

## SENATE—Tuesday, March 12, 1991

(Legislative day of Wednesday, February 6, 1991)

The Senate met at 2:30 p.m., on the expiration of the recess, and was called to order by the Acting President pro tempore [Mr. KERREY].

### PRAYER

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

Let us pray:

*Let us come before his presence with thanksgiving, and make a joyful noise unto him with psalms. For the Lord is a great God, and a great King above all gods.—Psalm 95:2,3.*

Almighty God, we have much for which to be thankful. As men and women return from the Persian Gulf and are welcomed by their loved ones and all Americans, we rejoice afresh in the brevity of the war and the minimum of casualties. But even as we rejoice at the homecomings we remember those who are brought home in caskets and greeted with deep sorrow by their loved ones, a sorrow that seems almost compounded by the joy of those returning home safely.

Gracious Father, we commend to Your love and comfort and care those who sorrow. We pray for any prisoner of war who has not been returned, for those who are missing in action and for their loved ones. And we pray that, as rapidly as possible, peace and order may be restored.

Midst our thanksgiving, loving Lord, we remember those who have been held hostage for so long: Terry Anderson, Thomas Sutherland, Jesse Turner, Joseph James Cicippio, Edward Austin Tracy, and Alann Steen. Grant that their freedom may soon come to pass.

In the name of the Prince of Peace we pray. Amen.

### RECOGNITION OF THE MAJORITY LEADER

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

### THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

### EXTENSION OF TIME FOR MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that today, following the time reserved for the two leaders, there be a period for morning business not to extend beyond 4 p.m., with Senators permitted to speak therein for up to 10 minutes each.

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

### SCHEDULE

Mr. MITCHELL. Mr. President, for the information of Senators, under a previous unanimous-consent agreement, I have the authority, following consultation with the Republican leader, to proceed to S. 578, a bill to authorize supplemental appropriations for the Department of Defense for Operation Desert Storm and for other purposes.

The distinguished Republican leader and I met earlier today. We intend to meet again shortly, and it is my hope that we can work out an arrangement whereby we will be able to proceed later today, at 4, if possible, if not, as soon thereafter as possible, to consider this legislation, I hope in a manner that will permit its prompt enactment.

This legislation includes the benefits for the men and women who served in the Desert Storm operation and, of equal importance to them and to all of us, their families. So I hope that we can proceed with that later today. We will be consulting further, and I hope to have an announcement on that shortly.

### RESERVATION OF LEADER TIME

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

### RECOGNITION OF THE REPUBLICAN LEADER

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

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 611 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for morning business until 4 o'clock. Senators are permitted to speak therein for not to exceed 10 minutes each.

The Senator from Texas.

Mr. BENTSEN. I thank the Chair.

(The remarks of Mr. BENTSEN, Mr. ROTH, and Mr. SEYMOUR pertaining to the introduction of S. 612 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

### INTERNATIONAL CRIMINAL COURT TO TRY WAR CRIMES

Mr. SPECTER. Mr. President, I seek recognition to amplify evidence in support of a pending sense-of-the-Senate resolution to establish an international criminal court to try war crimes.

This issue was presented on the floor of the Senate last week, and a vote was deferred on Thursday afternoon because of scheduling difficulties with some Senators who would be necessarily absent; and the schedule was established where the vote would occur this week after another scheduled vote, to make sure that as many Senators were present as were possible. But there have been some intervening events since last week which are worth placing on the RECORD, Mr. President.

A report by the Philadelphia Inquirer specifies:

The eight U.S. Air Force pilots released last week by the Iraqis were "treated in a very severe fashion, and were physically injured," a ranking Air Force doctor reported yesterday. An initial examination of the airmen at Andrews Air Force Base showed that some had lost as much as 30 pounds during their confinement because of a daily diet of a few slices of pita bread and broth. Brigadier General Robert Pol told the news conference that several had contracted intestinal parasites.

A report by the Washington Post today specifies Iraqi treatment of pilots as "severe." U.S. officials cite malnutrition, duress, and delayed medical care.

