEC. 202. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKS AND BANK HOLDING COMPANIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following:

"NATIONAL TREATMENT

"SEC. 15. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States banks and bank holding companies that operate or seek to operate in those countries, and thereby end discrimination against United States banks and bank holding companies.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States banks and bank holding companies—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment United States banks and bank holding companies; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States banks and holding companies.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interest; and

(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States banks or bank holding companies.

"(2) ACTION BY AGENCY.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, any Federal banking agency—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) among the factors the agency considers in evaluating any application or notice filed by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or disapprove the notice.

"(3) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) PREVENTING EXISTING ENTITIES FROM BEING USED TO EVADE THIS SECTION.—

"(1) IN GENERAL.—If a determination under subsection (d)(1) is in effect with respect to a foreign country, no bank, foreign bank described in section 8(a), branch, agency, commercial lending company, or other affiliated entity that is a person of that country shall, without prior approval pursuant to paragraph (3) or (4), directly or indirectly, in the United States—

"(A) commence any line of business in which it was not engaged as of the date on which that determination was published in the Federal Register; or

"(B) conduct business from any location at which it did not conduct business as of that date.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to transactions under section 2(h)(2) of the Bank Holding Company Act of 1956.

"(3) STATE-SUPERVISED ENTITIES.—

"(A) This paragraph shall apply if—

"(i) the entity in question is an uninsured State bank or branch, a State agency, or a commercial lending company;

"(ii) the State requires the entity to obtain the prior approval of the State bank supervisor before engaging in the activity described in subparagraph (A) or (B) of paragraph (1); and

"(iii) no other provision of Federal law requires the entity to obtain the prior approval of a Federal banking agency before engaging in that activity.

"(B) The State bank supervisor shall consult about the application with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act). If the State bank supervisor approves the application, the supervisor shall notify the appropriate Federal banking agency and provide the agency with a copy of the record of the application. During the 45-day period beginning on the date on which the appropriate Federal banking agency receives the record, the agency, after consultation with the State bank supervisor—

"(i) may include the determination under subsection (d)(1) and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) of this section among the factors the agency considers in evaluating the application; and

"(ii) may issue an order disapproving the activity in question based upon that determination and in consultation with the Secretary of the Treasury.

The period for disapproval under clause (ii) may, in the agency's discretion, be extended for not more than 45 days.

"(4) FEDERAL APPROVAL.—If the transaction is not described in paragraph (3)(A), the entity in question shall obtain the prior approval of the appropriate Federal banking agency.

"(5) INFORMING STATE SUPERVISORS.—The Secretary of the Treasury shall inform State bank supervisors of any determination under subsection (d)(1).

"(6) EFFECT ON OTHER LAW.—Nothing in this subsection shall be construed to relieve the entity in question from any otherwise applicable requirement of Federal law.

"(f) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States banks and bank holding companies if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banks and bank holding companies.

"(g) PERSON OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country, or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(h) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Federal banking agencies shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Federal banking agencies, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States banks and bank holding companies; and

"(ii) whether that country would permit United States banks and bank holding companies already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's banks and bank holding companies; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 203. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES BROKERS AND DEALERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"NATIONAL TREATMENT

"SEC. 36. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States brokers and dealers that operate or seek to operate in those countries, and thereby end discrimination against United States brokers and dealers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States brokers and dealers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted

as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States brokers or dealers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States brokers and dealers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) Discretionary Sanctions.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States brokers or dealers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE BROKER OR DEALER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered broker or dealer unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States brokers and dealers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic brokers and dealers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a broker or dealer that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States brokers and dealers; and

"(ii) whether that country would permit United States brokers or dealers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's brokers or dealers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 204. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INVESTMENT ADVISERS.

The Investment Advisers Act of 1940 (12 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

"NATIONAL TREATMENT

"SEC. 223. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States investment advisers that operate or seek to operate in those countries, and thereby end discrimination against United States investment advisers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States investment advisers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States investment advisers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States investment advisers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States investment advisers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE INVESTMENT ADVISER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country,

acting directly or indirectly, shall acquire control of any registered investment adviser unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States investment advisers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic investment advisers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to an investment adviser that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States investment advisers; and

"(ii) whether that country would permit United States investment advisers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's investment advisers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 205. FINANCIAL INTERDEPENDENCE STUDY.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5341 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.

"(a) INVESTIGATION REQUIRED.—The Secretary of the Treasury, in consultation and coordination with the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), and any other appropriate Federal agency or department to be designated by the Secretary of the Treasury, shall conduct an investigation to determine the extent of the interdependence of the financial services sectors of the United States and foreign countries whose financial services institutions provide financial services in the United States, or whose persons have substantial ownership interests in United States financial services institutions, and the economic, strategic, and other consequences of that interdependence for the United States.

"(b) REPORT.—The Secretary of the Treasury shall transmit a report on the results of the investigation under subsection (a) within 2 years after the date of enactment of this section to the President, the Congress, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and any other appropriate Federal agency or department as designated by the Secretary of the Treasury. The report shall—

"(1) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

"(2) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

"(3) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial services activites conducted by United States financial services institutions;

"(4) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to those countries' domestic financial services institutions;

"(5) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, providing credit or other financial services, or otherwise;

"(6) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

"(7) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

"(8) describe the extent to which United States companies rely on financing by or through foreign financial services institutions, and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

"(9) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

"(10) contain other appropriate information relating to the results of the investigation under subsection (a).

"(c) DEFINITIONS.—As used in this section, the term 'financial services institutions' means—

"(1) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

"(2) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

"(3) any depository institution or depository institution holding company (as such terms are defined in section 3 of the Federal Deposit Insurance Act); and

"(4) any other entity providing financial services.".

SEC. 206. CONFORMING AMENDMENTS SPECIFYING THAT NATIONAL TREATMENT INCLUDES EFFECTIVE MARKET ACCESS.

(a) QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in paragraph (3), by striking "and securities companies" and inserting ", securities companies, and investment advisers"; and

(2) by adding at the end the following: "For purposes of this section, a foreign country denies national treatment to United States entities unless it offers them the same competitive opportunities (including effective market access) as are available to its domestic entities.".

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting "effective" after "banking organizations and securities companies have".

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342) is amended—

(1) by striking "does not accord to" and inserting "does not offer";

(2) by inserting "(including effective market access)" after "the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country"; and

(3) by striking "as such country accords to" and inserting "as are available to".

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

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

Mr. President, I withdraw my suggestion.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I ask unanimous consent to proceed as in morning business, if I may.

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

STRENGTHENING OUR NATION'S CIVIL RIGHTS LAWS

Mr. SIMPSON. Mr. President, I wish to introduce legislation to strengthen our Nation's civil rights laws. Every Member of this Congress is proud of the tremendous strides our Nation made toward equality of opportunity in the last 30 years. Because we have not eliminated discrimination in our country, every Member of this Congress agrees that our civil rights laws are a very important underpinning of our temporary legal structure.

Every American must have an equal opportunity to achieve that which he or she is capable of and willing to work for. No person's potential should be frustrated by discrimination. I believe every Member of Congress shares this conviction. There is surely a clear consensus on that point.

In fact, our Nation's major civil rights laws have always been passed with broad support on both sides of the aisle, on both sides of the Rotunda, and at 1600 Pennsylvania Avenue, as well as on Capitol Hill.

However, last year's civil rights bill lost this element of consensus. It became a highly charged exercise in partisan politics and the process left me quite disapponted and even a bit disgusted.

I am indeed not the only person who has noted the destructive nature of last year's legislative battle. Morris Abram, one of the early champions in the early 1960's, noted:

> All my life, beginning in the darkest days of segregation in my home State of Georgia, I have fought against the principle of color preference known then as "white supremacy."

However, when discussing last year's civil rights bill, Mr. Abran observed, "This bill institutionalizes color preference under the false flag of civil rights. It is not a civil rights bill; it is a quota bill that would achieve exactly what the landmark Civil Rights Act stood foursquare against."

Mr. President, I think it is time to leave behind these contentious approaches toward civil rights reform. Let us reject partisan skirmishing and work together to achieve the consensus that propelled the 1964 Civil Rights Act into law.

I will be introducing legislation placing myself on record about these civil rights reforms which are needed and about these proposed changes in the law which must be avoided. Let me emphasize I am not speaking for the President; I am not speaking for the administration; I am not speaking for the Republican leadership or the Republican Party. This is just one Senator, myself, saying what he thinks is fair and right and, most importantly, what is possible.

This bill reflects my four main goals. I wish to expand existing civil rights protections for employees, and especially women, who suffer harassment on the job. I wish to clarify that even after the Wards Cove decision, plaintiffs may still bring suits under the theory of disparate impact. I seek to avoid enacting civil rights laws which will force employers to play it safe, and thus hire by quota. Finally, I seek to avoid enacting civil rights laws which fulfill the dreams of legions of lawyers but create a nightmare for American employers and consumers.

I will be very pleased to work with those on both sides of the aisle in crafting the legislation, working with the administration, cosponsoring the administration proposal.

I will ask unanimous consent later that a copy of the legislation be placed in the RECORD. That will be done next week. A section-by-section analysis of the bill will be printed in the RECORD at that time.

I embark upon this tough task of improving our Nation's civil rights laws in good faith, and I commend this legislation to my colleagues.

I thank the Chair.

Mr. BOND. Mr. President, I ask unanimous consent to proceed for up to 5 minutes as if in morning business.

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

CHRISTIAN HALEY PRINCE

Mr. BOND. Mr. President, yesterday we attended services at St. Columbus Church for Christian Haley Prince, a young man whose tragic loss was widely noted in the media last Saturday night, early Sunday morning, at Yale University.

The newspapers gave his basic biography, and it truly is an outstanding biography. He was a scholar, an athlete, a leader. President Bush called the parents at the visitation the night before to extend his condolences and to say that Christian Prince obviously was an all-American young man.

Certainly, his credentials indicate that he was an all-American: Dean's list, all-American lacrosse player, leader in prep school, recognized by his peers as an outstanding young man. He was going to be an intern in my office in the Senate this summer, and I am very disappointed that my colleagues and the Senate family did not have a chance to get to know him, because he truly was an outstanding young man.

The services was billed as a thanksgiving and celebrating the life of Christian Prince. It is difficult for me, as a layman, to be able to go to a service like that and to realize that in services for a 19-year-old, it could be a celebration. But there were some aspects of that service—the love that was evident there—that convinced me that, yes, maybe we could celebrate this life because, you see, the accomplishments on paper do not tell all there was to know about Christian.

One of the people who knew him much better than I, his headmaster, a teacher at Lawrenceville, said that it is unusual for a boy to do so well, so fast, in so many ways; just get out of his way and let him keep going.

The headmaster at his school said that Christian was a man of character in the best sense of the word. He took on responsibilities not for acclaim and not for the public recognition that they would draw but because he believed it was right to help a friend in a crisis situation; to spend time tutoring some person who was slow. His uncle told me that he was a tremendous athlete. To put his arm around him was like putting his arm around an oak tree. Yet, he was a very gentle young man. He never spoke a word in anger. He had that great ability, even though he was shy, to make friends, because he was full of love.

His sister, in her tribute to him, said that he was a man that she would have chosen as her best friend, had he not been a brother. Another friend who has teenaged daughters said that this is the kind of person that a father hopes his daughter will ultimately meet.

We saw at those services not only the strength of his parents, Sally and Ted Prince; his brother Teddy, who delivered an eloquent homily; and his sister Jackie—and our hearts go out to them—but we saw such a warmth and a genuine feeling of love for Christian, and a concern for his family, that in the darkest of dark, we could look back in celebration at the life of a young man who in 19 years had achieved more than most of us will ever achieve, and who leaves his mark very eloquently among thousands who came to pay respects: friends from the lacrosse team at Yale, friends from high school, from prep school, from the neighborhood, from the church.

I truly regret that my friends in the Senate will not have an opportunity to get to know him. But I think his life has left us a wonderful legacy of love and accomplishment that I wanted to recognize tonight and to share with my colleagues.

I thank the Chair. I yield the floor.

PERSIAN GULF PRESS BRIEFINGS

Mr. SIMPSON. Mr. President, I ask unanimous consent that a very powerful article that appeared in the Washington Post today concerning the conduct of the media and military in the Persian Gulf war, entitled "The Gulf Between Media and Military," be printed in the RECORD.

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

[From the Washington Post, Feb. 21, 1991]

THE GULF BETWEEN MEDIA AND MILITARY

(By Henry Allen)

The Persian Gulf press briefings are making reporters look like fools, nit-pickers and egomaniacs; like dilettantes who have spent exactly none of their lives on the end of a gun or even a shovel; dinner party commandos, slouching inquisitors, collegiate spitball artists; people who have never been in a fistfight much less combat; a whining, self-righteous, upper-middle-class mob jostling for whatever tiny flakes of fame may settle on their shoulders like some sort of Pulitzer Prize dandruff.

They ask the same questions over and over. In their frustration, they ask questions that no one could answer; that anyone could answer; that no one should answer if they could answer. They complain about getting no answers, they complain about the answers they get. They are angry that the military won't let them go anywhere, the way they could in Vietnam. They talk about war as if it were a matter of feelings to be hashed out with a psychotherapist, or a matter of ethics to be discussed in a philosophy seminar. A lot of them seem to care more about Iraqi deaths than American deaths, and after the big oil spill in the gulf, they seemed to care more about animals than people—a greasy cormorant staggered around on CNN until it seemed like a network logo, along the lines of the NBC peacock.

They don't always seem to understand that the war is real.

They don't seem to understand the military either. Meanwhile, the military seems to have their number, perfectly. Media and military cultures are clashing, the media are getting hurt and it's all happening on television, live from Riyadh and the Pentagon.

It is a silly spectacle.

It is so silly that 80 percent of Americans say they approve of all the military restrictions on the reporting of the war, and 60 percent think there should be more. When a Washington Post-ABC News poll asked if we should bomb a Baghdad command and control center in a hotel where American reporters are staying, 62 percent said we should give a warning and then bomb even if the reporters are still there, and 5 percent said we should bomb with no warning.

Yesterday the Los Angeles Times quoted John Balzar, one of its correspondents in Saudi Arabia: "I was a sergeant in Vietnam and now I am a journalist here. In both wars, I feel like I'm in the wrong place at the wrong time, and I am going to go home and have people throw rocks at me."

It is so silly that "Saturday Night Live" recently went after the media with the same wise-guy irony it might have used on the military back in the '70s.

An actor playing a briefing officer says: "I am happy to take any questions you might have with the understanding that there are certain sensitive areas that I'm just not going to get into, particularly information that may be useful to the enemy."

A reporter asks: "I understand there are passwords our troops on the front lines use. Could you give us some examples of those?"

And so on, the point being that the reporters are either fools or traitors.

The point could just as well have been media self-righteousness, or their obsession with contradictions and ironies.

After a Marine reconnaissance team was trapped near Khafji, a reporter asked Air Force Gen. Pat Stevens IV: "You said recently our communications were 'superb,' but the Marine recon team was taken by surprise. How then can you call our communications 'superb'?"

In a briefing after U.S. planes bombed a building where civilians were hiding, one reporter adopted the Mike Wallace autograph-model tone of astonished innocence: "Are you saying then that you're not watching these buildings that you're going to target 24 hours a day?"

One reporter asked if we had put a limit on the number of Iraqi casualties we will inflict. Then there was the young woman with the National Public Radio accent, that elegant confection of crispness and offhandedness that you hear on "All Things Considered." After the big oil spill, she wanted to know if Gen. Norman Schwarzkopf had been aware before the war began of the damage such a spill could do, and if so, had such a possibility entered his moral reasoning when he was deciding whether to start the war.

Why is this happening? Why do the reporters at the briefings seem to be on one side and the briefers on the other? And why do so many people cringe and hoot at the reporters, and admire the briefers?

Oil and water, dogs and cats, Hatfields and McCoys.

In "Battle Lines: Report of the Twentieth Century Fund Task Force on the Military and the Media," Peter Braestrup, a former Marine and journalist, cites studies indicating that military values "are closer to those of Middle America than to those of the more permissive members of the media. * * * Not surprisingly, given the media's focus on conflict, deviance, and melodrama, most senior military men do not see the media as allies of civic peace and virtue. * * * There is no counterpart in journalism to 'duty, honor, country,' or to the military leader's ultimate responsibility for life and death and the nation's security."

The military demands team play, journalists fight not only with the people they cover but with each other.

The military is hierarchical. Reporters have no rank.

The military values loyalty and confidence in superiors. The press values objectivity and skepticism.

At a Senate hearing yesterday, former CBS anchor and war correspondent Walter Cronkite said the military "has the responsibility of giving all the information it possibly can to the press and the press has every right, to the point of insolence, to demand this."

Sen. John Heinz (R-Pa.) went to the point of insolence himself when he cited a long list of media woesayings about the military before the war started, and a long list of successes since, concluding: "Any advice for your colleagues?"

"No," Cronkite said.

The military is average guys who take pride in their anonymity. The big-time press is high-achievers struggling for the brief candle that passes for stardom in the media. (What's the last time you thought about Dorothy Kilgallen? Westbrook Pegler? Chet Huntley?)

When the military makes a mistake in combat, its own people die. When the press makes a mistake, it runs a correction.

For 20 years, they've been getting further apart, each heading in its own direction, proud of becoming an island of virtue, unto itself.

But why do the reporters looks so bad? What's hard for viewers to understand is that they are merely doing the poking, nagging, whining, demanding, posturing and hustling that are the standard tricks of the reporting trade—people don't have to tell them anything, after all, so they have to worm it out of them. And there are many reporters there who have never covered the military before. It's an ugly business, and in the Persian Gulf they do it on television, and they do it with the tone of antagonism, paranoia and moral superiority that arose two decades ago in response to the lies and failures of Vietnam and Watergate.

There is a lot of history here.

Back in the '70s, reporters were heroes of sorts—one bumper sticker even said "And Thank God for The Washington Post."

Government officials and military officers were the villains.

In the years since, the press has changed very little, and the military has changed a lot.

Besides polishing its public relations techniques with courses at Fort Benjamin Harrison, the military seems to have studied the master, Ronald Reagan, and the way he buffaloed the press with his nice-guy rope-a-doping—rope-a-dope, you recall, seeing how Muhammad Ali let George Foreman punch himself into exhaustion.

In the Persian Gulf briefings, the military briefers adopt the Reagan/Ali style, taking punch after punch, looking humble, cocking their heads, being polite and playing the tarbaby. They don't let the reporters get to them. They confess errors—deaths by friendly fire, bombs that missed. Like the Viet Cong, they only fight when they know they'll win. They come on like the silent majority in desert fatigues, while the reporters come on like Ivy League Puritans, pointing bony fingers and working themselves into rages.

Why, the reporters demand, can't they drive north and interview whatever troops they want? Why can't they talk to fighter pilots? Why are they restricted to pools? Why are so few journalists going to be allowed to cover the ground war?

This is not Vietnam, where combat was only a helicopter ride away—although it's interesting to note that one study says in Vietnam no more than about 40 reporters were ever out where the bullets were flying, except during the Tet Offensive of 1968 when the number might have gone to 70 or 80. Access to the siege of the Marines at Khe Sanh was limited to 10 or 12 reporters.

In Saudi Arabia, the military is keeping journalists on a short leash, but no shorter, probably, than it would keep them on in peacetime if they were doing stories at Fort Hood or Camp Pendleton. Corporations, professional football teams, police stations and political conventions keep a close eye on journalists too. And no journalist would expect to get very far with businessmen and politicians by being as quarrelsome and ignorant as some of the journalists covering this war.

The parallel between other institutions and the military doesn't go very far, though. The military is a separate culture that is difficult to explain to anyone who hasn't been in it. As Bernard Trainor, a retired Marine lieutenant general, writes: "Whereas businessmen and politicians try to enlist journalists for their own purposes, the military man tries to avoid them, and when he cannot, he faces the prospect defensively with a mixture of fear, dread and contempt."

Trainor covered military affairs for the New York Times after he retired. He has

seen the military-media war from both sides. Last December in Parameters, an Army War College magazine, he wrote: "Today's officer corps carries as part of its cultural baggage a loathing for the press. * * * Like racism, anti-Semitism, and all forms of bigotry, it is irrational but nonetheless real. The credo of the military seems to have become 'duty, honor, country, and hate the media.'"

With the end of the draft, Trainor says, the military "settled into the relative isolation of self-contained ghettos and lost touch with a changing America. It focused on warlike things and implicitly rejected the amorality of the outside world it was sworn to defend. In an age of selfishness, the professional soldier took pride in his image of his own selflessness. A sense of moral elitism emerged within the armed forces."

Hate! Scores to settle! As Secretary of Defense Dick Cheney recently told the U.S. Chamber of Commerce, "You might never know from all the stories we saw in recent years about $600 toilet seats that our defense industry was capable of producing effective systems and weapons to support our men and women in uniform." He went on about "doom and gloom reporting," and cited a 10-year-old story in the Boston Globe attacking the Tomahawk missile, even giving the exact date—Nov. 22, 1981.

The media have pulled away from mainstream America too.

Once, reporters were part of whatever team they covered, in a vague and unreliable way. They cut deals, they protected their favorites. But after Vietnam and Watergate, they declared a sort of ethical independence, and came to think of themselves as inhabiting a neutral territory of objectivity and value-free analysis. (It should be pointed out that objectivity is not an attitude that goes down well when there's an enemy shooting at American troops—hence the antagonism directed at Peter Arnett, the CNN reporter covering the war from Baghdad.)

Anyway, things changed in the '70s. Suddenly, the media had prestige. Instead of drawing their staffs from high-school graduates, failed novelists and the occasional aristocrat looking to get his hands smudged, big-time media were getting résumés from people who had grown up in the class segregation of upscale suburbs, day-school products who had never been in places where you don't let your mouth write checks that your butt can't cash, had never even been yelled at with the professional finesse of a drill sergeant, a construction boss or a shop teacher. The most important experience in their life had been college. During the summers, they had internships, not jobs. A lot more of them were women. After the draft ended, virtually none of them even knew anyone who had been in the military, much less served themselves. They were part of what sociologists called the new class, the governing class, the professional class. They were a long way from most Americans.

The military came closer.

An Army infantry battalion commander in Saudi Arabia recently told his troops what kind of people they all are. "Like I told you before, this is not the Izod, Polo-shirt, Weejuns loafers crowd. Not a whole lot of kids here whose dads are anesthesiologists or justices of the Supreme Court. We're the poor, white, middle class and the poor, black kids from the block and the Hispanics from the barrio. We're just as good as the * * * rest, because the honest thing is, that's who I want to go to war with, people like you."

Not people like the media.

But the military can't go to war without the media, either.

And oh, how the military wants to be honored, to have its deeds recorded for history. And how good journalists are at doing it, if their audiences and editors want to hear it. Both sides, in fact, like to sit around telling stories about their adventures, giving it all a mythological glow. Both feel they are underpaid and undervalued. Both feel they are sacrificing for a greater good. And in wars, journalists for once share a little of the risk with the people they are covering—in most peacetime stories, a story about an election or a stock speculator, say, this would be called a conflict of interest. Secretly, you suspect, the military admires the media's soldier-of-fortune independence, and the media admire the orderliness of blood-and-dirt courage of the military.

They're so close, you say. There's no reason they can't work together. And then you turn on the TV and watch the press briefings.

"General," a reporter drawls, "I wonder if you could dwell for a moment on the apparent contradiction between * * *."

Mr. SIMPSON. Mr. President, I do not usually do this, but this is a very pungent, powerful, and highly provocative article in today's Post, by Henry Allen, and it is particularly important to me because I have suffered the slings and arrows of the media these last days for making some pungent and powerful and provocative remarks myself about the conduct of those in the Western media who are hosted by an enemy government.

I made some of those comments, and some of them, unfortunately, portrayed, and perhaps at some appropriate time the target of those remarks and I will visit and discuss that. I hope that can be done.

But for that, I was referred to then as sleaze and slime, and McCarthy. And in 25 years of life in the public, I have never been called McCarthy or sleaze or slime. So it is a double standard, and this article sets it out beautifully.

I commend the Washington Post for their real courage to print this. It will create some great discussion and discourse, just what should be created by a good newspaper, and what it should try to generate.

This ought to do it because it is what I have said. It is said by a journalist, and it is what I say again. This is not a war about reporting; it is a war about competition and ratings, fame, and potential Pulitzer Prizes.

So this is one worth pursuing. I certainly commend it to my colleagues. It is worth a look. It is a genuinely extraordinary article by a journalist about those in his craft. I commend it.

Mr. FORD. Regular order, Mr. President.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1991

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from further consideration of S. 330, a bill to amend the Soldiers' and Sailors' Civil Relief Act of 1940, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 330) to amend the Soldiers' and Sailors' Civil Relief Act of 1940 to improve and clarify the protections provided by that Act; to amend title 38, United States Code, to clarify veterans' reemployment rights and to improve veterans' rights to reinstatement of health insurance, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DECONCINI. Mr. President, as ranking Democratic member of the Committee on Veterans' Affairs, I am pleased to respond to Senator CRANSTON's request to manage S. 330 today, the Soldiers' and Sailors' Relief Act amendments of 1991.

As we all know, Senator CRANSTON has been ill. He is getting better. I talked to him yesterday. He wants us to proceed with this. He has had his treatment for cancer and is recuperating. I know he wishes he could be here.

This is a very important piece of legislation. It deals with the current problems that our soldiers and sailors have and will encounter and may be encountering at this very moment, at least their families.

As my colleagues will recall, the Committee on Veterans' Affairs favorably reported S. 3248 last year, a bill substantially the same as the pending measure, S. 330. Unfortunately, there were objections to unrelated veterans' legislation which blocked the passage in the last Congress. Fortunately, a compromise was reached on that legislation paving the way for this and other bills vital to America's fighting men and women.

Mr. President, since our last attempt in October to pass S. 3248, America has once again called upon our men and women in the National Guard and Reserves to answer the call to arms. At great risk to themselves and great hardship to their families, these citizen-soldiers have once again selflessly answered that call. Given their dedication to duty, we in Congress must continue to meet ours.

The SSCRA was first passed in 1940 to provide certain civil and financial protection for those called up on active duty. Once again as reservists respond to the call of duty, many are faced with a harsh pay reduction as they leave their civilian jobs and responsibilities. The SSCRA has not been substantially amended since it was first enacted nearly 50 years ago. While it is still a sound piece of legislation, its effectiveness has been grossly eroded by time and inflation.

Thank goodness, there are some reservists with the good fortune to work for businesses like General Motors Corp. which are financially sound enough to provide full compensation to their employees called to duty. I applaud GM and others I have yet to hear of which have stepped in to support their employees in the gulf. Very few employees are so fortunate. Nearly all have left for the gulf while their spouses were left with the grim prospect of paying the mortgage or feeding their children.

In such circumstances, one wonders how effective a soldier and sailor in combat can be with the knowledge that their family back home is in financial disarray and there are problems.

The bill before us today offers a package of updated remedies supplementing current law. Taken together, the provisions of S. 330 will resolve most of the financial problems plaguing these reservists and their families while the reservist is on active duty. S. 330 would protect these families by increasing the maximum rental delinquency prior to eviction from $150 to $1,200 while the reservist is on active duty.

The bill would also require automatic reinstatement of employer-provided health insurance. It would prohibit credit discrimination related to the service member's exercise of financial relief under this act and suspend civil action against servicemen and women.

Another important feature would protect physicians who are called to the gulf by suspending their malpractice and insurance premium payments until their return to the United States and private practice.

Last, S. 330 would clarify reemployment rights for reservists called to active duty for a period of 90 days or longer.

Mr. President, passage today is the only way to assure these citizen-soldiers and sailors that their country will not fail to match their commitment to duty. I am sure that more will need to be done. I am confronted with new ideas and dilemmas every day. As acting chairman of the Committee on Veterans' Affairs, I can assure you that each and every proposal will be reviewed and acted upon as soon as humanly possible.

I am confronted with the idea of not having this in place, and things happening where this encounter in the Persian Gulf ends and we have not acted. So I think it is very important that we finish this today.

Let the word go out that America has nothing but uncompromising support for each and every reservist wherever they serve, whenever they serve, and however they may serve. I urge my colleagues to support passage of this most important legislation to America and its citizen-soldiers and sailors.

I want to make mention of Ed Scott and Bill Brew and Chuck Lee and also Tim Gearan, of my staff, for the work put in on this; Todd Mullins, and Chris Yoder from the minority staff; and Doug Loon and Scott Waitlevertch of Senator SPECTER's staff.

I yield to the distinguished ranking member, who worked on this last year and tried very hard to see that it was passed, only to see it go down. I thank him for staying around tonight to help usher this through.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, at the outset, as the ranking Republican on the Veterans' Affairs Committee, I associate myself with the remarks made by the distinguished Senator from Arizona, the acting chairman, and would note only briefly the importance of this kind of legislation. It is regrettable, really, that it takes the Congress as long as it does to enact this legislation. It was introduced last year. The bill passed the House by a vote of 414 to 0 on January 29.

As we were preparing to bring this bill to the floor there was a news conference announcing what may be, hopefully, a resolution of the gulf war. So it may well be that Congress finally acts after much of the emergency has subsided.

But the fact is there are many legal proceedings going on in many courts involving many servicemen. In my practice of law, I have had occasion to deal with the Soldiers' and Sailors' Civil Relief Act of 1940. It alters contractural arrangements between individuals, but it does so on a statement of national public policy which supersedes State laws, supersedes private contracts because of the public policy in protecting the interests of those who are in the service. While they are in the service they cannot protect themselves where there are circumstances which arise where they need extra protection. The supremacy of Federal law comes in to accomplish just that.

I know our distinguished colleague from Rhode Island has some questions. In view of the lateness of the hour, I shall not speak further at this juncture.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Thank you, Mr. President.

First of all, I would like to voice my support for the Soldiers' and Sailors' Civil Relief Act Amendments of 1991. This bill will update a law which dates back to 1940, and certainly is in critical need of revision and expansion. I will just briefly touch on some of the items, and then I have a couple of questions that I would like to address.

This bill would stay the eviction of a family or of a reservist called to active duty if the monthly rent is $1,200 or less. The current limit is $150. This is an updating. I believe we will discover in the questions that that $150 was set way back in 1966. The landlords would be required to get a court order to evict the individual or his or her family.

The bill provides for 6 percent interest cap on loans or obligations of Reserve members called up to active duty if those obligations were made while the service person was a civilian. It guarantees the immediate reinstatement of private health insurance for military personnel returning to civilian life and guarantees the right of the military reservists to return to civilian jobs after serving on active duty.

There is one provision that I am particularly interested in, having talked with many physicians from my State.

The problem they face, the very real one, is their liability insurance. Liability insurance for doctors in some types of practice can run as high as $10,000 a month. You might think that $120,000 a year is unbelievable. Well, it is not impossible. Some of them are carrying burdens as high as that. And to continue the protection for past possible liability claims, they have to keep their insurance in force. So what happens? There is no way in the world under a service person's salary that they can carry premiums of $10,000 a month.

This bill addresses that problem and says that while on active duty, the suspension of those premiums will be in force; that is, there will be a suspension while the individual is on active duty.

This bill also requires courts to suspend legal proceedings at the request of a reservist on active duty in the Armed Forces, and would stay payments such as taxes, premiums, fines, and penalties. Those suspensions of payments cannot be used for a negative credit rating.

I would like to ask the distinguished managers of the bill a couple of questions, if I might. The first deals with the point I raised in my remarks earlier, and that is the $150 limit; when was that set?

Mr. DECONCINI. That was set in 1966, when the limit was increased from $80 to $150 by Public Law 89-358. As the Senator knows, this raises it to $1,200 per month. It is a long overdue adjustment.

Mr. CHAFEE. My next question has to do with the fact that a landlord cannot evict a service individual falling into this category, except pursuant to a court order. Then in section 6 it says that the reservist can apply for a stay of all noncriminal judicial proceedings until June 30, 1991. Am I correct in saying that since we are now in February, the landlord could not take any action against the reservist who is paying less than $1,200 a month, until 5 months from now?

Mr. DECONCINI. The Senator is correct. Under the provisions of current law, the court would have the discretion to stay eviction proceedings for up to 3 months, thus allowing the family time to find other shelter. The rent due, however, would generally remain the obligation of the tenant, unless the court were to order otherwise. As the Senator mentioned, another provision is section 6, which would stay any civil judicial actions or proceedings, and this would include eviction proceedings, involving a member of the Armed Forces, until after June 30, 1991.

Mr. SPECTER. Mr. President, if I might supplement the answer given by the distinguished Senator from Arizona, it is vital to vest the discretion with the court but not have it automatic. There are many State proceedings which would allow a confession of judgment, for example, or a cognovit note for the landlord to go into court, and as a matter automatically done by a clerk without examining any of the underlying facts, which is very different than if it goes before a court and the judge hears the equities of the case. It may be that on such a hearing and such an inquiry there would not be any right to evict at all. Then, in addition, there is the extension of discretion in the court to extend the opportunity of the lessee to stay in the premises even if the landlord has a right otherwise for eviction.

Mr. CHAFEE. My next question deals with whether this applies to a contract that the reservist entered into for a tenancy after the reservist was called to active duty. What I am concerned about is that we may have a reverse effect here. If we say that the landlord cannot take action to get his rent in a contract that the reservist has entered after the reservist has been called to active duty, we may be doing a disservice to the reservist. The prospective landlord, knowing about this provision, might say that he did not want to rent to that reservist on active duty, because the reservist would have the opportunity of not paying the rent. In other words, am I correct in believing that this applies to contracts entered into by the reservist before he was called to active duty?

Mr. DECONCINI. If the Senator would yield, it does not apply to contracts that are entered into after he had been called to active duty.

Mr. CHAFEE. I see. So that when the reservist is called to active duty, he then knows what his income is going to be, what his new rent is going to be when he entered into a contract. Therefore the landlord is perfectly willing to rent to the reservist knowing that there would not be this opportunity or this possibility of the rent not being paid and, thus, doing a disservice to the reservist?

Mr. DECONCINI. The Senator from Rhode Island is correct.

Mr. CHAFEE. That point that I raise, is that clearly covered in here?

Mr. DECONCINI. That is the current law, and we are making no changes in that with amendments that are before us today.

Mr. CHAFEE. All right. I think the distinguished manager of the bill sees my concern. We might well be doing a disservice to the reservist who is trying to find a place to live next to a military camp where he is being reassigned or moving his family close or to another area. Getting new lodging is not always that easy.

Mr. DECONCINI. If the Senator will yield, let me call the Senator's attention to something. There has not been, from what we gather, a lot of discrimination by lenders or lessors regarding Reserve members who have been called to active duty. We have not heard of much of that. Of course, it has been a short time for many of them. To some extent, there has been a partriotic response, at least so far, in this encounter, since these are men and women who are called to defend our Nation.

Section 7 of this bill provides that the exercise of the protective provisions of the law shall not itself adversely affect the individual's opportunity for certain future financial transactions. So it addresses exactly what the Senator is talking about. I also note that, for the Senator's information, under the veterans reemployment law, chapter 43 of title 38, United States Code, it is illegal for employers to discriminate in hiring, retention, or promotion of any individual because he or she is a reservist.

I think the Senator is concerned about that, and we are not making any alterations in that part of the law that I think has served very well.

Mr. CHAFEE. I know what the law has been. As a matter of fact, I operated under it myself on two separate occasions.

I particularly congratulate the authors, the managers of this legislation, and the Veterans' Committee for the provision dealing with liability insurance. I believe in the bill it is called professional liability insurance. This applies to lawyers as it does to doctors.

The people who were really hit under this, I suspect in most instances are doctors called to active duty who were paying these extremely high premiums, and they have to continue to have that protection.

Under the bill, as I understand it—and I am confident I am correct in this—there is a suspension of the payment of those premiums and then the reservist has a right to get back with that insurance company when he returns to active duty; is that not correct?

Mr. DECONCINI. The Senator from Rhode Island interprets it correctly.

Mr. CHAFEE. I think that is a splendid provision, and I think the managers and the committee have done a good job on this legislation. I think it gives a lot of not solely financial relief but mental relief to those individuals who are called to active duty frequently in a very swift manner without being able to get their affairs in total order. This bill provides some relief for them not only when they go into the service but when they come back.

In other words, they are entitled to their jobs again and are entitled to reinstatement of their accident and health insurance which is a new provision.

Mr. DECONCINI. Yes, that is a new provision as to health insurance, also liability insurance.

Mr. CHAFEE. Both those provisions plus the original provisions are good.

I am so glad that this legislation is before us, and I am glad it is going to pass swiftly. As I understand, there has not been a request for a rollcall vote. It will go through. I wish to join as a cosponsor.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Senator from Rhode Island be added as original cosponsor.

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

Is there further debate?

Mr. DECONCINI. Mr. President, I thank the Senator from Rhode Island for his leadership here. He served as Secretary of the Navy and, having been covered by this legislation, I think it is very commendable that he has come here and got involved in ensuring that these provisions are as he understood them to be. I thank him very much.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I join my colleagues from Arizona in commending the distinguished Senator from Rhode Island for his astuteness in raising quite a number of interesting legal questions. We had a more protracted discussion off the record before we went on the record and I made some significant inquiries as to the legal background of the distinguished Senator from Rhode Island, and I think he has done Harvard Law School proud this evening.

Mr. DECONCINI. Will the Senator from Pennsylvania yield back the remainder of his time?

Mr. SPECTER. I have concluded.

Mr. CHAFEE. I might just thank the managers of the bill for their kind comments, and I thank them for the judicious manner in which they have handled this legislation. I would like to thank them very much for their kind comments.

Mr. BIDEN. Mr. President, I am proud to join in cosponsoring S. 330, amending the Soldiers' and Sailors' Civil Relief Act of 1940.

The onslaught of war has placed tremendous burdens on our service members in the gulf and on their families. Both have had to face challenges and difficulties that only months ago one probably could not have imagined, much less planned for.

In too many cases, the war has meant that fundamental aspects of family life—paying rent and mortgages, meeting health care costs, creating and maintaining a credit record—have become onerous tasks, sometimes ones that cannot be fulfilled. Particularly for the families of Reserve and Guard members, the departure of a parent or spouse has often meant a decline in income and the lapse or even loss of health insurance.

S. 330 will lift some of these burdens from the shoulders of service members and their families. It provides several protections to ease some of the responsibilities of daily life that have increased as a result of the war.

One provision of S. 330, section 7, addresses an issue that could be of significance to virtually every person deployed in the gulf. It attempts to protect service people from credit discrimination in the future if they exercise various financial rights available to them in wartime.

Letters, comments, and complaints from many of my constituents have convinced me that this provision is needed. I have learned, to my dismay, that some creditor institutions have not complied as completely with the original Soldiers' and Sailors' Civil Relief Act as I would hope and expect. Specifically, not all institutions have been consistent in granting the interest rate relief promised in the 1940 act.

In fact, I was so concerned by the complaints on this matter that I had received from Delawareans that I recently wrote to Treasury Secretary Brady asking him to see to it that the appropriate Federal agency issue clear guidelines on creditors' responsibilities, and act aggressively to ensure creditor compliance with the act. I ask that the letter be included in the RECORD.

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

U.S. SENATE,
Washington, DC, February 1, 1991.

Hon. NICHOLAS F. BRADY,
Secretary, Department of the Treasury, Washington, DC

DEAR SECRETARY BRADY: I write to call your attention to a matter bearing on the well-being of hundreds of thousands of American servicemen and women in the Persian Gulf and their families at home. I ask that you take all appropriate steps to ensure creditor compliance with the Soldiers and Sailors Civil Relief Act of 1940.

Enacted on the eve of America's involvement in World War II, the Act was designed to ensure that persons unexpectedly called from higher-paying civilian jobs into active duty military service are not distracted from their military duties by worries over prior financial obligations which they and their families may suddenly have difficulty sustaining. With over 200,000 Guardsmen and reservists now serving bravely in the Persian Gulf, it has never been more important that the law be enforced. It is a small compensation for the great personal sacrifices these men and women are making for their country.

Sadly, I have received numerous complaints from families of activated reservists and Guardsmen from Delaware about creditors not granting the relief promised by the Act, especially with regard to interest rates. Section 526 of the Act clearly limits interest on debts incurred prior to being activated to 6 percent for the full period of active duty. Yet qualifying applicants have been asked by creditors to make up for this lost interest in one way or another—either through extra principal payments or higher interest charges in the future. In my view, those practices are contrary to both the spirit and the letter of the law.

When contacted by my staff with regard to individual cases, creditors have said their rights and responsibilities under the Act are unclear. If so, legislative changes may be needed in the long run, but the war in the Gulf will not wait. What is needed as soon as possible is a clear set of guidelines from the Federal government instructing all creditor instituions on how to comply with the Act. In tandem, there should be aggressive enforcement actions against any willful violators of the Act. Since the Act does not specify, it is up to the Administration to determine which federal agency(ies) should handle the tasks of clarifying and enforcing the Act.

Whether intentional or not, creditor noncompliance has been a considerable hardship to families already straining under the emotional weight of the separation, fear and uncertainty of having their loved ones in harm's way in the Gulf. I urge that you take immediate steps to make the rules crystal clear, and to see that any willful violators are punished.

Sincerely,

JOSEPH R. BIDEN, Jr.,
U.S. Senator.

Mr. MURKOWSKI. Mr. President, today I am pleased to rise in strong support of the proposed Soldiers' and Sailors' Civil Relief Act Amendments of 1991. This important and timely bill will bring up to date many of the provisions included in the original law which was enacted in 1940.

I am pleased to be an original cosponsor of S. 330 and to have had the opportunity to help to craft this legislation during the last session of Congress during which time I served as ranking Republican on the Veterans' Affairs Committee.

This legislation will assist those National Guard and reservist members who have been called to active duty as a result of the gulf crisis. These dedicated men and women have left behind their civilian jobs and their families to serve our Nation in this difficult time. This Congress should acknowledge their sacrifices and help to make the transition a little easier. This bill will go a long way toward accomplishing that objective.

This bill would, among other things, Protect the service member from eviction in cases where the monthly payments for the residence is less than $1,200 per month.

Permit physicians who are called to active duty to suspend their medical liability insurance during the period of such duty.

Clarify that service members called to active duty for 90 days or more are entitled to reemployment benefits.

Provide that returning service members would be entitled to the same health insurance through their employers as if they had never left the organization and would require insurance companies to reinstate their insurance.

Mr. President, nearly identical legislation (H.R. 555) passed the House on January 29 by a vote of 414 to 0. I applaud my colleagues on the House side for their quick passage of this legislation.

Mr. President, I urge my colleagues to support this measure which will provide prompt relief to those who have been called upon to serve our Nation during the gulf crisis and to their families.

Mr. THURMOND. Mr. President, I rise today in support of S. 330, the Soldiers' and Sailors' Civil Relief Act Amendments of 1991. This legislation will protect our reserve personnel and their families from the severe hardships caused by the activation of reserves for the Persian Gulf war. These members of our Armed Forces are already making extreme sacrifices as they bravely serve this great Nation far from home. We should not ask them to sacrifice the financial stability of their families as they fight for freedom. The men and women called to active duty in Operation Desert Storm must be provided with every advantage available. These amendments to the Soldiers' and Sailors' Civil Relief Act are an important step toward this goal.

The amendments will provide several advantages to those ordered to active duty. First, the maximum rental amount of a residence from which the family of a service member ordered to active duty may not be evicted will be increased from $150 to $1,200. The amendments will provide for an automatic extension of a power of attorney of a service member who is missing in action and will provide for the stay of judicial actions or proceedings involving a member of the Armed Forces until after June 30, 1991, if that member applies for the stay and is on active duty and serving outside the State in which the court having jurisdiction is located. The amendments further provide for reinstatement of health insurance, without waiting periods or exclusion of coverage for preexisting conditions. Additionally, professional liability insurance for physicians and members of other professions who are ordered to active duty would be suspended upon written request to the in-

surance carrier for the period of the individual's active duty.

Finally, the measure will provide that a service member may not be discriminated against in terms of creditworthiness by reason of the exercise of rights under the Soldiers' and Sailors' Civil Relief Act.

I have stated many times that the highest obligation of American citizenship is to defend this country in its time of need and that the highest obligation of a grateful nation is to provide for those who make sacrifices in the defense of America and freedom. Those men and women called to duty in the Persian Gulf are bravely making the sacrifices this Nation has asked of them. We now have the opportunity to send a clear message of support to these members of our Armed Forces. I am pleased to be an original cosponsor of this important measure and I urge my colleagues to join in support of the 1991 amendments to the Soldiers' and Sailors' Civil Relief Act.

Mr. MITCHELL. Mr. President, as Members of the Senate are aware, Senator CRANSTON is unable to be here today because he is recovering from treatment for cancer. Thus, I am submitting for him the following statement on S. 330.

• Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to give their unanimous approval to the pending measure, S. 330, the proposed Soldiers' and Sailors' Civil Relief Amendments of 1991. This measure would modify and make technical amendments to the Soldiers' and Sailors' Civil Relief Act of 1940 [SSCRA] (50 U.S.C. App. 510 et seq.) and the Veterans' Reemployment Rights [VRR] law, which is codified in chapter 43 of title 38, United States Code.

Mr. President, the measure being considered today is very similar to S. 3248, which I introduced in the 101st Congress on October 25, 1990, and which was identical in most respects to H.R. 5814, introduced in the House of Representatives by my good friend and chairman of the House Veterans' Affairs Committee, Representative MONTGOMERY, on October 11 and passed by the House on October 15. Unfortunately, in the last days of the 101st Congress all veterans legislation in the Senate was blocked as a result of objections to several provisions in S. 2100, the Veterans Benefits and Health Care Amendments of 1990. The controversy, which has been resolved, had no substantive connection with the proposed amendments to the SSCRA or VRR.

On January 17, Chairman MONTGOMERY introduced H.R. 555, a bill very similar to H.H. 5814, with two additional provisions which he and I developed together. That bill, as amended slightly, was passed by the House on January 29 by a vote of 414 to 0. The legislation being considered by the Senate today is a companion to the one passed by the House.

The SSCRA was enacted by Congress in 1940 to protect individuals called to active duty. It is intended in large part to promote the national defense by suspending enforcement of civil liabilities of servicemembers in order to enable them to devote their entire energies to the defense needs of the Nation. Thus, it does not relieve an individual of any indebtedness or obligation; it seeks to ensure fair and equitable treatment of individuals called to active duty by providing for the suspension of various obligations. For example, the act provides for forbearance and limited interest on certain obligations incurred prior to service and restricts default judgments against servicemembers and rental evictions of servicemembers and their dependents.

Reservists called to active duty also are concerned about having jobs when they return to civilian life—preferably their old jobs—and not losing seniority and other employment benefits because of their absence while serving their country. Under the VRR law, reservists ordered to active duty under section 673(b) of title 10, United States Code—as in the case of those individuals currently serving by virtue of Executive Order 12727—are entitled to return to their civilian jobs after an honorable discharge or release from service if they apply for reemployment within 31 days after separation from active duty. For purposes of rights and benefits based upon length of service, employees are entitled to be treated as though they had never left. Thus, returning veterans step back on the seniority escalator at the point they would have occupied without the interruption for military service.

Mr. President, this measure addresses concerns raised in a September 12, 1990, joint hearing of the Senate and House Committees on Veterans' Affairs. The two new provisions—one to allow a stay of civil action pending against servicemembers until after June 30, 1991, and the other to prohibit creditors or insurers from taking adverse action against a servicemember because he or she exercised rights available under the act—were added at the request of the Department of Defense.

Chairman MONTGOMERY and I—together with the two committees' ranking minority members—Mr. MURKOWSKI during the 101st Congress and Mr. STUMP—agreed to seek in this bill only those changes to the SSCRA and VRR necessary to address the application of these laws in connection with Operation Desert Storm. In the near future, we plan to carry out a more comprehensive review of these laws.

The similarities between the House-passed bill and the measure being considered today reflect our continuing joint effort to develop legislation that will bring timely relief to those who answered their nation's call.

SUMMARY OF PROVISIONS

Mr. President, this measure contains seven substantive provisions that would:

First, increase from $150 to $1,200 the maximum rental amount of a residence from which the family of a servicemember who has been ordered to active duty may not be evicted.

Second, expand the authority under the SSCRA for automatic extension of a power-of-attorney of a servicemember who is missing in action that otherwise would have expired as of July 31, 1990.

Third, provide that the professional liability insurance for physicians and members of other professions who are ordered to active duty would be suspended upon written request to the insurance carrier for the period of the individual's active duty.

Fourth, provide under both VRR and SSCRA for reinstatement of health insurance, without waiting periods or exclusion of coverage for preexisting conditions, for a reservist who is ordered to active duty and his or her family.

Fifth, provide for the stay of any judicial action or proceeding—other than a criminal case—involving a member of the Armed Forces until after June 30, 1991, if the member applies for the stay and is on active duty and serving outside the State in which the court having jurisdiction over the action or proceeding is located.

Sixth, provide that the servicemember may not be discriminated against in terms of creditworthiness and certain other contexts by reason of exercise of rights under the SSCRA.

Seventh, clarify existing reemployment rights for reservists called to active duty for preiods of 90 days or longer.

BACKGROUND

Mr. President, in response to the August 22, 1990, mobilization of over 46,000 members of National Guard and other Selected Reserve units for what was then called Operation Desert Shield, the Senate and House Veterans' Affairs Committees held a joint hearing, on September 12, 1990, to assess the adequacy of protections provided by the Soldiers' and Sailors' Civil Relief Act of 1940 and the Veterans' Reemployment Rights Law. Witnesses included representatives from the Departments of Veterans Affairs, Defense, and Labor; veterans service organizations; and institutions and trade associations in the financial and housing industries. Now, 6 months later, we have nearly 200,000 National Guard and reservists on active duty, many of whom are serving in the Persian Gulf, amidst the hostilities of Operation Desert Storm—and still the number continues to climb toward the 319,000 strength ceiling established by the Department of Defense.

INCREASE IN RENTAL CAP ON EVICTION PROTECTION

Section 2 of the bill would amend section 300 of the SSCRA, which protects servicemembers and their families against eviction from rental homes. Under current law, this protection applies only in cases in which the rent is not more than $150 a month. This ceiling clearly is unrealistically low, considering the rent that even a family of three or four must pay for a modest apartment or house—especially in high-cost areas, such as my own State of California, which has a large number of the Nation's military and Reserve members.

The Department of Housing and Urban Development [HUD] compiles annual data on current rent levels in the United States for standard-quality rental housing units. According to HUD, these levels reflect estimated rentals for privately owned, decent, safe, nonluxury housing. The most recent compilation includes rents of $1,144 per month for a three-bedroom home and $1,281 for a four-bedroom home in the San Francisco metropolitan area; $1,087 for a three-bedroom home and $1,217 for a four-bedroom home in Boston; and $1,042 for a three-bedroom home and $1,164 for a four-bedroom home on Long Island. These data were printed in volume 55 of the Federal Register on October 1, 1990—pages 40044–40117.

This provision would amend section 300 of the SSCRA to increase the maximum rental amount from $150 to $1,200 for purposes of staying eviction proceedings, and would apply to actions for eviction or distress that are begun after July 31, 1990.

POWERS OF ATTORNEY

Section 701 of the SSCRA provided for an extension of powers of attorney executed by servicemembers who later are missing in action. Section 3 of the bill would amend this provision, which currently applies only to powers of attorney executed during the Vietnam era, to cover powers of attorney that expire after July 31, 1990.

PROFESSIONAL LIABILITY INSURANCE

Mr. President, one critical issue addressed at the September 12 hearing was the effect of a callup on the professional liability insurance of a reservist ordered to active duty who is a physician or other health care professional. As a result of changes in the malpractice insurance industry, there has been a shift toward claims-made policies, which provide coverage for claims filed during the period of coverage, rather than in connection with actions or injuries that occur during the coverage. Thus, to ensure that they are covered for claims made while on active duty, reservists must continue paying malpractice insurance premiums after being called to active duty. In some medical specialties, the malpractice insurance premiums could far exceed the reservist's military pay and allowances during the period of active service.

Section 4 of the bill, which would add a new section 702 to the SSCRA to address this issue, is derived from draft legislation proposed by the Department of Defense. It would require a professional-liability insurance carrier, if requested by a professional who is a reservist ordered to active duty after July 31, 1990, to suspend coverage under a claims-made policy during the individual's period of service. Under a claims-made policy, the individual is protected against liability for claims presented during the period of coverage, regardless of whom the events giving rise to the alleged liability occurred. Under new section 702, a claim based upon abandonment—the failure of a professional to make adequate provision for patients to be cared for during the period of active duty—would be considered to be based on an action or failure to take action before the beginning of the period of suspension of professional liability insurance. Under this legislation, an insurance company could not require premium payments during the period of suspension and would be required either to refund any prepayments or, if the servicemember chooses, to apply any such prepayments to coverage after reinstatement. After the individual's release from active duty, the insurance carrier would also be required to reinstate coverage on the date the servicemember submits a written request, if such a request is submitted within 30 days after release. The premium would be due within 30 days after the insurance carrier provides notice of the amount owed. This provision also would prohibit discriminatory rate increases and would stay civil and administrative actions for damages brought against the servicemember by holding such claims in abeyance until after the individual leaves active duty.

REEMPLOYMENT RIGHTS

Mr. President, when I visited the Middle East in September, many servicemembers with whom I met expressed concerns about how their active duty might affect their ability to regain their jobs after military service. They wanted clarification of how much time they had to apply for their reemployment upon release from active duty and how long after their return they were protected from discharge without cause. Currently, section 2024(g) of title 38 makes clear that reservists ordered to active duty for not more than 90 days have 31 days to apply for reemployment and that they will be given 6 months of protection upon return. However, those rights are in doubt when there is an extension of the reservists' active duty for more than 90 days, as has been the case since late November—90 days from the initial August callup. To address this concern, section 6 of the bill would amend the VRR law to clarify that all reservists called to active duty under section 673(b) of title 10 would have 31 days after their service to apply for reemployment and 6 months of job protection upon returning to work.

HEALTH INSURANCE PROTECTION

Mr. President, section 5 of the bill addresses concerns regarding the reinstatement of health-insurance coverage for reservists called to active duty and their families. It would amend section 2021(b) of title 38, a VRR provision, and add a new section 703 to the SSCRA to provide for health-insurance reinstatement for servicemembers and their families—with no waiting period or exclusion of coverage for preexisting conditions—in cases in which coverage would have been provided if the servicemember had not been called to active duty. Our bill would provide the same reinstatement rights under the SSCRA for returning reservists—and their families—who, as self-employed persons, were covered by health insurance prior to being called to active duty.

STATE OF JUDICIAL PROCEEDINGS

Mr. President, section 201 of the SCCRA currently provides a court with discretion to stay a judicial proceeding—other than a criminal case—involving a person in the military service if, in the opinion of the court, the ability of the servicemember, as either plaintiff or defendant, is materially affected by reason of his or her military service.

Under recent military buildups and deployments, personal mobility has been greatly restricted. In many instances, servicemembers have not been able to leave their military facility or have been transferred great distances on short notice. Reserve and National Guard personnel have been activated and deployed with little time to settle their personal affairs. For many, the last 6 months have been a time of turmoil.

The Department of Defense has expressed to the committee its concern that servicemembers who were involved in court proceedings but unavailable for a court appearance could be adversely affected by reason of their military service if a court, exercising its discretion, decided it would not grant a stay of proceedings until the individual would again be available. It was noted that at least one court, several years ago, treated a letter from a servicemember requesting a stay of proceedings as a court appearance, allowing jurisdiction to be established and a default judgment to be entered.

The Defense Department and I, however, are equally concerned that the legal process not be unduly restricted. Section 6, which represents a temporary remedy pending a more comprehensive review of the SSCRA, provides for the suspension of court discre-

tion regarding stays until July 1, 1991. Courts will not be able to deny a request for a stay of judicial action or proceeding—including criminal cases—if, at the time of application, the servicemember is on active duty and is serving outside the State in which the court of jurisdiction is located. After June 30, 1991, provisions of current law will again be in force, providing that a stay of judicial proceedings would be subject to the court's discretion.

PROTECTION OF RIGHTS

Mr. President, section 7 of the bill, which would add a new section 108 of the SSCRA, expresses the intent of Congress that lenders, creditors, insurers, and others involved in financial transactions not take adverse action against a person in the military because he or she exercises the rights available under the SSCRA. The provision prohibits certain adverse actions, including denial or revocation of credit by a creditor, adverse reports relating to the credit record of a servicemember, and refusal to insure a servicemember, based solely upon the application for or receipt of relief under the SSCRA. New section 108 would underscore our support for the dedicated men and women who wear the uniform of this great Nation by ensuring that the exercise of rights under the act does not have a negative impact on their future financial transactions.

I would like to state, by way of caution, that the amendment proposed in section 7 is not intended to prohibit insurers or lenders from making decisions based on the usual qualifying criteria for credit or insurance. For example, a reduction in income would remain permissible criteria, when fairly applied, for determining continued eligibility for existing lines of credit.

Moreover, the bill is not intended to prohibit creditors from taking actions based on valid business considerations when responding to a servicemember's request for relief under the SSCRA. For example, capping an account for preexisting debts being converted to a reduced interest rate and simultaneously reopening a new account with residual credit and the same terms as the original account would not be considered a "revocation of credit."

Finally, I would also like to note that the prohibition against an "adverse report" relating to the creditworthiness of a servicemember would not preclude accurately reporting, as an integral part of a servicemember's credit history, the fact of his or her military status and the invocation of his or her legal rights under the SSCRA.

CONCLUSION

Mr. President, the Soldiers' and Sailors' Civil Relief Act of 1940 and the veterans' readjustment rights law are intended to protect individuals called to active duty and their families. The measure being considered today is intended to ensure that those protections reflect current legal and economic realities. The committee will again look very closely at these two important laws in the near future, when we have more time to investigate and deliberate the numerous issues we have already encountered and others which will undoubtedly arise.

Mr. President, H.R. 555 will be amended with the text of S. 330 and then returned to the House. S. 330 differs from H.R. 555 only in the correction of technical and clerical matters that were discovered subsequent to the House passage of the bill. It is our expectation that the House will pass H.R. 555 as amended, thus clearing the legislation for the President's signature.

Mr. President, in closing, I express my deep appreciation to the distinguished chairman and ranking minority members of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, as well as the former ranking minority member of the Senate Committee, Mr. MURKOWSKI, and the current ranking minority member, Mr. SPECTER, for their cooperation and many courtesies on this measure.

Mr. President, it has been a pleasure to work with all the members of the Senate committee in the development of this legislation. I note the contributions of, and express my deep gratitude to, the committee staff members who have worked on this legislation—on the minority staff, Todd Mullins, Cris Yoder, who recently left the committee staff, and Al Ptak; and, on the majority staff, Kim Morin, Shannon Phillips, Michael Cogan, Chuck Lee, Bill Brew, and Ed Scott.

I also note the fine work, as always, on the staff of the House Committee on Veterans' Affairs—Jill Cochran, Kingston Smith, Pat Ryan, and Mack Fleming.

Additionally, I am pleased to recognize the significant technical assistance provided by staff from the Department of Defense—Col. Don Deline, Lt. Col. James Schwenk, and Capt. T.D. Keating.

Finally, we are deeply indebted to Bob Cover, Charlie Armstrong, and Greg Scott of the legislative counsels' offices for their fine work.

Mr. President, I urge the Senate to give its unanimous approval to this measure.●

The PRESIDING OFFICER. If there is no further debate, the clerk will read the bill a third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the House companion bill, H.R. 555, Calendar No. 9; that all after the enacting clause be stricken and the text of S. 330 be substituted in lieu thereof; that the bill be read the third time and passed and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 555), as amended, was passed.

Mr. DECONCINI. I ask unanimous consent that S. 330 be indefinitely postponed.

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

Mr. DECONCINI. I thank the Chair and yield to the distinguished acting majority leader.

The PRESIDING OFFICER. The Senator from Kentucky.

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

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

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar No. 9. Susannah S. Kent, to be Director of the Institute of Museum Services;

Calendar No. 10. William E. Strickland, Jr., to be a Member of the National Council on the Arts;

Calendar No. 11. Walter E. Massey, to be Director of the National Science Foundation;

Calendar No. 12. John Leopold and Mary Ann Mobley-Collins, to be Members of the National Council on Disability; and

All nominations placed on the Secretary's desk in the Public Health Service.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Susannah Simpson Kent, of Pennsylvania, to be Director of the Institute of Museum Services.

William E. Strickland, Jr., of Pennsylvania, to be a member of the National Council on the Arts for a term expiring September 3, 1996.

NATIONAL SCIENCE FOUNDATION

Walter E. Massey, of Illinois, to be Director of the National Science Foundation for a term of 6 years.

NATIONAL COUNCIL ON DISABILITY

The following-named persons to be Members of the National Council on Disability for the terms indicated:

John Leopold, of Maryland, for a term expiring September 17, 1991.

Mary Ann Mobley-Collins, of California for a term expiring September 17, 1991.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE PUBLIC HEALTH SERVICE

Public Health Service nominations beginning Alan R Baker, and ending Maria E Stetter, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 4, 1991.

The PRESIDING OFFICER. Under the previous order, the Senate returned to legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FORD, from the Committee on Rules and Administration, without amendment:

S. Res. 58. An original resolution to authorize the printing of a collection of the rules of the committees of the Senate.

By Mr. FORD, from the Committee on Rules and Administration, without amendment and with a preamble:

S. Con. Res. 11. Concurrent resolution to establish an Albert Einstein Congressional Fellowship Program.

MESSAGES FROM THE HOUSE

At 3:54 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 44. Concurrent resolution calling upon the people of the United States to display the American flag in show of support of the United States troops stationed in the Persian Gulf region.

The message also announced that the House has agreed to the following resolution:

H. Res. 76. Resolution relative to the death of the Honorable Silvio O. Conte, a Representative of the Commonwealth of Massachusetts.

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. MCCONNELL:

S. 454. A bill to provide for a comprehensive health care plan for all Americans, and for other purposes; to the Committee on Finance.

By Mr. MITCHELL (for himself, Mr. CHAFEE, and Mr. LAUTENBERG):

S. 455. A bill to authorize a national program to reduce the threat to human health posed by exposure to contaminants in the air indoors; to the Committee on Environment and Public Works.

By Ms. MIKULSKI (for herself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. SARBANES, and Mr. LEAHY):

S. 456. A bill to amend chapter 83 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the United States Customs Service, and revenue officers of the Internal Revenue Service; to the Committee on Governmental Affairs.

By Mr. DODD (for himself, Mr. PELL, and Mr. KENNEDY):

S. 457. A bill to provide for a National Board for Professional Teaching Standards; to the Committee on Labor and Human Resources.

By Mr. ROTH (by request):

S. 458. A bill to provide for Government-wide procurement ethics reform, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MCCAIN:

S. 459. A bill to declare that the United States holds certain lands in trust for the Camp Verde Yavapai-Apache Indian Community, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DIXON (for himself, Mr. BURDICK, and Mr. DASCHLE):

S. 460. A bill to amend the United States Warehouse Act to allow States to require grain elevators with Federal warehouse licenses to participate in State grain indemnity funds or to require collateral security; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH (for himself and Mr. RUDMAN):

S. 461. A bill 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; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 462. A bill to amend section 401 of the Act of December 19, 1980; to the Committee on Energy and Natural Resources.

By Mr. HATFIELD:

S. 463. A bill to establish within the Department of Education an Office of Community Colleges; to the Committee on Labor and Human Resources.

By Mr. GARN:

S. 464. A bill for the relief of John Gabriel Robledo-Gomez Dunn; to the Committee on the Judiciary.

By Mr. GLENN (for himself and Mr. INOUYE):

S. 465. A bill to require the Secretary of Agriculture to conduct a pilot program to permit two States to enter into a reciprocal agreement for the interstate shipment and marketing of State inspected meat and poultry products and to establish a task force to advise the Secretary with respect to such pilot program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRASSLEY (for himself and Mr. DASCHLE):

S. 466. A bill to amend the Internal Revenue Code of 1986 to provide for a renewable energy production credit, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 467. A bill to amend the Internal Revenue Code of 1986 to restore a capital gains tax differential for small and high-risk business stock held for more than 5 years; to the Committee on Finance.

By Mr. HEINZ:

S. 468. A bill to amend the Defense Production Act of 1950; considered and passed.

By Mr. DODD (for himself, Mr. BYRD, Mr. LEAHY, Mr. GLENN, Mr. DECONCINI, Mr. WIRTH, Mr. LIEBERMAN, Mr. HARKIN, Mr. BRYAN, Mr. ADAMS, Mr. ROBB, Mr. SANFORD, Mr. LEVIN, Mr. LAUTENBERG, Mrs. KASSEBAUM, Mr. BINGAMAN, and Mr. REID):

S. 469. A bill to amend the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 to apply the same honoraria provisions to Senators and officers and employees of the Senate as apply to Members of the House of Representatives and other officers and employees of the Government, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KOHL (for himself and Mr. DASCHLE):

S. 470. A bill to amend the Agricultural Act of 1949 to repeal the reduction in the milk price support for calendar year 1992; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCAIN:

S. 471. A bill to protect consumers by regulating certain providers of 900 telephone services; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. SIMPSON, Mr. THURMOND, Mr. COCHRAN, Mr. KASTEN, Mr. BURNS, Mr. D'AMATO, Mr. LUGAR, Mr. MCCAIN, Mr. MURKOWSKI, Mr. ROTH, Mr. SEYMOUR, Mr. STEVENS, and Mr. WARNER):

S. 472. A bill to secure the right of women to be free of sexual harassment and violence, to promote equal opportunity for women, and for other purposes; to the Committee on the Judiciary.

By Mr. BROWN:

S.J. Res. 75. Joint resolution pertaining to U.S. economic sanctions against Iraq; to the Committee on Foreign Relations.

By Mr. DODD (for himself, Mr. CRANSTON, Mr. PELL, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. SIMON, Mr. SANFORD, Mr. MOYNIHAN, Mr. ROBB, Mr. LUGAR, Mrs. KASSEBAUM, Mr. PRESSLER, Mr. MURKOWSKI, Mr. MCCONNELL, Mr. KENNEDY, Mr. BENTSEN, Mr. BOREN, Mr. RIEGLE, and Mr. DECONCINI):

S.J. Res. 76. Joint resolution commending the Peace Corps and the current and former Peace Corps volunteers on the thirtieth anniversary of the establishment of the Peace Corps; considered and passed.

By Mr. DOLE (for himself, Mr. BURNS, Mr. GORE, Mr. MCCAIN, Mr. LOTT, Mr. KASTEN, Mr. WARNER, Mr. CRAIG, Mr. THURMOND, Mr. DOMENICI, Mr. MACK, Mr. COATS, Mr. GRASSLEY, Mr. COHEN, Mr. BREAUX, Mr. ROBB, Mr. WIRTH, Mr. DASCHLE, Mr. NUNN, Mr. FORD, Mr. DANFORTH, Mr. HEINZ, Mr. INOUYE, Mr. HOLLINGS, and Mr. CHAFEE):

S.J. Res. 77. Joint resolution relative to telephone rates and procedures for Operation Desert Storm personnel; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FORD, from the Committee on Rules and Administration:

S. Res. 58. An original resolution to authorize the printing of a collection of the rules of the committees of the Senate; placed on the calendar.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. MITCHELL, and Mr. DOLE):

S. Res. 59. Resolution relative to the death of Representative Silvio O. Conte, of Massachusetts; considered and agreed to.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 60. Resolution to authorize Senate employees to testify and to produce records of the Senate; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL:

S. 454. A bill to provide for a comprehensive health care plan for all Americans, and for other purposes; to the Committee on Finance.

COMPREHENSIVE AMERICAN HEALTH CARE ACT

• Mr. MCCONNELL. Mr. President, while our attention is focused abroad naturally on our brave service men and women serving in Operation Desert Storm, we should not forget that there are needs yet to be met here at home. I rise today in reintroduce the Comprehensive American Health Care Act, a bill which seeks to improve access to the American health care system.

HEALTH CARE: A CHALLENGE FOR THE '90'S

Our system of health care is characterized by contradiction. Although the United States has the highest quality of care available anywhere in the world, many Americans do not have adequate access to—or cannot afford—that high-quality care. The cost of health care has skyrocketed to the point where it is beyond the reach of families, small businesses, and especially those living on a fixed income, like our senior citizens.

The United States spends more on health care than any other nation. We now spend between 11 to 12 percent of our gross national product on health care, and may spend as much as 15 percent of our GNP by the turn of the century. We spend between $500 to $660 billion on health care each year—roughly $2 billion each and every day. Given a national health expenditure of this magnitude, I think it is both fair and appropriate that we question what we are getting for our money.

Although roughly 85 percent of the American population is covered by health insurance, as many as 37 million Americans go without health insurance because they can't afford it. Health care inflation, coupled with regional and societal barriers to access, threatens to further erode the access to care which the majority of Americans now enjoy.

Mr. President, there have been no shortage of proposals to reform America's health care system. More committees, commissions, task forces, and ad hoc groups have been organized around health care than any other issue within my memory. Indeed, there have been nearly as many health care proposals introduced in the Congress as there are Members—and I could not even begin to estimate the number of proposals put forth in the private sector.

Thus, Mr. President, I introduce this bill today with the understanding that, although the health care agenda is crowded, fair and comprehensive health care reform has thus far defied our best efforts. Although my bill will not solve all of the American health care system's problems at a stroke, I respectfully suggest that my proposals address America's most urgent health care problems in a reasonable, appropriate, and yet comprehensive manner.

If we are to be at all effective, we must acknowledge that no one segment of society—particularly not the Federal Government—has either the means or the resources to adequately address health care reform. In addition, we must recognize that the polar extremes of the health care debate—staying the present course on health care, or replacing our hybrid American system with national health care—are simply unworkable and unacceptable. We must combine individual responsibility, business and corporate contributions, as well as the efforts of government at every level, to adequately and effectively address America's health care problems.

OUTLINE OF THE COMPREHENSIVE AMERICAN HEALTH CARE PLAN

Mr. President, the legislation I introduce today addresses what I believe to be America's most urgent health care problems in an appropriate, responsible, and yet comprehensive manner. My bill seeks to improve low- and moderate-income Americans' access to health care by increasing the availability of health insurance and by strengthening our rural health care system. I believe that we must address, in addition, an important component of health care inflation by enacting certain accepted medical malpractice reforms and by promoting preventive health care practices for seniors. Finally, I propose that we recognize the degree to which our society is aging, and take further steps to assist seniors with their long-term and catastrophic health care needs, and to protect seniors from deceptive or confusing insurance practices.

EXPANDING HEALTH CARE ACCESS

To expand health care access for uninsured and underserved Americans, my plan provides a tax credit for health insurance to low- and moderate-income families. Those who qualify would receive a refundable credit of up to $1,750. The amount of the credit received would be reduced by any benefits received under the new supplemental earned income tax credit.

In addition, my plan increases Federal support for rural health care by ending the discrimination against rural hospitals in Medicare, and by revitalizing the National Health Service Corps, which has a long history of encouraging health professionals to work in underserved rural areas.

CONTAINING HEALTH CARE COSTS: MEDICAL MALPRACTICE REFORM

We cannot hope to solve our health care problems unless we tackle its skyrocketing cost. For that reason, my plan offers some needed reforms of the medical liability system.

Liability costs are the fastest growing portion of health care expenses, accounting for $25 billion of the Nation's health bill, by some estimates. Even worse, medical malpractice fears have catastrophically affected rural health care, curtailing prenatal care and delivery in 73 of Kentucky's 120 counties.

The reforms I am proposing—abolishing joint and several liability, requiring anyone who brings a frivolous malpractice suit to pay part of the other side's legal costs, and encouraging alternative dispute resolution—are endorsed by the American Hospital Association and the American College of Nurse-Midwives, among others.

LONG-TERM CARE

Finally, my plan addresses the most difficult problem facing America's seniors: the cost of long-term and catastrophic care. My plan provides a refundable tax credit to pay for long-term care insurance premiums, and re-

stores several of the remaining benefits lost in the repeal of the Medicare Catastrophic Coverage Act.

In addition, my plan would build on protections adopted in last year's reconciliation bill to help protect seniors from deceptive or confusing insurance practices, by requiring the Secretary of Health and Human Services to establish uniform health insurance disclosure standards, enforced by marketplace incentives.

CONCLUSION

Mr. President, there are considerable problems which we must address to improve access to health care—the cost of health care being none the least. We don't need—and cannot afford—grandiose schemes that would require massive tax increases or raise the Federal deficit even higher. And Mr. President, we should not force our recessionary economy—particularly the small business backbone of our economy—to shoulder the cost of health care, or else we will put a lot of companies out of business, and a lot of people out of work.

I firmly believe that the solutions to our problems can be found right here at home without ruining our economy in the balance. All we need is the same American ingenuity and commitment to excellence which has made our health care system—and our Nation—the envy of the world.

Mr. President, I look forward to working with my colleagues in addressing America's health care needs and challenges, and I welcome their interest in my proposals.

Mr. President, I ask unanimous consent that the text of the bill and a summary of its provisions be printed in the RECORD.

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

SUMMARY OF S. 454, THE COMPREHENSIVE AMERICAN HEALTH CARE ACT

I. HEALTH CARE ACCESS FOR UNINSURED AND UNDERSERVED AMERICANS

Health Insurance Tax Credits for Low and Moderate Income Americans.

Rural Health Initiatives.

II. HEALTH CARE COST CONTROL

Medical Malpractice Reform.

Preventative Medicine Initiative.

III. LONG-TERM CARE AND SENIOR HEALTH PROMOTION

Long-Term Care Insurance Tax Credits.

Medicare Benefits Expansion.

Senior Health Insurance Consumer Protection.

I. HEALTH CARE ACCESS FOR UNINSURED AND UNDERSERVED AMERICANS

Health Insurance Tax Credits.

Rural Health Initiatives: Eliminate Medicare Urban/Rural Differential; Expand and Target National Health Service Corps Assistance; Study Barriers to Prenatal Care in Rural Areas; Increase Funding for Area Health Education Centers; and Review Medicare Regulation of Rural Hospitals.

A. Health Insurance Tax Credits

Provides low and moderate income Americans tax-based assistance to purchase health insurance. Amount of credit is determined by income level and actual insurance expenditures. Credit is not available at income levels of $40,000 and above, and is made refundable to reach taxpayers below filing threshold. Health Insurance credit is reduced by the amount of health benefits received through the Supplemental Earned Income Tax Credit.

Income level	Maximum credit
$20,000 and below to $24,999	$1,750
25,000 to $29,999	1,250
30,000 to $34,999	750
35,000 to $39,999	250

B. Rural Health Initiatives

1. Eliminate Medicare Urban/Rural Hospital Differential—Eliminates Medicare Part A reimbursement differential between urban and rural hospitals by FY-92, rather than FY-95 as is scheduled under current law. Harmless to urban hospitals.

2. Expand and Target National Health Service Corps Assistance.—Revitalizes National Health Service Corps program and increases funding for the NHSC loan repayment program. The NHSC program provides scholarships to and repays health practitioners willing to practice in rural and other medically underserved regions. Populations with high percentages of uninsured would be targeted.

3. Study of Prenatal Care in Rural Areas.—Establishes a demonstration project to evaluate availability, accessibility, and use of prenatal care services by pregnant women residing in rural areas.

4. Increase funding for Area Health Education Centers.—Area Health Education Centers provide continuing education and clinical instruction in or near medically underserved areas for physicians, nurse practitioners, and other health care professionals. AHECs provide an important incentive for health care professionals to settle in rural areas.

5. Target Preventative Grants to County Health Departments.—Allows county health departments to apply for grants to provide immunization services, maternal and infant health care, health education, and preventative health services.

6. Review Medicare Regulation of Rural Hospitals.—Requires the Secretary of Health and Human Services to review regulations applying to rural hospitals to determine which requirements could be made less administratively and economically burdensome without diminishing quality.

II. HEALTH CARE COST CONTROL

Medical Malpractice Reform.

Preventative Health Practices Promotion.

A. Medical Malpractice Reform

Provides urgently needed reforms of the medical liability system recommended by the American Hospital Association and the American College of Nurse Midwives. Abolishes joint and several liability, deters frivolous suits by requiring the losing party to pay the attorneys' fee and costs of the prevailing party, and promotes the use of alternative dispute resolution in medical malpractice cases.

B. Preventative Health Practices Promotion

Requires the Secretary of Health and Human Services to develop and distribute to Medicare beneficiaries a summary of recommended health care practices for elderly individuals.

III. LONG-TERM CARE AND SENIOR HEALTH PROMOTION

Long-Term Care Insurance Tax Credits.

Medicare Program Enhancements.

Senior Health Insurance Consumer Protection.

A. Long-Term Care Insurance Tax Credits

Provides senior and other Americans with tax-based assistance to purchase long-term care insurance. Assistance weighted to provide most assistance to seniors, but all taxpayers are eligible to receive the credit, which varies by age and income. The credit is equivalent to the applicable percentage of qualified long-term care insurance premiums, subject to the dollar limitation. Credit is not available at income levels of $40,000 and above, and is made refundable to reach low-income Americans.

Age	Dollar limitation
More than 70	$3,000
More than 60 but less than 70	2,400
More than 50 but less than 60	1,800
More than 40 but less than 50	1,200
40 or less	600

Income	Applicable percentage
$20,000 and below to $24,999	70
25,000 to 29,999	50
30,000 to 34,999	30
35,000 to 39,999	10

B. Medicare Program Enhancements

Restores certain important benefits lost in the repeal of the Medicare Catastrophic Coverage Act. Home Health Care coverage would be expanded to a maximum of 38 consecutive days. Medicare Coverage would be provided for Home Intravenous Drug Therapy Services. In-home respite care would be provided for chronically dependent individuals.

C. Senior Health Insurance Consumer Protection

Requires the Secretary of Health and Human Services to establish a certification system for health insurance for the elderly. Certified policies would be required to meet or exceed the National Association of Insurance Commissioners Model Act Standards. Certified policies would be guaranteed to be renewable at the same premium rate or be adjusted on a class basis. Exclusion of preexisting conditions would be limited. Provides purchasers with a 30-day period to rescind their purchase of a certified policy. Requires the Secretary of Health and Human Services to study health insurance policies for the elderly three years after enactment.

S. 454

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 "Comprehensive American Health Care Act".

TITLE I—HEALTH CARE ACCESS FOR UNINSURED AND MEDICALLY UNDERSERVED INDIVIDUALS

Subtitle A—Tax Credits for Low and Moderate Income Individuals

SEC. 101. CREDIT FOR HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by inserting after section 34 the following new section:

"SEC. 34A. HEALTH INSURANCE EXPENSES.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to—

"(A) the applicable percentage of the qualified health insurance expenses paid by such individual during the taxable year, less

"(B) the amount of the health insurance credit allowable to such individual for such taxable year under section 32.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

"If adjusted income is:	The applicable gross percentage is:
Less than $25,000	70
$25,000 but less than $30,000	50
$30,000 but less than $35,000	30
$35,000 but less than $40,000	10
$40,000 or more	0.

"(b) QUALIFIED HEALTH INSURANCE EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified health insurance expenses' means amounts paid during the taxable year for insurance which constitutes medical care (within the meaning of section 213(d)(1)(C)). For purposes of the preceding sentence, the rules of section 213(d)(6) shall apply.

"(2) DOLLAR LIMIT ON QUALIFIED HEALTH INSURANCE EXPENSES.—The amount of the qualified health insurance expenses paid during any taxable year which may be taken into account under subsection (a)(1) shall not exceed $2,500.

"(3) ELECTION NOT TO TAKE CREDIT.—A taxpayer may elect for any taxable year to have amounts described in paragraph (1) not treated as qualified health insurance expenses.

"(c) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means, with respect to any period, an individual who is not covered during such period by a health plan maintained by an employer of such individual or such individual's spouse.

"(d) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—

"(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual under section 101(b) of the Comprehensive American Health Care Act during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

"(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) MEDICARE-ELIGIBLE INDIVIDUALS.—No expense shall be treated as a qualified health insurance expense if it is an amount paid for insurance for an individual for any period with respect to which such individual is entitled (or, on application without the payment of an additional premium, would be entitled to) benefits under part A of title XVIII of the Social Security Act.

"(2) SUBSIDIZED EXPENSES.—No expense shall be treated as a qualified health insurance expense to the extent—

"(A) such expense is paid, reimbursed, or subsidized (whether by being disregarded for purposes of another program or otherwise) by the Federal Government, a State or local government, or any agency or instrumentality thereof, and

"(B) the payment, reimbursement, or subsidy of such expense is not includible in the gross income of the recipient.

"(3) COORDINATION WITH MINIMUM TAX.—Rules similar to the rules of subsection (h) of section 32 shall apply to any credit to which this section applies.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) ADVANCE PAYMENTS OF CREDIT FOR SOME INDIVIDUALS.—

(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall enter into an agreement with each State to provide for advance payments of the credit provided by section 34A of the Internal Revenue Code of 1986 (as added by this subtitle) to eligible individuals in the form of certificates usable for the purchase of health insurance. The certificates shall be available at such locations as the Secretary determines will ensure the widest distribution.

(2) ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—An individual shall be eligible for advance payments described in paragraph (1) if such individual—

(i) has income for the taxable year which results in a poverty ratio of not more than 1.49, and

(ii) has filed a certificate with the Secretary of the Treasury or the Secretary's delegate described in subparagraph (C).

(B) POVERTY RATIO.—For purposes of subparagraph (A)(i), the poverty ratio for any individual shall be determined by dividing such individual's family income for the taxable year (as determined for purposes of title XIX of the Social Security Act) by the income official poverty line for such year (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(C) CERTIFICATE OF ELIGIBILITY.—A certificate described in this subparagraph is a statement furnished by the individual which—

(i) certifies that the individual will be eligible to receive the credit provided by section 34A of the Internal Revenue Code of 1986 for the taxable year,

(ii) certifies that the poverty ratio of the individual for such year will be not more than 1.49,

(iii) certifies that the individual does not have another certificate with respect to such credit in effect for such year,

(iv) estimates the amount of qualified health insurance expenses (as defined in section 34A(b) of such Code) for such year, and

(v) estimates the amount of health insurance credit under section 32 of such Code allowed for such year.

(c) PROGRAM TO INCREASE PUBLIC AWARENESS.—Not later than the first day of the first calendar year following the date of enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, in consultation with the Secretary of Health and Human Services, shall establish a public awareness program to inform the public of the availability of the credit for health insurance expenses allowed under section 34A of the Internal Revenue Code of 1986 (as added by this subtitle) and the coordination of such credit with the health insurance credit allowed under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures.

(d) COORDINATION WITH DEDUCTIONS FOR HEALTH INSURANCE EXPENSES.—

(1) SELF-EMPLOYED INDIVIDUALS.—Subparagraph (B) of section 162(l)(3) of the Internal Revenue Code of 1986 is amended by inserting "or section 34A" after "section 32".

(2) MEDICAL, DENTAL, ETC., EXPENSES.—Subsection (f) of section 213 of such Code is amended—

(A) by inserting "or section 34A" after "section 32", and

(B) by inserting "OR SECTION 34A" in the heading thereof after "SECTION 32".

(e) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 34 the following new item:

"Sec. 34A. Health insurance expenses.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

Subtitle B—Rural Health Initiatives

SEC. 111. ELIMINATION OF SEPARATE AVERAGE STANDARDIZED AMOUNTS FOR HOSPITALS IN DIFFERENT AREAS.

Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end thereof the following new subsection:

"(j)(1) On or before September 1, 1991, the Secretary and the Prospective Payment Assessment Commission established under subsection (e) (in this subsection referred to as the 'Commission') shall each submit to the Congress a report recommending a methodology that provides for the elimination of the system of determining separate average standardized amounts for subsection (d) hospitals (as defined in subsection (d)(1)(B)) located in large urban, other urban, or rural areas under subsection (d)(2)(D). The methodologies set forth in such reports shall provide for the complete elimination of the average standardized amounts applicable to large urban, other urban, or rural area hospitals for discharges occurring on or after January 1, 1992. Such methodologies may provide for such changes to any of the adjustments, reductions, and special payments otherwise authorized or required by this section as the Secretary or the Commission determines to be necessary and appropriate to carry out the purposes of this subsection. But in no case may the Secretary or the Commission recommend or provide for a methodology that will result in total payments under part A of this title to hospitals at a level less than such hospitals were receiving on October 1, 1991.

"(2) Not later than October 1, 1991, the Secretary shall promulgate interim final regulations to implement the recommendations of the Secretary under paragraph (1) (including any recommended changes in the adjustments, reductions, and special payments otherwise authorized or required by this section).

"(3) If the Congress does not enact legislation after the date of enactment of this subsection and before December 1, 1991, with respect to the average standardized amounts applicable to large urban, other urban, or rural area hospitals, then, notwithstanding any other provision of this section, the average standardized amounts for such hospitals for discharges occurring on or after January 1, 1992, shall be determined in accordance with the interim final regulations promulgated under paragraph (2).

"(4) On or before July 1, 1992, the Secretary and the Commission shall each submit to the

Congress a report specifying the manner in which the average standardized amounts determined under the regulations and which became effective in accordance with paragraph (3) should be adjusted appropriately to reflect differences in the operating costs of providing inpatient hospital services (as defined in subsection (a)(4)) for different categories of subsection (d) hospitals.".

SEC. 112. SCHOLARSHIP AND LOAN REPAYMENT PROGRAM PRIORITIES.

(a) SCHOLARSHIP PROGRAM.—Section 338A(d) of the Public Health Service Act (42 U.S.C. 254l(d)) is amended—

(1) in paragraph (1), by striking "and" at the end thereof;

(2) in paragraph (2)(C), by striking the period and inserting a semicolon; and

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

"(3) to individuals who reside in health manpower shortage areas;

"(4) to disadvantaged individuals and minorities;

"(5) to individuals who attend or plan to attend health professions schools that have records of training graduates who then intend to work in primary care fields and with underserved populations;

"(6) to nurses, nurse midwives, nurse practitioners, and physician assistants to increase access to perinatal care; and

"(7) to physicians who are willing to serve in a Health Manpower Shortage Area that has been identified by the Corps as having difficulties in attracting physicians.".

(b) LOAN REPAYMENT PROGRAM.—Section 338B(d) of the Public Health Service Act (42 U.S.C. 254l-1(d)) is amended—

(1) in paragraph (1), by striking "and" at the end thereof;

(2) in paragraph (2), by striking the period and inserting a semicolon; and

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

"(3) to applications from individuals who are legal residents of health manpower shortage areas or who, at the time of the submission of the application, reside in a health manpower shortage area;

"(4) to applications from disadvantaged individuals and minorities;

"(5) to applications from individuals who have demonstrated an interest in providing primary care service for the underserved through the participation of such individuals in internship and externship programs such as the commissioned officer, student training and extern program, and other programs;

"(6) to applications from nurses, nurse midwives, nurse practitioners, and physicians assistants to increase access to perinatal care and other essential primary care health services; and

"(7) to applications from physicians in the primary care fields of pediatrics, general internal medicine, general practice, and obstetrics and gynecology who are willing to serve in a health manpower shortage area that has been identified by the Corps as having difficulties in attracting such physicians.".

SEC. 113. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENTS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 136 as section 137 and by inserting after section 135 the following new section:

"SEC. 136. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include any qualified loan repayment.

"(b) QUALIFIED LOAN REPAYMENT.—For purposes of this section, the term 'qualified loan repayment' means any payment made on behalf of the taxpayer by the National Health Service Corps Loan Repayment Program under section 338B(g) of the Public Health Service Act.".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 338B(g) of the Public Health Service Act is amended by striking "Federal, State, or local" and inserting "State or local".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 136 and inserting the following:

"Sec. 136. National Health Service Corps loan repayments.

"Sec. 137. Cross references to other Acts.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to payments made under section 338B(g) of the Public Health Service Act after the date of enactment of this Act.

SEC. 114. DEMONSTRATION PROJECT TO EVALUATE AVAILABILITY OF PRENATAL CARE SERVICES IN RURAL AREAS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall from amounts retained by the Secretary under section 502(b)(1)(A) of the Social Security Act (42 U.S.C. 702(b)(1)(A)) as amended by section 6502 of the Omnibus Budget Reconciliation Act of 1989, provide for a demonstration project evaluating the availability, accessibility, and use of prenatal care services by pregnant women residing in rural areas (as defined in section 1886(d)(2)(D) of the Social Security Act).

(b) EFFECTIVE DATES.—(1) The Secretary shall conduct the demonstration project described in subsection (a) within 18 months of the date of enactment of this Act.

(2) The Secretary shall transmit a summary of the demonstration project conducted under subsection (a) to relevant committees of Congress no later than 3 months after the date of completion of such project as provided in paragraph (1).

SEC. 115. INCREASED FUNDING FOR AREA HEALTH EDUCATION CENTERS.

Section 781(h)(1) of the Public Health Service Act (42 U.S.C. 295g-1(h)(1)) is amended by striking "$20,000,000 for each of the fiscal years 1990 and 1991" and inserting "$25,000,000 for each of the fiscal years 1991 and 1992".

SEC. 116. PREVENTIVE HEALTH SERVICES.

Part A of title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended—

(1) in section 1901, by adding at the end thereof the following new subsection:

"(c) Of the amounts appropriated for each fiscal year under subsection (a), the Secretary shall make available not less than $25,000,000 in each such fiscal year to carry out section 1910A."; and

(2) by adding at the end thereof the following new section:

"SEC. 1910A. PREVENTIVE GRANTS FOR COUNTY HEALTH DEPARTMENTS.

"(a) IN GENERAL.—From amounts made available under section 1901(c), the Secretary shall make grants to county health departments to enable such departments to provide preventive health services.

"(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a county health department shall prepare and submit, to the Secretary, an application at such time, in such form, and containing such information as the Secretary shall require.

"(c) USE OF FUNDS.—A county health department shall use amounts provided through a grant received under this section to—

"(1) provide immunization services to control the spread of infectious diseases;

"(2) improve maternal and infant health;

"(3) reduce adolescent pregnancy and improve reproductive health;

"(4) improve health education and the access of individuals to preventive health services; and

"(5) provide such other services as the Secretary determines appropriate.

"(d) DEFINITION.—Not later than 30 days after the date of enactment of this section, the Secretary shall promulgate regulations that define 'county health department' for purposes of this section.".

SEC. 117. REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS.

(a) IN GENERAL.—Within 12 months of the date of enactment of this Act, the Secretary of Health and Human Services shall review the requirements in regulations developed pursuant to section 1861(e) of the Social Security Act to determine which requirements could be made less administratively and economically burdensome for hospitals defined in section 1886(d)(1)(B) of the Social Security Act that are located in a rural area as defined in section 1886(d)(2)(D) of the Social Security Act without diminishing the quality of care provided by such hospitals to individuals entitled to receive benefits under part A of title XVIII of the Social Security Act. Such review shall specifically include standards related to staffing requirements.

(b) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include recommendations on which regulations if any, should be modified with respect to hospitals located outside a metropolitan statistical area as described in subsection (a).

TITLE II—HEALTH CARE COST CONTROL

Subtitle A—Medical Malpractice Reform

SEC. 201. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) there are serious flaws in the civil justice system under which tort claims are filed and resolved, including spiraling costs, unpredictability, impediments to United States competitiveness and inefficient use of the civil justice system;

(2) the cost of litigation has risen at a dramatic rate over the past 25 years and threatens to continue to rise at a similar rate for the foreseeable future;

(3) the rising cost of litigation has a direct and undesirable effect on interstate commerce and international competitiveness, and decreases the availability of products and services in commerce;

(4) excessive litigation has contributed to health care inflation through defensive medical practices and the high cost of medical malpractice insurance accounting for an estimated $25,000,000,000 of the health care bill of the United States in 1987;

(5) the medical malpractice crisis has contributed to the diminution of the availability of health care across the country, particularly in rural areas;

(6) there is a need for reasonable limits on the potential exposure of health care provid-

ers to liability for damages resulting from the provision of medical services, which contributes to the availability of health care, the net output of the economy of the United States, to the American consumer, and the general welfare; and

(7) because of the interstate nature of commerce and the pervasive nature of the involvement of the Federal Government in the provision of health care, no single State can act to address flaws in the civil justice system without threatening to inflict disparate and potentially discriminatory burdens, thereby diminishing the general welfare of the Nation and of the several States.

(b) PURPOSE.—It is the purpose of this subtitle to establish uniform rules of medical malpractice law, to encourage alternate means of dispute resolution, to provide fair and reasonable compensation for accident or injury, and to promote the free flow of commerce and the availability and affordability of liability insurance.

SEC. 202. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this subtitle shall apply to any civil action against any individual based on professional medical malpractice, in any State or Federal court, in which damages are sought for physical injury or for physical or mental pain or suffering or for economic loss.

(b) PREEMPTION.—This subtitle shall preempt and supersede Federal or State law only to the extent such law is inconsistent with this subtitle. Any issue arising under the provisions of this subtitle that is not governed by the provisions of this subtitle shall be governed by applicable State or Federal law.

(c) CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) supersede any Federal law, except the Federal Employees Compensation Act and the Longshoremen's and Harborworkers' Compensation Act;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code, commonly known as the Foreign Sovereign Immunities Act of 1976;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation on the ground of inconvenient forum.

(d) ATTORNEY'S FEES.—

(1) IN GENERAL.—Subject to paragraph (3), and except as provided in paragraph (2), in any action brought pursuant to the provisions of this subtitle, the court shall provide for an award of costs and reasonable attorney's fees to be paid to the prevailing party by the other parties to such action.

(2) EXCEPTION.—Paragraph (1) shall not apply in any case in which the losing party was qualified for assistance by the Legal Services Corporation, in the State in which such party resides, pursuant to the limits and guidelines described in part 1611 of title 45, Code of Federal Regulations.

(3) LIMITATION.—The amount of attorney fees ordered to be paid to the prevailing party under this subsection shall be limited to either—

(A) a percentage of the prevailing party's costs and fees equal to the percentage of any damage award such losing party had agreed to pay as a contingency fee to the attorney of such party if such party had prevailed, if the attorney for such losing party was to receive compensation based on a percentage of the recovery; or

(B) an amount that does not exceed the amount of attorney's fees such party is paying the attorney of such party in such matter, if the attorney for such losing party was not receiving compensation based on a percentage of the recovery.

SEC. 203. JOINT AND SEVERAL LIABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), joint and several liability shall not be applied to a civil liability action that is subject to this subtitle. A person found liable for damages in any such action may—

(1) be found liable, if at all, only for those damages directly attributable to the pro rata share of fault or responsibility of such person for the injury; and

(2) not be found liable for damages attributable to the pro rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action) for the injury, including any person bringing the action.

(b) CONCERTED ACTION.—

(1) APPLICATION.—This section shall not apply as between persons acting in concert where the concerted action proximately caused the injury for which one or more persons are found liable for damages.

(2) DEFINITION.—As used in this section, the terms "concerted action" and "acting in concert" mean the participation in joint conduct by two or more persons who agree to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct.

SEC. 204. ALTERNATIVE DISPUTE RESOLUTION.

(a) POLICY.—Because the traditional litigation process is not always suited to the timely, efficient, and inexpensive resolution of civil actions, it is the policy of the United States to encourage the creation and use of alternative dispute resolution techniques, and to promote the expeditious resolution of such actions.

(b) EXISTENCE OF OPTIONS.—In any action to which this subtitle applies, each attorney who has made an appearance in the case and who represents one or more of the parties to such action shall, with respect to each party separately represented, advise the party of the existence and availability of alternative dispute resolution options, including extrajudicial proceedings such as minitrials, third-party mediation, court supervised arbitration, and summary jury trial proceedings.

(c) CERTIFICATION.—Each attorney described in subsection (b) shall, at the time of the filing of the complaint or a responsive pleading, file notice with the court certifying that the attorney has so advised the client or clients of the attorney as required under subsection (b), and indicating whether such client will agree to one or more of the alternative dispute resolution techniques.

(d) ORDER GOVERNING FURTHER PROCEEDINGS.—If all parties to an action agree to proceed with one or more alternative dispute resolution proceedings, the court shall issue an appropriate order governing the conduct of such proceedings. The issuance of an order governing such further proceedings shall constitute a waiver, by each party subject to the order, of the right to proceed further in court.

SEC. 205. DEFINITIONS.

(a) DEFINITIONS.—As used in this subtitle:

(1) CLAIMANT.—The term "claimant" means any person who brings a civil action under this subtitle, and any person on whose behalf such action is brought, and, if such an action is brought through or on behalf of an estate, such term includes the decedent of the claimant, or, if it is brought through or on behalf of a minor or incompetent, such term includes the parent or guardian of the claimant.

(2) HARM.—The term "harm" means any harm recognized under the law of the State in which the civil action is maintained.

(3) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 206. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle shall become effective on the date of enactment of this Act, and shall apply to all civil actions filed on or after such date, including any civil action in which the harm or the conduct complained of occurred before such effective date.

(b) APPLICABLE TIME PERIOD.—If any such provision of this subtitle would shorten the period during which a person would otherwise be exposed to liability, the plaintiff may, notwithstanding the otherwise applicable time period, bring any civil action pursuant to this subtitle not later than within 1 year after the effective date of this subtitle.

SEC. 207. SEVERABILITY.

If any provision of this subtitle or the application of any such provision to any person or circumstance is held to be unconstitutional, the remainder of this subtitle and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Subtitle B—Preventive Health Practices Promotion

SEC. 211. DISTRIBUTION OF INFORMATION ON RECOMMENDED PREVENTIVE HEALTH PRACTICES.

(a) IN GENERAL.—Section 1804 of the Social Security Act (42 U.S.C. 1396b-2) is amended—

(1) in the heading, by inserting "AND DISTRIBUTION OF PREVENTIVE HEALTH INFORMATION" after "MEDICARE BENEFITS";

(2) by inserting "(a)" after "SEC. 1804."; and

(3) by adding at the end the following new subsection:

"(b)(1) The Secretary shall develop (and, from time to time, shall revise) a summary of recommended preventive health care practices for elderly individuals entitled to benefits under this title.

"(2) The summary shall be developed in consultation with national physician, consumer, and other health-related groups and shall be based on recommendations of any appropriate task force or similar group established by the Secretary.

"(3) The Secretary shall provide for the distribution of—

"(A) the summary developed under paragraph (1) to each individual at the time of the individual's first becoming eligible for benefits under part A under section 226(a) or section 1818, as part of other materials sent to such an individual at such a time, and

"(B) the summary developed under paragraph (1) to individuals entitled to benefits under this title in conjunction with general mailings sent under this title to such individuals.".

(b) DEVELOPMENT OF SUMMARY AND FORM.—The Secretary of Health and Human Services

shall initially develop the summary described in section 1804(b) of the Social Security Act (as added by subsection (a)) not later than April 1, 1992, and shall first provide for the distribution of such summaries by not later than October 1, 1992.

TITLE III—LONG-TERM CARE AND SENIOR HEALTH PROMOTION

Subtitle A—Long-Term Care Insurance Promotion

SEC. 301. TREATMENT OF LONG-TERM CARE INSURANCE OR PLANS.

(a) GENERAL RULE.—Chapter 79 of the Internal Revenue Code of 1986 (relating to definitions) is amended by inserting after section 7702 the following new section:

"SEC. 7702A. TREATMENT OF LONG-TERM CARE INSURANCE OR PLANS.

"(a) GENERAL RULE.—For purposes of this title—

"(1) a long-term care insurance contract shall be treated as a health insurance contract,

"(2) amounts received under such a contract with respect to qualified long-term care services shall be treated as amounts received for personal injuries or sickness, and

"(3) any plan of an employer providing qualified long-term care services shall be treated as an accident or health plan.

"(b) LONG-TERM CARE INSURANCE CONTRACT.—For purposes of this title, the term 'long-term care insurance contract' means any insurance contract if—

"(1) the only insurance protection provided under such contract is coverage of qualified long-term care services,

"(2) such contract does not cover expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,

"(3) such contract is guaranteed renewable,

"(4) such contract does not have any surrender value, and

"(5) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits.

"(c) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, preventive, therapeutic, and rehabilitative services, and maintenance or personal care services, which—

"(A) are required by a chronically ill individual in a qualified facility, and

"(B) are provided pursuant to a plan of care prescribed by a physician.

"(2) CHRONICALLY ILL INDIVIDUAL.—

"(A) IN GENERAL.—The term 'chronically ill individual' means any individual who has been certified by a physician as—

"(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living (as defined in subparagraph (B)), or

"(ii) having a similar level of disability due to cognitive impairment.

"(B) ACTIVITIES OF DAILY LIVING.—For purposes of subparagraph (A), each of the following is an activity of daily living:

"(i) BATHING.—The overall complex behavior of getting water and cleansing the whole body, including turning on the water for a bath, shower, or sponge bath, getting to, in, and out of a tub or shower, and washing and drying oneself.

"(ii) DRESSING.—The overall complex behavior of getting clothes from closets and drawers and then getting dressed.

"(iii) TOILETING.—The act of going to the toilet room for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes.

"(iv) TRANSFER.—The process of getting in and out of bed or in and out of a chair or wheelchair.

"(v) EATING.—The process of getting food from a plate or its equivalent into the mouth.

"(3) QUALIFIED FACILITY.—The term 'qualified facility' means—

"(A) a nursing, rehabilitative, hospice, or adult day care facility, including a hospital, retirement home, nursing home, skilled nursing facility, intermediate care facility, or similar institution, licensed under State law, or

"(B) an individual's home if a physician, certifies that without home care the individual would have to be cared for in a facility described in subparagraph (A), except that such home shall be treated as a qualified facility only to the extent the cost of such services is not greater than the cost of similar services provided in a facility described in subparagraph (A).

"(4) MAINTENANCE OR PERSONAL CARE SERVICES.—The term 'maintenance or personal care services' means any service the primary purpose of which is to provide needed assistance with any of the activities of daily living described in paragraph (2)(B).

"(5) PHYSICIAN.—The term 'physician' has the meaning given to such term by section 213(d)(4).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 79 of such Code is amended by inserting after the item relating to section 7702 the following new item:

"Sec. 7702A. Treatment of long-term care insurance or plans.".

SEC. 302. QUALIFIED LONG-TERM SERVICES TREATED AS MEDICAL CARE.

(a) GENERAL RULE.—Paragraph (1) of section 213(d) of the Internal Revenue Code of 1986 (defining medical care) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified long-term care services (as defined in section 7702A(c)), or".

(b) TECHNICAL AMENDMENT.—

(1) Subparagraph (D) of section 213(d)(1) of such Code (as amended by subsection (a)) is amended by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)".

(2) Paragraph (6) of section 213(d) of such Code is amended—

(A) by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)", and

(B) by striking "paragraph (1)(C)" in subparagraph (A) and inserting "paragraph (1)(D)".

(3) Paragraph (7) of section 213(d) of such Code is amended by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)".

SEC. 303. EMPLOYER PAYMENTS FOR LONG-TERM CARE INSURANCE NOT TREATED AS DEFERRED COMPENSATION.

(a) GENERAL RULE.—Subparagraph (B) of section 404(b)(2) of the Internal Revenue Code of 1986 (relating to plans providing certain deferred benefits) is amended to read as follows:

"(B) EXCEPTIONS.—

"(i) WELFARE BENEFIT FUNDS.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

"(ii) PREMIUMS FOR LONG-TERM INSURANCE CONTRACTS.—

"(I) IN GENERAL.—Except as provided in subclause (II), subparagraph (A) shall not apply to any amount paid or incurred for any long-term care insurance contract.

"(II) EXCEPTION.—Subclause (I) shall not apply to any amount paid or incurred by the taxpayer during any taxable year to the extent such amount exceeds the premium which would have been payable under the contract for such year under a level premium structure.".

(b) CAFETERIA PLANS.—Paragraph (2) of section 125(c) of such Code (relating to deferred compensation plans excluded) is amended by adding at the end thereof the following new subparagraph:

"(D) EXCEPTION FOR LONG-TERM CARE INSURANCE CONTRACTS.—For purposes of subparagraph (A), amounts paid or incurred for any long-term care insurance contract shall not be treated as deferred compensation to the extent section 404(b)(2)(A) does not apply to such amounts by reason of section 404(b)(2)(B)(ii).".

SEC. 304. LONG-TERM CARE INSURANCE TAX CREDIT.

(a) GENERAL RULE.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits), as amended by section 101, is amended by redesignating section 35 as section 36 and by inserting after section 34A the following new section:

"SEC. 35. LONG-TERM CARE INSURANCE CREDIT.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to applicable percentage of the qualified long-term care premiums paid during such taxable year.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a)—

"If adjusted gross income is:	The applicable percentage is:
Less than $25,000	70
$25,000 but less than $30,000	50
$30,000 but less than $35,000	30
$35,000 but less than $40,000	10
$40,000 or more	0.

"(c) DOLLAR LIMITATION ON AMOUNT DEDUCTIBLE.—

"(1) IN GENERAL.—The amount of the qualified long-term care premiums taken to account under subsection (a) for any taxable year shall not exceed the limitation determined under the following table:

"In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	$600
More than 40 but not more than 50	1,200
More than 50 but not more than 60	1,800
More than 60 but not more than 70	2,400
More than 70	3,000.

In the case of a joint return, the limitation of this paragraph shall be applied separately with respect to each spouse.

"(2) INDEXING.—

"(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1992, each dollar amount contained in paragraph (1) shall be increased by the medical care cost adjustment for such taxable year. If any

increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

"(B) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any taxable year is the percentage (if any) by which—

"(i) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the calendar year preceding the calendar year in which the taxable year begins, exceeds

"(ii) such component for August of 1991.

"(d) QUALIFIED LONG-TERM CARE PREMIUMS.—For purposes of this section, the term 'qualified long-term care premiums' means the amount paid by the taxpayer during the taxable year for any long-term care insurance contract covering the taxpayer, but only to the extent the amount so paid does not exceed the premiums which would have been payable under the contract for such taxable year under a level premium structure.

"(e) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—

"(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual under section 304(b) of the Comprehensive American Health Care Act during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

"(2) Reconciliation of payments advanced and credit allowed.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

"(f) COORDINATION WITH MINIMUM TAX.—Rules similar to the rules of subsection (h) of section 32 shall apply to any credit to which this section applies.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) ADVANCE PAYMENTS OF CREDIT FOR SOME INDIVIDUALS.—

(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall enter into an agreement with each State to provide for advance payments of the credit provided by section 35 of the Internal Revenue Code of 1986 (as added by this subtitle) to eligible individuals in the form of certificates usable for the purchase of long-term care insurance. The certificates shall be available at such locations as the Secretary determines will ensure the widest distribution.

(2) ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—An individual shall be eligible for advance payments described in paragraph (1) if such individual—

(i) has income for the taxable year which results in a poverty ratio of not more than 1.49, and

(ii) has filed a certificate with the Secretary of the Treasury described in subparagraph (C).

(B) POVERTY RATIO.—For purposes of subparagraph (A)(i), the poverty ratio for any individual shall be determined by dividing such individual's family income for the taxable year (as determined for purposes of title XIX of the Social Security Act) by the income official poverty line for such year (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(C) CERTIFICATE OF ELIGIBILITY.—A certificate described in this subparagraph is a statement furnished by the individual which—

(i) certifies that the individual will be eligible to receive the credit provided by section 35 of the Internal Revenue Code of 1986 for the taxable year,

(ii) certifies that the poverty ratio of the individual for such year will be not more than 1.49,

(iii) certifies that the individual does not have another certificate with respect to such credit in effect for such year, and

(iv) estimates the amount of qualified long-term care premiums (as defined in section 35(d) of such Code) for such year.

(c) PROGRAM TO INCREASE PUBLIC AWARENESS.—Not later than the first day of the first calendar year following the date of enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, in consultation with the Secretary of Health and Human Services, shall establish a public awareness program to inform the public of the availability of the credit for long-term care insurance expenses allowed under section 35 of the Internal Revenue Code of 1986 (as added by this subtitle). Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures.

(d) CLERICAL AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 35 and inserting the following:

"Sec. 35. Long-term care insurance credit.

"Sec. 36. Overpayments of tax.".

SEC. 305. EXEMPTION FROM 10-PERCENT ADDITIONAL TAX; CERTAIN EXCHANGES NOT TAXABLE.

(a) EXEMPTION FROM ADDITIONAL TAX.—

(1) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to additional tax not to apply to certain distributions) is amended by adding at the end thereof the following new subparagraph:

"(E) DISTRIBUTIONS USED TO PAY FOR LONG-TERM CARE INSURANCE CONTRACTS.—Any distribution made on or after the date on which the employee attains age 50 to the extent such distribution is used, not later than the day 60 days after the day on which such distribution is made, to pay premiums on a long-term care insurance contract for such employee.".

(2) TECHNICAL AMENDMENT.—Subparagraph (B) of section 72(t)(2) of such Code is amended—

(A) by striking "subparagraph (A) or (C)" and inserting "subparagraph (A), (C), or (E)",

(B) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any premiums paid on a long-term care insurance contract shall not be treated as paid for medical care to the extent such premiums are taken into account under subparagraph (E).".

(b) CERTAIN EXCHANGES NOT TAXABLE.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance contracts) is amended by striking the period at the end of paragraph (3) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(4) in the case of an individual who has attained age 50, a contract of life insurance or an endowment or annuity contract for a long-term care insurance contract.".

SEC. 306. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after the date of enactment of this Act.

Subtitle B—Medicare Benefit Improvements

SEC. 311. IN-HOME RESPITE CARE FOR CERTAIN CHRONICALLY DEPENDENT INDIVIDUALS.

(a) IN GENERAL.—Section 1832(a) of the Social Security Act (42 U.S.C. 1395k(a)) is amended—

(1) in paragraph (2)(A)—

(A) by inserting "(i)" after "(A)", and

(B) by inserting before the semicolon at the end the following: ", and (ii) in-home respite care for a chronically dependent individual for up to 80 hours in any 12-month period described in section 1861(kk)(4), but not to exceed 80 hours in any calendar year"; and

(2) by adding at the end the following new sentence:

"In the case of in-home respite care (described in paragraph (2)(A)(ii)) provided to a chronically dependent individual on any day, such care provided for 3 hours or less on the day shall be counted (for purposes of the limitation in such paragraph) as 3 hours of such care.".

(b) IN-HOME RESPITE CARE FOR CHRONICALLY DEPENDENT INDIVIDUAL DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting after subsection (jj) the following new subsection:

"In-Home Respite Care; Chronically Dependent Individual

"(kk)(1) The term 'in-home respite care' means the following items and services furnished, under the supervision of a registered professional nurse, to a chronically dependent individual (as defined in paragraph (2)) during the period described in paragraph (4) by a home health agency or by others under arrangements with them made by such agency in a place of residence used as such individual's home:

"(A) Services of a homemaker/home health aide (who has successfully completed a training program approved by the Secretary).

"(B) Personal care services.

"(C) Nursing care provided by a licensed professional nurse.

"(2) The term 'chronically dependent individual' means an individual who has been certified by a physician as—

"(A) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living (as defined in paragraph (3)), or

"(B) having a similar level of disability due to cognitive impairment.

"(3) The 'activities of daily living', referred to in paragraph (2), are as follows:

"(i) Eating.

"(ii) Bathing.

"(iii) Dressing.

"(iv) Toileting.

"(v) Transferring in and out of a bed or in and out of a chair.

"(4)(A) The 12-month period described in this paragraph is the 1-year period beginning on the date that the Secretary determines that a chronically dependent individual has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to the part B limit (as determined under paragraph (5)(B)) for the year.

"(B) In the case of an individual who qualifies under subparagraph (A) within 12 months after previously qualifying, the subsequent qualification shall begin a new 12-month period under this paragraph.

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under part B if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1833(i)(2), 1834(c)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B limit for 1992 is $1,780. The part B limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that only 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1992), the Secretary shall promulgate the part B limit under this subparagraph for the succeeding year.".

(c) PAYMENT.—Section 1833(a) of such Act (42 U.S.C. 1395l(a)) is amended—

(1) in paragraph (2), by inserting "(A)(ii)," after "subparagraphs" the first place it appears,

(2) in paragraph (3), by striking "(D)" and inserting "(A)(ii), (D),", and

(3) by adding at the end the following:

"Payment for in-home respite care for chronically dependent individuals shall be paid on the basis of an hour of such care provided. In applying paragraph (2) in the case of an organization receiving payment under clause (A) of paragraph (1) or under a reasonable cost reimbursement contract under section 1876 and providing coverage of in-home respite care, the Secretary shall provide for an appropriate adjustment in the payment amounts otherwise made to reflect the aggregate increase in payments that would otherwise be made with respect to enrollees in the organization if payments were made other than under such clause or such a contract if payments were to be made on an individual-by-individual basis.".

(d) CERTIFICATION.—Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by striking the period at the end and inserting "; and"; and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) in the case of in-home respite care provided to a chronically dependent individual during a 12-month period, the individual was a chronically dependent individual during the 3-month period immediately preceding the beginning of the 12-month period.".

(e) STANDARDS FOR UTILIZATION.—

(1) Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking "and" at the end,

(ii) in subparagraph (F), by striking the semicolon at the end and inserting ", and", and

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

"(G) in the case of in-home respite care for chronically dependent individuals, which is not reasonable and necessary to assure the health and condition of the individual is maintained in the individual's noninstitutional residence;"; and

(B) in paragraph (6), by inserting "and except, in the case of in-home respite care, as is otherwise permitted under paragraph (1)(G)" after "paragraph (1)(C)".

(2) The Secretary of Health and Human Services shall take appropriate efforts to assure the quality, and provide for appropriate utilization of, in-home respite care for chronically dependent individuals under the amendments made by this section.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 1992.

SEC. 312. COVERAGE OF HOME INTRAVENOUS DRUG THERAPY SERVICES.

(a) IN GENERAL.—Section 1832(a)(2)(A) of the Social Security Act (42 U.S.C. 1395k(a)(2)(A)), as amended by section 311(a) of this Act, is further amended—

(1) by striking ", and (ii)" and inserting ", (ii)"; and

(2) by striking "calendar year" before the semicolon and inserting ", calendar year, and (iii) home intravenous drug therapy services".

(b) HOME INTRAVENOUS DRUG THERAPY SERVICES DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x), as amended by section 311(b) of this Act, is further amended by adding at the end the following new subsection:

"Home Intravenous Drug Therapy Services

"(ll)(1) The term 'home intravenous drug therapy services' means the items and services described in paragraph (2) furnished to an individual who is under the care of a physician—

"(A) in a place of residence used as such individual's home;

"(B) by a qualified home intravenous drug therapy provider (as defined in paragraph (4)) or by another person under arrangements with such person made by such provider; and

"(C) under a plan established and periodically reviewed by a physician.

"(2) The items and services described in this paragraph are such nursing, pharmacy, and related services and products (including pharmaceutical products, medical supplies, intravenous fluids, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered drug regimen through use of a covered home intravenous drug.

"(3)(A) The term 'covered home intravenous drug' means an approved drug dispensed to an individual that the Secretary of Health and Human Services has determined can generally be administered safely and effectively in a home setting.

"(B) Not later than January 1, 1992, and periodically thereafter, the Secretary shall publish a list of covered home intravenous drugs that may be used in conjunction with the provision of home intravenous drug therapy services under this title.

"(4) The term 'qualified home intravenous drug therapy provider' means any entity that the Secretary determines meets the following requirements:

"(i) The entity is capable of providing or arranging for the items and services described in paragraph (2) of this subsection and covered home intravenous drugs.

"(ii) The entity maintains clinical records for each patient.

"(iii) The entity adheres to written protocols and policies with respect to the provision of items and services.

"(iv) The entity makes services available, as needed, 7 days a week on a 24-hour basis.

"(v) The entity coordinates all services provided to a patient with the physician of such patient.

"(vi) The entity conducts a quality assessment and assurance program, including a drug regimen review and the coordination of patient care.

"(vii) The entity assures that only trained personnel provide—

"(A) covered home intravenous drugs; and

"(B) any other service for which training is required to safely provide the service.

"(viii) The entity assumes responsibility for the quality of services provided by another person under arrangements with a State agency (or the appropriate agency or department of a political subdivision of a State) or the entity.

"(ix) In the case where the State or a political subdivision of the State in which the entity operates has a licensing program applicable to such entity, such entity—

"(A) is licensed pursuant to applicable laws; or

"(B) has been approved by the State agency or department (or the appropriate agency or department of the political subdivision of the State) responsible for conducting such licensing program as meeting the standards for licensing under such program.

"(x) The entity meets such other requirements as the Secretary may determine are necessary to assure the safe and effective provision of home intravenous drug therapy services and the efficient administration of such services under this title.".

(c) PAYMENT.—

(1) IN GENERAL.—Part B of title XVIII of such Act (42 U.S.C. 1395j et seq.) is amended—

(A) in section 1833—

(i) in paragraph (2) of subsection (a)—

(I) in subparagraph (D), by striking "and" at the end of the subparagraph;

(II) in subparagraph (E), by striking the semicolon and inserting "; and"; and

(III) by adding at the end of the paragraph the following new subparagraph:

"(F) with respect to home intravenous drug therapy services, the amounts described in section 1834(d)(1);"; and

(ii) in subsection (b) of such section, by striking "services, (3)" and inserting "services and home intravenous drug therapy services, (3)"; and

(B) by adding at the end of section 1834, the following new subsection:

"(d) HOME INTRAVENOUS DRUG THERAPY SERVICES.—

"(1) IN GENERAL.—With respect to home intravenous drug therapy services, payment under this part shall be made in an amount equal to the lesser of the actual charges for such services or the fee determined under the fee schedule established under paragraph (2).

"(2) ESTABLISHMENT OF FEE SCHEDULE.—Not later than January 1, 1992, and annually thereafter, the Secretary shall establish by regulation, with respect to each calendar year, a fee schedule for home intravenous drug therapy services for which payment is made under this part. Each fee schedule established under this subsection shall be on a illness-specific basis.".

(d) CERTIFICATION.—

(1) IN GENERAL.—Section 1835(a)(2) of such Act (42 U.S.C. 1395n(a)(2)), as amended by section 311(d) of this Act, is further amended—

(A) by striking "and" at the end of subparagraph (F);

(B) by inserting "and" at the end of subparagraph (G); and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) in the case of home intravenous drug therapy services—

"(i) such services are or were required because the individual needed such services for the administration of a covered home intravenous drug;

"(ii) a plan for furnishing such services has been established and is reviewed periodically by a physician;

"(iii) such services are or were furnished while the individual is or was under the care of a physician;

"(iv) such services are administered in a place or residence used as the home of such individual; and

"(v) with respect to such services initiated before January 1, 1994, such services have been reviewed and approved by a utilization and peer review organization under section 1154(a)(16) before the date such services were initiated (or, in the case of services initiated on an outpatient basis, within 1 working day (as used in section 1154) of the date of initiation of the services, except in exceptional circumstances, as determined by the Secretary).".

(2) PRIOR APPROVAL REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320-c3(a)), is amended by adding at the end the following new paragraph:

"(16) The organization shall conduct a review described in paragraph (1) with respect to home intravenous drug therapy services (as defined in section 1861(ll)(1)) initiated before January 1, 1994, within 1 working day of the date of the receipt of a request for such review. The Secretary shall establish criteria to be used by the organization in conducting a review of the appropriateness of home intravenous drug therapy services pursuant to this paragraph.".

(e) CERTIFICATION OF HOME INTRAVENOUS DRUG THERAPY PROVIDERS; INTERMEDIATE SANCTIONS FOR NONCOMPLIANCE.—

(1) TREATMENT AS PROVIDER OF SERVICES.—Section 1861(u) of such Act (42 U.S.C. 1395x(u)) is amended by inserting "qualified home intravenous drug therapy provider," after "hospice program,".

(2) CONSULTATION WITH STATE AGENCIES AND OTHER ORGANIZATIONS.—Section 1863 of such Act (42 U.S.C. 1395z), is amended by striking "and (dd)(2)" and inserting "(dd)(2), and (ll)(4)".

(3) USE OF STATE AGENCIES IN DETERMINING COMPLIANCE.—Section 1864(a) of such Act (42 U.S.C. 1395aa(a)), as amended by section 4163(c)(2) of the Omnibus Budget Reconciliation Act of 1990, is amended—

(A) in the first sentence, by inserting "or a qualified home intravenous drug therapy provider," after "hospice program", and

(B) in the second sentence, by striking "or hospice program" and inserting "hospice program, or qualified home intravenous drug therapy provider".

(4) APPLICATION OF INTERMEDIATE SANCTIONS.—Section 1846 of such Act (42 U.S.C. 1395w-2), as amended by section 4154(e)(2) of the Ominibus Budget Reconciliation Act of 1990, is amended—

(A) in the heading, by adding at the end "AND FOR QUALIFIED HOME INTRAVENOUS DRUG THERAPY PROVIDERS";

(B) in subsection (a), by inserting "or that a qualified home intravenous drug therapy provider that is certified for participation under this title no longer substantially meets the requirements described in clauses (i) through (x) of section 1861(ll)(4)" after "under this part"; and

(C) in subsection (b)(2)(A)(iv), by inserting "or home intravenous drug therapy service" after "clinical diagnostic laboratory tests".

(f) USE OF REGIONAL INTERMEDIARIES IN ADMINISTRATION OF BENEFIT.—Section 1816 of such Act (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

"(k) With respect to carrying out functions relating to payment for home intravenous drug therapy services, the Secretary may enter into contracts with agencies or organizations under this section to perform such functions on a regional basis.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 1992.

SEC. 313. EXTENDING HOME HEALTH SERVICES.

(a) IN GENERAL.—Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) is amended by adding at the end the following new sentence: "For purposes of paragraphs (1) and (4) and sections 1814(a)(2)(C) and 1835(a)(2)(A), nursing care and home health aide services shall be considered to be provided or needed on an 'intermittent' basis if they are provided or needed less than 7 days each week and, in the case they are provided or needed for 7 days each week, if they are provided or needed for a period of up to 38 consecutive days.".

(b) PAYMENT UNDER PART B.—Section 1833(d) of such Act (42 U.S.C. 1395l(d)) is amended—

(1) by striking "(d) No payment" and inserting "(d)(1) Except as provided in paragraph (2), no payment"; and

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

"(2) In the case of home health services furnished to an individual enrolled under this part for which payment is made only as a result of the application of the last sentence of section 1861(m), payment shall be made under this part.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished in cases of initial periods of home health services beginning on or after January 1, 1992.

Subtitle C—Senior Health Insurance Consumer Protection

SEC. 321. CERTIFICATION OF HEALTH INSURANCE POLICIES FOR THE ELDERLY.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall no later than 90 days after the date of enactment of this Act establish a procedure whereby health insurance policies for the elderly may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (b). Such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to verify independently the accuracy of such notarized statement. Where the Secretary determines such policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may require) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(b) CERTIFICATION AND REQUIREMENTS.—The Secretary shall certify under this section any health insurance policies for the elderly, or continue certification of such a policy, only if he or she finds that such policy—

(1) meets or exceeds the National Association of Insurance Commissioners Model Act Standards;

(2) is guaranteed to be renewable on the basis of the same premium rate (or, if a different rate, a rate that is adjusted on a class basis);

(3) limits the exclusion of preexisting conditions in accordance with regulations prescribed by the Secretary;

(4) allows purchasers 30 days to rescind their purchase of the policy;

(5) provides that policies of such health insurance be written in simplified language which can be understood by purchasers, as specified in regulations prescribed by the Secretary; and

(6) meets or exceeds such other requirements as the Secretary (in consultation with State commissioners or superintendents of insurance) shall by regulation prescribe.

(c) STUDY AND REPORT.—The Secretary shall 3 years after the date of enactment of this Act conduct a study and issue a report to Congress on health insurance policies for the elderly. Such study and report shall be conducted and issued no later than 6 months after the 3-year period commencing after the date of enactment of this Act.•

By Mr. MITCHELL (for himself, Mr. CHAFEE, and Mr. LAUTENBERG):

S. 455. A bill to authorize a national program to reduce the threat to human health posed by exposure to contaminants in the air indoors; to the Committee on Environment and Public Works.

INDOOR AIR QUALITY ACT OF 1991

Mr. MITCHELL. Mr. President, today I am reintroducing legislation to address the significant threats to human health posed by exposure to contaminants in the air indoors.

This legislation, titled the "Indoor Air Quality Act," was passed by the Senate in the last Congress. Comparable legislation was introduced in the House by Representative KENNEDY but did not reach the House floor for consideration.

I am very pleased that Senator CHAFEE, the ranking Republican member of the Environment and Public Works Committee, and Senator LAUTENBERG, the chairman of the subcommittee with jurisdiction over this bill, have joined me in introducing this important legislation. With their help, and the help of the many other Senators who have worked on and supported this legislation, I am confident that we will be able to enact indoor air legislation in this Congress.

Most Americans spend up to 90 percent of the day indoors and have a significant exposure to contaminants in the air in homes, schools, workplaces, and other buildings.

Indoor air contaminants include radon, asbestos, volatile organic chemicals, combustion by-products, environmental tobacco smoke, biological contaminants, and respirable particles.

There is growing evidence that exposure to contaminants in the air indoors is a deadly serious problem.

The Environmental Protection Agency submitted a four-volume report to Congress in August 1989 describing the indoor air quality problem which concludes that, while additional research is needed—

Indoor air pollution represents a major portion of the public's exposure to air pollution and may pose serious acute and chronic health risks. This evidence warrants an expanded effort to characterize and mitigate this exposure.

The report further notes—

The information available suggests that exposure to indoor air pollutants poses a significant health threat to the domestic population.

The foundation for these conclusions is a series of EPA research projects which, taken together, offer compelling documentation of the serious health threats posed by indoor air contaminants.

In June 1987, the EPA published results of a major, multi-year research effort addressing total exposure to air pollutants. The report states—

The major finding of this study is the observation that personal and indoor exposures to these toxic and carcinogenic chemicals are nearly always greater—often much greater—than outdoor concentrations. We are led to the conclusion that indoor air in the home and at work far outweighs outdoor air as a route of exposure to these chemicals.

The EPA completed a major study of indoor air quality in public buildings in September 1988. The report from this study concluded—

VOCs (volatile organic chemicals) are ubiquitous indoors. About 500 different chemicals were identified in just four buildings * * * Almost every pollutant was at higher levels indoors than out.

In December of 1988, the EPA published the results of studies of environmental priority setting in three regions of the country. The report concludes—

Risk associated within most environmental problems does not differ much across the (geographic) areas studied. For example, indoor air pollution consistently causes greater health risks than hazardous waste sites whether one is concerned with New England, the Middle Atlantic region, or the Pacific Northwest. Such consistent findings should play an important role in setting national environmental priorities.

Some of the health effects of exposure to indoor air contaminants include lung cancer, reduced heart function, developmental effects, mutagenicity, respiratory illness, and skin and eye irritation.

A single indoor air contaminant, radon gas, is estimated by the EPA to cause up to 16,000 lung cancer deaths each year. The EPA report to Congress cites studies estimating that between 1,000 and 5,000 lung cancer deaths each year are due to indoor exposure to 6 specific volatile organic chemicals. The report also cites studies estimating an additional 2,500 to 5,200 deaths each year from exposure to environmental tobacco smoke.

Illnesses caused by indoor air contaminants take a toll in death, suffering, and discomfort. These illnesses, however, also have a cost to society in the form of increased medical expenses, increased sick leave, and declines in worker productivity.

The EPA report to Congress provides a detailed review of the health effects of indoor air contaminants. It places the direct medical costs associated with only a select group of contaminants at over $1 billion a year.

When the costs of increased sick leave and reduced productivity associated with these illnesses are considered, costs to society of indoor air pollution climb even higher. The EPA report provides a conservative estimate of lost productivity costs at between $4.4 and $5.4 billion a year.

In summarizing the overall costs of indoor air pollution, the EPA report concludes—

Many costs of indoor air pollution have not been calculated. Nevertheless, because of the large number of people and buildings potentially affected, as well as the wide range of effects for which there is a cost component, it is reasonable to conclude that the aggregate costs of indoor air pollution amount to tens of billion of dollars per year.

For the past several years, I have worked with Senator CHAFEE, Senator LAUTENBERG, and other members of the Environment Committee to document the health effects and the costs of indoor air contamination and to develop legislation to reduce exposure to these contaminants.

In April 1987, I chaired hearings of the Subcommittee on Environmental Protection addressing the health effects of indoor air contaminants. Additional hearings were held in 1989. Based on these hearings, I worked with other Senators to develop the Indoor Air Quality Act. This legislation passed the Senate in September 1990.

A key objective of the bill is to expand and strengthen research of indoor air contaminants. The bill establishes a comprehensive research program for indoor air quality, describes basic research authorities, and creates a grant program for development of indoor air control technology.

The bill calls for programs to reduce indoor air contaminants in various types of buildings. It provides for the development of building technology and management practice bulletins identifying measures to reduce exposure to indoor air contaminants. It establishes training courses for building managers and calls for a national study of ventilation standards.

The bill establishes health advisories to assess the health risks posed by specific indoor air contaminants at a range of concentrations. This information will help the Federal Government focus its efforts on the most serious contaminants and avoid duplication of State research and assessment efforts. I want to stress that the bill does not provide for setting enforceable standards for indoor air contaminants.

A key provision of the bill directs the Environmental Protection Agency to develop a national response plan. The plan, which focuses and directs the relevant authorities which exist in current statutes, is intended to identify contaminants of concern and specify actions to reduce exposures. I want to point out that the bill provides no new authority to regulate indoor air contaminants beyond the authorities which already exist in current statutes and regulations.

Another key objective of the bill is to demonstrate very basic indoor air quality management strategies and assessments at the State level. States have the option of applying for grant assistance to develop programs in this area. States also may apply for grant assistance to respond to specific indoor air contaminants in selected geographic areas of a State.

States have proven to be essential partners in implementing many of our environmental programs. I hope that this provision of the bill will foster an improved understanding of the role of State governments in responding to indoor air quality problems.

The bill also addresses the problem of coordination of indoor air quality activities among Federal agencies. The nature of indoor air pollution problems requires that a wide range of Federal agencies participate in assessment and control efforts. The bill establishes a Council on Indoor Air Quality to oversee the indoor air activities of various Federal agencies.

The bill also expands the authority of the National Institute for Occupational Safety and Health [NIOSH] to conduct assessments of sick buildings. This expanded effort will help develop the most effective measures to identify the causes of sick building syndrome and the most effective measures to mitigate these problems.

I urge all my colleagues to join me in supporting this important legislation. With your support, we can assure that Americans have clean, safe air to breathe indoors as well as outdoors.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 455

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. TITLE.—(a) This Act, together with the following table of contents, may be cited as the "Indoor Air Quality Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Definitions.
Sec. 5. Indoor air quality research.
Sec. 6. Management practices and ventilation standards.
Sec. 7. Indoor air contaminant health advisories.
Sec. 8. National indoor air quality response plans.
Sec. 9. Federal building response plan and demonstration program.
Sec. 10. State indoor air quality programs.
Sec. 11. Office of Indoor Air Quality.
Sec. 12. Council on Indoor Air Quality.
Sec. 13. Indoor air quality information clearinghouse.
Sec. 14. Building assessment demonstration.
Sec. 15. State and Federal authority.
Sec. 16. Authorizations.

FINDINGS

SEC. 2. The Congress finds that—

(1) Americans spend up to 90 per centum of a day indoors and, as a result, have a significant potential for exposure to contaminants in the air indoors;

(2) exposure to indoor air contamination occurs in workplaces, schools, public buildings, residences, and transportation vehicles;

(3) recent scientific studies indicate that pollutants in the indoor air include radon, asbestos, volatile organic chemicals (including, formaldehyde and benzene), combustion byproducts (including, carbon monoxide and nitrogen oxides), metals and gases (including, lead, chlorine, and ozone), respirable particles, biological contaminants, microorganisms, and other contaminants;

(4) a number of contaminants found in both ambient air and indoor air may occur at higher concentrations in indoor air than in outdoor air;

(5) indoor air pollutants pose serious threats to public health (including cancer, respiratory illness, multiple chemical sensitivities, skin and eye irritation, and related effects);

(6) up to 15 per centum of the United States population may have heightened sensitivity to chemicals and related substances found in the air indoors;

(7) radon is among the most harmful indoor air pollutants and is estimated to cause between five thousand and twenty thousand lung cancer deaths each year;

(8) other selected indoor air pollutants are estimated to cause between three thousand five hundred and six thousand five hundred additional cancer cases per year;

(9) indoor air contamination is estimated to cause significant increases in medical costs and declines in work productivity;

(10) as many as 20 per centum of office workers may be exposed to environmental conditions manifested as "sick building syndrome";

(11) sources of indoor air pollution include conventional ambient air pollution sources, building materials, consumer and commercial products, combustion appliances, indoor application of pesticides and other sources;

(12) there is not an adequate effort by Federal agencies to conduct research on the seriousness and extent of indoor air contamination, to identify the health effects of indoor air contamination, and to develop control technologies, education programs, and other methods of reducing human exposure to such contamination;

(13) there is not an adequate effort by Federal agencies to develop response plans to reduce human exposure to indoor air contaminants and there is a need for improved coordination of the activities of these agencies;

(14) there is not an adequate effort by Federal agencies to develop methods, techniques, and protocols for assessment of indoor air contamination in non-residential, non-industrial buildings and to provide guidance on measures to respond to contamination; and

(15) State governments can make significant contributions to the effective reduction of human exposure to indoor air contaminants and the Federal Government should assist States in development of programs to reduce exposures to these contaminants.

PURPOSE

SEC. 3. The purposes of this Act are to—

(1) develop and coordinate through the Environmental Protection Agency and at other departments and agencies of the United States a comprehensive program of research and development concerning the seriousness and extent of indoor air contamination, the human health effects of indoor air contaminants, and the technological and other methods of reducing human exposure to such contaminants;

(2) establish a process whereby the existing authorities of Federal statutes will be directed and focused to assure the full and effective application of these authorities to reduce human exposure to indoor air contaminants where appropriate;

(3) provide support to State governments to demonstrate and develop indoor air quality management strategies, assessments, and response programs; and

(4) to authorize activities to assure the general coordination of indoor air quality-related activity, to provide for reports on indoor air quality to Congress, to provide for assessments of indoor air contamination in specific buildings by the National Institute for Occupational Safety and Health, to assure that data and information on indoor air quality issues is available to interested parties, to provide training, education, information, and technical assistance to the public and private sector, and for other purposes.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(1) "Agency" means the United States Environmental Protection Agency;

(2) "indoor" refers to the enclosed portions of buildings including non-industrial workplaces, public buildings, Federal buildings, schools, commercial buildings, residences, and the occupied portions of vehicles;

(3) "indoor air contaminant" means any solid, liquid, semisolid, dissolved solid, biological organism, aerosol, or gaseous material, including combinations or mixtures of substances in indoor air which may reasonably be anticipated to have an adverse effect on human health;

(4) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, including any independent agency or establishment of the Federal Government or government corporation;

(5) "Federal building" means any building which is used primarily as an office building, school, hospital, or residence that is owned, leased, or operated by any Federal agency and is over ten thousand square feet in area and any building occupied by the Library of Congress;

(6) "Administrator" means the Administrator of the Environmental Protection Agency;

(7) "Administration" means the Occupational Safety and Health Administration;

(8) "Director" means the Director of the National Institute of Occupational Safety and Health;

(9) "local education agency" means any educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381); and

(10) "local air pollution control agency" means any city, county, or other local government authority charged with the responsibility for implementing programs or enforcing ordinances or laws relating to the prevention and control of air pollution including indoor air pollution.

INDOOR AIR QUALITY RESEARCH

SEC. 5. (a) AUTHORITY.—(1) The Administrator shall, in coordination with other appropriate Federal agencies, establish a national research, development, and demonstration program to assure the quality of air indoors and as part of such program shall promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, sources, effects, extent, prevention, detection, and correction of contamination of indoor air.

(2) In carrying out the provisions of this section, the Administrator is authorized, subject to the availability of appropriation to—

(A) collect and make available to the public through publications and other appropriate means, the results of research, development and demonstration activities conducted pursuant to this section;

(B) conduct research, development and demonstration activities and cooperate with other Federal agencies, with State and local government entities, interstate and regional agencies, other public agencies and authorities, nonprofit institutions and organizations and other persons in the preparation and conduct of such research, development and demonstration activities;

(C) make grants to the States or to local government entities, to other public agencies and authorities, to nonprofit institutions and organizations, and to other persons;

(D) enter into contracts or cooperative agreements with public agencies and authorities, nonprofit institutions and organizations, and other persons;

(E) conduct studies, including epidemiological studies, of the effects of indoor air contaminants or potential contaminants on mortality and morbidity and clinical and laboratory studies on the immunologic, biochemical, physiological, and toxicological effects including the carcinogenic, teratogenic, mutagenic, cardiovascular, and neurotoxic effects of indoor air contaminants or potential contaminants;

(F) develop and disseminate informational documents on indoor air contaminants describing the nature and characteristics of such contaminants in various concentrations;

(G) develop effective and practical processes, protocols, methods, and techniques for the prevention, detection, and correction of indoor air contamination and work with the private sector, other governmental entities,

and schools and universities to encourage the development of innovative techniques to improve indoor air quality;

(H) construct such facilities and staff and equip them as may be necessary to carry out the provisions of this section;

(I) call conferences concerning the potential or actual contamination of indoor air giving opportunity for interested persons to be heard and present papers at such conferences;

(J) utilize, on a reimbursable basis, facilities and personnel of existing Federal scientific laboratories and research centers; and

(K) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, equipment and facilities and other property rights, by purchase, license, lease, or donation. If the Administrator expects or intends that research pursuant to this subsection will primarily affect worker safety and health, he shall consult with the Assistant Secretary of Occupational Safety and Health and the Director.

(b) PROGRAM REQUIREMENTS.—The Administrator, in coordination with other appropriate Federal agencies, shall conduct, assist, or facilitate research, investigations, studies, surveys, or demonstrations with respect to, but not limited to, the following—

(1) the effects on human health of contaminants or combinations of contaminants at various levels whether natural or anthropogenic including additive, cumulative, and synergistic effects on populations both with and without heightened sensitivity that are found or are likely to be found in indoor air;

(2) the exposure of persons to contaminants that are found in indoor air (including exposure to such substances from sources other than indoor air contamination including drinking water, diet, or other exposures);

(3) the identification of populations at increased risk of illness from exposure to indoor air contaminants and assessment of the extent and characteristics of such exposure;

(4) the exposure of persons to contaminants in different building classes or types, and in vehicles, and assessment of the association of particular contaminants and particular building classes or types and vehicles;

(5) identification of building classes or types and design features or characteristics which increase the likelihood of exposure to indoor air contaminants;

(6) identification of the sources of indoor air contaminants including association of contaminants with outdoor sources, building or vehicle design, classes or types of products, building management practices, equipment operation practices, building materials, and related factors;

(7) assessment of relationships between contaminant concentration levels in ambient air and the contaminant concentration levels in the indoor air;

(8) development of methods and techniques for characterizing and modeling indoor air movement and flow within buildings or vehicles, including the transport and dispersion of contaminants in the indoor air;

(9) assessment of the fate, including degradation and transformation, of particular contaminants in indoor air;

(10) development of methods and techniques to characterize the association of contaminants, the levels of contaminants, and the potential for contamination of new construction with climate, building location, seasonal change, soil and geologic formations, and related factors;

(11) assessment of indoor air quality in facilities of local education agencies and buildings housing child care facilities and development of measures and techniques for control of indoor air contamination in such buildings;

(12) development of protocols, methods, techniques and instruments for sampling indoor air to determine the presence and level of contaminants including sample collection and the storage of samples before analysis and development of methods to improve the efficiency and reduce the cost of analysis;

(13) development of air quality sampling methods and instruments which are inexpensive and easy to use and may be used by the general public;

(14) development of control technologies, building design criteria, and management practices to prevent the entrance of contaminants into buildings or vehicles (for example, air intake protection, sealing, and related measures) and to reduce the concentrations of contaminants indoors (for example, control of emissions from internal sources of contamination, improved air exchange and ventilation, filtration, and related measures);

(15) development of materials and products which may be used as alternatives to materials or products which are now in use and which contribute to indoor air contamination;

(16) development of equipment and processes for removal of contaminants from the indoor air;

(17) research, to be carried out principally by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, for the purpose of assessing—

(A) the exposure of workers to indoor air contaminants including assessment of resulting health effects; and

(B) the costs of declines in productivity, sick time use, increased use of employer-paid health insurance, and worker compensation claims;

(18) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, and the Secretary of the Department of Energy for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, permeability of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution, and

(19) research, to be carried out in conjunction with the Secretary of Transportation, for the purposes of—

(A) assessing the potential for indoor air contamination in public and private transportation; and

(B) designing measures to avoid such indoor air contamination.

(c) TECHNOLOGY DEMONSTRATION PROGRAM.—(1) The Administrator may enter into cooperative agreements or contracts, or provide financial assistance in the form of grants, to public agencies and authorities, nonprofit institutions and organizations, employee advocate organizations, local educational institutions, or other persons, to demonstrate practices, methods, technologies, or processes which may be effective in controlling sources or potential sources of indoor air contamination, preventing the occurrence of indoor air contamination, and reducing exposures to indoor air contamination.

(2) The Administrator may assist demonstration activities under paragraph (1) of this subsection only if—

(A) such demonstration activity will serve to demonstrate a new or significantly improved practice, method, technology or process or the feasibility and cost effectiveness of an existing, but unproven, practice, method, technology, or process and will not duplicate other Federal, State, local, or commercial efforts to demonstrate such practice, method, technology, or process;

(B) such demonstration activity meets the requirements of this section and serves the purposes of this Act;

(C) the demonstration of such practice, technology, or process will comply with all other laws and regulations for the protection of human health, welfare, and the environment; and

(D) in the case of a contract or cooperative agreement, such practice, method, technology, or process would not be adequately demonstrated by State, local, or private persons or in the case of an application for financial assistance by a grant, such practice, method, technology, or process is not likely to receive adequate financial assistance from other sources.

(3) The demonstration program established by this subsection shall include solicitations for demonstration projects, selection of suitable demonstration projects from among those proposed, supervision of such demonstration projects, evaluation and publication of the results of demonstration projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, technologies and processes which are proven to be effective.

(4) Within one hundred and eighty days after the date of enactment of this Act, and no less often than every twelve months thereafter, the Administrator shall publish a solicitation for proposals to demonstrate, prototype or at full-scale, practices, methods, technologies, and processes which are (or may be) effective in controlling sources or potential sources of indoor air contaminants. The solicitation notice shall prescribe the information to be included in the proposal, including technical and economic information derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the potential effectiveness and feasibility of the practice, method, technology, or process proposed to be demonstrated.

(5) Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitations required by paragraph (4) of this section. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(6) In selecting practices, methods, technologies or processes to be demonstrated, the Administrator shall fully review the applications submitted and shall evaluate each project according to the following criteria—

(A) the potential for the proposed practice, method, technology, or process to effectively control sources or potential sources of contaminants which present risks to human health;

(B) the consistency of the proposal with the recommendations provided pursuant to paragraph (8) of section 8(d);

(C) the capability of the person or persons proposing the project to successfully complete the demonstration as described in the application;

(D) the likelihood that the demonstrated practice, method, technique, or process could

be applied in other locations and circumstances to control sources or potential sources of contaminants, including considerations of cost, effectiveness, and technological feasibility;

(E) the extent of financial support from other persons to accomplish the demonstration as described in the application; and

(F) the capability of the person or persons proposing the project to disseminate the results of the demonstration or otherwise make the benefits of the practice, method, or technology widely available to the public in a timely manner.

(7) The Administrator shall select or refuse to select a project for demonstration under this subsection in an expeditious manner. In the case of a refusal to select a project, the Administrator shall notify the applicant of the reasons for the refusal.

(8) Each demonstration project under this section shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project.

(9) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide for monitoring testing procedures, quality control, and such other measurements necessary to evaluate the results of demonstration projects or facilities intended to control sources or potential sources of contaminants.

(10) Each demonstration project under this section shall be completed within such time as is established in the demonstration plan. The Administrator may extend any deadline established under this subsection by mutual agreement with the applicant concerned.

(11) Total Federal funds for any demonstration project under this section shall not exceed 75 per centum of the total cost of such project. In cases where the Administrator determines that research under this section is of a basic nature which would not otherwise be undertaken, or the applicant is a local educational agency, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(12) The Administrator shall, from time to time, publish general reports describing the findings of demonstration projects conducted pursuant to this section. Such reports shall be provided to the Indoor Air Quality Information Clearinghouse provided for in section 13 of this Act.

(d) ASSESSMENT OF SCHOOLS AND CHILD CARE FACILITIES.—(1) The Administrator shall conduct a national assessment of the seriousness and extent of indoor air contamination in buildings owned by local educational agencies and child care facilities.

(2) The Administrator shall establish an advisory group made up of representatives of school administrators, teachers, child care organizations, parents and service employees and other interested parties, including scientific and technical experts familiar with indoor air pollution exposures, effects, and controls, to provide guidance and direction in the development of the national assessment.

(3) The Administrator shall provide a report to Congress of the results of the national assessment not later than two years after the date of enactment of this Act. The report required by this paragraph shall provide such recommendations for activities or programs to reduce and avoid indoor air contamination in buildings owned by local educational agencies and in child care facilities as the Administrator determines to be appropriate.

(e) REPORT TO CONGRESS.—The Administrator shall, within twenty-four months of the date of enactment of this Act, prepare and submit to the Congress a report reviewing and assessing issues related to chemical sensitivity disorders, including multiple chemical sensitivities. The Advisory Committee established pursuant to subsection 7(c) of this Act shall review and comment on the report prior to submittal to the Congress.

(f) CLARIFICATION OF AUTHORITY.—Title IV of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note) is repealed.

MANAGEMENT PRACTICES AND VENTILATION STANDARDS

SEC. 6. (a) TECHNOLOGY AND MANAGEMENT PRACTICE ASSESSMENT BULLETINS.—(1) The Administrator shall publish bulletins providing an assessment of technologies and management practices for the control and measurement of contaminants in the air indoors.

(2) Bulletins published pursuant to this subsection shall, at a minimum—

(A) describe the control or measurement technology or practice;

(B) describe the effectiveness of the technology or practice in control or measurement of indoor air contaminants and, to the extent feasible, the resulting reduction in risk to human health;

(C) assess the feasibility of application of the technology or practice in buildings of different types, sizes, ages, and designs;

(D) assess the cost of application of the technology or practice in buildings of different types, sizes, ages, and designs, including capital and operational costs; and

(E) assess any risks to human health that such technology or practice may create.

(3) The Administrator shall establish and utilize a standard format for presentation of the technology and management practice assessment bulletins. The format shall be designed to facilitate assessment of technologies or practices by interested parties, including homeowners and building owners and managers.

(4) The Administrator shall provide that bulletins published pursuant to this subsection shall be published on a schedule consistent with the publication of health advisories pursuant to subsection 7(b) of this Act to the extent practicable.

(5) In development of bulletins pursuant to this subsection, the Administrator shall provide for public review and shall consider public comment prior to publication of bulletins. Where the technology or management practice is expected to have significant implications for worker safety or health, the Administrator shall consult with the Director prior to seeking review and comment.

(6) Bulletins published pursuant to this subsection shall be provided to the Indoor Air Quality Information Clearinghouse provided for in section 13 of this Act and, to the extent practicable, shall be made available to architecture, design, and engineering firms and building owners and managers and to organizations representing such parties.

(b) MODEL BUILDING MANAGEMENT PRACTICES TRAINING.—(1) Within twelve months of the date of enactment of this Act, the Director of the National Institute of Occupational Safety and Health, in consultation with the Administrator of the General Services Administration and the Administrator, shall develop an indoor air training course providing training in—

(A) principles, methods, and techniques related to ventilation system operation and maintenance including applicable ventilation guidelines and standards;

(B) maintenance of records concerning indoor air quality, including maintenance of ventilation systems, complaints of indoor air quality, and actions taken to address indoor air quality problems;

(C) health threats posed by indoor air pollutants, including a knowledge of health advisories published pursuant to this Act and other information concerning contaminant levels;

(D) identification of potential indoor air pollutant sources and options for reducing exposures to contaminants;

(E) special measures which may be necessary to reduce indoor air contaminant exposures in new buildings and in portions of buildings which have been renovated or substantially refurbished within the past six months; and

(F) special measures which may be necessary to reduce exposures to contaminants associated with pesticide applications, installation of products, furnishings, or equipment, and cleaning operations.

(2) Within twenty-four months of the date of enactment of this Act, the Director of the National Institute for Occupational Safety and Health shall provide, or contract for the provision of, training courses pursuant to paragraph (1) of this subsection sufficient, at a minimum, to assure training on a schedule consistent with the requirements of paragraph 9(f)(2).

(3) The Director of the National Institute of Occupational Safety and Health, or firms or organizations operating under contract with such Administrator, are authorized to establish a fee for training pursuant to this subsection. Fees shall be in an amount not to exceed the amount necessary to defray the costs of the training program.

(4) The Director of the National Institute of Occupational Safety and Health, in consultation with the Administrator of the General Services Administration, and the Administrator, shall prepare a report to Congress within forty-eight months of the date of enactment of this subsection assessing the training program pursuant to this subsection and making recommendations concerning the application of training requirements to classes and types of buildings not covered by this subsection.

(c) VENTILATION PROGRAM.—(1) The Administrator, in coordination with other Federal agencies, shall conduct a progam to analyze the adequacy of existing ventilation standards and guidelines to protect the public and workers from indoor air contaminants.

(2) The Administrator shall—

(A) identify and describe ventilation standards adopted by State and local governments and professional organizations, including the American Society of Heating, Refrigerating and Air Conditioning Engineers;

(B) determine the adequacy of the standards for protecting public health and promoting worker productivity;

(C) assess the costs of compliance with such standards;

(D) determine the degree to which such standards are being adopted and enforced;

(E) identify the extent to which buildings are being operated in a manner which achieves the standard; and

(F) assess the potential for such standards to complement controls over specific sources

of contaminants in reducing indoor air contamination.

(3) The Administrator shall submit to the Congress, within thirty-six months of the enactment of this Act a report which shall—

(A) describe the ventilation program carried out under this Act; and

(B) make recommendations concerning—

(i) the establishment of ventilation standards which protect public and worker health and take comfort and energy conservation goals into account; and

(ii) ensuring that adequate ventilation standards are being adopted and that buildings are being operated in a manner which achieves the standard.

INDOOR AIR CONTAMINANT HEALTH ADVISORIES

SEC. 7. (a) LIST OF CONTAMINANTS.—(1) Within two hundred and forty days after the date of enactment of this Act, the Administrator shall prepare and publish in the Federal Register a list of the contaminants (hereinafter referred to as listed contaminants) that may occur or are known to occur in indoor air at levels which may reasonably be expected to have an adverse impact on human health. The list may include combinations or mixtures of contaminants and may refer to such combinations or mixtures by a common name.

(2) The Administrator shall from time to time and as necessary to carry out the provisions of this Act, but not less often than biennially, review and revise such list adding other contaminants pursuant to the requirements of this Act.

(3) The list provided for in paragraph (1) of this subsection shall include, at a minimum: benzene, biological contaminants, carbon monoxide, formaldehyde, lead, methylene chloride, nitrogen oxide, particulate matter, asbestos, polycyclic aromatic hydrocarbons (PAHs), and radon.

(4) In development of the list provided for in paragraph (1) of this subsection or in revision of such list pursuant to paragraph (2), the Administrator shall consult with the advisory panel provided for in subsection (c) of this section and provide for public review and shall consider public comment prior to issuance of a final list.

(5) The listing of contaminants under this subsection is not an agency rulemaking. In considering objections raised in any judicial or related action, the Administrator's decision to list a particular contaminant shall be upheld unless the objecting party can demonstrate that the decision was arbitrary or capricious or otherwise not in accordance with the law. The list of contaminants prepared in accordance with this subsection shall not be construed to indicate that those contaminants not listed are safe for human exposure or without adverse health effect.

(6) Upon application of the Governor of a State showing that a contaminant or potential contaminant in the indoor air which is not listed pursuant to paragraph (1) of this subsection may reasonably be anticipated to have an adverse effect on human health as a result of its presence in the indoor air, the Administrator shall, within ninety days, revise the list established by paragraph (1) of this subsection to include such contaminant or publish in the Federal Register the reasons for not making such a revision.

(b) CONTAMINANT HEALTH ADVISORIES.—(1) The Administrator shall, in consultation with the advisory panel, provided for in subsection (c) of this section, and after providing for public review and comment pursuant to paragraph (6), publish advisory materials addressing the adverse human health effects of listed contaminants.

(2) Such advisory materials shall, at a minimum, describe—

(A) the physical, chemical, biological, and radiological properties of the contaminant;

(B) the adverse human health effects of the contaminant in various indoor environments and in various concentrations;

(C) an analysis of the risk posed by the contaminant to human health at the full range of concentration levels, including risk to subpopulations which may be especially sensitive to exposure to the contaminant;

(D) the extent to which the contaminant, or a mixture of contaminants, is associated with a particular substance or material and emissions rates which are expected to result in varying levels of contaminant concentration in indoor air;

(E) any Technology and Management Practice Assessment Bulletin which is applicable to the contaminant and any actions which are identified for the contaminant in the National Indoor Air Quality Response Plan prepared pursuant to this Act; and

(F) any indoor air contaminant standards or related action levels which are in effect under any authority of a Federal statute or regulation, the authority of State statutes or regulations, the authority of any local government, or the authority of another country, including standards or action levels suggested by appropriate international organizations.

(2) Health advisories published pursuant to this section shall in no way limit or restrict the application of requirements or standards established under any other Federal statute.

(3) The Administrator shall establish and utilize a standard format of presentation of indoor air contaminant health advisories. The format shall be designed to facilitate public understanding of the range of risks of exposure to indoor air contaminants and shall include a summary of the research and information concerning the contaminant which is understandable to public health professionals and to those who lack training in toxicology.

(4) The Administrator shall publish health advisories for listed contaminants as expeditiously as possible. At a minimum, the Administrator shall publish not less than six advisories within eighteen months of the date of enactment of this Act and shall publish an additional six advisories within thirty-six months of the date of enactment of this Act.

(5) Health advisories shall be based on the most current available scientific and related findings or information and shall be reviewed, revised, and republished to reflect new scientific and related findings or information on a periodic basis but not less frequently than every five years.

(6) In development and revision of health advisories pursuant to this subsection, the Administrator shall provide for public review and comment, including provision of notice in the Federal Register of the intent to publish a health advisory not less than ninety days prior to publication, and shall consider public comment prior to issuance of an advisory.

(c) ADVISORY PANEL.—The Indoor Air Quality and Total Human Exposure Committee of the Environmental Protection Agency Science Advisory Board shall advise the Administrator with respect to the implementation of this section including, but not limited to, the listing of contaminants, the contaminants for which advisories should be published, the order in which advisories should be published, the content, quality, and format of advisory documents, and the revision of such documents. The Administrator shall provide that a representative of the Agency for Toxic Substances and Disease Registry, the Department of Energy Office of Health and Environmental Research, the National Institute for Occupational Safety and Health, and the National Institute for Environmental Health Sciences shall participate in the work of the Advisory Panel as ex officio members.

NATIONAL INDOOR AIR QUALITY RESPONSE PLAN

SEC. 8. (a) AUTHORITY.—(1) The Administrator shall, in coordination with other appropriate Federal agencies, develop and publish a national indoor air quality response plan.

(2) The response plan shall provide for implementation of a range of response actions identified in subsections (b) and (c) which will result in the reduction of human exposure to indoor air contaminants listed pursuant to section 7(a) of this Act and attainment, to the fullest extent practicable, of indoor air contaminant levels which are protective of human health.

(b) EXISTING AUTHORITY.—The Administrator, in coordination with other appropriate Federal agencies, shall include in the plans provided for in subsection (a) of this section a description of specific response actions to be implemented based on existing statutory authorities provided in—

(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

(2) the Toxic Substances Control Act (15 U.S.C. 201 et seq.);

(3) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

(4) the Safe Drinking Water Act (42 U.S.C. 300 et seq.);

(5) the authorities of the Consumer Product Safety Commission;

(6) the authorities of the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health; and

(7) other regulatory and related authorities provided under any other Federal statute. In implementation of response actions pursuant to paragraph (6) of this subsection the Assistant Secretary for Occupational Safety and Health shall consult with representatives of State and local governments and their employees with respect to States where the Occupational Safety and Health Administration lacks jurisdiction over State and local employees.

(c) SUPPORTING ACTIONS.—The Administrator, in coordination with other appropriate Federal agencies, shall include in the plans provided for in subsection (a) of this section a description of specific supporting actions including, but not limited to—

(1) programs to disseminate technical information to public health, design, and construction professionals concerning the risks of exposure to indoor air contaminants and methods and programs for reducing exposures to such contaminants;

(2) development of guidance documents addressing individual contaminants, groups of contaminants, sources of contaminants, or types of buildings or structures and providing information on measures to reduce exposure to contaminants including—

(A) the estimated cost of such measures;

(B) the technologic feasibility of such measures; and

(C) the effectiveness and efficiency of such measures.

(3) education programs for the general public concerning the health threats posed by indoor air contaminants and appropriate individual response actions;

(4) technical assistance including design and implementation of training seminars for State and local officials, private and professional firms, and labor organizations dealing with indoor air pollution and addressing topics such as monitoring, analysis, mitigation, building management practices, ventilation, health effects, public information and program design;

(5) development of model building codes, including ventilation rates, for various types of buildings designed to reduce levels of indoor air contaminants;

(6) identification of contaminants, or circumstances of contamination for which immediate action to protect public and worker health is necessary and appropriate and a description of the actions needed;

(7) identification of contaminants, or circumstances of contamination, where regulatory or statutory authority is not adequate to address an identified contaminant or circumstance of contamination and recommendation of legislation to provide needed authority;

(8) identification of contaminants, or circumstances of contamination, where continued reduction of contamination requires development of technology or technological mechanisms; and

(9) identification of remedies to "sick building syndrome", including proper design and maintenance of ventilation systems, building construction and remodeling practices, and safe practices for the application of pesticides, herbicides, and disinfectants, and a standardized protocol for investigating and solving indoor air quality problems in sick buildings.

(d) CONTENTS OF PLAN.—In describing specific actions to be taken under subsections (b) and (c) of this section, the Administrator, in coordination with other appropriate Federal agencies, shall—

(1) identify the health effects, and any contaminant or contaminants thought to cause health effects to be addressed by a particular action and to the fullest extent feasible, the relative contribution to indoor air contamination from all sources of contamination;

(2) identify the statutory basis for the action;

(3) identify the schedule and process for implementation of the action;

(4) identify the Federal agency with jurisdiction for the specific action which will implement the action; and

(5) identify the financial resources needed to implement the specific action and the source of these resources.

(e) SCHEDULE.—Response plans provided for in subsection (a) shall be submitted to Congress within twenty-four months of enactment of this Act and biennially thereafter.

(f) REVIEW.—(1) The Administrator shall provide for public review and comment on the response plan provided for in this section, including provision of notice in the Federal Register for public review and comment not less than three months prior to submission to the Congress. The Administrator shall include in the response plan a summary of public comments.

(2) The Administrator shall provide for the review and comment on the response plan by the Council on Indoor Air Quality provided for under section 12 of this Act.

(g) ASSESSMENT OF MONITORING AND MITIGATION SERVICES.—The Administrator shall include in the first plan published pursuant to this section an assessment of indoor air monitoring and mitigation services provided by private firms and other organizations, including the range of such services, the reliability and accuracy of such services, and the relative costs of such services. The assessment required by this subsection shall include a review and analysis of options for oversight of indoor air monitoring and mitigation firms and organizations, including registration, licensing, and certification of such firms and organizations and options for imposing a user fee on such firms and organizations.

FEDERAL BUILDING RESPONSE PLAN AND DEMONSTRATION PROGRAM

SEC. 9. (a) AUTHORITY.—The Administrator and the Administrator of the General Services Administration shall develop and implement a program to respond to and reduce indoor air contamination in Federal buildings and to demonstrate methods of reducing indoor air contamination in new Federal buildings.

(b) FEDERAL BUILDING RESPONSE PLAN.—(1) The Administrator of the General Services Administration, in consultation with the Administrator, the Assistant Secretary for Occupational Safety and Health Administration, the Director, and affected Federal departments or agencies shall prepare response plans addressing indoor air quality in Federal buildings. The plans shall, to the fullest extent practicable, be developed in conjunction with response plans pursuant to section 8 of this Act.

(2) The response plan shall provide for implementation of a range of response actions which will result in the reduction of human exposure to indoor air contaminants listed pursuant to section 7(a) of this Act, and attainment, to the fullest extent practicable, of indoor air contaminant concentration levels which are protective of public and worker health.

(3) Federal building response plans provided for in paragraph (1) of this subsection shall include—

(A) a list of all Federal buildings;

(B) a description and schedule of general response actions including general building management practices, product purchase guidelines, air quality problem identification practices and methods, personnel training programs, and other actions to be implemented to reduce exposures to indoor air contaminants in those buildings listed in paragraph (A);

(C) a list of individual Federal buildings listed in paragraph (A) for which there is sufficient evidence of indoor air contamination or related employee health effects to warrant assessment of the building pursuant to section 14 of this Act and a schedule for development and submittal of building assessment proposals pursuant to subsection 14(d) of this Act;

(D) a description and schedule of specific response actions to be implemented in each specific building identified in paragraph (C) and assessed pursuant to section 14 of this Act;

(E) an identification of the Federal agency responsible for funding and implementation of each response action identified in paragraphs (B) and (D); and

(F) an identification of the estimated costs of each response action identified in paragraphs (B) and (D) and the source of these resources.

(4) The response plan provided for in this subsection shall address each Federal building identified in paragraph 3(A), except that specific buildings may be exempted from coverage under this subsection. Such buildings may be exempted on the grounds of—

(A) national security;

(B) anticipated demolition or termination of Federal ownership within three years; and

(C) specialized use of a building which precludes necessary actions to reduce indoor air contamination.

(5) The plan provided for in subsection (b) shall be submitted to Congress within twenty-four months of enactment of this Act and biennially thereafter.

(6) The Administrator of the General Services Administration shall provide for public review and comment on the response plan provided for in this section, including provision of notice in the Federal Register not less than three months prior to submission to the Congress.

(7) The response plan shall include a summary of public comments. The Council on Indoor Air Quality, provided for under section 12 of this Act, shall review and comment on the plan.

(c) INDOOR AIR QUALITY RESERVE.—(1) The Administrator of the General Services Administration shall reserve 0.5 per centum of any funds used for construction of new Federal buildings for design and construction of measures to reduce indoor air contaminant concentrations within such buildings.

(2) Measures which may be funded with the reserve provided for in this subsection may include, but are not limited to—

(A) development and implementation of general design principles intended to avoid or prevent contamination of indoor air;

(B) design and construction of improved ventilation techniques or equipment;

(C) development and implementation of product purchasing guidelines;

(D) design and construction of contaminant detection and response systems;

(E) development of building management guidelines and practices; and

(F) training in building and systems operations for building management and maintenance personnel.

(3) Upon completion of construction of each Federal building covered by this section, the Administrator of the General Services Administration shall file with the Administrator, with the Clearinghouse established under section 13 of this Act, and with the Council established under section 12 of this Act, a report describing the uses made of the reserve provided for in this subsection. Such report shall be in sufficient detail to provide design and construction professionals with models and general plans of various indoor air contaminant reduction measures adequate to assess the appropriateness of such measures for application in other buildings.

(4) The Administrator of the General Services Administration, with the concurrence of the Administrator, may exempt a planned Federal building from the requirements of this subsection if he finds that such exemption is required on the grounds of national security or that the intended use of the building is not compatible with the authority of this section.

(d) NEW EPA BUILDING.—Any new building constructed for use by the Environmental Protection Agency as headquarters shall be designed, constructed, maintained, and operated as a model to demonstrate principles and practices for protection of indoor air quality.

(e) BUILDING COMMENTS.—(1) The Administrator of the General Services Administration, in consultation with the Administrator, the Assistant Secretary for Occupational Safety and Health Administration, and the Director, shall provide, by regulation, a method and format for filing and re-

sponding to comments and complaints concerning indoor air quality in Federal buildings by workers in such buildings and by the public. The procedure for filing and responding to worker complaints shall supplement and not diminish or supplant existing practices or procedures established under the Occupational Safety and Health Act and executive orders pertaining to health and safety for Federal employees.

(2) A listing of each such filing and an analysis of such filings shall be included in each response plan prepared pursuant to this section. Such listing shall preserve the confidentiality of individuals making filings under this section. Such listing shall preserve the confidentiality of the individuals making filings under this section.

(3) Regulations implementing this subsection shall be promulgated at the earliest possible date, but not later than twenty-four months from the date of enactment of this Act.

(f) BUILDING VENTILATION AND MANAGEMENT TRAINING.—(1) Within six months of the date of enactment of this Act the Administrator of the General Services Administration shall designate, or require that a lessee designate, an Indoor Air Quality Coordinator for each Federal building which is owned or leased by the General Services Administration. An Indoor Air Quality Coordinator shall not serve more than one building.

(2) Within forty-eight months of the date of enactment of this Act, each Indoor Air Quality Coordinator shall complete the indoor air training course operated pursuant to section 6(b) of this Act. After thirty-six months from the date of enactment of this Act, each newly designated Indoor Air Quality Coordinator shall complete the indoor air training course within twelve months of designation.

(3) In any case where the Administrator of the General Services Administration finds that a lessee has failed to designate and train an Indoor Air Quality Coordinator pursuant to the requirements of this Act, the Administrator of the General Services Administration shall not reestablish a lease for such building.

STATE AND LOCAL INDOOR AIR QUALITY PROGRAMS

SEC. 10. (a) MANAGEMENT AND ASSESSMENT STRATEGY DEMONSTRATION.—(1) The Governor of a State may apply to the Administrator for a grant to support demonstration of the development and implementation of a management strategy and assessment with respect to indoor air quality within such State.

(2) State indoor air quality management strategies shall—

(A) identify a lead agency and provide an institutional framework for protection of indoor air quality;

(B) identify and describe existing programs, controls or related activities concerning indoor air quality within State agencies including regulations, educational programs, assessment programs, or other activities;

(C) identify and describe existing programs, controls, or related activities concerning indoor air quality of local and other sub-State agencies and assure coordination among local, State, and Federal agencies involved in indoor air quality activities in the State; and

(D) assure coordination of indoor air quality programs with ambient air quality programs and related activities.

(3) State indoor air quality assessment programs shall—

(A) identify indoor air contaminants of concern and, to the extent practicable, assess the seriousness and the extent of indoor air contamination by contaminants listed in section 7(a) of this Act;

(B) identify the classes or types of buildings or other indoor environments in which indoor air contaminants pose the most serious threat to human health;

(C) if applicable, identify geographic areas in the State where there is a reasonable likelihood of indoor air contamination as a result of the presence of contaminants in the ambient air or the existence of sources of a contaminant;

(D) identify methods and procedures for indoor air contaminant assessment and monitoring;

(E) provide for periodic assessments of indoor air quality and identification of indoor air quality changes and trends; and

(F) establish methods to provide information concerning indoor air contamination to the public and to educate the public and interested groups, including building owners and design and engineering professionals, about indoor air contamination.

(4) As part of a management strategy and assessment pursuant to this subsection, the applicant may develop contaminant action levels, guidance, or standards and may draw on health advisories developed pursuant to section 7 of this Act.

(5) States which are selected to demonstrate the development of management and assessment strategies shall provide a management strategy and assessment pursuant to subsections (2) and (3) to the Administrator within thirty-six months of selection and shall certify to the Administrator that the strategy and assessment meet the requirements of this Act.

(6) States shall provide for public review and comment on the management strategy and assessment prior to submission of such strategy and assessment to the Administrator.

(b) RESPONSE PROGRAMS.—(1) A Governor of a State or the executive officer of a local air pollution control agency may apply to the Administrator for grant assistance to develop a response program designed to reduce human exposure to an indoor air contaminant or contaminants in the State, or in a specific class or type of building in that State, or in a specific geographic area of that State.

(2) A response program shall—

(A) address a contaminant or contaminants listed pursuant to section 7(a) of this Act;

(B) identify existing data and information concerning the contaminant or contaminants to be addressed, the class or type of building to be addressed, and the specific geographic area to be addressed;

(C) describe and schedule the specific actions to be taken to reduce human exposure to the identified contaminant or contaminants including the adoption and enforcement of any ventilation standards;

(D) identify the State or local agency or public organization which will implement the response actions;

(E) identify the Federal, State, and local financial resources to be used to implement the response program; and

(F) provide for the assessment of the effectiveness of the response program.

(3) As part of a response program pursuant to this subsection, an applicant may develop contaminant action levels, guidance, or standards based on health advisories developed pursuant to section 7 of this Act.

(4) As part of a response program pursuant to this subsection, an applicant may develop a standard establishing a ventilation rate or rates for a class or classes of buildings including development assessment and compliance programs needed to implement the standard.

(5) As part of the response program pursuant to this subsection, an applicant may develop a response plan addressing indoor air quality in State and local government buildings. Such plans shall, to the fullest extent practicable, be consistent with response plans developed pursuant to section 9 of this Act.

(c) GRANT MANAGEMENT.—(1) Grants under subsection (a)(1) of this subsection shall not be less than $75,000 for each fiscal year.

(2) In selecting States for demonstration and implementation of management strategies and assessments under subsection (a)(1) the Administrator shall consider—

(A) the previous experience of the State in addressing indoor air quality issues;

(B) the seriousness of the indoor air quality issues identified by the State; and

(C) the potential for demonstration of innovative management or assessment measures which may be of use to other States.

(3) In selecting States for demonstration of management strategies and assessments under subsection (a)(1), the Administrator shall focus resources to assure that sufficient funds are available to selected States to provide for the development of comprehensive and thorough management strategies and assessments in each selected State and to adequately demonstrate implementation of such strategies and assessments.

(4) Grants under subsection (b)(1) of this section shall not exceed $250,000 per fiscal year and shall be available to the State for a period of not to exceed three years.

(5) In selecting response programs developed under subsection (b) for grant assistance, the Administrator shall consider—

(A) the potential for the response program to bring about reductions in indoor air contaminant levels;

(B) the contaminants to be addressed, giving priority to contaminants for which health advisories have been developed pursuant to section 7 of this Act;

(C) the type of building to be addressed, giving priority to building types in which substantial human exposures to indoor air contaminants occur;

(D) the potential for development of innovative response measures or methods which may be of use to other States or local air pollution control agencies; and

(E) the State indoor air quality management strategy and assessment, giving priority to States with complete indoor air management strategies and assessments.

(6) The Federal share of grants under subsections (a) and (b) of this section shall not exceed 75 per centum of the costs incurred in demonstration and implementation of such activities and shall be made on the condition that the non-Federal share is provided from non-Federal funds.

(7) Funds granted pursuant to subsections (a) and (b) of this section in a fiscal year shall remain available for obligation for the next fiscal year in which obligated and for the next following fiscal year.

(8) No grant shall be made under this section in any fiscal year to a State or local air pollution control agency which in the preceding year received a grant under this section unless the Administrator determines that such agency satisfactorily implemented such grant activities in such preceding fiscal year.

(9) States and air pollution control agencies shall provide such information in applications for grant assistance and pertaining to grant funded activities as the Administrator requires.

OFFICE OF INDOOR AIR QUALITY

SEC. 11. (a) ESTABLISHMENT.—The Administrator shall establish an Office of Indoor Air Quality within the Office of Air and Radiation at the Environmental Protection Agency.

(b) RESPONSIBILITIES.—The Office of Indoor Air Quality shall—

(1) list indoor air contaminants and develop health advisories pursuant to section 7 of this Act;

(2) develop national indoor air quality response plans as provided for in section 8 of this Act;

(3) manage Federal grant assistance provided to air pollution control agencies under section 10 of this Act;

(4) assure the coordination of Federal statutes and programs administered by the Agency relating to indoor air quality and reduce duplication or inconsistencies among these programs;

(5) work with other Federal agencies, including the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, to assure the effective coordination of programs related to indoor air quality; and

(6) work with public interest groups, labor organizations, and the private sector in development of information related to indoor air quality including the health threats of human exposure to indoor air contaminants, the development of technologies and methods to control such contaminants, and the development of programs to reduce contaminant concentrations.

COUNCIL ON INDOOR AIR QUALITY

SEC. 12. (a) AUTHORITY.—There is established a Council on Indoor Air Quality.

(b) RESPONSIBILITIES.—The Council on Indoor Air Quality shall—

(1) provide for the full and effective coordination of Federal agency activities relating to indoor air quality;

(2) provide a forum for resolution of conflicts or inconsistencies in policies or programs related to indoor air quality;

(3) review and comment on the national indoor air response program developed pursuant to section 8 of this Act and the Federal Building Response Plan developed pursuant to section 9(b); and

(4) prepare a report to Congress pursuant to subsection (d) of this subsection.

(c) ORGANIZATION.—(1) The Council on Indoor Air Quality shall include senior representatives of Federal agencies involved in indoor air quality programs including—

(A) the Environmental Protection Agency;

(B) the Occupational Safety and Health Administration;

(C) the National Institute of Occupational Safety and Health;

(D) the Department of Health and Human Services;

(E) the Department of Housing and Urban Development;

(F) the Department of Energy;

(G) the Department of Transportation;

(H) the Consumer Product Safety Commission; and

(I) the General Services Administration.

(2) The Environmental Protection Agency shall chair the Council in the two years following enactment of this Act. In each subsequent year, members of the Council shall select the chair for that year.

(3) The Council shall be served by a staff to include an Executive Director and not less than three full-time equivalent employees.

(d) REPORT TO CONGRESS.—(1) The Council shall submit to the Congress, within eighteen months of enactment of this Act, and biennially thereafter, a report which shall—

(A) describe and assess the seriousness, extent, and characteristics of indoor air contamination throughout the country;

(B) summarize the major research issues concerning the protection of indoor air quality, describe the research accomplishments of Federal agencies over the previous two years, and provide an agenda of indoor air quality research for individual Federal agencies over a three-year period;

(C) summarize actions taken pursuant to this Act over the previous year, including publication of health advisories, implementation of national and Federal building response plans, and assistance to States;

(D) provide a general description of the activities to be conducted by Federal agencies to address indoor air quality problems over the following three-year period; and

(E) make recommendations for any actions needed to assure the quality of indoor air, including recommendations relating to institutional structures, funding, and legislation.

(2) The Council shall provide for public review and comment on the report required by this subsection.

INDOOR AIR QUALITY INFORMATION CLEARINGHOUSE

SEC. 13. (1) The Administrator is authorized and directed to establish a national indoor air quality clearinghouse to be used to disseminate indoor air quality information to other Federal agencies, State, and local governments, and private organizations and individuals.

(2) The clearinghouse shall be a repository for reliable indoor air quality related information to be collected from and made available to government agencies and private organizations and individuals. At a minimum, the clearinghouse established by this section shall make available reports, programs, and materials developed pursuant to the requirements of this Act.

(3) The clearinghouse shall operate a toll-free "hotline" on indoor air quality which shall be available to provide to the public general information about indoor air quality and general guidance concerning response to indoor air quality contamination problems.

(4) The Administrator may provide for the design, development, and implementation of the clearinghouse through a contractual agreement with a nonprofit organization.

BUILDING ASSESSMENT DEMONSTRATION

SEC. 14. (a) AUTHORITY.—(1) The Director of the National Institute for Occupational Safety and Health shall, in consultation with the Administrator, implement a Building Assessment Demonstration Program to support development of methods, techniques, and protocols for assessment of indoor air contamination in nonresidential, nonindustrial buildings and to provide assistance and guidance to building owners and occupants on measures to reduce indoor air contamination.

(2) In implementation of this section, the Director shall have the authority to conduct on-site assessments of individual buildings, including Federal, State, and municipal buildings.

(3) Nothing in this section shall in any way limit or constrain existing authorities pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651).

(b) ASSESSMENT ELEMENTS.—Assessments of individual buildings conducted pursuant to this section shall, at a minimum, provide—

(A) an identification of suspected contaminants in the air in the building and the level of such contaminants;

(B) an assessment of the probable sources of contaminants in the air in the building;

(C) a review of the nature and extent of health concerns and symptoms identified by building occupants;

(D) an assessment of the probable association of indoor air contaminants with the health and related concerns of building occupants including assessment of occupational and environmental factors which may relate to the health concerns;

(E) identification of appropriate measures to control contaminants in the air in the building, to reduce the concentration levels of contaminants, and to reduce exposure to contaminants; and

(F) evaluation of the effectiveness of response measures in control and reduction of contaminants and contaminant levels, the change in occupant health concerns and symptoms, the approximate costs of such measures, and any additional response measures which may reduce occupant's health concerns.

(c) ASSESSMENT REPORTS.—(1) The Director shall prepare—

(A) a preliminary report of each building assessment which shall document findings concerning assessment elements (A) through (E) of subsection (b); and

(B) a final report which shall provide an overall summary of the building assessment including information on the effectiveness and cost of response measures, and the potential for application of response measures to other buildings.

(2) Preliminary assessment reports shall be prepared not later than one hundred and eighty days after the selection of a building for assessment. Final assessment reports shall be prepared not later than one hundred and eighty days after completion of the preliminary report.

(3) Preliminary and final reports shall be made available to building owners, occupants, and the authorized representatives of occupants.

(d) BUILDING ASSESSMENT PROPOSAL.—(1) The Director shall consider individual buildings for assessment under this section in response to a proposal identifying the building and the building owner and providing preliminary, background information about the nature of the indoor air contamination, previous responses to air contamination problems, and the characteristics, occupancy, and uses of the building.

(2) Building assessment proposals may be submitted by a building owner or occupants or the authorized representatives of building occupants, including the authorized representatives of employees working in a building.

(e) BUILDING ASSESSMENT SELECTION.—(1) In selection of buildings to be assessed under this section, the Director shall consider—

(A) the seriousness and extent of apparent indoor air contamination and human health effects of such contamination;

(B) the proposal for a building assessment submitted pursuant to subsection (d) of this section;

(C) the views and comments of the building owners;

(D) the potential for the building assessment to expand knowledge of building assessment methods including identification of

contaminants, assessment of sources, and development of response measures; and

(E) the listing of a building pursuant to paragraph (C) of section 9(b)(3).

(2) The Director shall provide a preliminary response and review of building assessment proposals to applicants and the applicable building owner within sixty days of receipt of a proposal and, to the extent practicable, shall provide a final decision concerning selection of a proposal within one hundred and twenty days of submittal.