Over the weekend, the New York Times, on Sunday, reported a United States plan to bomb Iraq if poison chemical gas was administered to the internal population of Iraq. One such report, although not cited in this New York Times article, specified that a chemical weapon had been used against the dissidents within Iraq, but that the shell was so old and antiquated that it malfunctioned.

Mr. President, the additional evidence which is coming to light, and increasing acts of barbarousness on the part of Iraq, I submit, underscores the necessity for Iraqi officials, from President Saddam Hussein on down, to be on notice that they will be held responsible for war crimes.

Last week considerable detail was specified about the atrocities against Kuwait, which would warrant war crimes trials in an international court, under an analogy to Nuremberg after World War II. Similarly, there were atrocities against prisoners of war and atrocities against other civilians, and the firing of some 39 Scud missiles into civilian populations in Israel, without any conceivable military objective.

Mr. President, this additional information, I think, underscores the necessity for a very strong vote by the sense of the Senate on our determination to establish an international criminal court to try war crimes. This would be a followup to previous acts by this body. In 1986 a resolution was adopted, on the initiation of this Senator, for an international court to try terrorists; in 1988 a resolution was initiated by this Senator on an international court to try drug dealers; and, last year, there was a provision in the foreign aid bill which calls for a report from the President by October 1, 1991, and a report from the U.S. Judicial Congress.

But the evidence is mounting that the international criminal court to try war crimes is very much needed, and this additional information, I think, will lend an additional evidentiary base.

Mr. BAUCUS addressed the Chair.

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

#### THE NORTH AMERICAN FREE TRADE AGREEMENT

Mr. BAUCUS. Mr. President, last week the administration requested authority to negotiate a free trade agreement with Mexico and Canada. This agreement builds upon the recently concluded FTA with Canada. The negotiations have been dubbed the North American Free Trade Agreement or NAFTA negotiations.

I feel considerable pride of authorship in the concept of a NAFTA. One of my first major projects when I came to the Senate in 1979 was to include an amendment in the 1979 Trade Act to require the administration to study the NAFTA concept. At the time, the idea was received with great skepticism, but it has slowly gained acceptance over the last 12 years. I ask unanimous consent that the text of the provision in the 1979 Trade Act and a statement I made at the time appear in the RECORD directly following my remarks.

#### BENEFITS OF A NAFTA

Why attempt to negotiate an FTA with a developing country, like Mexico?

The International Trade Commission attempted to answer that question in their recent study:

\*\*\* an FTA with Mexico will benefit the U.S. economy overall by expanding trade opportunities, lowering prices, increasing competition, and improving the ability of U.S. firms to exploit economies of scale.

If the United States, Mexico, and Canada were to eliminate internal trade barriers it would create a single market of 360 million consumers—by far the largest in the world. A secure market of this size would create an enormous competitive advantage for U.S. business vis-à-vis their Asian and European competitors.

Further, opening the Mexican market could have enormous commercial benefits for the United States. Mexico is already the United States' third largest trading partner. The Salinas government has undertaken a significant trade liberalization over the past 4 years. Tariffs are down from as high as 100 percent to an average of just over 10 percent, and a number of trade barriers have been dismantled. This unilateral market opening has expanded United States exports to Mexico from \$12.4 to \$28.4 billion in 4 short years. During that same period, the annual United States trade deficit with Mexico shrunk from \$5.7 billion to \$1.8 billion.

But Mexican tariffs are still more than twice as high as United States tariffs and import licenses are still required for many products. Further, Mexico's tariffs are not bound at current levels by international agreement. If the Salinas government were to change policy or be replaced, Mexico's tariffs could be raised as high as 50 percent and other barriers reimposed. A free trade agreement with Mexico could break down remaining trade barriers and prevent old ones from being reerected.

Mexico is also the United States' second largest source of oil imports behind Saudi Arabia. An FTA could help assure a reliable supply of oil from Mexico and help to lessen dependence on the Persian Gulf.

#### CONCERNS ABOUT MEXICO

However, though the potential benefits of an FTA with Mexico are large so are the risks. Negotiating an FTA with Canada was relatively easy. The United States and Canada are at the same level of development. Both maintain similar labor and environmental standards. And both share a common language.