(f) BUILDING ASSESSMENT SUPPORT.—(1) The Director may enter into agreements with private individuals, firms, State and local governments, or academic institutions for services and related assistance in conduct of assessments under the authority of this section.

(2) The Director may enter into agreements with other Federal agencies for the assignment of Federal employees to a specific building assessment project for periods of up to one hundred and eighty days.

(g) SUMMARY REPORT.—(1) The Director shall provide, on an annual basis, a report on the implementation of this section to the Administrator of the Environmental Protection Agency and to the Council on Indoor Air Quality established pursuant to section 12 of this Act.

(2) The Director shall, from time to time and in consultation with the Administrator, publish general reports containing materials, information, and general conclusions concerning assessments conducted pursuant to this section. Such reports may address concerns related to remediation of indoor air contamination problems, assessment of health related concerns, and prevention of such problems through improved design, materials and product specifications, and management practices.

(3) Reports prepared pursuant to this subsection and subsection (c) of this section shall be provided to the Indoor Air Quality Information Clearinghouse provided for in section 13 of this Act and, to the extent practicable, such reports shall be made available to architectural, design and engineering firms and to organizations representing such firms.

STATE AND FEDERAL AUTHORITY

SEC. 15. (a) GENERAL AUTHORITY.—Nothing in this Act shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common or any local ordinance.

(b) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any authority under this Act, the Administrator shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

AUTHORIZATIONS

SEC. 16. (a)(1) For the purpose of carrying out sections 5, 6, and 7 of this Act there is authorized to be appropriated $20,000,000 for each of the fiscal years ending September 30, 1992, 1993, 1994, 1995, and 1996. Of such sums appropriated, one quarter shall be reserved for implementation of section 7 of this Act and one quarter shall be reserved for implementation of section 5(c) of this Act and $1,000,000 shall be reserved for implementation of section 6(b) of this Act.

(2) For the purpose of carrying out sections 8, 9, 11 and 13 there is authorized to be appropriated $10,000,000 for each of the fiscal years ending September 30, 1992, 1993, 1994, 1995, and 1996. Of such sums appropriated, one-fifth shall be reserved for implementation of section 13 and one-fifth shall be reserved for implementation of section 9.

(3) For the purpose of carrying out section 10 of this Act, there is authorized to be appropriated $12,000,000 for each of the fiscal years ending September 30, 1992, 1993, 1994, 1995, and 1996. Of such sums appropriated, one-third shall be reserved for the purpose of carrying out section 10(b) of this Act.

(4) For the purpose of carrying out section 12 of this Act there is authorized to be appropriated $1,500,000 for each fiscal year ending September 30, 1992, 1993, 1994, 1995, and 1996.

(5) For the purpose of carrying out section 14 of this Act there is authorized to be appropriated $5,000,000 per year for each fiscal year ending September 30, 1992, 1993, 1994, 1995, and 1996.

Mr. CHAFEE. Mr. President, I am pleased that we are today introducing the Indoor Air Quality Act of 1991. This ill will provide for a substantial research and development initiative to uncover harmful pollutants in our indoor environment, and will focus the efforts of the Federal Government to address this problem.

By focusing our efforts on providing clean indoor air, we will make strides toward preventing health problems before they occur. Our Nation spends billions of dollars each year on health care. Many of the illnesses we experience are preventable. In terms of public health, this bill will provide us with a much-needed ounce of prevention, and help us to avoid the costly pound of cure in treating respiratory illnesses.

Over the last decade we have made considerable progress in abating some of the most harmful pollutants of our outdoor environment. Emissions from cars are no longer as injurious to the air quality, and, under the new Clean Air Act, auto emissions will be reduced even more. Leaded gasoline, known to cause health effects in children, is being phased out. Once unsightly rivers are now returning to a state where they are fishable and swimmable.

Yet for all this progress, we have not turned out attention to the environment where Americans spend an average of 90 percent of their time: indoors. Much is known about the effects of some indoor contaminants such as radon, asbestos, and tobacco smoke. However, there are several other contaminants prevalent in the indoor environment about which very little is known. These include formaldehyde, volatile organic chemicals, combustion byproducts and respirable particles. There is a great likelihood that these pollutants pose a serious threat to public health.

The threat from these chemicals may be heightened by the fact that many of us live and work in virtually airtight buildings. Soaring energy costs over the past two decades spurred conservation efforts which led to the construction of office buildings in which you cannot open the windows. These well-insulated, energy efficient buildings often seal in potentially hazardous substances while reducing the amount of fresh air.

To date, relatively little attention has been given to the quality and potential health effects of the air inside our homes and offices. But there is mounting evidence that the air we breathe indoors may be at least as polluted with cigarette smoke, radioactive radon gas, and formaldehyde as the smog outside.

In a significant development, EPA now concludes that the risk to human health from indoor air contaminants may be at least as great as those from the outdoor environment. In a recent report, EPA notes that:

> Sufficient evidence exists to conclude that indoor air pollution represents a major portion of the public's exposure to air pollution and may pose serious acute and chronic health risks. This evidence warrants an expanded effort to characterize and mitigate this exposure.

This statement represents a major step forward in the Agency's thinking about what needs to be done to address indoor air pollution.

One of the most ubiquitous forms of indoor air pollution is environmental tobacco smoke. With over 54 million smokers in the United States, cigarette fumes will undoubtedly rank as one of the most significant sources of indoor air pollution. Passive smoking may be associated with a wide range of health problems, including increased risk for respiratory illnesses, lung cancer, and heart disease. It is estimated by the Surgeon General that up to 5,000 nonsmokers may die each year from lung cancer caused by inhaling other people's smoke.

At a hearing on the health effects of indoor air pollution before the Committee on Environment and Public Works, it became painfully clear that there is not an adequate effort by Federal agencies or States to conduct research on indoor air contaminants. This bill will direct the various agencies responsible for indoor air quality to coordinate their response plans to address these contaminants. The bill will place the Environmental Protection Agency squarely in the lead in developing the Federal response to indoor air contamination.

Let me describe the key elements of this legislation.

First, the bill establishes a research program for indoor air. This is an appropriate Federal role, to identify the risk posed by our indoor environment. Information developed by this research must be shared with the States and the private sector.

Second, the legislation will require EPA to establish health advisories. These advisories must be written in plain English, and must make it clear to the average citizen how he can best

minimize exposure and adverse health effects from indoor contaminants.

Third, the measure also provides for limited grant assistance to States for development of management strategies and response programs.

Fourth, the bill will authorize the National Institute of Occupational Safety and Health [NIOSH] to conduct assessments of "sick buildings." Estimates of lost worker productivity due to symptoms attributable to sick buildings is in the billions of dollars.

Also, I have added a provision to the legislation requiring EPA to conduct an assessment of the seriousness and extent of indoor air contamination in schools. As with radon, children may be at greater risk from harmful chemicals due to a higher respiratory rate, and the fact that their internal organs are still developing.

I would like to make it clear that this legislation does not place the Federal Government in the living rooms of Americans. The bill does not provide authority to regulate indoor air contaminants, but rather takes an informational approach. The health advisories, for example, will indicate the health risks at various concentration levels, and inform homeowners of ways to reduce and minimize the risk from various contaminants.

The best defense we have against an unhealthy indoor environment is an informed consumer. For example, homeowners need to be made aware of the health risks associated with using certain pesticides in the home. If this information can be communicated effectively, the marketplace will send a strong signal to pesticide manufacturers: Consumers demand safe pesticides for home use. The same can be true for cleaning solvents, furniture stripper, and a host of other chemicals which we bring into our home.

Americans need to know how to ensure that the quality of the air inside their home and office is healthy. We must begin to address the health threat posed by contaminants of the air indoors. This legislation, which was approved unanimously by the Senate last year, is a major step in this direction.

Mr. LAUTENBERG. Mr. President, I am pleased to join Senator MITCHELL and Senator CHAFEE in reintroducing the Indoor Air Quality Act of 1989. This legislation would require EPA to comprehensively address the threat to human health posed by indoor air contamination.

During the last Congress, the administration made action on the Clean Air Act one of its highest priorities. But concern about our air must not stop at our front doorsteps.

According to EPA's "Report to Congress on Indoor Air Quality":

Indoor air pollution represents a major portion of the public's exposure to air pollution and may present serious health risks.

The total costs of indoor air pollution, including medical costs and lost productivity, are in the tens of billions of dollars a year.

We need to expand efforts to mitigate exposure to indoor air pollutants.

We need to invest in an expanded research program.

Indoor air pollutants such as radon, asbestos, volatile organic compounds, environmental tobacco smoke, carbon monoxide, biological contaminants and pesticides pose a serious threat to the health of our citizens. As early as 1987, EPA identified indoor radon and other indoor air pollutants as areas of relatively high risk but low EPA efforts.

In a more recent EPA study of indoor air quality in 10 large buildings focusing on a class of pollutants known as volatile organic compounds [VOC's], EPA concluded that VOC's are ubiquitous indoors, almost every compound is found at higher levels indoors than out, and in some new buildings, some VOC's were measured at levels 100 times higher than outdoor levels. Similarly, the World Health Organization has determined that up to 30 percent of new or remodeled commercial buildings may have high rates of health or comfort complaints related to indoor air pollutants.

This is of particular concern because people spend approximately 90 percent of their time indoors, making the risk to health from indoor air pollutants potentially greater than air pollution outdoors. The people most exposed to indoor air pollution, the young, the elderly and the chronically ill, are often the most susceptible to its adverse effects.

The effects of indoor air pollutants are serious. Radon is estimated to cause up to 20,000 cancer deaths a year. Other indoor air pollutants may be responsible for another 11,000 deaths annually. The Surgeon General has determined that environmental tobacco smoke is a cause of disease, including lung cancer, in nonsmokers. Other long-term effects to exposure of harmful levels of indoor air pollutants include respiratory illnesses, central nervous system disorders, and reproductive problems. Acute reactions to certain pollutants include headaches, throat, skin and eye irritation, fatigue, shortness of breath, and nausea. The Consumer Federation of America estimates that the health costs from indoor air pollution approach $100 billion a year.

In addition, an estimated 15 percent of the U.S. population have an increased allergic senstitivity to common chemicals. Many of these people have a predisposition to become allergic to certain chemicals after a sensitizing exposure. Hypersensitivity can occur upon reexposure. Among the more common symptoms are those involving the nervous system including tension, and fatigue, and the respiratory system.

EPA has been slow to react to the threat posed by indoor air pollutants. That is why the majority leader and I introduced the legislation, which was enacted as title IV of the Superfund Amendments and Reauthorization Act of 1986, requiring EPA to establish a radon and indoor air pollution research program.

The Indoor Air Quality Act of 1991 builds on our prior legislation. It would require EPA to: Expand and strengthen indoor air research, and establish a technology demonstration program, conduct an assessment of indoor air quality in schools, develop health advisories on indoor air contaminants which may occur in indoor air at levels which may reasonably be expected to have an adverse impact on human health, prepare a response plan using existing regulatory authorities and other specified nonregulatory authorities to reduce exposure to indoor air contaminants, and make grants to States to develop and implement indoor air pollution strategies.

The bill also expands the authority of the National Institute of Occupational Safety and Health to conduct assessments of sick buildings.

As chairman of the Senate Subcommittee on Superfund, Ocean and Water Protection, I held hearings on this bill in May 1989 and the subcommittee approved the bill later that year with a number of changes. These changes include requiring EPA to: Prepare a report on multiple chemical sensitivities and expand its research program to address the effects of indoor air pollutants on all people, including those who suffer from multiple chemical sensitivities; conduct an assessment of indoor air problems in buildings housing child care facilities; conduct research with the Department of Transportation on indoor air pollution in public and private transportation; establish a program to address the role of ventilation in protecting the public from indoor air contaminants, and provide an assessment of indoor air monitoring and mitigation services provided by private firms.

The amendments also require the National Institute of Occupational Safety and Health to develop an indoor air training course which indoor air quality managers for every Federal building will have to take.

The amendments my subcommittee adopted last year are contained in the bill being introduced today.

This legislation passed the Senate last year. Unfortunately, the Congress ended before the House had a chance to act. I am optimistic the House will pass indoor air legislation during this Congress.

Mr. President, Americans want clean air, and that concern does not end

when they step into their home, place of employment, school, or their house of worship. The Indoor Air Quality Act establishes a comprehensive, balanced program to address the public health threat posed by indoor air contamination.

I urge my colleagues to support this bill.

By Ms. MIKULSKI (for herself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. SARBANES, and Mr. LEAHY):

S. 456. A bill to amend chapter 83 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the U.S. Customs Service, and revenue officers of the Internal Revenue Service; to the Committee on Governmental Affairs.

RETIREMENT BENEFITS FOR CERTAIN HAZARDOUS OCCUPATIONS

• Ms. MIKULSKI. Mr. President, I rise today to introduce legislation to permit certain employees of the U.S. Customs Service, Immigration and Naturalization Service, and Internal Revenue Service who are working in hazardous occupations to retire at age 50 with 20 years of Federal service. I am pleased to introduce this legislation on behalf of myself and Senators D'AMATO, MOYNIHAN, SARBANES, and LEAHY.

Under current law, Federal law enforcement officers and firefighters are eligible to retire at age 50 with 20 years of Federal service. This legislation would provide the same retirement benefit to U.S. Customs inspectors and canine enforcement officers, immigration inspectors, and IRS revenue officers. Like law enforcement officers and firefighters, these employees also have very hazardous, physically taxing occupations, and it is in the public's interest to ensure a young and vigorous work force in these jobs.

Customs and Immigration inspectors are our first line of defense against terrorism and the smuggling of illegal drugs. Recently, Customs instituted an antiterrorist program called Border Shield, which put employees on full alert at all border crossings and airports and required inspectors to carry firearms at all times. A clear and constant threat of severe bodily injury means that all Customs inspectors are authorized to carry firearms and must meet one of the highest qualification standards of all law enforcement officers.

In February, 1990, a tragic reminder of this threat occurred when Timothy McGaghren, a U.S. Customs inspector, was killed in the line of duty on the Southwest border.

According to an FBI uniform Crime Report, in 1988 IRS officers suffered more assaults than any law enforcement group in the Federal Government, and Customs and Immigration officers were assaulted at a rate exceeding that experienced by the FBI, U.S. Marshalls Service, and the U.S. Secret Service. In addition, between 1984 and 1988, more Customs officers died due to service-related injuries than any other group except DEA and Bureau of Prisons officers.

In the 101st Congress, I introduced S. 513, which covered the same employee groups and provided the same employee benefits as this bill. S. 513 was cosponsored by 36 other Senators.

I urge my colleagues to join me again in this Congress in expressing support for this bill and finally getting it enacted. This bill will improve the effectiveness of our inspector and revenue officer work force to ensure the integrity of our borders and proper collection of the taxes and duties owed to the Federal Government.

Mr. President, I ask unanimous consent that the text of the bill appear in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICATION OF CIVIL SERVICE RETIREMENT PROVISIONS.

(a) DEFINITIONS.—Section 8331 of title 5, United States Code, is amended

(1) by striking "and" at the end of paragraph (24);

(2) by striking the period at the end of paragraph (25) and inserting "; and"; and

(3) by adding at the end the following new paragraphs:

"(26) 'revenue officer' means an employee of the Internal Revenue Service, the duties of whose position are primarily the collection of delinquent taxes and the securing of delinquent returns, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(27) 'customs inspector' means an employee of the United States Customs Service, the duties of whose position are primarily to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(28) 'customs canine enforcement officer' means an employee of the United States Customs Service, the duties of whose position are primarily to work directly with a dog in an effort to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

"(29) 'Immigration and Naturalization inspector' means an employee of the Immigration and Naturalization Service, the duties of whose position are primarily the controlling and guarding of the boundaries and borders of the United States against the illegal entry of aliens, including an employee engaged in this activity who is transferred to a supervisory or administrative position.".

(b) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—Section 8334 of such title is amended—

(1) in subsection (a)(1), by striking "a law enforcement officer," and inserting "a law enforcement officer, a revenue officer, a customs inspector, a customs canine enforcement officer, an Immigration and Naturalization inspector,"; and

(2) in the table in subsection (c), by striking "and firefighter for firefighter service." and inserting ", firefighter service, revenue officer for revenue officer service, customs inspector for customs inspector service, customs canine enforcement officer for customs canine enforcement officer service, and Immigration and Naturalization inspector for Immigration and Naturalization inspector service".

(c) MANDATORY SEPARATION.—Section 8335(b) of such title is amended by striking "law enforcement officer or a firefighter" and inserting "law enforcement officer, a firefighter, a revenue officer, a customs inspector, a customs canine enforcement officer, or an Immigration and Naturalization inspector".

(d) IMMEDIATE RETIREMENT.—Section 8336(c)(1) of such title is amended by striking "law enforcement officer or firefighter," and inserting "law enforcement officer, a firefighter, a revenue officer, a customs inspector, a customs canine enforcement officer, or an Immigration and Naturalization inspector,".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to all persons employed as revenue officers of the Internal Revenue Service, customs inspectors and canine enforcement officers of the United States Customs Service, and inspectors of the Immigration and Naturalization Service upon or after the expiration of the 90-day period which begins on the date of the enactment of this Act.•

By Mr. DODD (for himself, Mr. PELL, and Mr. KENNEDY):

S. 457. A bill to provide for a National Board for Professional Teaching Standards; to the Committee on Labor and Human Resources.

NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS ACT

• Mr. DODD. Mr. President, today I am pleased to introduce, along with my colleagues Senators KENNEDY and PELL, the National Board for Professional Teaching Standards Act of 1991. This will be the third Congress in which we have introduced such legislation, Mr. President, and I hope the saying "third time's the charm" applies—not for our sake, but for the sake of American education.

The bill we are introducing is, save a change in effective dates, identical to

that passed by the Senate last February—1990—as a part of the President's Educational Excellence Act of 1990. That bill passed the Senate by a vote of 92 to 8. The legislation would provide $25 million in matching funds over 4 years to the national board for professional teaching standards for the research and development of equitable and comprehensive methods of assessment for high and rigorous certification standards for teachers.

If any of my colleagues are not familiar with the plans and goals of the National Board for Professional Teaching Standards [NBPTS], let me commend their important work to you. This outstanding national project was started in 1987 as a result of the recommendations of the Carnegie forum of education and the economy outlined in "A Nation Prepared: Teachers for the 21st Century." The NBPTS board of directors consists of 63 members—64 counting the president—who together come from 34 States plus the District of Columbia. The super-majority of the board—two-thirds—are teaching professionals, and the remainder are members of the public such as Governors and representatives of business, parents, and others from the education community such as school board members, administrators, and chief State school officers. The majority of the teaching professionals category are regular practicing classroom teachers. The presidents of both teachers unions, the NEA and the AFT, sit on the board.

The NBPTS has set as its task the goal of developing exemplary standards for teachers and devising state-of-the-art methods for assessing those standards, so that all of America's outstanding teachers may have access to a national system which will certify that they are tops in their field of teaching. It is important to understand that these certifications would be for advanced certifications—not to be confused with State licensing standards and procedures—and would be voluntary for teachers.

Right now, the board plans to develop some 30-plus certificates—categorized by grade level and subject matter. The standards for each one are being devised by expert teachers in that field from around the country. The board intends to launch their first certificates in 1993. They are now in the very early stages of developing four certificates.

The potential benefits to be derived from the board's work are great. First, the recognition and esteem with which the profession is held will rise. Parents will know that the schools their children attend are good because board certified teachers are on the faculty. Teacher education will adjust, as did medical education in this country when board certification was introduced to the medical profession. This is because education schools and departments will want their graduates to have high pass rates on the boards. Overtime, teachers who might have been tempted to leave the profession will stay because the work environment and rewards have improved, as has the status of teachers in the community. The best and brightest of our Nation's college students will see teaching as an attractive profession, not just for a short, "do good" stint, but as a real career, and, finally, the real beneficiaries, of course, will be the students, who will receive a better education because the quality of teachers in the classroom will improve.

Of course, these benefits will not accrue overnight. Nor will national board certification solve all the problems in American education. But this effort can be a very important cog in the machinery of educational improvement in our country, one which can have benefits nationwide far outstripping some other programs we may enact which in fact cost far more.

The Congress should make this investment of $25 million so the vital research and development work to create national board certification may proceed at as fast a pace as is possible. It is in all of our interests to see certifications in all important fields in elementary and secondary education available to teachers at the earliest possible date. It took the medical profession over 150 years to develop specialty boards in all the important fields of medicine. We do not want to wait 50 years for teaching. With these funds and with those matching funds provided by the private sector, the board will be able to complete certificates covering the majority of elementary and secondary teachers in this country.

Meanwhile, the NBPTS has not sat still while waiting for us to help. On the contrary, they have proceeded to start the research with money raised privately. But without our help, it will surely take many years longer to complete.

Mr. President, it is certainly true that our best efforts up here often not achieved overnight—our best programs have often taken several Congresses for birthing, several more for refinement. And it is also true that those programs which have had the shortest gestation period have also often had the shortest life span, if they've ever gotten off the ground at all. So, I am neither surprised nor especially chagrined that it has taken my efforts and the efforts of many of my colleagues two Congresses to build support for and refine this important proposal.

And refine it we have. The bill contains the tightest accountability requirements possible. It requires all the research funded to be undertaken under recognized systems of merit review. Only the board's research and development activities will be funded, not its general administrative and operating expenses. It requires the board to undertake certificates first in the areas Congress deems of highest priority—math, science, literacy, and the like. It requires that the research findings be shared, so that States and localities can benefit from the new state-of-the-art methods of assessment. All these features of the bill ensure that this important work will indeed be undertaken under the highest standards and in the national interest.

Mr. President, I urge my colleagues to lend their support to this measure and thus make a Federal commitment to one of the most important initiatives aimed at raising the standard of American education being undertaken in our country today.

I ask unanimous consent that the full text of the bill be printed in the RECORD following this statement.

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

S. 457

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 "National Board for Professional Teaching Standards Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the economic well-being and national security of the United States depends on efforts to strengthen the educational system to provide all children with an education which will ensure a well-educated workforce;

(2) improved teaching is central to the goal of ensuring a well-educated workforce;

(3) incentives to enhance the professionalism and status of teaching can be provided through the development and promulgation of voluntary standards of professional certification that are rigorous and unbiased, that complement and support State licensing practices and recognize the diversity of American society;

(4) the National Board for Professional Teaching Standards, a private nonprofit organization has been created to establish such voluntary standards and a significant initial investment in research and development from non-Federal sources will be required to create such a system of professional certification; and

(5) the Federal Government has played an active role in funding vital educational research and can continue to support this national effort by providing limited but essential support for critical research activities.

(b) PURPOSE.—It is the purpose of this Act to provide financial assistance to the National Board for Professional Teaching Standards to enable the Board to conduct independent research and development related to the establishment of national, voluntary professional standards and assessment methods for the teaching profession.

SEC. 3. DEFINITIONS.

For the purpose of this title—

(1) the term "Board" means the National Board for Professional Teaching Standards;

(2) the term "Committee" means the Research and Development Advisory Committee established pursuant to section 5 of this Act;

(3) the term "Director" means the Director of the National Science Foundation;

(4) the term "elementary school" has the same meaning given that term in section 1471(8) of the Elementary and Secondary Education Act of 1965;

(5) the term "secondary school" has the same meaning given that term in section 1471(21) of the Elementary and Secondary Education Act of 1965. Nothing in this Act shall be construed to infringe upon the practice or accreditation of home school or private school teaching; and

(6) the term "Secretary" means the Secretary of Education.

SEC. 4. PROGRAM AUTHORIZATION.

(a) PROGRAM AUTHORIZED.—From sums appropriated pursuant to the authority of subsection (b) in any fiscal year, the Secretary is authorized and directed to provide financial assistance to the National Board for Professional Teaching Standards, in order to pay the Federal share of the costs of the activities described in section 6.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 for the period beginning October 1, 1990 and ending September 30, 1994 to carry out the provisions of this Act.

(c) TERMS AND CONDITIONS.—(1) No financial assistance may be made available under this Act except upon an application as required by section 7.

(2) No financial assistance may be made available under this Act unless the Secretary determines that—

(A) the Board will comply with the provisions of this Act;

(B) the Board will use the Federal funds only for research and development activities in accordance with section 6, and such teacher assessment and certification procedures will be free from racial, cultural, gender or regional bias;

(C) the Board—

(i) will widely disseminate for review and comment announcements of specific research projects to be conducted with Federal funds, including a description of the goals and focus of the specific project involved and the specific merit review procedures and evaluation criteria to be used in the competitive award process; and

(ii) will send such announcements to the Secretary, the Director, the National Research Council, and the educational research community;

(D) will make arrangements with the Secretary to have the announcement described in subparagraph (C) published in the Federal Register (or such other publication deemed appropriate by the Secretary) and in publications of general circulation designed to disseminate such announcements widely to the educational research community;

(E) the Board will, after offering any interested party an opportunity to make comment upon, and take exception to, the projects contained in the announcements described in subparagraph (C) for a 30-day period following publication, and after reconsidering any project on which comment is made or to which exception is taken, through the Secretary issue a request for proposals in the Federal Register (or such other publication deemed appropriate by the Secretary) containing any revised project information;

(F) the Board will make awards of Federal funds competitively on the basis of merit, and, in the award process, the Board will select for such awards, to the extent practicable consistent with standards of excellence—

(i) a broad range of institutions associated with educational research and development; and

(ii) individuals who are broadly representative of the educational research and teaching communities with expertise in the specific area of research and development in question;

(G) the Board will adopt audit practices customarily applied to nonprofit private organizations and will comply with the provisions of section 9(c);

(H) the Board will not use Federal funds to meet the administrative and operating expenses of the Board;

(I) the Board will submit an annual report to Congress in accordance with the provisions of section 9(a); and

(J) the Board will, upon request, disseminate to States, local educational agencies, or other public educational entities the results of any research or research project produced with funds authorized by this Act, upon the payment of the cost of reproducing the appropriate material.

(d) AVAILABILITY OF FUNDS.—(1) Notwithstanding any other provision of law, funds appropriated to carry out the provisions of this Act shall remain available for obligation and expenditure until the end of the second fiscal year succeeding the fiscal year for which the funds were appropriated.

(2) No Federal funds shall be made available to the Board after September 30, 1994, except as authorized by paragraph (1) of this subsection.

SEC. 5. RESEARCH AND DEVELOPMENT ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Board shall establish a Research and Development Advisory Committee composed of 10 recognized scholars and experts in teaching, assessment, and other relevant fields. In carrying out the previous sentence the Board shall appoint two individuals selected by the Secretary. The Board shall consult with the Secretary, the Director, the National Research Council, and the educational research community on the appointment of other members to the Committee.

(b) FUNCTIONS.—The Committee shall advise the Board on the design and execution of the overall research and development strategy for activities assisted under this Act, including procedures to assure compliance with the provisions of this Act. The procedures shall include—

(1) an outline of a specific research and development agenda and activities to be conducted with the Federal funds; and

(2) provisions to ensure compliance with the open competition and merit review requirements of this Act for proposals and projects assisted under this Act.

SEC. 6. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Federal funds received under this Act may be used only for research and development activities directly related to the development of teacher assessment and certification procedures for elementary and secondary school teachers.

(b) PRIORITIES.—(1) The Board shall give priority to research and development activities in—

(A) mathematics;

(B) the sciences;

(C) foreign languages; and

(D) literacy, including the ability to read, write and analyze.

(2) The Board shall give priority to research and development activities for the certification of elementary and secondary school teachers and the need and ability of such teachers to teach special educational populations, including—

(A) limited English proficient children;

(B) gifted and talented children;

(C) children with disabilities; and

(D) economically and educationally disadvantaged children.

SEC. 7. APPLICATION.

(a) IN GENERAL.—The Board shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance is sought; and

(2) provide assurances that the non-Federal share of the cost of activities of the Board shall be paid from non-Federal sources, together with a description of the manner in which the Board will comply with the requirements of this paragraph.

(b) APPROVAL.—The Secretary shall approve an application submitted pursuant to subsection (a) unless such application fails to comply with the provisions of this Act.

SEC. 8. PAYMENTS; FEDERAL SHARE.

(a) IN GENERAL.—The Secretary shall pay to the Board the Federal share of the costs of the activities described in the application approved pursuant to section 7 for the period for which the application is approved under section 7.

(b) AMOUNT OF FEDERAL SHARE.—The Federal share shall be 50 percent.

SEC. 9. REPORTS AND AUDITING PROVISION.

(a) NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS REPORT.—(1) The Board shall submit an annual report to the appropriate committees of the Congress not later than December 31, 1991, and each succeeding year thereafter, for any fiscal year in which Federal funds are expended pursuant to this Act. The Board shall disseminate the report for review and comment to the Secretary, the Director, the National Research Council, and the education research community. The report shall—

(A) include a detailed financial statement and a report of the audit practices described in section 4(c)(2)(G);

(B) include a description of the general procedure to assure compliance with the requirements of section 6; and

(C) provide a comprehensive and detailed description of the Board's agenda, activities, and planned activities for the preceding and succeeding fiscal years, including—

(i) the Board's overall research and development program and activities;

(ii) the specific research and development projects and activities conducted with Federal funds during the preceding fiscal year, including—

(I) a description of the goals and methodology of the project;

(II) a description and assessment of the findings (or status and preliminary findings if the project is not yet complete);

(III) a description of the competitive bidding process, the merit review procedures, and the evaluation criteria used to award project funds; and

(IV) a description of the Board's plans for dissemination of the findings described in subclause (II);

(iii) the specific research and development projects and activities planned to be conducted with Federal funds during the succeeding fiscal year, including the goals and methodologies to be used; and

(iv) a listing of available publications of the Board, including publications related to policies, standards and general information,

research reports, and commissioned papers of the Board.

(2) The first annual report required by this subsection shall include a description of the Board's research and development agenda for the succeeding 5-year period. Such first report shall include, to the maximum extent practicable, a description of specific research and development projects and activities, and the goals and methodologies of such projects and activities.

(b) ADDITIONAL REPORTS.—The Secretary, the Director, and the National Research Council shall report to the appropriate committees of the Congress on the compliance of the Board with the requirements of this Act not later than 30 days after the Board submits each annual report described in subsection (a).

(c) AUDITING PROVISION.—The Comptroller General of the United States, and any of his authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the Board, and to any recipient of funds from the Board, that are pertinent to the sums received and disbursed under this Act.

SEC. 10. CONSTRUCTION.

Nothing in this Act shall be construed to—

(1) establish a preferred national curriculum or preferred teaching methodology for elementary and secondary school instruction;

(2) infringe upon the rights and responsibilities of the States to license elementary and secondary school teachers;

(3) provide an individual certified by the Board with a right of action against a State, local educational agency, or other public educational entity for any decisions related to hiring, promotion, retention or dismissal; or

(4) authorize the Secretary to exercise supervision or control over the research program, standards, assessment practices, administration, or staffing policies of the Board.•

By Mr. ROTH (by request):

S. 458. A bill to provide for Governmentwide procurement ethics reform, and for other purposes; to the Commitee on Governmental Affairs.

PROCUREMENT ETHICS REFORM ACT

• Mr. ROTH. Mr. President, I rise today to introduce, at the request of the administration, a bill titled the "Procurement Ethics Reform Act."

The administration believes that certain procurement-specific statutes are no longer needed. These provisions have been criticized by contractors and by administration officials as complex, inconsistent, and sometimes redundant. In response to the criticism and for other reasons, certain provisions of section 27 of the Office of Federal Procurement Policy Act were suspended for 1 year by the Ethics Reform Act and a portion of them suspended again for an additional 6 months.

This proposal would repeal the statutes which the administration sees as most bothersome. First, it would replace the procurement-integrity provisions set out in section 27 of the Office of Federal Procurement Policy Act, with a new provision that the administration believes more squarely address the same basic concerns which is protecting procurement sensitive information. Second, it would remove section 27's gratuities and revolving-door restrictions, and repeal three other sets of revolving-door statutes applicable to officers and employees of the Department of Defense and the Department of Energy.

I believe that the force and effect of these proposed changes need to be clearly understood. While I do not fully agree with the administration's proposal, I believe it is a good starting point and will permit the Senate to proceed with the debate and negotiations that are necessary to reaching consensus on whether there is a need to reform procurement-integrity statutes and if so, what is needed.

Mr. President, I ask unanimous consent that the bill be printed in full in the RECORD along with a section-by-section analysis and the administration's statement of purpose and need. I think these documents will provide an excellent reference for our upcoming debate.

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

S. 458

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 "Procurement Ethics Reform Act."

SEC. 2. FINDINGS AND PURPOSE.

(a) The Congress finds that enacting a statute addressing the disclosure and receipt of contractor bid or proposal information and source selection information will clarify existing lain. By focusing on the information to be protected, rather than the status of persons who might disclose or obtain the information, or the stage of a Federal agency procurement when the information may be generated, this Act will increase the general understanding of the conduct expected and limitations imposed.

(b) The purpose of this Act is to clarify existing lain governing participation in Federal agency procurements by adding a new provision addressing the disclosure and receipt of contractor bid or proposal information or source selection information and repealing certain conflict of interest statutes that apply to individual employees on a selective basis.

SEC. 3. DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

(a) Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

"SEC. 27. DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

"(a) A present or former officer or employee of the United States, or a person who is acting or has acted for or on behalf of or who is advising or has advised the United States with respect to a Federal agency procurement and who—

"(1) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information, and

"(2) other than as provided by law, knowingly and willfully discloses that information before the award of a Federal agency procurement contract to which the information relates,

is subject to the penalties and administrative actions set forth in subsection (d).

"(b) Whoever, other than as provided by law, knowingly and willfully obtains contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates is subject to the penalties and administrative actions set forth in subsection (d).

"(c) Whoever, other than as provided by law, knowingly and willfully violates the terms of a protective order, issued by the Comptroller General or the board of contract appeals of the General Services Administration in connection with a protest against the award or proposed award of a Federal agency procurement contract, by disclosing or obtaining contractor bid or proposal information or source selection information is subject to the penalties and administrative actions set forth in subsection (d).

"(d) The penalties and administrative actions for an offense under subsection (a), (b), or (c), are as follows:

"(1) CRIMINAL PENALTIES.—

"(A) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in 18 U.S.C. 3571, or both.

"(B) Whoever engages in the conduct constituting the offense for the purpose of either

"(i) exchanging the information covered by subsections (a), (b), and (c), for anything of value, or

"(ii) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than five years or fined in the amount set forth in 18 U.S.C. 3571, or both.

"(2) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), or (c). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

"(3) ADMINISTRATIVE ACTIONS.—If a Federal agency receives information that a contractor or a person has engaged in conduct constituting an offense under subsection (a), (b), or (c), the Federal agency shall consider one or more of the following actions, as appropriate:

"(A) Canceling the Federal agency procurement when a contract has not been awarded;

"(B) Declaring void and rescinding a contract in relation to which there has been either

"(i) a conviction for an offense under subsection (a), (b), or (c), committed by the contractor or someone acting for the contractor, or

"(ii) a determination by the head of the agency based upon clear and convincing evidence that the contractor or someone acting for the contractor has engaged in such conduct.

If such action is taken, the United States is entitled to recover in addition to any penalty prescribed by law, the amount expended under the contract;

"(C) Initiating suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation. In this regard, engaging in conduct constituting an offense under subsection (a), (b), or (c), affects the present responsibility of a Government contractor or subcontractor; or

"(D) Initiating adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

"(e) For purposes of this section:

"(1) The term 'contracting officer' means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

"(2) The term 'contractor bid or proposal information' means the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Cost or pricing data;

"(B) Indirect costs and direct labor rates;

"(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation; or

"(D) Information marked by the contractor as 'contractor bid or proposal information,' in accordance with applicable law or regulation.

"(3) The term 'Federal agency' has the meaning given that term in section 3 of the Federal Property and Administrative Services Act (40 U.S.C. 472).

"(4) The term 'Federal agency procurement' means the competitive acquisition by contract of supplies or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

"(5) The term 'protest' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759) or subchapter V of chapter 35 of title 31, United States Code.

"(6) The term 'source selection information' means the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if the information has not been previously made available to the public or disclosed publicly:

"(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids or lists of those bid prices prior to public bid opening;

"(B) Proposed costs or prices submitted in response to a Federal agency solicitation or lists of those proposed costs or prices;

"(C) Source selection plans;

"(D) Technical evaluation plans;

"(E) Technical evaluations of proposals;

"(F) Cost or price evaluations of proposals;

"(G) Competitive range determinations which identify proposals that have a reasonable chance of being selected for award of a contract;

"(H) Rankings of bids, proposals, or competitors;

"(I) The reports and evaluations of source selection panels or boards or advisory councils; or

"(J) Other information marked as 'source selection information' based upon a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

"(f) No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging an offense under subsection (a), (b), or (c), of this section, nor may the Comptroller General or the board of contract appeals of the General Services Administration consider such an allegation in deciding such a protest, unless that person reported information to the Federal agency responsible for the procurement that he believed constituted evidence of the offense no later than ten working days after he first discovered the possible offense.

"(g) This section does not:

"(1) Restrict the disclosure of information to or its receipt by any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(2) Restrict a contractor from disclosing its own bib or proposal information or the recipient from receiving that information;

"(3) Restrict the disclosure or receipt of information relating to the Federal agency procurement after it has been cancelled by the Federal agency prior to contract award unless the Federal agency plans on resuming the procurement;

"(4) Authorize the withholding of information from nor restrict its receipt by the Congress, a committee or subcommittee thereof, the Comptroller General, a Federal agency, or an Inspector General of a Federal agency;

"(5) Authorize the withholding of information from nor restrict its receipt by any board of contract appeals of a Federal agency or the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

"(6) Limit the applicability of the requirements, sanctions, contract penalties, and remedies established under any other law or regulation.".

(b) Government-wide regulations and guidelines deemed appropriate to carry out this Act shall be issued in the Federal Acquisition Regulation by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, in coordination with the Federal Acquisition Regulatory Council. Proposed regulations and guidelines shall be issued within 120 days after the date of enactment. Implementing regulations and guidelines shall be issued within 180 days of enactment.

SEC. 4. REPEALS.

The following laws are repealed:

(a) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(b) Section 281 of title 18, United States Code.

(c) Section 801 of title 37, United States Code.

(d) Sections 604, 605, 606, and 608(c) of the Department of Energy Organization Act (42 U.S.C. 7214–7216 and 7218(c)).

SEC. 5. CONFORMING AMENDMENTS.

(a) Chapter 141 of title 10, United States Code, is amended by striking the items relating to sections 2397, 2397a, 2397b, and 2397c in the table of sections at its beginning.

(b) Chapter 15 of title 18, United States Code, is amended by striking the item relating to section 281 in the table of sections at its beginning.

(c) Chapter 15 of title 37, United States Code, is amended by striking the item relating to section 801 in the table of sections at its beginning.

(d) The Department of Energy Organization Act is amended:

(1) In section 601(c)(1) by striking "through 606" and inserting "and 603";

(2) In section 601(d) by striking ", 603(a), 605(a), and 606" and inserting "and 603(a)";

(3) In section 607(a) by striking ", 604, or 605";

(4) In section 607(b) by striking "sections 603, 604, and 605" and inserting "section 603", and by striking "Personnel Management" wherever it appears and inserting "Government Ethics";

(5) In section 607(c) by striking ", 603(c), 605(a), or 606(c)" and inserting "and 603(c)"; and

(6) In section 608(b) by striking ", 603, 604, 605, or 606" and inserting "or 603".

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED PROCUREMENT ETHICS REFORM ACT

SECTION 1—SHORT TITLE

Section 1 provides that the proposed Act may be cited as the "Procurement Ethics Reform Act."

SECTION 2—FINDINGS AND PURPOSE

Section 2(a) states the finding of Congress that enacting a statute addressing the disclosure and receipt of contractor bid or proposal information and source selection information would clarify existing law. By focusing on the information to be protected, rather than the status of persons who might disclose or obtain the information, or the stage of a Federal agency procurement when the information is generated, the proposed Act would increase the general understanding of the conduct expected and limitations imposed.

Enactment of individual statutes addressing conflicts of interest in Federal agency procurements has, over time, contributed a measure of uncertainty and complexity to the body of conflict interest lain. These statutes were intended, in part, to protect the integrity of the procurement process. They help to ensure that no bidder or offeror for a Federal agency procurement will gain an unfair competitive advantage by unauthorized access to procurement-sensitive information or by the inappropriate use of influence. In many cases, however, the restrictions they impose overlap similar restrictions imposed by Government-wide statutes. As a net result of the accretion of these statutes, officers and employees of executive branch agencies are subject to multiple layers of seemingly inconsistent rules, and the executive branch ethics program is encumbered by a complex, multi-tiered system of statutory restrictions that make it difficult to provide effective ethics training and counseling.

There are four sets of statutes that are directed specifically at the conduct of personnel involved in procurement-related activities, either as current or former officers or employees: the procurement integrity provisions (section 27 of the Office of Federal Procurement Policy Act); the Department of Defense restrictions at 10 U.S.C. §§ 2397 through

2397c; the military selling statutes at 18 U.S.C. §281 and 37 U.S.C. §801; and the Department of Energy statutes at sections 604 through 606 of the Department of Energy Organization Act. At the time of their enactment, most of these statutes served to supplement existing Government-wide remedies by creating civil remedies for conduct similar to that prohibited by the criminal conflict of interest statutes. However, with the addition of 18 U.S.C. §216 as part of the Ethics Reform Act of 1989, Congress created a new class of misdemeanor violations and added civil penalties and injunctive relief for violations of most of the conflict of interest statutes at Chapter 11 of title 18 of the United States Code.

To a great extent, these four sets of statutes are duplicative in purpose of the general conflict of interest statutes, 18 U.S.C. §§201, 207, and 208. For example, the restrictions on seeking employment imposed by the procurement integrity provisions and 10 U.S.C. §2397a are similar in their application to the prohibitions that apply to all executive branch personnel under 18 U.S.C. §208 and the standards of conduct. The post-employment restrictions imposed by the procurement integrity provisions, 10 U.S.C. §2397b, the military selling statutes, and section 605 of the Department of Energy statute mirror the purpose, but not the scope and coverage of the Government-wide post-employment statute, 18 U.S.C. §207.

The overlapping of the various statutory requirements results in considerable confusion for those who must follow the rules and who risk stiff criminal, civil, and administrative sanctions for failure to do so. The overlapping statutory requirements also create considerable administrative burden for those charged with administering agency ethics programs.

Section 2(b) states that the purpose of the proposed Act is to reduce the confusion resulting from the overlapping statutory requirements, while protecting the Government from potential conflicts of interest by those who participate in Federal agency procurements. To accomplish this purpose, the proposed Act would replace the protections afforded proprietary and source selection information by the procurement integrity provisions with less complex provisions that would prohibit disclosing or obtaining contractor bid or proposal information or source selection information. The proposed Act would also repeal several conflict of interest statutes that are duplicative of general conflict of interest laws.

SECTION 3—DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION

Section 3 would replace section 27 of the Office of Federal Procurement Policy Act (the procurement integrity provisions) with a new section 27 which would prohibit improperly disclosing or obtaining contractor bid or proposal information or source selection information. One who violates the prohibitions of section 27 of the proposed Act would be subject to criminal and civil penalties and to appropriate administrative actions. In terms of the conduct it circumscribes, the proposed Act is similar in scope to the prohibitions on disclosing and obtaining proprietary and source selection information contained in the procurement integrity provisions.

Unauthorized access to a competitor's bid or proposal information or the agency's source selection information may provide a bidder or offeror an opportunity to obtain an unfair advantage in competing for a Government contract. The Government has a substantial interest in maintaining a level playing field for all competitors for Government contracts and any perception that the process is unfair is likely to discourage potential competitors. The net result of diminished competition in Government procurements is increased costs to the Government, whether because of a higher contract price or less satisfactory products or performance. The proposed Act would provide needed protections to ensure that competing contractors do not obtain access to information that would give them an unfair competitive advantage and, thereby, jeopardize the integrity of the procurement process.

The proposed Act would simplify the application of protections similar to the procurement integrity provisions. The proposed prohibitions would focus on the information protected, rather than on whether it was disclosed or obtained by a person having the status of a "procurement official" or a "competing contractor" or at a particular point in the procurement process. Until the contract to which it pertains is awarded, contractor bid or proposal information and source selection information would be protected by proposed subsection 27(a) from unauthorized disclosure. Anyone who had access to that information by reason of being an employee of the United States or acting for or advising the United States with respect to the particular procurement would be prohibited from such disclosure. The corollary restriction of proposed subsection 27(b) would make it a violation for anyone to obtain such information prior to contract award. Subsection 27(c) would prohibit anyone from violating the terms of a protective order, issued in the course of a protest to the award or proposed award of a Federal agency procurement contract, by disclosing or obtaining information protected by the Act. An offense under subsections 27 (a), (b), or (c), would occur only if the information is disclosed or obtained "knowingly and willfully," in violation of the Act.

Proposed subsection 27(d) establishes both criminal and civil penalties for violations of subsections 27(a), 27(b), and 27(c), and prescribes appropriate administrative actions that may be taken by the procuring agency. Subsection 27(s) (1)(A) would make persons who engage in conduct proscribed by subsection 27(a), 27(b), or 27(c) subject to imprisonment for up to one year and fines set forth in 18 U.S.C. §3571, or both. Subsection 27 (d)(1)(B) would make persons who engage in such conduct for the purpose of either exchanging the information covered by subsection 27(a), 27(b), or 27(c) for anything of value, or obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract subject to imprisonment for up to five years and fines set forth in 18 U.S.C. §3571, or both. Subsection 27(d) (2) would allow the Attorney General to bring a civil action to recover from an individual up to $50,000 for each violation plus twice the amount of any compensation received or offered for the prohibited conduct. An organization that engages in the prohibited conduct would be subject to a civil fine of up to $500,000 for each violation plus twice the amount of any compensation received or offered for the prohibited conduct.

Where a Federal agency receives information that a contractor or any person has engaged in conduct constituting an offense under the Act, subsection 27(d) (3) provides that the procuring agency shall consider appropriate administrative action. Prior to contract award, and without regard to whether any penalty has been imposed, appropriate action may include cancelling the procurement. Appropriate action may also include declaring the contract void and rescinding the contract, where there has been a conviction related to the procurement for an offense committed by the contractor or someone acting for the contractor, or where the head of the procuring agency makes a determination that such an offense has occurred.

Regardless of the stage of the procurement, appropriate action may include debarment or suspension, i.e., excluding or temporarily excluding a contractor or person from Government contracting and Government-approved subcontracting for a specified period. Subsection 27 (d) (3) facilitates the initiation of debarment or suspension proceedings by making it clear that an offense under the proposed Act affects the present responsibility of a Government contractor or subcontractor. In the case of a Government employee who engages in conduct constituting an offense under the Act, appropriate administrative action may include initiating adverse personnel action. It is anticipated that regulations implementing Subsection 27 (d) (3) would provide further guidance to procuring agencies on taking appropriate administrative actions.

Proposed subsection 27(e) provides definitions of the information protected, along with definitions of the terms "contracting officer," "Federal agency," "Federal agency procurement," and "protest." By the definition at subsection 27 (e) (2), two categories of information are specifically protected as biG or proposal information and there is provision for extending the statute's protections to other information marked by the contractor in accordance with applicable law or regulation. Proposed section 27 uses the term "contractor bid or proposal information", rather than "proprietary information" used in the procurement integrity provisions, to characterize more precisely the class of information protected. The term "source selection information" is the same as that used in the procurement integrity provisions. However, unlike the procurement integrity provisions' generic definition, subsection 27 (e) (6) lists nine specific categories of information generated within the agency or for use by the agency in selecting the successful bid or proposal. There is provision for extending the statute's protections to other information that is marked as source selection information based on the determination that its disclosure would jeopardize the integrity or successful completion of the procurement.

Proposed subsection 27(f) would preclude the filing of a protest alleging a violation of the substantive restrictions of subsection 27 (a), (b), or (c), unless the protestor reported information to the Federal agency responsible for the procurement that he believed constituted evidence of the offense no later than 10 days after he first discovered the possible offense. This restriction is intended to provide the agency an opportunity to take administrative action or initiate investigations, as appropriate, where the information gives the agency reason to believe that a violation has occurred.

Proposed subsection 27(g)(I) contains language to ensure that contractor bid or proposal information and source selection information may properly be disclosed in accordance with applicable procedures and regulations. Subsection 27(g)(2) would make it clear that the Act is not intended to restrict a contractor from disclosing its own bid or proposal information. Subsection 27(g)(3)

provides that otherwise protected information may be disclosed when a procurement has been cancelled prior to award and the agency does not plan on resuming the procurement. Subsection 27(g)(4) would ensure that the proposed Act is not construed to authorize the withholding of information from Congress, the Comptroller General, a Federal agency, or an Inspector General of a Federal agency. Subsection 27(g)(5) would make it clear that the proposed Act would not authorize withholding information from a board of contract appeals or the Comptroller General incident to the bid protest process. Subsection 27(g)(6) is intended to preserve the applicability of any requirements, sanctions, contract penalties and remedies provided by other law or regulation.

Subsection 3(b) of the proposed Act would require that appropriate implementing regulations and guidelines be issued in the Federal Acquisition Regulation in coordination with the Federal Acquisition Regulatory Council. This subsection would require that proposed regulations and guidelines be issued within 120 days of enactment, and that implementing regulations and guidelines be issued within 180 days of enactment.

While portions of the procurement integrity provisions served a similar purpose to proposed section 27, the procurement integrity provisions used definitions and imposed certification requirements that introduced a measure of uncertainty and complexity not presented by the proposed Act.

SECTION 4—REPEALS

Section 4 would repeal three sets of statutes that, on a selective basis, impose additional restrictions upon the conflict of interest standards that apply to all personnel in the executive branch. Together with the proposed changes to section 27 of the Office of Federal Procurement Policy Act, repeal of these statutes would eliminate much of the complexity that now burdens the executive branch ethics program and encumbers agency efforts to provide meaningful ethics training and counseling.

The Ethics Reform Act of 1989 was passed in the wake of comprehensive executive and legislative branch reviews of the conflict of interest statutes that apply to all three branches of Government. As a result of that review, major amendments were made to 18 U.S.C. 207 to establish a single, comprehensive, post-employment statute applicable to executive and legislative branch personnel who leave Government service; the basic conflict of interest statute, 18 U.S.C. §208 was modified; new misdemeanor and civil remedies were added for violations of 18 U.S.C. §5207 and 208; and 5 U.S.C. §7353 was added to establish uniform standards for the receipt of gifts by all Government personnel. A major purpose of the Ethics Reform Act of 1989 was to create a comprehensive body of conflict of interest restrictions applicable to employees throughout the three branches of the Government. That purpose is thwarted by the continued existence of the overlapping sets of statutes that would be repealed by this section.

Those portions of the procurement integrity provisions designed to protect procurement-sensitive information would be superseded by the new protections for bid or proposal information and source selection information added by section 3. The gratuities and revolving door restrictions on the procurement integrity provisions would be eliminated as duplicative in purpose of gratuities and revolving door statutes that apply to personnel throughout the executive branch.

To reduce the multiple layers of overlapping restrictions that burden the Defense Department ethics program, section 4 would repeal several revolving door statutes targeted at Defense Department personnel and their employment with contractors who do work for the Defense Department. The restrictions on seeking employment contained in 10 U.S.C. §2397a and the post-employment restrictions of 10 U.S.C. §2397b would be repealed because they are duplicative in purpose of the revolving door restrictions that apply to all executive branch personnel under 18 U.S.C. §207 and 208. The post-employment reporting requirements of 10 U.S.C. 2397 and 2397c would be repealed because they encumber the Defense Department's ethics program with procedural requirements that do not contribute to the enforcement of the substantive post-employment restrictions.

Because they have been superseded in purpose by the more appropriate post-employment restrictions of 18 U.S.C. §207, the military selling statutes, 18 U.S.C. §281 and 37 U.S.C. §801, would also be repealed. Their repeal could eliminate the unfairness of burdening retired military officers with two or more layers of overlapping post-employment restrictions than apply to any other officer or employee in the executive branch.

Finally, section 4 would repeal the Energy Department revolving door statutes, sections 605 and 606 of the Department of Energy Organization Act (42 U.S.C. 7215 and 7216), and their related sanctions and reporting and disclosure provisions. Enacted as a prototype for the one year no-contract ban contained in 18 U.S.C. §207(c), the Energy Department post-employment statute, section 605, makes Energy Department supervisory employees the only employees in the executive branch below level V of the Executive Schedule to be subject to a one-year no-contact ban. Under section 606, Energy Department employees are the only employees subject to a "reverse" revolving door statute that mandates their recusal from matters affecting a former employer with whom they have severed all financial ties.

SECTION 5—CONFORMING AMENDMENTS

Section 5 would amend the appropriate tables of sections in titles 10, 18, and 37, to strike references to the repealed provisions, and would amend the Department of Energy Organization Act to conform to the repeal of the provisions of that Act identified in section 4.

STATEMENT OF PURPOSE AND NEED FOR THE PROCUREMENT ETHICS REFORM ACT

The purpose of the attached bill is twofold. First, it would replace the procurement integrity provisions, section 27 of the Office of Federal Procurement Policy Act, with a new provision that more squarely addresses the same basic concerns: unauthorized disclosure and receipt of contractor bid or proposal information and source selection information. Second, it would remove section 27's gratuities and revolving door restrictions, and repeal three other sets of revolving door statutes applicable to officers and employees of the Department of Defense (DOD) and the Department of Energy (DOE).

Congress passed the Ethics Reform Act in November, 1989. The Ethics Reform Act added provisions to the existing body of conflict of interest laws applicable throughout the executive branch, and extended the application of many of those laws to all three branches of the Government. The Ethics Reform Act added a new provision restricting the receipt of gifts by officers and employees of all three branches and amended most of the basic statutes underlying the Government's ethics program. Amendments were made to 18 U.S.C. §208, which places restrictions on negotiating for other employment while still in Government service, and 18 U.S.C. §207, which restricts activities after Government service has ended. In addition, a new statute, 18 U.S.C. §216, created a new class of misdemeanor violations and added civil remedies and injunctive relief for violations of most of the conflict of interest statutes in Chapter 11 of title 18 of the United States Code.

Section 507 of the Ethics Reform Act of 1989 suspended for one year, until December 1, 1990, section 27 and three other sets of statutes that impose additional and overlapping conflict of interest restrictions applicable to narrow classes of executive branch personnel. Section 815 of the National Defense Authorization Act for Fiscal Year 1991 continued the suspension of the post-employment provisions of section 27(f) and the other three sets of statutes through May 31, 1991. The suspended statutes include the DOD revolving door statutes at 10 U.S.C. §52397a and 2397b, the military selling statute at 18 U.S.C. §281, and most of the DOE conflict of interest statutes at 42 U.S.C. §57211–7218. The perpetuation of these ethics statutes addressing similar conduct but applying different prohibitions to limited classes of officers and employees is at odds with the comprehensive purpose and structure of the Ethics Reform Act of 1989.

THE PROCUREMENT INTEGRITY PROVISIONS

Section 27 subjects Government procurement officials (i.e., those who participate personally and substantially in specified activities in the conduct of a procurement prior to award) to four separate restrictions, with three corollary restrictions made applicable to competing contractors. Throughout the conduct of a procurement prior to award, it prohibits a procurement official from (1) seeking employment with a competing contractor; (2) soliciting or receiving gratuities from a competing contractor; and (3) making an unauthorized disclosure of proprietary or source selection information. For each of these three restrictions, there is a corollary restriction applicable to competing contractors. A separate provision extends the prohibition on unauthorized disclosure of proprietary and source selection information to anyone who has authorized or unauthorized access to such information. An additional restriction prohibits a former procurement official for two years from participating on behalf of a competing contractor (1) in any negotiations leading to award or modification of any contract for such procurement or (2) in the performance of such contract. There are a number of definitions and certification requirements that, in combination with recusal procedures and requirements to issue "safe harbor" opinions, make it difficult to integrate section 27 into the executive branch ethics program.

Protection of procurement-sensitive information

Although section 27 is broader in scope, its focus and important contribution to the scheme of Federal ethics-related legislation lies in its prohibitions on disclosing and obtaining procurement-sensitive information. The draft bill is a modified version of subsections 27(a)(3), (b)(3) and (d) (formerly (c)), constituting those portions of section 27 that protect proprietary and source selection information. It strengthens those protections while at the same time simplifying their application. The draft bill substitutes the phrase "contractor bid or proposal informa-

tion" for "proprietary information" and provides a more specific definition of the information protected. It identifies nine categories of "source selection information" and includes a provision under which other information can be marked and protected as source selection information based on a case-by-case determinaton that its disclosure would jeopardize the integrity or successful completion of the procurement to which it relates.

One of the difficulties encountered in implementing section 27 has been the definitional problem of determining whether and when its substantive prohibitions have been triggered. Because of the variety of procedures under which procurement is conducted, it is often difficult to determine whether a particular procurement has begun or whether a particular individual is a procurement official and, thus, whether the prohibitions apply. For purposes of protecting procurement-sensitive information, the draft bill eliminates those difficulties by prohibiting the knowing and willful pre-award disclosure, other than as provided by law, of bid or proposal information and source selection information by anyone, who, by reason of his office, employment, or relationship with the United States, has access to such information. The draft bill would include remedies similar to those contained in subsections 27 (h), (i), and (j) (formerly (g), (h), and (i)).

The recent "Ill Wind" investigations are frequently cited as justification for the restrictions imposed by section 27. An earlier review of completed investigations indicated that the Justice Department had been successful in obtaining convictions using statutes such as the criminal conspiracy and conversion statutes that have long been on the books. Nevertheless, the fact that many of the Ill Wind cases involved individuals or companies who were trafficking in procurement-sensitive information tends to confirm the value of a statute designed to provide clear notice that those who improperly disclose or obtain bid or proposal or source selection information will be subject to criminal prosecution, civil fines, and appropriate administration action.

Unlike section 27, the draft bill does not rely on a complex system of certifications to ensure compliance. A primary lesson learned from the Ill Wind investigations to date has been that the conduct prosecuted has been conscious, deliberate, and in some cases, highly sophisticated criminal conduct. Such deliberate criminal conduct is unlikely to be deterred by the risk of additional penalties resulting from false statement violations under 18 U.S.C. §1001. Furthermore, such deliberate criminal conduct is unlikely to be detected as part of the certification process required of the vast majority of individuals who have not engaged in criminal conduct. The practical value of certifications, then, would be to force procurement officials and contractor personnel periodically to consider the matters prohibited by the bill. This practical value must be weighed against the administrative costs involved.

The cumulative effect of the various certifications required of contracting officers, procurement officials, and contractor personnel by section 27 is to create an administrative burden that focuses limited agency resources on procedural rather than substantive requirements. To the extent that persons gained some knowledge of section 27 in the certification process, they would have learned that the wisest course of action would be to seek advice from agency ethics officials on specific matters. Statutory requirements to certify familiarity and compliance with a complex statute, coupled with requirements to report any information concerning a violation or possible violation of the statutory provisions, do not ensure that clear guidance is provided to the great majority of Government and contractor employees who want to abide by the rules. The time spent on completing certifications would be better spent on ethics training.

Restrictions on seeking employment

Given the effect of other statutes and standards of conduct that apply to officers and employees throughout the executive branch, the restrictions on seeking or offering employment imposed by subsections 27(a)(1) and 27(b)(1) are unnecessary. At the time of its enactment, section 27 supplemented these statutes and standards by creating civil remedies for conduct similar to that already prohibited. With the enactment of 18 U.S.C. §216 as part of the Ethics Reform Act of 1989, Congress added a new civil remedies to the existing criminal remedies of 18 U.S.C. §208, thus eliminating much of the purpose of Subsections 27(a)(1) and 27(b)(1). The draft bill would remove those prohibitions based on the enactment of 18 U.S.C. §216 and the understanding that the subject of seeking employment is addressed in agency standards of conduct and is soon to be dealt with comprehensively across the executive branch in the uniform standards of ethical conduct soon to be issued under Executive Order 12674, April 12, 1989.

Every officer and employee in the executive branch is subject to 18 U.S.C. §208(a), a criminal statute that prohibits his participation in a matter affecting the financial interests of any person with whom he is negotiating for or has an arrangement concerning future employment. Under this statute, any employee who is participating in a procurement on behalf of his agency must recuse—disqualify—himself from further participation in that procurement if he wishes to engage in employment negotiations with a competing contractor. Both the Department of Justice and the Office of Government Ethics view even the unilateral submission of a resume to a competing contractor—conduct short of "negotiating"—as conduct requiring an employee's recusal from further involvement in a procurement under the standards of conduct. A contractor's offer of employment to an executive branch employee who is working on a procurement that affects the contractor's interests may, depending on the circumstances, also constitute a bribe or illegal gratuity.

The prohibitions of subsections 27(a)(1) and 27(b)(1) on seeking and offering employment are, thus, largely duplicative of standards now applicable throughout the executive branch. Consistent with these standards, the Defense Authorization Act of 1990 amended section 27 to establish procedures that would allow many procurement officials to recuse themselves from further involvement in a procurement in order to seek employment with a competing contractor. As amended, section 27 imposes an absolute ban on employment negotiations with a competing contractor for only those procurement officials which have participated personally and substantially in (1) evaluation of bids or proposals; (2) selection of sources; or (3) conduct of negotiations.

The recusal of an employee from any further participation in a procurement ensures that an employee seeking outside employment cannot use his Government position to take action that might benefit a potential employer. Thus, the absolute restrictions on seeking employment imposed by section 27 serve only the collateral purpose of reducing the opportunities for employees and competing contractors to engage in communications that might result in disclosure of procurement sensitive information. Upon the enactment of a statute that prohibits unauthorized disclosure and receipt of bid or proposal or source selection information, even those concerns become redundant.

As applied to DOD personnel whose duties relate to procurement, the prohibitions of subsection 27(b)(1) compound with 10 U.S.C. §2397a, discussed below, and Government-wide standards on seeking employment to create a structure consisting of three sets of rules governing essentially the same conduct. Because each involves different procedural requirements, they result in DOD personnel having to learn and comply with three overlapping sets of rules. This layering of restrictions is counterproductive to efforts to provide meaningful training and administer an overall agency ethics program.

Post-employment restrictions

The draft bill would remove as unnecessary the post-employment restrictions imposed upon former procurement personnel by subsection 27(f) (formerly (e)). An earlier review of the factual information underlying the "Ill Wind" indictments and pleas indicated that none of the individuals or companies involved had engaged in conduct that would have violated subsection 27(f). Specifically, there is no indication that, after leaving Government service, any individual performed work under a contract or assisted a competing contractor in negotiations leading to the award of a contract on which he had participated during Government service.

Every former officer or employee within the executive branch is subject to the criminal post-employment statute, 18 U.S.C. §207. This statute was recently subject to extensive review. As part of the Ethics Reform Act of 1989, major amendments were made to 18 U.S.C. §207 to establish a single, comprehensive, post-employment statute applicable to former executive and legislative branch personnel. Among its several proscriptions is a lifetime bar that prohibits a former officer or employee who participated personally and substantially in a procurement from representing any other person before a department or agency of the United States in connection with that same contract.

Potentially, there are three ways in which Government personnel can abuse the trust of their public office when seeking employment with Government contractors. Before leaving government, they may seek to curry favor with a potential employer by acting in a procurement with less than the perfect impartiality required of Government service. The disqualification requirements, discussed above, are an effective check on this type of conduct. After leaving the Government, there are the dual concerns that they may take unfair advantage of their former positions to benefit a new employer either by using their influence with former associates or by revealing or using nonpublic information obtained as a result of their Federal employment. By banning contacts back with their former associates on matters in which former employees were involved, 18 U.S.C. §207 adequately addresses the potential for improper use of influence. The draft bill squarely addresses the latter concern that a former employee, advisor, or consultant will reveal procurement-sensitive information.

Given the Government-wide post-employment statute and assuming the existence of

legislation such as the draft bill, there is no need for post-employment restrictions that single out procurement personnel for restrictions more onerous than those imposed upon other employees whose actions may have an equally significant impact upon potential employers. Because it does not involve contacts with former associates and because source selection and bid and proposal information lose their importance with respect to a particular procurement once a company has been awarded a contract, the prohibition at subsection 27(f)(2) on performing work under a contract circumscribes conduct that poses no potential for abuse of former position. After award, the Government and the contractor instead have a shared interest in successful performance, and the efforts of former Government employees devoted to that end are ultimately beneficial to the Government. Arguably, the prohibition at subsection 27(f)(1) on participation in negotiations may provide some collateral insurance that procurement-sensitive information is not disclosed. That additional insurance is needed, however, only if the information is not adequately protected, as it would be under the draft bill. And, that insurance comes at a high cost to executive branch efforts to administer a meaningful ethics program and to recruit and retain qualified personnel.

For individual employees, the post-employment proscriptions of subsection 27(f) add a second, third or fourth layer of post-employment restrictions. The net effect of imposing multiple overlapping and inconsistent post-employment restrictions is to render the post-employment portion of the executive branch ethics program so complex that even senior agency ethics officials are challenged to master the matrix of applicable restrictions. A military officer retiring from a position that involves procurement responsibilities is subject to 5 different post-employment statutes, three of which contain multiple prohibitions; DOD and DOE civilians are subject to three. In view of the complexities of 18 U.S.C. §23G(7)(b) and section 27(f), even the double layering of post-employment restrictions that applies to non-DOD and non-DOE agencies is counterproductive to efforts to provide ethics training and advice regarding the responsibilities of former employees.

Congress recognized the complexity of section 27's post-employment restrictions and concluded that education and counseling alone cannot be expected to provide notice of whether particular employment arrangements will violate those restrictions. The Defense Authorization Act of 1990 amended section 27 to add a new subsection (k), which requires agency ethics officials to provide procurement officials with "safe harbor" opinions regarding the applicability of section 27. Because the statute provides other mechanisms for employees to determine whether they may seek employment or disclose information, the safe harbor opinions required by subsection 27(k) will deal primarily with the post-employment restrictions at subsection 27(f).

DOD has now had considerable experience in issuing safe-harbor opinions under 10 U.S.C. §23G(7)(b) to DOD employees who have performed procurement functions. DOD contractors as a matter of practice refuse to hire former DOD personnel who have not obtained a safe-harbor opinion guaranteeing that their employment cannot be challenged. These opinions are not pro forma. Each must be written by a lawyer and tailored to address the propriety of employment with a specific contractor based on the particular procurement duties the employee performed. At a considerable cost in terms of lawyer hours expended, DOD has provided approximately 4,400 of these safe harbor opinions over the past 2½ years. In only about two hundred cases, would the employee's post-employment activities have been restricted by 10 U.S.C. §2397b.

Based on the DOD experience, it is unlikely that any Government contractor would offer employment to a Government employee who has had procurement-related responsibilities without first obtaining a safe harbor opinion under subsection 27(k). Thus, agency ethics officials, particularly those in the procurement agencies, can expect to be inundated with requests for these opinions. The very substantial effort expended on these opinions will redirect resources better used in implementing other aspects of agency ethics programs. As a matter of principle, safe harbor opinions should be unnecessary in the ethics arena. Ethics laws must be sufficiently straight-forward that most employees can understand and comply with their limitations without obtaining a written legal opinion.

Gratuities restrictions

The draft bill would repeal the gratuities prohibitions contained in subsections 27(a)(2) and 27(b)(2). There are a number of statutes other than section 27 that restrict the ability of Federal officers and employees to accept gratuities. Executive branch employees, including those with responsibilities relating to procurements, are prohibited by U.S.C. §209 from accepting any supplementation of salary as compensation for their services. The status contains corollary restrictions that prohibit contractors from supplementing the salary of Federal employees. Subsection 201(c) of title 18 subjects both the donor and the public official recipient of an illegal gratuity to criminal prosecution. As defined in that statute, the term "public official" would extend the provision's coverage to contractors, experts or advisors assisting an agency with respect to a procurement. 18 U.S.C. §218 provides authority for voiding contracts where there is a related violation of 18 U.S.C. §§201 or 209. The cause inserted into many contracts pursuant to 10 U.S.C. §2207 gives the Government a contractual remedy against a contractor who offers or gives any gratuity to an officer or employee of the United States in order to receive favorable treatment in connection with a Government procurement.

In addition to these longstanding statutory prohibitions, executive branch employees are subject to the standards of conduct regulations issued under Executive Order 11222. Under agency implementing regulations, officers and employees who have responsibilities relating to a particular procurement are prohibited from accepting gifts from a contractor with an interest in the procurement, unless the gift comes within one of a very few narrowly-drawn exceptions.

The gift restrictions imposed by Executive Order 11222 are carried forward and broadened by the new Principles of Ethical Conduct for Government Officers and Employees contained in Executive Order 12674 of April 12, 1989 and in 5 U.S.C. §7353 which was added by the Ethics Reform Act of 1989. The Office of Government Ethics is drafting new standards of ethical conduct that, as required by the new Executive order, will establish "a single, comprehensive and clear set of executive branch standards of conduct that shall be objective, reasonable and enforceable." The new standards of ethical conduct will concurrently implement the gift restrictions contained in the Executive order and in the new statute. Because they will apply uniformly throughout the executive branch and supersede individual agency regulations that adopt varying exceptions to the basic gift prohibitions, the uniform standards of conduct will eliminate the problem of contractors having to learn different gift rules for each agency they contract with.

In terms of substantive restrictions, subsections 27(a)(2) and 27(b)(2) largely duplicate the standards of conduct. They impose a stricter standard by mandating the issuance of an implementing regulation defining prohibited gifts from competing contractors to include "a single uniform Government exclusion at a specified minimal dollar amount." The new standards of conduct will achieve the uniformity contemplated by this requirement. Because it would be unworkable and unjustifiably restrictive, however, their exclusions will not be limited to a single exclusion at a specified minimal dollar amount. A single exclusion of this nature would not provide appropriate exceptions such as those necessary to allow employees to accept entertainment and gifts from family members who happen to be employed by prohibited sources. Nor would a single exclusion allow employees to accept certain commercial discounts. The necessity for reasonable exceptions such as these makes it unnecessarily harsh to restrict gifts to procurement personnel to those that meet a single *de minimis* standard. Moreover any such requirement targeted only at procurement personnel defeats a major goal of the President's ethics program—a uniform bill of gift and other standards of conduct applicable to all personnel within the executive branch.

THE DOD STATUTES

The draft bill would repeal the four sections of title 10 directed at DOD personnel and their potential or actual employment with DOD contractors. Sections 2397a and 2397b remain suspended under section 815 of the National Defense Authorization Act for Fiscal Year 1991. The former imposes recusal and related procedural requirements applicable to mid-level and senior-level DOD personnel who have performed a procurement function in connection with a defense contract and who wish to seek other employment. The latter imposes a set of post employment restrictions directed at a selected subclass of those same personnel. The other two statutes impose post-employment reporting requirements. Section 2397 requires former mid-level and senior-level DOD personnel to file reports if they are employed by a major defense contractor at an annual pay rate of $25,000 within the two years after leaving DOD. Section 2397c, a corollary to section 2397, requires major defense contractors to submit annual reports identifying former DOD personnel who, within two years after leaving DOD, were compensated by the contractor.

Restrictions on seeking employment

The draft bill would repeal section 2397a on the basis that it is duplicative and subjects a selected class of employees to unnecessary procedural requirements intended to ensure that they do not improperly use their positions to further the interests of a potential employer.

The procedures required by section 2397a apply to DOD personnel in positions at GS-11 or 0-4 and higher who have performed a procurement function with respect to a contract awarded by DOD and who contact or are contacted regarding future employment

opportunities by the defense contractor to whom the contract was awarded. Unless the employee simply rejects an unsolicited employment overture by the contractor, he must file a written report of the contact and recuse himself from further participation in the performance of procurement functions relating to contracts of that defense contractor for any period during which the future employment opportunity has not been rejected.

18 U.S.C. §208 and the standards of conduct already require the employee's recusal under essentially the same conditions. To this substantive requirement of recusal, section 2397a adds only the procedural requirement that the employee give written notice of the contact and file a written recusal statement. It mandates compliance with these procedures even though an employee is no longer performing duties that impact upon his prospective employer and, as a consequence, is recused in fact from the performance of procurement functions relating to the contracts of that particular defense contractor. Section 2397a imposes significant penalties for a DOD employee's failure to comply with these procedural requirements.

The subject of seeking employment is to be dealt with comprehensively in the standards of ethical conduct soon to be issued under Executive Order 12674 for application to all personnel in the executive branch. In the interest of uniformity and because it is discriminatory to subject DOD procurement personnel to procedural requirements and penalties that differ from those applicable to other officers and employees of the executive branch, the draft bill would repeal section 2397a.

Post-employment restrictions

The draft bill would repeal the cumbersome post-employment restrictions contained in 10 U.S.C. §2397b for the reason that they burden DOD's ethics program with an additional layer of complex post-employment restrictions applicable only to a selected class of officers and employees.

Section 2397b prohibits former mid-level and senior-level DOD personnel from receiving compensation from particular major defense contractors for two years after separating from DOD if, during their last two years of DOD service, they performed certain procurement-related functions with respect to those contractors. The prohibitions apply to those SES and 0-7 level personnel who, during the two-year period prior to separation, served as a primary representative of the United States in the negotiation of a contract or settlement of a claim over $10,000,000 and to employees who, during a majority of their working days during the 2 year period prior to separation, performed a procurement function:

(1) at a contractor's plant which was the employee's principal location of work on that procurement; or

(2) relating to a major weapons system and participated in a manner involving decision-making responsibilities with respect to a contract for that system through contact with a contractor.

Subsection 2397b(e) provides that any person may request that the designated agency ethics official provide advice on the applicability of section 2397b and requires issuance of a written opinion not later than 30 days after receipt of all relevant information pertaining to the request.

DOD experience indicates that these restrictions have a potential for application to very few DOD personnel. Notwithstanding its narrow application, section 2397b has created an administrative burden that probably was not envisioned and that would appear to be disproportionate to the purpose it serves. Because of the penalties to which they may be subject (up to $500,000 for a single violation by a contractor), most defense contractors, as a matter of practice, now refuse to hire any former DOD officer or employee who, regardless of his activities while in Government service, has not obtained a safe harbor opinion under subsection 2397b(e). From April 6, 1987, when the section became effective, through December 1, 1989, when it was suspended, DOD was required to prepare approximately 4,400 lengthy written opinions, only 4% of which indicate that any limitations were applicable under the law.

Section 2397b uses concepts and definitions of such complexity that it would probably be unfair to leave employees and contractors to their own resources to determine whether a particular employment relationship is precluded. Yet, the necessity to provide definitive legal advice has diverted thousands of manhours that could better be used in providing ethics training and counseling. This complexity, when layered on top of the Government-wide post-employment standards which all DOD employees must learn, makes it difficult for DOD to provide meaningful training to its many employees involved in procurements. With the three layers of post-employment statutes (18 U.S.C. §207, 10 U.S.C. §2397b and section 27) applicable to civilians, the best that ethics training can hope to accomplish is to give employees the impression that employment after Government service has so many pitfalls that they must seek individualized counseling before leaving government. The challenge of providing meaningful training for military officers is compounded by two additional layers of post-employment restrictions imposed by 18 U.S.C. §281 and 37 U.S.C. §801 (discussed below).

Reporting requirements

The draft bill would repeal the reporting provisions of 10 U.S.C. §§2397 and 2397c because they encumber DOD's ethics program with procedural requirements that do not contribute to the enforcement of the post-employment restrictions.

The reporting requirements of section 2397 are imposed upon current and former military officers in grade 0-4 and above and current and former employees at the GS-13 level and above. If employed by a major defense contractor at an annual pay rate of at least $25,000 within the two-year period after leaving DOD, they must file a report which, among other things, describes their current duties and the duties they performed within their last two years of service with DOD. During a two year period after leaving DOD, a new report must be filed each time there is a significant change in the employee's duties and upon employment with a different contractor. Current DOD employees must file reports if they were employed by a major defense contractor at an annual rate of at least $25,000 within the two-year period prior to beginning employment with DOD.

Section 2397c requires a major defense contractor to submit an annual report to the Secretary of Defense identifying former or retired DOD officers and employees who have been compensated by the contractor during the period covered by the report and received that compensation within two years after leaving DOD. Contractors reports contain information similar to that reported by former employees under section 2397.

These two statutes single out DOD personnel and contractors for the imposition of requirements not applicable to personnel and contractors of other agencies. Such differential treatment is at odds with Congressional and Administration efforts to provide uniformity in ethical standards that apply throughout the executive branch. The reports they elicit have not proved to be of value in enforcing any of the substantive conflict of interest provisions. Neither section has provided a basis for initiating action for violation of any requirement other than the requirement to file the reports themselves.

The burden of collecting, analyzing and obtaining clarifications on the information required to be filed under both sections is substantial. The General Accounting Office has estimated that compliance with the individual filing requirements of section 2397 has been as low as 30% and DOD ethics personnel have on several occasions been diverted from other duties in attempts to contact thousands of non-fliers. The resources dedicated to collecting these reports would be better spent in more productive areas, such as providing ethics advice and training relating to the substantive post-employment restrictions of 18 U.S.C. §207.

THE MILITARY SELLING STATUTES

The draft bill would repeal two post-employment statutes which are generally referred to as the "selling statutes." These statutes, 18 U.S.C. §281 and 37 U.S.C. §801, apply only to certain retired military officers and have been superseded in purpose by the Government-wide post-employment statute, 18 U.S.C. §207.

The criminal selling section of the statute, 18 U.S.C. §281(a), prohibits a retired officer of the armed forces, for two years after retirement, from representing anyone in the sale of anything, including services, to the United States through the military department in which he retired. Section 281(b) prohibits a retired officer of the armed forces, for two years after retirement, from acting as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in which he retired or involving any subject matter with which he was directly connected while on active duty. Section 281(b) affects very few individuals, but adds to the confusion of laws. Although it is a representation restriction rather than a selling restriction, the considerations discussed below apply to section 281(b), as well as section 281(a).

18 U.S.C.§281 remains suspended through May 31, 1991. The civil companion to the criminal selling statute, 37 U.S.C. §801, provides for the loss of retired pay by a retired regular officer of the uniformed services if, within three years after his name is placed on the retired list, he engages in activities involving the sale of supplies or war materials to DOD, the Coast Guard, NOAA or the Public Health Service. This particular section was not suspended.

Like 18 U.S.C. §207, the two selling statutes are directed at the improper use of influence by former Government officials and, thus, prohibit representational activities. The Government-wide post-employment statute, however, establishes a more appropriate scheme of restrictions. Section 207 provides a comprehensive series of bans on post-Government activities that relate directly to both the level and nature of a former official's Government service and to the particular matters on which he worked as a Government official.

Under 18 U.S.C. §207, certain very senior personnel, including former officers at 0-9 and above, are subject to a one-year ban on

contacts back with their former agencies. It is an anomaly that all retired officers, including those at lower ranks, are subject to two-year and three-year restrictions, respectively, on contacts made for the purpose of selling to their former agencies or departments. Under subsections 207(a)(1) and (a)(2), applicable to former officers and employees regardless of grade, the prohibitions on representational activities are triggered only if the employee has participated personally and substantially in a particular matter involving specific parties, or if that matter fell under this official responsibility while in Government service. His representational activities are only limited with respect to that same matter. The sort of nexus which makes this restriction appropriate and meaningful is lacking in both selling statutes. For example, a retired Regular officer with a career of operational fleet assignments and no involvement with procurement is restricted in his selling activities on behalf of a DOD contractor for 2 and 3 years, respectively, under the criminal and civil selling statutes. At a time when most of the procurement work of DOD is conducted by civilians, there would seem to be no basis for singling out subclasses of retired military personnel for more restrictive post-employment rules regarding sales to the Government.

Military officers are subject to an unbelievably complex and confusing scheme of post-employment restrictions. Retired Regular officers of the armed forces can, immediately following their retirement, represent others in the sale of service to each military department except that in which they hold retired status. They may sell their own services directly to the military department in which they hold retired status. Representing others in the sale of anything to that department would, however, violate 18 U.S.C. §281; selling supplies and war materials to any agency of the DOD or to any uniformed service not under the jurisdiction of the Department would violate 37 U.S.C. §801. Two years after their retirement, they can legally begin to represent others in selling services, but not supplies or war materials, to the military department in which they hold retired status, to the other DOD agencies, and to the uniformed services not under the jurisdiction of DOD. One year later, they can represent themselves or others in selling anything to any agency of DOD and to the uniformed services not under the jurisdiction of DOD. None of these restrictions apply to former civilian employees of DOD, officers leaving prior to retirement, or retired enlisted personnel regardless of the nature of their prior duties.

Notably, the selling statutes are only two of five layers of post-employment restrictions that former officers must take care not to violate. In addition, each is subject to the Government-wide post-employment statute, 18 U.S.C. §207 and, if his duties related to procurement, section 27 and 10 U.S.C. §2397b may apply. These five layers of post-employment statutes create a system of restrictions of such complexity as to be destructive of efforts to administer a meaningful ethics program and provide training and counseling for officers.

THE DEPARTMENT OF ENERGY STATUTES

The draft bill would repeal two DOE revolving door statutes, sections 605(a) and 606 of the DOE Organization Act (42 U.S.C. §§7215(a) and 7216), and the related reporting requirements of sections 604 and 605(b) (42 U.S.C. §7214 and 7215(b)).

Post-employment restrictions

The draft bill would repeal the substantive post-employment restrictions of section 605(a) on the basis that they have been superseded in purpose by the Government-wide post-employment statute, 18 U.S.C. §207, and result in a layering of restrictions that encumber the DOE ethics program. It would repeal the related reporting requirements of section 605(b), along with the relevant sanctions at sections 608 (b) and (c), on the basis that these procedural requirements and sanctions do not aid in the enforcement of any of the substantive post-employment restrictions. Section 605 is suspended through May 31, 1991.

For one year after their DOE employment has ceased, section 605(a) provides that former "supervisory employees" of DOE may not knowingly "(A) make any appearance or attendance before, or (B) make any written or oral communication to, and with the intent to influence the action of the Department" in a matter pending before DOE. In terms of the activity it restricts, the DOE statute is virtually identical to the one-year no-contact ban imposed by 18 U.S.C. §207(c) on higher-level employees thoughout the executive branch. As part of a comprehensive revision of the Government-wide post-employment statute, the one-year no-contact ban applies as of January 1, 1991, to anyone in a position for which the basic rate of pay is equal to or greater than the basic rate for level V of the Executive Schedule.

The DOE statute has the practical effect of extending the one-year no-contact ban to lower level DOE employees. Within the statutory definition of "supervisory employees" are all employees holding GS-16 or comparable positions, Directors and Deputy Directors of field offices, any employee who has primary responsibility for the award, review, modification, or termination of any grant, contract, award, or fund transfer and other employees designated by the Secretary.

The DOE statute pre-dates the major revisions to 18 U.S.C. §207 made by the Ethics in Government Act of 1978. In a sense, section 605(a) served as the prototype for the one-year no-contact ban enacted in 1978 as 18 U.S.C. §207(c). Because 18 U.S.C. §207 was intended to establish uniform standards for application throughout the executive branch, the DOE statute should have been repealed at that time. There appears to be no rational basis for extending to DOE employees at lower grades the same restriction that Congress, after much deliberation, concluded should apply only to those at level V of the Executive Schedule and above. It is discriminatory to single out former DOE employees as the only employees in the Government barred from contacting their former agency for one year based on their former employment in certain positions below level V of the Executive Schedule.

For DOE employees, section 605 adds a layer of post-employment restrictions atop the procurement integrity provisions of section 27 and the Government-wide post-employment statute, 18 U.S.C. §207. This triple layering of post-employment restrictions compounds the difficulty of providing ethics training and advice for DOE personnel.

The second part of the same statute, section 605(b) creates a post-employment reporting system applicable to former supervisory DOE employees. It requires former DOE supervisory personnel to report any employment with an energy concern for two years after DOE employment. The reports filed under section 605(b) identify the energy concern that employs or will employ the former DOE employee and the nature of the duties performed or to be performed by the former DOE employee. As with the DOD post-employment reports filed under 10 U.S.C. §2397, these reports are of no value for the purpose of identifying violations of the substantive post-employment restrictions.

Participation restrictions

The draft bill would repeal the one-year participation restrictions of section 606 applicable to supervisory employees of DOE. Along with the relevant sanctions at section 608(b), it would repeal the related reporting and disclosure requirements of sections 604 and 607 (42 U.S.C. §§7214 and 7217).

In the nature of a "reverse" revolving door restriction, section 606 imposes one-year cooling-off periods upon newly-appointed supervisory employees. These prohibit participation in Departmental proceedings if a former employer which is an energy concern is involved. Specifically, a supervisory employee is prohibited from participating:

(1) for a period of one year after terminating any employment with an energy concern, in a DOE proceeding, other than rulemaking, in which his or her former employer is involved; and

(2) for a period of one year after commencing service with DOE, in a DOE proceeding for which, within the previous five years, the employee had direct responsibility or participated personally and substantially as an employee of the energy concern.

Employees of DOE are the only employees in the executive branch subject to a recusal requirement of this nature. The Government-wide conflict of interest statute, 18 U.S.C. §208, requires all executive branch employees to recuse themselves from participation in matters affecting their own financial interests. Those who come to Government service while retaining a financial interest in a former employer, as through continued participation in a retirement or insurance plan, are subject to a recusal obligation under 18 U.S.C. §208 that continues for as long as the employee retains the interest. Others who have severed all ties with a former employer at the time they enter Government service are subject to the standards of conduct which require them to avoid even the appearance of lack of impartiality or preferential treatment. Depending on the circumstances, this may require employees to recuse themselves from participation in matters affecting their former employers.

For DOE employees, the participation restrictions of section 606 add one more layer of selective restrictions that have failed to prove their effectiveness in protecting the Government's interests. To administer these participation restrictions, section 604 imposes an additional reporting requirement upon newly-appointed supervisory employees requiring them to describe former relationships with energy concerns. Those reports are required to be made available to the public under section 607(a) and partially duplicate financial disclosure requirements under the Ethics in Government Act. The DOE ethics program would function more efficiently with no loss of effectiveness without the reporting and disclosure burdens imposed by these sections.●

By Mr. McCAIN:

S. 459. A bill to declare that the United States holds certain lands in trust for the Camp Verde Yavapai-Apache Indian community, and for other pur-

poses; to the Committee on Energy and Natural Resources.

YAVAPAI-APACHE LAND TRANSFER ACT

• Mr. McCAIN. Mr. President, I rise today to introduce a bill which would transfer certain Federal lands located in the Verde Valley in Arizona to the Yavapai-Apache Indian community and the town of Camp Verde.

Under the terms of this bill, approximately 6,000 acres of U.S. Forest Service base for exchange land would be transferred to the Secretary of the Interior to be held in trust for the benefit of the Indian community. Approximately 200 acres would be transferred directly to the Indian community to be held in fee simple. In addition, about 570 acres would be transferred to the town of Camp Verde for such municipal uses as parks, landfills, cemeteries, and airports.

Mr. President, this bill reflects 4 years of extensive negotiations between the tribal government and the local governments in the Verde Valley. Many private citizens and local organizations have also participated in the discussions which led to the development of this bill. There is a broad, although not perfect, consensus behind the provisions of this bill. There are a few individuals who do not agree with all or part of the bill. I am hopeful that we will be able to resolve any remaining concerns as the bill moves through the Congress.

The lands proposed for transfer to the town of Camp Verde are essential to the future vitality of that small community. All of the lands are within the current town limits and will be utilized solely for local governmental purposes. The lands have little or no value as forest lands, but should prove to be very helpful to the efforts of the town of Camp Verde to continue its steady progress toward an improved standard of living for all of its residents.

The lands proposed for transfer to the Secretary of the Interior for the benefit of the Indian community will enable the tribe to advance its longstanding desire to improve its economic condition. The Yavapai-Apache people have a long and proud history in the Verde Valley. They have endured in the valley in spite of Federal policies and sanctions which were not in their interest.

In 1864, non-Indian settlers in the valley petitioned the Federal Government to subdue the Indian residents. Yavapai chiefs Delshay and Chalipun surrendered their people to General Crook in 1872. A treaty was then negotiated and signed which reserved to the tribe most of the Verde Valley, including the sites of the present day towns of Jerome, Sedona, Cottonwood, Rimrock, and Camp Verde.

During 1875, corrupt military contractors from Tucson succeeded in persuading the War Department to take away the Indian lands. More than 1,500 Indians were rounded up in 1875 and marched to the San Carlos Apache reservation. Over 100 of the Indians died during the forced march.

The Yavapai-Apache were not permitted to return to the Verde Valley for several years. When they finally did return, they were settled on four small, noncontiguous reservations where they have resided throughout this century. The lands to be transferred under the bill I am introducing today will not become part of the existing reservations, but will be held in trust. These lands will provide the tribe with its first real hope of building an economy from which the entire Verde Valley will benefit.

The tribe has already made an impressive start on developing a tourism-based economy with the construction and operation of a motel. They plan to use a sizeable portion of the lands transferred by this bill to establish a natural recreation area to complement their tourism activity.

I ask unanimous consent that the bill be printed in the RECORD immediately following my remarks.

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

S. 459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Subject to the other provisions of this Act and the prohibition against the establishment of reservations in section 2 of the Act of May 25, 1918 (25 U.S.C. 211), all rights, title, and interests of the United States in the following lands (including all improvements thereon and appurtenances and accretions thereto) located in Yavapai County, Arizona, are hereby declared to be held by the United States in trust for the benefit and use of the Camp Verde Yavapai-Apache Indian Community:

Gila and Salt River Base and Meridian, Arizona:

T. 15 N., R. 4 E.

Sec. 25: S½ (unsurveyed), consisting of 320 acres, more or less.

Sec. 26: S½, consisting of 320 acres, more or less.

Sec. 35: All, consisting of 636 acres, more or less.

Sec. 36: All, containing N½; N½S½; and lots 1, 2, 3, and 4 consisting of 636 acres, more or less.

T. 15 N., R. 5 E.

Sec. 30: Portion of lot 2 lying south of a line from the E¼ corner of sec. 25, T. 15 N., R. 4 E., extended thence due east to the east line of lot 2; and lots 3 and 4 consisting of 134.42 acres, more or less.

Sec. 31: Lots 1, 2, 3, and 4, consisting of 196.24 acres, more or less.

T. 14 N., R. 4 E.

Sec. 1: Lots 5, 6, 10, 11, 7, 8, and 9; SW¼NW¼; E½ SW¼; lots 14, 15, 12, and 13; and S½SE¼ containing 665.56 acres, more or less.

Sec. 12: N½; NE¼SW¼; and lots 6, 7, 8, 9, 11, and 12 consisting of 531.82 acres, more or less.

Sec. 13: NE¼NE¼; N½SE¼NE¼; and lots 12 and 13 containing 89.84 acres, more or less.

T. 14 N., R. 5 E.

Sec. 4: Lots 2, 3, and 4; and portion of SW¼NE¼ and S½NW¼ situated northerly from Interstate Highway 17 northern most easement line, as shown on Arizona Department of Transportation (ADOT), Job Numbers 1-17-2(10) and (15), containing 198.09 acres, more or less.

Sec. 5: Lots 1 and 2; S½NE¼; lots 3, 4, 5, 6, 7, 8, 11, and 12; SW¼SW¼; lots 13, 10, and 14; and portion of lots 9 and 15 situated northwesterly from Interstate Highway 17 northwestern most easement line, shown on Arizona Department of Transportation (ADOT), Job Numbers 1-17-2(10) and (15), containing 665.78 acres, more or less.

Sec. 6: Lots 1, 2, 7, and 8; S½ NE¼; lots 3, 4, 5, 6, and 9; SE¼NW¼; E½ SW¼; lots 10 and 11; and SE¼ consisting of 703.80 acres, more or less.

Sec. 7: NE¼; E½NW¼; lots 3 and 4; NE¼SW¼; lots 6, 12, and 7; N½SE¼; and lots 8 and 9 consisting of 613.71 acres, more or less.

Sec. 8: Portion of W½ NE¼, NW¼ and N½N½SW¼ situated northwesterly from northwestern most easement line for Interestate Highway 17, as shown on Arizona Department of Transportation (ADOT), Job Numbers 1-17-2(10) and (15); S½NW¼SW¼; SW¼SW¼, containing 285 acres, more or less, and specifically not including any land lying south and east of Interstate Highway 17.

Sec. 17: Portion of lot 1 lying westerly of Beaver Creek as found by the survey of Vance McDonald of April, 1984 consisting of 2 acres, more or less.

Sec. 18: lot 8; Tract 37; lots 17, 9, 15, 1, 11, 16, 10, 18, 19, 20, 21, and 22; and Tract 38 consisting of 330.89 acres, more or less.

Sec. 19: E½, exclusive of FX PAT. 02-73-0040, FX PAT. 02-78-0005, FX PAT. 02-75-0005 and HE PAT 789, consisting of 93.13 acres, more or less.

Sec. 20: Portions of E½NW¼ and lots 5, 1, 2, and 6 which lie west of Beaver Creek, as found by the survey of Vance McDonald of April, 1984, consisting of 146 acres, more or less.

(b) All lands lying in sections 17, 18, 19, and 20, which are south and east of the present day alignment of Interstate Highway 17 and which are transferred to the Yavapai-Apache Indian Community shall be held by the Indian Community in fee simple.

(c) Nothing in this Act shall be construed as diminishing or affecting the status of the Yavapai-Apache Reservations currently established at Camp Verde, Middle Verde, Clarkdale, Rimrock and Cliff Castle.

SEC. 2. All rights, title, and interests of the United States in the following lands (including improvements thereon and apportenances thereto) Gila and Salt River Base and Meridian, Arizona, are transferred to the Town of Camp Verde in fee simple:

T. 13 N, R. 5 E.

Sec. 9, S½, a parcel consisting of 10 acres, more or less, known as the Clear Creek Cemetery.

Sec. 9, NW¼, a parcel consisting of 120 acres, more or less, known as the Camp Verde Airport.

Sec. 4, W½, a parcel consisting of 280 acres, more or less, known as the Camp Verde Airport and the Camp Verde Sanitary District.

Sec. 5, NW¼, a parcel consisting of 27 acres, more or less, contiguous with the eastern shore of the Verde River on the west and including Quarterhorse Lane and Murdock Lane on the east; excluding an easement for a right-of-way for an irrigation ditch to be granted by the Secretary of the Interior within 180 days following the date of enact-

ment of this Act to the Diamond S Ditch Company.

T. 14 N. R. 5 E.

Sec. 33, SW¼, a parcel consisting of 160 acres, more or less, known as the Camp Verde Sanitary District; S½ NW¼ consisting of 80 acres, more or less.

SEC. 3. Subject to the provisions of section 9 of this Act, there is hereby reserved to the holder of the livestock grazing permit issued by the Forest Service of the Department of Agriculture for the Montezuma Allotment an easement on the customary and usual passageways along and in the bed of Beaver Creek within the lands described in section 1(a) for the purpose of moving livestock to and from pastures.

SEC. 4. The Camp Verde Yavapai-Apache Indian Community is hereby granted a permanent public easement over United States Forest Service Highway, No. 119A from the United States Forest Service Highway, No. 119 to the Middle Verde Road, within sections 3, 24, 25, 26, 34, and 35, township 14 north, range 4 east, and sections 18 and 19, township 15 north, range 5 east, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

SEC. 5. There is hereby reserved a corridor for elective utility power lines in, upon, and through the lands described in subsections (a) and (b) of section 1 of this Act. Such corridor shall be 40 feet in width. Special use permits issued by the United States as trustee of the Camp Verde Yavapai-Apache Indian Community for the construction, operation, and maintenance of power lines in the corridor shall be upon such terms and conditions as are customary for the grants of such rights on Indian lands and shall provide for payment of full rental value by the permittee.

SEC. 6. The Montezuma Castle Background Management Unit shall remain in effect over those lands described in section 1(a) to the extent provided in the Memorandum of Understanding dated April 1, 1970, between the Forest Service of the Department of Agriculture and the National Park Service of the Department of the Interior. The Camp Verde Yavapai-Apache Indian Community shall be treated as if it were a signatory to such Memorandum of Understanding with respect to such lands.

SEC. 7. The Camp Verde Yavapai-Apache Indian Community may, subject to the approval of the Secretary of the Interior, or his delegate, transfer, assign, exchange or lease, up to 40 acres of the lands described in section 1(a) for an educational or charitable use or for other purposes.

SEC. 8. Except as otherwise provided by this Act, all permits issued by the Forest Service of the Department of Agriculture for uses on lands described in section 1(a), which are in effect on the date of enactment of this Act, shall remain in effect until the earlier of—

(1) the date that is 15 years after the date of enactment of this Act, or

(2) the date on which such uses are abandoned.

Thereafter, all such uses shall be subject to the approval of the Camp Verde Yavapai-Apache Indian Community or the Secretary of the Interior under any authority provided by a law relating to Indians. Fees or rentals charged for such uses shall be based upon fair market value.

SEC. 9. (a) The flood plain area east of the Montezuma Castle Highway within sections 17, 18, 19, and 20 of Township 14 North, Range 5 East, Gila and Salt River Base and Meridian, Arizona, and further described as beginning at the toe of the slope, may be designated as the Yavapai-Apache Tribal Natural Recreation Area by the Yavapai-Apache Tribal Council. The local planning and zoning authorities (Yavapai-Apache Tribal Council and the Town of Camp Verde) shall approve activities or land developments within such Recreation Area only if such activities or developments are compatible with duly adopted land use regulations, or management plans.

(b) Notwithstanding subsection (a), the following activities are authorized within the Yavapai-Apache Tribal Natural Recreation Area:

(1) limited camp site development and low-speed access roads and restroom facilities;

(2) effluent ponds for waste water treatment; and

(3) any other type of development that may be compatible with such area as determined by a duly adopted master plan and pertinent zoning.

(c) Notwithstanding subsection (a), the following activities are not allowed within the Yavapai-Apache Tribal Natural Recreation Area:

(1) residential development;

(2) major structural development;

(3) sand and gravel extraction;

(4) any disturbance within the stream side riparian zone and a 50-yard buffer of mature mesquite forest; and

(5) any other development that may be in conflict with a duly adopted master plan and pertinent zoning.

(d) Nothing in this Act shall affect the right of any person to canoe or float along Beaver Creek, including the right to portage obstacles.

SEC. 10. The Secretary of the Interior shall grant an easement for right-of-way for roadway purposes, within 180 days following the date of the enactment of this Act, to the United States Department of Transportation, at no cost to the grantee in damages or rentals, in perpetuity or until abandoned for the purposes originally granted, for that portion of Interstate Highway 17 which transects the lands transferred by this Act located in sections 4, 5, 7, 8, and 18, township 14 north, range 5 east, Gila and Salt River Base and Meridian, Arizona said easement being approximately 1.0 mile in length and containing approximately 60.0 acres.

SEC. 11. The Secretary of the Interior shall grant an easement for right-of-way purposes, within 180 days following the date of the enactment of this Act, to the Town of Camp Verde, at no cost to the grantee in damages or rentals, in perpetuity or until abandoned for the purposes originally granted, for roadways as follows:

(1) Middle Verde Cemetery access road located in sections 11 and 12, T. 14 N., R. 4 E.; said easement being approximately 0.1 mile in length by 68 feet wide and containing approximately 0.82 acre.

(2) South Middle Verde Road located in sections 7 and 18, T. 14. N., R. 5. E., and sections 12 and 13, T. 14. N., R. 4. E.; said easement being approximately 0.7 mile in length by 68 feet wide and containing approximately 5.77 acres.

(3) Montezuma Castle Highway (Forest Service Highway 646) located in sections 8, 17, 18 and 19, T. 14. N., R. 5. E., said easement being approximately 1.2 miles in length by 110 feet wide and containing approximately 16.00 acres.

(4) Rainbow Drive located in section 12, T. 14. N., R. 4. E.; said easement being approximately 0.4 mile in length by 68 feet wide and containing approximately 3.30 acres.

(5) Private access road located in section 12, T. 14. N., R. 5. E.; said easement being approximately 0.2 mile in length by 50 feet wide and containing approximately 1.2 acres, to remain as a private access road.

(6) Private access road located in section 12, T. 14. N., R. 4. E.; said easement being approximately 0.1 mile in length by 50 feet wide and containing approximately 0.61 acre, to remain as a private access road.

SEC. 12. The Secretary of the Interior shall grant an easement for right-of-way for roadway purposes, within 180 days following the date of the enactment of this Act, to the Bureau of Indian Affairs, at no cost to the grantee in damages or rentals, in perpetuity or until abandoned for the purposes originally granted, for Forest Road No. 119A located in sections 26 and 35, T. 15. N., R. 4. E.; said easement being approximately 1.4 miles in length and containing approximately 8.5 acres; and for Forest Road No. 119A located in section 26, T. 15. N., R. 4. E.; said easement being approximately 0.8 mile in length and containing approximately 4.8 acres.

SEC. 13. The Secretary of the Interior shall transfer the existing easement for right-of-way for Forest Road No. 119A (Middle Verde Road) located in sections 18 and 7, T. 14. N., R. 5. E., and sections 12 and 1, T. 14. N., R. 4. E., said easement being approximately 1.8 miles in length by 110 feet wide and containing approximately 24.0 acres; and the existing easement for right-of-way for Verde Drive Road located in section 12, T. 14. N., R. 4. E.; said easement being approximately 0.5 mile in length by 68 feet wide and containing approximately 4.12 acres; to the Town of Camp Verde within 180 days of receipt of a written request from the Town of Camp Verde for such transfers, all terms and conditions of the easements otherwise shall remain the same.

SEC. 14. The Secretary of the Interior shall grant an easement for right-of-way for an irrigation ditch, located in section 13, T. 14. N., R. 4. E., within 180 days following the date of the enactment of this Act, to the Eureka Irrigation Ditch Company, at no cost to the grantee in damages or rentals, in perpetuity or until abandoned for the purposes originally granted; said easement being approximately 0.6 mile in length and containing approximately 2.9 acres.

SEC. 15. The Secretary of the Interior, prior to approving any land use plan, land use ordinance, land development plan, land management plan, or commercial development plan (under any authority provided by a law relating to Indians) for activities to be undertaken within the lands described in section 1 of this Act and held in trust by the United States for the benefit of the Camp Verde Yavapai-Apache Indian Community, shall first consult with those authorities who represent the Town of Camp Verde and provide a forum for input and recommendations from the public for revisions and implementation of such ordinances or plans. To the maximum extent feasible, the Secretary shall ensure that any such ordinance or plan is in substantial conformity with any comparable laws of the State of Arizona.

SEC. 16. There is authorized to be appropriated to the Secretary of the Interior the sum of $75,000, which the Secretary shall make available to the Camp Verde Yavapai-Apache Indian Community pursuant to Public Law 93-638 (25 U.S.C. 450 et seq.) for the purposes of assisting the community in the development of a comprehensive land use plan and defraying any direct or indirect costs for the lands transferred to the community pursuant to this Act.

By Mr. DIXON (for himself, Mr. BURDICK, and Mr. DASCHLE):

S. 460. A bill to amend the U.S. Warehouse Act to allow States to require grain elevators with Federal warehouse licenses to participate in State grain indemnity funds or to require collateral security; to the Committee on Agriculture, Nutrition, and Forestry.

STATE GRAIN FUND PROTECTION ACT

Mr. DIXON. Mr. President, I rise today, joined by Senators BURDICK and DASCHLE, to introduce legislation which addresses a serious problem facing farmers and our rural communities. The intent of this legislation, the State Grain Fund Protection Act of 1991, is to ensure that all farmers are protected from severe financial loses resulting from the failure of a grain warehouse facility.

In a recent U.S. district court decision, it was ruled that elevators that are federally licensed are not required to participate in a State's indemnity program. There are federally licensed elevators which have opted to participate in State grain funds. At the same time, however, there are many federally licensed elevators which have not.

Mr. President, farmers are not concerned with the type of license an elevator possesses. Rather, farmers are concerned, and rightly so, with the protections they are accorded by storing their grain with an elevator. It is my firm belief that every farmer is entitled to have his or her investment protected, to the fullest extent, when it is stored with an elevator, regardless of whether the elevator holds a State or a Federal license.

Mr. President, history has demonstrated that federally licensed warehouses are not immune from the financial difficulties which can plague State licensed facilities. It is an unfortunate fact, but the Federal requirements provide only limited and inadequate protection to our farmers. Those elevators not participating in State programs do not provide the same degree of protection that farmers receive from elevators which do participate in the State programs.

In my State of Illinois, there are 67 elevator facilities licensed by the Federal Government which do not participate in the State insurance program. The current protection system, established under the U.S. Warehouse Act, provides that grain storage companies licensed by the Federal Government must post a storage bond to cover losses. These bonds, however, would not be adequate to cover the losses incurred by all farmers with grain stored in federally licensed elevators.

The farmers of Illinois are adversely affected by this recent court ruling, but they are not alone. Other States which currently have some form of State indemnity funds on the books included Iowa, Ohio, South Carolina, Oklahoma, Kentucky, New York, Idaho, and Washington. Moreover, the States of Michigan and South Dakota are presently considering the establishment of State indemnity programs to protect their farmers.

The legislation that we are introducing will amend the U.S. Warehouse Act to allow States to require that all elevators participate in State grain funds, regardless of whether they are licensed by the Federal Government or the State government. In essence, this will allow States the right to decide how they want to handle elevator liability in the event of a failure.

The State Grain Fund Protection Act of 1991 restores protection to farmers while their grain is being warehoused. It is an approach which represents both common sense and fairness. I urge my colleagues to join me in this important and worthy effort.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 460

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 "State Grain Fund Protection Act of 1991".

SEC. 2. PARTICIPATION OF FEDERALLY LICENSED GRAIN ELEVATORS IN STATE GRAIN INDEMNITY FUNDS OR PROVISION OF COLLATERAL SECURITY.

Section 6 of the United States Warehouse Act (7 U.S.C. 247) is amended—

(1) by striking "That each" and inserting "(a) Each"; and

(2) by adding at the end the following new subsection:

"(b) This Act shall not prevent or preempt any State from requiring a licensee under this Act to participate in any form of grain indemnity fund or from requiring any bond or other form of collateral security designated to secure the faithful performance of grain obligations.".

By Mr. SMITH (for himself and Mr. RUDMAN):

S. 461. A bill 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; to the Committee on Energy and Natural Resources.

LAMPREY RIVER STUDY ACT

• Mr. SMITH. Mr. President, today I will submit legislation to designate a segment of New Hampshire's Lamprey River for study as a potential addition to the National Wild and Scenic Rivers System. I am delighted that my friend and New Hampshire colleague, WARREN RUDMAN, has agreed to join me as an original cosponsor of this legislation.

The Lamprey River stretches over 60 miles along New Hampshire's seacoast. It is the longest river to enter the Great Bay, a federally designated estuarine research reserve that empties into the Atlantic Ocean. The Lamprey has one of the few successful anadramous fish restoration projects on the Atlantic coast, and it was cited by the National Park Service in 1982 as an outstanding river.

The 10-mile segment of the Lamprey that our bill would address flows through the New Hampshire towns of Durham and Lee. This segment serves as a critical breeding ground and habitat for many species of fish, mammals, and birds. It is heavily used by recreationists: Ice skaters, swimmers, canoists, kayakers, and fishermen. It also contains the extensive remains of a 19th century mill complex—a site recognized for its historical importance by the National Register of Historic Places. The 3-year, National Park Service study required under our bill is a necessary first step toward the long-term protection of these resources.

Beyond its study provisions, our bill would effectively stop the Federal Energy Regulatory Commission from proceeding with a dam application for Wiswall Falls in Durham, NH. The dam proposed for this area is widely opposed by the communities it would affect, the FERC's June 1989 decision to license the project has been formally appealed by the New Hampshire State Attorney General.

Everything needed to support the case for a wild and scenic study of the Lamprey is available, including solid local support from the New Hampshire towns that the study would affect: Durham, Lee, and Newmarket. Proposals to study the Lamprey have received 90 percent approval from riverfront landowners in the town of Durham, and 50 percent approval from those in the town of Lee. Our legislation also has overwhelming support from the Selectmen and Council Members of Lee, Durham, and Newmarket.

Our proposal to study the Lamprey has strong support at the State level as well. The Governor of New Hampshire, Judd Gregg, called for a study of the Lamprey's outstanding scenic and historical resources last year, while the New Hampshire Fish and Game Department singled out the Lamprey as "the most important coastal river for anadromous fish in the State." The New Hampshire Environmental Commissioner also has gone on record in support of Federal legislation to provide for a study of the Lamprey.

I fully expect that a comprehensive study of the Lamprey will lead to the preparation of a long-term protection plan for the Lamprey. Accordingly, I urge my colleagues' support for this important legislation.

I ask unanimous consent that a copy of my bill and letters in support of the legislation be printed in the RECORD.

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

S. 461

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 "Lamprey River Study Act of 1991".

SEC. 2. STUDY RIVER DESIGNATION.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended—

(1) by redesignating the second paragraph (106), relating to the St. Mary's River, added by section 1(a) of Public Law 101-364 (104 Stat. 428), as paragraph (108);

(2) by designating the paragraph relating to the Mills River, added by section 1 of Public Law 101-538 (104 Stat. 2376), as paragraph (109);

(3) by designating the paragraph relating to the Sudbury, Assabet, and Concord Rivers, added by section 703 of the Sudbury, Assabet, and Concord Wild and Scenic River Study Act (104 Stat. 4497), as paragraph (110); and

(4) by adding at the end thereof the following new paragraph:

"(111) LAMPREY, NEW HAMPSHIRE.—The segment from the southern Lee town line downstream to the confluence with Woodman's Brook at the Base of Sullivan Falls in Durham.".

SEC. 3. STUDY AND REPORT.

Section 5(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(b)) is amended—

(1) by amending the second paragraph (8), relating to the St. Mary's River, added by section 1(b) of Public Law 101-364 (104 Stat. 428), as paragraph (10); and

(2) by adding at the end thereof the following new paragraph:

"(11) The study of the Lamprey River, New Hampshire, shall be completed by the Secretary of the Interior and the report thereon submitted not later than 3 years after the date of enactment of this paragraph.".

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

STATE OF NEW HAMPSHIRE,
Concord, NH, November 14, 1989.

Hon. ROBERT C. SMITH,
House of Representatives, Washington, DC.

DEAR BOB: As Governor, I would like to bring to your attention my support for the proposal of a study for the designation of a segment of the Lamprey River as Wild and Scenic under the National Wild and Scenic River System. In our review of the proposal, it would appear that there is wide spread support for the study in the area affected. This is substantiated by support from elected leaders from the region, and public input that we have received.

The Lamprey River Watershed Association has submitted a nomination for a 9.5 mile segment of the river under New Hampshire's Rivers Management Protection Program. I believe that the river's proximity to the Great Bay provides outstanding resources in terms of its scenic beauty, its value for anadromous fish, and its historic contributions. Thus, I would support federal legislation relative to a study for the inclusion of this part of the Lamprey River for Wild and Scenic designation.

Sincerely,

JUDD GREGG,
Governor.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF ENVIRONMENTAL SERVICES,
Concord, NH, September 5, 1990.

Hon. ROBERT C. SMITH,
House of Representatives, Washington, DC.

DEAR MR. SMITH: Thank you for the opportunity to review and comment on your draft bill for a Wild and Scenic Rivers System study of a ten-mile segment of the Lamprey River. This department has the primary responsibility for managing the rivers, lakes, streams and other public waters of the state, and as such we have a keen interest in any federal action that affects these waters.

As you know, essentially this same stretch of the Lamprey River has recently been designated under the New Hampshire Rivers Management and Protection Program. This legislative designation relies on a combination of state-enforced protection measures, (e.g., protected instream flows) and voluntary local river corridor planning and management. The designation effort involved extensive local input, and the actual designation received strong local support.

We see the proposed National Park Service study, and the possible Wild and Scenic River designation, as a parallel and complimentary effort that would guide federal actions affecting the Lamprey River. We support your draft bill for the federal study and look forward to its passage.

Sincerely,

ROBERT W. VARNEY,
Commissioner.

LAMPREY RIVER WATERSHED ASSOCIATION,
Durham, NH, August 14, 1990.

RE: Lamprey River Wild and Scenic.

Rep. ROBERT SMITH,
Washington, DC.

DEAR MR. SMITH: Ms. Estes was kind enough to fax me a copy of the bill several weeks ago. As I told her at that time, the LRWA approves of this bill. We appreciate your support and anxiously look forward to the introduction of this bill in the House.

Sincerely,

RICHARD H. LORD,
President.

LAMPREY RIVER WATERSHED ASSN.,
Durham, NH, November 21, 1989.

Re: Support of Study Legislation, Lamprey River—Durham & Lee, NH.

Gov. JUDD GREGG,
State House,
Concord, NH.

DEAR GOVERNOR GREGG: On behalf of the Lamprey River Watershed Association, and the Riverfields Association, I wish to extend our sincere appreciation for your official support of Congressional legislation for the study of the Lamprey River basin in Durham and Lee, New Hampshire.

Your personal interest in the study is of great importance at this time, considering the increased interest in land ownership and "near water" development, anywhere in the seacoast or Great Bay region.

It is hoped that the scenic and natural resources of this area may be preserved with the general growth and prosperity of our fine state.

If the study is allowed, we are certain the results will open the eyes of many of our citizens as to the quality of life and recreation we are attempting to conserve and preserve for future generations from this beautiful river.

We have been most fortunate to have assistance and guidance from Ms. Evelyn Estes, Legislative Assistant to Cong. Robert Smith; and Ms. Sue Stahl, Staff Assistant to Sen. Warren Rudman.

Our thanks to the N.H. State officials who gave time from their busy schedules to review our proposal and lend their support. We are most grateful to Senator Franklin Torr for his dedication to our program—a gracious gentleman and a fine credit to his District 21.

We now look forward to state designation of the Lamprey under the N.H. Rivers Management and Protection Program.

With kindest regards,

FRANK M. GRAHAM.

TOWN OF LEE,
Lee, NH, September 14, 1989.

Senator GORDON J. HUMPHREY,
1 Eagle Square, Suite 507,
Concord, NH.

DEAR SENATOR HUMPHREY: The Selectmen of Lee are deeply concerned about the threat posed to the Lamprey River by the proposed construction of a hydropower facility at Wiswall Dam, Durham. We believe this facility has the potential of causing serious and irreversible damage to the quality and character of riverine life, not only in Durham, but in Lee as well.

The Selectmen have long recognized that the Lamprey River provides our residents with many outstanding scenic, recreational, ecological, cultural, historical and other resource opportunities. In order to protect these resources, not only from the threat of hydropower development, but also from the long-term pressures of rapid growth in the Seacoast region, we urge you and other members of the New Hampshire delegation to work toward the enactment of legislation to designate the Lamprey River for study under the provisions of the National Wild and Scenic Rivers Act.

If such legislation is enacted, the Selectmen intend to work with the National Park Service and with other river towns to assist in the preparation of a local conservation plan to protect the Lamprey River and its environs for future generations.

We hope that you and your colleagues will do everything possible to assist us in this important effort.

Sincerely,

JOSEPH P. FORD, *Chairman,*
Lee Board of Selectmen.

TOWN OF DURHAM,
Durham, NH, August 14, 1990.

Representative ROBERT C. SMITH,
House of Representatives,
Cannon Building,
Washington, DC.

DEAR REPRESENTATIVE SMITH: Thank you very much for your August 8, 1990 letter on the Lamprey River legislation that you plan to introduce in the House of Representatives. The Town of Durham endorsed Senator Humphrey's legislation designating the Lamprey River as part of the National Wild and Scenic Rivers System. We encourage you to introduce this legislation in the House of the Representatives.

The bill as drafted addresses the needs and concerns of the Town of Durham. Thank you very much for your support for designating the Lamprey River as part of the National Wild and Scenic Rivers Systems.

Sincerely yours,

RALPH FREEDMAN,
Town Administrator.

TOWN OF DURHAM,
Durham, NH, September 19, 1989.

Representative BOB SMITH,
90 Washington Street,
Dover, NH.

DEAR CONGRESSMAN SMITH: The Durham Town Council at their meeting on September 18, 1989 approved the attached Resolution which supports a study for the Lamprey River under the provisions of the National Wild and Scenic Rivers Act. The property owners along the Lamprey River and the community at large support the preservation and the protection of the Lamphrey River in its current state.

The Town Council urges you to support our efforts in designating the Lamprey River for study. Please contact me on what additional steps the Town of Durham must undertake to achieve this result. Thank you very much for your prompt consideration of this request.

Sincerely yours,

RALPH FREEDMAN.
Town Administrator.

RESOLUTION NO. 89-12; TOWN OF DURHAM, NH

Now comes the Durham Town Council, the governing body of the Town of Durham, and resolves as follows:

Whereas, the majority of landowners along the Lamprey River in Durham, NH have petitioned by signature the Durham Town Council to pass a resolution requesting members of Congress to enact legislation designating the Lamprey River for study under the provisions of the National Wild and Scenic Rivers Act; and

Whereas, the petitioners and the Durham Town Council recognize that the Lamprey River provides residents with many outstanding recreational, ecological, scenic, historic, and other resources; and

Whereas, local concern about this important river has increased due to a number of factors, including the proposed development of a hydroelectric facility, which may diminish or preclude local control of this resource; and

Whereas, the National Park Service, under the provisions of the National Wild and Scenic Rivers Act, can assist local communities in preparing a long-term protection plan for the Lamprey River which will rely on the use of existing state and local government authorities, as well as voluntary private landowner actions;

Now, therefore, be it resolved that the Durham Town Council hereby urges members of Congress to enact legislation to designate that segment of the Lamprey River within the Durham Town boundaries for study under the provisions of the National Wild and Scenic Rivers Act; and

Be it further resolved that our intent is to protect the river and its important related adjacent land areas for future generations through the development of a locally prepared and controlled river management plan.

OFFICE OF CONSERVATION COMMISSION,
Newmarket, NH, February 6, 1991.

PROPOSED RESOLUTION—LAMPREY RIVER WILD & SCENIC STUDY

(1) In accordance with the Wild and Scenic Legislation, the study area would be from the southern Lee town line downstream to the confluence with Woodman Brook, that being the area at the base of Sullivan Falls.

(2) In accordance with the Wild and Scenic Legislation, the study shall be completed by the Secretary of the Interior (NPS) and the report submitted not later than 3 years after the date of enactment.

(3) The study includes an in-depth section on water quality analysis and recommendations for projected water use for such activities as town public drinking water supplies and residential and commercial development.

(4) A member or delegate from the Newmarket Town government be a permanent member of the study committee.

(5) If the study is approved, the Newmarket Town government be notified of the study's results and given ample time (minimum 60 days) to respond with comments before any legislation is introduced recommending the study area be designated in the Federal, Wild, Scenic & Recreational Program.

(Signed by the Newmarket Town Councilors.)

• Mr. RUDMAN. Mr. President, I rise today to cosponsor legislation introduced by my colleague, Senator SMITH, authorizing the National Park Service to study a 10-mile segment of the Lamprey River running through Lee and Durham, NH.

This legislation is the culmination of aggressive and carefully coordinated local efforts to protect the Lamprey from hydroelectric development. In response to plans to construct a dam on the Lamprey River, the Lamprey River Watershed Association [LRWA] was born. This organization has actively pursued Federal legislation authorizing a National Park Service study of the Lamprey River and has successfully garnered the strong support of Governor Gregg, the towns of Durham and Lee, the Strafford Regional Planning Commission, as well as the vast majority of local residents and landowners.

Mr. President, the Lamprey River is worth protecting. It is the largest estuary system north of the Chesapeake, which feeds into George's Bank. The Lamprey also serves as a major tributary to the recently protected Great Bay, which has been designated as part of the National Estuarine Research Reserve System. In order to meet the protection goals of Great Bay, we must carefully manage and preserve the tributaries that feed into it. With this in mind, in August 1989 Governor Gregg stated:

> The whole question of how we address the issue of use of lakes, rivers and Great Bay is a core concern * * * I look at them as the crown jewels in the State's natural environment.

The Lamprey River and its shoreline serves as an important breeding ground and habitat for anadromous and game fish, mammals, and birds. One Audubon Society observer has noted 140 species of birds in the Lamprey River corridor. The New Hampshire Fish and Game Department has cited the presence of 26 species of commonly seen mammals, including otter, beaver, mink, coyote, red fox, and fisher. Moose and signs of black bear have also been reported.

The Lamprey River corridor contains two historically significant sites that are worth noting. In 1987, the Wiswall Falls Mill Site was placed on the National Register of Historic Places, a site which contains extensive remains of a 19th century mill complex. Archeological digs have discovered Indian sites along the river corridor, one of which is estimated to be over 8,500 years old.

Recreational opportunities abound on the Lamprey River—everything from canoeing and kayaking to swimming, tubing, and fishing. In fact, a survey conducted by the New Hampshire Fish and Game Department found that anglers spent 875 fishing hours on a three-quarter-mile stretch of river in a single month. The "AMC River Guide" highlights several portions of the river for canoeing and goes on to note the challenging rapids at Durham's Packers Falls recreation area for those looking for more adventurous canoeing and kayaking.

Enactment of the legislation we are introducing today will mean a careful study by the National Park Service of the outstanding values I noted previously, along with the development of a comprehensive river management plan in conjunction with the State and local governments as well as private groups, citizens, and landowners. This process has worked well in New Hampshire.

Let me highlight the very positive experience in Jackson which led to congressional designation of Wildcat Brook as a wild and scenic river. The New Hampshire congressional delegation continues to be committed to river protection. In fact, last year the congressional delegation jointly introduced the Pemigewasset and Merrimack River bills, both of which passed both the House and Senate and were subsequently signed into law by President Bush. Additionally, New Hampshire has further emphasized the importance of the Lamprey River by incorporating it as part of the State river protection plan. It is also included in the National Inventory System.

Passage of this legislation is critical to delaying the construction of a hydroelectric facility at Wiswall Dam in Durham, which has tentatively received a Federal Energy Regulatory Commission license. Barring a reversal by the FERC or a Federal court, the project is expected to go forward. It is obvious to me that an overwhelming majority of the citizens in these two communities oppose this project and support the legislation we are introducing today.

I continue to support local efforts to preserve our natural resources. I am happy to support this legislation and I look forward to the Senate considering it in the very near future.•

By Mr. DOMENICI:

S. 462. A bill to amend section 401 of the Act of December 19, 1980; to the Committee on Energy and Natural Resources.

VERMEJO PROJECT RELIEF

• Mr. DOMENICI. Mr. President, I rise today to introduce legislation to allow the Bureau of Reclamation to transfer a lake known as "Lake 13" to the Vermejo Conservancy District.

I am pleased to state that my colleague, Senator BINGAMAN, is a cosponsor of this legislation. I am also pleased to state that Congressman RICHARDSON is preparing to introduce a similar bill in the House. I applaud the efforts and continued support of both of these gentlemen.

This bill would clarify a law that I authored in 1980. That law, Public Law 96-550, was designed to defer payments and transfer certain facilities of the Vermejo Project from the Bureau of Reclamation to the Vermejo Conservancy District.

The amendatory contract required under Title IV has never reached final approval because an Interior Solicitor's Opinion has interpreted the fish and wildlife exception to prevent a transfer of Lake 13 to the District.

Despite the fact that Lake 13 has been a part of the Vermejo Project since 1954 and the Maxwell National Wildlife Refuge was not established until 1966, the Solicitor's Opinion argues that the use since 1969 of Lake 13 by the Maxwell Refuge under certain contractual arrangements means that the United States holds Lake 13 within the meaning of the transfer exception.

While the district does not dispute, and will honor, the contractual right of the United States to use Lake 13 for fish and wildlife purposes, Lake 13 should not fall within the transfer exception to Title IV.

Instead, the transfer exception refers to approximately 2,800 acres acquired by the United States from individual landowners for the Maxwell Refuge, and not to any project facilities acquired by the United States for the Vermejo Project.

Lake 13 is an important component of the district's water supply and delivery system. Releases from the lake are used to irrigate much of the 7,400 acres in the Vermejo Project.

Control of this integral part of the district's water system should rest with the district. Transferring Lake 13 to the district would permit more efficient operation of the Vermejo Conservancy District. In addition, this transfer is justified because the district has made a significant investment in Lake 13 by undertaking costly improvements and repairs to the Lake.

Mr. President, this bill is needed to correct the erroneous interpretation by the Department of the Interior of Title IV of Public Law 96-550. It clarifies that Lake 13 should be transferred to the district under title IV and also requires that the district continue to honor its contractual agreements with the Maxwell National Wildlife Refuge.

I ask that the text of the bill be inserted in the RECORD immediately following my remarks.

In the 1950's, the Vermejo Conservancy District and the Bureau of Reclamation entered into a repayment contract that obligated the district to pay the government $2.1 million for facilities that the Bureau constructed for the Vermejo Project. Over the years, the district was unable to make substantial repayments.

Title IV of Public Law 96-550 allowed the district to defer repayment and to obtain the project facilities. Under the law, the Bureau and the district were required to develop an amendatory contract on the repayment and transfer question. In order to protect the interests of the Maxwell National Wildlife Refuge, title IV included language added at the Bureau's request that excluded fish and wildlife lands and any attendant water rights from the transfer to the district. This allowed title to those lands and waters to remain with the United States.

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

S. 462

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. VERMEJO PROJECT RELIEF, NEW MEXICO.

Section 401 of the Act of December 19, 1980 (94 Stat. 3227) is amended by striking the text that begins: "Transfer of project facilities to the district shall be without . . ." and ends with ". . . . shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend Contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract Numbered 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1990, and expiring January 17, 1992, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract Numbered 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project.".•

By Mr. HATFIELD:

S. 463. A bill to establish within the Department of Education an Office of Community Colleges; to the Committee on Labor and Human Resources.

OFFICE OF COMMUNITY COLLEGES

• Mr. HATFIELD. Mr. President, in the last several decades, this Nation's community colleges have risen from virtual obscurity to become a large and critically important component of our higher education system. In fact, community colleges across the country have a larger combined enrollment than any other segment of higher education. Between 1965 and 1975 alone, community college enrollment jumped by 215 percent—and the numbers continue to rise every year.

In Oregon, our 16 community colleges are practically bursting at the seams with students—over 300,000 men and women are attending at least one community college class in Oregon this year. The four community colleges in the Greater Portland Area alone have almost 150,000 students coming through their doors annually. From vocational education to English as a second language to preparation for transfer to a 4-year institution, all of Oregon's community colleges are developing innovative programs and projects to meet the needs of a very wide range of people. From what my colleagues tell me about community colleges in their States, the trends in Oregon are reflected throughout the Nation.

Given the contributions community colleges are making to higher education, to the quality of life in our communities, and certainly to the Nation's economy, it is hard to believe that there is no higher level position within the Department of Education to represent their interests. Hard to believe, Mr. President, but true—and I am convinced that the creation of such a position is long overdue.

I rise today to introduce legislation to establish an Office of Community Colleges within the Department of Education, and to encourage my colleagues to talk with community college representatives in their own States about this proposal.

When we consider the reauthorization of the Higher Education Act later this year, I hope very much that this proposal can be incorporated into the legislation debated here in the Senate. In the weeks ahead, I look forward to talking with my colleagues on the Senate Labor and Human Resources Committee about this long overdue proposal, and working with them and others to see that it becomes a reality.•

By Mr. GARN:

S. 464. A bill for the relief of John Gabriel Robledo-Gomez Dunn; to the Committee on the Judiciary.

THE RELIEF OF JOHN GABRIEL ROBLEDO-GOMEZ

• Mr. GARN. Mr. President, today I am introducing a bill for the relief of John

Gabriel Robledo-Gomez Dunn of Brigham City, UT.

John was born in Perera, Columbia to very meager circumstances. As an infant this young man was deserted by his natural father. Although his mother worked very hard to support her family she could not provide even the most basic essentials. In the summer of 1987 the Dunn family of Brigham City, UT heard of John's situation and decided to see what they could do to help. With their sponsorship he was able to come to Utah to study at Box Elder High School on a student visa. He arrived malnourished and in need of a great deal of medical and dental care. Through his diligent efforts he learned English and progressed very well in school. He graduated from high school in May 1989 and began his college education at Weber State University in Ogden, UT.

Once John arrived in Utah the Dunns realized that they wanted him to become a part of their family permanently. This was not a new experience for them. Richard and Deon have eight children. Four of the children were born to them and the others have joined their family under a variety of special circumstances. This was the first time, however, that they had adopted a child from overseas. They proceeded with the adoption. When it became final in November of 1987 they were excited and wanted to be certain that John received all the opportunities they had provided their other children. They realized they needed to change John's immigration status since he was now the son of U.S. citizens. Only then did they become aware of the fact that the immigration law does not recognize the adoption of a child over the age of 16 as conveying immediate relative status to the child. John could not remain in the United States unless he was a student.

The family was very upset and concerned. John was a part of their family and now there was a possibility he could not stay with them. Each family member has expressed to me how much they love and depend on John as a part of their family. John has expressed his desire to remain with his new brothers and sisters. He is pleased to have a new mom because now he has two. But perhaps his most telling comment was how much he was pleased to finally have a father. He allowed as how it wasn't always easy because it was a new experience for him but was grateful for his Dad and the lessons he was learning from him.

This young man has made a profound impact on his family. If the letters and phone calls that have come to my office are any indication of his impact on the community, his school and his church then there is no question that John Robledo Dunn makes a very positive mark on all who meet him. Two of his goals in life are to serve his church and to get a college education. He has started on his educational goal. For the last year John has been serving his church by working with the Hispanic community in Cleveland, OH. He is enthusiastic in his service and grateful for the opportunity and challenge of helping others. Passage of this bill would allow the Dunn family to remain complete and John to continue to pursue his goals. I am confident he will be a valued addition to Brigham City, to Utah and to the United States.●

By Mr. GLENN:

S. 465. A bill to require the Secretary of Agriculture to conduct a pilot program to permit two States to enter into a reciprocal agreement for the interstate shipment and marketing of State-inspected meat and poultry products and to establish a task force to advise the Secretary with respect to such pilot program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

RECIPROCAL STATE MEAT AND POULTRY AGREEMENTS.

● Mr. GLENN. Mr. President, I rise today, with Senator INOUYE to introduce legislation to establish a pilot program to permit States to enter into reciprocal agreements for the interstate shipment and marketing of State-inspected meat and poulty products and to establish a task force to advise the Secretary of Agriculture concerning the pilot program. This bill will provide an enormous benefit to the small and mid-sized meat and poultry processing plants by among other things expanding their markets. These expanded markets also mean a greater variety for our consumers—without compromising one bit of safety. The large plants are not losers under this bill either. They also can benefit from greater selling opportunities.

Federal inspection of meat and poultry is carried out under the authority of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

About 97 percent of all red meat and 99 percent of all poultry is inspected by Federal inspectors who are employees of the U.S. Department of Agriculture's Food Safety and Inspection Service [FSIS]. These inspectors are stationed in private slaughtering and processing plants, and 100 percent of the cost of inspection is borne by USDA, except for overtime charges, which are paid by the packers.

Twenty-eight, States operate their own programs for inspecting meat and poultry for sale in intrastate commerce. I would just like to take a minute to list these States: Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Montana, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

About 3 percent of all red meat and 1 percent of all poultry is State-inspected. The Wholesomeness Meat Act of 1967 and the Wholesome Poultry Act of 1968 amended the existing Federal meat inspection legislation to require that State inspection programs be equal to Federal inspection and be subject to periodic USDA review. The costs of State inspection are borne half by the State, half by USDA. If the State program does not meet Federal standards, USDA may terminate the State program and convert all meat and poultry inspection to the Federal system.

The Food Safety Inspection Service [FSIS], by allowing State inspection programs to continue, is certifying that meats inspected under their system meet or exceed the requirements for federally-inspected meats. States may also choose to terminate their own inspection programs (usually for budgetary reasons) and opt for Federal inspection. Meat and poultry products from State-inspected packers may be marketed only within that State, and they are not eligible for export.

A number of questions have been raised regarding the desirability of permitting interstate shipment of State-inspected meat and poultry products. For instance, some argue that not all State inspection programs are equal to Federal inspection and that consumer confidence in the safety of all meat and poulty products would be lowered if contamination were discovered in State-inspected products in interstate commerce. First of all, I am confident that a meat product inspected in an Ohio-inspected plant will also be safe for consumption in any other state. Additionally, food poisoning outbreaks have been traced to meat from federally as well as State-inspected plants.

I do not believe that State-inspected meats are any more likely to have occasional contamination problems than Federally-inspected meats. Moreover, consumer confidence is jeopardized by contamination problems regardless of who did the inspection.

However, in order to answer these important questions, this legislation establishes a task force to advise the Secretary of Agriculture concerning the desirability of continuing the pilot program. The task force would be composed of members of USDA; State departments of agriculture; industry, including large and small processors; consumer groups; and labor organizations.

It is unfair that imported meats can be shipped anywhere within the United States when State-inspected meats cannot. The USDA's review program for assuring the wholesomeness of State-inspected meat is at least as good as, if not better than, its program for reviewing meat and poultry inspec-

tion in foreign countries cleared to export products to the United States.

The prohibition against shipment across State lines unfairly limits small packers' marketing areas, especially for plants located near State borders. Allowing State-inspected products to go out of State could benefit larger packers as well as smaller ones. For example, large packers in Ohio and elsewhere would be able to purchase carcasses from local, State-inspected slaughtering plants across the border in neighboring States, which could prove cost-effective. Or a large packer could purchase a line of specialty meats from a State-inspected packer to expand its product line and reach different markets.

Mr. President, this bill is very simple. It establishes a 2-year pilot program which will permit States to enter into agreements to allow for the interstate shipment and marketing of State-inspected meat and poultry products. The bill also establishes a task force to determine the effectiveness of the pilot program.

Should a State have some reason to question the State inspection program of a neighboring State, it is not required to enter into a reciprocal agreement with that State. I would like to stress that no State is required to accept what it perceives as inferior meat or poultry. It is simply given the option to safely expand market opportunities for small and midsized packers. I have long had confidence in the quality of the State-inspected meats produced by our plants in Ohio. I am sure that my colleagues share the same confidence in the products coming from State-inspected plants in their own States.

I believe this bill to be a good starting point for evaluating interstate commerce of State-inspected meat and poultry products. It is limited in its scope in that the program operates for 2 years and is evaluated by a representative task force.

For these reasons, Mr. President, I urge my colleagues to join me in allowing States the freedom to enter into reciprocal agreements for the interstate shipment of State-inspected meats.●

By Mr. GRASSLEY (for himself and Mr. DASCHLE):

S. 466. A bill to amend the Internal Revenue Code of 1986 to provide for a renewable energy production credit, and for other purposes; to the Committee on Finance.

RENEWABLE ENERGY PRODUCTION CREDIT

Mr. GRASSLEY. Mr. President, together, with my distinguished colleague, Senator DASCHLE, we are introducing legislation to address what we consider to be a significant gap in the administration's national energy strategy.

This void concerns the lack of stronger incentives in the strategy for our Nation to dramatically increase the production of renewable fuels. Any successful national energy and environmental policy must seriously move in the direction of shifting our reliance away from finite supplies of fossil fuels toward the infinite supply of alternative energy fuels.

The administration has taken the first steps in reiterating its support for ethanol and other alternative fuels. However, more aggressive steps are going to have to be taken.

So this legislation we are introducing today would provide a tax credit for the production of electricity created through renewable fuel technologies including solar, wind, photovoltaic, and geothermal. It would also extend the renewable fuels investment tax credit. These alternative fuels, along with ethanol, are the keys toward a cleaner and safer environment and a virtually unlimited supply of energy.

Ironically, this legislation was a part of the original national energy strategy that was forwarded to the White House from the Department of Energy. So, the Energy Department has recognized the need for this legislation. Unfortunately, some officials in the White House apparently think otherwise.

The war in the gulf has only highlighted the dangerous reliance we have placed on oil, especially foreign oil, to fuel our Nation. Everyone seems to recognize that we need to lessen our dependence on oil. However, the administration's response puts too much emphasis on further oil production.

In last year's budget reconciliation bill, a number of tax incentives for the oil industry was passed into law. Although ethanol incentives that I strongly supported were included, the bulk of assistance went to oil production.

However, our oil reserves are going to run dry eventually. Everyone knows that. So, we have to be looking further ahead than just the next generation, or we are going to fail once again. If we can provide a few billion dollars in tax incentives to the oil industry, as we did last year, which is flush with cash at this time, then we can be more forward looking and provide commensurate assistance to the energies of the future.

Mr. President, the administration's energy strategy is just the beginning, and President Bush, to his credit, has started the ball rolling. I hope this legislation will fill in a very important gap, as Senator DASCHLE and I see it. Now, the Congress has the responsibility to move ahead and help mold the President's initiative into a winning strategy.

I look forward to working with Senator DASCHLE and others as we begin making our contributions to this process by introducing this legislation and building upon it.

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

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

S. 466

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RENEWABLE ENERGY PRODUCTION CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end thereof the following new section:

"SEC. 30. RENEWABLE ENERGY PRODUCTION CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

"(1) the applicable amount, multiplied by

"(2) the kilowatt hours of electricity produced with qualified technologies property—

"(A) sold by the taxpayer to an unrelated person during the taxable year,

"(B) the production of which is attributable to the taxpayer.

"(b) APPLICABLE AMOUNT.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the applicable amount shall be determined under the following table:

"Taxable year qualified technologies property placed in service:	The applicable amount is:
1992–1996	2.0 cents
1997	1.6 cents
1998	1.2 cents
1999	0.9 cents
2000	0.6 cents
2001	0.3 cents

"(2) REDUCED APPLICABLE AMOUNT FOR GEOTHERMAL PROPERTIES.—In the case of qualified technologies described in subsection (e)(1)(D), the applicable amount for any taxable year shall be equal to 50 percent of the applicable amount otherwise determined under paragraph (1).

"(3) CREDIT ADJUSTMENT BASED ON INFLATION.—

"(A) IN GENERAL.—The applicable amount in paragraph (1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs.

"(B) PUBLICATION.—The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor for the preceding calendar year in accordance with the paragraph.

"(C) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1992. The term 'GNP implicit price deflator' means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

"(c) APPLICATION OF SECTION.—This section shall apply with respect to electricity—

"(1) produced with qualified technologies property—

"(A) placed in service after December 31, 1991, and before January 1, 2002,

"(B) for which an energy credit has not been allowed, and

"(2) sold after December 31, 1991, and before January 1, 2009.

"(d) LIMITATIONS.—

"(1) CREDIT REDUCED FOR GRANTS, TAX-EXEMPT BONDS, AND SUBSIDIZED ENERGY FINANCING.—The amount of the credit allowable under subsection (a) with respect to any qualified technologies property for any taxable year shall be reduced by an amount determined under rules similar to the rules of section 29(b)(3).

"(2) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29, over

"(B) the tentative minimum tax for the taxable year.

"(d) QUALIFIED TECHNOLOGIES DEFINED.—For purposes of this section—

"(1) QUALIFIED TECHNOLOGIES.—The term 'qualified technologies' means—

"(A) solar thermal,

"(B) photovoltaic,

"(C) wind,

"(D) geothermal (other than dry steam geothermal),

"(E) biomass, and

"(F) any other technology identified by the Secretary, after consultation with the Secretary of Energy, within 1 year of the date of the enactment of this section.

"(2) BIOMASS.—The term 'biomass" means any organic material, including wood and other agricultural crops, which—

"(A) is available on a renewable basis, and

"(B) is—

"(i) produced by a facility used exclusively for growing biomass for energy purposes on a sustained basis; or

"(ii) converted to electricity by a conversion technology with a net heat rate of 10,500 Btu's per kilowatt hour or less.

The term 'biomass' shall not include aquatic plants and waste residues from wood, animal, municipal, agricultural, or other sources.

"(3) DRY STEAM GEOTHERMAL.—The term 'dry steam geothermal' means geothermal produced from a dry steam geothermal reservoir which—

"(A) has no mobile liquid in its natural state,

"(B) has steam quality of 95 percent water or more, and

"(C) has an enthalpy for the total produced fluid at least equal to 1,200 Btu's per pound.

"(e) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—

"(1) ONLY PRODUCTION WITHIN THE UNITED STATES TAKEN INTO ACCOUNT.—Sales shall be taken into account under this section only with respect to electricity produced within—

"(A) the United States (as defined in section 7701(a)(9), or

"(B) a possession of the United States.

"(2) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified technologies property in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from such property shall be allocated among such persons in proportion to their respective interests in the gross sales from such property.

"(3) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity produced with qualified technologies property to an unrelated person if such electricity is sold to such a person by another member of such group.

"(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(5) FLOW-THRU FOR PUBLIC UTILITIES.—

"(A) IN GENERAL.—The Secretary, after consultation with the Secretary of Energy, shall prescribe regulations within 1 year of the date of the enactment of this section for the flow-thru of credits allowed under this section for public utilities.

"(B) PUBLIC UTILITY.—For purposes of subparagraph (A), the term 'public utility' means a person, State agency, or local unit of government engaged in the sale of electricity."

"(b) EXTENSION OF SOLAR AND GEOTHERMAL ENERGY CREDITS.—Section 448(a)(2)(B) of the Internal Revenue Code of 1086 (relating to termination) is amended by striking "1991" and inserting "1996".

"(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 30. Renewable energy production credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

Mr. DASCHLE. Mr. President, I rise today to join with my distinguished colleague from Iowa, Senator GRASSLEY, to introduce the Renewable Energy Development Act of 1991. This bill provides incentives for the production of electricity through the use of renewable technologies, and is designed to supplement other legislative initiatives focusing on energy policy.

Our legislation is taken almost verbatim from legislation drafted by the Department of Energy in its development of a national energy strategy, but inexplicably shelved when final recommendations were made by the White House and Office of Management and Budget.

This bill is by no means comprehensive. First of all, it is only directed at promoting the development of renewable energy technologies. It does not address conservation, the development and utilization of fossil fuels, or enhancing strategic energy reserves, all of which must be a part of an overall energy strategy. Moreover, this bill focuses on electrical generation and does not address renewable energy technologies that produce liquid transportation fuels. Approximately half the oil utilized in this country is consumed by the transportation sector, and there must be a greater emphasis placed on renewable fuels. Senator GRASSLEY and I intend to consider these additional concerns in the weeks and months ahead.

The past weeks have generated a proliferation of energy policy bills, and we may only have seen the beginning. The focus of the national energy policy effort has been, for the last 18 months, the development of the national energy strategy by the Department of Energy and the administration. Secretary Watkins made an ambitious attempt to talk to all sides and to look into all alternatives. The list of options presented to the White House included some extremely aggressive and farsighted proposals. I sincerely believe that Secretary Watkins made an honest effort in trying to address a politically and substantively thorny issue. If nothing else, he has helped focus the Nation's attention on the issue of energy policy. For that, he deserves considerable credit. Unfortunately, Secretary Watkins turned 18 months of hard work over to ideologues in the White House, and the result is a mere shell, long on style and hype but sadly lacking in solutions.

The national energy strategy released yesterday has a fatal flaw. It does little to reverse the course that we have followed for the last decade toward greater dependence on oil, and, in particular, foreign oil. The proposal is based on wildly optimistic assumptions about future oil production and demand, and is centered around the dubious proposition of developing our most environmentally sensitive and remote areas. The national energy strategy, at best, has modest conservation measures, and is seriously lacking in the area of renewable energy incentives.

The energy problems facing America are not due to foreign oil—the problems are due to our dependence on oil. Period. As much as we may wish for it, producing more oil from the United States will not insulate the Nation from the wild price swings of the world oil market. Oil is a fungible commodity—if the world oil price goes up, the cost of American oil goes up and the cost to American consumers will also go up. While better utilizing our own resources is a worthwhile goal, in reality it only helps protect us from foreign blackmail.

But the problems with oil go well beyond volatile consumer prices. They range from massive spills on our coastal and inland waters to toxic emissions from refineries; from deadly urban smog to military tanker escorts; from leaking underground storage tanks to all-out war in the Persian Gulf. These are all costs of our dependency on oil. We cannot produce our way out of this vulnerability—we must find alternatives. That is what this bill is all about.

The legislation that we are introducing today would provide a tax credit based on the production of electricity through an array of renewable technologies, including solar, geothermal, photovoltaics, wind, and biomass technologies. The amount of the credit would be determined according to the amount of kilowatt hours of electricity produced.

In addition, solar and geothermal facilities, which have utilized the section 46 investment tax credit in the past, will be permitted to continue using that credit, if they choose to do so. Under current law, the section 46 credit expires at the end of this year. Therefore, the legislation we are introducing today would extend the current law section 46 credit for 5 years, an extension that exceeds both the administration and DOE proposals. The new production credit and the current investment credit would be offered in the alternative, to avoid any double benefit.

I must emphasize that the measure we are introducing today is only a start. As chairman of the Finance Committee's Subcommittee on Energy and Agricultural Taxation, I plan to hold hearings on the measure in the near future. Senator GRASSLEY, who is also a member of the subcommittee, and I will be interested in hearing comments on the measure, as well as suggestions for additional renewable development provisions that would be appropriate under the Tax Code. After having the benefit of comments from industry representatives and other interested parties, we hope to introduce a revised renewable energy development package.

By Mr. KERRY:

S. 467. A bill to amend the Internal Revenue Code of 1986 to restore a capital gains tax differential for small and high-risk business stock held for more than 5 years; to the Committee on Finance.

SMALL AND HIGH-RISK BUSINESS INVESTMENT ACT

• Mr. KERRY. Mr. President, I rise today to introduce the Small and High-Risk Business Investment Act of 1991. This legislation would establish a two-tiered tax rate structure for investments in new, small, and emerging businesses that are held for a specified length of time.

Mr. President, as many of my colleagues know, the entire Northeast region is in the midst of a severe economic downturn. In Massachusetts, the lack of available capital threatens to aggravate the recession. Banks, faced with large loan losses and tougher capital standards, are shutting off credit lines to sound business opportunities and even to reliable, credit-worthy customers. As a result, many small companies and new businesses find themselves without the investment capital necessary to expand and contribute to the growth of the regional and national economy.

On January 28, 1991, Gov. William Weld and I held a day-long economic conference in Boston to gather our State's banking, public, business, and academic leaders and to hear first hand their views on how best to get the Massachusetts economy moving again. Perhaps the most vital issue raised by conference participants was the urgency of finding new ways to get capital flowing into Massachusetts again. Capital must be available to small companies today if they are to grow into the large employers of tomorrow.

Mr. President, I introduce this legislation to address that particular concern and also to correct one aspect of the Tax Reform Act of 1986 which I believe has contributed, in part, to a general decline in the availability of investment capital for small businesses.

However, unlike President Bush, I do not believe a broad-based cut in the capital gains tax represents the best way to promote job-creating initiatives. My bill, by establishing a two-tier tax rate structure that distinguishes the type and holding period of a qualified investment, will encourage the flow of capital into emerging growth companies and set the stage for future income growth and job creation.

For direct equity investments in businesses worth $100 million or less, my bill will lower the tax rate on capital gains to 15 percent after a 5-year holding period. After a 10-year holding period, the tax rate decreases to 10 percent.

For investments in high-risk or emerging companies worth $10 million or less, the tax rate on capital gains will start at 10 percent after a 5-year holding period and decrease to 5 percent after 10 years.

I believe the institutions of this two-tiered capital gains differential will encourage increased investment in the startup and expansion of small- and medium-sized businesses. This kind of targeted approach is vital and fair—one that encourages capital formation and rewards patient capital.

Mr. President, I would also like to make another distinction between my proposal and President Bush's across-the-board capital gains tax cut. My approach does not have the regressive income distributional effect. By limiting the tax cut to certain types of investments, my bill excludes profits from short-term paper investments and targets long-term job producing investment. Thus, the cost to U.S. taxpayers and the regressive consequences are limited.

Last, I want to emphasize how important this measure is in terms of addressing the deepening concerns in Massachusetts and throughout the Northeast regarding the lack of available capital. I urge my colleagues to join me in supporting this narrowly targeted incentive to get capital flowing in this Nation's economy again.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 467

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small and High-Risk Business Investment Act of 1991".

SEC. 2. ALTERNATIVE TAX RATES ON CAPITAL GAINS FROM CERTAIN SMALL AND HIGH-RISK BUSINESS STOCK.

(a) TAXPAYERS OTHER THAN CORPORATIONS.—

(1) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 1201 the following new section:

"SEC. 1202. ALTERNATIVE RATES FOR CAPITAL GAINS ON SMALL AND HIGH-RISK BUSINESS STOCK HELD BY TAXPAYERS OTHER THAN CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a small business stock net capital gain, then in lieu of the tax imposed by section 1, there is hereby imposed a tax (if such tax is less than the tax imposed by section 1) in an amount equal to the sum of—

"(1) a tax computed on the taxable income, reduced by the amount of small business stock net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) the tax on small business stock net capital gain determined under subsection (b).

"(b) TAX ON SMALL BUSINESS STOCK NET CAPITAL GAIN.—The tax under this subsection shall be the sum of the amounts determined in accordance with the following table:

"In the case of:	The tax is:
10-year high-risk gain	5 percent
5-year high-risk gain	10 percent
10-year small business gain	10 percent
5-year small business gain	15 percent.

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

"(1) SMALL BUSINESS STOCK NET CAPITAL GAIN.—The term 'small business stock net capital gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the net capital gain for the taxable year determined by taking into account only gain or loss from qualified small business stock which has been held for more than 5 years.

"(2) 10-YEAR HIGH-RISK GAIN.—The term '10-year high-risk gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the net capital gain for the taxable year by taking into account only gain or loss from high-risk business stock held for 10 years or more.

"(3) 5-YEAR HIGH-RISK GAIN.—The term '5-year high-risk gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 10-year high-risk gain, or

"(B) the net capital gain for the taxable year determined by taking into account only gain or loss from high-risk business stock held for 5 years or more but less than 10 years.

"(4) 10-YEAR SMALL BUSINESS GAIN.—The term '10-year small business gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 5-year high-risk gain and 10-year high-risk gain, or

"(B) the net capital gain for the taxable year determined by taking into account only

gain or loss from qualified small business stock (other than high-risk business stock) held for 10 years or more.

"(5) 5-YEAR SMALL BUSINESS GAIN.—The term '5-year small business gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 5-year high-risk gain, 10-year high-risk gain, and 5-year small business gain, or

"(B) the net capital gain for the taxable year determined by taking into account only gain or loss from qualified small business stock (other than high-risk business stock) held for 5 years or more but less than 10 years.

"(6) QUALIFIED SMALL BUSINESS STOCK.—

"(A) IN GENERAL.—The term 'qualified small business stock' means stock which—

"(i) is issued by a qualified small business after the date which is 6 months after the date of the enactment of this section,

"(ii) is first acquired (whether directly or through an underwriter) by the taxpayer, and

"(iii) is not issued in redemption of (or otherwise exchanged for) stock not issued during the period described in clause (i).

"(B) QUALIFIED SMALL BUSINESS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'qualified small business' means a corporation the paid-up capital of which immediately after the date of issuance described in subparagraph (A) is $100,000,000 or less.

"(ii) ACTIVE TRADE OR BUSINESS REQUIREMENT.—A corporation shall not be treated as a qualified small business unless such corporation—

"(I) was engaged in the active conduct of a trade or business during the 5-year period ending on the date of issuance described in subparagraph (A) (or if shorter, its period of existence), and

"(II) is so engaged immediately after such date.

"(iii) EXCEPTION FOR PERSONAL SERVICE CORPORATIONS.—The term 'qualified small business' shall not include a personal service corporation (within the meaning of section 269A(b)(1)).

"(7) HIGH-RISK BUSINESS STOCK.—The term 'high-risk business stock' means stock which is qualified small-business stock under paragraph (6) determined by substituting '$10,000,000' for '$100,000,000' in subparagraph (B)(i) thereof.".

(2) MAXIMUM RATE.—Subsection (h) of section 1 of the Internal Revenue Code of 1986 is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed at the rate and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the amount of the net capital gain, or

"(ii) the amount of taxable income taxed at a rate below 28 percent, plus

"(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A).

"(2) SPECIAL RULE WHERE TAXPAYER HAS SMALL BUSINESS STOCK NET CAPITAL GAIN.—

"(A) IN GENERAL.—If a taxpayer has a small business stock net capital gain for any taxable year, then the tax imposed by this section shall not exceed the lesser of—

"(i) the amount determined under paragraph (1), or

"(ii) the sum of—

"(I) the amount determined under paragraph (1) without taking into account small business stock net capital gain for purposes of subparagraphs (A) and (B) thereof, plus

"(II) the amount determined under section 1201(b).

"(B) SMALL BUSINESS STOCK NET CAPITAL GAIN.—For purposes of this paragraph, the term 'small business stock net capital gain' has the meaning given such term by section 1202(c)."

(b) CORPORATIONS.—Section 1201 of the Internal Revenue Code of 1986 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) QUALIFIED SMALL BUSINESS STOCK NET CAPITAL GAIN.—

"(1) IN GENERAL.—If for any taxable year a corporation has a small business stock net capital gain, then—

"(A) in lieu of the tax imposed by section 11, 511, or 831 (a) or (b) (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) in an amount equal to the sum of—

"(i) a tax computed on the taxable income reduced by the amount of the small business stock net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(ii) a tax on the small business stock net capital gain determined in the same manner as under section 1202(b), and

"(B) paragraph (2) of subsection (a) shall be applied as if it read as follows:

"'(2) a tax equal to the sum of—

"'(A) the amount determined under clause (ii) of subsection (b)(1)(A), plus

"'(B) 34 percent of the net capital gain, reduced by small business stock net capital gain.'

"(2) SMALL BUSINESS STOCK NET CAPITAL GAIN.—For purposes of this subsection, the term 'small business stock net capital gain' has the meaning given such term by section 1202(c).".

(c) TREATMENT AS PREFERENCE ITEM FOR MINIMUM TAX.—Section 57(a) of the Internal Revenue Code of 1986 (relating to items of tax preference under the alternative minimum tax) is amended by adding at the end thereof the following new paragraph:

"(8) CAPITAL GAINS ON SALE OF CERTAIN SMALL AND HIGH-RISK BUSINESS STOCK.—

"(A) IN GENERAL.—In the case of a taxpayer with small business stock net capital gain, an amount equal to the rate differential portion for the taxable year determined under subparagraph (B).

"(B) RATE DIFFERENTIAL PORTION.—

"(i) IN GENERAL.—The rate differential portion of 5-year high-risk gain, 10-year high-risk gain, 5-year small business gain and 10-year small business gain is the same proportion of such amount as—

"(I) the excess of the highest applicable rate over the alternative tax rate, bears to

"(II) the highest applicable tax rate.

"(ii) HIGHEST APPLICABLE TAX RATE.—The term 'highest applicable tax rate' means the rate determined under section 904(b)(3)(E)(ii), whichever is applicable.

"(iii) ALTERNATIVE RATE.—The term 'alternative rate' means the rate determined under section 1202(b).

"(C) DEFINITIONS.—For purposes of this paragraph, any term used in this paragraph which is used in section 1202 shall have the same meaning as when used in section 1202.".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 691(c) of such Code is amended by striking "1(h), 1201, and 1211" and inserting "1(h), 1201, 1202, and 1211, and for purposes of section 57(a)(8)".

(2) Clause (iii) of section 852(b)(3)(D) of such Code is amended by striking "66 percent" and inserting "the rate differential portion under section 904(b)(3)(E) or section 57(a)(8)(B), whichever is applicable,".

(3) Section 904(b)(3)(E) of such Code is amended by striking "1(h)" in clause (iii)(I) thereof and inserting "1(h) (without regard to paragraph (2) thereof)".

(4) Section 1445(e)(1) of such Code is amended by striking "34 percent (or, to the extent provided in regulations, 28 percent)" and inserting "34 percent (or, to the extent provided in regulations, the alternative tax rate determined under section 904(b)(3)(E)(iii) or section 57(a)(8)(B)(iii), whichever is applicable)".

(5) The table of sections for part I of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1201 the following new item:

"Sec. 1202. Alternative rates for capital gains on small and high-risk business stock held by taxpayers other than corporations.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to stock issued after the date which is 6 months after the date of the enactment of this Act.•

By Mr. DODD (for himself, Mr. BYRD, Mr. LEAHY, Mr. GLENN, Mr. DECONCINI, Mr. WIRTH, Mr. LIEBERMAN, Mr. HARKIN, Mr. BRYAN, Mr. ADAMS, Mr. ROBB, Mr. SANFORD, Mr. LEVIN, Mr. LAUTENBERG, Mrs. KASSEBAUM, Mr. BINGAMAN, and Mr. REID):

S. 469. A bill to amend the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 to apply the same honoraria provisions to Senators and officers and employees of the Senate as apply to Members of the House of Representatives and other officers and employees of the Government, and for other purposes; to the Committee on Governmental Affairs.

BAN ON HONORARIA FOR SENATORS AND OFFICERS AND EMPLOYEES OF THE SENATE

• Mr. DODD. Mr. President, today, I am introducing legislation to ban the receipt of honoraria by Senators, as well as by Senate staff and officers. I am pleased to be joined in this effort by the distinguished President pro tempore, ROBERT BYRD, and by my colleagues, Senators LEAHY, GLENN, DECONCINI, WIRTH, ROBB, ADAMS, LIEBERMAN, HARKIN, KASSEBAUM, LEVIN, LAUTENBERG, REID, BRYAN, BINGAMAN, and SANFORD.

My belief that Senators should be paid only by their employers—the people—is well-known. It is only fitting given that we serve the public in the very highest chambers of government. Unfortunately, under the current pay system, Senators are permitted to supplement the salary received from the Treasury with honoraria received from a handful of interest groups for a speech or a roundtable meeting. Senators who choose this route can boost their earnings by nearly $30,000 a year.

The code of ethics for Government service states "a public office is a pub-

lic trust." Honoraria creates the appearance of a betrayal of this trust for direct financial benefit and should be banned.

Mr. President, it is not my belief that Senators in this Chamber sell their influence; my colleagues are men and women of integrity and honor. However, this practice casts the institution in a poor light; it creates the perception of influence peddling, of an institution whose Members have a $2,000 price tag and, thereby, it erodes public support and confidence.

This support is essential to democratic government. Without it, this institution has no base, no future. Yet, according to a 1990 Harris Poll, only 15 percent of Americans had "a great deal of confidence" in Congress and we have all seen the political cartoon where a couple opens a savings account and gets "one toaster and two U.S. Senators." We have a responsibility as Members of this great body to preserve it and to encourage others to serve here. We cannot effectively do so with honoraria tarnishing our institution and cheapening our work. Even the appearance of impropriety, which honoraria creates, should be reason enough for us to end this system that does nothing but add fuel to the fire of public cynicism about the motives of its highest elected officials. Adoption of this measure will help restore public confidence in the integrity of this institution.

Although this change is long overdue, this bill is not new to the Senate. It is substantially the same as the measure I introduced in the last Congress. Beginning in 1992, it would conform the Senate's rules on honoraria and outside income to those that apply to the House of Representatives, as well as to the executive and judicial branches.

As such, the bill prohibits the acceptance of honoraria by Senators and, at the same time, limits outside earned income to 15 percent of a Senator's salary. In addition, no payments in lieu of honoraria may be paid on behalf of a Senator, officer, or employee directly to a charitable organization if such payments exceed $2,000 or are made to a charitable organization from which the individual or an immediate family member derives any direct financial benefit.

The bill also places other limitations on outside earned income. A Senator may not: First, affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services that involve a fiduciary relationship for compensation; second, permit his or her name to be used by any such firm, partnership, association, corporation, or other entity; third, practice a profession that involves a fiduciary relationship for compensation; fourth, serve for compensation as an officer or member of the board of any association, corporation, or other entity; or fifth, receive compensation for teaching without prior notification and approval of the Senate Ethics Committee.

However, it is not the intent of this bill to limit income from copyright royalties from established trade publishers that are consistent with usual and customary contract terms. The House has granted such an exemption in its regulations interpreting language identical to that contained in this bill, and I fully anticipate that the Senate would do the same under this measure.

Mr. President, in effect, this bill has already received the approval of the Senate. It was considered and approved last year by an overwhelming 77 to 23 margin as an amendment to S. 137, the Senatorial Election Campaign Act. Unfortunately, the conference committee was unable to resolve differences between the Senate and House bills. Beyond the overall value of the campaign financing legislation, it is most unfortunate that the honoraria ban was not enacted into law during the last Congress. In every other part of the Federal Government, officials are governed by these ethics rules; in 1991, Senators and Senate staff stand alone as the only public servants who can legally accept honoraria.

This measure does not address compensation of U.S. Senators. While the elimination of honoraria has, in the past, been linked to a pay raise for the Members of this body, it does not appear that such a linkage will be pursued in this Congress. Nevertheless, I believe the acceptance of honoraria, which some have come to see as a substitute for an official increase in pay, can be separated from the issue of compensation and should be discussed on its own merits.

Mr. President, the level of compensation we receive should be the level provided by the public through the U.S. Treasury, not through checks provided by private interest groups. It means something when a Senator accepts his or her check from the Treasury, as when any employee receives a paycheck from his employer; it means he is performing his job—he is working in the public interest. When a Senator receives a check from a special interest group, what does it mean? Mr. President, I don't like what I think it means, or what it could be construed to mean. The source of compensation received is significant. And that is the issue on which debate on this bill should focus—"Who pays the Senate?"

Finally, let me make it clear that this bill does not affect the amount of unearned outside income a Senator may accept. I strongly believe that efforts to do so would be inappropriate as well as unprecedented in American history. It is true that the Senate has many millionaires, men and women who have been successful in business or, in some cases, in birth. However, in America there is no law against financial success; indeed, our system of private enterprise encourages such success, as I believe it should. To limit outside unearned income would be a grave error, a punishment to those who have done no wrong under our laws, and it would preclude many who could bring much to this institution from serving.

I recognize that the issue before us is a difficult one, with an impact that is so personal, so close to home. But it is an issue we can no longer avoid. The executive and judicial branches have outlawed the taking of honoraria, as have our colleagues in the House. Let us delay no longer. It is imperative we abolish this practice and strengthen public confidence in this institution.

Mr. President, there is a Russian proverb that says, "You cannot drive straight on a twisting lane." With this measure, I hope we can put the Senate on the straight and narrow with respect to the source of our salaries. I thank you and yield the floor.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO TITLE 5 OF THE ETHICS IN GOVERNMENT ACT OF 1978.

(a) ADMINISTRATION.—Section 503(1) of the Ethics in Government Act of 1978 is amended by—

(1) inserting "or the Senate" after "House of Representatives" the first place it appears; and

(2) inserting "or the Senate, as the case may be" before the semicolon.

(b) DEFINITIONS.—Section 505 of the ethics in Government Act of 1978 is amended—

(1) in paragraph (1) by inserting "a Senator or" after "means"; and

(2) in paragraph (2) by striking "(A)" and all that follows through "(B)".

SEC. 2. AMENDMENTS TO THE ETHICS REFORM ACT OF 1989.

Section 1101(b) of the Ethics Reform Act of 1989 is repealed and section 1101(c) is redesignated section 1101(b).

SEC. 3. CONFORMING AMENDMENTS.

(a) FEDERAL ELECTION CAMPAIGN ACT OF 1971.—Section 323 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441i) is repealed.

(b) SUPPLEMENTAL APPROPRIATIONS ACT, 1983.—Section 908 of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1) is repealed.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect on January 1, 1992.●

● Mr. LEAHY. Mr. President, the privilege of serving in the U.S. Senate is hard-earned, and emanates from public trust in one's ability to conduct all

business with fealty to no master other than the Constitution of the United States.

The public demands its elected representatives adhere to a higher standard—of ethics, morality, and judgment. Public doubt about any activity condoned by this body requires our most serious attention. And if that doubt is not dispelled, public demand requires that we reevaluate such practices.

Mr. President, the practice of accepting honoraria for appearances or speeches before special interest groups is not acceptable to the public. I had a clear message from Vermonters to end the practice—and I did. Once again this year, I rise as a original cosponsor of the legislation offered by Senator DODD to ban the receipt of honoraria by Senators.

The American people want Senators to draw one paycheck, and not supplement their salaries through honoraria.

During the debate on congressional pay in the 100th Congress, the House of Representatives voted for a significant pay increase and to phase out the honoraria system by January 1, 1991.

The Senate decided to accept a much smaller increase in salary, and allowed the practice of honoraria to continue. I concurred with the House decision on honoraria, and as of January 1, 1991, no longer accept such speaking fees. Though not required to, I am voluntarily following the more restrictive rules of the House of Representatives.

The question of honoraria influencing a vote or decision of any senator is implausible to me.

But accepting honoraria does further the perception that special interest groups have unusual and unhealthy access to Members of Congress.

And doubt cast upon this body denigrates the trust that is the very basis of our democratic institutions. A practice that we accepted, perhaps too cavalierly as a perquisite of public office, has become a symbol of the abuse of power by elected officials.

Power comes only from the people we represent. Those who insist that honoraria has not influence in their deliberations are missing the point.

The public perception is that it can—not that it does. In retrospect, we should have raised this issue ourselves and dealt with it ourselves.

The public has raised the issue of accepting honoraria—and, however late, it is time for us to resolve it.

For myself, I no longer want any part of it. I urge the adoption of the bill introduced by Senator DODD.●

● Mr. WIRTH. Mr. President, today I am cosponsoring legislation to ban honoraria that is being introduced by the Senator from Connecticut [Mr. DODD].

Members of this body will recall that last year I announced that I no longer accept honoraria payments despite Senate rules that allow it.

In past years, while I have accepted honoraria from various groups, I have been careful in selecting the groups to which I spoke. For example, while chairing a major subcommittee in the House of Representatives, I did not accept speaking fees from companies with legislation before my subcommittee.

This care in selecting audiences and honoraria was important in order to avoid the reality or appearance of a conflict of interest. But the public climate has changed, and even this careful policy is now not acceptable. So, I changed my personal policy and no longer accept honoraria.

I had hoped that this issue would be resolved in 1989 during the debate on the ethics reform bill, but it wasn't. If you recall, Congress approved ethics legislation that contained a number of reforms for both congressional and administration officials. Unfortunately, the Senate did not have an opportunity to vote on an honoraria ban during consideration of this bill. The final bill, which I opposed, included a 25-percent pay raise for the House of Representatives and a 10-percent cost-of-living adjustment for Senators. The bill only included a partial reduction of the honoraria limit for Senators.

Last year I introduced legislation, S. 2020, similar to that being introduced today by Mr. DODD. Last year my legislation banned honoraria outright for Senators, Senate officers, and employees.

The Dodd bill that is being introduced today will eliminate the practice of honoraria altogether for Members, staff, and employees of the Senate. It also limits outside income from certain sources and bans income from other sources outright. This is similar to a provision that now covers House Members, enacted in 1989.

The Dodd bill is a way to remove the real or perceived influence of money in this body and I urge my colleagues to join me in cosponsoring and supporting this bill.

I think it is clear to all of us that the system needs reform. Steps must be taken to restore confidence in the Congress and our Government—the elimination of honoraria is crucial to accomplishing this goal. I am hopeful that 1991 will bring about an opportunity to pass a full ban on honoraria into law.

Finally, I hope that when the Senate resolves the honoraria issue, it will move on to the even more important issue of campaign finance reform. I am a cosponsor of broad sweeping campaign finance legislation which will be considered by the Senate later this year. With the passage of the Dodd bill and campaign finance reform, we will have reaffirmed for the American people that their government is here to work for them and not engage in a money chase.●

By Mr. KOHL (for himself and Mr. DASCHLE):

S. 470. A bill to amend the Agricultural Act of 1949 to repeal the reduction in the milk price support for calendar year 1992; to the Committee on Agriculture, Nutrition, and Forestry.

FAIR BUDGET TREATMENT FOR DAIRY FARMERS ACT

Mr. KOHL. Mr. President, I rise today to introduce the Fair Budget Treatment for Dairy Farmers Act of 1991. I am pleased to be joined by Senator DASCHLE as a cosponsor of this measure, and I would like to commend my friend and colleague, Congressman DAVE OBEY, for introducing companion legislation in the House today.

Dairy farmers are currently suffering from the lowest milk prices since 1978. The M-W price for milk last month was $10.16 per hundredweight, down nearly $4 from last January's price. Dairy economists estimate that Wisconsin's gross farm receipts are likely to drop between $500 million and $700 million this year as a result.

While the 1990 farm bill provided some price stability for dairy farmers by setting a $10.10 dairy price support floor for the next 5 years, that stability was undermined by last year's budget package. The Omnibus Budget Reconciliation Act of 1990 instituted a 5-cent-per-hundredweight milk assessment on dairy farmers in 1991, and an 11.25-cent assessment in 1992–95.

I was unhappy with those assessments, as I know many of my colleagues were. And I joined with many of my colleagues to try to reduce the level of those assessments. But we were unsuccessful. And we were unsuccessful, in part, because of the administration's claims regarding the cost of the dairy program.

Last summer, the administration's midsession review estimated the cost of the dairy program in 1992 at $815 million. That cost estimate encouraged many of my colleagues to support the use of assessments to reduce the cost of the dairy program.

Yet the administration has now substantially revised its dairy program baseline. The President's fiscal year 1992 budget proposal estimates the program's cost at $392 million in 1992. That amounts to a $423 million reduction in 1992 spending for the dairy program.

Needless to say, Mr. President, I am puzzled by this dramatic revision in just 6 months. I would like to believe USDA's justifications for this downward adjustment—a change of assumptions regarding the use of bovine growth hormone, lower-than-expected milk prices, higher-than-expected export sales, and offsets from the collection of assessments.

Whatever the reason, USDA's earlier forecast led this Congress to establish assessments on dairy farmers to offset expected program costs. And now that

this forecast has been dramatically revised, I do not believe that dairy farmers should be forced to pay millions of dollars in milk taxes for the forecasting errors of USDA.

The legislation I am introducing today is simple: It would repeal the 11.25-cent-per-hundredweight milk assessment required in 1992. It does not affect the collection of this year's 5-cent assessment. Nor does it affect the collection of assessments in 1993–95, although I hope we can eliminate those assessments as well at a later date.

I suspect, Mr. President, that some of my colleagues will view this legislation as an attempt to undermine last year's budget agreement—an agreement, I might add, that I supported, albeit reluctantly. But let me respond in two ways. First, even with the repeal of the 1992 assessment, the cost of the dairy program will still be more than $250 million below last year's estimate. And second, I am fully prepared to come up with an offset for the cost of this legislation, and will be exploring ways to do so with my colleagues on the Agriculture Committee in the months ahead.

Mr. President, dairy farmers across the country are already facing 1978 milk prices and 1991 costs of production. They should not have to face assessments as well when the justification for these assessments is gone.

I urge my colleagues to join with me in support of this legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD at this time.

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

S. 470

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 known as the Fair Budget Treatment for Dairy Farmers Act of 1991.

SEC. 2. REPEAL OF MILK PRICE SUPPORT REDUCTION FOR 1992.

Section 204 of the Agricultural Act of 1949 (as added by section 101 of the Food Agriculture, Conservation, and Trade Act of 1990 (104 Stat. 3374) and amended by Section 1105(g) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508)) is amended in subsection (h)(2)(B) by striking "1992 through 1995" both places it appears and inserting "1993 through 1995".

By Mr. McCAIN:

S. 471. A bill to protect consumers by regulating certain providers of 900 telephone services; to the Committee on Commerce, Science, and Transportation.

THE 900 SERVICES CONSUMER PROTECTION ACT

• Mr. McCAIN. Mr. President, in the last decade, we have seen an explosion in the 900 service provider industry. This industry has afforded consumers a broad array of services right in their own homes, giving them the convenience of receiving services and entertainment through an interactive system. Consumers have benefited from the growth of this industry, which is largely comprised of honest, legitimate 900 service providers. Unfortunately, Mr. President, there are some providers who are maligning this industry by deceiving consumers and manipulating young children. The result has been costly to both consumers and the industry.

For this reason, I am introducing the 900 Services Consumer Protection Act of 1991. This legislation addresses the issues of cost disclosure to the consumer, the option of blocking access to 900 services, and regulating advertising aimed at attracting young children.

Mr. President, there are 900 services providers who do not see fit to clearly disclose their prices for the services they offer. Time and time again you hear of the case where a consumer calls a 900 service, then later receives a phone bill and is shocked to discover that the cost of the call was much higher than he or she was led to believe. This legislation requires the Federal Communications Commission to issue regulations which mandate that the provider broadcast a preamble announcement at the beginning of each service transaction. The preamble would include such information as the initial cost of the call, the cost-per-minute if it differs from the initial cost, a description of the service to be provided, and an announcement of the time involved in each 900 service transaction if the duration of the call is not at the discretion of the caller. The consumer would also be permitted sufficient time to terminate the call before any charges are incurred. This is the clearest way for consumers to learn what they need to know about the service in order to make in informed decision.

There is great concern, particularly on the part of parents, about the access to 900 services by children. Minors are not in a position where they can make an informed decision about whether or not they should incur the cost of 900 services. So-called latch key kids are particularly susceptible to the temptation of making a call, since they cannot ask their parents for permission or guidance because their parents are away at work. Addressing this concern, the bill contains a provision which would permit consumers to block address to 900 services in the home without incurring any additional cost for equipment, installation, or service. Consumers should not have to run the risk of having direct access to a service they do not want if having that access to a service they do not want if having that access results in service charges made by an uninformed consumer, or an unsupervised minor.

It is clear that children are generally susceptible to the temptation of phoning in for services, and many of these services do not deliver what they promise. One such example is the Santa Claus line which promised a conversation with Santa. During the Christmas holidays, this is particularly enticing to young children. However, upon calling one particular Santa line, the child was informed that Santa was in the restroom, and that the child should call back in 10 minutes. Regardless of whether or not the call was authorized by an adult, the child did not receive the service he or she was promised. If the child is still interested enough in contacting Santa Claus, he will continue to call in the hopes of speaking to him. While adults may be unable to see past a cleverly produced advertisement, they are still in a better position to decide if a child should make a 900 services call. For this reason, this bill encourages children to first get permission from a parent or guardian before placing such a call. The bill requires 900 services providers to include in radio and television advertising directed at children notification that parental permission is required to use the service. This will encourage children to first ask their parents to place the call, and further serves to put 900 service providers on notice that their services will be under scrutiny by adults.

Another notorious case involving children is that of a different Santa Claus advertisement which directed children to put the phone up to the television set and delivered a series of tones which automatically dialed the phone number for the service. Clearly, the advertisement was aimed at very young children who may have difficulty dialing the telephone. If a child is too young to dial a telephone, then that child is obviously too young to make an informed consumer decision. This legislation prohibits the use of automatic tone dialing in advertisements directed at young children. Automatic tone dialing has many legitimate uses for adults who are unable to dial a telephone themselves, but it only leads to high costs incurred by minors when the system is used to promote a service for children.

The 900 services industry has undeniably provided consumers with many great opportunities to use the interactive system in the home. This legislation is not intended to hamper its growth. Indeed, the industry itself has taken steps to police itself and weed out those providers who are hurting the industry. Nonetheless, this legislation is needed to stop some providers from defrauding consumers with hidden costs, and luring innocent children into placing phone calls which later encumber the entire family. I encourage my colleagues to support this legislation

and help further the cause for consumers in this country.●

By Mr. DOLE (for himself, Mr. SIMPSON, Mr. THURMOND, Mr. COCHRAN, Mr. KASTEN, Mr. BURNS, Mr. D'AMATO, Mr. LUGAR, Mr. MCCAIN, Mr. MURKOWSKI, Mr. ROTH, Mr. SEYMOUR, Mr. STEVENS, and Mr. WARNER):

S. 472. A bill to secure the right of women to be free of sexual harassment and violence, to promote equal opportunity for women, and for other purposes; to the Committee on the Judiciary.

WOMEN'S EQUAL OPPORTUNITY ACT OF 1991

Mr. DOLE. Mr. President, I join today with my distinguished colleagues, Senators SIMPSON, THURMOND, COCHRAN, KASTEN, BURNS, D'AMATO, LUGAR, MCCAIN, MURKOWSKI, ROTH, SEYMOUR, STEVENS, and WARNER, in introducing the Women's Equal Opportunity Act of 1991.

Comprehensive in approach, this bill seeks to reaffirm our Nation's historic commitment to an important principle—the priciple of equal opportunity for all Americans.

Mr. President, as we see American women on the front lines in the Persian Gulf, we must also open our eyes to the battles women must fight today here at home.

It's just plain common sense that the women of American cannot share fully in the promise of equal opportunity if they are sexually harassed in the workplace.

They cannot have equal opportunity if they are the victims of violent crime—at home and on the streets.

And the women of this country cannot have equal opportunity if they must struggle to overcome artificial—and sometimes insurmountable—barriers to job placement, job promotion, and job advancement.

Mr. President, the Women's Equal Opportunity Act of 1991 confronts these issues head on. It expands Federal civil rights protections against sexual harassment. It attacks domestic and street crime violence. And it takes a hard and close look at expanding employment opportunities for women—not only in the executive board room, but also on the construction site.

I want to commend my colleague, Senator BIDEN, for holding hearings last year on the horrifying problem of violence against women. Needless to say, there's plenty of room for bipartisanship on this issue and the other issues addressed by this bill.

And it is my hope that we will be able to reach a bipartisan consensus as this Congress unfolds.

While each of us may have different concerns and different approaches, we all agree on one simple point: America can be no stronger abroad than she is at home.

And an America that refuses to tolerate barriers in her workplaces, and fear in her streets, is the only America that our soldiers, and all our citizens, deserve.

SEXUAL HARASSMENT IN THE WORKPLACE

As someone who was smack in the middle of last year's debate on the so-called Civil Rights Act of 1990, I can attest to the intensity of conviction on both sides of the aisle.

The civil rights debate got hot, and at times, it was anything but civil.

But despite all the partisan bickering and all the heated rhetoric, I must admit that I learned a few things last year.

I learned, for example, about the meaning of "parity." I learned that Federal law treats victims of sexual harassment differently—less favorably—than the victims of racial harassment.

And I learned that—in many cases—the only remedy that a victim of sexual harasssment can obtain under the Civil Rights Act of 1964 is declaratory and injunctive relief—a remedy that is hardly adequate, and one that is particularly unfair for those victims of sexual harassment who may suffer medical and psychological harm.

MONETARY REMEDY

Title I of the Women's Equal Opportunity Act attempts to close this gap in the law by providing—for the first time in our Nation's history—a court-ordered monetary remedy for intentional sexual harassment in the workplace—up to $100,000 for first offenses, and up to $150,000 for each subsequent act of sexual harassment.