Unfortunately, none of those things are true with regard to Mexico. Mexico remains a developing country with all the accompanying human rights and environmental problems usually found in developing countries.

To link Mexican economy with the United States economy is to build a bridge that spans 100 years of economic development. Such a negotiation raises particular concerns in three areas.

First the wage rate differential between the United States and Mexico is large. Wages in Mexico are only one-quarter to one-fifteenth of United States wages. Under an FTA this would seem to create a tremendous incentive for labor intensive industries in the United States to move to Mexico—causing massive job losses in the United States.

Various economic analysis suggest that this problem may be overstated. Most suggest net gains in U.S. employment. Nonetheless, in a number of U.S. sectors large job losses are likely.

In order to win approval of a United States-Mexican FTA, the administration must develop a comprehensive plan to address these job losses. In some sectors, that will mean tariff snapbacks and special safeguard measures to address import surges. In others, it could mean long transition periods.

The United States Government must also take a hard look at revamping worker adjustment assistance programs to deal with displacements that may result from free trade with Mexico. This administration has been openly hostile to trade adjustment assistance and this year proposed repealing the program. If we are going to sacrifice some low wage jobs in order to create new higher wage jobs, we must create a training ladder to help the displaced workers fill the new jobs. We must work to see to it that those who lose jobs because of an FTA with Mexico, are able to share the benefits of free trade.

Second, Mexico has not vigorously enforced its environmental laws. Most experts concede that Mexico has a fairly sound set of environmental laws on the books, but it doesn't devote sufficient resources to enforcing those laws. If an FTA were concluded under current circumstances, an incentive could be created for United States business to move to Mexico to avoid United States environmental regulations. This could create job losses in the United States and spawn new pollution.

Environmental issues do not fit well into a trade negotiation. But before a trade agreement is approved by the Congress, the United States must ensure that adequate environmental regulations are on the books and enforced in Mexico.

Finally, Mexico does not impose adequate worker's rights standards. As is the case with environmental regulations, an FTA could create an incentive for United States businesses to move to Mexico to exploit the workforce. Clearly, this is intolerable. We cannot allow free trade if it means more child labor and more workers working under unsafe conditions. As is the case with the environment, these issues should be addressed before a trade agreement is approved by Congress.

I have already announced that I intend to support an extension of the administration's fast track negotiating authority. This will allow the administration to begin negotiations with Mexico and Canada aimed at producing a NAFTA.

However, I do have serious concerns about negotiating an FTA that involves Mexico. In the end, I will be taking a hard look at any agreement produced by those negotiations. Such an agreement must be in the United States commercial and economic interest, it cannot simply be disguised foreign aid for Mexico.

Further, before the negotiations begin, Mexico must live up to all the commitments it has made to the United States in previous trade negotiations involving intellectual property protection.

Finally, the concerns that I have just laid out on wage rates, environmental standards, and worker's rights must be addressed either in or concurrently with the FTA negotiations.

Those are high standards. But if the Administration negotiates with these objectives in mind, they are achievable. The United States has great leverage with Mexico in the negotiations. After all, the U.S. market is the most prosperous in the world.

Given my past involvement with this issue, I would deeply regret voting against a North American Free Trade Agreement. But unless such an agreement measures up to these standards, I would have no choice but to vote to reject it.

Mr. President, I ask unanimous consent that material on this subject be printed in the RECORD at this point.

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

**SEC. 1104. STUDY OF POSSIBLE AGREEMENTS WITH NORTH AMERICAN COUNTRIES.**

(a) IN GENERAL.—Section 612 of the Trade Act of 1974 (19 U.S.C. 2486) is amended by inserting "(a)" before "It" and by adding at the end thereof the following:

"(b) The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors."

(b) CLERICAL AMENDMENTS.—

(1) The caption of section 612 of such Act is amended to read as follows:

"SEC. 612. TRADE RELATIONS WITH NORTH AMERICAN COUNTRIES."

(2) The table of contents of such Act is amended by striking out the item relating to section 612 and inserting in lieu thereof the following new item:

"Sec. 612. Trade relations with North American countries."

Senator BAUCUS. The hearing of the International Trade Subcommittee will come to order. I want to welcome today all of the witnesses who are here to testify.