These are maximum penalties—payable to the aggrieved party—that a court may adjust in light of the employer's financial condition and its history of resolving sexual harassment complaints through internal grievance procedures.

FAST-TRACK RELIEF

Title I also recognizes that prolonged exposure to workplace sexual harassment can have lasting detrimental effects on the victim. As a result, title I directs the courts to give expedited—fast-track—relief to those persons claiming sexual harassment on the job.

TECHNICAL ASSISTANCE FOR SMALL EMPLOYERS

And, finally, title I directs the Equal Employment Opportunity Commission to establish technical assistance programs to educate our small employers on the law of sexual harassment.

Unlike large corporations, most small employers cannot afford the cost of compliance advice from private law firms and consultants. An EEOC technical assistance program will help fill this void and will produce some very desirable results—a reduction in the number of sexual harassment complaints and a reduction in the quantity of litigation for an already overburdened court system.

VIOLENCE AGAINST WOMEN

Mr. President, the second title of this bill addresses the horrifying problem of violence against women, a problem that was vividly highlighted 2 weeks ago on television—during "The Marla Hanson Story."

My distinguished colleague from Delaware and chairman of the Judiciary Committee, Senator BIDEN, conducted several hearings on this issue last year. Once again, I want to commend Senator BIDEN for holding these hearings, which have helped to make violence against women an issue of truly national concern.

Mr. President, if anyone doesn't think that violence against women is a serious problem today, they should read the story of Aileen Hefferren, who—as a jogger in Washington's Rock Creek Park last August—was knocked to the ground by a 12-year-old assailant, taunted, and then left shaking, bleeding, falling in and out of consciousness, only to be picked up almost an hour later by an emergency room ambulance.

A minor event in a busy city. Perhaps an event that is repeated hundreds of times each day throughout this country. Yes.

But an event that this Nation should countenance as routine, as the price we pay for living in a free society? Absolutely not.

Mr. President, those who don't think that violence against women is a serious national problem should also read the testimony of Nancy Ziegenmeyer—a Grinnell, IA, homemaker—who was abducted and raped in a supermarket parking lot, only to then suffer 13 months of indignities and delay in a court system that treated her more like a suspect on trial than the real-life victim of a brutal crime.

And they should read the recent report of the Justice Department's Bureau of Justice Statistics, which estimated that a staggering 2.5 million violent crimes have been committed against women each year from 1979 through 1987.

Mr. President, violence against women is a national disgrace. It's a disgrace that we must have the courage to recognize, and the commitment to reform.

We can, and must, do better. While title II of this bill does not have all the answers to the problem of violence against women, it does offer a few proposals that, I believe, deserve our consideration and could serve as the basis for reform at the State level as well.

CAMPUS SECURITY

First, title II addresses the issue of safety on our university campuses.

Last year, Congress passed legislation requiring universities to inform students of campus crime statistics. Title II builds on this approach by requiring the disclosure of these statis-

tics to the parents of students and to the local police authorities.

It goes without saying that more disclosure, more information, leads to better education and more safety.

TOUGHER PENALTIES

Second, title II imposes tougher penalties for Federal sex offenders—capital punishment for murders committed in the course of sexual assaults and child molestations, increased penalties for recidivist sex offenders, and a doubling of the penalty for distributing illegal drugs to pregnant women.

RESTITUTION

Third, it amends the Federal restitution statute to allow sex crime victims to seek restitution for medical expenses related to sexually transmitted diseases and for child care, transportation and other costs.

Title II also increases the opportunities for victim restitution by incorporating the Pornography Victims Compensation Act, which was introduced last year by my distinguished colleague from Kentucky, Senator MITCH MCCONNELL.

REFORM OF THE FEDERAL RULES OF EVIDENCE

Fourth, title II reforms the Federal rules of evidence to make absolutely clear that evidence of past acts of sexual abuse and child molestation are admissible in court. A recent Delaware Supreme Court decision overturned a defendant's conviction for raping his 11-year-old daughter because evidence of past molestations was improperly admitted.

Mr. President, this decision—a decision based on legal technicalities—is an outrage that should never be repeated in any court, anywhere.

PROFESSIONAL CONDUCT BY LAWYERS

Fifth, title II outlines several model rules for professional conduct by lawyers. These rules make absolutely clear that lawyers should never engage in a trial tactic designed solely to—harass, embarrass, or humiliate—a sex crime victim. Lawyers have a lot of tricks in their litigation bags, but the harassing technique is one trick that should be bagged. The model rules would also require lawyers to disclose normally confidential client information if disclosure is necessary to prevent the commission of a sexual assault or child molestation.

AIDS TESTING

Sixth, title II requires the AIDS testing of an individual charged with a Federal sex offense at the time of that individual's pretrial release hearing. Women who have been sexually abused, assaulted, or raped should not have to endure the pain of waiting 6 months, a year, even 2 years, to learn whether or not the alleged assailant tests HIV-positive. AIDS testing at the pretrial release stage will give sex crime victims the full panoply of information they need, and they want. And in this Senator's view, an AIDS test on a person accused of a sex offense is only a minor intrusion into that person's privacy—an intrusion that is far outweighed by the palpable emotional benefit that full information could offer the sex crime victim.

Mr. President, I recognize that AIDS testing is not a fail-safe and that counseling for the victim is a critical complement to such testing. To ease the financial burden for the victim, title II amends the Victims' Rights and Restitution Act of 1990 to require Government payment of up to two HIV tests for the victim as well as the cost of an AIDS counseling session.

SEXUAL ASSAULT

Seventh, title II authorizes $25 million each year—over the next 3 years—for rape prevention and education grants under the Victims of Crime Act of 1984. These grants will provide sorely-needed funds to rape crisis centers, hotlines, and other essential services for the victims of sexual assault.

DOMESTIC VIOLENCE

And finally, Mr. President, title II addresses the hidden side of violence against women—domestic violence—the violence that occurs in the family home.

For the skeptics, let me cite some frightening statistics. An estimated 3 million American women are battered each year by their husbands or partners.

More than 1 million women seek medical assistance annually for injuries caused by battering.

And the FBI reports that 30 percent of female homicide victims are killed by their husbands or boyfriends.

To assist those who are on the frontlines against domestic violence—the shelters and local community groups that provide care to the victims—title II adopts many of the provisions contained in the Domestic Violence Prevention Act of 1990, which was introduced last year by my distinguished colleague, Senator DAN COATS.

Title II also authorizes $60 million each year—over the next 3 fiscal years—for the Family Violence Services and Prevention Act. This act has been the lifeblood for hundreds of shelters throughout the country, and additional funding is well deserved.

EQUAL EMPLOYMENT OPPORTUNITIES

Mr. President, the third title of the bill is directed at improving employment opportunities for women and minorities.

What I am talking about is making the playing field level to ensure that women and minorities have equal access to the same career-enhancing experiences, the same jobs, and the same promotions. It's a matter of simple fairness, and an issue that deserves much closer attention and review.

THE GLASS CEILING

Subtitle A of title III is directed at the "Glass ceiling."

The issue is one of access to upper level decisionmaking positions that women and minorities who are qualified to move up the corporate ladder can see, but all too often seem unable to reach. Instead, they find themselves bumping their heads on an invisible—and impenetrable—ceiling that blocks their advancement to the most coveted management positions.

A recent study by the UCLA Anderson Graduate School of Management and the Korn-Ferry executive search firm found that during the past decade little progress has been made in breaking through that ceiling. Indeed, while women and minorities currently account for over half the work force, they hold less than 5 percent of upper level positions in Fortune 500 companies which represents a mere 2-percent increase since 1979. While there is, of course, no right or correct number and I strongly oppose any notion of employment or promotion-related quotas, such figures do suggest that artificial barriers exist with respect to the upward mobility of women and minorities.

While this legislation is only a first step forward in identifying, understanding, and reforming business attitudes and practices that have kept the glass ceiling in place, it is an important step forward to ensuring that the glass ceiling meets the same fate as the Berlin Wall.

GLASS CEILING COMMISSION

First, this subtitle establishes the Glass Ceiling Commission which is provided with the resources and powers to examine those practices and policies in corporate America which impede the advancement of women and minorities.

REPORT

Second, this legislation specifically charges the Commission with preparing a report for the President and Congress due 15 months after enactment examining the reasons behind the existence of the Glass ceiling and making recommendations with respect to policies which would eliminate any impediments to the advancement of women and minorities.

NATIONAL AWARD

Finally, this legislation provides for the establishment of the National Award for Diversity and Excellence in American Executive Management to be made by the President on an annual basis to a business which has made substantial efforts to promote opportunities for women and minorities to advance to top levels.

Mr. President, it is my firm belief and my firm commitment that by raising the national awareness of the existence of the Glass ceiling from the assembly line to the board room, by studying and better understanding why the Glass ceiling exists and what keeps it in place, and finally by having recommendations in hand as to how cor-

porate America can break that ceiling, we will have ensured that everyone has access to the same employment opportunities.

THE STEEL DOOR

Subtitle B of the third title focuses on promoting equal opportunity for women and minorities in apprenticeship programs registered with the Department of Labor.

Apprenticeship programs are a well-recognized and time-tested means of getting workers off the unemployment and welfare roles and out of low paying, subsistence-level jobs. They are, in short, that ticket to opportunity to the skilled trades jobs where wages are typically in the $14 to $25 per hour range and where fringe benefits are higher, work schedules are more flexible, and advancement opportunities are greater. And yet, Mr. President, where upwardly mobile women and minorities are often blocked from upper level management jobs by the Glass ceiling, women and minorities seeking access to apprenticeship programs in the skilled trades jobs often face a steel door.

Nothing illustrates this steel door better than the fact that while women and minorities account for more than half the work force, only 7 percent of individuals presently enrolled in apprenticeship programs registered with the Department of Labor are women, and if a breakdown is made of participation by women and minorities in particular trades, the numbers become even more disturbing.

As with the Glass ceiling, these types of numbers suggest that very real barriers exist with respect to the recruitment and participation of women and minorities in apprenticeship programs. Some of these barriers may relate to the socialization process and the perceived unacceptability of women working in nontraditional jobs.

Unfortunately, Mr. President, such perceived unacceptability translates in the real world into discriminatory recruitment and placement practices and sexual harassment on the job.

Another reason is the lack of information about apprenticeship programs.

In addition, recent studies suggest that even with adequate education and outreach efforts, women and minorities often lack the necessary skills needed to qualify them for participation in a particular program.

Mr. President, this subtitle seeks to break down the steel door and to address some of these problems by:

First, directing the Secretary of Labor to establish an extensive and well-targeted outreach and public relations program designed to expand the opportunities for women and minorities in registered apprenticeship programs;

Second, providing for the authorization of $8 million for grants to be made to educational institutions, employers, employer associations, unions, State apprenticeship councils, sponsors of apprenticeship programs, and other related groups and individuals in connection with the Secretary's Outreach Program;

Third, providing for the authorization of $15 million for grants to be made to sponsors of registered apprenticeship programs for preapprenticeship training of women and minorities;

Fourth, providing that the Secretary of Labor may reserve up to 5 percent of funds appropriated under the subtitle to carry out the enforcement of the nondiscrimination and affirmative action requirements relating to registered apprenticeship programs; and

Fifth, requiring the Department of Labor to conduct a study relating to the participation of women and minorities in apprenticeship programs focusing on such issues as barriers to entry, recruitment, sexual harassment, and discrimination.

With women and minorities emerging as the major source of new entrants into the labor force between now and the year 2000, it is critical that such individuals not only be empowered with the necessary skills to meet the labor challenges of the future, but that they be afforded the same opportunities—equal opportunities—when it comes to employment and training.

One area urgently in need of change is equal opportunities in the skilled trades jobs.

Everyone deserves equal access, and this legislation works to ensure that access.

ALTERNATIVE WORK ARRANGEMENTS

The last subtitle relates to alternative work schedules.

As more and more households find both parents working instead of just one parent, the need to accommodate an employee's family and child care responsibilities has increased dramatically.

In response to this situation, Congress authorized Federal agencies in 1982 to establish alternative work schedules to assist Federal employees who are trying to manage the precarious balancing act between work and family.

Since that time, the Office of Personnel Management has been instrumental in encouraging Federal agencies to establish alternative work schedule programs such as flexitime, compressed workday scheduling, and job sharing.

This subtitle provides that it is the sense of the Congress that OPM has made commendable efforts with respect to the development, use, and expansion of alternative work schedule programs and that such efforts should be continued to help Federal employees, as well as to serve as a model for State and local governments and private sector employers.

Mr. President, I ask unanimous consent that the full text of the Women's Equal Opportunity Act of 1991, and a section-by-section analysis, be included in the RECORD.

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

S. 472

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Women's Equal Opportunity Act of 1991".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

Subtitle A—Federal Remedies for Sexual Harassment in the Workplace

Sec. 101. Findings.
Sec. 102. Enhanced remedies for sexual harassment.
Sec. 103. Expedited injunctive relief for sexual harassment.
Sec. 104. Technical assistance.

Subtitle B—Expansion of Other Federal Civil Rights

Sec. 111. Expansion of protections against all racial discrimination in the performance of contracts.
Sec. 112. Expansion of right to challenge discriminatory seniority systems.
Sec. 113. Congressional coverage.
Sec. 114. Effective date.

TITLE II—DOMESTIC AND STREET CRIME VIOLENCE AGAINST WOMEN

Subtitle A—Safety on College and University Campuses

Sec. 201. Required campus reporting of sexual assault.

Subtitle B—Stronger Penalties for Federal Sex Offenses

Sec. 211. Capital punishment for murders in connection with sexual assaults and child molestations.
Sec. 212. Increased penalties for recidivist sex offenders.
Sec. 213. Definition of sexual act for victims below 16 years of age.
Sec. 214. Drug distribution to pregnant women.

Subtitle C—Enhanced Compensation and Restitution for Victims of Sex Crimes

Sec. 221. Short title.
Sec. 222. Findings, purpose, and construction.
Sec. 223. Cause of action.
Sec. 224. Definitions.
Sec. 225. Restitution in sex offense cases.

Subtitle D—Reform of Procedure and Evidentiary Requirements in Sex Offense and Other Cases

Sec. 231. Admissibility of evidence of similar crimes in sexual assault and child molestation cases.
Sec. 232. Right of the victim to an impartial jury.
Sec. 233. Rules of professional conduct for lawyers in Federal practice.
Sec. 234. Statutory presumption against child custody.
Sec. 235. Full faith and credit for protective orders.
Sec. 236. HIV testing and penalty enhancement in sexual abuse cases.

Sec. 237. Payment of cost of HIV testing for victim.

Subtitle E—National Task Force on Violence Against Women

Sec. 241. Establishment.
Sec. 242. Duties of task force.
Sec. 243. Membership.
Sec. 244. Pay.
Sec. 245. Executive director and staff.
Sec. 246. Powers of task force.
Sec. 247. Report.
Sec. 248. Authorization of appropriations.
Sec. 249. Termination.

Subtitle F—Prevention of Sexual Assault

Sec. 251. Education and prevention grants to reduce sexual assaults against women.

Subtitle G—Domestic Violence Prevention Act of 1991

Sec. 261. Short title.
Sec. 262. Expansion of purpose.
Sec. 263. Expansion of State demonstration grant program.
Sec. 264. Grants for public information campaigns.
Sec. 265. State commissions on domestic violence.
Sec. 266. Indian tribes.
Sec. 267. Funding limitations.
Sec. 268. Grants to entities other than States; local share.
Sec. 269. Shelter and related assistance; rural areas.
Sec. 270. Law enforcement training and technical assistance grants.
Sec. 271. Authorization of appropriations.
Sec. 272. Report on recordkeeping.

TITLE III—EMPLOYMENT OPPORTUNITIES

Subtitle A—Glass Ceiling Commission

Sec. 301. Short title.
Sec. 302. Findings and purpose.
Sec. 303. Establishment of Glass Ceiling Commission.
Sec. 304. Research on advancement of women and minorities to executive management and senior decisionmaking positions in business.
Sec. 305. Establishment of the National Award for Diversity and Excellence in American Executive Management.
Sec. 306. Powers of the Commission.
Sec. 307. Confidentiality of information.
Sec. 308. Staff and consultants.
Sec. 309. Authorization of appropriations.
Sec. 310. Termination.

Subtitle B—Opportunities in Apprenticeship

Sec. 321. Short title.
Sec. 322. Findings and purpose.
Sec. 323. Outreach and education program.
Sec. 324. Preapprenticeship training grant program.
Sec. 325. Study of participation of women and minorities in apprenticeship.
Sec. 326. Authorization of appropriations.

Subtitle C—Opportunities for Alternative Work Arrangements

Sec. 331. Findings.
Sec. 332. Sense of the Congress.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

Subtitle A—Federal Remedies for Sexual Harassment in the Workplace

SEC. 101. FINDINGS.

Congress finds that—

(1) title VII of the Civil Rights Act of 1964 prohibits discrimination in the terms and conditions of employment, including sexual harassment in the workplace;

(2) sexual harassment in the workplace can have very serious and lasting detrimental effects on the victim of the harassment;

(3) under the current remedial scheme of title VII, often the only remedies that a victim of sexual harassment can obtain are declaratory and injunctive relief against the continuation of the harassment;

(4) as the result of the lack of an effective remedy under title VII for sexual harassment, victims of sexual harassment may not receive restitution for monetary losses relating to medical and psychological harm caused by the misconduct of an employer;

(5) as the result of the lack of an effective remedy under title VII for sexual harassment, victims of sexual harassment who are driven to resign from jobs often fail to recover any relief under title VII; and

(6) additional equitable remedies for sexual harassment in the workplace are clearly appropriate and warranted.

SEC. 102. ENHANCED REMEDIES FOR SEXUAL HARASSMENT.

Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) With respect to a complaint involving an alleged unlawful employment practice relating to harassment on the basis of sex, the court may, if the plaintiff pleads and proves that the respondent intentionally engaged in such practice, award to the aggrieved party an amount not to exceed $100,000 for the first such offense by the respondent, and not to exceed $150,000 for each subsequent offense. The court shall exercise the equitable discretion of the court and determine whether an enhanced remedy is appropriate under this paragraph based upon the criteria set forth in subparagraph (C).

"(B)(i) In order to obtain an award under subparagraph (A), the plaintiff shall demonstrate that—

"(I) the aggrieved party has submitted the grievance to any grievance procedure established by the employer; and

"(II) the aggrieved party has obtained a determination from the grievance procedure, the grievance procedure is inappropriate for resolution of sexual harassment complaints, or use of the procedure has resulted in an unreasonable delay in resolving the grievance.

"(ii) The participation by any party in the grievance procedure shall not be considered an admission of liability for any purpose, and determinations resulting from the grievance procedure shall not be entitled to deference in any judicial or administrative proceeding, including a subsequent proceeding under this paragraph.

"(C) In determining the appropriateness and magnitude of an award under subparagraph (A), the court shall consider whether—

"(i) the aggrieved party has incurred any medical bills or suffered any monetary or other out-of-pocket loss as a result of the unlawful conduct of the employer;

"(ii) enhanced relief under subsection (a) is necessary to make injunctive relief ordered by the court meaningful, considering—

"(I) the financial resources and employment history of the respondent;

"(II) whether the respondent has initiated compliance programs designed to ensure that the employment practices of the respondent are lawful; and

"(III) whether the respondent has instituted programs or policies designed to prevent, and resolve complaints of, harassment on the basis of sex in the workplace.

"(D)(i) Except as provided in clause (ii), a judge shall hear and determine all issues in cases arising under this paragraph.

"(ii) If a plaintiff seeks a monetary award under paragraph (2)(A) of this section and the court determines that such award cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which the award is sought, the court may impanel a jury to hear and determine such liability issues and no others.

"(E) For purposes of this paragraph, each distinct, physically separate subdivision of a respondent shall be considered a separate respondent if—

"(i) the subdivision provides separately for the employment practices (including hiring and discharge) of the subdivision, without reference to the practices of another subdivision; and

"(ii) the operations of the subdivision are not under the control of another subdivision, or under the common control of the subdivision with another subdivision.

"(F) As used in this paragraph, the terms 'aggrieved party', 'harassment on the basis of sex', and 'plaintiff' have the meanings given the terms in section 706(f)(2)(B)(v).".

SEC. 103. EXPEDITED INJUNCTIVE RELIEF FOR SEXUAL HARASSMENT.

Section 706(f)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(f)(2)) is amended—

(1) by inserting "(A)" after the paragraph designation; and

(2) by adding at the end thereof the following new subparagraph:

"(B)(i) Notwithstanding any other provision of this title, and except as otherwise provided in this subparagraph, a plaintiff who files a charge of discrimination alleging that an individual has been subject to harassment on the basis of sex in violation of this title shall have the right to seek temporary or preliminary injunctive relief against a respondent in any court having jurisdiction over such a claim, without regard to any period of time following the filing of the charge and without obtaining a right-to-sue letter from the Commission.

"(ii)(I) Except as provided in subclause (II), any order granting the relief described in clause (i) shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure.

"(II) If the plaintiff establishes a substantial probability of success on the merits of the harassment claim, the continued submission to unlawful harassment shall be deemed injury sufficiently irreparable to warrant the entry of temporary or preliminary relief.

"(iii)(I) In order to obtain permanent injunctive relief for a grievance under this subparagraph, the plaintiff shall demonstrate that—

"(aa) the aggrieved party has submitted the grievance to any grievance procedure established by the employer; and

"(bb) the aggrieved party has obtained a determination from the grievance procedure, the grievance procedure is inappropriate for resolution of sexual harassment complaints, or use of the procedure has resulted in an unreasonable delay in resolving the grievance.

"(II) The participation by any party in the grievance procedure shall not be considered an admission of liability for any purpose, and determinations resulting from the grievance procedure shall not be entitled to deference in any judicial or administrative proceeding, including a subsequent proceeding under this subparagraph.

"(III) The court shall not grant permanent injunctive relief to a plaintiff under this sec-

tion unless such relief is granted simultaneously with or after the imposition of a monetary award under subsection (g)(2).

"(iv) It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be expedited in every way practicable.

"(v) As used in this subparagraph:

"(I) The term 'aggrieved party' means a party suffering an alleged unlawful employment practice relating to harassment on the basis of sex in violation of this title.

"(II) The term 'harassment on the basis of sex' means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where—

"(aa) submission to such conduct is made explicitly or implicitly a term or condition of employment of an individual;

"(bb) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

"(cc) such conduct has the purpose or effect of creating a working environment that a reasonable person would consider intimidating, hostile, or abusive.

"(III) The term 'plaintiff' means an aggrieved party, the Attorney General, or the Commission who files the charge described in clause (i).".

SEC. 104. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Chairman of the Equal Employment Opportunity Commission, acting through the Directors of the district offices of the Commission, shall establish programs to provide technical assistance concerning sexual harassment law to employers who have fewer than 50 employees.

(b) SUBJECTS.—The programs shall provide assistance concerning—

(1) the requirements of sections 706 (f)(2)(B) and (g)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5 (f)(2)(B) and (g)(2)); and

(2) recommended practices and procedures for avoiding—

(A) practices that constitute harassment on the basis of sex; and

(B) litigation related to harassment on the basis of sex.

(c) DEFINITIONS.—As used in this section, the terms "employer" and "employee" have the meaning given the terms in section 701 (b) and (f), respectively, of the Civil Rights Act of 1964 (42 U.S.C. 2000e (b) and (f)).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for each of fiscal years 1992, 1993, and 1994.

Subtitle B—Expansion of Other Federal Civil Rights

SEC. 111. EXPANSION OF PROTECTIONS AGAINST ALL RACIAL DISCRIMINATION IN THE PERFORMANCE OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end thereof the following new sentences: "The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of State law. This section affords the same protection against discrimination in the performance, breach, modification, or termination of a contract, or in the setting of the terms or conditions thereof, as it does in the making or enforcement of the contract.".

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) For purposes of this section, an alleged unlawful employment practice occurs—

"(A) when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system or provision of the system; and

"(B) if the system is alleged to have been adopted for an intentionally discriminatory purpose, in violation of this title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.".

SEC. 113. CONGRESSIONAL COVERAGE.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"SEC. 719. CONGRESSIONAL COVERAGE.

"Notwithstanding any other provision of this title, the provisions of this title shall apply to the Congress, and the means for enforcing this title as such applies to the House of Representatives and the Senate shall be as determined by such House of Congress.".

SEC. 114. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of enactment of this Act.

TITLE II—DOMESTIC AND STREET CRIME VIOLENCE AGAINST WOMEN

Subtitle A—Safety on College and University Campuses

SEC. 201. REQUIRED CAMPUS REPORTING OF SEXUAL ASSAULT.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)), as added by section 204(a) of the Crime Awareness and Campus Security Act of 1990 (Public Law 101–542), is amended—

(1) in paragraph (1)(F), to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;

"(ii) rape, sexual assault, or any other abusive sexual conduct;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft."; and

(2) in paragraph (3), to read as follows:

"(3) Each institution participating in any program under this section shall make timely reports on criminal offenses described in paragraph (1)(F) that the institution considers to be a threat to other students and employees. The institution shall provide the reports to students, parents or guardians of students, and employees, at the institution, and to local police agencies, in a manner that is timely and that will aid in the prevention of similar occurrences.".

Subtitle B—Stronger Penalties for Federal Sex Offenses

SEC. 211. CAPITAL PUNISHMENT FOR MURDERS IN CONNECTION WITH SEXUAL ASSAULTS AND CHILD MOLESTATIONS.

Title 18 of the United States Code is amended—

(1) by adding at the end of chapter 51 the following new section:

"§ 1118. Capital Punishment for Murders in Connection with Sexual Assaults and Child Molestations

"(a) OFFENSE.—It is an offense to cause the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or to cause the death of a person through the intentional infliction of serious bodily injury.

"(b) FEDERAL JURISDICTION.—There is Federal jurisdiction over an offense described in this section if the conduct resulting in death occurs in the course of another offense against the United States.

"(c) PENALTY.—An offense described in this section is a Class A felony. A sentence of death may be imposed for an offense described in this section as provided in subsections (d) through (l), except that a sentence of death may not be imposed on a defendant who was below the age of eighteen at the time of the commission of the crime.

"(d) MITIGATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider whether any aspect of the defendant's character or record or any circumstance of the offense that the defendant may proffer as a mitigating factor exists, including the following factors:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired.

"(2) DURESS.—The defendant was under unusual and substantial duress.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal (pursuant to section 2 of this title) in the offense, which was committed by another, but the defendant's participation was relatively minor.

"(e) AGGRAVATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider any aggravating factor for which notice has been provided under subsection (f), including the following factors:

"(1) KILLING IN COURSE OF DESIGNATED SEX CRIMES.—The conduct resulting in death occurred in the course of an offense defined in chapter 109A, 110, or 117 of this title.

"(2) KILLING IN CONNECTION WITH SEXUAL ASSAULT OR CHILD MOLESTATION.—The defendant committed a crime of sexual assault or crime of child molestation, as defined in subsection (x), in the course of an offense on which Federal jurisdiction is based under subsection (b).

"(3) PRIOR CONVICTION OF SEXUAL ASSAULT OR CHILD MOLESTATION.—The defendant has previously been convicted of a crime of sexual assault or crime of child molestation as defined in subsection (x).

"(f) NOTICE OF INTENT TO SEEK DEATH PENALTY.—If the Government intends to seek the death penalty for an offense under this section, the attorney for the Government shall file with the court and serve on the defendant a notice of such intent. The notice shall be provided a reasonable time before the trial or acceptance of a guilty plea, or at such later time as the court may permit for good cause. The notice shall set forth the aggravating factor or factors set forth in subsection (e) and any other aggravating factor or factors that the Government will seek to prove as the basis for the death penalty. The factors for which notice is provided may include factors concerning the effect of the offense on the victim and the family of the victim. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(g) JUDGE AND JURY AT CAPITAL SENTENCING HEARING.—A hearing to determine whether the death penalty will be imposed for an offense under this section shall be conducted by the judge who presided at trial or accepted a guilty plea, or by another judge if that judge is not available. The hearing shall be conducted before the jury that determined the defendant's guilt if that jury is available. A new jury shall be impaneled for the purpose of the hearing if the defendant pleaded guilty, the trial of guilt was conducted without a jury, the jury that determined the defendant's guilt was discharged for good cause, or reconsideration of the sentence is necessary after the initial imposition of a sentence of death. A jury impaneled under this subsection shall have twelve members unless the parties stipulate to a lesser number at any time before the conclusion of the hearing with the approval of the judge. Upon motion of the defendant, with the approval of the attorney for the Government, the hearing shall be carried out before the judge without a jury. If there is no jury, references to 'the jury' in this section, where applicable, shall be understood as referring to the judge.

"(h) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—No presentence report shall be prepared if a capital sentencing hearing is held under this section. Any information relevant to the existence of mitigating factors, or to the existence of aggravating factors for which notice has been provided under subsection (f), may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing the admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The information presented may include trial transcripts and exhibits. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument, the defendant shall be permitted to reply, and the Government shall then be permitted to reply in rebuttal.

"(i) FINDINGS OF AGGRAVATING AND MITIGATING FACTORS.—The jury shall return special findings identifying any aggravating factor or factors for which notice has been provided under subsection (f) and which the jury unanimously determines have been established by the government beyond a reasonable doubt. A mitigating factor is established if the defendant has proven its existence by a preponderance of the evidence, and any member of the jury who finds the existence of such a factor may regard it as established for purposes of this section regardless of the number of jurors who concur that the factor has been established.

"(j) FINDING CONCERNING A SENTENCE OF DEATH.—If the jury specially finds under subsection (i) that one or more aggravating factors set forth in subsection (e) exist, and the jury further finds unanimously that there are no mitigating factors or that the aggravating factor or factors specially found under subsection (i) outweigh any mitigating factors, then the jury shall recommend a sentence of death. In any other case, the jury shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(k) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, before the return of a finding under subsection (j), shall instruct the jury that, in considering whether to recommend a sentence of death, it shall not consider the race, color, religion, national origin, or sex of the defendant or any victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim. The jury, upon the return of a finding under subsection (j), shall also return to the court a certificate, signed by each juror, that the race, color, religion, national origin, or sex of the defendant or any victim did not affect the juror's individual decision and that the individual juror would have recommended the same sentence for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim.

"(l) IMPOSITION OF A SENTENCE OF DEATH.—Upon a recommendation under subsection (j) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"(m) REVIEW OF A SENTENCE OF DEATH.—The defendant may appeal a sentence of death under this section by filing a notice of appeal of the sentence within the time provided for filing a notice of appeal of the judgment of conviction. An appeal of a sentence under this subsection may be consolidated with an appeal of the judgment of conviction and shall have priority over all non-capital matters in the court of appeals. The court of appeals shall review the entire record in the case including the evidence submitted at trial and information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under subsection (i). The court of appeals shall uphold the sentence if it determines that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor, that the evidence and information support the special findings under subsection (i), and that the proceedings were otherwise free of prejudicial error requiring reversal of the sentence that was properly preserved for review and raised on appeal. In any other case, the court of appeals shall remand the case for reconsideration of the sentence or imposition of another authorized sentence as appropriate. The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(n) IMPLEMENTATION OF SENTENCE OF DEATH.—A person sentenced to death under this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal. The Marshal shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed, or in the manner prescribed by the law of another State designated by the court if the law of the State in which the sentence was imposed does not provide for implementation of a sentence of death. The Marshal may use State or local facilities, may use the services of an appropriate State or local official or of a person such an official employs, and shall pay the costs thereof in an amount approved by the Attorney General.

"(o) SPECIAL BAR TO EXECUTION OF PREGNANT WOMEN.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(p) CONSCIENTIOUS OBJECTION TO PARTICIPATION IN EXECUTION.—No employee of any State department of corrections or the Federal Bureau of Prisons and no person providing services to that department or bureau under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at, or to participate in, any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"(q) APPOINTMENT OF COUNSEL FOR INDIGENT CAPITAL DEFENDANTS.—A defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, under this section, shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in subsection (v) has occurred, if the defendant is or becomes financially unable to obtain adequate representation. Counsel shall be appointed for trial representation as provided in section 3005 of this title, and at least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel. Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(r) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death under this section has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the court that imposed the sentence. The court, within 10 days of receipt of such notice, shall proceed to make a determination whether the defendant is eligible for appointment of counsel for subsequent proceedings. The court shall issue an order appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel. The court shall issue an order denying appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation or that the defendant rejected appointment of counsel with an understanding of the consequences of that decision. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(s) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is enti-

tled to appointment of counsel under subsections (q) and (r), at least one counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(t) CLAIMS OF INEFFECTIVENESS OF COUNSEL IN COLLATERAL PROCEEDINGS.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a case under this section shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"(u) TIME FOR COLLATERAL ATTACK ON DEATH SENTENCE.—A motion under section 2255 of title 28, United States Code, attacking a sentence of death under this section, or the conviction on which it is predicated, must be filed within 90 days of the issuance of the order under subsection (r) appointing or denying the appointment of counsel for such proceedings. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. Such a motion shall have priority over all non-capital matters in the district court, and in the court of appeals on review of the district court's decision.

"(v) STAY OF EXECUTION.—The execution of a sentence of death under this section shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (u), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the Supreme Court disposes of a petition for certiorari in a manner that leaves the capital sentence undisturbed, or the defendant fails to file a timely petition for certiorari; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of such a decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(w) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (v) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim is the result of governmental action in violation of the Constitution or laws of the United States, the result of the Supreme Court's recognition of a new Federal right that is retroactively applicable, or the result of the fact that the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

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

"(1) 'crime of sexual assault' means a crime under Federal or State law that involved—

"(A) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

"(B) contact, without consent, between the genitals or anus of the defendant and any part of the body of another person;

"(C) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(D) an attempt or conspiracy to engage in any conduct described in paragraphs (A) through (C);

"(2) 'crime of child molestation' means a crime under Federal or State law that involved—

"(A) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(B) contact between the genitals or anus of the defendant and any part of the body of a child;

"(C) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(D) an attempt or conspiracy to engage in any conduct described in paragraphs (A) through (C); and

"(3) 'child' means a person below the age of 14."; and

(2) by adding the following at the end of the table of sections for chapter 51:

"1118. Capital punishment for murders in connection with sexual assaults and child molestations.".

SEC. 212. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) REDESIGNATION.—Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) NEW SECTION.—Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

"§ 2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 213. DEFINITION OF SEXUAL ACT FOR VICTIMS BELOW 16 YEARS OF AGE.

Paragraph (2) of section 2246 of title 18, United States Code, as redesignated by section 212 of this Act, is amended—

(1) in subparagraph (B) by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

SEC. 214. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act (21 U.S.C. 845) is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

Subtitle C—Enhanced Compensation and Restitution for Victims of Sex Crimes

SEC. 221. SHORT TITLE.

This subtitle may be cited as the "Pornography Victims' Compensation Act of 1991".

SEC. 222. FINDINGS, PURPOSE, AND CONSTRUCTION.

(a) FINDINGS.—The Congress finds and declares that—

(1) protecting freedom of speech, within the bounds of safety to individuals and society, is essential to the preservation of a just and free society;

(2) consistent with the constitutional protection of freedom of speech, the State has a legitimate interest in restricting sexually explicit material, if there is a danger of harm or actual harm to individuals, such as the sexual exploitation of children by child pornography or the promotion of rape and sexual homicide by violent sexual material;

(3) the Attorney General's Commission on Pornography in 1986 found clinical and experimental evidence of a causal relationship between exposure to sexually explicit materials and sexual aggression, including the commission of unlawful sexual acts;

(4) the Attorney General's Commission on Pornography also found evidence that sexually explicit material need not be legally obscene to stimulate anti-social and potentially unlawful sexual aggression, if the material presents violent acts in a clear sexual context, or the sexual abuse of children;

(5) behavioral studies of serial murderers conducted by the Federal Bureau of Investigation have revealed a strong correlation between heavy exposure to violent sexual material and violent serial criminality;

(6) investigations conducted by the Child Pornography and Protection Unit of the United States Customs Service have revealed a strong correlation between heavy consumption of child pornography and child sexual abuse, including the use of child pornography to entrap children into the performance of sexual acts;

(7) recent psychological studies indicate a correlation between the growing number of children and youths who commit rape and other violent sexual offenses, and the declining age of first exposure to sexually explicit materials;

(8) sexual crimes such as rape and child abuse usually leave life-long psychological scars that may prevent the victim and his or her family from leading normal, fulfilled lives;

(9) the State has a legitimate interest in protecting its citizens, including children, from sexual crimes and in preventing such crimes through reasonable, effective, and constitutional means; and

(10) the State has a legitimate interest in providing adequate compensation to the victims of sexual crimes for their physical injuries, complete medical and psychological

treatment, and continuing pain and suffering.

(b) PURPOSE.—It is the purpose of this subtitle to require the producers, distributors, exhibitors, and sellers of sexually explicit material to be jointly and severally liable for all damages resulting from any sexual offense that was caused, in substantial part, by the sexual offender's exposure to the sexually explicit material.

(c) CONSTRUCTION.—The cause of action created by this subtitle shall be available in addition to, and not exclusive of, any other civil or criminal cause of action against a sex offender for any sexual offense.

SEC. 223. CAUSE OF ACTION.

(a) CAUSE OF ACTION.—Notwithstanding any other provision of law, a civil action may be instituted in an appropriate United States district court against a producer, distributor, exhibitor, or seller of sexually explicit material, pursuant to the provisions of this subtitle, by—

(1) a victim of a rape, sexual assault, act of sexual abuse, sexual murder, or other sexual crime as described under the relevant State or Federal law, whether or not such rape, assault, abuse, murder, or crime has been prosecuted or proven in a separate criminal proceeding,

(2) the estate of such a victim, or

(3) the guardian or survivors of any such victim.

(b) BURDEN OF PROOF.—To recover pursuant to the provisions of this subtitle, the individual bringing such action must prove, by a preponderance of the evidence, that—

(1) the victim was a victim of a rape, sexual assault, act of sexual abuse, sexual murder, or other sexual crime, as defined under the relevant State or Federal law, whether or not such rape, assault, abuse, murder, or other crime has been prosecuted or proven in a separate criminal proceeding;

(2) the material—

(A) is obscene;

(B) constitutes child pornography; or

(C) in the case of rape, sexual assault, sexual abuse, sexual murder, or any other violent sexual crime, is both sexually explicit and violent;

(3) the material was a proximate cause of the offense, by inciting the sexual offender to commit the offense perpetrated against the victim;

(4) the defendant is a producer or distributor of the material, or exhibited or sold the material to the sexual offender;

(5) the producer, distributor, exhibitor, or seller of the material knew or should have known that such material was sexually explicit; and

(6) the sale or transport of the material affects interstate or foreign commerce.

(c) PROXIMATE CAUSE OF THE OFFENSE.—For purposes of this subtitle, the finder of fact may reasonably infer that the material was a proximate cause of the offense, by inciting the offender to commit the offense if any of the following are found—

(1) extraordinary similarities between the acts described in such material and the actual offense;

(2) testimony of the offender to the effect that such material incited the commission of the offense; and

(3) testimony of experts that such material incited the offender to commit the offense.

(d) RECOVERY.—Any person who has brought an action pursuant to the provisions of this subtitle and has met the requirements of the provisions of this subtitle shall be awarded economic damages and compensation for pain and suffering as well as reasonable attorney's fees and costs of the suit.

(e) ACTION BARRED AFTER 6 YEARS.—Any action commenced under this section shall be forever barred unless the complaint is filed within 6 years after the right of action first accrued or, in the case of a person under a legal disability, not later than 3 years after the termination of such disability.

SEC. 224. DEFINITIONS.

For the purposes of this subtitle, the term—

(1) "child pornography" means a description of a minor engaging or participating in sexually explicit conduct as defined in section 2256(2) of title 18, United States Code;

(2) "minor" means a person under the age of 18 years;

(3) "sexual murder" means a murder that follows a rape, sexual assault, act of sexual abuse, or other sexual crime;

(4) "sexually explicit" means the depiction or description of actual or simulated—

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals of any person; or

(E) sadistic or masochistic abuse; and

(5) "violent" means an act, behavior, or material that depicts or describes such act or behavior, in which women, children, or men are—

(A) victims of sexual crimes such as rape, sexual homicide, or child sexual abuse;

(B) penetrated by animals or inanimate objects; or

(C) tortured, dismembered, confined, bound, beaten, or injured, in a context that makes these experiences sexual or indicates that the victims derive sexual pleasure from such experiences.

SEC. 225. RESTITUTION IN SEX OFFENSE CASES.

Section 3663(b) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and";

(3) by striking "an offense resulting in bodily injury" in paragraph (3) and inserting "an offense described in paragraph (2) or (5) that"; and

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

"(5) in the case of an offense under chapter 109A or chapter 110 of this title—

"(A) pay an amount equal to the cost of necessary medical and related professional services relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

"(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation;

"(C) reimburse the victim for income lost by such victim as a result of the offense;

"(D) make payment or reimbursement as provided in subparagraphs (A) through (C) for costs and losses related to any disease transmitted to the victim through the commission of the offense; and

"(E) reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation of the offense or attendance at proceedings related to the offense.".

Subtitle D—Reform of Procedure and Evidentiary Requirements in Sex Offense and Other Cases

SEC. 231. ADMISSIBILITY OF EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT AND CHILD MOLESTATION CASES.

The Federal Rules of Evidence are amended by adding after rule 412 the following new rules:

"Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

"(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, 'offense of sexual assault' means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code;

"(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

"(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

"(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(5) an attempt or conspiracy to engage in conduct described in paragraphs (1) through (4).

"Rule 414. Evidence of Similar Crimes in Child Molestation Cases

"(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, 'child' means a person below the age of fourteen, and 'offense of child molestation' means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;

"(2) any conduct proscribed by chapter 110 of title 18, United States Code;

"(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(4) contact between the genitals or anus of the defendant and any part of the body of a child;

"(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(6) an attempt or conspiracy to engage in conduct described in paragraphs (1) through (5).

"Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

"(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in rule 413 and rule 414.

"(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.".

SEC. 232. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

(a) FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 6 peremptory challenges".

(b) PROHIBITION OF DISCRIMINATION IN SELECTION OF JURY.—Section 243 of title 18, United States Code, is amended by designating the text of the section as subsection (a) and by adding a new subsection at the end thereof as follows:

"(b) In a proceeding in a court of the United States, an attorney representing a criminal defendant shall not exercise peremptory challenges to exclude any person from the jury on the basis of race or color, or on the basis of any other classification that could not lawfully be used by a prosecutor as the basis for exercising peremptory challenges. The prosecutor shall have the same right as the defense attorney to challenge the exercise of peremptory challenges on this ground. In determining whether a defense attorney has engaged in discrimination in violation of this subsection, a court shall apply the same standards that would apply in making a like determination concerning the exercise of peremptory challenges by a prosecutor, and shall have the authority to grant the same relief that would be available in case of unlawful discrimination by a prosecutor.".

SEC. 233. RULES OF PROFESSIONAL CONDUCT FOR LAWYERS IN FEDERAL PRACTICE.

The following rules, to be known as the Rules of Professional Conduct for Lawyers in Federal Practice, are enacted and shall be included as an appendix to title 28, United States Code:

"RULES FOR PROFESSIONAL CONDUCT FOR LAWYERS IN FEDERAL PRACTICE

"Rule 1. Scope
"Rule 2. Litigation Abuses Prohibited
"Rule 3. Expediting Litigation
"Rule 4. Duty to Prevent Commission of Crime

"Rule 1. Scope

"(a) These rules apply to the conduct of lawyers in their representation of clients in relation to proceedings and potential proceedings before Federal tribunals.

"(b) For purposes of these rules, 'Federal tribunal' and 'tribunal' mean a court of the United States or an agency of the Federal Government that carries out adjudicatory or quasi-adjudicatory functions.

"Rule 2. Litigation Abuses Prohibited

"(a) A lawyer shall not engage in any action or course of conduct for the purpose of increasing the expense of litigation for any person, other than a liability under an order or judgment of a tribunal.

"(b) A lawyer shall not engage in any action or course of conduct that has no substantial purpose other than to distress, harass, embarrass, burden, or inconvenience another person.

"(c) A lawyer shall not offer evidence that the lawyers knows to be false or attempt to discredit evidence that the lawyer knows to be true.

"Rule 3. Expediting Litigation

"(a) A lawyer shall seek to bring about the expeditious conduct and conclusion of litigation.

"(b) A lawyer shall not seek a continuance or otherwise attempt to delay or prolong proceedings in the hope or expectation that—

"(1) evidence will become unavailable;

"(2) evidence will become more subject to impeachment or otherwise less useful to another party because of the passage of time; or

"(3) an advantage will be obtained in relation to another party because of the expense, frustration, distress, or other hardship resulting from prolonged or delayed proceedings.

"Rule 4. Duty to Prevent Commission of Crime

"(a) A lawyer may disclose information relating to the representation of a client to the extent necessary to prevent the commission of a crime or other unlawful act.

"(b) A lawyer shall disclose information relating to the representation of a client where disclosure is required by law. A lawyer shall also disclose such information to the extent necessary to prevent—

"(1) the commission of a crime involving the use or threatened use of force against another, or a substantial risk of death or serious injury to another; or

"(2) the commission of a crime of sexual assault or child molestation.

"(c) For purposes of this rule, the term 'crime' means a crime under Federal law or the law of a State, and the term 'unlawful act' means an act in violation of the law of the United States or the law of a State.".

SEC. 234. STATUTORY PRESUMPTION AGAINST CHILD CUSTODY.

(a) FINDINGS.—The Congress finds that—

(1) State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

(2) joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

(3) physical abuse of a spouse is relevant to child abuse in child custody disputes;

(4) the effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

(5) children are emotionally traumatized by witnessing physical abuse of a parent;

(6) children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

(7) even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

(8) research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

(9) witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

(10) few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases.

(b) SENSE OF THE CONGRESS.—(1) It is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

(2) This section is not intended to encourage States to prohibit supervised visitation.

SEC. 235. FULL FAITH AND CREDIT FOR PROTECTIVE ORDERS.

(a) ENFORCEMENT.—A protective order issued by a court of a State shall have the same full faith and credit in a court in another State that the order would have in a court of the State in which issued, and shall be enforced by the courts of any State as if it were issued in the State.

(b) DEFINITIONS.—As used in this section:

(1) The term "protective order" means an order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(2) The term "State" has the meaning given the term in section 513(c)(5) of title 18, United States Code.

SEC. 236. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"§ 2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) TESTING AT TIME OF PRE-TRIAL RELEASE DETERMINATION.—In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that follow-up tests for the virus be performed six months and twelve months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) TESTING AT LATER TIME.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed

six months and twelve months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of follow-up testing imposed under this section shall be cancelled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed only to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.".

(b) CLERICAL AMENDMENT.—The chapter heading for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty.".

SEC. 237. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: ", the cost of up to two tests of the victim for the human immunodeficiency virus during the twelve months following the assault, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of the human immunodeficiency virus to the victim as the result of the assault".

Subtitle E—National Task Force on Violence Against Women

SEC. 241. ESTABLISHMENT.

Not later than 30 days after the date of enactment of this subtitle, the Attorney General shall establish a task force to be known as the "National Task Force on Violence against Women" (referred to in this subtitle as the "task force").

SEC. 242. DUTIES OF TASK FORCE.

(a) GENERAL PURPOSE OF TASK FORCE.—The task force shall develop a uniform Federal, State, and local law enforcement strategy aimed at protecting women against violent crime, punishing persons who commit such crimes, and enhancing the rights of victims of such crimes.

(b) DUTIES OF TASK FORCE.—The task force shall perform such functions as the Attorney General deems appropriate to carry out the purposes of the task force, including—

(1) considering the reports of past Federal and State task forces or commissions on violent crime, family violence, and crime victims, including the President's Task Force on Victims of Crime (1982), the Attorney General's Task Force on Family Violence (1984), and the task forces and commissions established by the States of Alabama, Alaska, Arkansas, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, New York, North Carolina, Rhode Island, Virginia, Texas, and Wyoming;

(2) developing strategies for Federal, State, and local law enforcement designated to protect women against violent crime, and to prosecute and punish those responsible for such crime;

(3) evaluating the adequacy of sentencing, incarceration, and release of violent offenders against women, and making recommendations designated to ensure that such offenders receive appropriate punishment; and

(4) evaluating the adequacy of the treatment of victims of violent crime against women within the criminal justice system, and making recommendations designed to improve such treatment.

SEC. 243. MEMBERSHIP.

(a) IN GENERAL.—The task force shall consist of up to 10 members, who shall be appointed by the Attorney General not later than 60 days after the date of enactment of this subtitle. The Attorney General shall ensure that the task force includes representatives of State and local law enforcement, the State and local judiciary, and groups dedicated to protecting the rights of victims.

(b) CHAIRMAN.—The Attorney General or his designee shall serve as the chairman of the task force.

SEC. 244. PAY.

(a) NO ADDITIONAL COMPENSATION.—Members of the task force who are officers or employees of a governmental agency shall receive no additional compensation by reason of their service on the task force.

(b) PER DIEM.—While away from their homes or regular places of business in the performance of duties for the task force, members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

SEC. 245. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The task force shall have an Executive Director who shall be appointed by the Attorney General not later than 30 days after the task force is fully constituted under section 243.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the task force, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the task force.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the task force appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the task force, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

SEC. 246. POWERS OF TASK FORCE.

(a) HEARINGS.—For the purpose of carrying out this subtitle, the task force may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the task force considers appropriate. The task force may administer oaths before the task force.

(b) DELEGATION.—Any member or employee of the task force may, if authorized by the task force, take any action that the task force is authorized to take under this subtitle.

(c) ACCESS TO INFORMATION.—The task force may secure directly from any executive department or agency such information as may be necessary to enable the task force to carry out this subtitle, to the extent access to such information is permitted by law. On request of the Attorney General, the head of such a department or agency shall furnish such permitted information to the task force.

(d) MAIL.—The task force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 247. REPORT.

Not later than 1 year after the date on which the task force is fully constituted under section 243, the Attorney General shall submit a detailed report to the Congress on the findings and recommendations of the task force.

SEC. 248. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $500,000 to carry out the purposes of this subtitle.

SEC. 249. TERMINATION.

The task force shall cease to exist 30 days after the date on which the Attorney General's report is submitted under section 247. The Attorney General may extend the life of the task force for a period of not to exceed one year.

Subtitle F—Prevention of Sexual Assault

SEC. 251. EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ASSAULTS AGAINST WOMEN.

The Victims of Crime Act of 1984 is amended by inserting after section 1404 (42 U.S.C. 10603) the following new section:

"SEC. 1405. RAPE PREVENTION AND EDUCATION PROGRAMS.

"(a) DEFINITION.—As used in this section, the term 'rape prevention and education' includes education and prevention efforts directed at offenses committed by—

"(1) offenders who are not known to the victim; and

"(2) offenders known to the victim.

"(b) ESTABLISHMENT.—The Attorney General shall establish a program of grants to assist States in supporting rape prevention and education programs.

"(c) USE OF FUNDS.—A State may use a grant awarded under subsection (b) to support rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, including programs that—

"(1) conduct educational seminars;

"(2) operate hotlines;

"(3) conduct training programs for professionals;

"(4) prepare informational materials; and

"(5) undertake other efforts to increase awareness of the facts about, or help prevent, sexual assault.

"(d) APPLICATION.—To be eligible to receive a grant under subsection (b), a State

shall submit an application at such time, in such manner, and containing such agreements, assurances, and information as the Attorney General determines to be necessary to carry out this section. At a minimum, the application shall include—

"(1) an assurance that the State will use at least 15 percent of the grant money made available under this section to support education programs targeted for junior high school and high school students; and

"(2) an assurance that the State will pay for the full cost of forensic medical examinations for victims of sexual assault, and will, if the State receives funds under section 1403, pay for the cost of the examinations with such funds.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for each of the 1992 through 1994 fiscal years.".

Subtitle G—Domestic Violence Prevention Act of 1991

SEC. 261. SHORT TITLE.

This subtitle may be cited as the "Domestic Violence Prevention Act of 1991".

SEC. 262. EXPANSION OF PURPOSE.

Section 302(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10401(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 263. EXPANSION OF STATE DEMONSTRATION GRANT PROGRAM.

Section 303(a)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 264. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

The Family Violence Prevention and Services Act is amended by adding at the end thereof the following new section:

"GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

"SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

"(c) An application submitted under subsection (b) shall—

"(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

"(2) include a complete description of the plan of the application for the development of a public information campaign;

"(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

"(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

"(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

"(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

"(7) contain such other information as the Secretary may require.

"(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

"(e) The criteria for awarding grants shall ensure that an applicant—

"(1) will conduct activities that educate communities and groups at greatest risk;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups identified as most at risk.".

SEC. 265. STATE COMMISSIONS ON DOMESTIC VIOLENCE.

Section 303(a)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) provides assurances that, not later than 1 year after receipt of funds, the State shall have established a Commission on Domestic Violence, which will include as members representatives of antidomestic violence organizations and whose expenses will be paid out of funds other than those dedicated to providing services in domestic violence cases, to examine issues including—

"(i) the use of mandatory arrest of accused offenders;

"(ii) the adoption of 'no-drop' prosecution policies;

"(iii) the use of mandatory requirements for presentencing investigations;

"(iv) the length of time taken to prosecute cases or reach plea agreements;

"(v) the use of plea agreements;

"(vi) the testifying by victims at post-conviction sentencing and release hearings;

"(vii) the consistency of sentencing practices;

"(viii) restitution of victims;

"(ix) the reporting practices of and significance to be accorded to prior convictions (both felonies and misdemeanors); and

"(x) such other matters as the Commission believes merit investigation.

SEC. 266. INDIAN TRIBES.

Section 303(b)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(b)(1)) is amended by striking "is authorized" and inserting "shall make no less than $1,000,000 available for".

SEC. 267. FUNDING LIMITATIONS.

Section 303(c) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)) is amended by striking ", and" and all that follows through "fiscal years".

SEC. 268. GRANTS TO ENTITIES OTHER THAN STATES; LOCAL SHARE.

The first sentence of section 303(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(f)) is amended to read as follows: "No demonstration grant may be made under this section to an entity other than a State unless the entity provides 50 percent of the funding of the program or project funded by the grant.".

SEC. 269. SHELTER AND RELATED ASSISTANCE; RURAL AREAS.

Section 303(g) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(g)) is amended to read as follows:

"(g)(1) The Secretary shall ensure that, of the funds distributed under subsection (a) or (b)—

"(A) not less than 60 percent of the funds shall be distributed to entities for the purpose of providing shelter and related assistance to victims of family violence and their dependents, such as—

"(i) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

"(ii) transportation, legal assistance, referrals, and technical assistance with respect to obtaining financial assistance under Federal and State programs;

"(iii) comprehensive counseling about parenting, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services, employment training, social skills (including communication skills), home management, and assertiveness training; and

"(iv) day care services for children who are victims of family violence or the dependents of such victims; and

"(B) not less than 20 percent of the funds (which may include funds distributed under subparagraph (A)) shall be distributed to entities in rural areas.

"(2) As used in this subsection, the term 'rural area' means a territory of a State that is not within the outer boundary of any city or town that has a population of 20,000 or more, based on the latest decennial census of the United States.".

SEC. 270. LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.

Section 311(b) of the Family Violence Protection and Services Act (42 U.S.C. 10410(b)) is amended by adding at the end thereof the following new subparagraph:

"(C) Training grants may be made under this section only to private nonprofit organizations that have experience in providing training and technical assistance to law enforcement personnel on a national or regional basis.".

SEC. 271. AUTHORIZATION OF APPROPRIATIONS.

Section 310 of the Family Violence Prevention and Services Act (42 U.S.C. 10409) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 310. (a) There are authorized to be appropriated to carry out this title, $60,000,000 for each of fiscal years 1992, 1993, and 1994.

"(b) Of the sums appropriated under subsection (a) for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) for any fiscal year, not more than 3 percent shall be used by the Secretary for making grants under section 314.".

SEC. 272. REPORT ON RECORDKEEPING.

Not later than 1 year after the date of enactment of this subtitle, the Attorney Gen-

eral shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

TITLE III—EMPLOYMENT OPPORTUNITIES

Subtitle A—Glass Ceiling Commission

SEC. 301. SHORT TITLE.

This subtitle may be cited as the "Glass Ceiling Act of 1991".

SEC. 302. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in executive management and senior decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the executive management and senior decisionmaking levels in the United States work force; and

(B) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to executive management and senior decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which executive management and senior decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions;

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this subtitle is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills executive management and senior decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the executive management and senior decisionmaking levels in business.

SEC. 303. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this subtitle as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to executive management and senior decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 17 members—

(A) five individuals appointed by the President;

(B) three individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold executive management or senior decisionmaking positions in corporations or other business entities; and

(C) possess academic expertise or other recognized ability regarding employment and discrimination issues.

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 304(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 304(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Federal service, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code, and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 304. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO EXECUTIVE MANAGEMENT AND SENIOR DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to executive management and senior decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to executive management and senior decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which executive management and senior decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to executive man-

agement and senior decisionmaking positions, and businesses and industries in which women and minorities are not promoted to executive management and senior decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to executive management and senior decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to executive management and senior decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this subtitle, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the executive management and senior decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume executive management and senior decisionmaking positions; and

(C) compensation programs and reward structures utilized to reward and retain key employees.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to executive management and senior decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 305. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to executive management and senior decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to executive management and senior decisionmaking positions.

SEC. 306. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 307. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 304 and 305, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 308. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this subtitle. The sums shall remain available until expended, without fiscal year limitation.

SEC. 310. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this subtitle.

(b) AWARD.—The authority to make awards under section 305 shall terminate 4 years after the date of the enactment of this subtitle.

Subtitle B—Opportunities in Apprenticeship

SEC. 321. SHORT TITLE.

This subtitle may be cited as the "Opportunities in Apprenticeship Act of 1991".

SEC. 322. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) there is a history of underrepresentation of women and minorities in apprenticeship programs;

(2) artificial barriers exist to the participation of women and minorities in apprenticeship programs;

(3) United States business is increasingly relying on women and minorities to meet employment requirements and is increasingly aware of the advantages derived from a diverse work force;

(4) the "Skilled Trades Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of the problems of underrepresentation and barriers to participation in apprenticeship programs;

(5) expansion of outreach and education activities and preapprenticeship training would increase the participation of women and minorities in apprenticeship programs;

(6) a comprehensive study of the barriers to the participation and retention of women and minorities in apprenticeship programs would assist in the development of recommendations for eliminating such barriers and improving overall participation; and

(7) employment or participation quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this subtitle is to establish programs that will expand the opportunities for women and minorities in registered apprenticeship programs by—

(1) providing outreach, education, and technical assistance to make women and minorities aware of, and encourage their participation in, registered apprenticeship programs;

(2) providing information, skills development, and preapprenticeship training to women and minorities to enable them to enter registered apprenticeship programs; and

(3) conducting a comprehensive study to examine the barriers to the participation of women and minorities in registered apprenticeship programs and to develop recommendations for eliminating such barriers.

SEC. 323. OUTREACH AND EDUCATION PROGRAM.

(a) IN GENERAL.—The Secretary of Labor (referred to in this subtitle as the "Secretary") shall establish in the Department of Labor an outreach and education program designed to expand the opportunities for women and minorities in apprenticeship programs registered with the Department of Labor pursuant to the National Apprenticeship Act (referred to in this subtitle as "registered apprenticeship programs"). The program shall include the activities described in this section.

(b) INFORMATION.—

(1) DEVELOPMENT.—The Secretary shall develop and disseminate information regarding opportunities for women and minorities in registered apprenticeship programs, which may include information on—

(A) the nature and advantages of apprenticeship;

(B) requirements for admission to apprenticeship;

(C) sources of apprenticeship applications; and

(D) existing programs and organizations assisting in the preparation of women and minorities for apprenticeable occupations.

(2) DISSEMINATION.—The Secretary shall disseminate information developed in accordance with paragraph (1) to educational institutions, employers, employer associations, unions, State apprenticeship councils, sponsors of apprenticeship programs, organizations representing and assisting women and minorities, and other appropriate organizations, institutions, groups, and individuals.

(c) MODEL PROGRAMS.—The Secretary shall identify and develop model preapprenticeship and apprenticeship programs that promote training and employment opportunities for women and minorities, and disseminate information relating to the programs.

(d) TECHNICAL ASSISTANCE.—The Secretary shall provide appropriate technical assistance to the organizations, institutions, groups, and individuals described in subsection (b)(2) to promote outreach to, and the recruitment of, women and minorities for registered apprenticeship programs. The technical assistance may include—

(1) participation in annual workshops conducted for the purpose of familiarizing school, employment service, and other appropriate personnel with the apprenticeship system and current opportunities in the system;

(2) cooperation with local school boards and vocational education systems to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs; and

(3) organization of and participation in conferences and seminars involving groups representing and assisting women and minorities to inform the groups about the apprenticeship system and available apprenticeship opportunities.

(e) OUTREACH GRANTS.—

(1) ESTABLISHMENT.—The Secretary may award grants to eligible organizations to pay the Federal share of conducting outreach and recruitment activities designed to increase the participation of women and minorities in registered apprenticeship programs.

(2) USE OF FUNDS.—An eligible organization shall use funds provided under this subsection to conduct outreach and recruitment activities designed to increase the participation of women and minorities in registered apprenticeship programs. The activities may include—

(A) dissemination of information to make women and minorities aware of, and encourage participation in, registered apprenticeship programs;

(B) preparation of women and minorities for apprenticeship selection procedures, including tutoring for tests and coaching for job interviews; and

(C) outreach combined with skills development and preparatory trade training to enable women and minorities to become eligible for apprenticeship selection.

(3) APPLICATION.—To be eligible for a grant under this subsection, an organization shall submit to the Secretary an application for assistance at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(4) ELIGIBILITY.—Organizations eligible to receive funds under this subsection shall include educational institutions, employers, employer associations, unions, State apprenticeship councils, sponsors of registered apprenticeship programs, and organizations representing and assisting women and minorities.

(5) PAYMENT OF FEDERAL SHARE.—

(A) FEDERAL SHARE.—The Federal share of the cost of conducting outreach and recruitment activities under this subsection shall not exceed 75 percent.

(B) OTHER SOURCES.—The portion of the costs of the activities conducted under this subsection that is not paid by the grant may be paid from any other Federal or non-Federal sources.

SEC. 324. PREAPPRENTICESHIP TRAINING GRANT PROGRAM.

(a) ESTABLISHMENT.—The Secretary may establish in the Department of Labor a program of grants to sponsors of registered apprenticeship programs to pay the Federal share of providing preapprenticeship training to women and minorities.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Sponsors of registered apprenticeship programs shall use funds provided under this section—

(A) to conduct preapprenticeship training programs for women and minorities, as described in paragraph (2); and

(B) to provide supportive services, such as child care and transportation, to women and minorities necessary to enable them to participate in preapprenticeship training.

(2) PREAPPRENTICESHIP TRAINING PROGRAM.—A preapprenticeship training program shall include an organized training plan in which candidates for apprenticeship are provided with intensified training activities for the purpose of placement into a registered apprenticeship program on completion or soon after completion of the preapprenticeship training.

(3) TRAINING.—Training under the program described in paragraph (2) may include—

(A) dissemination of information to the participant relating to the content of a trade;

(B) development of the manipulative skills of a participant relating to a trade;

(C) development of the skills of a participant in using materials, tools, and equipment relating to a trade; and

(D) technical instruction in a trade.

(c) APPLICATION.—To be eligible to receive a grant under this section, a sponsor of a registered apprenticeship program requesting assistance shall submit an application for assistance to the Secretary at such time, in such manner and containing or accompanied by such information as the Secretary may reasonably require. At a minimum, the application shall include—

(1) a description of the need for the assistance;

(2) a description of the preapprenticeship training program to be conducted, including a description of any supportive services to be provided;

(3) assurances that there are or will be suitable and appropriate positions available in the apprenticeship program of the sponsor on completion of the preapprenticeship training; and

(4) commitments that all reasonable efforts shall be made to place participants in the apprenticeship program of the sponsor on completion of training.

(d) PAYMENT OF FEDERAL SHARE.—

(1) FEDERAL SHARE.—The Federal share of the cost of providing preapprenticeship training under this section shall not exceed 75 percent.

(2) OTHER SOURCES.—The portion of the costs of the activities conducted under this subsection that is not paid by the grant may be paid from any other Federal or non-Federal sources.

SEC. 325. STUDY OF PARTICIPATION OF WOMEN AND MINORITIES IN APPRENTICESHIP.

(a) STUDY.—The Secretary shall conduct a study of the participation of women and minorities in registered apprenticeship programs. The study shall examine—

(1) the barriers to the participation of women and minorities in registered appren-

ticeship programs, including whether the lack of adequate preapprenticeship training and supportive services constitutes a significant barrier to participation, and methods for eliminating the barriers;

(2) techniques by which women and minorities have been recruited into registered apprenticeship programs and methods for improving recruitment;

(3) the retention rates for women and minorities in registered apprenticeship programs and methods for increasing the rates;

(4) the extent to which women and minorities are employed following the completion of registered apprenticeship programs, the nature of the employment, the extent to which the employment is retained, and methods for enhancing employment;

(5) model apprenticeship programs for women and minorities and methods for incorporating and expanding the programs into other registered apprenticeship programs;

(6) the effectiveness of the preapprenticeship grant training program established in section 324; and

(7) other relevant issues affecting the participation of women and minorities in registered apprenticeship programs.

(b) REPORT.—The Secretary shall submit a report containing the study described in subsection (a) and such recommendations as the Secretary determines to be appropriate to the appropriate committees of Congress not later than 2 years after the date of the enactment of this Act.

SEC. 326. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR OUTREACH PROGRAM AND STUDY.—There are authorized to be appropriated to carry out section 323 (other than subsection (e)) and section 325, $2,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(b) AUTHORIZATION FOR OUTREACH GRANTS.—There are authorized to be appropriated to carry out section 323(e), $8,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(c) AUTHORIZATION FOR PREAPPRENTICESHIP GRANTS.—There are authorized to be appropriated to carry out section 324, $15,000,000 for fiscal year 1992, and such sums as may be necessary for each subsequent fiscal year.

(d) RESERVATION.—The Secretary may reserve not more than 5 percent of the funds appropriated in accordance with subsections (a), (b) and (c) in each fiscal year to carry out the enforcement of nondiscrimination and affirmative action requirements relating to registered apprenticeship programs, including the training of Department of Labor personnel for the enforcement purposes.

Subtitle C—Opportunities for Alternative Work Arrangements

SEC. 331. FINDINGS.

Congress finds that—

(1) since 1982, Federal agencies have had authority under subpart II of chapter 61 of title 5, United States Code, to establish alternative work schedules to assist Federal employees who are trying to balance work and family responsibilities;

(2) one form of alternative work schedule allows Federal employees considerable leeway in setting arrival and departure times at work;

(3) under these flexible schedules, employees must be present during a fixed "core time" and must cooperatively work out arrangements with supervisors and coworkers to ensure that office operations run smoothly;

(4) another form of alternative work schedule enables Federal employees to work more than 8 hours in a day and thus complete their 80-hour biweekly work requirement in fewer than 10 workdays;

(5) using flexible scheduling, agencies may authorize a variety of work arrangements to assist employees with family responsibilities;

(6) agencies that use alternative work schedules permit parents—

(A) to begin work earlier in order to be home when children return from school in the afternoon; or

(B) to work additional hours per day, and fewer days per week in order to be home with children an additional number of days;

(7) the Office of Personnel Management encourages Federal agencies to consider using the flexible schedule programs as valuable tools to help employees meet dependent care needs and enhance employee morale and productivity;

(8) the Office of Personnel Management provides technical assistance and training in the use of alternative work scheduling;

(9) the Office of Personnel Management has recently promoted job sharing for Federal employees;

(10) job sharing is a form of part-time employment in which two part-time employees voluntarily share the duties and responsibilities of one full-time position;

(11) under job sharing, each employee is considered to be an individual part-time employee for the purposes of appointment, pay, classification, leave, benefits, and other personnel considerations;

(12) a variety of different arrangements can be used under job sharing, including those in which—

(A) one job sharer works mornings and the other afternoons;

(B) job sharers alternate days or alternate weeks; or

(C) job sharers overlap schedules to provide extra coverage at peak times or to allow time for meetings;

(13) the Office of Personnel Management has recently—

(A) issued guidance to Federal agencies encouraging the agencies to establish additional job-sharing positions and to inform Federal employees of the option to work less than full-time;

(B) published a booklet entitled "Job Sharing for Federal Employees" that gives detailed information on setting up a job sharing arrangement and making the arrangement work effectively; and

(C) established "The OPM Connection," a pilot program currently operating in Boston, Chicago, Los Angeles, and Washington, D.C., that—

(i) matches Federal employees who want to work part-time with Federal agencies trying to fill part-time and shared jobs; and

(ii) helps current Federal employees find other employees interested in job sharing; and

(14) job sharing can be especially beneficial for employees who have child care responsibilities because of the flexible nature of the arrangement.

SEC. 332. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) the Office of Personnel Management has made commendable efforts to develop alternative work arrangements through flexible scheduling and job sharing; and

(2) the Office of Personnel Management should continue efforts to develop and expand alternative work arrangements to assist Federal employees with family responsibilities and to serve as an example for State and local governments and private sector employers and employees.

THE WOMEN'S EQUAL OPPORTUNITY ACT OF 1991—SECTION-BY-SECTION ANALYSIS

(Introduced by Senators DOLE, SIMPSON, ROTH, KASTEN, D'AMATO, MCCAIN, MURKOWSKI, BURNS, THURMOND, COCHRAN, WARNER, STEVENS, LUGAR, and SEYMOUR)

Section 1—Short Title.

The legislation may be cited as the "Women's Equal Opportunity Act of 1991."

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

Subtitle A—Federal Remedies for Sexual Harassment in the Workplace

Section 101. Statement of Findings.

Section 102. Enhanced Remedies for Sexual Harassment. Title VII currently prohibits intentional discrimination in the terms and conditions of employment, but provides inadequate remedies for certain unlawful practices, including sexual harassment in the workplace, which the Supreme Court has recognized as actionable under Title VII. See *Meritor Savings Bank, FSB* v. *Vinson*, 477 U.S. 57 (1986). Such harassment will frequently not be so intolerable that an employee subjected to it immediately leaves the job. In such circumstances, the only remedy that the victim of harassment can obtain under title VII's current remedial scheme is declaratory and injunctive relief against the harassment.

Additional remedies for this situation are clearly appropriate and warranted. The mere threat of an injunctive order requiring the employer to stop engaging in acts of sexual harassment is clearly insufficient to deter this type of misconduct.

To deter harassment on the basis of sex, section 102 provides that the court shall be empowered, upon pleading and proof that such practice was intentionally engaged in, to award the plaintiff an amount not to exceed $100,000 for the first offense and an amount not to exceed $150,000 for each subsequent offense.

Because of the equitable nature of the relief to be awarded under this section, the courts should find a judge-ordered remedy consistent with the Seventh Amendment. See *Local No. 391* v. *Terry*, 110 S. Ct. 1339 (1990); *Tull* v. *United States*, 107 S. Ct. 1831 (1987). This provision is important in maintaining to the greatest extent possible the current structure of Title VII's remedies provisions and preventing it from being replaced with a tort-like approach. Because the question of constitutionality is not entirely free from doubt, however, section 102 also provides that should a court hold that a jury trial with respect to issues of liability is constitutionally required, it may empanel a jury to hear those issues and no others. This ensures that the additional relief this scheme makes available will not become a dead letter should a court find that the Seventh Amendment requires a jury trial on liability.

In determining the appropriateness and magnitude of an award under this section, the court shall consider whether a) the plaintiff has incurred any medical bills or suffered any monetary or other out-of-pocket loss as a result of the respondent's unlawful conduct and b) such relief is necessary to make injunctive relief ordered by the court meaningful. The court shall also consider a) the financial resources and employment history of the respondent, b) whether the respondent has initiated compliance programs designed to ensure that the employment practices of the respondent are lawful, and c) whether the respondent has instituted programs or policies designed to prevent, and resolve complaints of, harassment on the basis of sex in the workplace.

For purposes of this title, the term "harassment on the basis of sex" is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where 1) submission to such conduct is made explicitly or implicitly a term or condition of employment of an individual, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of creating a working environment that a reasonable person would consider intimidating, hostile, or abusive." This definition of "harassment on the basis of sex" is taken largely from an EEOC regulation at 29 CFR Section 1604.11(a).

Section 103. Expedited Injunctive Relief for Sexual Harassment. Prolonged exposure to sexual harassment in the workplace can have serious and lasting detrimental effects on the victim. As a result, persons claiming sexual harassment on-the-job should be entitled to expedited relief through the court system.

Section 103 allows an individual alleging sexual harassment to seek temporary or preliminary injunctive relief, without regard to any period of time following the filing of a charge of unlawful discrimination and without obtaining a right-to-sue letter from the EEOC. Prior to obtaining permanent injunctive relief, the charging party must first demonstrate that he or she (1) has submitted the charge of sexual harassment to any grievance procedure established by the employer, and (2) has obtained a determination from the grievance procedure, or establishes that the grievance procedure is inappropriate for resolution of sexual harassment complaints or that its use has resulted in an unreasonable delay in resolving the grievance. The purpose of this provision is to ensure that lawsuits seeking injunctive relief do not become a substitute for employer-established grievance procedures.

Finally, Section 103 directs the courts to assign sexual harassment cases at the earliest practicable date and to cause such cases to be expedited in every way practicable.

Section 104. Technical Assistance. Section 104 directs the Chairman of the EEOC, acting through the Directors of the EEOC's district offices, to establish programs to provide technical assistance on the law of sexual harassment to small employers with fewer than 50 employees. Unlike large corporations, most small employers cannot afford the cost of compliance advice from private law firms. An EEOC technical assistance program for small employers will help reduce the instances of sexual harassment in the workplace and the quantity of litigation for an already over-burdened court system.

For these technical assistance efforts, Section 104 authorizes an additional $500,000 in funding for the EEOC for each of fiscal years 1992, 1993, and 1994.

Subtitle B—Expansion of Other Federal Civil Rights

Section 111. Expansion of Protections against All Racial Discrimination in the Making of Contracts. Section 111 would overrule the Supreme Court's decision in *Patterson v. McLean Credit Union*, 109 S. Ct. 2362 (1989). In *Patterson*, an employee sued under 42 U.S.C. 1981, alleging that her employer had harassed her on the job, failed to promote her, and ultimately discharged her, all because of her race. The Court held that Section 1981 is limited by its terms to prohibiting discrimination in "mak[ing] and enforc[ing] contracts," and does not extend to "problems that may arise later from the conditions of continuing employment." *Patterson*, 109 S. Ct. at 2372. Thus, the Court held, the statute prohibits discrimination—whether governmental or private—only in the formation of a contract and in the right of access to a legal process that will enforce established contract obligations without regard to race. While the plaintiff's allegation that she had been discriminatorily denied promotion might fall within the prohibition against discrimination in making contracts, her allegations of harassment on the job addressed only conditions of employment.

The law as interpreted in *Patterson* leaves a significant gap in Section 1981 coverage that should be filled. This section would also remove any possible ambiguity for future cases by codifying the holding in *Runyon v. McCrary*, 427 U.S. 160 (1976), that Section 1981 prohibits private, as well as governmental, discrimination.

Section 112. Expansion of Right to Challenge Discriminatory Seniority Systems. Section 112 would overrule the Supreme Court's ruling in *Lorance v. AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989). In *Lorance*, a group of female employees challenged a seniority system under Title VII, claiming that the system was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly-situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system intentionally to alter their contract rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for the plaintiffs to file their complaint began to run when the employer adopted an allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which the plaintiffs suffered the diminution in employment status about which they complained.

The *Lorance* holding is contrary to the position taken by the Justice Department and the EEOC. It would shield existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary litigation. Employees will be forced to challenge the system before it has produced any concrete impact or forever remain silent. Given such a choice, employees who might never suffer harm from the seniority system may be forced to file a charge—an especially difficult choice since they may be understandably reluctant to intiate a lawsuit against an employer if the lawsuit is not clearly necessary.

Section 113. Congressional Coverage. Section 113 extends the protections of Title VII to all employees of Congress. The means of enforcing Title VII shall be determined by each House of Congress.

Section 114. Effective Date. Section 114 specifies that the provisions of Title I shall take effect upon enactment.

TITLE II—DOMESTIC AND STREET CRIME VIOLENCE AGAINST WOMEN

Subtitle A—Safety on College and University Campuses

Section 201. Amendments to the Higher Education Act of 1965. Last year, the 101st Congress passed, and President Bush signed into a law, a bill called the "Crime Awareness and Campus Security Act of 1990." This legislation amended the Higher Education Act of 1965 to require colleges and universities to establish and disclose campus security policies and to inform students and employees of campus crime statistics.

Section 201 would require colleges and universities to disclose and specify crimes involving sexual contact, sexual assault, and rape. It would also require the disclosure of this information to (a) local and state police authorities and (b) the parents of students.

Subtitle B—Stronger Penalties for Federal Sex Offenses

Section 211. Capital Punishment for Murders in Connection with Sexual Assaults and Child Molestations. Section 211 authorizes capital punishment for murders committed in connection with sex crimes that occur in the course of federal offenses. For example, in a case in which a kidnapping was committed in violation of 18 U.S.C. 1201, and the kidnapper raped and murdered the victim, the death penalty could be imposed pursuant to the provisions of this section.

This section adds a new section 1118 to the criminal code (title 18). Subsections (a)-(b) generally provide federal jurisdiction to prosecute murders committed in the course of other federal offenses. The basic definition of murder in subsection (a)—causing death intentionally, knowingly, or through recklessness manifesting extreme indifference to human life—is similar to the corresponding definition in the Model Penal Code (MPC section 210.2) and various state codes. *See, e.g.*, Ala. Code section 13A-6-2(a)(1)-(2); N.D. Cent. Code section 12.1-16-01(1)(a)-(b).

Subsection (a) also covers deaths resulting from the intentional infliction of serious injury. This is substantially the same as a clause in the definition of capital murder in title I of S. 2970, as passed by the Senate in the 101st Congress. There is also support in state law for the inclusion of this category of homicides in potentially capital murders. *See* Ill. Ann. Stat., ch. 38, section 9.1; N.S. Stat. Ann. section 2C:11-3.

Under subsection (c), murders in violation of proposed section 1118 would be Class A felonies, punishable by up to life imprisonment. The death penalty could be imposed for a subcategory of these murders as provided in subsections (d)-(l).

Subsection (e) identifies the classes of murders for which the death penalty would be available. Under the procedures of the section, a finding of at least one of the aggravating factors specified in subsection (e) would be a prerequisite to the jury's consideration of capital punishment. These aggravating factors are as follows:

First, under paragraph (1) of subsection (e), the death penalty could be considered if the conduct resulting in death occurred in the course of an offense defined in chapters 109A, 110, or 117 of the criminal code. Chapter 109A defines the federal crimes of sexual abuse, including the crimes within federal jurisdiction that would commonly be characterized as rape or child molestation. Chapter 110 defines the federal crimes relating to sexual exploitation of children, including crimes involved in the production of child pornography. Chapter 117 includes crimes involved

in the management of interstate prostitution, "white slavery" and child prostitution operations.

Second, under paragraph (2), the death penalty could be considered if the conduct resulting in death occurred in the course of a federal offense, and the defendant committed a crime of sexual assault or child molestation in the course of the same offense. For example, as noted above, if the victim were kidnapped in violation of 18 U.S.C. 1201, and the kidnapper raped and murdered the victim, the death penalty would be available under this paragraph.

Third, under paragraph (3), the death penalty could be considered if a defendant committing a murder in violation of this section had a prior conviction for sexual assault or child molestation. Subsection (x) defines the terms "sexual assault" and "child molestation" for purposes of this paragraph and paragraph (2).

If the jury found that at least one of the aggravating factors specified in subsection (e) existed, and further found that there were no mitigating factors or that the aggravating factors outweighed any mitigating factors, then the death penalty would be imposed pursuant to subsections (j) and (l).

The remaining provisions of the section set out the general procedures required for conducting a capital sentencing hearing, and for reviewing and carrying out the death penalty in cases in which it is imposed. These procedural provisions take the same approach as the Administration's death penalty legislation of the 101st Congress. They are substantially the same in almost all respects as the death penalty procedures passed by the House of Representatives in title II of H.R. 5269 in the 101st Congress, and the death penalty procedures passed by the Senate in title XIV of S. 1970 in the 101st Congress. They are also the same or similar in many respects to the death penalty procedures passed by the Senate in title I of S. 1970.

Section 212. Increased Penalties for Recidivist Sex Offenders. Section 212 amends the penalties applicable under the sexual abuse chapter (chapter 109A) of title 18 of the United States Code by providing that second or subsequent offenses are punishable by a term of imprisonment of up to twice that otherwise authorized. The prior conviction may be either a violation of the chapter or a violation of state law involving a type of conduct proscribed by chapter 109A. This amendment, which was passed by the Senate in S. 1970 (section 2425), is designated to correct the inadequacy of current penalties with respect to recidivist sex offenders.

Section 213. Definition of Sexual Act for Victims below the Age of 16. Section 213 amends the definitional section for federal sexual abuse offenses to provide greater protection for victims below the age of 16. Recently, the maxium penalty for engaging in a sexual act with a minor between the ages of 12 and 16 (by a person at least 4 years older than the victim) was raised from five to fifteen years' imprisonment (section 322 of the Crime Control Act of 1990). Both the original Senate-passed and House-passed versions of this legislation—section 2425 of S. 1970 and section 2919 of H.R. 5269—also contained amendments addressing deficiencies in the definition of the term "sexual act" in relation to victims below the age of 16. However, the enacted bill did not contain these amendments, presumably because of other differences in the sections in which they appeared.

Section 213 is the same as the corresponding amendments to the definition of "sexual act" in S. 1970 and H.R. 5269. It would extend the definition of "sexual act" to include intentional touching, not through the clothing, of the genitals of a person who is less than 16 years of age, provided the intent element common to the other touching offenses is present. This form of molestation can be as detrimental to a young teenager or child as the conduct currently covered by the term sexual act.

The current definition of sexual act and sexual contact also involve a gender-based imbalance that effectively tends to give more lenient treatment to cases in which the victim is a boy. Under the current definitions, sexual touching that involves even a slight degree of penetration of a genital or anal opening constitutes a sexual act, rather than just sexual contact, and the former is punished more severely than the latter under the existing statutory scheme. Since penetration is more likely with female than male victims, such conduct would more likely constitute sexual act when committed with females than with males.

The amendment corrects this gender-based imbalance by treating all direct gential touching of children under the age of 16, with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person as sexual acts, regardless of whether penetration has occurred. Moreover, it eliminates the difficulties of proving penetration for many sexual abuse offenses against children—both boys and girls—in which there are typically no adult witnesses.

Section 214. Drug Distribution to Pregnant Women. 21 U.S.C 845 prescribes enhanced penalties for the distribution of controlled substances to persons below the age of twenty-one. Section 214 amends 21 U.S.C. 845 to make the same enhanced penalties apply to the distribution of control substances to pregnant women.

Conduct covered by this amendment frequently involves exploitation by the drug dealer of the pregnant mother's drug dependency or addiction to facilitate conduct on her part that carries a grave risk to her child of pre-natal injury and permanent impairment followng birth. Such conduct by a trafficker in controlled substances is among the most serious forms of drug-related child abuse and plainly merits the enhanced penalties provided by 21 U.S.C. 845.

Subtitle C—Enhanced Restitution for Victims of Sex Crimes

Sections 221-224. Pornography Victims Restitution. Sections 221-224 create a federal cause of action against a producer, distributor, exhibitor, or seller of sexually explicit material by a victim of a rape, sexual assault, or sexual crime. Section 222 conditions recovery of damages on proof by a preponderance of the evidence that: a) the victim was a victim of a sexual crime, as defined by State or Federal law, whether or not such crime has been prosecuted or proven in a separate criminal proceeding; b) the material is either obscene, child pornography, or sexually explicit and violent; c) the defendant knew or should have known the nature and character of the contents of the material; and d) the material was a proximate cause of the offense, by inciting the sexual offender to commit the offense against the victim.

The Pornography Victims Compensation Act was originally introduced by Senator Mitch McConnell in the 101st Congress.

Section 225. Restitution in Sex Offense Cases. Section 225 amends the restitution statute, 18 U.S.C. 3663, to provide for restitution by offenders to the victims of sexual abuse crimes defined in chapter 109A of Title 18 and crimes involving sexual exploitation of children defined in chapter 110 of Title 18.

Section 3663(b)(2) of Title 18 currently authorizes restitution covering medical and therapeutic costs and lost income in cases involving "bodily injury" to a victim. However, the sex crimes defined in chapters 109A and 110 do not necessarily involve physical damage to the body of the victim. For example, there may not be such physical damage where rape against an adult victim is committed through the threat of force, but without the actual use of force, or where a child molestation or exploitation offense is committed without physically injurious violence.

This section would add a new paragraph (3) to 18 U.S.C. 3663(b) which makes it clear that restitution is authorized in all federal sex offense cases, whether or not the offense involved "bodily injury" on a narrow interpretation of that phrase. Subparagraphs (A)-(C) of the new paragraph track the authorization in current paragraph (2) for restitution covering necessary medical and therapeutic costs and lost income.

Subparagraph (D) of proposed paragraph (3) provides that the medical and therapeutic costs and lost income for which restitution is awarded may include costs and losses related to a disease that was transmitted to the victim through the commission associated with sex offenses. While restitution for costs and losses related to such a disease could be independently based on current 18 U.S.C. 3663(b)(2) or subparagraphs (A)-(C) of proposed new paragraph (3), the explicit authorization of proposed subparagraph (D) forecloses any argument that such costs and losses are too remote a result of the offense to be included in an order of restitution.

Subparagraph (E) of proposed paragraph (3) recognizes child care, transportation, and other costs to the victim from involvement in the investigation and prosecution of the crime as resultant costs of the crime for which the offender may properly be required to make restitution.

Finally, section 226 makes a conforming amendment in the second-to-last paragraph of 18 U.S.C. 3663(b), which currently provides for restitution of funeral expenses in "bodily injury" cases in which death also results.

Subtitle D—Reform of Procedure and Evidentiary Requirements in Sex Offense and Other Cases

Section 231. Admissibility of Evidence of Similar Crimes in Sexual Assault and Child Molestation Cases. In cases where the defendant is accused of committing an offense of sexual assault or child molestation, courts in the United States have traditionally favored the broad admission at trial of evidence of the defendant's prior commission of similar crimes. The contemporary edition of Wigmore's treaties describes this tendency as follows (IA Wigmore's *Evidence* sec. 62.2 (Tillers rev. 1983)):

"[T]here is a strong tendency in prosecutions for sex offenses to admit evidence of the accused's sexual proclivities. Do such decisions show that the general rule against the use of propensity evidence against an accused is not honored in sex offense prosecutions? We think so.

"[S]ome states and courts have forthrightly and expressly recogniz[ed] a "lustful disposition" or sexual proclivity exception to the general rule barring the use of character evidence against an accused. . . . [J]urisdictions that do not expressly recognize a lustful disposition exception may effectively recognize such an exception by expansively interpreting in prosecutions for

sex offenses various well-established exceptions to the character evidence rule. The exception for common scheme or design is frequently used, but other exceptions are also used."

More succinctly, the Supreme Court of Wyoming observed in *Elliot v. State*, 600 P. 2d 1044, 1047-48 (1979):

"[I]n recent years a preponderance of the courts have sustained the admissibility of the testimony of third persons as to prior or subsequent similar crimes, wrongs or acts in cases involving sexual offenses . . . [I]n cases involving sexual assaults, such as incest, and statutory rape with family members as the victims, the courts in recent years have almost uniformly admitted such testimony."

The willingness of the courts to admit similar crimes evidence in prosecutions for serious sex crimes is of great importance to effective prosecution in this area, and hence to the public's security against dangerous sex offenders. In a rape prosecution, for example, disclosure of the fact that the defendant has previously committed other rapes is frequently critical to the jury's informed assessment of the credibility of a claim by the defense that the victim consented and that the defendant is being falsely accused.

The importance of admitting this type of evidence is still greater in child molestation cases. Such cases regularly present the need to rely on the testimony of child victim-witnesses whose credibility can readily be attacked in the absence of substantial corroboration. In such cases, the public interest in admitting all significant evidence that will illumine the credibility of the charge and any denial by the defense is truly compelling.

Notwithstanding the salutary tendency of the courts to admit evidence of other offenses by the defendant in such cases, the current state of the law in this area is not satisfactory. The approach of the courts has been characterized by considerable uncertainty and inconsistency. Not all courts have recognized the area of sex offense prosecutions as one requiring special standards or treatment, and those which have, have adopted admission rules of varying scope and rationale.

Moreover, even where the courts have traditionally favored admission of "similar crimes evidence" in sex offense prosecutions, the continuation of this approach has been jeopardized by recent developments. These developments include the widespread adoption by the states of codified rules of evidence modeled on the Federal Rules of Evidence, which make no special allowance for admitting similar crimes evidence in sex offense cases.

Section 231 would amend the Federal Rules of Evidence to ensure an appropriate scope of admission for evidence of similar crimes by defendants accused of serious sex crimes. The section adds three new Rules (proposed Rules 413, 414, and 415), which state general rules of admissibility for such evidence. The proposed new rules would apply directly in federal cases, and would have broader significance as a potential model for state reforms.

Proposed Rule 413 relates to criminal prosecutions for sexual assault. Paragraph (a) provides that evidence of the defendant's commission of other sexual assaults is admissible in such cases. If such evidence were admitted under the Rule, it could be considered for its bearing on any matter to which it is relevant. For example, it could be considered as evidence that the defendant has the motivation or disposition to commit sexual assaults, and a lack of effective inhibitions against acting on such impulses, and as evidence bearing on the probability or improbability that the defendant was falsely implicated in the offense of which he is presently accused.

Paragraph (b) of proposed Rule 413 generally requires pretrial disclosure of evidence to be offered under the Rule. This is designed to provide the defendant with notice of the evidence that will be offered, and a fair opportunity to develop a response. The Rule sets a normal minimum period of 15 days notice, but the court could allow notice at a later time for good cause, such as later discovery of evidence admissible under the rule. In such a case, it would, of course, be within the court's authority to grant a continuance if the defense needed additional time for preparation.

Paragraph (c) makes clear that proposed Rule 413 is not meant to be the exclusive avenue for introducing evidence of other crimes by the defendant in sexual assault prosecutions, and that the admission and consideration of such evidence under other rules will not be limited or impaired. For example, evidence that could be offered under proposed Rule 413 will often be independently admissible for certain purposes under Rule 404(b) (evidence of matters other than "character").

Paragraph (d) defines the term "offense of sexual assault." The definition would apply both in determining whether a currently charged federal offense is an offense of sexual assault for purposes of the Rule, and in determining whether an uncharged offense qualifies as an offense of sexual assault for purposes of admitting evidence of its commission under the Rule. The definition covers federal and State offenses involving conduct proscribed by the chapter of the criminal code relating to sexual abuse (chapter 109A of title 18, U.S. Code) in light of subparagraph (1), and other federal and state offenses that satisfy the general criteria set out in subparagraphs (2)–(5).

Rule 414 concerns criminal prosecutions for child molestation. Its provisions are parallel to those of the sexual assault rule (Rule 413), and should be understood in the same sense, except that the relevant class of offenses is child molestations rather than sexual assaults. The definition of child molestation offenses set out in paragraph (d) of this Rule differs from the corresponding definition of sexual assault offenses in Rule 413 in that (1) it provides that the offense must be committed in relation to a child, defined as a person below the age of fourteen, (2) it includes the child exploitation offenses of chapter 110 of the criminal code within the relevant category, and (3) it does not condition coverage of such offenses on a lack of consent by the child-victim.

Rule 415 applies the same rules to civil actions in which a claim for damages or other relief is predicated on the defendant's alleged commission of an offense of sexual assault or child molestation. Evidence of the defendant's commission of other offenses of the same type would be admissible, and could be considered for its bearing on any matter to which it is relevant.

Background of Section 231 in the Law of Evidence

The common law has traditionally limited the admission of evidence of a defendant's commission of offenses other than the particular crime for which he is on trial. This limitation, however, has never been absolute. The Supreme Court has summarized the general position of the common law on this issue as follows:

"Alongside the general principle that prior offenses are inadmissible, despite their relevance to guilt . . . the common law developed broad, vaguely defined exceptions—such as proof of intent, identity, malice, motive, and plan —whose application is left largely to the discretion of the trial judge. . . . In short, the common law, like our decision in [*Spencer v. Texas*], implicitly recognized that any unfairness resulting from admitting prior convictions was more often than not balanced by its probative value and permitted the prosecution to introduce such evidence without demanding any particularly strong justification." (*Marshall v. Lonberger*, 459 U.S. 422, 438-39 n.6 (1983)).

The Federal Rules of Evidence—which went into effect in 1975—follow the general pattern of traditional evidence rules, in that they reflect a general presumption against admitting evidence of uncharged offenses, but recognize various exceptions to this principle. One exception is set out in Rule 609. Rule 609 incorporates a restricted version of the traditional rule admitting, for purposes of impeachment, evidence of a witness's prior conviction for felonies or crimes involving dishonesty or false statement. The other major provision under which evidence of uncharged offenses may be admitted is Rule 404(b). That rule provides that such evidence is not admissible for the purpose of proving the "character" of the accused, but that it may be admitted as proof concerning any non-character issue:

"(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Rule 404(b), however, makes no special allowance for admission of evidence of other "crimes, wrongs, or acts" in sex offense prosecutions. There was perhaps little reason for the framers of the Federal Rules of Evidence to focus on this issue, since sex offense prosecutions were not a significant category of federal criminal jurisdiction.

This omission has been widely reproduced in codified state rules of evidence, whose formulation has been strongly influenced by the Federal Rules. *The practical effect of this development is that the authority of the courts to admit evidence of uncharged offenses in prosecutions for sexual assault and child molestations has been clouded, even in states that have traditionally favored a broad approach to admission in this area.*

The actual responses of the courts to this development have varied. For example, in *State v. McKay*, 787 P. 2d 479 (Or. 1990), in which the defendant was accused of molesting his stepdaughter, the court admitted evidence of prior acts of molestation against the girl. The court reached this result by stipulating that evidence of a predisposition to commit sex crimes against the victim of the charged offense was not evidence of "character" for purposes of the state's version of Rule 404(b), although it apparently would have regarded evidence of a general disposition to commit sex crimes as impermissible "character" evidence.

In *Elliot v. State*, 600 P. 2d 1044 (1979), the Supreme Court of Wyoming reached a broader result supporting admission, despite a state rule that was essentially the same as Federal Rule 404(b). This was also a prosecution for child molestation. Evidence was admitted that the defendant had attempted to

molest the older sister of the victim of the charged offense on a number of previous occasions. The court reconciled this result with Rule 404(b) by indicating that proof of prior acts of molestation would generally be admissible as evidence of "motive"—one of the traditional "exception" categories that is explicitly mentioned in Rule 404(b). *Id.* at 1048–49.

In contrast, in *Getz v. State*, 538 A.2d 726 (1988), the Supreme Court of Delaware overturned the defendant's conviction for raping his 11-year-old daughter because evidence that he had also molested her on other occasions was admitted. The court stated that "a lustful disposition or sexual propensity exception to [Rule] 404(b)'s general prohibitions . . . is almost universally recognized in cases involving proof of prior incestuous relations between the defendant and the complaining victim," but that "courts which have rejected this blanket exception have noted that in the absence of a materiality nexus such propensity evidence is difficult to reconcile with the restrictive language of [Rule] 404(b)." The court went on to hold that the disputed evidence in the case was impermissible evidence of character and could not be admitted under the state's Rule 404(b).

The foregoing decisions illustrate the increased jeopardy that the current formulation of the Federal Rules of Evidence has created for effective prosecution in sex offense cases. While the law in this area has never been a model of clarity and consistency, the widespread adoption of codified state rules based on the Federal Rules has aggravated its shortcomings. In jurisdictions that have such codified rules, the courts are no longer free to recognize straightforwardly the need for rules of admission tailored to the distinctive characteristics of sex offense cases or other distinctive categories of crimes. Important evidence of guilt may consequently be excluded in such cases.

Where the courts do admit such evidence, it may require a forced effort to work around the language and standard interpretation of codified rules that restrict admission, or may depend on unpredictable decisions by individual trial judges to allow admission under other "exception" categories. The establishment of clear, general rules of admission, as set out in proposed Rules 413–415, would resolve these problems under current law in federal proceedings, and would provide a model for comparable reforms in state rules of evidence.

Section 232. Right of the Victim to an Impartial Jury. Section 232 contains provisions to protect the right of crime victims and the public to an impartial jury. Subsection (a) amends Fed. F. Crim. P. 24(b) to equalize the number of peremptory challenges that may be exercised by the defense and the prosecution in jury selection. Currently, the Rule gives the prosecution and defense 3 challenges each in misdemeanor cases and 20 challenges each in capital cases. however, in felony cases—including rape cases and other felony cases involving violence against women—the defense is given 10 peremptory challenges and the prosecution is only given 6.

This means that the selection process in felony cases is skewed in the direction of enabling the defense to select a jury that is biased in favor of the defendant and against the victim. Section 232 corrects this imbalance by equalizing the number of peremptory challenges provided to each side in felony cases at 6. A provision equalizing the number of peremptories for the defense and prosecution has previously been passed by the Senate as part of S. 1970 in the 101st Congress.

Subsection (b) of Section 232 amends 18 U.S.C. 243 to prohibit invidious discrimination by the defense in using peremptory challenges. Under the decision in *Batson v. Kentucky*, 476 U.S. 79 (1986), a prosecutor is barred from using peremptory challenges to exclude potential jurors on the basis of race. However, courts have not generally adopted a like rule for defense attorneys. This means, for example, that a defense attorney could use his peremptories to obtain an all-white jury in a case in which white racists were charged with murdering blacks, and there would be nothing the government could do about it.

Further concerns arise from the possibility that the *Batson* Rule will be applied—but only one-sidedly—to exclusion of jurors on the basis of gender. This would mean, for example, that a defense attorney could use his peremptories to get an all-male or nearly all-male jury in a rape case, and the prosecutor would potentially be barred from using his peremptories to strike male jurors in order to obtain a more balanced jury. In general, crime victims are victimized by rules that leave the defense free to choose an unrepresentative jury, while barring the prosecutor from attempting to redress the imbalance by striking jurors from the complementary population group.

Section 232 resolves this problem by providing that a defense attorney cannot exercise peremptories on the basis of race or other grounds that would be prohibited to a prosecutor, and by giving the prosecutor the same right to challenge such misconduct by the defense that the defense has in relation to the government.

Section 233. Rules of Professional Conduct for Lawyers in Federal Cases. Section 233 proposes new standards of professional conduct for lawyers involved in federal litigation. The proposed rules are of fundamental importance in preventing abuse by lawyers of victims of crime and civil misconduct, including rape victims and other women victimized by criminal violence, and victims of sexual harassment and discrimination.

Existing standards of professional conduct for lawyers are usually modeled on the American Bar Association Model Rules of Professional Conduct. These existing rules are highly tolerant of practices by lawyers that thwart the search for truth and subject victims and witnesses to gratuitous humiliation and traumatization.

For example, the current rules prohibit a lawyer from offering evidence that he knows to be false, but they contain no corresponding prohibition of attempting to discredit evidence that the lawyer knows to be true. In other words, the current rules countenance deliberate efforts by a lawyer to deceive a tribunal by making it appear that a witness is lying or mistaken, when the lawyer knows that the witness is telling the truth.

The concerns raised by this practice go beyond its inconsistency with "the very nature of a trial as a search for truth." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986). Victims of rape and other highly serious crimes frequently report that the traumatic effect of their abuse by the criminal justice system is comparable to the traumatic effect of the crime committed against them. The efforts of defense counsel to portray the victim as a liar and perjuring criminal figure prominently in the accounts of why this is so.

No rational justification exists for permitting such conduct by a lawyer if the lawyer knows that the victim is telling the truth because his client has admitted to him that the allegations are true, and the lawyer's investigation of the case shows no grounds to doubt the veracity of the client's admissions. In such a case, the lawyer's effort to discredit the victim is calculated to thwart the search for truth.

The Rules proposed in this section would bar this abuse by prohibiting efforts to discredit evidence that the lawyer knows to be true, as well as perpetuating the existing prohibition of offering evidence that the lawyer knows to be false. This would establish as a standard of professional conduct the principle that was once—but is no longer—endorsed by the ABA, that a lawyer "should not misuse the power of cross-examination or impeachment by employing it to discredit or undermine a witness if he knows the witness is testifying truthfully." ABA Standards, The Defense Function Section 7.6(b) (1974); ABA Standards, The Prosecution Function Section 7(b) (1974).

Another area of concern is the inadequacy of the current rules to curb unjustified delay and other litigation tactics that are designed to make litigation more burdensome or expensive. *In rape cases and other criminal cases, for example, lawyers can and do make efforts to slow down the progress of litigation in the hope that witnesses favorable to the other side will become unavailable, that the memories of such witnesses will become less certain or more subject to impeachment by the time of trial, or that the victim will be sufficiently frustrated and traumatized by repeated delays that the case will be dropped.*

These abuses are antithetical to the search for truth. Their impact on the lives of crime victims, particularly sex crime victims, are an equally grave concern: "victims . . . are burdened by irresolution and the realization that they will be called upon to relive their victimization when the case is finally tried. The healing process cannot truly begin until the case can be put behind them. This is especially so for children and victims of sexual assault or any other case involving violence." *Report of the President's Task Force on Victims of Crime* 75 (1982).

The rules proposed in this section address effectively the litigation abuse that flourishes under the current standards. They make it unequivocally clear that a lawyer is not permitted to pursue such objectives as increasing the expense of litigation for another party, bringing about the loss or deterioration of another party's evidence through delay, or gaining some other advantage over another party as a result of the distress or hardship caused by prolonged proceedings.

A third area of concern is the inadequacy of the ABA Model Rules to permit and require disclosure of information received from clients where such disclosure is necessary to prevent the commission of serious crimes. In this connection, the ABA Model Rules only qualify the requirement of attorney-client confidentiality to the extent of providing that a lawyer "may" reveal information "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm."

In other words, a lawyer is not permitted under the current ABA standards to make disclosures necessary to prevent the commission of such crimes as child molestation, arson, espionage, blackmail, or defrauding a person of his life's savings, so long as the lawyer does not believe that the offense threatens imminent death or bodily injury.

Moreover, under these standards a lawyer is never *required* to make such a disclosure to prevent the commission of a crime, regardless of its seriousness—even such crimes as rape or murder.

The current position of the ABA rules on this issue is regressive in comparison with the earlier ABA Model Code of Professional Responsibility, which permitted disclosure of the client's intention to commit any crime. Not surprisingly, most states have rejected the current ABA position and provide substantially broader authorizations or requirements for disclosure of client confidences to prevent crime. The rules proposed in this section likewise take a broader approach, authorizing disclosure to prevent crimes or other unlawful acts, and requiring disclosure to prevent the commission of violent crimes and serious sex offenses.

The proposed rules are important both for their direct effect in federal litigation, and as a model for reforms by the states in their standards of attorney conduct. These rules are not meant to be an exhaustive statement of the professional responsibilities of lawyers. Rather, they focus on the areas where there is a clear need for reform. Government attorneys will continue to be subject to additional standards and requirements under the policies of their employing agencies, and private attorneys will continue to be subject to additional standards and requirements under the bar disciplinary rules of the States in which they are admitted to practice. The specific provisions of the rules are as follows:

Rule 1

Rule 1 sets out the general scope of the Rules, which apply to representation of clients in the relation to federal proceedings. The Rules apply both to government attorneys and to private attorneys in federal practice. Representation in litigation before the federal courts and representation before federal administrative agencies are both covered.

Rule 2

Rule 2 prohibits various abusive practices. Paragraph (a) generally prohibits engaging in any action or course of conduct for the purpose of increasing the expense of litigation to another person. In other words, the fact that proceeding in a particular manner will make litigation more costly for an adversary cannot count as a positive consideration in a lawyer's decision whether to proceed in that manner. Paragraph (b) generally prohibits malicious or petty acts whose only substantal purpose is to hurt others or make life more difficult for them. It is partially comparable to ABA Model Rule 4.4's strictures against acts having no substantial purpose other than to embarrass or burden a third person, but it adds explicit strictures against pointlessly distressing, harassing, and inconveniencing others.

ABA Model Rule 3.3(a)(4) prohibits a lawyer from offering evidence that he knows to be false. Paragraph (c) of the proposed Rule goes beyond this standard by also prohibiting a lawyer from attempting to discredit evidence that the lawyer knows to be true. This bars both efforts to discredit particular assertions in adverse testimony that the lawyer knows to be true, and efforts at general impeachment of the credibility of an adverse witness who the lawyer knows is telling the truth.

Standards of this type have sometimes been opposed on the view that a lawyer cannot assess or pass judgment on the truth or falsity of matters affecting the interest of his client, and should simply present the best case in favor of the client's position. However, this view, if valid, would be equally fatal to the current prohibition of presenting testimony or other evidence that the lawyer knows to be false. This existing prohibition also presupposes that a lawyer may know matters to be true or false, and may be ethically constrained on the basis of such knowledge.

Realistically, a lawyer often does know facts that implicate the standards of this rule. The client may admit facts adverse to his interest to the lawyer, and the lawyer's investigation of the case may show no grounds to doubt the veracity of the client's admissions. Or prior consultation with the client and the lawyer's investigation may foreclose any genuine doubt that certain damaging facts exist, and show that the client's contrary assertions represent an effort to fabricate a failed claim or defense. *See, e.g., Nix v. Whiteside*, 475 U.S. 157 (1986).

In such circumstances, presenting evidence that denies these known facts, or attempting to discredit evidence that confirms them, would constitute a deliberate effort to deceive the tribunal. Conduct of this type by a lawyer impedes the search for truth without furthering any legitimate function of advocacy, and frequently involves gratuitous defamation and traumatization of truthful witnesses, particularly in sex offense cases. Paragraph (c) prohibits such actions by lawyers as unprofessional conduct.

The ABA has taken inconsistent positions at different times concerning the propriety of attempting to discredit evidence that a lawyer knows to be true. The original ABA Standards Relating to the Defense Function (section 7.6(b)) and to the Prosecution Function (section 5.7(b)), which were adopted by the ABA House of Delegates in 1971, stated that a lawyer should not misuse the power of cross-examiniation "to discredit or undermine a witness if he knows that the witness is testifying truthfully." However, the revised ABA Criminal Justice Standard, adopted by the House of Delegates in 1979, retained this standard for prosecutors, but declined to state a corresponding standard for defense lawyers. Paragraph (c) reflect the view that justice is due to victims and the public as well as defendants, and evenhandedly prohibits this abuse by all lawyers.

Rule 3

Paragraph (a) of Rule 3 states the general principle that a lawyer should seek to expedite the conduct and conclusion of litigation.

Paragraph (b) of Rule 3 specifically prohibits efforts to delay or prolong litigation for illegitimate purposes. Subparagraphs (1) and (2) preclude such efforts where, for example, they are motivated by the hope or expectation that witnesses helpful to an adverse party will become unavailable, or that such witnesses' memories will become less certain or more subject to impeachment if procedings are delayed. Subparagraph (3) prohibits efforts to secure other advantages arising from the expense, frustration, distress, or other hardship that is caused by prolonged or delayed proceedings—for example, trying to win by depleting an adverse party's financial resources for litigation, or attempting to wear down an adverse party or secure a favorable settlement through the distress or hardship caused by prolonged litigation.

Rule 4

Lawyers must normally maintain the confidentiality of information received from clients. In some circumstances, however, this presumption must give way to overriding considerations of fidelity to the law or respect for the rights of others. Rule 4 identifies a number of situations in which disclosure of such information is permitted or required. Paragraph (a) permits disclosure to the extent necessary to prevent violent crimes, crimes involving a substantial risk of death or serious injury, *and crimes of sexual assault or child molestation.*

Section 234. Statutory Presumption against Child Custody. Section 234 provides that it is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

Section 235. Full Faith and Credit for Protective Orders. Section 235 requires the States to give full faith and credit to valid protective orders of other States.

Section 236. Mandatory HIV-Testing and Penalty Enhancement in Sexual Abuse. The trauma of victims of sex crimes may be greatly magnified by the fear of contracting AIDS as a result of the attack. Section 1804 of the Crime Control Act of 1990 created a funding incentive for the States to require HIV testing of sex offenders and disclosure of the test results to the victim. There is, however, no comparable requirement or authorization for federal sex offense cases.

Section 236 remedies this omission by requiring HIV testing in federal cases involving a risk of HIV transmission. It also requires enhanced penalties for federal sex offenders who risk HIV infection of their victims.

Section 236 would add a new section (proposed section 2247) to the chapter of Title 18 of the United States Code that defines the federal crimes of sexual abuse (chapter 109A). Subsection (a) of proposed section 2247 would require HIV testing of a person charged with an offense under chapter 109A, at the time of the pre-trial release determination for the person, unless the judicial officer determines that the person's conduct created no risk of transmission of the virus to the victim. The test would be conducted within 24 hours or as soon thereafter as feasible, and in any event before the person is released. Two follow-up tests would also be required (six and twelve months following the initial test) for persons testing negative. Under subsection (d), the results of the HIV test would be disclosed to the person tested, to the attorney for the government, and—most importantly—the victim or the victim's parent or guardian.

In some instances testing may not be ordered pursuant to proposed 18 U.S.C. 2247(a) because the information available at the time of the pre-trial release determination indicated that the person's conduct created no risk of HIV transmission, but in light of information developed at a later time it may subsequently appear to the court that the person's conduct may have risked transmission of the virus to the victim. Subsection (b) of proposed section 2247 accordingly authorizes the court to order testing at a later time if testing did not occur at the time of the pre-trial release determination.

Subsection (c) of proposed section 2247 provides that a requirement of follow-up HIV testing is canceled if the person tests positive—in which case further testing would be superfluous—or if the person is acquitted or all charges under chapter 109A are dismissed.

Subsection (e) of proposed section 2247 directs the Sentencing Commission to provide enhanced penalties for offenders who know or have reason to know that they are HIV-positive and who engage or attempt to en-

gage in criminal conduct that creates a risk of transmission of the virus to the victim. This requirement reflects the higher degree of moral reprehensibility and depravity involved in the commission of a crime when it risks transmission of a lethal illness to the victim, and the exceptional dangerousness of sex offenders who create such a risk to the victims of their crimes.

Section 237. Payment of Cost of HIV Testing for Victim. Section 5039(c)(7) of the Victims' Rights and Restitution Act of 1990, enacted as part of the Crime Control Act of 1990, currently provides that a federal government agency investigating a sexual assault shall pay the costs of a physical examination of the victim, if the examination is necessary or useful for investigative purposes. Section 237 in this title extends this provision to require payment for a) up to two HIV tests for the victim in the twelve months following the sexual assault, and b) the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of the human immunodeficiency virus to the victim as a result of the assault.

Subtitle E—National Task Force on Violence against Women

This subtitle establishes a "National Task Force on Violence against Women." The general purpose of the task force is to develop a uniform federal, State, and local law enforcement strategy aimed at protecting women against violent crime, punishing persons who commit such crimes, and enhancing the rights of victims.

The task force shall consist of up to 10 persons, who shall be appointed by the Attorney General not later than 60 days after the date of enactment. Not later than 1 year after the date that the task force is fully constituted, the Attorney General shall submit a detailed report to Congress on the findings and recommendations of the task force.

Subtitle F—Prevention of Sexual Assault

This subtitle authorizes $25 million for each of fiscal years 1992, 1993, and 1994 to establish a grant program under the Victims of Crime Act of 1984 for rape prevention and education.

Grants under this subtitle may be used to support rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, including programs that a) conduct eductional seminars, b) operate hotlines, c) conduct training programs for professionals, d) prepare informational materials, and e) undertake other efforts to increase awareness of the facts about, or help prevent, sexual assault.

To be eligible to receive a grant under this subtitle, a State must assure the Attorney General that a) the State will use at least 15 percent of the grant money to support education programs targeted for junior high school and high school students, and b) the State will pay for the full cost of forensic medical examinations for the victims of sexual assault.

Subtitle G—Domestic Violence; Funding for Shelters; Amendments to the Family Violence Prevention and Services Act

Many of the provisions of this subtitle are modelled after the provisions contained in S. 3134, the "Domestic Violence Prevention Act of 1990," which was introduced last year by Senator Dan Coats.

Section 261. Short Title. Section 261 sets forth the short title of the subtitle, The "Domestic Violence Prevention Act of 1991.".

Section 262. Expansion of Purpose. Section 262 expands the purpose of the Family Violence Prevention and Services Act to increase public awareness about, and prevention of, domestic violence.

Sections 263-264. Expansion of State Demonstration Grant Program. Section 263 and Section 264 authorize the Secretary of HHS to make grants for public information campaigns about domestic violence.

Section 265. State Commissions on Domestic Violence. Section 265 requires states to provide assurances, as a condition of receiving Family Violence funds, that they will establish a Commission on Domestic Violence to examine a variety of issues including the use of mandatory arrest of accused offenders, the adoption of "no-drop" prosecution policies, the consistency of sentencing practices, and the testifying by victims at post-conviction and release hearings.

Section 266. Indian Tribes. Section 266 authorizes a minimum grant of $1,000,000 for Family Violence grants to Indian Tribes.

Section 267. Funding Limitations. Section 267 eliminates the $150,000 cumulative grant limitation for states.

Section 268. Grants to Entities other than States; Local Share. Section 268 reduces the match required for grants to entities other than States to 50%.

Section 269. Shelter and Related Assistance; Rural Areas. Section 269 provides a list of services that should be provided by shelters and safe homes receiving assistance under the Family Violence Prevention and Services Act. Section 269 also provides that not less than 20% of the funds available under Section 303 of the Family Violence Prevention and Services Act must be distributed to entities in rural areas.

Section 270. Law Enforcement Training and Technical Assistance Grants. Section 270 requires that law enforcement training grants go to those with experience providing training and technical assistance to law enforcement personnel on a national or regional basis.

Section 271. Authorization of Appropriations. Section 271 authorizes an additional $75 million for each of fiscal years 1991, 1992, and 1993 to provide grants under the Family Violence Prevention and Services Act.

Section 272. Report on Recordkeeping. Section 272 requires the Attorney General to complete a study of problems associated with recordkeeping of criminal complaints involving domestic violence. Report is to be completed within 120 days.

TITLE III—EMPLOYMENT OPPORTUNITIES

Subtitle A—Glass Ceiling Commission

Section 301. Short Title. Section 301 sets forth the short title of the subtitle, the "Glass Ceiling Act of 1991".

Section 302. Findings and Purpose. Section 302 sets forth the findings and purpose of the subtitle.

Section 303. Establishment of Glass Ceiling Commission. Section 303 establishes the "Glass Ceiling Commission" and authorizes the appointment of 17 persons, five of whom are appointed by the President, three of whom are appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate, one of whom is appointed by the Majority Leader of the House of Representatives, one of whom is appointed by the Minority Leader of the House of Representatives, one of whom is appointed by the Majority Leader of the Senate, one of whom is appointed by the Minority Leader of the Senate, two of whom are Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives, two of whom are Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate, and one of whom is the Secretary of Labor who is also the Chairperson of the Commission. This section also specifies that in making their appointments, the Speaker of the House of Representatives and the Majority Leader of the Senate, in connection with their jointly-made appointments, and the President should consider the background of each appointee, including individuals from business and from organizations representing women and minorities, as well as individuals with academic expertise or other recognized ability regarding employment and discrimination issues. Appointment is for the life of the Commission.

This section also specifies rates of pay for members who are not public officials, authorizes payment for travel costs, fixes a quorum for meetings, and requires that the Commission hold a minimum of five meetings prior to the completion of its report and once a year thereafter.

Section 304. Research on Advancement of Women and Minorities to Executive Management and Senior Decisionmaking Positions in Business. Section 304 requires the Commission to conduct a comprehensive study concerning opportunities for, and artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business, including the preparedness of women and minorities to advance to upper-level decisionmaking positions, businesses in which women and minorities are promoted to such positions and those in which they do not receive advancement opportunities, practices and policies which result in a diverse workforce and the successful promotion of women and minorities to senior management positions, and other matters related to the glass ceiling. This section also requires that the report contain recommendations relating to the promotion of opportunities for, and the elimination of artificial barriers to, the advancement of women and minorities to executive management and senior decisionmaking positions in business. This section further provides that the report of the Commission must be completed within 15 months after the date of enactment and identifies to whom it is to be sent. Finally, this section provides that the Commission may conduct such additional research and study relating to the glass ceiling as a majority of its members determines to be necessary upon the completion and dissemination of its report.

Section 305. Establishment of the National Award for Diversity and Excellence in American Executive Management. Section 305 establishes the "National Award for Diversity and Excellence in American Executive Management" to be presented on an annual basis by the President or the designated representative of the President to a business which has made substantial efforts to promote the opportunities and development experiences of women and minorities to foster their advancement to executive management and senior decisionmaking positions (including the elimination of artificial barriers to such advancement) and is deserving special recognition as a consequence.

Section 306. Powers of the Commission. Section 306 prescribes the powers of the Commission, including conducting hearings, taking testimony, entering into contracts, making expenditures, and receiving voluntary service, gifts and donations.

Section 307. Confidentiality of Information. Section 307 requires that all informa-

tion acquired by the Commission in carrying out its duties relating to the employment practices and procedures of individual businesses and regarding employees of the business shall be kept confidential unless the prior written consent of the particular business or employee, as the case may be, is obtained. Information concerning the aggregate employment practices and procedures of a class or group of businesses or the employees of such businesses is not subject to this confidentiality restriction.

Section 308. Staff and Consultants. Section 308 authorizes the Commission to appoint staff and employ experts and consultants and sets out rates of pay for such individuals. This section also authorizes the Commission to obtain materials, personnel, or other support from Federal agencies.

Section 309. Authorization of Appropriations. Section 309 authorizes the appropriation of such sums as are necessary to carry out the provisions of the subtitle which sums are to remain available until spent, without fiscal year limitation.

Section 310. Termination. Section 310 provides that the Commission and the authority to make the award will terminate four years after the date of enactment.

Subtitle B—Opportunities in Apprenticeship

Section 321. Short Title. Section 321 sets forth the short title of the subtitle, the "Opportunities in Apprenticeship Act of 1991".

Section 322. Findings and Purpose. Section 322 sets forth the findings and purpose of the subtitle.

Section 323. Outreach and Education Program. Section 323 directs the Secretary of Labor to establish an outreach and education program designed to expand the opportunities for women and minorities in apprenticeship programs registered with the Department of Labor. Such outreach and education program shall include the development and dissemination of information on apprenticeship programs, the provision of technical assistance, and the establishment and promotion of model preapprenticeship and apprenticeship programs directed at women and minorities. The Secretary's program shall include assistance to such groups and entities as educational institutions, employers, employer associations, unions, state apprenticeship councils, sponsors of apprenticeship programs, and organizations representing and assisting women and minorities.

This section also provides that the Secretary is authorized to award grants from appropriated funds to the foregoing groups and entities as part of the education and outreach program. Such grants shall be based on an application for assistance pursuant to standards set by the Secretary, with the grant amount equaling up to 75 percent of the costs of the outreach activities undertaken by the recipient.

Section 324. Preapprenticeship Training Grant Program. Section 324 directs the Secretary of Labor to establish a program of grants to sponsors of registered apprenticeship programs in connection with the provision of preapprenticeship training and related support services to women and minorities. Sponsors of eligible preapprenticeship training programs must indicate that positions are available in the apprenticeship program for which the preapprenticeship training is provided and use all reasonable efforts to place eligible participants in the apprenticeship program following completion of such preparatory training. Such grants shall be based on an application for assistance pursuant to standards set by the Secretary, with the grant amount equaling up to 75 percent of the costs of the preapprenticeship and supportive service activities undertaken by the recipient.

Section 325. Study of Participation of Women and Minorities in Apprenticeship. Section 325 requires the Secretary to conduct a comprehensive study relating to the participation of women and minorities in registered apprenticeship programs, including barriers to participation in such programs, recruitment, retention in such programs, preapprenticeship training, employment success following completion of the apprenticeship program, model apprenticeship programs, and other relevant issues affecting the participation of women and minorities in registered apprenticeship programs. This section also requires that the report of the Secretary be completed within two years after the date of enactment and identifies to whom it is to be sent.

Section 326. Authorization of Appropriations. Section 326 authorizes the appropriation of $8 million for fiscal year 1992 for the education and outreach grants pursuant to section 323(e) and $2 million for the activities of the Department of Labor in connection with its outreach and education program and the completion of the study. This section further authorizes the appropriation of $15 million for fiscal year 1992 for the preapprenticeship grants pursuant to section 324. Finally, this section provides that the Secretary may reserve not more than five percent of such appropriated funds to carry out the enforcment of nondiscrimination and affirmative action requirements relating to registered apprenticeship programs, including the training of Department of Labor personnel for such enforcement purposes.

Subtitle C.—Opportunities for Alternative Work Arrangements

This subtitle expresses the sense of the Congress that the Office of Personnel Management has made commendable efforts to develop alternative work arrangements through flexible scheduling and job sharing programs and that such efforts should be continued. Alternative work arrangements assist federal workers in meeting family responsibilities, and through OPM's efforts, such programs serve as a model for state and local governments and private sector employers and their respective employees.

Mr. SEYMOUR. Mr. President, I am proud to rise with the distinguished minority leader, Senator DOLE, and several of my colleagues to introduce the Women's Equal Opportunity Act of 1991.

For too many years, we as a society have failed to confront and adequately eliminate the problems and fears that women are subjected to in the workplace, in their communities and, sadly, in their own homes.

Many statistics will be cited here on the floor today and throughout what I anticipate will be a lively, substantive debate to describe the instance of discrimination and abuse. In this regard, I would like to take a few moments to comment on three specific provisions in our legislation where progress must be made.

First, I am especially pleased our bill would impose stiffer penalties for drug dealers convicted of plying their trade on pregnant women. Let's be clear: The victims of this crime are not just the addicted mothers, but their unborn children who will enter this world with two strikes against him.

When I was chairman of the California Senate Select Committee on Substance Abuse, I had the privilege of conducting numerous hearings throughout the State on the effects of drug and alcohol abuse on the fetus and children. As many members already know, the degree of pain and suffering a substance-exposed child must endure throughout their lifetime is criminal.

I ask each of you. How can we live with the shocking fact that approximately 375,000 babies are born each year already addicted to drugs. In California alone, this number stands at about 30,000 addicted newborns who will face a life of turmoil. These statistics don't include those babies who die a few hours or a few short days after birth, the innocent victims of drug abuse and drug trafficking. Very simply, it is child abuse through the umbilical cord.

This legislation will not resolve all sides of the drug baby issue. It will, however, send a strong and unequivocal message to drug dealers: If you are convicted of dealing drugs to a pregnant worman, you will face up to 30 years in prison for a first offense. The second time around your debt to society will increase up to 45 years in prison.

Second, keeping a woman safe must begin within her own home. In that regard, this legislation addresses the issue of domestic violence. I am pleased to see that recently there has been a growing awareness of the problem, and want to recognize the efforts Senator BIDEN and other Members in the last Congress made to bring about reforms in this area. It does not take much to see that action is needed:

Every 18 seconds, a woman is beaten.

Three to four million women are battered each year.

Each day, three women in our Nation will die, victims of domestic abuse.

Looking at these numbers, I have to ask myself how many cases go unreported? Is this just the tip of the iceberg? Obviously, one of our goals must continue to be the focus on community awareness, which can lead to better prevention. Women must have the assurance that we do not condone intrafamilial abuse, and that we will do everything possible to protect them and their children. We must provide them with the tools to escape a life-threatening, violent environment. Failure to do so only adds to the pain and increases the likelihood that other members of the family, namely children, will become emotional if not physical victims of abuse.

This measure takes a multifaceted approach to the problem. It focuses on increasing victim services by coordinating local efforts. It recognizes the need for outreach, education, and prevention. And it places a special empha-

sis on protecting our children by urging the courts to consider domestic violence as evidence of child endangerment in custody decisions.

A third point I want to raise on the floor today surrounds a rape victim's right to know whether or not her assailant is infected with the HIV virus. The reasoning is simple: Every 6 minutes, a woman is raped. Currently, crisis centers in California are dealing with between 20,000 and 30,000 victims of sexual assault each year, and I'm sure many more victims are terrified and consequently do not report such attacks. With the rapid spread of the HIV virus, it's clear that rape victims, their partners and children are at higher risk of contracting AIDS.

Our bill would mandate HIV testing of sex offenders and the disclosure of the test results to the victims.

Mr. President, the intent of this legislation is clear: it seeks to protect women from the abuses of society, whether they occur in the home, the workplace, or in our communities. I have only touched on three aspects of this omnibus measure, but I know there will be an opportunity at a later date to discuss each provision of the bill in greater detail.

Needless to say, this body must continue in its resolve to protect all of our citizens, and this bill takes a major step in that direction. I can attest to the fact that these issues are on the front burner for people in California, so I do hope we can join together in true bipartisan spirit to implement critically needed reforms in this Congress. The women and children of this Nation deserve no less.

Mr. MURKOWSKI. Mr. President, I am pleased to join as an original cosponsor of the proposed Women's Equal Opportunity Act of 1991. This legislation, which is sponsored by the Republican leader in the Senate, addresses many of the key issues which face women including domestic and street violence, sexual harassment in the workplace, and equal job opportunities.

This important and comprehensive legislation would, among other things:

Provide additional monetary remedies for persons alleging harassment;

Require colleges to disclose sex crime statistics to police and parents;

Authorize capital punishment for murders committed during a sex crime;

Increase penalties for those who sell drugs to pregnant women;

Establish a task force on violence against women;

Authorize the victim of Federal sex offenses to seek restitution for medical expenses associated with related sexually transmitted diseases;

Require AIDS testing of any person charged with Federal sex offenses; and

Establish a commission to conduct a study on the opportunities for and the barriers to employment advancement for women.

This bill should go a long way in addressing the important and valid concerns of many women. I hope that the Senate Judiciary takes prompt action on this legislation.

Mr. McCAIN. Mr. President, I am pleased to offer my wholehearted support for the Women's Equal Opportunity Act of 1991. Equality is one of the bedrocks upon which our Nation stands. Yet, for all the progress we have made in the past to ensure equal opportunity, and Mr. President we have done much; we must do more. We must make sure that, in principle and practice, women are afforded the same opportunities and protections that are offered to men. The legislation introduced today by the distinguished Republican leader is an important step in that direction.

First, I am extremely pleased that this legislation addresses the safety of women on our streets. We must deter criminals from committing the violent and heinous crimes which affect the lives of so many women. Certainly, any solution to this problem will be multifacetted. Nonetheless, the result is the same. Those individuals in our communities who prey on women and count on society's passive reaction to their vile behavior are on notice that we will no longer tolerate such action. This legislation will establish tough penalties to serve as a deterrent. Criminals must know that if they commit atrocities against women, then they will face harsh penalties rightly imposed by a society seeking justice.

Additionally, Mr. President, for far too long we have put the rights of the perpetrators of these sick crimes ahead of those of the victims. This bill seeks to remedy this unjust situation. There is no reasonable rationale for maintaining the status quo in this area. The legislation we are introducing today will work to correct this inequity.

Title II of this legislation specifically addresses domestic and street crime perpetrated against women. First, the bill requires colleges and universities to disclose crimes involving sexual contact, sexual assault, and rape. Second, it increases the penalties for murders in connection with sexual assaults and child molestations by authorizing the death penalty for those convicted of these crimes. Third, it increases penalties for repeat sex offenders by providing that second or subsequent offenses be punishable by a term of imprisonment of up to twice that presently authorized by law.

Additionally, title II establishes a Federal cause of action against a producer, distributor, exhibitor, or seller of sexually explicit material by a victim of a rape, sexual assault, or sexual crime. In this way, pornography victims can receive restitution from the criminal who has abused them. The bill also amends the Federal restitution statute to allow victims of Federal sex offenses to seek restitution for medical expenses related to sexually transmitted diseases, child care, and other costs related to the prosecution of the crime. It also facilitates the prosecution of these crimes by ensuring that evidence about prior sexual offenses is admissible in court. It further seeks to facilitate prosecution by proposing new standards for professional conduct by lawyers which prohibit trial tactics intended to embarrass, harass, or humiliate a victim of a sex crime.

Furthermore, this act would further protect victims of sexual assault by requiring the testing of any person charged with a Federal sex offense for the HIV virus. While I believe that it is important to protect the privacy of those who may be infected with the virus, the victim of sexual assault must be given the right to know if he or she is at risk of contracting the disease. When a sexual assault occurs, combined with the spread of the HIV virus in our communities against their will, victims can be placed in a life threatening situation, one that not only affects the victim, but where the repercussions may echo through all of society.

The bill also establishes a 10-member national task force which addresses violence against women under the direction of the Attorney General. It also authorizes $60 million under the Family Violence Prevention and Services Act for fiscal years 1992, 1993, and 1994. This is an increase of $35 million over the current authorization.

The bill also provides a $25 million authorization to be used for programs dealing with rape prevention and education. Recognizing the increase in assaults commonly referred to as date rapes, these programs would address the issues affecting victims who are assaulted by unknown as well as known assailants.

In addition to addressing violence against women, this legislation also promotes employment opportunities for women. Mr. President, the Bureau of Labor Statistics reports that women earn only 68 percent of what men earn. This figure points to something patently wrong in our society, and I can find no justification for this disparity. The statistics substantiate the unfortunate fact that in many sectors of our society women are treated as second-class citizens. We only need to look as far as this esteemed institution to see the results of such inequity. Women are 51 percent of our population, yet only 2 percent of the Senate. There is no viable reason for this disparity.

Mr. President, much remains which needs to be done in this area, and this bill is an important step toward augmenting the body of labor and civil rights laws that govern gender discrimination and employment. First, it establishes a Glass Ceiling Commission charged with proposing policies for

businesses which would promote opportunities for the advancement of women and minorities, and ultimately eliminate artificial barriers to their advancement. Second, it establishes the "National Award for Diversity and Excellence in American Executive Management" to be given by the President annually to a business which successfully breaks down these barriers.

Third, it directs the Secretary of Labor to establish an outreach and education program directed at providing women and minorities opportunities to participate in registered apprenticeship programs. Related to this effort, it authorized $2 million for the program and a study of women and minorities' participation in these programs.

Fourth, this legislation seeks to provide preapprenticeship training to women and minorities, and authorizes $8 million for grants to groups involved in outreach and education programs, and $15 million for grants to registered apprenticeship programs.

Another aspect to the bill addresses equal opportunity interests for women already in the workplace. It establishes a court-ordered remedy under title VII of the Civil Rights Act for sexual harassment. Currently, the only remedies available to a victim of sexual harassment are back-pay, declaratory, and injunctive relief. This bill provides an additional remedy of up to $100,000 for the first act of sexual harassment, and $150,000 for each subsequent act. Further, it allows persons alleging sexual harassment to seek temporary or preliminary injunctive relief and directs the courts to expedite these cases. Finally, it directs the Equal Employment Opportunity Commission to establish technical assistance programs for small employers to more effectively implement laws addressing sexual harassment.

Mr. President, I believe that our Founding Fathers intended for the phrase "all men are created equal" to include women. We must ensure that the rules of our society accurately reflect that concept. If our Nation is to continue to be the torchbearer of freedom and equality in the world, we must be vigilant in our efforts to protect our citizens and their constitutional rights. This bill seeks to do just that, and I urge my colleagues to support this important legislation.

Mr. ROTH. Mr. President, I am pleased to join with the distinguished minority leader today in offering the Women's Equal Opportunity Act of 1991.

I commend Senator DOLE for bringing forward legislation to advance opportunities and bring redress for women in the work force, at home, and at school and to promote action against domestic street crime and violence against women. The statutory changes embodied in the bill represent an effort to move forward constructively beyond simple rhetorical characterizations to effect positive change.

Specifically title I of the legislation advances Federal civil rights remedies. It overturns the Supreme Court decisions in Patterson and Lorance and enhances the remedies for sexual harassment in the workplace under title VII. By advancing the civil right against invidious discrimination in the workplace women should be guaranteed the right to come forward without fear of personal reprisal for refusing to tolerate insufferable conditions in their place of employment. Title III of the bill seeks to open up employment opportunities for women. Following through on an initiative of former Labor Secretary Elizabeth Dole, the legislation establishes a glass ceiling commission to conduct a study on the advance and promotion of women and minorities to senior management and decisionmaking positions and establishes an annual national award for excellence in the advance of women and minorities in business to bring recognition to businesses which bring a progressive approach to their employment practices. Under title III the legislation seeks to address the lack of participation of women and minorities in the Bureau of Apprenticeship and Training and Certifies Apprenticeship and Training Programs which provide access to the higher paying skilled jobs in the manufacturing and construction industries. The final component of title III of the legislation gives recognition to alternative work arrangements developed by the Office of Personnel Management for the Federal Government and urges the continuation of these efforts.

Title II of the legislation contains several components which address domestic and street crime violence against women and promotes safety on college and university campuses. The bill expands on the law enacted in the 101st Congress which required schools to establish and disclose campus security policies and inform students and employees of campus crime statistics. It would require schools to disclose and specify crimes involving sexual contact, sexual assault, and rape and would require colleges and universities to disclose any such information to local and State police authorities. Mr. President, a national magazine recently highlighted the dramatic problem of sexual abuse on our college campuses and the lack of appropriate response to such serious crimes. The provisions of the Women's Equal Opportunity Act would help reverse this attitude and create an environment where women on our campuses could be secure and where any personal violence is dealt with swiftly and surely. Title II contains several other measures in the area of criminal conduct against women and children. It includes provisions to provide for stronger penalties for Federal sex offenses, enhanced penalties for drug distribution to pregnant women, enhanced restitution for victims of sex crimes, reform of Federal civil and criminal procedure in sex offense cases, promotes the right of victims to an impartial jury, establishes a Federal task force on domestic and street crime violence against women and expands funding and the provisions of the Family Violence Prevention and Services Act.

Again, Mr. President, I commend Senator DOLE for this initiative and I hope we will be able to act promptly on this important legislation.

Mr. BURNS. Mr President, I want to thank Senator DOLE for his leadership on this important issue. I am pleased to be an original consponsor of the Women's Equal Opportunity Act—a bill which makes a two-pronged attack on the problems of discrimination against women.

In the workplace, it protects women from harassment and addresses issues of equal opportunity for advancement. By the year 2000, women will make up 47 percent of the work force. We need to make sure that employment practices provide the flexibility needed to ensure their advancement. This bill establishes a "Glass Ceiling Commission" to explore ways to break the artificial barrier which keeps women and minorities from advancing to upper level management positions. One area which I think deserves special attention is the advancement of single mothers in the work force. Often times our businesses are biased toward the advancement of those who can work 60- to 80-hour weeks. It is my hope that the Commission can explore ways for business to advance capable women—single mothers in particular—whether or not they fill the traditional, hard-working executive stereotype.

On our campuses and in our streets, this legislation brings the force of the law down harder on those who commit acts of violence against women and children. In recent years we have passed laws to crack down on the drug dealers who wreak havoc on our streets, I believe that the perpetrators of violent crimes against women and children deserve a treatment just as severe. This bill does just that by authorizing the death penalty for murders connected to sex crimes which occur under the Federal jurisdiction. It also doubles the penalties for repeat sex offenders and for drug dealers who sell drugs to pregnant women. In addition, the bill changes the way in which the courts prosecute crimes of sexual assault and child molestation and establishes a "National Task Force on Violence Against Women" to help develop national uniformity in the laws that protect women from violent crimes.

We have all heard a lot lately from our college campuses regarding safety

problems. For too long, colleges and universities have been secretive about crimes involving sexual contact, sexual assault, and rape. This bill requires them to come forward and disclose information about these crimes. This practice is not to incite fear, but rather to increase awareness and safety on our campuses.

Finally, I am sure many people also remember the chilling interview between Dr. James Dobson and Ted Bundy before he was executed. In that interview, Bundy talks about the influence pornographic material had on his mindset which ultimately led him to commit those heinous crimes. This legislation holds the producers, distributors, exhibitors, and sellers of pornographic material accountable for their actions. It gives the victims of pornography-inspired crimes—who are most often women—redress against them in the civil justice system. The provision is narrowly defined in order to protect the first amendment rights of those who choose to produce and distribute pornography, yet it recognizes, for the first time, the rights of the victim.

I have not summarized the entire bill, but rather I have highlighted provisions which I find particularly noteworthy. I urge my colleagues to look seriously at this legislation in its entirety.

Mr. D'AMATO. Mr. President, I am pleased to lend my support today to legislation that will secure the right of women to be free of sexual harassment and violence and better able to achieve meaningful advancement on the job. The bill that Senator DOLE and I are introducing today, the Women's Equal Opportunity Act of 1991, attacks problems that currently diminish our society. Once enacted, this bill will develop a level playing field for women in the workplace, and a safe environment on the streets and in the home.

The first section of this bill establishes provisions for the receipt of monetary damages of up to $150,000 for acts of sexual harassment in violation of civil rights law. This takes the place of the current remedy which only allows backpay and declaratory and injunctive relief. In addition, victims would be able to seek injunctive relief at a pace quicker than is currently available. By legislating the remedies under this section, the Supreme Court decisions in Patterson versus McLean and Lorance versus AT&T would be vitiated.

The second section of this bill addresses the increasing tragedy of street crime and violence against women. Presently, we are not doing enough to stop these heinous acts. Under this section, penalties for sex crimes will be increased. For repeat offenders and those who distribute drugs to pregnant women, current penalties will be doubled. For anyone convicted of murder while in connection with a sexual assault or child molestation, the death penalty will be authorized. Also, this bill incorporates the provisions of the Pornography Victims Compensation Act. This allows for a Federal cause of action against producers and distributors of pornography if connected with a sex crime. In addition, HIV testing will be required of anyone charged with a Federal sex offense before pretrial release. It also enhances penalties for knowingly transmitting HIV. This section also establishes a "National Task Force on Violence Against Women" to determine ways to decrease such violence.

The third section of this bill establishes a 17-member Glass Ceiling Commission. The duty of this Commission will be to conduct a study and report back to the Congress within 15 months on why this ceiling exists and what remedies would best remove these barriers. Incentive programs would also be established to recognize businesses that have made substantial efforts to remove the glass ceiling. Also, grant funds would be made available to women and minorities for apprenticeship training programs.

I believe that this bill goes a long way toward fostering equality in the workplace and safeguarding aganst violence. The provisions in this legislation are sorely needed in our modern society and I am pleased to be a cosponsor of this bill. I commend Senator DOLE for his leadership on this issue and it is my hope that this bill will be quickly enacted.

Mr. WARNER. Mr. President, I am pleased to join my colleagues in cosponsoring the Women's Equal Opportunity Act of 1991. This comprehensive piece of legislation covers three main issues which are of concern to all women in our society. The three issues are: Federal civil rights, employment opportunities, and domestic and street violence against women.

With respect to the issue of Federal civil rights, title VII currently prohibits intentional discrimination in the terms and conditions of employment, but it does not provide adequate remedies for certain unlawful practices, such as sexual harassment in the workplace. This is a problem in our society and additional remedies for this situation are warranted.

Promoting opportunities for the advancement of women and minorities in the business world is a goal that we should be striving to achieve. I have hosted a number of forums called Virginia Woman '90s in my State. The forums are comprised of workshops lead by numerous professionals who provide information and guidance to women entering or assuming positions in the business community.

One issue which I am particularly concerned about is the increase in domestic and street violence against women. The facts are sobering indeed: Every fifth women in a hospital emergency room is there because of battering, and 30 percent of female homicide victims die at the hands of their husbands or boyfriends. Physical abuse at home is the most common cause of women's injuries: It occurs more often than auto accidents, muggings, and rapes combined. According to the U.S. Surgeon General, battering is the single largest cause of injury to women in the United States.

Last September, the attorney general of the Commonwealth of Virginia created an attorney general's task force on domestic violence to investigate and address these issues.

Because domestic violence is a multifaceted problem that demands a multifaceted response, the attorney general's task force on domestic violence includes law enforcement officers, prosecutors, judges, probation officers, persons providing services to victims of domestic violence, and other concerned citizens. The task force will seek to make recommendations in three major areas: immediate intervention by law enforcement officers; reporting by law enforcement, medical personnel and others; and education.

While legislation is only one part of a comprehensive response to the problem of domestic violence, it is an important part. Appropriate laws make it clear that while domestic violence is, indeed, a problem facing our society, it will not be tolerated.

By Mr. BROWN:

S.J. Res. 75. Joint resolution pertaining to United States economic sanctions against Iraq; to the Committee on Foreign Relations.

AMERICAN PRISONERS OF WAR IN IRAQ

Mr. BROWN. Mr. President, I am introducing a resolution to require the return of all America's POWs and a full accounting for all of our missing in action to date. These steps would be required before the economic sanctions that are imposed on Iraq are rescinded.

Throughout our experience with the Vietnam war, this Nation sadly found that many of our POWs, that we had strong evidence were in the hands of the North Vietnamese, were never returned following the war. This is a mark of shame on this country and on North Vietnam. We must make sure that folly, that mistake not be repeated.

If we owe any group in this Nation our full support, it surely must be the brave men and women who put their lives on the line to defend this Nation and defend freedom around the world. To turn our backs on the men and women who serve us in combat surely must be a mark of shame that we cannot stand to be repeated.

This resolution clearly states the policy of this Nation must be to require full accounting of all of the missing in action and require the return of

all of our POWs before we relax those economic sanctions. I am convinced have a real impact on the country of Iraq.

I hope all the Members of the Senate will join me in this effort. I believe we have in our hands the ability to ensure American service men and women in Iraq are not forgotten. We have the ability to insist our POWs are returned.

We should not allow this conflict to end and our efforts to be relaxed without insisting that American men and women have the full force and effect of this Nation that stands behind them. We can end this conflict and end it quickly, but hopefully we will also insist at the termination of it that the missing in action and the POWs are treated fairly as well.

Mr. President, in the past weeks, Americans everywhere have joined in sincere displays of support and affection for our men and women serving in the Persian Gulf. Buildings around the Nation have been decorated with yellow ribbons and flags, some so large they can be seen from the air. Billboards announce our backing for Operation Desert Storm, cars fly yellow ribbons from their antenna and homes in every town across our country are decorated to proclaim their solidarity with our troops in the Middle East.

No group of service men and women have received more of our concern and our attention than have the brave captives being held as prisoners of war in Iraq. All Americans were saddened and enraged as we saw them paraded before television cameras, obviously beaten, and forced to denounce the country they have fought for so courageously.

The joint resolution I am introducing today I introduce on their behalf, and on behalf of their families. These seven men and at least one woman have suffered to stop aggression and liberate Kuwait from the clutches of Iraq's merciless dictator. Not only are these men and women suffering, but their families suffer too as they face the difficult battle of maintaining hope in the face of uncertainty.

Once Kuwait is liberated, we must take every possible action to ensure every American held prisoner is freed, and that those missing in action are accounted for to the fullest extent possible.

This resolution maintains those economic sanctions already in place against Saddam's regime until all the coalitions' prisoners of war are released, and those missing in action are fully accounted for. Keeping sanctions in place ensures we keep the pressure on Saddam even after Kuwait is liberated.

To be certain the effectiveness of our sanctions is not undermined, the resolution also requires the President to make every effort to ensure the members of the international coalition maintain the full range of their sanctions as well until all allied prisoners of war held by Iraq are released.

Why continue worldwide sanctions even after Saddam withdraws or is forced from Kuwait? The reason is clear. There are still 8,177 American prisoners taken during the Korean war who have yet to be accounted for by the Government of North Korea. Furthermore, there are 2,285 American prisoners taken during the Vietnam conflict who have yet to be accounted for by the Government of North Vietnam.

The United States ended hostilities but failed to maintain any leverage over these two governments. When we asked, requested and finally pleaded for their return or for any knowledge about their disappearance, the Governments of North Vietnam and North Korea ignored us. We cannot allow history to repeat itself.

Continuing sanctions will allow us to maintain our leverage and our vigilance, that these men and women who are so bravely imprisoned might one day be free.

I urge my colleagues to join me in passing this resolution. I ask that a copy of the joint resolution be printed in the RECORD.

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

S.J. RES. 75

Whereas the United States, as the world's leading democracy, is at the forefront of the United Nation's effort to liberate Kuwait from the hand of a destructive tyrant, Saddam Hussein.

Whereas the American people are deeply committed to the brave men and women serving in the Armed Forces of this Nation.

Whereas over half of a million of America's servicemen and women are risking their very lives to liberate the people of Kuwait, and to prevent further aggression by Saddam Hussein.

Whereas 8,177 American prisoners taken during the Korean war have yet to be accounted for by the Government of North Korea.

Whereas 2,285 American prisoners taken during the Vietnam conflict by the Governments of North Vietnam and Laos have yet to be accounted for.

Whereas the American people owe no greater obligation than to stand up for those who have been captured or are missing in action while risking their lives in defense of country.

Whereas a complete return of all those known to be captured by the Government of Iraq and a fullest possible accounting of those known to be missing in action during the current war in the Persian Gulf is of the highest national priority: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President shall not lift United States economic sanctions currently in place against Saddam Hussein's regime in Iraq until the regime has released all prisoners of war and accounted as fully as possible for all those missing in action.

(b) In addition, the President shall make every effort to ensure the multinational coalition maintains the full range of econmic sanctions against Saddam Hussein's regime in Iraq until the regime has released all prisoners of war and accounted as fully as possible for all those missing in action.

By Mr. DOLE (for himself, Mr. BURNS, Mr. GORE, Mr. MCCAIN, Mr. LOTT, Mr. KASTEN, Mr. WARNER, Mr. CRAIG, Mr. THURMOND, Mr. DOMENICI, Mr. MACK, Mr. COATS, Mr. GRASSLEY, Mr. COHEN, Mr. BREAUX, Mr. ROBB, Mr. WIRTH, Mr. DASCHLE, Mr. NUNN, Mr. FORD, Mr. DANFORTH, Mr. HEINZ, Mr. INOUYE, Mr. HOLLIINGS, and Mr. CHAFEE):

S.J. Res. 77. Joint resolution relative to telephone rates and procedures for Operation Desert Storm personnel; to the Committee on Commerce, Science, and Transportation.

TELEPHONE RATES FOR OPERATION DESERT STORM PERSONNEL

Mr. DOLE. Mr. President, recent news accounts have described how America's service men and women deployed in the gulf, and their families, have discovered how easy it is to call their loved ones in, or from, the war zone—and then gotten a nasty shock when the phone bill arrived. Dependents and families already bearing the burdens of separation—and, in the case of some activated reservists, reduced incomes—have been confronted with the additional financial hardship of three- and four-figure phone bills.

There are even instances of disconnection of telephone service due to inability to pay these steep bills immediately.

I ask unanimous consent an article appearing in the Washington Post be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. DOLE. Ironically, the largest single factor in these high bills is the surcharge imposed by Saudi Arabia, the nation our troops have been helping to defend since last August. For every call to or from the United States that uses Saudi circuits, the long distance carrier pays the Saudis $1.05 per minute.

But even for calls that use American satellite earthstations, bypassing Saudi facilities altogether, the Saudis get paid $.73 per minute—still more than half the cost of the call. Since August 2, almost $15 million has been paid to the Government of Saudi Arabia for long distance phone calls to, or from, the States.

Mr. President, it seems to me that is a bum deal—A real wrong number. Our fighting forces and their families deserve better. If anyone should get a fair shake, it is those who are doing the hard work of freedom, not only for Americans, but for Saudis as well.

The Federal Communications Commission has just today expressed its concern about these rates, and is seeking to work with local authorities to prevent service cutoffs. But talking will not do it. Fast action is required. At this rate, coalition forces may liberate Kuwait before our service families are free from crushing telephone rates.

This resolution: calls on the State Department to seek elimination of the $.73 surcharge required by the Saudi Government on calls not using Saudi equipment, and reduction of the rates on calls transmitted by, or to U.S. Armed Forces personnel in the gulf;

Asks the FCC to ensure that local telephone companies adopt flexible billing procedures for spouses or families incurring extraordinary phone bills because of calls to, or from loved ones on duty in the gulf;

Asks the FCC to work with State authorities to ensure that service families aren't cut off from telephone service because they are unable to pay such bills immediately; and

Urges long distance carriers to file new, lower emergency rates with the FCC, to be in effect for the duration of the war.

Mr. President, I urge my colleagues to join me in seeking this easing of the burdens already borne by our service personnel, their spouses and families.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 77

Whereas United States service men and woman deployed in the Persian Gulf for Operation Desert Storm rely heavily on telephone service to communicate with their families at home;

Whereas in addition to the significant cost of a call to or from Saudi Arabia there is imposed a $.73 per minute surcharge by Saudi Arabia on all calls not using Saudi telecommunications facilities;

Whereas the expense of these calls has placed an additional burden on members and families of the armed forces at a time when they are already bearing great burdens for the Nation and the world;

Whereas the Federal Communications Commission has special tariff procedures which allow for promotional offerings such as an "Operation Desert Storm Special Offering": Now, therefore be it

Resolved, That in recognition of the sacrifices borne by the men and women of the United States Armed Forces participating in Operation Desert Storm, and by their families;

(1) the Department of State immediately undertake to convince the government of Saudi Arabia to eliminate the $.73 per minute surcharge where Saudi facilities are not used in transmission, and to reduce the charge applicable to calls using Saudi facilities; and

(2) the Federal Communications Commission exercise its existing regulatory authority to ensure that local and inter-exchange telephone service providers adopt flexible billing and procedures and policies in connection with costs incurred by service persons or their families for telephone calls to and from the gulf; and

(3) that the Federal Communications Commission work with appropriate state authorities to ensure that no family or spouse is disconnected from basic telephone service due to financial hardship imposed by such costs; and

(4) United States long distance service carriers should file, and the Federal Communications Commission should immediately consider, special reduced rates to and from the Saudi Arabia theatre, to be effective for the duration of the conflict.

EXHIBIT 1

[From the Washington Post, Feb. 12, 1991]

FAMILIES FACE HIGH BILLS WHEN GIS PHONE HOME

MANY DON'T REALIZE COSTS, CAN'T PAY

(By John Burgess and Sue Anne Pressley)

For seven straight nights recently, Diana Steele of Rockville had the thrill of speaking to her husband, Lt. Cmdr. Jeffrey S. Steele, a U.S. Navy medical officer serving in the Persian Gulf.

Forewarned that overseas phone rates were steep, the Steeles tried to economize. They limited their calls to just a few minutes each and the conversations seemed to be over before they began.

Then Diana Steele got her phone bill: $250. "I was shocked," she said yesterday.

Around the country, many families with loved ones in the Persian Gulf feel the same way. Although telephone calls to the war zone are a treasured link and source of comfort, many families are ignorant of the cost and in some cases cannot pay the bills.

"Clearly there has been some disinformation and confusion" over billing rates, said AT&T spokesman Herb Linnen. Despite efforts to inform GIs of the costs, Linnen said, rumors abound in the war zone that all calls are billed as if they orginated in New York or are free, as AT&T's were briefly last fall.

One family ran up a $1,400 bill, Linnen said. And the local phone company of a Texas woman last month disconnected her newly installed phone after she declined to pay immediately a $424 bill run up talking to her husband in the gulf.

According to Marta Greytok, a member of the Public Utility Commission of Texas, who has taken up the issue, bills of $500 to $800 are common in military families.

AT&T last week set up a special hot line, 1-800-323-HELP, which families can call to hash out gulf bills, and is getting more than 1,000 calls a day on it. It is intended only for people with family in the gulf.

Officials at the Federal Communications Commission have begun studying how it might lower the rates. "We want to make sure our servicemen and women are charged fair prices that reflect only legitimate, underlying costs," FCC Chairman Alfred Sikes said in a statement yesterday.

The phone service in the gulf marks another wartime first: allowing soldiers to call home simply, if not inexpensively, from a combat zone. Pilots can return from raids over Iraq and call home almost immediately. Long-distance companies have set up large phone centers in the desert, with satellite dishes beaming their calls directly home.

AT&T has installed 1,000 special phones in Saudi Arabia. GIs who pick them up are immediately connected to an operator in the United States. If they call collect, a 10-minute conversation costs $19; if they use a credit card, it runs about $16.

MCI Communications Corp. is also present, with 120 phones, as is a company called Military Communications Corp., which in normal times handles telephones on military bases in the United States. US Sprint Communications Co. has a service that provides free phone calls through amateur radio operators.

Saudi Arabia is collecting fees on calls, according to AT&T—73 cents per minute in the case of the company's special phones—even when they make no use of the Saudi phone system, a practice that has engendered some criticism in the United States. "We're over there defending them," said Greytok, suggesting the Saudis should waive the charge.

Confusion over billing has been heightened by the fact that some calls were free. AT&T offered free calls for three one-week periods before war broke out, but otherwise it has charged for them. Linnen said that rates are posted at its telephones in Saudi Arabia but that not everyone seems to have gotten the message. Linnen said the free calling cost AT&T about $7 million; it has spent about $1.3 million more on a free service that lets people send facsimile messages to the gulf from military bases and AT&T retail stores. Rates it charges for gulf toll calls to the United States are set essentially at a break-even basis, he said, while AT&T loses money on every call from Saudi Arabia to U.S. bases in Gemany, from which many servicemen were shipped to the gulf. Currently, about 25,000 calls are being placed daily on the AT&T special phones, up from about 13,000 before war began on Jan. 16.

Linnen said AT&T is not offering to waive charges for families with big bills. Callers to the AT&T hot line are counseled on rates and generally referred to their local telephone companies, which act as bill collectors for AT&T and can offer installment payment plans. Linnen said some of the calls to the hot line were from people offering to donate money to offset bills run up by service families.

The FCC believes it has authority to set up special rates for gulf calls, which would be subsidized by other callers. But an official said yesterday the FCC has no plans for that now.

Mr. FORD. Mr. President, will the distinguished Republican leader yield?

I am a cosponsor of this piece of legislation, and I think it is outrageous that our servicemen and women over there would have the Saudi Government add 73 cents a minute when we do not use any of their equipment, and $1.05 when we do.

As I understand it, the telephone company is giving the time free, without any charge, but the charge is horrendous just for the added tax, if we want to call it that, from the Saudi Government.

I compliment the Republican leader for introducing this, and hopefully we might even think about getting a refund to those, as you say, men and women, whose income has been reduced considerably. When that reduction is there, and then to find three- and four-figure telephone bills, I think it is completely out of order.

I compliment the Republican leader, and I am proud I am a cosponsor of that bill.

Mr. MCCAIN. Mr. President, I am pleased to join Senator DOLE in intro-

ducing this resolution which will serve to facilitate communication between our troops in Saudi Arabia and their loved ones here at home. During this time of war, the members of our armed services bravely face loneliness and concern for their spouses, families, and friends back home. These stressful feelings are further fueled by the uncertainty inherent in war. As a result, our soldiers have understandably been wanting to call home, wanting to calm the fears of those they love, and wanting to find consolation from hearing a familiar voice.

However, Mr. President, Saudi Arabia is very far away, and long distance has a high price. The result has been extremely high long-distance telephone costs that must be borne by soldiers and their families. Some are seeing monthly telephone bills as high as $600. In a great many households, this cost cannot be readily absorbed, and families that are already burdened by concern about their relatives in the gulf are now feeling the extreme economic burden as well. This resolution seeks to encourage local and long-distance telephone companies to reduce these economic hardships by implementing flexible payment programs to assist families in meeting their obligations. By doing so, telephone companies would help ease the burden felt by these families, and would ultimately facilitate collection from families who may not have the funds necessary to pay these high phone bills.

Several telephone and long-distance companies have taken steps to provide easier and more direct access to our troops in the gulf, and they should be commended and encouraged to continue in this effort. However, their efforts have not resulted in lower costs due to the imposition of a per-minute surcharge by the Saudi Government on all calls, regardless of whether or not Saudi facilities are used. This resolution reflects our support of efforts to have this surcharge removed, which would result in lowering long-distance costs for our men and women in the gulf, who have given so much of themselves in an effort to establish peace.

In this age of sophisticated technology, one marvels at the ways in which this technology can be used to impart comfort and support in times of trouble and great concern. It is my hope that this resolution will facilitate its continued use in raising the spirits of our troops in the Persian Gulf.

DESERT STORM FAMILY COMMUNICATIONS RELIEF RESOLUTION

Mr. BURNS. Mr. President, I rise today, with the distinguished minority leader, Senator DOLE, to introduce the "Desert Storm family communications relief resolution."

Mr. President, at a time when U.S. servicemen and women deployed on the sands of the desert in the Persian Gulf deal with great burdens for the Nation and the world, it has come to our attention that the families and loved ones of our soldiers are incurring high telephone bills to communicate with troops in the gulf.

It is understandable to all Americans that our troops and their loved ones would rely heavily on telephone service to bridge the great distance between them. Almost every family in America knows the fear and anxiety that a separation of this type brings. In order to deal with these anxieties, telephone communication is essential.

New communication technologies for the first time permit American troops to communicate on a regular basis with family and loved ones at home here in the United States. It is incumbent on policymakers to take the necessary steps to ensure that rates for such telephone calls remain as low as possible and that no family members lose basic telephone service due to financial hardship.

A one-way call between the United States and Saudi Arabia costs $1.18 per minute if it goes through Saudi facilities. In addition to this significant cost, there is imposed a $0.73 per minute surcharge by Saudi Aradia on those calls that do not utilize Saudi facilities.

AT&T has installed, near front-line troops, millions of dollars of satellite link-ups which permit long-distance calls to be made without going through Saudi facilities. In order to provide that service, however, AT&T needs permission from the Saudi Government, which requires the $0.73 per minute surcharge, even though none of its facilities are involved.

As a result, the resolution instructs the State Department to make every effort to convince the Saudi Government to: First, reduce the charge applicable to calls using Saudi facilities; and second, eliminate the surcharge where Saudi facilities are not used in completing the call.

Additionally, the resolution calls on the Federal Communications Commission to ensure that local and long-distance telephone companies adopt flexible billing and collection procedures to ease the burden and sacrifice borne by our Desert Storm troops and families. For instance, telephone companies could take any number of actions including, but not limited to, a waiver of certain payments or allow payment through an installment plan.

State regulatory authorities are instructed to implement policies which ensure that no spouse or family member is disconnected from basic telephone service due to financial hardship imposed by the high costs incurred while talking to loved ones in the gulf.

Finally, the resolution encourages long-distance carriers to implement special reduced rates to and from the Saudi Arabia theater for the duration of the Persian Gulf conflict.

Mr. President, enactment of this resolution is the very least we can do to say to the families of our troops in the Middle East that our support, our thoughts and our prayers are with you. And it sends a small but meaningful message to our men and women, who stand on the sands of the desert in harm's way that we are with them and we pledge to support them all the way.

Mr. President, I would be remiss if I failed to enumerate the many actions taken over the last several weeks by the Federal Communications Commission, State Department, and local and interexchange telephone companies to address many of the problems identified in the resolution.

First, I would also like to recognize the substantial contributions made by the FCC already to help establish, for the first time in history, instantaneous communication between troops in a war zone and their family and friends half a world away. I commend the efforts of the FCC to ensure that the troops are able to contact their loved ones, even in remote desert positions, by licensing additional facilities, sometimes within 24 hours, and by actively pursuing reductions in the price of telephone calls home from Saudi Arabia. I also understand that the FCC has requested that the telephone companies renew their efforts with the Saudi Arabian telecommunications administration to lower the charges the Saudis place on each telephone call originating there. We strongly support this request and expect that, through the reduction or elimination of these charges, cost savings will be reflected in the telephone bills received by the families of military personnel serving in the Mideast. Finally, we would like to acknowledge and encourage the continuing actions by the FCC, working with local telephone companies, to ensure that military families have ample opportunity to pay for the calls from the gulf and avoid service cutoffs.

In an effort to avoid any disconnection of service, many local exchange telephone companies, who act as the collection agents for the long-distance carriers in many instances, have instructed their billing and collection departments to work with and be sensitive to the needs of family members who run up large long-distance bills on Persian Gulf calls, including the offer of extended payment plans.

AT&T has already lost over $10 million providing service to Saudi Arabia while installing equipment near the battle zones that could be easily and quickly lost through Iraqi attack. For instance, AT&T has expanded network capacity, provided several weeks of free calling, introduced lower price USA Direct service, donated funds to military assistance organizations, offered free desert fax facsimile service,

and offered an 800 hot line for payment problems. MCI also set up a special 800 number for military families to receive advice on long-distance bills.

Thank you, Mr. President. I yield the floor.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. ROTH, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 39, a bill to amend the National Wildlife Refuge Administration Act.

S. 55

At the request of Mr. METZENBAUM, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 55, a bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

S. 104

At the request of Mr. PRESSLER, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 104, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid by a physician as principal and interest on student loans if the physician agrees to practice medicine for 2 years in a rural community.

S. 105

At the request of Mr. D'AMATO, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 105, a bill entitled "The Drug Kingpin Death Penalty Act."

S. 139

At the request of Mr. DASHLE, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 139, a bill to amend the Internal Revenue Code to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 242

At the request of Mr. GLENN, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 242, a bill to amend the Ethics in Government Act of 1978 to modify the rule prohibiting the receipt of honoraria by certain Government employees and for other purposes.

S. 245

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 245, a bill to establish constitutional procedures for the imposition of the death penalty for terrorist murders.

S. 270

At the request of Mr. GRASSLEY, the names of the Senator from Tennessee [Mr. SASSER], the Senator from Vermont [Mr. LEAHY], the Senator from Maryland [Mr. SARBANES], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from North Dakota [Mr. BURDICK], the Senator from Colorado [Mr. WIRTH], and the Senator from Alaska [Mr. MURKOWSKI] were added as a cosponsors of S. 270, a bill to require regular reports to the Congress on the amount of expenditures made to carry out Operation Desert Shield and Operation Desert Storm and on the amount of contributions made to the United States by foreign countries to support Operation Desert Shield and Operation Desert Storm.

S. 278

At the request of Mr. SARBANES, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Tennessee [Mr. SASSER] were added as a cosponsors of S. 278, a bill to provide for certain notice and procedures before the Social Security Administration may close, consolidate, or recategorize certain offices.

S. 284

At the request of Mr. BRADLEY, the names of the Senator from Oregon [Mr. PACKWOOD], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors 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. 294

At the request of Mr. BUMPERS, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 294, a bill to amend the Federal Election Campaign Act to exclude from the definition of "independent expenditures" those expenditures that are not truly independent of the legislative process.

S. 305

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 305, a bill to authorize Federal depository institution regulatory agencies to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses, to amend chapter 53 of title 31, United States Code, to require the Secretary of the Treasury to issue regulations concerning the identification of nonbank financial institutions subject to the Bank Secrecy Act, to prohibit illegal money transmitting businesses, and for other purposes.

S. 311

At the request of Mr. ROTH, the names of the Senator from Virginia [Mr. WARNER], the Senator from Delaware [Mr. BIDEN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 311, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 313

At the request of Mr. SPECTER, the name of the Senator from Colorado [Mr. WIRTH], was added as a cosponsor of S. 313, a bill to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from a person who engages in torture or extra judicial killing.

S. 315

At the request of Mr. KASTEN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 315, a bill to amend the Internal Revenue Code of 1986 to increase to 100 percent and make permanent the deduction for health insurance for self-employed individuals.

S. 316

At the request of Mr. CRAIG, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 316, a bill to provide for treatment of Federal pay in the same manner as non-Federal pay with respect to garnishment and similar legal process.

S. 329

At the request of Mr. PELL, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from Nebraska [Mr. EXON], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 329, a bill to strengthen the teaching profession, and for other purposes.

S. 330

At the request of Mr. DECONCINI, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 330, a bill to amend the Soldiers' and Sailors' Civil Relief Act of 1940 to improve and clarify the protections provided by that Act; to amend title 38 United States Code, to clarify veterans' reemployment rights and to improve veterans' rights to reinstatement of health insurance, and for other purposes.

S. 335

At the request of Mr. KENNEDY, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 335, a bill to provide relief for active duty military personnel serving in connection with Operation Desert Storm on obligations under the Robert T. Stafford Student Loan Program, to alleviate health care provider shortages resulting from hostilities, and for other purposes.

S. 340

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 340, a bill to amend the Internal Revenue Code of 1986 to impose a tax on the excess profits of large oil companies, and for other purposes.

S. 341

At the request of Mr. JOHNSTON, the names of the Senator from Utah [Mr. GARN], and the Senator from Penn-

sylvania [Mr. HEINZ] were added as cosponsors of S. 341, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes.

S. 349

At the request of Mr. BUMPERS, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 349, a bill to amend the Fair Labor Standards Act of 1938 to clarify the application of such Act, and for other purposes.

S. 401

At the request of Mr. DOMENICI, the names of the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 401, a bill to amend the Internal Revenue Code of 1986 to exempt from the luxury excise tax parts or accessories installed for the use of passenger vehicles by disabled individuals.

S. 413

At the request of Mr. KENNEDY, the names of the Senator from Massachusetts [Mr. KERRY], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 413, a bill to authorize supplemental appropriations for fiscal year 1991 for relief, rehabilitation, and reconstruction in Liberia.

S. 433

At the request of Mr. BUMPERS, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 433, a bill to provide for the disposition of certain minerals on Federal lands, and for other purposes.

SENATE JOINT RESOLUTION 36

At the request of Mr. PRESSLER, the names of the Senator from New York [Mr. MOYNIHAN], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of Senate Joint Resolution 36, a joint resolution to designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month."

SENATE JOINT RESOLUTION 38

At the request of Mr. THURMOND, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Joint Resolution 38, a joint resolution to recognize the "Bill of Responsibilities" of the Freedoms Foundation at Valley Forge.

SENATE JOINT RESOLUTION 55

At the request of Mr. PELL, the names of the Senator from Georgia [Mr. NUNN], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Arizona [Mr. DECONCINI], the Senator from Idaho [Mr. CRAIG], the Senator from Michigan [Mr. LEVIN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Delaware [Mr. BIDEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Alabama [Mr. SHELBY], the Senator from Pennsylvania [Mr. SPECTER], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Tennessee [Mr. GORE], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. GARN], the Senator from Missouri [Mr. DANFORTH], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of Senate Joint Resolution 55, a joint resolution commemorating the 200th Anniversary of U.S.-Portugese Diplomatic Relations.

SENATE JOINT RESOLUTION 57

At the request of Mr. THURMOND, the names of the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 57, a joint resolution to designate the month of May, 1991, as "National Foster Care Month."

SENATE JOINT RESOLUTION 63

At the request of Mr. KASTEN, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of Senate Joint Resolution 63, a joint resolution to designate June 14, 1991 as "Baltic Freedom Day."

SENATE JOINT RESOLUTION 65

At the request of Mr. D'AMATO, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Joint Resolution 65, a joint resolution designating the week beginning May 12, 1991, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 70

At the request of Mr. LIEBERMAN, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 70, a joint resolution to establish April 15, 1991, as "National Recycling Day."

SENATE JOINT RESOLUTION 73

At the request of Mr. SPECTER, the names of the Senator from Nevada [Mr. REID], the Senator from Washington [Mr. ADAMS], the Senator from Delaware [Mr. BIDEN], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Alabama [Mr. SHELBY], the Senator from North Dakota [Mr. BURDICK], the Senator from Arkansas [Mr. BUMPERS], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Georgia [Mr. FOWLER], the Senator from Arizona [Mr. DECONCINI], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 73, a joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

At the request of Mr. LEVIN, his name was added as a cosponsor of Senate Joint Resolution 73, supra.

SENATE CONCURRENT RESOLUTION 1

At the request of Mr. HARKIN, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Vermont [Mr. LEAHY], and the Senator from Washington [Mr. ADAMS] were added as cosponsors of Senate Concurrent Resolution 1, a concurrent resolution expressing the sense of the Congress regarding policy on underground nuclear explosions.

SENATE RESOLUTION 22

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a consponsor of Senate Resolution 22, a resolution to urge the President to grant full diplomatic recognition to the Republics of Lithuania, Latvia, and Estonia.

SENATE RESOLUTION 41

At the request of Mr. LIEBERMAN, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Resolution 41, a resolution to establish April 15, 1991, as "National Recycling Day."

AMENDMENT NO. 3

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of amendment No. 3 proposed to S. 320, a bill to reauthorize the Export Administration Act of 1979, and for other purposes.

SENATE RESOLUTION 58—ORIGINAL RESOLUTION REPORTED AUTHORIZING THE PRINTING OF THE RULES OF THE COMMITTEES OF THE SENATE

Mr. FORD, from the Commiteee on Rules and Administration, reported the following original resolution; which was placed on the calendar;

S. RES. 58

Resolved, That a collection of the rules of the committees of the Senate, together with related materials, be printed as a Senate document, and that there be printed 600 additional copies of such document for the use of the Committee on Rules and Administration.

SENATE RESOLUTION 59—RELATIVE TO THE DEATH OF REPRESENTATIVE SILVIO O. CONTE

Mr. KENNEDY (for himself, Mr. KERRY, Mr. MITCHELL, and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 59

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable Silvio O. Conte, late a Representative from the Commonwealth of Massachusetts.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Representative.

SENATE RESOLUTION 60—RELATING TO THE AUTHORIZATION OF SENATE EMPLOYEES TO TESTIFY AND TO PRODUCE RECORDS OF THE SENATE

Mr. FORD (for Mr. MITCHELL) submitted the following resolution; which was considered and agreed to.

S. RES. 60

Whereas, the Select Committee on Ethics has referred to the Department of Justice for its attention matters relating to the conduct of Senator Dave Durenberger;

Whereas, the Department of Justice is seeking information from present and former employees of the Senate of the United States in connection with this referral;

Whereas, by the privileges of the Senate of the United States and rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that the provision by Senate employees of information acquired in the course of their official duties is needful for the promotion of justice, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That present and former employees of the Senate are authorized to testify and to produce records of the Senate, except as to matters for which a privilege should be asserted, in connection with the referral of the Select Committee on Ethics to the Department of Justice of matters relating to the conduct of Senator Dave Durenberger.

AMENDMENTS SUBMITTED

DEFENSE PRODUCTION ACT AMENDMENTS

EXON AMENDMENT NO. 10

Mr. EXON proposed an amendment to the bill (S. 347) to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes, as follows:

At the appropriate place in the bill insert the following:

SECT. . EXEMPTION FROM TERMINATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "and 719" and inserting "719, and 721".

DODD (AND OTHERS) AMENDMENT NO. 11

Mr. DODD (for himself, Mr. BOND, Mr. LIEBERMAN, Mr. D'AMATO, and Mr. SEYMOUR) proposed an amendment to the bill S. 347, supra, as follows:

At the appropriate place, insert the following:

SEC. . EXPORT-IMPORT BANK AUTHORITY.

Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) is amended by adding at the end the following subparagraph:

"(H) Notwithstanding subparagraph (A) of this paragraph and section 32 of the Arms Export Control Act, the Bank in the exercise of its functions may guarantee or insure the commercial sale of defense articles or services to any country which is a member of the North Atlantic Treaty Organization, Japan, Israel, Australia, and New Zealand, except that—

"(i) not more than $1,000,000,000 of the loan and guarantee authority available to the Bank in any fiscal year may be used by the Bank to support commercial sales of defense articles and services exclusive of any support provided by the Bank under subparagraph (B); and

"(ii) support for any such sale may only be provided if the Bank determines that loan and guarantee authority available to the Bank in the year of the sale is in excess of requirements for commercial, nonmilitary exports for that year.".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests be authorized to meet during the session of the Senate, 2 p.m., February 21, 1991, to receive testimony on the recent agreement to transfer control of the Yosemite Park and Curry Co. from MCA, Inc. to the National Park Foundation.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet Thursday, February 21, 1991, (in lieu of Wednesday, February 20, 1991) at 9 a.m. in open session to receive testimony on the Defense authorization request for fiscal years 1991 and 1993 and the fiscal years 1992–97 future year Defense plan.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 21, at 2 p.m. to hold a hearing on the civil war in Yugoslavia; the U.S. response.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent for the Senate Select Committee on Indian Affairs to hold an oversight hearing on the administration's fiscal year 1992 budget requests for Indian programs from 9:30 a.m. to 1 p.m. on February 21, 1991, in room 485 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the full Committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., February 21, 1991, to receive testimony on the administration's national energy strategy

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

SUBCOMMITTEE ON TOXIC SUBSTANCES, ENVIRONMENTAL OVERSIGHT RESEARCH, AND DEVELOPMENT

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, February 21, beginning at 2 p.m., to conduct a hearing on the administration's proposals to address lead poisoning and contamination.

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

SUBCOMMITTEE ON EDUCATION, ARTS, AND HUMANITIES

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Education, Arts and Humanities of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, February 21, 1991, at 10 a.m., for a hearing on the reauthorization of the Higher Education Act.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be allowed to meet during the session of the Senate on Thursday, February 21, 1991, at 10 a.m., to conduct a hearing on the condition of the banking industry and its broader economic implications.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FORD. Mr. President, I ask unanimous consent that the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on February 21, 1991, at 8:30 a.m. on S. 279, the Motor Vehicle Fuel Efficiency Act.

The PRESIDING OFFICER. Without objection it is so ordered.

ADDITIONAL STATEMENTS

WHAT WE CAN'T SAY CAN HURT US

• Mr. SIMON. Mr. President, a little more than a year ago, I was handed a statement published by the American Council on Education developed by their Commission on International Education.

At that time I glanced through it and applauded it, but I was concentrating on some other issue, which one I do not remember now. The other day, in preparation for reauthorization of the Higher Education Act, which we will have to do this year, I got out that report and re-read it. It is so striking in its wisdom and its call for the United States to do better, that I will be asking that it be printed in the RECORD following my remarks.

Those who served on the commission were: Leon E. Boothe, chair, president, Northern Kentucky University; Steven C. Beering, president, Purdue University; Richard Berendzen, president, the American University; William C. Cassell, president, Heidelberg College; Max Castillo, president, San Antonio College; Gordon P. Eaton, president, Iowa State University; Claire Gaudiani, president, Connecticut College; Janet Greenwood, president, University of Bridgeport; James B. Holderman, president, University of South Carolina; Roger H. Hull, president, Beloit College; Edward Kormondy, chancellor, University of Hawaii at Hilo; John Lombardi, provost, the Johns Hopkins University; Thomas A. Manion, president, St. Norbert College; Richard S. Meyers, president, Western Oregon State College; Iqbal Paroo, president, Hahnemann University; Wesley W. Posvar, president, University of Pittsburgh; Tyronza Richmond, chancellor, North Carolina Central University; Olin Robison, president, Middlebury College; Isaura Santiago Santiago, president, City University of New York—Hostos community College; Robert A. Scott, president, Ramapo College of New Jersey; Clint E. Smith, program officer, the William and Flora Hewlett Foundation; Niara Sudarkasa, president, Lincoln University; Elwin V. Svenson, vice chancellor, University of California, Los Angeles; Humphrey Tonkin, president, University of Hartford; Richard M. Turner III, president, Nashville State Technical Institute; Delbert Weber, chancellor, University of Nebraska at Omaha; Richard J. Wood, president, Earlham College; Robert L. Woodbury, chancellor, University of Maine Systems; Valerie Woolston, director, International Education Services, University of Maryland; James H. Young, chancellor, University of Arkansas at Little Rock.

They have a great number of recommendations including: First, Foreign language training for Americans to start as early as possible, preferably in elementary school, and be carried through secondary school; second, teacher training should include foreign language competence and maintenance and opportunities to study abroad; third, colleges and universities should encourage adult foreign language learning; fourth, language requirements at every level should be expressed in terms of competency—ability to use the language—rather than number of courses taken; fifth, intensive foreign language programs and study abroad are essential elements of achieving real proficiency in a foreign language; sixth, library resources must be sufficient to support the institution's language instruction program; and seventh, language instruction at both undergraduate and graduate levels must be better integrated with other studies and programs.

I urge my colleagues to read this report in the CONGRESSIONAL RECORD. You will find a great many additional recommendations and supporting material for it.

The report is a brief one, but length is not always an indication of wisdom, as the Gettysburg Address of Abraham Lincoln shows.

We will in a few months be looking at the whole question of where we go in reauthorizing the Higher Education Act, and my hope is that we can find at least partial answers to encouraging the study of foreign languages, a desperate need in this country, an area where we are behind virtually every other country on the face of the Earth.

I ask to insert the recommendations of the American Council on Education's Commission on International Education at this point.

The material follows:

[American Council on Education Policy Statement]

WHAT WE CAN'T SAY CAN HURT US

A CALL FOR FOREIGN LANGUAGE COMPETENCE BY THE YEAR 2000

"All college and university graduates must be knowledgeable about the broader world and conversant in another language."—America in Transition: The International Frontier, National Governors Association, 1989.

FOREWORD

American educators and policymakers have come to the sobering conclusion that learning other languages is an essential part of an education for today's and tomorrow's world. Other nations have succeeded in teaching their young people to be proficient in a second and even third language; but our great nation has been unable or unwilling to do the same.

This statement, developed by the American Council on Education's Commission on International Education and endorsed by the ACE Board of Directors, calls on higher education leaders to make foreign language competence an integral part of a college education. Every baccalaureate holder should be competent in a second language; we can settle for no less as we move into the next century.

The following pages elaborate on how we can achieve this ambitious goal, providing concrete suggestions that will help us move forward and shed our unenviable image of "tongue-tied Americans," to use a phrase of Senator Paul Simon. We recognize that the task we face is considerable, but the payoff to our national well-being will be worth the effort. We cannot be a leader in the world while our citizens are captive of their inability to communicate beyond our borders.

We offer this statement to colleges and universities in the hope that it will provide a point of departure, a basis for discussion and for much-needed action.—Robert H. Atwell, President, American Council on Education.

A CALL TO ACTION

This new call to action on foreign language competence is addressed to the leaders of American higher education—the presidents and chancellors, academic vice presidents, provosts and deans who are responsible for giving academic direction to our colleges and universities. It calls for action by all who are shocked and dismayed by reports of the level of ignorance of Americans regarding the rest of the world and those who are concerned by our continued inability to communicate with other people using their native language.

The statement is addressed primarily to presidents and academic officers because they are the people who can lead institutions, through the faculty, to sustained commitment to increase their students' understanding of other cultures and languages. The goal of competency in a foreign language requires institution-wide activity and commitment; it is not business of language departments alone. If an institution is truly committed to providing students with an opportunity to achieve proficiency in a foreign language, that effort will effect the undergraduate curriculum, graduate education, institutional ogranization, and the faculty development and reward system.

Several recent reports point out the damage to U.S. interests caused by our ignorance of other cultures and languages. The President's Commission on Foreign Languages and International Studies, the National Governors' Association, the Council of Chief State School Officers, the New England Board of Higher Education, the Business-Higher Education Forum, and several higher education associations have issued statements on the need for international and foreign language competence for our economic competitiveness, national security, and the protection of America's position in the world.

The recent report of the National Governor's Association (1989) states emphatically:

"Knowledge of other languages is essential for business and trade with economic competitors. Foreign language study also can be an important bridge to the understanding of other countries and cultures. . . . All college and university graduates must be knowledgeable about the broader world and conversant in another language."

American colleges and universities are not yet succeeding in their mission to equip our students for life in an independent world and to prepare them to communicate with people who speak other languages. The problem cannot and will not be solved by foreign language departments acting alone. We call for focus and coordination from leadership at the highest levels.

Few American colleges and universities require foreign language for degrees. Most students who do take foreign language courses cannot use the language to communicate effectively.

Fewer than one half of one per cent of the 12 million students enrolled in American colleges and universities study abroad in any one year.

Eighty per cent of all American-made goods now face direct international competition at home or abroad.

Few American business leaders or employees can speak any foreign language; therefore corporations are increasingly hiring language-competent graduates from abroad.

Over twenty per cent of American corporations now conduct business abroad; by the year 2000, that figure will be thirty per cent.

The professions of science, medicine, engineering and agriculture are increasingly global. The percentage of scientific research published in other languages is increasing.

The American educational system should produce sufficient numbers of language-competent citizens to meet national needs—in business, in the professions, and in government. We urge U.S. colleges and universities to set goals for foreign language competence by the year 2000.

Achieve usable levels of proficiency for all baccalaureate graduates. Achieve professional levels of foreign language proficiency for a significant proportion of all undergraduate and graduate students in order to meet foreign language needs for business and the professions.

Provide opportunities for students in all disciplines and pre-professional programs to achieve high levels of foreign language proficiency by a combination of preparatory courses, intensive courses, and foreign study and internships, as well as the infusion of international and foreign language materials into substantive disciplinary courses.

Increase significantly the percentage of all students who study abroad, their diversity, and the number of places to which they go.

Provide opportunities for the achievement and maintenance of foreign language proficiency for faculty in all disciplines.

Increase the number of language-competent elementary and secondary school teachers.

Give students an awareness of how one learns languages as well as knowledge of specific languages.

RECOMMENDATIONS

1. Provide continuity in language learning throughout the educational process

Foreign language training for Americans should start as early as possible, preferably in elementary shcool, and be carried through secondary school. Colleges and universities can support this goal by encouraging applicants to demonstrate foreign language competence as part of the admissions procedure. The purpose of introducing language in elementary and secondary schools is not to allow students to "examine out" of language requirements in college, but to give them a base on which to build higher level proficiency.

Teacher training includes foreign language competence and maintenance and opportunities to study abroad. Teachers at the elementary and secondary levels should be able to communicate in foreign languages and relate to other cultures.

Colleges and universities should be prepared to build on language skills acquired at the secondary school level by offering advanced language training and opportunities for use. Since secondary schools are increasingly providing foreign language instruction even in some previously rarely taught languages such as Japanese, Chinese, and Russian, colleges should do the same.

Colleges and universities should promote cooperative arrangements between elementary, secondary and postsecondary institutions in order to improve language instruction at all levels and to facilitate sequential learning. Coordination and cooperation among the different levels of education will increase efficiency and enhance our ability to achieve our goals. Furthermore, colleges and universities should strengthen teacher preparation programs in order to provide the necessary numbers of qualified language teachers at all levels of instruction.

Colleges and universities should encourage adult foreign language learning. Many adults discover a new need for learning or relearning a foreign language—for business, for travel, for general intellectual development. Genuine competence in a second language is attainable by all individuals, including adults, but it may require less emphasis on reading and writing, grammar and literature, than many college-level courses provide, and more work on speaking and listening skills, that is, on competence in using the language to communicate. Intensive programs like those of the Foreign Service Institute should be considered.

2. Stress language competence as a vital educational outcome

Foreign language training should be considered a normal part of the education of every American. At least minimal levels of competence should be expected for every bachelor's degree. Foreign language and international competence should not be only for language and international studies majors.

Entrance requirements for foreign language can encourage students to begin their foreign language study during elementary or secondary school and are a proven method of increasing attention to foreign language teaching at the secondary school level. We encourage adoption of entrance requirements but note that care must be taken that such requirements do not limit access for students without adequate opportunity to study language in high school or for learning-disabled students for whom special provisons must be made.

Language requirements at every level should be expressed in terms of competency—ability to use the language—rather than number of courses taken. All four language skills—speaking, listening, reading and writing should be emphasized.

Because competency in communicating in foreign languages is key to cultural competence, proficiency should be the major goal of language instruction. Cultural competence is understanding how to deal with cultural differences, it requires effective use of the language of the culture.

Institutions should provide special opportunities for highly motiviated and talented students to achieve high-level language proficiency. Institutions should create incentives to encourage students to acquire these skills. Upper level foreign language courses should include a variety of materials rather than only literature.

Intensive foreign language programs and study abroad are essential elements of achieving real proficiency in a foreign language. Success is higher if instruction is followed by use of the language in the country where it is spoken or by total immersion programs. This may require examining the structure of financial aid to ensure that financial aid students can enroll in full-time study opportunities at least for intensive summer work, and that aid is available for the serious language student for study or internship abroad. Study abroad programs should be built into the budgeting and pricing structure of any institution which is serious about foreign language instruction.

Leaders should promote and support use of the full range of technologies for providing individualized language instruction and for communicating with the world. Satellite links, new computer software, expanding computer networks, and video disks are especially important for the less commonly taught languages, where demand on an individual campus may be low.

Library resources must be sufficient to support the institution's language instruction programs. Budgets for new or expanded language programs should include funds for initial and ongoing library acquisitions.

Language instruction at both undergraduate and graduate levels must be better integrated with other studies and programs. This requires discussion and coordination both with the rest of the international program and with other departments, including pre-professional and professional studies such as business, agriculture, engineering, and health sciences. Institutions should examine the organizational structure to determine the best way to support such integration. A high-level coordinating committee and/or the appointment of a faculty-level administrator with appropriate resources can ensure that foreign languages, international studies, study abroad, and faculty development in international and foreign language fields support common institutional goals of international competence for all.

3. Provide institutional initiatives that will facilitate the process of language learning for students and faculty

Academic leaders should keep track of and make public the percentage of their students in each major field who are taking foreign language courses and at what level. They should insist on evidence of proficiency attained by students in foreign language courses at various levels. Foreign language instructors should agree on attainable standards of performance and on appropriate courses and models to achieve the language competency goals.

Institutions should cooperate with each other in foreign language teaching wherever possible. Consortia and other forms of interinstitutional cooperation maximize the availability of resources and can be especially effective for the less commonly taught languages and area studies and for summer or inter-term intensive language institutes.

Faculty in other disciplines should be supported and encouraged to acquire or improve their foreign language skills and international knowledge. They can use these skills to increase opportunities for language competent students to use foreign languages and international expertise in a variety of disciplinary majors.

Institutions should inventory the foreign language and international competencies of their students, faculty, and staff and utilize that expertise in the education of their students. Utilization of already available resources is advisable. Use of native-born or foreign-born language competent individuals can help students achieve the goal of language competency.

Student/faculty campus programs using foreign languages should be expanded. Interest in foreign languages can be enhanced by exposure through multilingual social and cultural activities.

Faculty, administration, and students must be convinced of the importance to the mission of the institution of the international and foreign language dimension. We are educating now the students who will be the future leaders of America. Presidential leadership is crucial in obtaining these goals.

MYTHS ABOUT LANGUAGE LEARNING

Americans do not need foreign language since English is an international language.

The great majority of the peoples of the world are not English-speaking. Communicating and transacting business internationally is more effective when an effort is made to communicate in the relevant local language.

American businesses do not need multilingual employees because they can hire English-speaking local residents and interpreters abroad. In fact, dependence on translation puts the American businessperson at a disadvantage and frequently leads to misunderstandings and possibly loss of business.

Americans are incapable of learning foreign languages. Americans are not less capable than any other peoples of the world. However, most other people start the study of a second language earlier than we do, when it is easier for them to learn, and therefore have a head start when they reach college.

Adults cannot learn foreign languages. There is no evidence that suggests that adults cannot learn other languages, but alternative techniques of language learning may be needed. Foreign language teachers already know a great deal about the most effective techniques.

College students are not interested in studying foreign languages. Low levels of interest may reflect both societal attitudes and geographic factors. We now know a variety of ways to increase student motivation to become proficient in a foreign language. Good counseling and curriculum changes in incorporating international studies enhance student interest. In an increasingly interdependent world, communication in multiple languages is a vehicle to better understanding of cultures and business transactions.

APPENDIX 1—THE CURRENT STATUS OF INTERNATIONAL AND FOREIGN LANGUAGE COMPETENCE

A new major study conducted by Richard Lambert for the American Council on Education describes the problems:

Fewer than half of the college students whose transcripts were examined had taken college level language courses past the intermediate level.

Less than 9 percent of American universities require a foreign language for the baccalaureate degree for all students (although 22 percent of baccalaureate colleges do).

Of those institutions that do require foreign language for all students, many require one year or less.

The National Governors' Association in its 1989 report, America in Transition—The International Frontier, states:

The vast majority of U.S. citizens cannot speak a language other than English . . .

Only 17 percent of U.S. public elementary schools offer any form of language instruction. Many that do offer classes offer only introductory exposure.

Only one in five American high school graduates take more than two years of a foreign language and less than one in ten enroll in four years of language.

A recent analysis of U.S. postsecondary students transcripts revealed that 53 percent took no basic foreign language classes during their undergraduate years.

Twenty-six states report a shortage of foreign language teachers at either the elementary or secondary level.

Most students who do take a foreign language cannot use it to communicate.

They do not study language long enough or under the necessary conditions to master it.

An insufficient number of advanced courses concentrate on speaking and listening skills; most emphasize literature.

Fewer than 50 thousand, or about .04 percent of over 12 million American college level students study abroad each year.

Of those, 33 thousand studied in non-English speaking countries.

Only 20 percent of those studying abroad stayed for the whole academic year.

The Council on International Education Exchange states in its 1988 report, "Educating for Global Competence," that:

The U.S. is the only major world power with no language requirement for entering its foreign service. Key posts are filled by ambassadors who do not speak the local language and cannot read the local newspaper.

Only 3 percent of American high school graduates and only 5 percent of our college graduates reach a meaningful proficiency in a second language despite the fact that many of them come from bilingual homes.

As recently as three years ago, 33 states did not require any foreign language study in high school, and one of every five high schools did not offer any foreign language instruction at all.

The U.S. continues to be one of the few nations in the world where a student can graduate from college without ever having studied a foreign language.

Fewer than 1 percent of U.S. military personnel stationed abroad are able to use the language of their host country.

APPENDIX 2—THE NEED FOR INTERNATIONAL AND LANGUAGE COMPETENCY

International trade and interdependency of financial markets continue to increase while the U.S. is facing international financial problems partly due to the deterioration of our international competitiveness:

In 1987 the U.S. exported $243 billion and imported about $400 billion, generating a trade deficit of over $150 billion.

In 1986, U.S. assets abroad amounts to $1,067 billion while foreign assets held in the U.S. amounted to $1,331.5 billion.

In 1985 the U.S. became the largest debtor nation in the world.

The World bank reports that between 1965–80 U.S. exports were growing 6.9 percent annually; during 1980–86 the rate was 2.7 percent annually. Growth in imports increased from 6.2 percent to 9 percent annually during those periods.

According to the U.S. Department of Commerce, 80 percent of all American-made goods now face international competition either at home or abroad.

To eliminate the significance deficits and the world's largest debtor nation status, Americans must become more active in trading and therefore must better understand and communicate with the world. Speaking other languages and understanding other cultures is a key element in maintaining our leadership role in the world community. The need for foreign language competence is exemplified by articles in business magazines and government and international association reports.

"How are we to sell our products in a global economy when we neglect to learn the language of the customer? How are we to open overseas markets when our cultures are only dimly understood."—Governor of Virginia, L. Baliles, in America in Transition: The International Frontier, the National Governor's Association, 1989.

Speaking local languages is one way to gain competitive advantage. In increasingly competitive markets every little edge counts.

42% of a sample of British businessmen thought they could have done better if they had taken the trouble to speak the local language.

One reason Americans find it so difficult to do business with the rest of the world is that they are so ignorant of it. International comparisons of the number of Americans learning foreign languages rank the nation woefully low.

Virtually all of Caterpillar's, an American maker of bulldozers, 550 staff in Geneva are at least bilingual.

In the European subsidiaries of Dupont managers normally speak the local language. All the international executives of Nestle, a Swiss multinational, speak two languages without exception.—The Economist of May 16, 1987.

Widespread culture innocence and language illiteracy is one of the three factors of prime importance in resolving the persistent U.S. trade deficits.

At least one factor contributing to the failure to cure the U.S. trade deficit seems to be the shocking lack of preparation expatriates receive before they go overseas. . . . The importance of competence in the language of the host country cannot be stressed too much.

The Business Council for International Understanding of Washington, D.C., estimates, based on their 30 year experience, that managers who go abroad without cross cultural preparation have a failure rate ranging from 33 percent to 66 percent. This contrasts with a rate of less than 2 percent failure for those with such training.—Arthur Whitehill, In "America's Trade Deficit: The Human Problems" in Business Horizons, Jan/Feb, 1988.

More technical journals are being published in other languages and the English speaking percentage of the total world population continues to decrease.

A growing number of foreign governments, in the interest of exercising their national sovereignty are requiring the sole use of their national languages in all contracts and contract negotiations.

It is often desirable for U.S. Managers to speak directly with lower level employees in their foreign subsidiary and this usually requires the use of foreign language. Some international executives have encountered great difficulty in managing subordinates because of the inability to communicate verbally.

Knowing the language facilitates one's comprehension of the culture, politics, laws, and environment of a foreign country, and breeds closer familiarity with the customer's business customs and decision making constraints. Language skills are also important in the growing need to understand and anticipate foreign economic and political developments in order to assess business risks.—Nancy Henderson, In "Selling Abroad: Speaking Their Language", in Business America, Sept. 7, 1981.

Shifting dynamics in world trade means that, more and more, the language of trade is the language of the customer. If the U.S. is to compete effectively and expand trade, it must continue to place a greater emphasis on adequate language instruction.—The National Governor's Association Committee on International and Foreign Relations statement "Educating Americans for Tomorrow's World", July 87.

To fully appreciate differences in cultures we must understand other languages. It is no longer possible to assume that we will be able to sell our products, conduct our negotiations and understand our world in English. If we cannot communicate with the rest of the world, we will lose markets for our

products and our ideas.—The Southern Governor's Association Advisory Council on International Education, report on "Cornerstone of Competition", November, 1986.

Education must prepare us to participate fully in the global community.

Urge colleges and universities to establish second langauge requirements for admissions to and graduates from appropriate post-secondary programs. The requirements should include demonstrated proficiency in speaking, understanding, reading and writing the second language.—The Council of Chief State School Officers, report "International Dimensions of Education", November 1985.

"International ignorance is a luxury that America can no longer afford."—Business Higher Education Forum, summer 1988 meeting.

ANNIVERSARY OF THE TAKING OF VINCENNES BY GEORGE ROGERS CLARK

• Mr. LUGAR. Mr. President, I want to take this opportunity to recognize the anniversary of the capture of Fort Sackville and Vincennes by George Rogers Clark on February 25, 1779.

The heroic deeds of George Rogers Clark are a significant event in the history of both Indiana and the United States of America. George Rogers Clark led 135 men on a 240-mile journey through the slush and icy floods of southern Illinois and strategically acquired the Old Northwest Territory for our fledgling country. The leadership exhibited by George Rogers Clark, the superior marksmanship of American frontiersmen, and the sound strategy of attack surprised the British and forced an unconditional surrender. This single action doubled the size of the Original Thirteen Colonies and paved the way for the westward expansion of the United States.

The noted scholar and author, Ross F. Lockridge, addressed the Vincennes Chamber of Commerce in Vincennes, IN, on December 21, 1926, and brought the rich experience of George Rogers Clark to light. I ask that the following excerpt be printed in the CONGRESSIONAL RECORD.

The excerpt follows:

If ever there was an example of inspired leadership in great historical accomplishment it was in this case of George Rogers Clark. At least he thought he was inspired. He believed, as he said, that he had a divine mission. His success was not the result of chance or fortune—not even in any single small particular.

It was the result of glorious vision and careful forethought. He carefully contemplated and definitely determined every phase of his conduct in advance. This was a monumental example of the right man for the right thing. He knew where he was going, he knew how to get there and he did not falter on the way. Carlisle has said "the history of the world is the biography of great men." It would be difficult, indeed, to find in all the annals of history a more significant demonstration of the truth of this dictum than in the heroic episode which culminated here at Vincennes. For certainly the conquest of the Northwest was peculiarly and distinctively the deed of George Rogers Clark. Certainly vast and grateful credit is due many for the success of this great enterprise. We pay due tribute to Patrick Henry and Thomas Jefferson for their patriot faith in supporting Clark when his enterprise seemed but a wild young dream. We are profoundly indebted to Francis Vigo, the big-hearted Sardinian, the broad-minded Spanish merchant who impoverished himself to help furnish supplies for the expedition. We owe deference and regard to Father Pierre Gibault for his invaluable and timely aid by which he was impoverished and ultimately forced into exile. Let us grant him the honored title of Patriot Priest of the Northwest. We can freely give imperishable renown to those intrepid backwoodsmen, the gallant riflemen who endured incredible hardships and reduced and English fort by sheer gallantry and peerless marksmanship. Certainly they deserve to be ranked with the Immortals, but over all there must ever be eternal glory for George Rogers Clark! He was ever the Captain Courageous, the soul, mind and arm of this great enterprise. Let us remember that it was he who first conceived this desperate undertaking. It was not Patrick Henry. It was not Thomas Jefferson. It was not George Washington. It was George Rogers Clark who conceived it. His the patriotic vision that conceived the undertaking, his the keen and powerful mind that organized it in every detail, and his the valiant arm that executed it. Let us crown him forever with a nation's tribute as the conquering hero of the Northwest.

At the time of this immortal achievement he was a mere youth twenty-six years of age, a perfect figure of a triumphant hero. It is usually the way of romance and always the policy of the movies to leave the hero in his ascendancy, as is fit, but I regret to say that it is not always the way of history. It seems almost unbelievable that a life which had such a bright and glorious morning, such a brillant forenoon, should have had such a dismal afternoon and evening. During practically all the rest of his life for forty years, he was destined to experience discouragement, disappointment, humiliation and anguish almost without parallel in the history of outstanding men. This experience of George Rogers Clark is worthy of thoughful contemplation as a reflection upon the uncertainties of life and the perverse ways of fate. It is a sad commentary upon the ingratitude of humanity and particularly upon the ingratitude of republics.

I cannot enter into a discussion of all the reasons for this later career, but wish to mention briefly a few of the most outstanding. I told you that his resources and provisions had become entirely exhausted with the conquest of Kaskaskia. In order to push the expedition to Vincennes and later to carry on further campaigns against the Indians, he had to pledge his own name and credit for provisions and supplies, which he ordered in the name of Virginia and for which he thought Virginia would certainly reimburse him; but Virginia never did. He thus became bound for claims and debts in large amounts which were not justly his, but which he was compelled to pay as far as his means extended. He thought that he was a man of wealth, as he would have been in due course, since he had taken large land holdings in Kentucky, but those claims and bills of credit were bought up for trifling amounts by unscrupulous "sharks" who hounded and harassed him all the rest of his life. All his property was taken from him and then there was not enough. He was never permitted to hold property in his own name. He could not share in the patrimony of his father's estate because of greedy claimants. For five years he did not receive officers' pay for his services as colonel and as brigadier general, until finally given a grant of poor land in Kentucky as compensation, and even this poor pittance was seized on execution for debts that were not justly his. By way of explanation of Virginia's neglect in this matter, we must remember that Virginia ceded the Northwest Territory to the United States in 1783, and by this she thought that she had relieved herself from all the debts and obligations that went with it, and so in the confusion and misunderstanding between Virginia and the Continental Congress, Clark's just and righteous claims went unheeded and he was impoverished and beggared in the empire which he had won.•

BLACK HISTORY

• Mr. SARBANES. Mr. President, in honor of African-Americans, their proud heritage, and ongoing contributions to this Nation, I want to take a moment to reflect on the history of their service in the U.S. military—a history replete with struggles, sacrifices and determination, and remarkable accomplishments. I join with pride in the celebration of Black History Month and in paying homage to African-Americans for their outstanding contributions to this Nation's military.

The participation of black Americans in the military can be traced back to the colonial period. They fought in most major battles of the Revolutionary War. By the end of that war, nearly 10,000 black Americans had served in the colonial armies of the Revolution. During the Civil War, President Lincoln was reluctant to have black American units in the Union military because he was afraid that the border States would join the Confederacy. Meanwhile, free black Americans, abolitionists, union commanders, and others lobbied for black participation.

On July 17, 1862, Congress authorized Lincoln to employ "persons of African descent" in the U.S. military. Although some States had already established their own regiments of black troops, the War Department in 1863 created a bureau to handle the recruitment and organization of black regiments. The units were known as the U.S. Colored Troops [USCT]. More than 200,000 black Americans served during the Civil War. Most notably, 23 black soldiers and sailors were awarded the Nation's highest military award, the Medal of Honor, for their outstanding service. I am especially pleased that nine of those courageous men were from the great State of Maryland. In my view, the courage and bravery of these African-Americans should serve as inspiration to all Americans.

Unfortunately, during World War I black Americans still had to endure a segregated military. Yet, they volunteered in force, many of them serving as combat troops in the all-black 92d

and 93d Divisions. The 93d Division served with the French Army which later bestowed its highest military honor, the Croix de Guerre, to 171 black American troops for their outstanding service. Black heroes of that war include Henry Johnson of Albany, NY and Needham Roberts from Trenton, NJ. Both received the French award for successfully dispersing German infiltrators during a camp invasion.

During World War II, an all-black 332d Fighter Group, known as the Tuskegee Airmen, was activated under President Roosevelt in 1941. The group was trained at Tuskegee Army Air Field where a combat pilot program had been set up. This became known as the "Tuskegee Experiment." The group's record included more than 15,000 combat sorties and the downing of 261 enemy aircraft in North Africa and Italy during the last 2 years of the war. The Tuskegee-trained unit included about 1,000 pilots and thousands of support workers. Distinguishing themselves in combat technique, aggressiveness and courage, they received a Presidential Unit Citation on March 23, 1945. Some notable members of this exceptionable group are Representative LOUIS STOKES of Ohio; Detroit's former mayor, Coleman Young; and Gen. Daniel (Chappie) James, the first black four-star Air Force general. Black heroes from this distinguished group have formed several chapters of their organization throughout the United States and Europe, dedicated to uniting those who shared the frustrations, aspirations, and triumphs of being pioneers in black military aviation.

The commander of the 332d Fighter Group and an African-American pioneer in his own right, Benjamin Davis, Jr., became the Air Force's first black American general in 1954. He was also the first of his race to graduate from West Point during this century. Remarkably, General Davis, Jr., followed in the footsteps of his father, Benjamin O. Davis, Sr., who became the first black general of the U.S. Army in 1940. General Davis, Sr., is credited with mediating race relations in the military and helping to make opportunities available for his fellow African-Americans.

Indeed the outbreak of the Vietnam war in 1965 brought more career opportunities for these American soldiers to serve their country. African-Americans gained higher rank and entry into specialized fields that could be used in the civilian work force as well. It was also the first U.S. war with totally integrated forces, an important achievement for African-Americans, especially those who had struggled for recognition and equality in past wars.

The contributions of African-Americans in the U.S. military reflect their steadily increasing participation. Of the men and women serving in the Armed Forces in the Persian Gulf, 22 percent are African-American, the highest percentage ever to have served in the United States military thus far. It is especially significant that Gen. Colin L. Powell, an African-American, is the Chairman of the Joint Chiefs of Staff. General Powell has a unique background of combat service and international relations expertise. During college, he became an Army officer in the Reserve Officers Training Corps [ROTC]. He served in Vietnam for two tours of duty, and by the conclusion of the war, he had received 11 medals. Powell quickly rose to the top of the ranks, serving in the White House as Deputy National Security Adviser and then National Security Adviser under President Reagan. General Powell is an inspiration to all African-Americans.

African-Americans have surely overcome many obstacles in this Nation's military with great pride and success. As we honor them in celebration of Black History Month, we must assure young African-Americans that the doors of opportunity will remain open. All Americans must continue to seek to fulfill those laudable goals for this Nation's greatest strengths are drawn from the individual talents of every American.•

CHINA LEGAL SCHOLAR FACES DEATH PENALTY IN DEMOCRACY TRIAL

• Mr. SIMON. Mr. President, many of us continue to be concerned about the insensitivity of the Government of China to the whole area of human rights.

I am particularly concerned about the fate of Chen Xiaoping, a 29-year-old law lecturer who helped support students who were demonstrating at Tiananmen Square.

In our country and in freedom loving countries everywhere, he is a hero of freedom.

I hope our Government is making clear to the Government of China in unmistakable terms, while they may imprison those who fight for freedom in China, we regard them as heroes.

I hope representatives of the Chinese Government who follow what happens in the CONGRESSIONAL RECORD will recognize that by this type of action, they are creating problems for themselves in terms of their economic future and their political future.

We want to work with the Government of China, but as the Government of China moves away from freedom, that becomes increasingly difficult.

Mr. President, I ask to insert into the RECORD an article titled, "China Legal Scholar Faces Death Penalty In Democracy Trial" by Sheryl WuDunn at this point.

The article follows:

CHINA LEGAL SCHOLAR FACES DEATH PENALTY IN DEMOCRACY TRIAL

(By Sheryl WuDunn)

BEIJING, February 5—A legal scholar went on trial today for "conspiracy to overthrow the Government," the most serious criminal charge known to be leveled so far in the latest round of trials of Tiananmen democracy advocates. Conviction could bring the death penalty.

The scholar, Chen Xiaoping, a 29-year-old law lecturer with a reputation for intellectual brilliance, is one of at least four democracy advocates known to be charged so far with "conspiring to overthrow the Government."

Mr. Chen, who helped organize a citizens' group to support demonstrating students at Tiananmen Square, was a teacher at the University of Politics and Law until his arrest sometime shortly after the military crackdown on June 4, 1989. A graduate of Beijing University, Mr. Chen had a background in constitutional law and had taken part in previous student demonstrations.

If convicted, he would face a minimum jail sentence of 10 years, and if his case is deemed particularly serious, he could receive the death penalty. The trial was closed to foreigners, and it was not clear whether it ended today but no sentence was announced. In the past, sentences have been announced sometime after the end of the trial.

COOPERATION BRINGS RELEASE

Many foreign diplomats and Chinese lawyers say they rule out the death sentence, or even life imprisonment, for any of the students or scholars who took part peacefully in the Tiananmen democracy movement.

But most defendants brought to trial are convicted, although some have then been released because of their cooperative attitude. In China, legal punishment is often governed by the principle, "leniency to those who confess, harshness to those who resist."

The court has recently held political trials for nearly 30 Tiananmen democracy advocates, sentencing students to under four years and intellectuals and workers to longer terms.•

TRIBUTE TO OEA

• Mr. WIRTH. Mr. President, it was my great pleasure on January 25, 1991, to tour the OEA, Inc., offices and manufacturing plant near Aurora, CO.

OEA, formerly known as Ordnance Engineering Associates, is the world's leading manufacturer of airbag initiators, which cause the bags to inflate on impact. OEA produces 20,000 of these every day, and yet not a single one has ever failed to work properly. This record of flawless production and performance is not only remarkable, but is absolutely imperative.

It is because of OEA's record of 100 percent reliable performance that this company is one of our most important defense subcontractors. OEA equipment is used on virtually every U.S. military aircraft including those now deployed in the Persian Gulf. OEA systems are an essential component of every Tomahawk cruise missile. Furthermore, OEA provides the thrust necessary to propel pilots safely out of injured aircraft. Beginning with the *Discovery* in 1988, OEA has provided simi-

lar systems to our Space Shuttle Program, allowing up to eight crew members to exit the craft safely during an emergency.

As impressive as OEA's products are, and as important as they are to our national defense, most impressive is the dedication and pride of the company's 450 Colorado employees. Beginning with the example set by President Charles Kafadar and Chairman Ahmed Kafadar, the people at OEA demonstrate a unique ability to solve complex problems. They also exhibit pride in their work that comes from knowing how important their work is to security and to the well-being of the United States.

Companies like OEA are a shining example that American know-how is alive and well, and that America can lead the way into a 21st century that will be safer and more peaceful. Finally, Mr. President, I take this opportunity to salute and thank OEA and its many fine workers.●

RULES OF PROCEDURE, SELECT COMMITTEE ON INTELLIGENCE

● Mr. BOREN. Mr. President, paragraph 2 of Senate rule XXVI requires that not later than March 1 of the first year of each Congress, the rules of each committee be published in the RECORD.

In compliance with this provision, I ask that the Rules of the Select Committee on Intelligence be printed in the RECORD.

The material follows:

RULES OF PROCEDURE FOR THE SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE

(Adopted June 23, 1976)

(Amended October 24, 1990)

David L. Boren, Oklahoma, Chairman.

William S. Cohen, Maine, Vice Chairman.

Sam Nunn, Georgia; Ernest F. Hollings, South Carolina; Bill Bradley, New Jersey; Alan Cranston, California; Dennis DeConcini, Arizona; Howard M. Metzenbaum, Ohio; John H. Glenn, Jr., Ohio.

Orrin Hatch, Utah; Frank Murkowski, Alaska; Arlen Specter, Pennsylvania; John Warner, Virginia; Alfonse M. D'Amato, New York; John C. Danforth, Missouri.

George Mitchell, Maine, Ex Officio.

Robert Dole, Kansas, Ex Officio.

George J. Tenet, Staff Director.

James H. Dykstra, Minority Staff Director.

L. Britt Snider, General Counsel.

Kathleen P. McGhee, Chief Clerk.

RULES OF PROCEDURE FOR THE SELECT COMMITTEE ON INTELLIGENCE

RULE 1. CONVENING OF MEETINGS

1.1. The regular meeting day of the Select Committee on Intelligence for the transaction of Committee business shall be every other Wednesday of each month, unless otherwise directed by the Chairman.

1.2. The Chairman shall have authority, upon proper notice, to call such additional meetings of the Committee as he may deem necessary and may delegate such authority to any other member of the Committee.

1.3. A special meeting of the Committee may be called at any time upon the written request of five or more members of the Committee filed with the Clerk of the Committee.

1.4. In the case of any meeting of the Committee, other than a regularly scheduled meeting, the Clerk of the Committee shall notify every member of the Committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C. and at least 48 hours in the case of any meetng held outside Washington, D.C.

1.5. If five members of the Committee have made a request in writing to the Chairman to call a meeting of the Committee, and the Chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the Clerk of the Committee who shall promptly notify each member of the Committee in writing of the date and time of the meeting.

RULE 2. MEETING PROCEDURES

2.1. Meetings of the Committee shall be open to the public except as provided in S. Res. 9, 94th Congress, 1st Session.

2.2. It shall be the duty of the Staff Director to keep or cause to be kept a record of all Committee proceedings.

2.3. The Chairman of the Committee, or if the Chairman is not present the Vice Chairman, shall preside over all meetings of the Committee. In the absence of the Chairman and the Vice Chairman at any meeting the ranking majority member, or if no majority member is present the ranking minority member present shall preside.

2.4. Except as otherwise provided in these Rules, decisions of the Committee shall be by majority vote of the members present and voting. A quorum for the transaction of Committee business, including the conduct of executive sessions, shall consist of five committee members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5. A vote by any member of the Committee with respect to any measure or matter being considered by the Committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the Committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6. Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such 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 3. SUBCOMMITTEES

Creation of subcommittees shall be by majority vote of the Commitee. Subcommittees shall deal with such legislation and oversight of programs and policies as the Committee may direct. The subcommittees shall be governed by the Rules of the Committee and by such other rules they may adopt which are consistent with the Rules of the Committee.

RULE 4. REPORTING OF MEASURES OR RECOMMENDATIONS

4.1. No measures or recommendations shall be reported, favorably or unfavorably, from the Committee unless a majority of the Committee is actually present and a majority concur.

4.2. In any case in which the Committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the Committee.

4.3. 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 working days in which to file such views, in writing with the 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.

4.4. Routine, non-legislative actions required of the Committee may be taken in accordance with procedures that have been approved by the Committee pursuant to these Committee Rules.

RULE 5. NOMINATIONS

5.1. Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least 14 days before being voted on by the Committee.

5.2. Each member of the Committee shall be promptly furnished a copy of all nominations referred to the Committee.

5.3. Nominees who are invited to appear before the Committee shall be heard in public session, except as provided in Rule 2.1.

5.4 No confirmation hearing shall be held sooner than seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the Committee.

5.5 The Committee vote on the confirmation shall not be sooner than 48 hours after the Committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the Committee.

5.6 No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the Committee.

RULE 6. INVESTIGATIONS

No investigation shall be initiated by the Committee unless at least five members of the Committee have specifically requested the Chairman or the Vice Chairman to authorize such an investigation. Authorized investigations may be conducted by members of the Committee and/or designated Committee staff members.

RULE 7. SUBPENAS

Subpenas authorized by the Committee for the attendance of witnesses or the production of memoranda, documents, records or any other material may be issued by the Chairman, the Vice Chairman, or any member of the Committee designated by the Chairman, and may be served by any person designated by the Chairman, Vice Chairman or member issuing the subpenas. Each subpena shall have attached thereto a copy of S. Res. 400, 94th Congress, 2nd Session and a copy of these rules.

RULE 8. PROCEDURES RELATED TO THE TAKING OF TESTIMONY

8.1 *Notice.*—Witnesses required to appear before the Committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2 *Oath or Affirmation.*—Testimony of witnesses shall be given under oath or affirmation which may be administered by any member of the Committee.

8.3 *Interrogation.*—Committee interrogation shall be conducted by members of the Com-

mittee and such Committee staff as are authorized by the Chairman, Vice Chairman, or the presiding member.

8.4 *Counsel for the Witness.*—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the Committee of such fact. If the witness informs the Committee of this fact at least 24 hours prior to his or her appearance before the Committee, the Committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warning, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit in writing any question he wishes propounded to his client or to any other witness and may, at the conclusion of his client's testimony, suggest the presentation of other evidence or the calling of other witnesses. The Committee may use such questions and dispose of such suggestions as it deems appropriate.

8.5 *Statements by Witnesses.*—A witness may make a statement, which shall be brief and relevant, at the beginning and conclusion of his or her testimony. Such statements shall not exceed a reasonable period of time as determined by the Chairman, or other presiding members. Any witness desiring to make a prepared or written statement for the record of the proceedings shall file a copy with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so at least 72 hours in advance of his or her appearance before the Committee.

8.6 *Objections and Rulings.*—Any objection raised by a witness or counsel shall be ruled upon by the Chairman or other presiding member, and such ruling shall be the ruling of the Committee unless a majority of the Committee present overrules the ruling of the chair.

8.7 *Inspection and Correction.*—All witnesses testifying before the Committee shall be given a reasonable opportunity to inspect, in the office of the Committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the Committee within five days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the Chairman. Upon request, those parts of testimony given by a witness in executive session which are subsequently quoted or made part of a public record shall be made available to that witness at his or her expense.

8.8 *Requests to Testify.*—The Committee will consider requests to testify on any matter or measure pending before the Committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a Committee member or a member of the Committee staff, may tend to affect adversely his or her reputation, may request to appear personally before the Committee to testify on his or her own behalf, or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the Chairman proposed questions in writing for the cross-examination of other witnesses. The Committee shall take such action as it deems appropriate.

8.9 *Contempt Procedures.*—No recommendation that a person be cited for contempt of Congress shall be forwarded to the Senate unless and until the Committee has, upon notice to all its members, met and considered the alleged contempt, afforded the person an opportunity to state in writing or in person why he or she should not be held in contempt, and agreed, by majority vote of the Committee to forward such recommendation to the Senate.

8.10 *Release of Name of Witness.*—Unless authorized by the Chairman, the name of any witness scheduled to be heard by the Committee shall not be released prior to, or after, his or her appearance before the Committee.

RULE 9. PROCEDURES FOR HANDLING CLASSIFIED OR SENSITIVE MATERIAL

9.1 Committee staff offices shall operate under strict precautions. At least one security guard shall be on duty at all times by the entrance to control entry. Before entering the office all persons shall identify themselves.

9.2 Sensitive or classified documents and material shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the Committee offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, and in conformity with Section 10.3 hereof. All documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's secure storage area for overnight storage.

9.3 Each member of the Committee shall at all times have access to all papers and other material received from any source. The Staff Director shall be responsible for the maintenance, under appropriate security procedures, of a registry which will number and identify all classified papers and other classified materials in the possession of the Committee, and such registry shall be available to any member of the Committee.

9.4 Whenever the Select Committee on Intelligence makes classified material available to any other committee of the Senate or to any member of the Senate not a member of the Committee, such material shall be accompanied by a verbal or written notice to the recipients advising of their responsibility to protect such material pursuant to section 8 of S. Res. 400 of the 94th Congress. The Clerk of the Committee shall ensure that such notice is provided and shall maintain a written record identifying the particular information transmitted and the Committee or members of the Senate receiving such information.

9.5 Access to classified information supplied to the Committee shall be limited to those Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and, under the Committee's direction, the Staff Director and Minority Staff Director.

9.6 No member of the Committee or of the Committee staff shall disclose, in whole or in part or by way of summary, to any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the Committee in executive session including the name of any witness who appeared or was called to appear before the Committee in executive session, or the contents of any papers or materials or other information received by the Committee except as authorized herein, or otherwise as authorized by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate. For purposes of this paragraph, members and staff of the Committee may disclose classified information in the possession of the Committee only to persons with appropriate security clearances who have a need to know such information for an official governmental purpose related to the work of the Committee Information discussed in Executive sessions of the Committee and information contained in papers and materials which are not classified but which are controlled by the Committee may be disclosed only to persons outside the Committee who have a need to know such information for an official governmental purpose related to the work of the Committee and only if such disclosure has been authorized by the Chairman and Vice Chairman of the Committee, or by the Staff Director and Minority Staff Director, acting on their behalf. Failure to abide by this provision shall constitute grounds for referral to the Select Committee on Ethics pursuant to Section 8 of S. Res. 400.

9.7 Before the Committee makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the Committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the Committee or the Committee staff.

9.8 Attendance of persons outside the Committee at closed meetings of the Committee shall be kept to a minimum and shall be limited to persons with appropriate security clearances and a need to know the information under consideration for the execution of their official duties. Notes taken at such meetings by any person in attendance shall be returned to the secure storage area in the Committee's offices at the conclusion of such meetings, and may be made available to the department, agency, office, committee or entity concerned only in accordance with the security procedures of the Committee.

RULE 10. STAFF

10.1 For purposes of these rules, Committee staff includes employees of the Committee, employees of the Members of the Committee assigned to the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable, the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform services for the Committee unless that individual holds appropriate security clearances.

10.2 The appointment of Committee staff shall be confirmed by a majority vote of the Committee. After confirmation, the Chairman shall certify Committee staff appointments to the Financial Clerk of the Senate in writing. No Committee staff shall be given access to any classified information or regular access to the Committee offices, until such Committee staff has received an appropriate security clearance as described in Sec-

tion 6 of Senate Resolution 400 of the 94th Congress.

10.3 The Committee staff works for the Committee as a whole, under the general supervision of the Chairman and Vice Chairman of the Committee. Except as otherwise provided by the Committee, the duties of Committee staff shall be performed, and Committee staff personnel affairs and day-to-day operations, including security and control of classified documents and material, shall be administered under the direct supervision and control of the Staff Director. The Minority Staff Director and the Minority Counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the Committee.

10.4 The Committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate and minority views, to the end that all points of view may be fully considered by the Committee and the Senate.

10.5 The members of the Committee staff shall not discuss either the substance or procedure of the work of the Committee with any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, either during their tenure as a member of the Committee staff at any time thereafter except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate.

10.6 No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment to abide by the conditions of the nondisclosure agreement promulgated by the Senate Select Committee on Intelligence, pursuant to Section 6 of S. Res. 400 of the 94th Congress, 2d Session, and to abide by the Committee's code of conduct.

10.7 No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment, to notify the Committee or in the event of the Committee's termination the Senate of any request for his or her testimony, either during his or her tenure as a member of the Committee staff or at any time thereafter with respect to information which came into his or her possession by virtue of his or her position as a member of the Committee staff. Such information shall not be disclosed in response to such requests except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such manner as may be determined by the Senate.

10.8 The Committee shall immediately consider action to be taken in the case of any member of the Committee staff who fails to conform to any of these Rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff.

10.9 Within the Committee staff shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards.

10.10 The workplace of the Committee shall be free from illegal use, possession, sale or distribution of controlled substances by its employees. Any violation of such policy by any member of the Committee staff shall be grounds for termination of employment. Further, any illegal use of controlled substances by a member of the Committee staff, within the workplace or otherwise, shall result in reconsideration of the security clearance of any such staff member and may constitute grounds for termination of employment with the Committee.

RULE 11. PREPARATION FOR COMMITTEE MEETINGS

11.1 Under direction of the Chairman and Vice Chairman designated Committee staff members shall brief members of the Committee at a time sufficiently prior to any Committee meeting to assist the Committee members in preparation for such meeting and to determine any matter which the Committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the Committee that bear on matters to be considered at the meeting.

11.2 The Staff Director shall recommend to the Chairman and the Vice Chairman the testimony, papers, and other materials to be presented to the Committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the Rules of the Senate and Rules of the Committee.

11.3 The Staff Director shall ensure that covert action programs of the U.S. Government receive appropriate consideration by the Committee no less frequently than once a quarter.

RULE 12. LEGISLATIVE CALENDAR

12.1 The Clerk of the Committee shall maintain a printed calendar for the information of each Committee member showing the measures introduced and referred to the Committee and the status of such measures; nominations referred to the Committee and their status; and such other matters as the Committee determines shall be included. The Calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the Committee.

12.2 Unless otherwise ordered, measures referred to the Committee shall be referred by the Clerk of the Committee to the appropriate department or agency of the Government for reports thereon.

RULE 13. COMMITTEE TRAVEL

13.1 No member of the Committee or Committee Staff shall travel abroad on Committee business unless specifically authorized by the Chairman and Vice Chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the Committee when travel is completed.

13.2 When the Chairman and the Vice Chairman approve the foreign travel of a member of the Committee staff not accompanying a member of the Committee, all members of the Committee are to be advised, prior to the commencement of such travel, of its extent, nature and purpose. The report referred to in Rule 13.1 shall be furnished to all members of the Committee and shall not be otherwise disseminated without the express authorization of the Committee pursuant to the Rules of the Committee.

13.3 No member of the Committee staff shall travel within this country on Committee business unless specifically authorized by the Staff Director as directed by the Committee.

RULE 14. CHANGES IN RULES

These Rules may be modified, amended, or repealed by the Committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

APPENDIX A

[94th Congress, 2d Session]

S. RES. 400

(Report No. 94-675)

(Report No. 94-770)

IN THE SENATE OF THE UNITED STATES

March 1, 1976

Mr. Mansfield (for Mr. Ribicoff) (for himself, Mr. Church, Mr. Percy, Mr. Baker, Mr. Brock, Mr. Chiles, Mr. Glenn, Mr. Huddleston, Mr. Jackson, Mr. Javits, Mr. Mathias, Mr. Metcalf, Mr. Mondale, Mr. Morgan, Mr. Muskie, Mr. Nunn, Mr. Roth, Mr. Schweiker, and Mr. Weicker) submitted the following resolution; which was referred to the Committee on Government Operations

May 19, 1976

Considered, amended, and agreed to

To establish a Standing Committee of the Senate on Intelligence, and for other purposes

Resolved, That it is the purpose of this resolution to establish a new selected committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolutoin referred to as the "select committee"). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations;

(D) two members from the Committee on the Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause

(E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

(b) No Senator may serve on the select committee for more than eight years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, one-third of the Members of the Senate appointed to the select committee at the beginning of the Ninety-seventh Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

(c) At the beginning of each Congress, the Members of the Senate who are members of the majority party of the Senate shall elect a chairman for the select committee, and the Members of the Senate who are from the minority party of the Senate shall elect a vice chairman for such committee. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the select committee shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 4(e)(1) of rule XXV of the Standing Rules of the Senate.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

(2) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; the Department of Justice; and the Department of the Treasury.

(3) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

(4) Authorizations for appropriations, both direct and indirect, for the following:

(A) The Central Intelligence Agency and Director of Central Intelligence.

(B) The Defense Intelligence Agency.

(C) The National Security Agency.

(D) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(E) The intelligence activities of the Department of State.

(F) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(G) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (D), (E), or (F) to the extent that the activities of such successor department, agency, or subdivision are activities described in clause (D), (E), or (F).

(b) Any proposed legislation reported by the select committee, except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within thirty days after the day on which such proposed legislation is referred to such standing committee; and any proposed legislation reported by any committee, other than the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred to the select committee for its consideration of such matter and be reported to the Senate by the select committee within thirty days after the day on which such proposed legislation is referred to such committee. In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed herein, such committee shall be automatically discharged from further consideration of such proposed legislation on the thirtieth day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise. In computing any thirty-day period under this paragraph there shall be excluded from such computation any days on which the Senate is not in session.

(c) Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purpose of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters, requiring the attention of the Senate or such other committee or committees. In making such report, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interest. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5 (a) For the purposes of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (6) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpoenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpoenas.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct[1] and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringe-

[1] Name changed to the Select Committee on Ethics by S. Res. 4, 95-1, Feb. 4, 1977.

ment on the privacy of any person or persons.

SEC. 8. (A) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall publicly disclose the information ordered to be disclosed.

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct[1] to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct,[1] shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct[1] determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it shall be transferred to the select committee.

SEC. 11. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency: *Provided*, That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence activities of the Department of State.

(6) The intelligence activities of the Federal Bureau of Investigations, including all activities of the Intelligence Division.

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gath-

[1] Name changed to the Select Committee on Ethics by S. Res. 4, 95-1, Feb. 4, 1977.

ering, use, security, and dissemination of intelligence:

(1) the quality of the analytical capabilities of United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule by procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(8) the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest; and

(9) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee to Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term "intelligence activities" includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign of policy, national security, or related policies the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, miltary force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and convert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

(b) As used in this resolution, the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 15. (This section authorized funds for the select committee for the period May 19, 1976, through Feb. 28, 1977.)

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

APPENDIX B

[94th Congress, 1st Session]

S. RES. 9

IN THE SENATE OF THE UNITED STATES

January 15, 1975

Mr. Chiles (for himself, Mr. Roth, Mr. Biden, Mr. Brock, Mr. Church, Mr. Clark, Mr. Cranston, Mr. Hatfield, Mr. Hathaway, Mr. Humphrey, Mr. Javits, Mr. Johnston, Mr. McGovern, Mr. Metcalf, Mr. Mondale, Mr. Muskie, Mr. Packwood, Mr. Percy, Mr. Proxmire, Mr. Stafford, Mr. Stevenson, Mr. Taft, Mr. Weicker, Mr. Bumpers, Mr. Stone, Mr. Culver, Mr. Ford, Mr. Hart of Colorado, Mr. Laxalt, Mr. Nelson, and Mr. Haskell) introduced the following resolution; which was read twice and referred to the Committee on Rules and Administration.

RESOLUTION

Amending the rules of the Senate relating to open committee meetings

Resolved, That paragraph 7(b) of rule XXV of the Standing Rules of the Senate is amended to read as follows;

"(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

"(2) will relate solely to matters of committee 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 to 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 any 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; or

"(5) will disclose information relating to the trade secrets or 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.

Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.".

SEC. 2. Section 133A(b) of the Legislative Reorganization Act of 1946, section 242(a) of the Legislative Reorganization Act of 1970, and section 102 (d) and (e) of the Congressional Budget Act of 1974 are repealed.•

BREAK UP THE CHINESE GULAG

• Mr. SIMON. Mr. President, one of the areas where we have not stood up on human rights is on China.

I say that not by way of hindsight, but as one who joined Chinese students in their protests both in Chicago and some days after Tiananmen Square in front of the Chinese Embassy here in Washington, DC.

Recently, the New York Times featured an op-ed piece by Robert L. Bernstein, chairman of Human Rights Watch, that calls on us to be more sensitive to the human rights situation in China.

I applaud his message.

Everytime we start waffling on human rights we end up doing damage to the cause of freedom in other countries, and we ultimately do damage to the respect and political effectiveness of our own country.

I urge my colleagues, who may not have seen the Robert Bernstein piece, to read it. I ask to insert the column in the RECORD at this point.

The column follows:

[From the New York Times, Feb. 17, 1991]

BREAK UP THE CHINESE GULAG

(By Robert L. Bernstein)

China's sentencing last week of two dissidents to 13 years in prison is the ultimate demonstration of the failure of so-called quiet diplomacy. Wang Juntao and Chen Ziming were champions of freedom, and their names deserve to be known to the world. Their arrest and convictions are an outrage, and the Chinese Government needs to hear it, in the strongest terms.

Wang Juntao, now 32, was a teenager when he was jailed by the Gang of Four for writing a poem to mark Zhou Enlai's death in 1976. The same year, Chen Ziming, now 38, got out of prison long enough to make a rousing speech in Tiananmen Square, only to be arrested again and sent to a labor camp. Three years later, as college students, they joined the Democracy Wall movement. After graduation Mr. Wang was relegated to a low-level job at a remote physics laboratory as a result. In 1985, the two men set up a think tank that conducted unprecedented opinion polls on issues of democracy and social justice.

In 1989, they were advisers to the students in Tiananmen Square and went into hiding after the June massacre. Mr. Chen and his wife were arrested that October trying to escape to Hong Kong; she was six months pregnant and had a miscarriage in prison. She is now free. Mr. Wang was arrested about the same time. Both men have been in solitary confinement.

The West's task is to make Wang Juntao and Chen Ziming a moral cause as Andrei Sakharov and Natan Sharansky were before them—and to get the same recognition for the hundreds of others who face prison terms.

To this end, Asia Watch, a division of Human Rights Watch, has formed the Committee to End the Chinese Gulag. It is headed by the Chinese disidents Fang Lizhi and Liu Binyan; Yuri Orlov, the former Soviet political prisoner, and myself.

We urge the boycott of professional conferences held in China until these men and women are released. (American Bar Association officials have been considering a visit to China to set up links with official law societies; they shouldn't go.) Nor should conferences held outside China include Beijing's hand-picked representatives.

We will protest any high-profile visits to China—be executives, musicians, writers and Government officials—unless these people raise the dissidents' cases. We will press for an end to the trading privileges the U.S. grants China as a most favored nation until those dissidents are freed. We demand that their release be as high on the Bush agenda as freedom for Soviet prisoners was for the Reagan Administration.

China has been completely let off the hook for the Tiananmen crackdown. Economic and political sanctions imposed by the U.S. and other governments have vanished into thin air.

In November, President Bush received China's Foreign Minister, Qian Qichen, a gesture that removed much of the force from the visit to Beijing a few weeks later of Assistant Secretary of State Richard Schifter. He took a list of 150 prisoners, but the names were never made public. The trials started just after he returned.

We have to change China's disdain for human rights. Constant attention worked for the Soviet prisoners. We have to make it work for the students, workers and intellectuals swallowed up by the Chinese gulag.

Simple justice demands it—and so does any hope for the "new world order" we hear so much about these days.•

VICTOR POOLE, LEADER FOR ALABAMA

• Mr. SHELBY. Mr. President, I rise today to pay tribute to an outstanding Alabamian. Mr. Victor Poole is the seventh district representative on the Alabama State Board of Education and the president of the Bank of Moundville. Further, he has been a positive influence in Alabama civic affairs for over 30 years.

As an influential member of the State Board of Education since the 1960's, Victor Poole has helped oversee the work of its 60,000 employees and the appropriation of its $2.7 billion budget. Victor Poole's career on the State Board of Education has been filled with outstanding accomplishments. In the 1970's, he was able to secure millions of dollars to build six vocational schools in his district's poorest region. Poole also worked to upgrade instruction in schools with heavy minority enrollment. This commitment led to a dramatic increase in average test scores in the region.

Victor Poole's greatest accomplishments may be his decade of work to establish statewide teacher certification. At the time, this program was a national breakthrough and served as a model for other States. Like much of Victor's work, he was able to achieve this goal at a time when people believed it was impossible.

Victor Poole has been equally successful in the business arena. As president and chairman of the Board of the Bank of Moundville since 1956, he has directed its emergence as one of the State's most secure financial institutions. The bank has grown from $500,000 in assets when he came on board to over $37 million today.

Victor Poole is a man of strong convictions and character who works within the framework of the State Board of Education to make sure Alabama's schools focus on the essentials in education as he sees them—the three R's, patriotism, and physical education. Victor is an accomplished consensus builder and motivator who achieves results through direct involvement and determination.

It is with great pleasure that I have shared the accomplishments of one of Alabama's leading citizens with my Senate colleagues.•

TRIBUTE TO DAN RODRIGUEZ AND HISPANIC BUSINESS

• Mr. WIRTH. Mr. President, I would like to take this opportunity to recognize the achievements of a Coloradan who is a leader of national significance on behalf of Hispanic business.

Mr. Dan Rodriguez is the executive director of the Colorado Hispanic Chamber of Commerce—and has been the driving force in this organization's growth for the last 5 years. Under Dan's leadership, the Hispanic Chamber has grown from 150 to more than 700 members. That is a remarkable achievement, and underscores the significant growth of Hispanic entrepreneurship in the last few years.

I have had the opportunity to work with the Colorado Hispanic Chamber of Commerce on a number of projects, and my staff and I have great respect for Dan and the men and women who make the chamber work so well.

Dan Rodriguez is a remarkable person. In many ways his personal story mirrors the stories of Hispanic Americans across the Nation. He started out on a cotton farm in Texas, served the country in the Air Force and worked his way to a position of political and commercial importance as the executive director of the chamber.

Coloradans of all political affiliations and representing every ethnic group and community have reason to be proud of a man like Dan Rodriguez, and I am pleased to use this occasion to recognize his considerable achievements.

Mr. President, I ask at this time that the following article from the Denver Post be printed in the RECORD:

The article follows:

[From the Denver Post, Feb. 8, 1991]

HISPANIC CHAMBER HEAD HAS CLOUT

(By Richard Johnson)

In October 1989, 400 military officers—including the commander of Lowry Air Force Base—gave Dan Rodriguez an enthusiastic ovation.

For Rodriguez, who grew up on a cotton farm in Texas, it was a sweet moment.

He had just finished an hour-long presentation as the keynote speaker at a Hispanic Heritage Luncheon sponsored by Lowry's officers' club.

"I couldn't help but be conscious that 28 years earlier I was stationed at Lowry as an airman," the 47-year-old Rodriguez recalled recently, with a faint, bemused smile. "In those days, I certainly didn't socialize with officers."

In those days, he couldn't pick up a telephone and get through to Gov. Roy Romer or to a legislator for that matter. Today, he can.

Rodriguez is executive director and chief operating officer of the Hispanic Chamber of Commerce Inc. The Denver-based organization's metropolitan membership has grown an impressive 366 percent since Rodriguez took the helm five years ago—from 150 to 700 members.

About 600 of the chamber's members are among metro Denver's 4,000 Hispanic-owned businesses. Fifty members are businesses owned by non-Hispanics, and another 50 are big corporations—like Adolph Coors Co.—with an interest in Hispanic consumers.

The chamber is no lobbying organization itself, but the size of its membership and three sister organizations in Pueblo, Colorado Springs and Trinidad—there are another 4,000 Hispanic-owned businesses throughout Colorado—should carry some political clout.

The four groups, in fact, collectively are considered a member of the new Hispanic League, a lobbying organization that this year for the first time will present a Hispanic agenda to the legislature.

To join the local chamber, corporate sponsors pay a $2,500 annual fee. Hispanic-owned businesses or small businesses owned by non-Hispanics pay $140 per year plus $2 per employee.

Rodriguez acknowledged that chamber members expect something for their investments of time and money in the organization.

"In the case of big corporations," he said, "they belong because Hispanics—and Hispanic businesses—buy things."

According to Denver furniture-store owner Zee Ferrufino, who helped organize the chamber in 1970 when it was founded as the Latin Chamber of Commerce, a projected 34 million Hispanics in the United States will have $500 billion in purchasing power by the year 2000.

"Ninety percent of our members," said Rodriguez, "are firms with fewer than 10 employees. We bring company representatives and buyers together at procurement breakfasts and luncheons. The owner of a small business doesn't feel intimidated. It's fun, and they learn that networking pays off in business gains."

Rodriguez is dignified but amiable.

He is modest about his accomplishments but will share his formula for success—respect for oneself and others, hard work, and continual education.

As the youngest child of Mexican parents who immigrated to Texas to do farm labor, he was the only Hispanic student in a series of country schools near San Angelo, Texas.

After high school, he studied at a San Angelo business school and then enlisted in the Air Force, which assigned him first to Lowry and then to Germany in office administration.

After his discharge, he moved to Denver and eventually became a real estate agent, as well as a director of the Latin Chamber of Commerce. He left two years later to help form an office-supply business, but in 1985, the Hispanic chamber's board of directors brought Rodriguez back to remedy a dwindling membership.

He has succeeded beyond even his own expectations.•

BUT ARE THERE ENOUGH JOBS FOR THE POOR?

• Mr. SIMON. Mr. President, I do not think, in all my years in Congress, I've ever asked that a letter to the editor be inserted into the CONGRESSIONAL RECORD. The other day I read a letter to the editor of the New York Times written by David R. Riemer, director of administration for the city of Milwaukee, that made so much sense, I believe it deserves larger circulation.

It talks about the need for a jobs program in this Nation.

It is one of the things that we seem to avoid facing.

We are either going to pay people for being productive or nonproductive, and I favor paying them for being productive.

I will be speaking more about the need for a jobs program on the floor of the Senate during the coming months, but I urge my colleagues to read this letter to the editor, which I ask to insert in the RECORD at this point.

The letter follows:

BUT ARE THERE ENOUGH JOBS FOR THE POOR?

To the Editor:

Your series on poverty in America ("The Missing Agenda: Poverty and Policy," Jan. 27, 28, 29), while hitting most of the issues, missed the biggest one: Are there enough jobs for the poor?

If the number of low-income welfare recipients, unemployed and "discouraged workers" is less than the supply of available jobs, then either the conventional conservative solution (increase motivation by cutting benefits) or the conventional liberal solution (remove barriers to entry such as racial discrimination and lack of job training) may be sound public policy.

If, on the other hand, the number of those whom we expect to work substantially exceeds the supply of available jobs, then neither motivation nor the removal of barriers will do much good. Most of the poor will remain poor—because there will literally be too few jobs for them to fill.

We don't have a lot of data as to how the number of persons expected to work compares to the supply of unfilled jobs, but such data as do exist all point to the same conclusion: The supply of officially unemployed workers alone exceeds the supply of unfilled jobs.

National studies by Katherine Abraham and Harry Holzer show that—depending on the official unemployment rate—the number of officially unemployed consistently exceeds the number of unfilled jobs by ratios ranging from 10:1 to 3:1. When welfare recipients and "discouraged workers" are thrown into the mix, the ratios get worse. In Milwaukee, a forthcoming study by the Social Development Commission will show that, since 1987, the sum of welfare recipients plus unemployed plus discouraged workers has exceeded the estimated supply of unfilled jobs by ratios ranging from 10:1 to 6:1. And this when the official jobless rate was generally below both state and national averages.

As I suggest in my recent book, "The Prisoners of Welfare: Liberating America's Poor from Unemployment and Low Wages," while any individual's poverty in the United States may be the result of inadequate motivation or frustrating barriers to entry, aggregate poverty in this country is the result of two simple shortcomings of the labor market: too few jobs, and too many jobs that pay wages too low.

To eliminate poverty, therefore, it is necessary to correct for these two basic labor market deficiencies. Empowering the poor—as that concept is defined by Housing Secretary Jack Kemp, i.e., letting the poor choose to enroll in any school, buy public housing units, etc.—however meritorious, will not work, because empowerment neither creates millions of new extra jobs nor augments the earnings provided by the low-wage jobs at the bottom of the wage structure. More or better social services won't work either, for the same reasons: No new jobs are created and wages are not augmented.

Welfare reform generally won't work either, and again for largely the same reasons. Reform usually does not expand the supply of jobs, and it usually does not function to supplement low wages. To the extent that some welfare reform initiatives do achieve these goals, they suffer from two fundamental flaws. First, welfare reform's efforts to create jobs (by "workfare" or other means) or bolster wages (by letting benefits remain in place after recipients get employment) terminate at some fixed point in time. Second, and worse, welfare reform's attempts to create jobs or bolster wages help only the relatively small percentage of poor who get welfare in the first place. Welfare reform by its very nature does not help the vast majority of poor—who aren't on welfare—to get jobs or augment earnings.

The poor will benefit, of course, from any general expansion of employment in the economy—the last solution mentioned in your series. It is universally acknowledged, however, that the poor benefit in only a limited way when employment expands across the board. Too many of the new jobs are taken by non-poor competitors (such as teenagers, college students, second-earners, and the elderly), who always enter and advance quickly in the queue for "untargeted" new jobs when more jobs are created on a general scale. One can hardly begrudge these competitors: while not officially poor, many are far from well-off. They need the money too.

In the final analysis, there are only two practical methods of ending poverty in the United States. Give the poor money—so much money that they get out of poverty. Or get the poor into jobs—and then make sure the jobs they then take or already hold (for most poor adults work in the first place) yield an "earnings-related income," consisting of wages and earnings supplements, higher than the poverty line. Only these two approaches correct for the basic problem: the economy's shortage of jobs and its plethora of low-wage jobs.

The first solution, whether it be called the Guaranteed Annual Income or the Negative Income Tax or something else, fell from grace over a decade ago. And for good reason. The poor don't want free money: they want jobs. And the rest of us don't want to give the poor free money: we expect the overwhelming majority of them, who are fit for work, to perform work to earn a living, just like us.

The second solution—basically, a combination of a revived Civilian Conservation Corps and an expanded Earned Income Tax Credit—thus emerges as the only practical, justifiable and politically acceptable solution to poverty in the United States. I add politically acceptable with care. Public opinion poll after public opinion poll has confirmed that the great majority of Americans believe that the unemployed poor should be offered community service employment if they cannot secure jobs in the private sector.

A revived C.C.C., an expanded E.I.T.C., and some help (based on ability to pay) with the high cost of child and health care—financed by eliminating Aid to Families With Dependent Children, Food Stamps, half of Medicaid, and most every other Federal program that deals with the symptoms of poverty—is the combination of public policies that the United States needs to transform its missing agenda into its rediscovery of justice.—David R. Reimer, Director of Administration, City of Milwaukee, Milwaukee, Jan. 31, 1991.•

INDEPENDENCE OF REPUBLIC OF ESTONIA

• Mr. LEVIN. Mr. President, this weekend commemorates the 73d anniversary of the declaration of independence of the Republic of Estonia on February 24, 1918. Because of the recent inspiring actions of the people in the Baltic nations, this year's commemoration is special.

After 50 years of forced occupation and subjugation by the Soviet Union, Estonia, Latvia, and Lithuania are engaged in a historic struggle to reclaim their freedom and sovereignty. Their oppression has been long, their struggle has been hard, and their will has been steadfast. The turns and twists in the different road ahead are unclear and unknown, but it is clear that they

are embarked on an inevitable march to freedom.

In 1939, Estonia and the other Baltic nations were forcefully and illegally annexed by the Soviet Union as the result of the secret Molotov-Ribbentrop pact between Hitler and Stalin. On the 50th anniversary of the Hitler-Stalin pact, a Soviet parliamentary commission acknowledged the existence of the pact, and officially acknowledged its illegality. Mr. President, even organs of the Soviet State have recognized that the pact was illegal, and violated international law.

The United States has never recognized the Soviet annexation of the sovereign Baltic nations, and our Government should not, must not, ever waver in this.

The current and ongoing standoff in Estonia, Latvia, and Lithuania has inspired freedom-loving people throughout the world. The repression of the Soviet Empire did not extinguish the desire for freedom in the Estonian people. The bravery of the people of Estonia, Latvia, and Lithuania is opening a new chapter in freedom. The people will prevail, and the Baltics will again be free, independent, and sovereign.•

LES TESCH TO BE AWARDED RED CROSS CERTIFICATE OF MERIT

• Mr. KOHL. Mr. President, on March 3, 1991, the American Red Cross will present Les Tesch, of Prairie du Sac, WI, with the Certificate of Merit, the highest award the Red Cross can present to recognize selfless efforts to save the life of another human being.

On June 2, 1989, Mr. Tesch and his late son, Chuck, in whose memory the award will also be presented, responded immediately to an automobile accident which occurred some 200 feet from their business, Tesch's Flowerland. By all accounts, both vehicles involved in the accident appeared to be totally destroyed. When a police officer reached the scene of the accident, he saw Mr. Tesch and his son inside one of the automobiles checking the occupant, a Mr. John Klozotsky, for breathing, bleeding, and other possible life-threatening problems. When the officer asked Mr. Tesch what the situation was, Mr. Tesch responded that he needed an ambulance for the victim and began giving Mr. Klozotsky mouth-to-mouth resuscitation. Mr. Tesch remained in the demolished vehicle providing care to Mr. Klozotsky until an Emergency Medical Unit arrived some 25 minutes later.

I believe that this incident reveals two of Mr. Tesch's outstanding qualities. First, Mr. President, this unfortunate accident displayed Mr. Tesch's willingness to help others, even if that action involved some risk to his own safety. As the police officer at the scene stated in a letter to the American Red Cross recommending Mr. Tesch for this award, "I have very seldom come across a citizen willing to endanger himself in order to save another person's life." But second, and equally important, Mr. Tesch had taken the steps necessary to be able to help others. No matter how well motivated he was, if Mr. Tesch had not been trained in American Red Cross advanced first aid and CPR, Mr. Klozotsky would probably not be alive today.

Mr. Tesch's action exemplifies the highest degree of concern of one human being for another. Mr. President, Les Tesch deserves the award the Red Cross will present to him and he deserves the gratitude of the Senate, the State of Wisconsin, and the Nation.•

INDIVIDUAL RESPONSIBILITY IN HEALTH CARE

• Mr. DURENBERGER. Mr. President, today, as we await the turn of events which will take us toward peace or a deeper involvement in war, we are reminded what it means to take personal responsibility for something larger than ourselves. On the homefront, we also are concerned with domestic issues which will be with us long after the Middle East is clear of the sights and sounds of conflict.

In a recent speech before an audience at Yale University, Dr. Louis Sullivan, Secretary of Health and Human Services, discussed the importance of having a sense of personal responsibility as we develop a more effective, efficient, and humane health care system.

Mr. President, I ask that the following remarks by Secretary Sullivan be printed in the RECORD, with my compliments.

The remarks follow:

REMARKS BY LOUIS W. SULLIVAN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES

Thanks very much, Dr. Lytton, and thank you all for that warm welcome. It's a great honor to have been invited by Jonathan Edwards College and Yale University to join you as a Tetelman Fellow, following in the footsteps of so many distinguished scientists and physicians upon whom you have previously bestowed this singular honor.

My lecture this morning will range far beyond what we normally consider science and medicine. Indeed, we will venture into some territory that this college's namesake, Jonathan Edwards, would have found familiar. For I propose to talk about the role of individual responsibility in health care today, and our need to cultivate a new "culture of character" within this nation.

But first, a word of context. My discussion today is part of a larger dialogue that I am conducting with the American people, about the problems afflicting our nation's health care system, and some possible solutions. Recent events in Washington have reminded us once again that, before we attempt to make significant change and reform in our health care system, we must first explore thoroughly with the American people the problems we face, and the difficult and painful choices we must make.

Upon the firm foundation of mutual understanding and trust, we can build the widespread and durable consensus that must undergird any proposed changes in our system of health care.

Last month, at Stanford, I discussed the factors that have driven the dramatic rate of increase in health care costs. In future presentations, I will talk about providing essential health care to those who are currently underserved; the structure of public and private insurance; and the effectiveness of our medical practices.

But today, I wish to discuss the critical role that a renewed sense of personal responsibility must play, as we seek to forge a more effective, less costly, and more humane system of health care. For the harsh truth is that a high percentage of the disease and disability afflicting the American people is a consequence of unwise choices of behavior and lifestyle.

Those poor choices result in lives that are blighted, stunted, and less fulfilling, and they cause an unnecessary, costly drain on the resources available for health care.

The decision to smoke, for instance, is responsible for one of every six deaths in America each year. The cumulative toll is 390,000 deaths per year, including 21 percent of heart disease deaths, 87 percent of lung cancer deaths, and 30 percent of all cancer deaths. In addition, smoking is responsible for 20 to 30 percent of low birth weight babies. Smoking costs our society over $52 billion annually.

Abuse of alcohol was responsible for one half of the 30,000 motor vehicle deaths in 1988, and 40 percent of the drownings. Drinking is a major cause of cirrhosis, the ninth leading cause of death in the United States; it has been linked to violence, homicide and suicide; and its costs to society amounted to some $70 billion in 1989.

Improper diet and inadequate exercise are other major contributors to poor health outcomes. Poor diet is related to five of the ten leading causes of death in the United States, including coronary heart disease, some types of cancer, stroke, and diabetes. Together, unhealthy diet and sedentary habits contribute to 300,000 to 400,000 deaths each year.

For children and youth, injuries are the leading cause of death. The lifetime costs of injuries were estimated to be $158 billion in 1985.

Problems of behavior and lifestyle contribute to some of the leading health problems facing this nation, including infant mortality, heart disease, and cancer.

If we are to bring better lives to all Americans—and if we are to cope with the dramatic increases in health care costs in America—it will be necessary for us to address directly the problem of ill-advised choice of behavior and lifestyle. And taking on this challenge, carries us well into the difficult realms of ethics and culture.

Now, this is not a comfortable passage for physicians and health care professionals—nor for Americans in general. By our actions, it would appear that we would rather avoid the issue of appropriate, healthy behavior altogether. But, clearly, our avoidance is ill-advised, both from the standpoints of healthy, fulfilling lives, and of financial costs.

Why do we approach health this way? In part, I believe, because we have seen such miraculous achievements in medical science that we believe that medical science can, indeed, fix virtually any ailment. Our faith in medicine grows ever stronger as we push out the frontiers of research, unveiling more of

the secrets of life. Consequently, we have come to think of medicine as a safety net, strong and wide enough to catch all who fall from the high wire of an unhealthy lifestyle.

Even as our trust as a society in medical science grows, however, I am troubled by diminishing confidence in our willingness and ability as a society and individuals to make sound judgments about healthy human behavior and lifestyles. Linked to this declining faith in ethical and value judgment is an erosion of those institutions that have generated, shaped, and sustained our ethical and cultural standards—family, neighborhood, church, school, and voluntary associations. As a consequence of this institutional decline, we have fewer sources of instruction in healthy, constructive behavior.

I leave it to the students and faculty of this splendid university to explore fully the profound issues of science, ethics, and philosophy into which we've ventured as a society. But from my practical standpoint—as a physician, and as Secretary of Health and Human Services—let me simply say this: every day, all about me, I see the toll of our ethical dilemma, the tragic price of our cultural indifference—not only in the prevalence of preventable disease and injury, but also in the vast range of social problems afflicting the American people—drug and alcohol addiction, escalating child abuse and neglect, children born to unwed teen mothers, families abandoned or never formed. So many of these problems have their roots in the alienation, isolation, and lack of direction that follow from the collapse of societal standards, and the institutions that generate them.

That is why I have travelled from one end of the country to the other over the past two years, calling for a renewed sense of personal responsibility on the part of every American citizen—in short, a new "culture of character."

By "character," I mean the personal values and qualities encompassed by that sturdy, time-honored word—values like self-discipline, integrity, taking responsibility for one's acts, respect for others, perserverance, moderation, and a commitment to serve others and the broader community.

By "culture," I mean these values that must be embraced as cornerstones of our society. I seek to remind Americans that we can best cultivate character in our citizens by reinvigorating and shoring up those institutions that teach and nurture values and principles of healthy behavior, especially the institutions of family and communtiy.

I certainly came to appreciate, in my own experience, the critical value of strong families and communities, and the standards they nurture. The neighborhoods in Atlanta and Blakely, Georgia, where I grew up, were by no means wealthy, but they were genuine communities—joined together in joy and sorrow, sharing our benefits and burdens, committed to common values and principles.

I was not just the child of my father and mother—I was in fact a child of the entire neighborhood. When I was out of sight of the folks and thought I could get away with something, Mr. Jones or Mrs. Smith down the block was sure to step in and administer appropriate, corrective caring—whether I like it, or not.

Now, I have to admit, there were times when all this caring about my personal life was not particularly welcome. But I have since come to appreciate just how critical that attention and discipline are. Through it I learned certain values—reinforced at every turn by my family, neighbors, church, and school—values that carried me to medical school, and that carried you into your studies and professions—values like self-esteem, self-discipline, the desire to learn, responsibility, and service.

In short, my neighborhood built around me a culture of character—an ethic of personal responsibility. As my beloved mentor, the late Dr. Benjamin Elijah Mays, former president of Morehouse College, put it, I learned that "It is not your environment, it is you—the quality of your mind, the integrity of your soul, the determination of your will—that will decide your future and shape your life."

Translated into strategies that would mean healthier, longer lives for all citizens, a new culture of character calls upon Americans to end drug abuse; avoid the high risk behavior that spreads the AIDS virus; reduce consumption of alcohol; seek early prenatal care; improve eating habits; wear seat belts and take other necessary precautions; increase exercise; learn to resolve conflicts without resorting to violence; seek the necessary medical examinations and vaccinations; and, yes, stop smoking.

Were we to follow these injunctions, studies have shown that we could eliminate 45 percent of deaths from cardiovascular disease, 23 percent of deaths from cancer, and more than 50 percent of the disabling complications of diabetes. Indeed, control of fewer than ten risk factors, including the above—could prevent between 40 and 70 percent of all premature death, a third of all cases of acute disability, and two-thirds of all cases of chronic disability.

Just as important, a new culture of character in America, nurtured by stengthened families and communities, would do much to alleviate the alienation, isolation and despair that fuel teen pregnancy, violence, drug and alcohol abuse and other social problems afflicting us. The lives of Americans would be healthier in every sense of the word.

Now, I have heard it said that my call to a new culture of character is in fact nothing more than a way of diverting attention from a Federal government and a society that refuses to provide the resources necessary for better health care for all Americans.

To be sure, proverty is linked to ill health and social dysfunction—so let us never be guilty of suggesting to our citizens that first they must be wealthier, before they can be healthier. But, many impoverished families and neighborhoods have sustained the values and institutions necessary for healthy, productive lives—lives that will eventually lead them out of poverty.

To suggest that our poor and minority citizens cannot improve their lives, by drawing on their own strong, traditional values and institutions, is not only inaccurate, it is patronizing and insulting. To counsel them to sit and wait patiently for massive new Federal (or other) programs is to counsel resignation, defeat, pessimism, and despair.

Ill-advised choices of behavior and lifestyle characterize all strata of American society. And so the call for a new culture of character applies with equal force to all Americans, regardless of income, race, sex, or other status.

Let me be clear about another aspect of the "culture of character." It by no means puts the onus for healthy behavior exclusively on the individual, nor does it rely simply on a heightened sense of personal responsibility. that's why our culture—the broader realm of social, economic, and political institutions that shape our lives—figures centrally in my message. We must mobilize all those institutions in the cause of healthier, more productive lives for our citizens.

The Federal government is playing a leadership role by marshalling all facets of society behind disease prevention and health promotion, as demonstrated most recently by our report of health goals for the nation, entitled "Healty People 2000"—a careful, thorough enunciation of certain clearly defined health goals to be reached by the turn of the century. We are also working to elevate the status of preventive services in our approach to health care delivery and health policy reform.

More broadly, the federal government today is working to revitalize institutions like the family and local community, which cultivate healthier, life-sustaining values. This approach carries us beyond the attitude of the 60s, 70s, and 80s, when government retreated from active social policy.

We now know that Federal programs are most effective when they work through, and help to reinforce, active, indigenous community groups. And so today, we are providing resources and assistance to community coalitions that are striving to prevent the spread of AIDS; halt drug and alcohol abuse; provide early childhood development programs; counsel young minority males; reduce violence; bring expectant mothers into prenatal care programs; and a vast range of other activities.

Workplace America also has a role to play in building a new culture of character. Businesses must become far more attentive to the health and lifestyle of their employees, both by discouraging unhealthy behavior like smoking and drug and alcohol abuse, and by encouraging positive behavior, like exercise and proper diet.

Equally important, some corporations must be held accountable when they undertake actions that erode the culture of character. Heavily promoting alcohol and tobacco sales in low-income communities is one such reprehensible act.

The media and cultural leadership groups also have a vital role in play in shaping a new culture of character in America. If they can help us celebrate solid values and institutions, then Americans will be far more likely to adopt healthy lifestyles.

A step in the right direction is the dramatic turn-about in Hollywood's and Madison Avenue's treatment of drug use. Where once it was accepted, today it is the target of a highly effective, voluntary multi-million dollar prevention campaign. This is a good example of what can be accomplished, if our media leaders can be mobilized behind healthier lifestyles.

Finally, within my own profession of medicine, health promotion and disease prevention must play a much larger role. We must work to redress the imbalance in health care expenditures devoted to promoting health versus treating disease—currently, only 4 percent of total expenditures go to prevention—and we must make prevention a central part of the improved primary health care that we are striving to make available to all Americans. Above all, physicians must overcome their reluctance to venture into the personal, private behaviors of those to whom we minister, in order to give them thoughtful counsel about the effect their choices have on their health.

This brings me to one final comment about my vision for a new culture of character in America. It is a culture in which we not only are more careful about our own health behavior, but also more attentive to the behav-

ior of those around us—our family members, friends, neighbors, and coworkers.

We must have the courage to point out the dangers of unhealthy, self-destructive behaviors in those around us, as well as voice approval for their healthy behaviors. And when these judgments are rendered—not out of smugness, or self-righteousness, or condemnation, but out of compassion, concern, and love—when they come in the spirit of family and friendship—then the message of a new culture of character will have discovered its most effective and profound voice.

My plea for a new culture of character, a new ethic of personal responsibility, is by no means intended to be a substitute for the changes that we must make in our broader system of health care. Government will have to be more active on behalf of those who are underserved by current health care arrangements—especially our poor and minority citizens—as I will discuss at another time.

But I believe that, as we struggle to overcome the barriers to healthier lives for all citizens, we can learn much from the experience of the Black community in America. That experience teaches us that progress and reform are most likely to come when we pursue a two-fold strategy: first, strive to change the external circumstances that are unjust and hold us back; but second, strive to reinforce the strength of character necessary to survive and prosper in spite of adverse circumstances.

Neither strategy in isolation is sufficient; both strategies together cannot fail to bring significant progress and reform. Frederick Douglas, for example, worked not only to abolish the social circumstance of slavery; he also sought to build better individuals, by emphasizing the importance of character. "With character we can be powerful," he proclaimed. "Nothing can harm us so long as we have character."

In our time, the outstanding leaders of our community continue to pursue both strategies simultaneously. Dr. Martin Luther King, Jr. resolutely pursued changes in society's laws and institutions, so that one day his daughters would not be judged by the color of their skin. But at the same time, he worked to prepare people for the day when they would be judged by the "content of their character."

Similarly, Jesse Jackson's quest for social and economic change in the larger society is joined inseparably to a call for personal reform, for better character. As he put it, "When you drink liquor, and when you take drugs, and when you sell drugs, and when you shoot people and when you rob people * * * nobody can save you but you from yourself."

So today, as we search for ways to ensure that our expenditures for health care are wisely spent, and not squandered treating unnecessary and preventable disease—more important, as we search for ways to bring healthier, safer, more fulfilling and productive lives to all our citizens—let us pursue both strategies at once. Let us not only seek ways to change and improve our health care system—let us search for ways to improve ourselves—our behavior and lifestyles, our values, indeed, our very character.

A new culture of character is not the entire answer to the health care dilemmas we face. But it is an essential, crucial part of the answer. And it is a vital key to better lives for all Americans.

Thank you very much.

• Mr. BOREN. Mr. President, America struggles today, perhaps more than at any other time in our history, to create a sense of community. We Americans have too few shared experiences to help us realize how much, in the midst of our diversity, we share common values, and common goals. In many ways we are becoming dangerously fractured, thinking of ourselves first in terms of regional, social, religious, ethnic, or economic identities before we think of ourselves as members of one American family. Our willingness to help each other, to pull together for the common good and for the next generation has become frayed and strained. We are a great nation because each succeeding generation of Americans has cared more about opportunities for the next generation than it has about its own well-being and we must not lose that spirit of commitment.

Even the tragic experience of war which once brought together all of the diverse segments of society into one group—living, working and fighting side by side with the tremendous mutual respect for the human dignity which flows from such a common effort in dangerous circumstances—is no longer having the same impact. In this age of the all-volunteer military force, parts of our society, principally lower and middle income Americans, are now taking more of the risks than others. In fact, the current crisis in the Persian Gulf has made us aware of the divisions among us as well as the failure to bond together as we did in the aftermath of the attack on Pearl Harbor in 1941.

The very term underclass emphasizes conditions of poverty and inequality so extreme as to have alienated a segment of our society to the point where they no longer even share the hope of entering into what has in the past been called mainstream America.

No one values diversity more than I. Our Nation is unique and exceedingly rich culturally and spiritually because of its diversity. It thrills me when I see native Americans in my own State rediscovering and preserving their own rich culture and language which was in danger of being lost. America is like a rich tapestry, vibrant and alive with each brilliant thread of color and hue adding to the beauty of the whole. Without the integrity and separate identity of each thread, the whole would lose its vitality. But without the threads being sewn together into one tapestry, each thread would have far less impact.

In many ways, it is in our colleges and universities that the battle for the future of our society is being waged. With intellectual openness, students and faculties alike struggle with the proper balance between unity and diversity.

One of the greatest and most thoughtful educators in our country, Donald Kagan, Colgate professor of history and classics at Yale University who currently serves as dean of Yale College, examined this difficult and controversial issue in an address to Yale's income class of 1994 last September. Some have reacted to Dean Kagan's call for the study of certain common elements of our national heritage without thoughtfully considering his comments in the context of his entire message. Don Kagan, himself the product of an immigrant family, demonstrates enormous respect for diversity in Amercia. He calls upon students to "take pride in your family and in the culture which they and your forebears have brought to our shores. Learn as much as you can about that culture and share it with all of us. Learn as much as you can about what the particular cultures of others have to offer."

At the same time, he urged his audience to gain a common understanding of the special gifts of western civilization which have served as the basis for so many of our institutions, including our political institutions. He clearly understands that we cannot even intelligently criticize—or much less reform—these institutions with the perspectives other experiences may give us unless we first understand their historic roots and evolution. He concludes with an appeal that all Americans should heed: "Do not let our separate heritages draw us apart and build walls between us, but use them to enrich the whole."

Mr. President, it is not easy to present a lecture like the challenging address of Dean Donald Kagan. It is much easier to remain silent out of the fear that one may be misunderstood. It is easier to carefully mark the bounds of what passes for politically acceptable at too many of today's universities. Dean Kagan's address could only have come from a person who truly loves this country, who understands that mutual respect for the dignity and diversity of each person can only exist where there is also a spirit of comity and community. Such an address could only come from the honest heart and clear mind of one who truly loves this generation of young Americans. I sincerely hope that some day the students who heard him, the colleagues who teach with him, and indeed all of us as Americans will have the wisdom to understand and appreciate the full meaning of his words.

Mr. President, I ask that the full text of Dean Kagan's address be printed in the RECORD.

The remarks follow:

THE ROLE OF THE WEST

(Donald Kagan, the Colgate Professor of History and Classics, took office as Dean of Yale College on July 1, 1989, prompting a vociferously mixed reaction among students and faculty. A distinguished scholar, Kagan has long been known for his outspoken—and often unpopular—views on athletics, politics, academic discipline, and educational philosophy. In a profile of him in this magazine one year ago, the dean was quoted as saying

that, "There are places in this university where a motion to wish me a happy birthday would get a close vote."

(In his September 1 speech in Woolsey Hall welcoming the Yale College Class of 1994, Kagan addressed one of the most hotly-debated issues on the campus today—the place of Western Civilization in today's academic curriculum—and took a characteristically provocative stand. The speech struck *YAM* as an appropriate companion piece to the profile on page 38 of Mario T. Garcia, Professor of History and American Studies, who is Yale's first tenured Chicano faculty member and its first director of ethnic studies. The dean's text follows.)

Ladies and gentlemen of the Class of 1994, parents, and friends, greetings and welcome to Yale. To a greater degree than ever before this class is made up of a sampling, not of Connecticut, not of New England, not even of North America, but of all the continents of the world. As I stood a year ago greeting the Class of 1993 I was thrilled by how much Yale and America have been enriched in the three centuries since its foundation by the presence and the contribution of the many racial and ethnic groups rarely if ever represented in Yale's early years. The greater diversity among our faculty and student body, as in the American people at large, is a scource of strength and it should be a source of pride, as well.

But ethnic and racial diversity is not without its problems. Few governments and societies have been able to combine diversity with internal peace, harmony, freedom, and the unity required to achieve these goals. Perhaps the greatest success in ancient times was achieved by the Roman Empire, which absorbed a wide variety of peoples under the single government, generally tolerated cultural diversity, and gradually granted to all Roman citizenship, the rule of law, and equality before the law. But the Romans had imposed their rule over independent nations by force and maintained peace and order by its threat. From the nations whose cultures they tolerated they did not create a single people; they did not and could not rely on the voluntary and enthusiastic participation in government and society of a unified population, as a modern democratic republic must.

From the Middle Ages until its collapse in 1918, the Hapsburg Empire did a remarkable job of bringing a great variety of different ethnic groups into the main stream of government and society, but it never succeeded in dissolving the distinct identities of the different groups, living together in separate communities, speaking their native languages, competing and quarreling with one another, and finally hostile to the dominant ethnic groups. The destruction of the Hapsburg Empire and its dissolution into smaller units did not end ethnic dissension, which threatens the survival of such successor states as Czechoslovakia and Yugoslavia.

In our time nationalism and ethnicity have emerged as immensely powerful forces, for good, but also for evil. Optimistic hopes for a diminution of differences among peoples and for a movement toward the unity of all mankind have been dashed as national and ethnic hostilities have played a major part in bringing on two terrible world wars. Even today they endanger the integrity of the Soviet Union and threaten peace both in Europe and in Africa. They have brought interethnic slaughter to Nigeria and all but destroyed the beautiful land of Lebanon.

From its origins the United States of America has faced a new challenge and opportunity. Its early settlers from the old world were somewhat diverse but had much in common. Most were British, spoke English, and practiced some form of Protestant Christianity. Before long, however, people of many different ethnic, religious, and national origins arrived with different cultural traditions, speaking various languages. Except for the salves brought from Africa, most came voluntarily, as families and individuals, usually eager to satisfy desires that could not be met in their former homelands. They swiftly became citizens and, within a generation or so, Americans. In our own time finally, after too long a delay, African-Americans also have achieved freedom, equality before the law, and full citizenship. People of different origins live side by side, often in ethnic communities, but never in enclaves of the country separated from other such enclaves. Although some inherit greater advantages than others, all are equal before the law, which does not recognize ethnic or other groups but only individuals. Each person is free to maintain old cultural practices, abandon them for ones found outside his ethnic group, or to create some mixture or combination.

Our country is not a nation like most others. "Nation" comes from the Latin word for birth; a nation is a group of people of common ancestry, a breed. Chinese, Frenchmen, and Swedes feel a bond that ties them to their compatriates as to a greatly extended family and provides the unity and commitment they need. But Americans do not share a common ancestry and a common blood. They and their forebears come from every corner of the earth. What they have in common and what brings them together is a system of laws and beliefs that shaped the establishment of the country, a system developed within the context of Western Civilization. It should be obvious, then, that all Americans need to learn about that civilization if we are to understand our country's origins, and share in its heritage, purposes, and character.

At present, however, the study of Western Civilization in our schools and colleges is under heavy attack. We are told that we should not give a privileged place in the curriculum to the great works of its history and literature. At the extremes of this onslaught, the civilization itself, and therefore its study, is attacked because of its history of slavery, imperialism, racial prejudice, addiction to war, its exclusion of women and people not of the white race from its rights and privileges. Some criticize its study as narrow, limiting, arrogant, and discriminatory, asserting that it has little or no value for those of different cultural origins. Others concede the value of the Western heritage but regard it as only one among many, all of which have equal claim to our attention. These attacks are unsound. It is both right and necessary to place Western Civilization and the culture to which it has given rise at the center of our studies, and we fail to do so at the peril of our students, our country, and of the hopes for a democratic, liberal society emerging throughout the world today.

In response to those who claim that Western culture is relevant only to a limited group, it is enough to quote W.E.B. Du Bois, the African-American intellectual political leader, writing at the turn of the century in a Jim Crow America: I sit with Shakespeare and he winces not. Across the color line I walk arm in arm with Balzac and Durnas, where smiling men and welcoming women glide in gilded halls. From out of the caves of evening that swing between the strong-limbed earth and the tracery of the stars, I summon Aristotle and Aurelius and what soul I will, and they come all graciously with no scorn or condescension. So, wed with Truth, I dwell above the veil." For him the wisdom of the West's great writers was valuable for all, and he would not allow himself or other to be deprived of it because of the accident of race. Such was and is the view of the millions of people of both genders and every ethnic group who have personally experienced the value and significance of the Western heritage.

The assault on the character of Western Civilization badly distorts history. Its flaws are real enough, but they are common to almost all the civilizations known on any continent at any time in human history. What is remarkable about the Western heritage and what makes it essential is the important ways in which it has departed from the common experience. More than any other it has asserted the claims of the individual against those of the state, limiting its power and creating a realm of privacy into which it cannot penetrate. By means of the philosophical scientific, agricultural, and industrial revolutions that have taken place in the West, human beings have been able to produce and multiply the things needed for life so as to make survival and prosperity possible for over-increasing numbers, without rapacious wars and at a level that permits dignity and independence. It is the champion of representative democracy as the normal way for human beings to govern themselves, in place of the different varieties of monarchy, oligarchy, and tyranny that have ruled most of the human race throughout history and rule most of the world today, it has produced the theory and practice of the separation of church from state, thereby protecting each from the other and creating a free and safe place for the individual conscience. At its core is a tolerance and respect for diversity unknown in most cultures. One of its most telling characteristic is its encouragement of criticism of itself and its ways. Only in the West can one imagine a movement to neglect the culture's own heritage in favor of some other. The university it self, a specially sheltered place for such self-examination, it a Western phenomenon only partially assimilated in other cultures.

My claim is that most of the sins and errors of Western Civilization are those of the human race. Its special achievements and values, however, are gifts to all humanity and are widely seen as such around the world today, although its authorship is rarely acknowledged. People everywhere envy not only is science and technology but also its freedom and popular government and the institutions that make them possible. Their roots are to be found uniquely in the experience and ideas of the West. Western culture and institutions are the most powerful paradigm in the world today. As they increasingly become the objects of emulation by people everywhere, their study becomes essential for those of all nations who wish to understand their nature and origins. How odd that Americans should choose this moment to declare it irrelevant, unnecesssary, and even vicious.

There is, in fact, great need to make the Western heritage the central and common study in American schools, colleges, and universities today. Happily, students bodies have grown vastly more diverse. Less happily, students are seeing themselves increasingly as parts of groups, distinct from other groups. They often feel pressure to communicate mainly with others like themselves

within the group and to pursue intellectual interests that are of particular importance to it. The result that threatens is a series of discreet experiences in college, isolated from one another, segregated, and partial. But a liberal education needs to bring about a challenge to the ideas, habits, and attitudes that students bring with them, so that their vision may be broadened, their knowledge expanded, their understanding deepened. That challenge must come from studies that are unfamiliar, sometimes uncomfortably so, and from a wide variety of fellow-students from many different backgrounds, holding different opinions, expressing them freely to one another, and exploring them together.

If the students are to educate each other in this way some part of their studies must be in common, and their natural subject is the experience of which our country is the heir and of which it remains an important part. There is, after all, a common culture in our society, itself various, changing, rich with contributions of Americans who come or whose ancestors came from every continent in the world, yet recognizably and unmistakably American. At this moment in history an objective observer would have to say that it derives chiefly from the experience of Western Civilization, and especially from England, whose language and institutions are the most copious springs from which American culture draws its life. I say that without embarrassment, as an immigrant from a tiny country on the fringe of the West, without any connection with the Anglo-Saxon founders of the United States. Our students will be handicapped in their lives after college if they do not have a broad and deep knowledge of the culture in which they live and the roots from which it comes.

There are implications, too, for our public life. Constitutional government and democracy are not natural blessings; they are far from common in the world today, and they have been terribly rare in the history of the human race. They are the product of some peculiar developments in the history of Western Civilization, and they, too, need to be thoroughly understood by all our citizens if our way of governing ourselves is to continue and flourish. We must all understand how it works, how it came to be, and how hard it is to sustain.

Our country was invented and has grown strong by achieving unity out of diversity while respecting the importance and integrity of the many elements that make it up. The founders chose as a slogan *e pluribus unum*, which kept a continuing and respected place for the plurality of the various groups that made up the country, but they emphasized the unity which was essential for its well-being. During the revolution that brought us independence, Benjamin Franklin addressed his colleagues, different from one another in so many ways, yet dependent on one another for survival and success, using a serious pun to make his point. He told them that they must all hang together or assuredly they would all hang separately. That warning still has meaning for Americans today. As our land becomes more diverse the danger of separation, segregation by ethnic group, mutual suspicion and hostility increases and with it the danger to the national unity which, ironically, is essential to the qualities that attracted its many people to this country. Our colleges and universities have a great responsibility to communicate and affirm the value of our common heritage, even as they question it and continue to broaden it with rich new elements.

Ladies and gentlemen of the Class of 1994, you, too, have important responsibilities. Take pride in your family and in the culture they and your forebears have brought to our shores. Learn as much as you can about that culture and share it with all of us. Learn as much as you can of what the particular cultures of others have to offer. But most important, do not fail to learn the great traditions that are the special gifts of that Western Civilization which is the main foundation of our university and our country. Do not let our separate heritages draw us apart and build walls between us, but use them to enrich the whole. In that way they may join with our common heritage to teach us, to bring us together as friends, to unite us into a single people seeking common goals, to make a reality of the ideal inherent in the motto *e pluribus unum*.

TRIBUTE TO R.J.R. JOHNSON

• Mr. DURENBERGER. Mr. President, after 38 years of service to the readers of the St. Paul Pioneer Press, R.J.R. Johnson retired not long ago. In his time as a wielder of the pen, Bob covered a variety of beats and served in a number of editors' positions. He capped his pen as assistant editor of the editorial page.

As an editorial writer, a journalist enjoys only a modicum of personal expression. He or she is distinguished by the ability to reflect a collective philosophy, the consensus of a group of fellow opinion leaders. Bob did that well, and he will be missed.

Before R.J.R. Johnson retired, he drafted a column which appeared under his name in the St. Paul newspaper he has come to love. Mr. President, I ask that his review of his career be printed in the RECORD with my best wishes.

The column follows:

The tendency to look backward is intensified when the time comes to say goodbye. That time has come for me. So I'm looking back, and I am satisifed with what I see,

That sounds smug, but think on that good word: satisfied. Think of putting down the glass after a cold drink on an August afternoon or, more seasonally, of stretching your tired frame under warm blankets after a hard day's work. Rewarded and fulfilled. That kind of satisfied.

Actually, I am amazed when I telescope 38 years at this newspaper and let the good times (properly) dominate the view. What I see is a great adventure, the newspaper life I dreamed of when I signed on so long ago.

Just imagine: a job that takes you to the ends of the Earth, to the stones of Carthage, to the trails of the Voyageurs; a job where you work with surgeons and astronomers and poets, cops and crooks and loonies; a job that changes with the big themes of the day; a job that has such marvelous people in it as I have been blessed to know.

Amazed and grateful. That kind of satisfied.

Yes, there have been times when I wanted to kick something or someone down an elevator shaft, times when I despaired over my craft, my newspaper, my colleagues, my bosses or myself, but we're talking percentages here, and telescopic views of time and action, and it is hard to imagine a more rewarding life, at least for the unsaintly. Figure a satisfaction/frustration ratio of even 70/30 over the span and that ain't bad, especially if the 70 sparkles.

There are people who think a job is just a job, people who cannot comprehend the idea of the job as craft—a source of satisfaction in the doing. Such people are foolish and they will never be satisfied.

You may wonder, "Who is this guy, and why does he carry on so?"

My name is Johnson and I am a small town boy—a jackpine savage from Deer River—who came to the city to be a newspaperman; specifically, to be a reporter for the St. Paul Dispatch and Pioneer Press, newspapers that in the '50s were delicious fun and fair. I wore a trenchcoat then, and a hat. I chainsmoked, drank too much, and loved to beat the Minneapolis Star and Tribune. Today, I am duller, but more reputable. Only the last of those vices remains.

Some of you may recognize the byline from reporting assignments I have had: City Hall, police, science, medicine, the environment. Later, as often happens in this business, I became an assistant city editor, Sunday magazine editor, an editorial writer, and finally, associate editor of the editorial pages—a lay preacher. After today I won't be a newspaperman, or preacher, at all.

I am carrying on because that is the prerogative of retiring newspaper writers. Our last perk. The next best thing to being able to write our own obituaries. It is a chance to brag a bit, to recall good times and good people. But one should keep it short. The good times and good people live.

I am carrying on because I want to celebrate good work; specifically, to celebrate the craft of newspapering, of journalism; the gathering and shaping and sharing of information about the people and events. It is fun and important work, when it does not slip into tawdriness. It begins, always, with curiosity and ends, at best, in poetry. Sometimes good journalism moves people to change the world, or a little part of it, or themselves.

It has been grand to be here these nearly four decades, but now it is time and possible to try a different way. I leave with no regrets, with curiosity intact, and satisfied, immensely satisfied.—ROBERT J.R. JOHNSON.•

S. 242—AMENDING ETHICS REFORM ACT OF 1989

• Mr. SARBANES. Mr. President, recently I joined in introducing S. 242, legislation to correct an inequity caused by the Ethics Reform Act of 1989 which prohibits Federal employees from collecting fees for non-job-related appearances or written material.

Prior to the changes in the Ethics Reform Act of 1989, Federal employees were allowed to receive payment for speeches, articles, and appearances which were not related to their employment. Workers could engage in these activities to fulfill personal interests, for career development, or in the interest of their community. Resulting revenue could supplement their income or be an integral part of their standard of living.

Clearly, Congress did not intend to prohibit rank-and-file Federal employees from engaging in outside writing and speaking activities of personal interest to them. This bill does not affect rules regarding honoraria for Member of Congress nor their staff. It simply

corrects an inequity created by previous legislation and allows Federal employees to accept contributions for non-job-related activities. I commend Senators GLENN and ROTH for their work in this area and for the speed in which they have addressed this problem. The Senate Committee on Governmental Affairs has already heard testimony on this issue and I urge my colleagues to join in working for swift passage of this important measure.•

POULTRY AND EGG WEEK IN ARKANSAS

• Mr. PRYOR. Mr. President, today I rise to bring the attention of this body to the recognition in Arkansas of Poultry and Egg Week, which is currently underway.

This is a week to celebrate the contributions of one of the largest and fastest growing industries in my State. The benefits provided to the communities this industry serves are numerous and meaningful. The farm value of poultry and egg products grown in Arkansas approached $2 billion in 1990. That is twice the value produced in 1980. During this past decade, we witnessed more jobs created by the poultry and egg industry, in manufacturing as well as production, than in any other industry in Arkansas.

My State has been the Nation's leading broiler producer for two decades, and it isn't by chance. Industry, government, and the education system have undertaken a number of cooperative and individual efforts in order to continue providing a safe and high quality food supply of poultry products to consumers in America and the rest of the world. The accomplishments have been vast, surpassed only by the goals and expectations for the future.

I could not adequately address this constituency without acknowledging the role played by the Univesity of Arkansas. The university has been a vital link in defining new initiatives and discovering new technologies that have served the industry and the consuming public well. The University of Arkansas has developed and expanded highly specialized skills in environmental engineering, food technology, and animal science.

With the assistance of Government and industry, the University of Arkansas serves as the lead institution in a food safety consortium that is nationally recognized as the premier resource for research projects and results. The school is also constructing a $2 million poultry health laboratory which will be one of only two poultry labs in the country with the highest rating for containment of disease organisms.

The University of Arkansas has also established the Poultry Center for Excellence, which will include a department of poultry science with an expanded faculty concentrating on food safety, poultry research, and environmental protection.

Too often the public is told of an isolated instance in which the food industry has not fulfilled its obligation to produce a safe food supply, and this is misrepresented as normal operating procedure. Clearly, this is not the case. In Arkansas and the rest of the Nation, the poultry and egg community has defined for itself the highest standards, and they have met those goals because they realize it is in the best interest of their business and the American diet to do so.

In Arkansas, poultry is more than chicken feed. It is a multibillion-dollar industry that employs almost 1 out of 12 members in my State's work force. Just this past year 4,000 new jobs were created by the State's poultry industry, and they serve the public in more ways than the dinner table. The industry is the single largest buyer of so many products in Arkansas, from 18 wheelers and paper clips to pulpwood and feedgrains, from natural gas and electricity to water and telephone service, and from computers to fenceposts. The impact is felt by local, State, and Federal taxing units as well. The poultry industry's performance in Arkansas means better dividends for schools, highways, health care, social services, and teacher salaries. These contributions are made possible by the farmer who utilizes his land to put food on our table, the person on the line in the factory, the truckdriver who delivers the product, the scientist in the lab who keeps a constant eye on the future, and the companies that insure we receive the best service possible.

Throughout the world's history many have posed the question, which came first, the chicken or the egg? This has been pondered by students and scholars alike, sometimes in jest and at times seriously. Mr. President, in Arkansas the chicken and the egg come together, and they put the consumer first.•

HUNGER IN AFRICA

• Mr. AKAKA. Mr. President, I rise to express my deep concern over the millions of Africans who are threatened with starvation because of severe food shortages resulting from an extreme drought, devastating civil wars, and uncooperative governments blocking international relief efforts. The challenges faced by this region of the world are simply overwhelming.

Whether hunger strikes in an inner city of America or in a rural African village, it is a human tragedy which demands our immedate attention. No responsibility is more significant and no task more urgent than to ensure that people are adequately fed. Our success in this endeavor will depend not only on our commitment to this challenge, but also on the collective effort by all nations to work cooperatively to end world hunger.

In Ethiopia, 5 million people face starvation. In the Sudan, which faces the harshest problems plaguing the African continent, over 40 percent of its 25 million people face severe food shortages. According to the Agency for International Development, starvation in the Sudan this year could be particularly pervasive unless emergency food assistance reaches afflicted areas immediately.

Emergency food relief alone, however, will not overcome hunger. To deal effectively with hunger in Africa, the international community and African states must engage in a comprehensive dialog to resolve civil wars, reform economies, and build a framework of trust and cooperation in which the pressing needs and requirements for the African continent can be addressed.

The problems in the Sudan underlie the critical challenges which confront us. A prolonged civil war has claimed the lives of over 1 million people from combat and war-induced famine, and has left millions living on the edge of starvation. The situation has been made worse by the Sudanese Government's obstruction of international food relief efforts, producing unnecessary hardship and deepening the prospect of widespread starvation.

Through coordinated international food relief efforts to Africa, we can make an important contribution in the fight against hunger. We must also continue to work with other countries and organizations such as the United Nations to reach peaceful settlements to existing armed conflicts. We have a unique opportunity to assist those African nations in need to move forward in the process of economic reform, to restore peace and stability, and to help their citizens assume their rights and guarantee their safety and welfare.

The movement to end hunger is not an American effort alone, it is an international effort. The commitment and dedication we bring to this endeavor can be a major force in Africa for change, the improvement in the lives of the people, and a future without suffering and war. Mr. President, let us work together with the international community and engage the nations of Africa in a cooperative effort to end hunger, to resolve armed conflict, and to pursue the process of reform.•

COMMEMORATING THE BICENTENNIAL OF THE APPOINTMENT OF DAVID HUMPHREYS AS THE FIRST AMBASSADOR TO PORTUGAL

• Mr. DODD. Mr. President, I rise today exactly 200 years since the U.S. Senate advised and consented to President Washington's very first ambassadorial nominee. On this date two centuries ago, Col. David Humphreys of

Derby, CT, became minister resident from the United States to her most faithful majesty and Queen of Portugal.

I take enormous pride in reminding my colleagues that it was a Connecticut son—a decorated patriot and close friend of George Washington—who was chosen to represent a nation still in its infancy at the court of Lisbon. This appointment serves as the opening chapter of U.S. diplomacy, and more specifically, of our longstanding and honored friendship with Portugal. This particular relationship is in fact the subject of Senate Joint Resolution 55, of which I am a cosponsor, a resolution to commemorate the bicentennial of our diplomatic ties with Portugal.

Historians can appreciate that with modes of communication being what they were at the time, Colonel Humphreys had officially been functioning as Minister Resident for over 2 months when notification finally reached him in early May, 1791. He was later presented at court as the newly appointed Minister Resident on May 22. On the eve of his formal presentation, a member of the royal family is reported to have said to Colonel Humphreys: "Young as your Nation is it advances in improvements with the step of a giant." In hindsight, this comment was perhaps not merely cordial—it was indeed prophetic.

It is fitting that Colonel Humphreys, whose career of service to his country culminated at the court of Lisbon, should have hailed from a state that today is home to a great many Portuguese-Americans. I know too that the citizens of the towns of Derby and Ansonia, which once comprised Humphreys' town of Old Derby, take special pride in their native son, and are this week celebrating this important bicentennial.

I would like to thank the Old Derby historical society for helping me to pay tribute to David Humphreys. I hope my words in behalf of Colonel Humphreys are worthy of him, his work, and his legacy to American diplomacy.●

SENATE JOINT RESOLUTION 70—NATIONAL RECYCLING DAY

● Mr. LIEBERMAN. Mr. President, due to a computer error, the list of cosponsors for Senate Joint Resolution 70 to establish April 15, 1991 as National Recycling Day printed in the February 7 CONGRESSIONAL RECORD at page S1839 was incomplete. The complete list of cosponsors is:

Mr. CHAFEE, Mr. MITCHELL, Mr. BURDICK, Mr. PELL, Mr. WARNER, Mr. INOUYE, Mr. DOMENICI, Mr. JEFFORDS, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. CONRAD, Mr. MURKOWSKI, Mr. FORD, Mr. HOLLINGS, Mr. LEVIN, Mr. ADAMS, Mr. NUNN, Mr. KERRY, Ms. MIKULSKI, Mr. CRANSTON, Mr. PRYOR, Mr. GORE, Mr. SASSER, Mr. AKAKA, Mr. SANFORD, Mr. BUMPERS, Mr. MOYNIHAN, Mr. DIXON, Mr. GORTON, Mr. WELLSTONE, Mr. DODD, Mr. GRAHAM, Mr. FOWLER, Mr. SARBANES, Mr. SYMMS, Mr. DASCHLE, Mr. DECONCINI, Mr. D'AMATO, Mr. REID, Mr. THURMOND, Mr. LUGER, Mrs. KASSEBAUM, Mr. KASTEN, Mr. HATCH, Mr. COHEN, Mr. PACKWOOD, Mr. BRYAN, Mr. KENNEDY, Mr. BIDEN, Mr. SIMPSON, Mr. BREAUX, Mr. SIMON, Mr. BOREN, Mr. METZENBAUM, Mr. ROTH, Mr. HEINZ, Mr. BROWN, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HELMS, Mr. BOND, Mr. EXON, Mr. CRAIG, Mr. COCHRAN, Mr. KERREY, and Mr. HEFLIN.●

S. 445—OSHA CRIMINAL PENALTY REFORM ACT

● Mr. JEFFORDS. Mr. President, with the introduction of S. 445, the OSHA Criminal Penalty Reform Act, Senator METZENBAUM and I are continuing the work begun in the last Congress to augment the seriousness and vigor of governmental enforcement efforts in the area of occupational safety and health. The bill originally introduced last year as S. 2154 was a sincere effort to address such bewildering facts as:

That in the first 18 years under the OSH Act nearly 200,000 workers were killed in workplace accidents, but until 1989 not 1 day of jail time was served for willful violations of the act resulting in those deaths; and

That from 1971 to 1990 OSHA referred a mere 63 cases to the Justice Department for possible criminal prosecution, while in the last 3 years alone the Environmental Protection Agency and Justice have combined to prosecute over 400 cases involving environmental crimes.

Clearly, if there is a purpose for having criminal penalties associated with safety, health, or environmental laws, then those penalties ought to be invoked when warranted in pursuit of that purpose. Prosecutors and Justice Department officials have let it be known over the years that their interest in prosecuting such cases would be enhanced if meaningful fines and penalties were involved. Perhaps this difference explains why environmental enforcement has raced so far ahead. In the absence of the changes we now propose, and in this era of tight budgets and cost benefit analysis, prosecutors will continue to have bigger fish to fry.

As much as I agreed with the intent of the original bill, there were points on which I felt that it went too far. To his credit, the Senator from Ohio was willing to work with us to make this a more reasonable effort. We worked very hard and came up with the amendment to his bill which was favorably reported last year by the Labor Committee. The Metzenbaum-Jeffords substitute amendment to S. 2154 was truly a combination of our ideas.

It retained the provision of S. 2154 that increased the current OSHA penalty for a willful violation resulting in death from 6 months in prison to 10 years for a first offense, 20 years for a second offense;

It retained the provision stating that any individual convicted of an occupational crime remains personally responsible for the payment of any criminal fines imposed on that individual; and

It retained the provision that preserves the ability of State and local authorities to prosecute these cases under State and local criminal laws.

In the spirit of compromise which brought us together on this project, Senator METZENBAUM agreed to suggestions on the bill that:

Reduced the maximum penalty for willful violations that result in serious bodily injury from 7 years in prison to 5 years for a first offense, and from 14 years in prison to 10 years for a second offense;

Narrowed the definition of "serious bodily injury": First, to ensure that actual bodily injury, not mere risk of such an injury, must be present; second, to permit unconsciousness be considered as an element of "serious bodily injury" only if it is protracted in nature; and third; to eliminate "extreme physical pain" as an element sufficient to invoke the sanctions called for in this section;

Eliminated "reckless endangerment" as an occupational crime; and

Maintained current law regarding criminal prosecution of corporations in the person of their officers, directors, and so forth.

In fact, we believe that we negotiated a bill which balances the twin objectives of:

First, protecting the working men and women of this country from egregious employer failures in providing safe workplaces; and

Second, retaining enough flexibility for OSHA to emphasize civil enforcement efforts first, with criminal enforcement in reserve for those few "bad actor" employers who choose not to comply.

S. 445 is identical to last year's Labor Committee-approved version of this legislation reflecting all of our negotiated changes. I believe in the substance of this measure. It is a good bill which represents sound policy. It is a bill which can withstand the scrutiny of full and open debate, and through such debate it may well be made an even better piece of legislation. In that spirit, we intend to hold hearings on the bill next week to gather the information and support which I am certain will move it on to final passage. We invite our colleagues to join us in this endeavor.●

TRIBUTE TO PROJECTS, INC.

● Mr. COHEN. Mr. President, I think we all realize the importance of raising the aspirations of our youth, of sparking their imaginations so that they can dream greater dreams and reach higher goals. But while this realization comes

easily, taking action, for most individuals, is much more difficult.

It gives me great pleasure, then, to recognize the efforts of one group from my home state that has been remarkably successful in giving opportunities to local youth and providing much-needed services to the rest of the community. Projects, Inc., founded 15 years ago in the Rockland, ME, area, has developed a unique and successful youth service agency, known as the Community Service Project. Under the project, young people of diverse backgrounds volunteer their time to assist senior citizens with shopping, home maintenance, and similar tasks. After a youngster has completed 30 hours of community service, he or she is given the opportunity to serve an educational apprenticeship with local businesses or other area organizations of their choice. The work experiences often spark a tremendous personal or career interest—one young man went onto dental school after spending time with a local dentist.

The programs carried out by Projects, Inc. deserve our highest praise. They seek to involve all members of the community: young and old, local businessmen and professionals, and students from a wide range of socioeconomic backgrounds. What's more, they have proven how far strong and innovative leadership can go on a very limited budget.

I am glad that I am not alone in recognizing the efforts of Projects, Inc. I recently learned that on February 28, Maine Gov. John R. McKernan will be presenting Projects, Inc. with the "Governor's Award for Outstanding Achievement in Human Resource Development." It is only the second time that this award has been presented. Today, I join Governor McKernan in recognizing the 2,400 people who are involved in Projects, Inc. I wish them the best for many, many years of continued service in Maine, and I hope that they can serve as a model for other communities throughout the country.•

IN HONOR OF PAUL WILLIAM McKENNA

• Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Paul Willima McKenna who is retiring from the Morris County Prosecutors Office after 28 years of distinguished service.

Paul McKenna has dedicated his career to making New Jersey a better and safer place. After serving 4 years in the U.S. Navy he joined the Madison Police Department, where he spent 8 years. He subsequently joined the Morris County Prosecutors Office where he devoted the past 28 years.

In addition Mr. McKenna has spent much of his career speaking out against drug abuse. He has received such honors as the Morris County Grand Jurors Award in 1981, the Morris County "Dope Open" Man of the Year Award in 1981, and Morris County Freeholders Resolutions in 1981, and 1986. He is a member of the New Jersey PBA, the founder and president of Morris County Chapter No. 3 Police and Firefighters Emerald Society, and has been included in the Who's Who in American Law Enforcement for the years 1980, 1986, and 1990.

I would like to extend my warmest congratulations to Paul William KcKenna and his family. His dedication to the citizens of Morris County and to New Jersey should serve as a model for all those in the law enforcement community.•

REVISED BUDGET AGGREGATES AND ALLOCATIONS AND THE FISCAL YEAR 1991 BUDGET SCOREKEEPING REPORT

• Mr. SASSER. Mr. President, I hereby submit to the Senate revised budget aggregates and allocations for fiscal year 1991 and the first current level report for the 1st session of the 102d Congress.

These reports show that for fiscal year 1991, current level on-budget spending is under the revised budget aggregates by $1.7 billion in budget authority and by $1.3 billion in outlays. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $325.7 billion, $1.3 billion below the maximum deficit amount for 1991 of $327 billion.

REVISED BUDGET ALLOCATIONS AND AGGREGATES

The tables below show revised and outyear budget aggregates and allocations for fiscal year 1991. These revisions were made in accordance with section 13112(f) of the budget enforcement act of 1990 (title XIII of Public Law 101-508). This section requires that "after the convening of the 102d Congress, the chairman of the Committee on the Budget of the Senate shall file with the Senate revised and outyear budget aggregates and allocations under section 602(a) consistent with this act.

The intent of this provision is to bring congressional enforcement procedures in line with the spending and revenue limitations contained in the Budget Enforcement Act. Absent these revisions, congressional scoring could not adequately enforce the requirements of the new law for the remainder of this fiscal year. The outyear aggregates and allocations will remain in effect until Congress adopts a budget resolution for 1992.

REVISED AND OUTYEAR ON-BUDGET ALLOCATIONS

The Appropriations Committee allocations made pursuant to section 602(a)(2) of the Budget Act were not revised since they are consistent with the statutory limits on discretionary spending set in the Budget Enforcement Act. The allocations to the authorizing committees were revised to reflect all legislation enacted through 1990.

In addition to revised allocations for 1991, each authorizing committee receives a similarly revised 5-year allocation of budget authority and outlays pursuant to section 602(a)(2) of the Congressional Budget Act. To avoid a point of order under section 602(c) of the Congressional Budget Act as amended, any increase in direct spending or decrease in revenues due to legislative action must be offset in 1991 and for the 5-year total 1991-95.

Under section 602(b)(2) of the Congressional Budget Act, authorizing committees are no longer required to file committee suballocations. If committees choose not to file these suballocations, points of order under section 602(c) of the Budget Act will apply to the total committee allocation.

CREDIT ALLOCATIONS

Pursuant to section 507(b)(2) of the Congressional Budget Act, a point of order under section 302(f)(2) of the act will lie against any committee which breaches its allocation for direct loans or loan guarantees for fiscal year 1991. The mandatory credit allocations contained on the table below reflect all legislation enacted through 1990. Discretionary credit allocations for the Appropriations Committee have not been revised.

OFF-BUDGET ALLOCATIONS

Allocations for Social Security outlays are included for 1991 and for the 5-year total (1991-95) pursuant to section 602(a)(2).

REVISED AND OUTYEAR BUDGET AGGREGATES

The revised on-budget outlay aggregates are simply the sum of the revised allocations for 1991, adjusted to be consistent with the economic and technical assumptions underlying the 1990 budget agreement. The revised and outyear on-budget revenue aggregates are also adjusted for summit estimating assumptions and reflect all legislation enacted last session. These revised budget aggregates will be used to enforce section 311(a) of the Budget act. The maximum deficit amount calculation for 1991 is that set forth in the act in section 601(a)(1) and has not been revised.

OFF-BUDGET AGGREGATES

Off-budget aggregates for social security outlays and revenues are made pursuant to section 13303(a)(6) and section 13303(a)(7) of the Budget Enforcement Act. These allocations are for 1991 and for the 5-year period, 1991-95.

CURRENT LEVEL REPORT

The current level report for the first session of the 102d Congress shows the effects of congressional action on the budget for fiscal year 1991 and is current through February 1, 1991. This report is submitted under section 308(b)

and in aid of section 605(b) and section 311 of the Congressional Budget Act, as amended, and meets the requirement for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the 1986 first concurrent resolution on the budget.

The material follows:

REVISED AND OUTYEAR BUDGET ALLOCATIONS FOR FISCAL YEAR 1991–95

[In millions of dollars]

	Direct spending jurisdiction		Entitlements in appropriations	
	1991	1991–95	1991	1991–95
Appropriations:				
Budget authority	685,616			
Outlays	696,649			
Agriculture, Nutrition, and Forestry:				
Budget authority	9,094	64,822	28,131	106,765
Outlays	10,621	68,229	21,732	55,248
Armed Services:				
Budget authority	48,011	315,537		
Outlays	34,694	235,167		
Banking, Housing, and Urban Affairs:				
Budget authority	79,242	310,077		
Outlays	75,335	159,817		
Commerce, Science, and Transportation:				
Budget authority	2,017	13,506	427	3,192
Outlays	37	−125	426	3,171
Energy and Natural Resources:				
Budget authority	1,417	9,340	72	391
Outlays	1,110	7,769	73	393
Environment and Public Works:				
Budget authority	14,795	103,686		
Outlays	430	9,749		
Finance:				
Budget authority	466,773	5,395,919	80,884	659,061
Outlays	433,901	4,845,717	80,523	658,183
Social Security outlays	234,214	1,284,366		
Foreign Relations:				
Budget authority	9,015	64,444		
Outlays	9,082	62,776		
Government Affairs:				
Budget authority	66,845	487,210	500	1,250
Outlays	42,350	309,182	500	1,250
Judiciary:				
Budget authority	2,300	9,997	135	987
Outlays	2,182	10,427	133	980
Labor and Human Resources:				
Budget authority	3,698	46,022	5,986	17,081
Outlays	2,886	44,043	6,022	16,785
Rules and Administration:				
Budget authority	37	235		
Outlays	29	2,562		
Veterans' Affairs:				
Budget authority	1,067	9,366	16,161	106,766
Outlays	876	9,313	16,194	106,740
Select Indian Affairs:				
Budget authority	479	3,022		
Outlays	475	2,968		
Small Business:				
Budget authority	0	709		
Outlays	0	−1,176		
Not allocated:				
Budget authority	−201,188	−1,813,665		
Outlays	−178,263	−1,745,217		
Total:				
Budget authority	1,189,217	9,761,853	132,296	895,494
Outlays	1,132,395	8,808,586	125,602	842,751
Social Security outlays	234,214	1,284,366		

REVISED CREDIT AUTHORITY ALLOCATIONS FOR FISCAL YEAR 1991

[In millions of dollars]

	Direct loans	Loan guarantees
Appropriations	8,701	71,969
Agriculture, Nutrition, and Forestry	8,019	6,100
Armed Services		
Banking, Housing, and Urban Affairs	3,250	251
Commerce, Science, and Transportation		104
Energy and Natural Resources		
Environment and Public Works	299	
Finance	2	
Foreign Relations		
Government Affairs		
Judiciary		
Labor and Human Resources		13,100
Rules and Administration		
Veterans Affairs	675	15,649
Select Indian Affairs		
Small Business		
Not allocated		
Total	20,946	107,173

Revised and outyear aggregate allocations for Fiscal Year 1991

	Billions
On-budget:	
Budget authority	1,189.2
Outlays	1,132.4
Revenues:	
1991	805.4
1991–95	4,690.3
Maximum deficit amount (MDA)	327.0
Off-budget:	
Social Security:	
Outlays:	
1991	234.2
1991–95	1,284.4
Revenues:	
1991	303.1
1991–95	1,736.3

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC February 21, 1991.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report, my first for the first session of the 102nd Congress, shows the effect of Congressional action on the budget for fiscal year 1991 and is current through February 20, 1991. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Budget Enforcement Act of 1990 (Title XIII of P.L. 101–508). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Sincerely,

ROBERT D. REISCHAUER,
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS., AS OF FEB. 20, 1991

[In billions of dollars]

	Revised on-budget aggregates [1]	Current level [2]	Current level +/− aggregates
On-budget:			
Budget authority	1,189.2	1,187.5	−1.7
Outlays	1,132.4	1.131.1	−1.3
Revenues:			
1991	805.4	805.4	
1991–95	4,690.3	4,690.3	
Maximum deficit amount	327.0	325.7	−1.3
Direct loan obligations	20.9	20.6	−0.3
Guaranteed loan commitments	107.2	106.9	−0.3
Debt subject to limit	4,145.0	3,341.1	−803.9
Off-budget:			
Social Security outlays:			
1991	234.2	234.2	
1991–95	1,284.4	1,284.4	
Social Security revenues:			
1991	303.1	303.1	
1991–95	1,736.3	1,736.3	

[1] The revised budget aggregates were made by the Senate Budget Committee staff in accordance with section 13112(f) of the Budget Enforcement Act of 1990 (title XIII of P.L. 101–508).

[2] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. In accordance with section 606(d)(2) of the Budget Enforcement Act of 1990 (title XIII of P.L. 101–508) current level excludes $1.0 billion in budget authority and $1.2 billion in outlays for Operation Desert Shield; $0.1 billion in budget authority and $.2 billion in outlays for debt foregiveness for Egypt and Poland; and $.2 billion in budget authority and outlays for Internal Revenue Service funding above the June 1990 baseline level. Current level outlays include a $1.1 billion savings for the Bank Insurance Fund that the Committee attributes to the Omnibus Budget Reconciliation Act (P.L. 101–508), and revenues include the Office of Management and Budget's estimate of $3.0 billion of $3.0 billion for the Internal Revenue Service provision in the Treasury-Postal Service Appropriations Bill (P.L. 101–509). The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSE OF BUSINESS FEB. 20, 1991

[In billions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions: Revenue			834,910
Permanent appropriations and trust funds	725,105	633,016	
Other legislation	664,057	676,371	
Offsetting receipts	−210,616	−210,616	
Total enacted in previous sessions	1,178,546	1,098,770	834,910
II. Enacted this sesssion			
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses: Extending IRS deadline for Desert Storm troops (H.R. 4)			−1
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in revised on-budget aggregates	−6,307	799	
VI. Economic and technical assumption used by Committee for budget enforcement act estimates	15,000	31,300	−29,500
On-budget current level	1,187,482	1,131,113	805,409
Revised on-budget aggregates	1,198,215	1,132,396	805,410
Amount remaining:			
Over budget resolution			
Under budget resolution	1,733	1,283	1

Note:—Numbers may not add due to rounding.•

THE CONSUMER PROTECTION AGAINST PRICE-FIXING ACT, S. 429

• Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of legislation that will strengthen consumer protections for all Americans. As we all know, a competitive marketplace is the bedrock of our economic system and must be preserved. This bill, S. 429, will codify the accepted norm that vertical price fixing is per se illegal, thereby allowing consumers greater ability to buy goods at a fair price.

Some have argued that manufacturers must remain free to set prices for retailers in order to maintain a particular level of service or quality in a product. Not only is that wrong, it lacks common sense. Why in the world should anyone pay more for a particular product or service than they absolutely have to? The theory of supply and demand should be the barometer that sets prices in a free market economy, not artificially determined criterion.

As we all should know, there are businesses, suppliers, retailers, and so forth that can provide for the American people at lower prices than other businesses, suppliers, and retailers. This practice must be maintained. Sadly, though, there are some in the business world who seek to take unfair advantage of the consumer. Quite simply, this bill will no longer allow retailers and manufacturers to enter into collusive agreements to set prices to the detriment of discounters. Price fixing hurts the consumer and must be stopped.

Mr. President, this bill will not negatively impact businesses that comply fully with fair and accepted economic standards. Ensuring a competitive marketplace will benefit both businesses and consumers. I believe that this bill will help achieve this goal. I am pleased to cosponsor S. 429, and I urge my colleagues to join me in supporting this bill.•

S. 349, FAIR LABOR STANDARDS ACT TECHNICAL CORRECTIONS

• Mr. D'AMATO. Mr. President, I rise today to cosponsor legislation that will correct an unforeseen burden upon America's small businesses. This bill, S. 349, will clarify the intent of Congress in the adherence to Federal minimum wage law for those small businesses dealing in interstate commerce. I commend both the chairman and ranking Republican member of the Small Business Committee, Senators BUMPERS and KASTEN, for bringing this inequity to the attention of this body.

When Congress raised the small business exemption from $362,500 to $500,000 in the minimum wage bill, it was intended to keep small businesses from going under due to the higher labor costs associated with a higher minimum wage. However, a deletion error was made that has changed the intent of Congress. Because of this deletion error, the Department of Labor has had no choice but to determine that all businesses with employees engaged in interstate commerce are not covered under the small business exemption. This deletion has, in effect, rendered the small business exemption useless and has threatened the economic well-being of many small businesses in our Nation.

The conforming amendments that led to this current situation will place hardships upon small businesses that have been unheard of in over 50 years of labor law. Under the DOL's interpretation of the law, any small business employee who accepts an out-of-State credit card, makes an out-of-State telephone sale, or even offloads a truck from another State could be construed as engaging in interstate commerce, and thus, making the small business ineligible for the exemption. I cannot think of any small companies that do not conduct even a modicum of such or similar transactions. To place such burdens upon small businesses, especially in our current economic situation, is unfair and needs to be corrected.

The intent of Congress on this issue is well documented, but, the actual interpretation of the law necessitates that we pass legislation that will allow this exemption to remain effective. This bill will return fairness to the very businesses that make America great. I am pleased to cosponsor S. 349, and I urge my colleagues to join me and support the passage of this bill.•

ESTONIAN INDEPENDENCE DAY

• Mr. RIEGLE. Mr. President, I would like to take this opportunity to honor the 73d anniversary of Estonian Independence Day—a day of great importance in the Estonian people's quest for freedom and democracy.

The Republic of Estonia declared its independence on February 24, 1918, ending 700 years of repression and occupation by foreign powers. The Peace Treaty of Tartu signed on February 2, 1920 with the Soviet Union cemented this declaration of independence by establishing the Government of the Republic of Estonia as the sole governing body in the country. These actions, coupled with Estonia's affiliation with the democratic postwar European community of nations, unequivocally affirmed Estonia's identity as one of the free nations of the world.

Estonia's short existence as an independent, free state was cut short in 1940 when Stalin's tanks forcibly occupied the Baltic States following the criminal Molotov-Ribbentrop pact between Nazi Germany and the Soviet Union. Tragically, the Soviet military occupation of Estonia continues to dominate the lives of citizens of that republic even today. Despite this brutal oppression, and strengthened by a history of suffering, the Estonian people persevere in their valiant efforts to preserve their right to self-determination and freedom.

This past year, the Estonian people have displayed remarkable courage and tenacity in facing disturbing circumstances of terror and psychological oppression. Moscow's campaign of intimidation against the Baltic nations, most specifically military assaults in neighboring Latvia and Lithuania has been a cause for great concern in Estonia. In solidarity with its Baltic sister nations, Estonia has prepared itself for difficult times ahead.

Of imminent concern is the Soviet mandated referendum to be held on March 17. Many Estonians feel that a clear expression of the will of the people is impossible in light of recent events in the Baltics. Such a referendum, it is felt, would only serve to legitimize future Soviet control of the

Estonian Republic. Despite very real progress in terms of expanding relations with the West, Estonia must still contend with ruthless Soviet rule and the presence of the Red army.

Because of these difficult times, America must continue to reaffirm its adherence to the doctrine of nonrecognition of the illegal Soviet occupation of the Baltics. Our Government must work in a real and meaningful way to support Estonia's drive for self-determination and to encourage the Soviet Union to begin good faith negotiations with Lithuania, Latvia, and Estonia on their independence. In an attempt to persuade Moscow to end its continuing crackdown in the Baltics, I have introduced legislation which would terminate various U.S. economic benefit programs until the Soviets cease their intimidation of the Baltic nations, withdraw their military forces and launch meaningful negotiations with the democratically elected Baltic governments.

Once again, on this important day for the people of Estonia, I wish to recognize and commend their courage, spirit, and perseverance. As we recall the establishment of a free and independent Estonian nation 73 years ago, it is imperative that we stand firmly behind the Estonian people in their struggle for self-determination and independence.•

S. 9—ASSISTANCE TO EMERGING DEMOCRATIC GOVERNMENTS

• Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 9. This legislation provides for direct financial assistance to emerging democratic governments still under Communist rule. The bill amends existing policy by permitting the Federal Government greater flexibility in foreign aid policy. I believe it will greatly enhance the effectiveness of money given as aid to these countries.

This legislation is of special importance right now. With the recent developments in the Baltics, the need for assistance from the United States is greater than ever. However, existing policy would require us to channel our aid to these countries through the Central Government, thereby taking the serious and foolish risk that the people of the Baltics will receive no benefit from our aid. Mr. Gorbachev has already demonstrated that the distribution of these funds is conditional upon cooperation with his dictatorial mandates. Senator DOLE has informed us in his statement introducing S. 9 that Gorbachev has made it clear that the only Republics that will get U.S. grain and feed are those who sign up for the Union Treaty.

I commend Senator DOLE for introducing this important legislation and for his leadership in ensuring that we are on the right side in an historic struggle to free the captive nations. I urge my colleagues to give this bill their strong support.•

NATIONAL ENERGY STRATEGY

• Mr. BINGAMAN. Mr. President, today the Secretary of Energy is providing the Senate Energy Committee with details of the administration's national energy strategy. Unfortunately, elements of the strategy appear to raise more questions than they answer.

The stated objectives of the strategy, namely achieving a balance among our need for energy at reasonable prices, protecting the environment, maintaining a strong economy, and reducing our dependence on unreliable energy suppliers, are laudable. One would be hard pressed to argue with any of them. Whether the measures proposed will even marginally allow this country to attain those objectives is another question.

The cornerstone of the strategy is "reliance on the market to determine prices, quantities, and technology choices." In fact, the strategy makes it clear that market forces alone will determine our national energy policy. The Bush administration's policy in this respect mirrors that of the previous administration. It may be well to remind ourselves where this approach has taken us. In the early 1980's, this country imported less than 30 percent of its oil. When the current administration took office in 1988, the percentage was up to 35 percent. Today it is close to 50 percent. Will market forces change this trend?

I want to return to the reasons for having an energy strategy in the first place. The obvious reason is that the current energy policies are unsatisfactory. That is an understatement. The severe problems this Nation faces today, from the economic and political crisis represented by the war in the gulf to the potential for global climate change, require a realistic view of the future and inspired leadership. We must eschew dogma in favor of practical and realistic measures which will allow us to achieve our objectives. It requires major changes in the patterns of energy consumption and supply in this country. Further, these changes do not have to occur at the expense of our quality of life—whether economic or environmental. Many of the changes to which I refer emphasize reductions in energy consumption. The American people are strongly in favor of reducing consumption through conservation and adoption of alternative energy strategies. If they are ready, why aren't their leaders?

The administration has articulated a set of objectives for the national energy strategy which are commendable. What it has not done is take the next logical step and establish concrete goals. Rather, the administration prefers to make projections of where we will be in the future. Mr. President, the Department of Energy sent a letter to the chairman of the Senate Energy Committee on January 16 of this year, an auspicious in world history. In that letter, the administration stated they would not provide the energy targets for net imports, domestic production, and end-use consumption that are required by law to be transmitted to the Congress every 2 years. Rather the administration would provide projections because, and I quote: "Government prescribed targets are inconsistent with the Bush administration's policy of allowing energy markets to determine energy supply and demand."

Mr. President, I have to take issue with the administration's refusal to set goals. Goals are not established as constraints, but to provide direction. The real difference between mere projections and effective goals can be summed up in a word—commitment. The national energy strategy purports to provide a road map to a more secure and cleaner energy future. Frankly, it is difficult to know whether we have the right road map when we do not know what the destination is. That is what this country needs to know—not where we might be, but where we should be. Goals tell us what we want our destination to be.

I plan to introduce legislation shortly which lays out the kind of broad goals we need to serve as the basis for an effective energy strategy. The goals are set for the year 2000. It would be useful if we were able to set goals beyond that period of time, but I want to be realistic. By then there will be technological breakthroughs which we cannot anticipate. Let us set new goals for ourselves at that time. For now, let us concentrate on attaining these goals.

There are only four goals in this bill. They are:

First, to reduce overall oil consumption in the United States while decreasing the percentage of oil that is imported;

Second, to reduce the use of fossil fuels;

Third, to increase energy efficiency in all sectors of the economy; and

Fourth, to reduce carbon dioxide emissions.

The kind of targets I am proposing are specific and realistic. In fact, in many cases they parallel some of the projections we see in the national energy strategy. They are consistent with environmental goals. Moreover, they are attainable, but only through concerted and consistent efforts by all concerned. While the bill does not dictate the paths by which the goals are to be reached, the nature of the goals will not allow business as usual. To attain them will require aggressive action and innovative approaches to energy policy. I regret the administration has not chosen to follow that path. I

hope Congress has the will to take effective action.●

CIVIL SERVICE RETIREMENT OF CERTAIN FEDERAL EMPLOYEES

● Mr. D'AMATO. Mr. President, I rise today as a primary cosponsor of legislation introduced by Senator MIKULSKI to amend chapter 83 of title 5 of the United States Code. This bill seeks to extend the civil service retirement provisions applicable to law enforcement officers to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the Customs Service, and revenue officers of the Internal Revenue Service.

The bill is designed to allow those personnel listed above to retire at age 50 with 20 years of service. Under current law, these particular employees are not permitted the option of 20-year retirement at age 50. During the 101st Congress, Senator MIKULSKI introduced identical legislation. It had the support of 36 cosponsors and I was an original cosponsor.

Each of the Federal employee positions specified in the bill have a demanding and dangerous job equal to that of other law enforcement officers who are now granted a 20-year retirement option. In addition, we must provide incentives for recruits to enter and, more importantly, to stay in these positions.

Mr. President, I urge my colleagues to support this important legislation. By doing so, we will also be supporting those Federal personnel who deserve our attention and thanks.●

ARMENIAN GENOCIDE

Mr. PRESSLER. Mr. President, 1 year ago yesterday, on February 20, 1990, I had the privilege to make the first speech in one of the most heated debates the Senate ever has had—whether to proceed to a vote on the Armenian genocide resolution. As our colleagues may recall, the supporters of that resolution were not able to defeat the filibuster against the motion to proceed. But the record established during that debate has had a good educational result. It has made people more aware of the Armenian genocide than if the Senate simply had quickly passed the resolution.

Political pressure from Turkey prevented passage of that resolution. Obviously, Turkey's value as a United States ally has increased with the gulf war. As I and many other supporters of the resolution stated last year, we highly value our relationship with Turkey. However, Turkey must come to understand that its relationship with the United States and its standing in the entire international community would be enhanced if it acknowledged and came to terms with the Armenian Genocide, just as modern Germany's image is enhanced by its acknowledgment of the Holocaust perpetrated by the Nazi government.

I believe that one of the most important lessons we will learn from the gulf war is that double standards or selective morality on international human rights matters can have drastic consequences. While Turkey was able to stop the resolution in Congress last year, Turkey will never be able to whitewash the issue because the international community recognizes the genocide perpetrated against the Armenians by the Ottoman Turks.

Israeli Prime Minister Yitzhak Shamir expressed solidarity with Armenians in commemorating the genocide in a radio broadcast last year. Similarly, President Bush effectively took the Genocide resolution issue out of Congress' hands last year by commemorating the 75th anniversary of the Armenian genocide himself—reaffirming his solemn pledge that:

> The United States must acknowledge the attempted genocide of the Armenian people in the last years of the Ottoman Empire based on the testimony of survivors, scholars, and indeed our own representatives at the time, if we are to insure that such horrors are not repeated. The American people, our government, and certainly the Bush administration will never allow political pressures to prevent our denunciation of crimes against humanity.

During the Senate debate, President Bush endorsed a concurrent Armenian genocide resolution which, again because of a procedural objection, was never considered. His statement in April, however, set the record straight. Similarly, in December of last year, the Federal District Court for the District of Columbia also had occasion to address the Armenian Genocide issue in the Freedom of Information Act case of Krikorian versus Department of State. That court explicitly noted "the U.S. policy of recognizing the Turkish genocide of the Armenians."

Besides the United States and Israel, the Europeans continue to acknowledge the Armenian genocide, and I know that the European Parliament continues to make Turkey's acknowledgment of the genocide a condition to full membership in the European Community. So again, while the congressional debates on last year's genocide resolution ended with an apparent political victory for Turkey, it is clear that Turkey's continued denial of the genocide will do it far more harm than good.

Last year, many Senators voted to sustain the filibuster because Turkish officials repeatedly promised that the relevant Ottoman Archives would be opened imminently. Then, Senator DOLE produced statements by Turkish observers that those archives have been scoured to remove any incriminating documents. Today, a year later, I still have not heard that the relevant archives have been opened. More importantly, it is clear that those who deny the genocide have not uncovered a single document in those archives which disproves the verdicts of Turkey's own courts—finding the responsible officials guilty of "destroying the Armenian race"—or any of the other overwhelming evidence of the massacres, deportations, and forced conversions.

Since the debate of last year, however, the internationally respected publishing house of Chadwych-Healy has announced publication of "The Armenian Genocide in the U.S. Archives 1915–1918." This microfiche publication contains approximately 30,000 pages of documents that details, with eyewitnesses accounts, the planning and execution of what Arnold Toynbee called "the murder of a race." I will ask unanimous consent that the announcement of this publication be placed in the RECORD immediately following my remarks, and I urge my colleagues to read it for its accurate view of the U.S. record on this important issue.

Finally, let me make a point I have made before. I became interested in the Armenian Genocide while I was a student at Oxford University. My interest in this matter developed long before I came to public service. While some may see denial of the Armenian Genocide to satisfy Turkey as in the interests of the United States or themselves, we need look no further than our experience with Saddam Hussein to see that applying double standards on human rights issues eventually harms the United States. I have been in Washington long enough to know that as long as Turkey denies the Armenian Genocide, some Americans will be willing to join those denial efforts. The solution to this problem is for Turkey to accept the reality of the genocide—something the rest of the world understands. Until then, we will continue to value Turkey as a staunch strategic ally, but it will never achieve its full potential standing in the international community unless it accepts these facts.

I ask that the article to which I referred be printed in the RECORD.

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

THE ARMENIAN GENOCIDE IN THE U.S. ARCHIVES, 1915–1918

INTRODUCTION

The United States National Archives holds the most comprehensive documentation in the world on the Armenian Genocide. Up to 1914, England, France, and Russia had been the states most involved with the question of the Armenian people in Ottoman Turkey. After war broke out between the Ottoman Empire and the Allies in November 1914, the United States, which remained neutral, was left as the sole major Western state with official representation at the court of the Sultan. In 1915, the Ottoman government, under

the control of the Young Turk Committee, began implementing a policy to annihilate the Armenians of the empire through deportation and massacres. Inevitably, the U.S. Embassy in Constantinople became the primary focus of attention for those reporting on the escalating violence directed against the Armenian population of the Ottoman state.

The interest of Americans in the condition of the Armenian people in Turkey grew out of a near century-long relationship between American missionaries and Armenians of the Middle East. Many had converted to Protestantism. Thus, in a way, thousands of Armenians had become wards of the American mission schools, hospitals, and churches. Living among the Armenian people, the missionaries witnessed their daily tribulations under Turkish rule and became a source of direct information on the treatment of the Armenians in the Ottoman Empire. American missions were located in some of the major cities of Anatolia—Sivas, Kayseri, Marash, Hadjin, Adana, Aintab, Urfa—and further east in historic Armenia—Harput, Bitlis, Erzerum, and Van.

The United States government maintained a number of consular posts in Turkey, at Smyrna, Trebizond, Mersin, Harput, and Aleppo. The presence of the American consuls in two of these sites proved crucial in closely monitoring the events of the spring and summer of 1915 when the Ottoman government expelled the Armenians from their homes and deported them to the Syrian desert. Large masses of Armenians were moved through the Harput region on the Euphrates as the point of exit for the population of Armenia proper and their exodus to the south. Many of the caravans of deportees were sent on to Aleppo. From Aleppo and other collection centers, they were marched into the desert and left to die of thirst and exposurre. Others were sent to specific killing sites, such as Deir-el-Zor. On a regular basis, the American consuls at Harput and especially at Aleppo kept the U.S. Embassy in Constantinople informed of the arrival of the exhausted refugees.

Independent of the consuls, the U.S. Embassy also received reports from citizens of other neutral countries and heard directly from Armenians who had managed to survive. Alarmed at the increasing frequency of the reports of mistreatment and massacre, and faced with the admission of government officials that wholesale measures were being taken against the Armenians, Henry Morgenthau, the U.S. Ambassador to Turkey, reached the conclusion that a systematic effort was under way to exterminate the Armenian population. Ambassador Morgenthau relayed his findings directly to the Secretary of State in Washington. His cables included reports substantiating that the Armenians in Turkey were in the throes of a state-organized campaign aimed at annihilating their entire population being carried out under the guise of a resettlement policy. In addition, the Department of State received correspondence from diplomatic sources outside the Ottoman Empire who had obtained evidence further substaniating the policy of genocide.

Persuaded of the danger faced by the Armenian population, the Department of State authorized Ambassador Morgenthau to submit formal protests to the appropriate Ottoman officials. It instructed him also to warn the representatives of Germany, Turkey's ally in war, that, under the circumstances, their government too would be held accountable for failing to intervene in order to stop the indiscriminate killings. Congress also gave its approval for setting up a private relief agency to raise funds in the United States to send aid to the Armenian deportees scattered across Syria. The Ambassador, consuls, and missionaries played key roles in disbursing aid to the Armenians, in spite of regular interference from Ottoman officials, and at risk to their own lives.

Formal relations between the United States and the Ottoman Empire were discontinued in April 1917 after Congress declared war on Germany. However, hostilities were never announced and an American presence in Turkey continued. After the war, Near East Relief was instrumental in providing shelter for thousands of orphans, rescuing hundreds of Armenian women from their abductors, and feeding and clothing tens of thousands of survivors.

President Woodrow Wilson's pronounced commitment to the principle of self-determination for the oppressed peoples of the defeated Ottoman Empire kept the United States involved in Middle Eastern affairs after the end of World War I. In an effort to resolve the disputed political situation, fact-finding commissions were sent to Turkey and other countries in the region. Hence, throughout the period of World War I until the establishment of the Republic of Turkey in 1923, which marked the end of the era of massacres and deportations, Americans were on site and reported in detail from direct observation and through reliable eyewitness accounts the entire course of events that enveloped the Armenian people.

A complete picture of the Armenian Genocide can thus be found in more than 30,000 pages of documents deposited in the National Archives. Largely spanning the years 1915 to 1918, these documents from the Department of State and other government agencies relate in chilling detail the entire process by which the Armenian population of the Ottoman Empire was made the subject of a racial policy aimed at destroying all vestiges of its existence in Armenia and Anatolia. They describe the forcible evacuation of Armenians from numerous towns and cities and the physical abuse of the deportees. They pinpoint the sites predetermined as places of execution by the authorities in charge. They list by town and village the number of people deported and further report on the number who survived, revealing that the deportations were nothing more than death marches. They verify the appalling conditions of induced famine, and recount innumerable instances of wanton killing and mass murder. In all, this important collection of documents records the demise of a people that was singled out as the object of incomprehensible violence and hatred and an unstoppable policy of extermination.

These documents also preserve a piece of American history. They tell of valiant diplomats, like Ambassador Morgenthau, who did everything within their personal and professional means to end the carnage and bring aid to the survivors. Leslie A. Davis, U.S. consul in Harput from 1915–1917, secretly housed Armenians in the consulate and helped many flee Turkey via escape routes to Russia. Jesse Jackson, U.S. Consul at Aleppo during 1915–1917, was actively involved in the distribution of aid to the survivors and defied the strict orders of Turkish authorities to "never aid the Armenians." These documents are also a testament to the hundreds of dedicated American relief workers and volunteers who went to the Middle East and under conditions of extreme difficulty arranged for the delivery and distribution of relief aid to the survivors. And they tell the story of countless Americans at home who collected and donated millions of dollars for the "starving Armenians." In short, these documents are the evidence of a little-known chapter in the history of the humanitarian generosity of the American people who came to the assistance of a beleaguered nation at the moment of its greatest agony and rescued it from near extinction.

SAMPLE LIST OF DOCUMENTS FROM THE NATIONAL ARCHIVES AND LIBRARY OF CONGRESS

(23 January 1914) Report by U.S. military attache Maj. J.R.M. Taylor on character and politics of Enver Pasha.

(12 April 1915) Report from U.S. Consul Jesse Jackson at Aleppo regarding attempted massacres at Marash and Aintab.

(26 July 1915) Letter from U.S. Consul at Beirut describing how only secret orders confirmed by Djemal Pasha were to be obeyed and that others were to be ignored.

(30 July 1915) Correspondence from James L. Barton of the American Board of Commissioners for Foreign Missions to Secretary of State Robert Lansing reporting massacres and concluding that "the Turks have apparently and avowedly set out to annihilate the Armenians as a race through massacre, torture and most drastic exile. . . ."

(18 August 1915) Report from U.S. Ambassador Henry Morgenthau to the Secretary of State, with attachments of 28 July 1915 and 3 August 1915 concerning deportations from Trebizond, Aleppo and 20 other cities and villages.

(23 August 1915) Cable from Ambassador Morgenthau to Washington noting massacres of Armenians at Ourfa and his efforts to intervene with Interior Minister Talaat Bey.

(29 September 1915) Report from U.S. Consul Jackson offering detailed accounting of movements of deportees by train and foot, noting that less than 25% were surviving the deportation process.

(22 October 1915) Letter from Imperial Persian Consulate in New York to President Woodrow Wilson acknowledging the "over five hundred thousand Armenian men, women and children have been deported from their homes and cruelly murdered. . . ."

(21 July 1916) Coded cable from Constantinople discussing orders from Interior Minister Talaat Bey for mass round-up of Armenians who had managed to escape thus far.

(22 July 1916) Cable from Constantinople smuggled out of Turkey via Copenhagen noting that Turkish actions are characterized by a "steady policy to exterminate these people but to deny the charge of massacres."

(16 August 1916) Report from Ambassador Morgenthau concerning the influence and position of German advisors in Turkey.

(7 September 1916) Coded cable from U.S. Consulate in Constantinople noting that Turkey is obstructing relief efforts.

(1916) Register from the Aleppo consular post records of Armenians seeking assistance from family members in the U.S.

(1 February 1919, 15 February 1919, 11 March 1919) Telegrams from Constantinople regarding arrests of members of Committee of Union and Progress on charges of complicity in the deportations.

DEATH OF REPRESENTATIVE SILVIO O. CONTE OF MASSACHUSETTS

Mr. FORD. Mr. President, on behalf of Mr. KENNEDY, Mr. KERRY, Mr. MITCHELL, and Mr. DOLE, I ask unani-

mous consent that the Senate proceed to the immediate consideration of Senate Resolution 59, now at the desk.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

A resolution (S. Res. 59) relative to the death of Representative Silvio O. Conte, of Massachusetts.

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable Silvio O. Conte, late a Representative from the Commonwealth of Massachusetts.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Representative.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. CHAFEE. Mr. President, I think it is fitting that we agree to this resolution. I had the privilege of knowing him for some 20 years. He was a remarkable legislator, a man who made great impact on this Nation through his work in the House of Representatives particularly through his very strong leadership posts on the Appropriations Committee of the House of Representatives. He was a very wonderful individual as well as being an outstanding legislator. We will all miss him.

Mr. FORD. I might add, Mr. President, this was a Republican all Democrats loved.

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

The resolution (S. Res. 59) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

THE 30TH ANNIVERSARY OF THE ESTABLISHMENT OF THE PEACE CORPS

Mr. FORD. I ask unanimous consent the Senate proceed to the immediate consideration of Senate Joint Resolution 76, a joint resolution commending the Peace Corps and its volunteers on the 30th anniversary of the establishment of the Peace Corps, introduced earlier today by Senators DODD, BIDEN, KASSEBAUM, LUGAR, and other Senators; that the resolution be read three times, passed, and that the motion to reconsider be laid upon the table; and that a statement by Senator DODD be inserted at the appropriate place in the RECORD as well as one inserted by me on behalf of Senator CRANSTON.

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

The joint resolution was engrossed for a third reading, was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 76

Whereas, on March 1, 1991, the Peace Corps of the United States of America concludes 30 years of promoting world peace and friendship, making available volunteers to help the peoples of other countries to meet their needs, and promoting mutual understanding between such peoples and the American people;

Whereas over 125,000 Americans have served in the Peace Corps in over 100 countries around the world;

Whereas Peace Corps programs and the efforts of individual volunteers have added significantly to mutual understanding between the people of the United States and the peoples of other countries;

Whereas Peace Corps volunteers work with their host country counterparts in seeking long-term solutions to complex human problems through efforts in education, agriculture, health, the environment, urban development, and small business;

Whereas Peace Corps volunteers have returned to their communities enriched by their experiences, more knowledgeable of the world, and more understanding of the challenges of building a lasting peace;

Whereas former Peace Corps volunteers continue to maintain friendships with the people of the countries with whom they served, thereby furthering the goals of international understanding and peace;

Whereas former Peace Corps volunteers continue to engage in volunteer-related activities in the United States, including activities that meet educational and other needs in the United States;

Whereas Peace Corps volunteers are now serving in more countries than ever before in all regions of the world; and

Whereas the response of Americans to the Peace Corps' call to serve continues to exceed the Peace Corps' recruiting requirements: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, on the occasion of the thirtieth anniversary of the establishment of the Peace Corps, the Congress (1) commends the Peace Corps and all those who have served as Peace Corps volunteers for the great contributions they have made to world peace and understanding, to the betterment of the lives of the citizens of the countries where volunteers have served, and to our own country, (2) reaffirms the United States' commitment, through the Peace Corps, to help peoples in countries around the world to meet their needs, and (3) urges the President to issue a proclamation commending Peace Corps volunteers for their service in the promotion of world peace and understanding.

Mr. CHAFEE. Mr President, I ask unanimous consent to be listed as a consponsor of the resolution.

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

Mr. DODD. Mr. President, I rise today to offer a joint resolution commending the Peace Corps on the date of its 30th anniversary. The text of this resolution is indentical to that of House Joint Resolution 131, introduced in the House by Representative HENRY.

Mr. President, it is with great personal pride that I offer this resolution. I say that not out of ego or vanity, but in recognition of the deep kinship that I share with the Peace Corps. As a former volunteer who spent two of my toughest yet most rewarding years in the Dominican Republic, I know the Peace Corps has made a strong influence on my life. I would venture to say that for most Peace Corps volunteers, the same holds true.

Over 125,000 volunteers have shared in the Peace Corps experience, serving in over 100 countries throughout the globe. They have helped to address important social issues, such as poverty, malnutrition, and disease. They have aided the citizens of other nations in the fields of agriculture, environmental preservation, and small business. They have engaged in numerous construction projects, such as the building of roadways, homes, and bridges.

But the most important bridges that Peace Corps volunteers have built, Mr. President, are bridges of understanding. Thousands of citizens around the world know only of the goodness of Americans through the effort and outreach of Peace Corps volunteers. For many citizens of the world, their only knowledge of Americans is through the ones that one day came out to build a hut, help dig an irrigation trench, or teach a child. I know from personal experience that there are a few people living in the mountains near Moncion, in the Dominican Republic, who know just how much the smallest things can make a difference.

And Mr. President, the Peace Corps is an experience that works both ways. Just as Peace Corps volunteers improve the lot of the people around them in the countries to which they have been assigned, so do they improve themselves as well. And that is the true wonder of the Peace Corps. Thousands of volunteers have returned from overseas, enriched by their experiences, and rededicated toward the principles of peace, sharing and understanding. Many former volunteers continue to contribute to their own society once back at home, sharing with other Americans the values instilled by the Peace Corps.

Sargent Shriver, the original Director of the Peace Corps, called it "a two-way street." allow me to cite a speech given by him in 1961:

> We hope that the activities of our volunteers will help the people of other Nations to understand the true nature of America—and that our volunteers will gain a greater knowledge and a deeper understanding of the people of other nations. It is a two-way street. It is this mutual understanding—this deeper appreciation—that leads to mutual respect and to world peace.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

Mr. FORD. Mr. President, since Senator CRANSTON cannot be here today because he is in California continuing to recover from cancer treatment, I am submitting the following statement for him.

THE 30TH ANNIVERSARY OF THE PEACE CORPS

• Mr. CRANSTON. Mr. President, I am very pleased to join with Senator DODD in introducing this resolution, which is cosponsored by all members of the Foreign Relations Committee, to honor Peace Corps Volunteers and the Peace Corps on the agency's 30th anniversary. Since the Peace Corps' inception 30 years ago, 125,000 volunteers have served in more than 90 countries around the world, working with men, women, and children on a grassroots level to better the often harsh conditions of their lives. I am particularly proud that 17,673 Californians have served as Peace Corps volunteers since 1961—more than from any other State.

Though the attention of our country is understandably riveted to the war raging in the Persian Gulf, we pause today to celebrate a noble goal, and an organization that embodies it, to promote peace and international understanding in all corners of the Earth.

On October 14, 1960, at the University of Michigan in Ann Arbor, as a candidate for the Presidency of the United States, John F. Kennedy first announced his proposal to launch the Peace Corps. It was the first time an American President had proposed to support and fully fund a volunteer movement of men and women dedicated to the pursuit of peace. It is remarkable and a testament to the value of the agency that it has thrived and prospered during often tumultuous times—times of war and peace, of social upheaval and consensus. The success of a person-to-person, volunteer effort is always hard to measure, but I believe the number of new countries requesting volunteers, the growing number of volunteer applications and the ongoing respect of the American public for the institution are signs of its immeasurable value.

Mr. President, on the occasion of the 30th anniversary of the Peace Corps, I believe it is appropriate for us to recognize the individuals who have served and are serving as volunteers. Charged with finding small scale solutions to often huge social and environmental problems, volunteers most certainly have a very tough job. To succeed, they must be innovative, creative, culturally sensitive, enthusiastic, persistent, encouraging, realistic, and sympathetic. Since 1961 volunteers have developed, adapted, and applied new techniques and appropriate technologies to a myriad of problems. From tropical gardening in the Marshall Islands to providing rehabilitative services to disabled children in Morocco and improving fisheries techniques in Honduras, volunteers have not only contributed greatly to the field of development efforts of Peace Corps countries, but have also taught, learned, and shared invaluable lessons in respective national and personal problems.

While the dramatic political changes in Eastern Europe, the easing of tensions in Central America, and the war in the Persian Gulf capture the headlines, Peace Corps volunteers strive quietly on in the pursuit of peace, not as official representatives of U.S. foreign policy but rather as representatives of the American people and of the American ideals of volunteerism, service to others, and the importance of the individual.

Mr. President, I also ask that we remember the 213 individuals who have died during their Peace Corps service. Although these volunteers and their families can never be fully repaid for their great losses, they are comforted by the knowledge that their loved ones died in service to their fellow man and in the pursuit of international peace.

Finally, Mr. President, I think that the war in which this Nation is now engaged reminds each of us of the tremendous value of peace and the tremendous costs involved when peace is lost. Our continued commitment to our now 30-year-old Peace Corps is more important than ever in demonstrating that our willingness to work for peace is not overshadowed by our willingness to prepare for war.•

UNANIMOUS-CONSENT AGREEMENT—S. 419

Mr. FORD. Mr. President, I ask unanimous consent the majority leader, following consultation with the Republican leader, may at any time proceed to the consideration of Calendar 22, S. 419, to amend the Federal Home Loan Bank Act and enable the Resolution Trust Corporation to meet its financial obligations, notwithstanding the provisions of rule XXII.

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

CALLING UPON THE PEOPLE OF THE UNITED STATES TO DISPLAY THE AMERICAN FLAG IN SHOW OF SUPPORT FOR U.S. TROOPS STATIONED IN THE PERSIAN GULF REGION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 44, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 44) calling upon the people of the United States to display the American flag in show of support for the United States troops stationed in the Persian Gulf region.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Is there further debate? The Chair hearing none, the question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 44) was agreed to.

The preamble was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

COMMITTEE ON THE JUDICIARY DISCHARGED, AND CONSIDERATION OF CERTAIN MEASURES

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged en bloc from consideration of the following resolutions: Senate Joint Resolution 50, 51, 52, 53, 56, 59, 62, 63, and Senate Resolution 17; that the Senate proceed en bloc to their consideration; that the joint resolutions be deemed read a third time and passed; that the resolution be agreed to; that the preambles be agreed to; and that the motion to reconsider the action on these resolutions be laid upon the table and that the consideration of these items appear individually in the RECORD.

Mr. CHAFEE. Mr. President, do I have those numbers right? Is it Senate Joint Resolution 50, 51, 52, 53, 56, 59, 62, and 63, and Senate Resolution 17?

Mr. FORD. Yes, the Senator is correct.

The PRESIDING OFFICER. Is there objection? The Chair hearing none, the request is agreed to.

The joint resolutions deemed read a third time and passed, and the resolution agreed to, read as follows:

S.J. RES. 50

Whereas the student-athlete represents a role model worthy of emulation by the youth of this Nation;

Whereas the past athletic successes of many business, governmental, and educational leaders of this Nation dispel the myth that successful athletes are one-dimensional;

Whereas such worthy values and behaviors as perseverance, teamwork, self-discipline, and commitment to a goal are fostered and promoted by both academic and athletic pursuits;

Whereas participation in athletics, together with education, provides opportunities to develop valuable social and leadership skills and to gain an appreciation of different ethnic and racial groups;

Whereas in spite of all the positive aspects of sport, overemphasis on sport at the ex-

pense of education may cause serious harm to the future of an athlete;

Whereas the pursuit of victory in athletics among the schools and colleges of this Nation too often leads to exploitation and abuse of the student-athlete;

Whereas less than 1 in 100 high school athletes have the opportunity to play Division I college athletics;

Whereas although college athletes graduate at the same rate as other students, fewer scholarship athletes in revenue producing sports graduate from college;

Whereas only 1 in 10,000 high school atheletes ever realize an aspiration of a career in professional sports, and those students who become professional athletes may expect a professional sports career of less than 4 years;

Whereas thousands of the youth of this Nation sacrifice academic achievement to the dream of professional athletics;

Whereas the practice of keeping athletes eligible for participation on a team, even at the high school level, must be abandoned for a policy of ensuring a meaningful education and degree;

Whereas coaches, parents, and educators of student athletes must express high expectations for academic performance as well as for athletic performance; and

Whereas there is a need in this Nation to reemphasize the student in the term "student-athlete"; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 6, 1991, is designated as "National Student Athlete Day" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

S.J. RES. 51

Whereas Federal employees serve the people of the United States by enabling the Federal Government to carry out its duties in an efficient manner;

Whereas more than three million individuals are employed by the Federal Government;

Whereas many valuable services performed by Federal employees are often inadequately recognized by Federal officials and by the people of the United States; and

Whereas Federal employees should be recognized for the contributions that they make to the efficient operation of the Federal Government: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning March 4, 1991, is designated "Federal Employees Recognition Week," and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

S.J. RES. 52

Whereas the incidence and prevalence of child abuse and neglect have reached alarming proportions in the United States;

Whereas an estimated four million children become victims of child abuse in this Nation each year;

Whereas an estimated five thousand of these children die as a result of such abuse each year;

Whereas the Nation faces a continuing need to support innovative programs to prevent child abuse and assist parents and family members in which child abuse occurs;

Whereas Congress has expressed its commitment to seeking and applying solutions to this problem by enacting the Child Abuse Prevention and Treatment Act of 1974;

Whereas many dedicated individuals and private organizations, including Child Help U.S.A., Parents Anonymous, the National Committee for the Prevention of Child Abuse, the American Humane Association, and other members of the National Child Abuse Coalition, are working to counter the ravages of abuse and neglect and to help child abusers break this destructive pattern of behavior;

Whereas the average cost for a public welfare agency to serve a family through a child abuse program is twenty times greater than self-help programs administered by private organizations;

Whereas organizations such as Parents Anonymous, and other members of the National Child Abuse Coalition, are expediting efforts to prevent child abuse in the next generation through special programs for abused children; and

Whereas it is appropriate to focus the attention of the Nation upon the problem of child abuse: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the months of April, 1991 and 1992, are designated as "National Child Abuse Prevention Month", and the President is authorized and requested to issue a proclamation calling upon all Government agencies and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

S.J. RES. 53

Whereas members of the armed forces of the United States have been recently captured by the armed forces of Iraq and have been held as prisoners of war;

Whereas the prisoners of war held by Iraq have endured incredible hardships and the events surrounding the holding of such prisoners remind us of the thousands of members of the armed forces of the United States who served in past armed conflicts and were held as prisoners of war;

Whereas many prisoners of war have been subjected to brutal and inhumane treatment by their captors in violation of international codes and customs for the treatment of prisoners of war;

Whereas many former prisoners of war died, or were disabled, as a result of such treatment;

Whereas, in 1985, the United States Congress directed the Department of Defense to issue a medal to former prisoners of war recognizing and commemorating their great sacrifices in service to our Nation; and

Whereas the great sacrifices of prisoners of war and their families deserve national recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 9, 1991 and April 9, 1992, are designated as "National Former Prisoner of War Recognition Day" in honor of the members of the armed forces of the United States who have been held as prisoners of war, and the President is authorized and requested to issue a proclamation calling upon the people of the United States to commemorate such day with appropriate ceremonies and activities.

S.J. RES. 56

Whereas during the second week of March 1988, a revolutionary sequence of historic social events evolved on the campus of Gallaudet University, the only university in the Nation which teaches exclusively deaf and hard of hearing students;

Whereas the events which occurred at Gallaudet University in the Spring of 1988 had great significance to all Americans, especially those who are deaf or hard of hearing;

Whereas the week long social protest at Gallaudet University awakened the people of nations around the world to the fact that deaf and hard of hearing individuals are able to achieve at the same level as others and need to be recognized as individuals with unique abilities and qualities; and

Whereas the week long social protest at Gallaudet University served to educate and sensitize the American people concerning the hopes and dreams of the more than 24,000,000 Americans who are deaf or hard of hearing: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing on March 10, 1991, and ending on March 16, 1991, is designated as "Deaf Awareness Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this week by remembering the significance of the historic social movement, which began in March 1988 at Gallaudet University, through appropriate ceremonies and activities.

S.J. RES. 59

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States of America drew heavily upon the political and philosophical experience of ancient Greece informing our representative democracy;

Whereas March 25, 1991, marks the one hundred and seventieth anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire;

Whereas these and other ideals have forged a close bond between our two nations and their peoples; and

Whereas it is proper and desirable to celebrate with the Greek people, and to reaffirm the democratic principles from which our two great nations sprang: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 25, 1991, is designated as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy,' and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

S.J. RES. 62

Whereas American women of every race, class, and ethnic background have made historic contributions to the growth and strength of the United States in countless recorded and unrecorded ways;

Whereas American women have played and continue to play a critical economic, cultural, and social role in every sphere of the life of the United States by constituting a significant portion of the labor force working inside and outside of the home;

Whereas American women have played a unique role through out the history of the United States by providing the majority of the volunteer labor force;

Whereas American women have been particulary important in the establishment of early charitiable, philanthropic, and cultural institutions of the United States;

Whereas American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement;

Whereas American women not only served as leaders in causes to secure the right of suffrage and equal opportunity for women, but also served in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and in other causes to create a more fair and just society for all; and

Whereas despite these contributions, the role of American women in history has been consistently overlooked and undervalued in the body of American history: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That

(1) the month of March, 1991 and the month of March, 1992, are designated as "Woman's History Month"; and

(2) the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the months with appropriate programs, ceremonies, and activities.

S.J. RES. 63

Whereas on June 14, 1941, the Soviet Union began mass deportation to Siberia of people from the Baltic Republics of Estonia, Latvia, and Lithuania;

Whereas the United States has for the past 50 years refused to recognize the forced incoporation of the Baltic Republics into the Soviet Union;

Whereas the Soviet Union has consistently refused to follow the request of the United States that it begin negotiating a peaceful end to the occupation of the Baltic Republics;

Whereas the Baltic Republics, which in 1990 reaffirmed independence from the Soviet Union, have not been allowed to pursue policies which would realize the intent of these declarations;

Whereas the armed forces and secret police of the Soviet Union continue to maintain an extensive presence in the Baltic Republics;

Whereas, although the Soviet Union has stated its intention to pursue policies of glasnost and perestroika, recent events in the Baltic Republics indicate that the Soviet Union is not fully committed to those policies;

Whereas the Soviet Union has consistently pursued measures which are contrary to its stated goal of sovereignty for Soviet republics; and

Whereas the Soviet Union has not acted in accordance with the Helsinki agreements, which it signed 15 years ago, because it has not allowed the Baltic Republics to exercise their respective rights to self-determination: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 14, 1991, is designated as "Baltic Freedom Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

S. RES. 17

Whereas over 400,000 American service men and women are risking their lives in defending the interests and principles of the United States of America;

Whereas these American troops are performing with remarkable success against Saddam Hussein and his military-industrial complex;

Whereas all citizens of the United States, including Congress, should take great pride in the manner in which our brave service men and women are representing our Nation in the Middle East; and

Whereas all Americans eagerly await a successful and expedient conclusion to the Persian Gulf war and the safe return of our courageous sons and daughters serving in that region: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Senate strongly supports and endorses "Operation Homefront" as a national grassroots effort to support our service men and women participating in "Operation Desert Storm" and their families here at home; and

(2) the Senate encourages Federal, State, and local governments and private businesses and industry to organize "Operation Homefront" task forces intended to provide support for the families of the troops while they are deployed and to plan and organize welcome home celebrations for the service men and women upon their arrival home.

Mr. SYMMS. Mr. President, tonight we adopted "Operation Homefront." As the eyes of the Nation and the world are focused on the Persian Gulf through the eyes of the camera lens, our hearts are with the soldiers and their families.

While we have all seen the pictures of the intense strategic bombing of Baghdad and the foiled Scud missile attacks on Israel and Saudi Arabia, most importantly, we've seen a highly trained, well-equipped and very motivated United States military force.

Mr. President, I could not be more proud of our men and women in the military than I am now. And it is for this reason, that I rise today.

Tonight, with the adoption of Senate Resolution 17 we are showing our strong support for the men and women serving in "Operation Desert Storm."

While we have previously passed unanimously resolutions of support, the "Operation Homefront" resolution urges Americans, whether mayors, school principals, parent-teacher organizations, local businesses, church leaders, rotary clubs and countless others, to organize nation-wide "Operation Homefront" task forces.

On Friday, January 19, during a rally on the capitol steps in Boise, ID sponsored by the local posts of the American Legion, the Veterans of Foreign Wars and the Disabled American Veterans, we kicked off Idaho's "Operation Homefront."

This is a nonpartisan, nonpolitical, volunteer effort to encourage everyone to support the troops by assisting their families here at home in numerous ways, and to plan for the arrival home of our military men and women.

Nothing hurt me more than to see the reception Vietnam veterans received upon returning home. While I recognize the right of every American to disagree, it is my hope that any disagreement is limited to our policy in the Gulf, not the men and women who are serving there; the same people who have accepted the responsibility to defend America and her interests.

Though I strongly support the President and his actions, I realize others may not. But I believe every American should support the men and women we've asked to risk their lives fighting for their country.

"Operation Homefront" is to assure that when these individuals finish their jobs and return home, they will be greeted as the heroes they are.

In Idaho, "Operation Homefront" volunteers are organizing gatherings for family members of servicemen and women, planning welcome home events and assembling Welcome Home packages of discounts and gift certificates from local businesses.

These welcome home packages are being sponsored by hotels and motels, restaurants and movie theaters, stores, even a ski resort and the many, many other businesses and community organizations to give these men and women a local "Thank You".

While it may not seem like much when compared to the risks our soldiers, sailors, airmen and Marines have taken, every thing we can do helps make the point that we appreciate the job they are doing, and that the men and women in the armed forces should be proud to wear the uniforms of the U.S. military—because we are proud of them.

"Operation Homefront" is underway in Idaho, Texas, Georgia, Colorado, and other States, and I hope we can extend this support in each State, each county, and each city and town across America.

There is so much we as Americans can do to support our troops, and this Senator hopes the resolution will be the catalyst to get the movement going.

Most importantly, Mr. President, my heart goes out to the families of the men who have paid the ultimate price for freedom and to those whose loved ones are being held prisoner by Saddam Hussein. They are the truest of heroes in the most difficult of times.

RECORD TO REMAIN OPEN UNTIL 2 P.M. TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that on Friday, February 22, the RECORD remain open until 2 p.m. for the introduction of bills and statements, and for the filing of Legislative and Executive Calendar busi-

ness, notwithstanding a recess of the Senate.

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

AUTHORIZING SENATE EMPLOYEES TO TESTIFY AND PRODUCE RECORDS

Mr. FORD. Mr. President, on behalf of the majority leader and the distinguished Republican leader, Senator DOLE, I send to the desk a resolution to authorize testimony and document production by Senate employees, and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 60), to authorize Senate employees to testify and produce records of the Senate.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, last year, at the conclusion of its inquiry into the conduct of Senator DURENBERGER, the Select Committee on Ethics referred the matter, in accordance with the committee's resolution and rules, and as it has done in prior cases, to the Department of Justice for its attention. In the course of its examination of the committee's referral, the Justice Department is seeking information from present and former employees of the Senate. Senator DURENBERGER wishes to cooperate fully with the Department, and, in keeping with the Senate's usual practice, this resolution would authorize the employees to provide information sought by the Justice Department, except for material as to which a privilege should be asserted, in order to assist the Department in this matter.

The PRESIDING OFFICER. Is there further debate on Senate Resolution 60? If there be no further debate, the question is on agreeing to the resolution.

The resolution (S. Res. 60) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 60

Whereas the Select Committee on Ethics has referred to the Department of Justice for its attention matters relating to the conduct of Senator Dave Durenberger;

Whereas the Department of Justice is seeking information from present and former employees of the Senate of the United States in connection with this referral;

Whereas by the privileges of the Senate of the United States and rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas when it appears that the provision by Senate employees of information acquired in the course of their official duties is needful for the promotion of justice, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That present and former employees of the Senate are authorized to testify and to produce records of the Senate, except as to matters for which a privilege should be asserted, in connection with the referral of the Select Committee on Ethics to the Department of Justice of matters relating to the conduct of Senator Dave Durenberger.

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Kansas is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 472 and Senate Joint Resolution 77 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

SALUTE TO PHIL PISTILLI

Mr. DOLE. Mr. President, on March 1 much of the business community of Kansas City will gather to honor Phil Pistilli, one of the most respected and successful leaders in the hospitality industry.

I am proud to call Phil my friend, and had hoped to be there as he is honored. Unfortunately, previous commitments will prevent me from attending.

I did want to take this occasion, however, to share with my colleagues, my admiration and respect for this remarkable man.

Phil is a true American success story. He arrived in Kansas City over 40 years ago, where the duties of his first job in the hotel industry included washing dishes. Phil quickly learned the ropes, and he never looked back.

Today, Phil is president and chief operating executive of the Raphael Hotel Group, which operates hotels in Kansas City, Chicago, and San Francisco.

He is recognized by his peers as one of the most innovative leaders in the field, and he has been honored time and again by hospitality industry associations in the Midwest and across America.

More importantly, Phil has never failed to give something back to the community. He has served as president, or chairman, of countless civic organizations, and he has received the National Humanitarian Award from the City of Hope.

Phil and I also share a common mission in helping persons with disabilities to find meaningful employment. His service on the Missouri Governor's Committee on Employment of the Handicapped stands as an inspiration to all business men and women.

To all those gathered to honor Phil, I extend my best wishes and thanks for honoring a true gentleman.

And to Phil, I offer my heartiest congratulations and a warning—just remember that all those saying such nice words at your dinner, may soon be asking for a 10-percent discount.

GULF PEACE PLAN

Mr. DOLE. Mr. President, I thank the distinguished majority floor leader, the distinguished Senator from Kentucky [Mr. FORD]. I apologize for taking more time than I intended.

With reference to what we are hearing on television now with reference to the gulf and the Iraqi plan that the Soviets are now trumpeting, let us be very cautious. Let us be very certain we have examined it carefully. Let us remember that the Soviet Union has only been an observer in the process. They have not committed any material or any young men or young women to the gulf coalition forces. And let us remember that Saddam Hussein may be playing a stalling game.

I am certain President Bush will consider this very carefully, consider the source, consider whether or not this may be a stall by Saddam Hussein, and then, obviously, make the judgments in the best interests of our long-term national concerns in that area. Keeping in mind, yes, if they withdraw from Kuwait, do it immediately. If they are prepared to make reparations—you do not reward an aggressor; do not reward Saddam Hussein. He does not deserve it.

Yes, we want a peaceful settlement, all of us. We would like to have it. We would like to have the young men and women home in the next 10 days, 2 weeks, 30 days, 60 days. But the bottom line is we do not want to bring them home in 10 days, 2 weeks, 30 days, or 60 days, and have them back there a year from now, 2 years from now, or 5 years from now.

The PRESIDING OFFICER. The Senator from Kentucky.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m., Friday, February 22; and that following the prayer,

the Journal of proceedings be approved to date; that following approval of the Journal, the distinguished Senator CONRAD BURNS of Montana be recognized to deliver Washington's Farewell Address; that upon the conclusion of Washington's address delivered by the distinguished Senator, the Senate stand in recess until 2:30 p.m., Tuesday, February 26.

Mr. President, I further ask unanimous consent that on Tuesday, February 26, following the time for the two leaders, there be a period for morning business not to extend beyond 3 p.m., with Senators permitted to speak therein for up to 5 minutes each.

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

TELEPHONE TAX

Mr. CHAFEE. Mr. President, I ask unanimous consent to proceed for 1 minute first in connection with the telephone joint resolution that was introduced by the distinguished Republican leader. I further ask unanimous consent to be added as a cosponsor to that joint resolution.

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

Mr. CHAFEE. I further say, Mr. President, that it makes eminent sense to me. I think we certainly want to work out a system with the Saudis whereby there is not a tax levied on those particular calls. We are in a modern world where apparently there is considerable accessibility to telephone over three and that is a form of communication that our service men and women are using. I think we ought to encourage it and certainly there is no need for anybody to add a tax, for the Saudis to add a tax to those particular calls. So I support the joint resolution and hope that it will achieve passage. I want to thank the Chair, and I want to thank the distinguished acting leader.

SCHEDULE

Mr. FORD. Mr. President, for the information of my colleagues, let me just reiterate what will transpire. On tomorrow, no legislative business will be conducted. The Senate will be in session only for the purpose of Washington's Farewell Address.

RECESS UNTIL 10 A.M. TOMORROW

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, and if no Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess, as under the provisions of Senate Resolution 59, until 10 a.m., Friday, February 22, in memory of the late Congressman Conte.

There being no objection, the Senate, at 7:48 p.m., recessed until Friday, February 22, 1991, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 21, 1991:

DEPARTMENT OF STATE

DAVID FLOYD LAMBERTSON, OF KANSAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF THAILAND.

MICHAEL T. F. PISTOR, OF ARIZONA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENITARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALAWI.

JENNIFER C. WARD, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NIGER.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MARTA ISTOMIN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1996, VICE CARLOS MOSELEY, TERM EXPIRED.

CONFIRMATION

Executive nominations confirmed by the Senate February 21, 1991:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SUSANNAH SIMPSON KENT, OF PENNSYLVANIA, TO BE DIRECTOR OF THE INSTITUTE OF MUSEUM SERVICES.

WILLIAM E. STRICKLAND, JR., OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1996.

NATIONAL SCIENCE FOUNDATION

WALTER E. MASSEY, OF ILLINOIS, TO BE DIRECTOR OF THE NATIONAL SCIENCE FOUNDATION FOR A TERM OF 6 YEARS.

NATIONAL COUNCIL ON DISABILITY

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE NATIONAL COUNCIL ON DISABILITY FOR THE TERMS INDICATED:

JOHN LEOPOLD, OF MARYLAND, FOR A TERM EXPIRING SEPTEMBER 17, 1991, VICE BRENDA PREMO, TERM EXPIRED.

MARY ANN MOBLEY-COLLINS, OF CALIFORNIA, FOR A TERM EXPIRING SEPTEMBER 17 1991, VICE JONI TADA, TERM EXPIRED.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

PUBLIC HEALTH SERVICE

PUBLIC HEALTH SERVICE NOMINATIONS BEGINNING ALAN R. BAKER, AND ENDING MARIA E. STETTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 4, 1991.