Today's hearing is the first of several I plan to conduct during the next few months to examine trade between the United States, Canada, Mexico and other nations in the northern portion of the Western Hemisphere.

To most Americans trade with Mexico and Canada means one thing: oil. Mexico's recent discoveries of vast reserves of oil and natural gas are an attractive alternative to Middle East oil.

At a time when lines at gasoline stations have reappeared and weekend closings are again common, such a large supply of oil on our southern border looks even more tempting.

Canada has in the past been a major supplier of energy to the United States. In my home State of Montana, Canada remains a major source of oil for refineries in Billings.

Several bills have been introduced this year that encourage energy cooperation among the three nations. Several proposals to establish a North American Common Market have come forward. We are a long way from that kind of relationship. Our neighbors are rightfully cautious about such talk and even the mention of common markets and free trade zones legitimately and correctly cause concern.

This Nation's relationship with Canada and Mexico is much more complex than simply oil. The United States conducts more trade with Canada than with any other nation by a wide margin.

In 1977, the United States sold over \$25.7 billion worth of products to Canada compared to \$10.5 billion to Japan. Americans bought nearly \$39 billion worth of imports from Canada compared to \$18 billion from Japan.

The value of U.S. trade with Canada in 1978, totaling \$62 billion, is more than the amount of U.S. trade with all of the members of the European Common Market.

We are also Mexico's largest trading partner, buying 70 percent of its exports. Last year, trade between the United States and Mexico totaled \$12.7 billion, up 34 percent over 1977.

Trade with Mexico and Canada is one-quarter of this Nation's total international trade.

Obviously, decisions made here have a dramatic impact in their capitals and upon their people.

Today, I hope we can begin to look beyond the statistics. We should look at the quality of our relationship with these nations.

How is our Government organized to handle North American affairs?

What do Mexico and Canada want in return for selling us their oil and other resources? How willing are American firms to share their research and development with the Canadian and Mexican firms?

How do we reduce and eliminate both tariff and nontariff barriers to trade? How do we provide some organization to the dozens of agreements that now govern trade?

These are some of the questions that I hope we can examine. Also, I am inserting at this point in the record a more complete statement for the record.

[The material referred to follows:]  
"The purpose of the hearings we are beginning today is to focus public and Congressional attention on the current status of North American relations in the field of trade and other areas, and to encourage serious thinking—both within and outside of our government—about the future direction of these relations.

"Today's witnesses will address themselves primarily to issues in United States-Canadian and United States-Mexican relations. However, we should at the outset note that a systematic study of the possibilities for greater cooperation among the countries of the northern portion of the Western Hemisphere should also include consideration of the nations of the Caribbean as well.

"We are witnessing an interesting change in American perceptions of our two large neighbors. Traditionally, little attention has been paid to the extensive and varied bond between our country and Canada and Mexico: We have tended to take them for granted.

"Fortunately, this is now changing. This increased American interest is a product of our own domestic needs. As our economy has slowed down and our balance of payments deficit has steadily risen, we have paid increasing attention to international trade. And as the energy crunch has become more acute, we have become more aware as a nation of the foreign sources of our energy. Analysis of where we stand in regard to energy or to trade leads inevitably to a discussion of our relations with our two major neighbors.

"Already the vastness and intricacy of the existing ties are apparent. Canada and the United States are each other's largest trading partner. The total value of U.S. trade with Canada alone (\$62 billion in 1978) is slightly more than U.S. trade with all of the members of the European Common Market, and exceeds U.S. trade with the OPEC nations as a group.

"The statistics in relation to United States-Mexican trade are no less impressive. We are Mexico's largest trading partner, taking approximately 70 percent of their exports. Mexico ranks within the top five of the nations with whom we trade. In 1978, trade between the United States and Mexico totaled \$12.7 billion, up 34% from \$9.5 billion in 1977.

"In the field of energy, Canada's importance as a source of fossil fuel and hydroelectric generation, as well as a conduit for Alaskan oil has loomed large. Similarly, the monumental recent discoveries of oil and gas reserves in Mexico must inevitably enter our calculations about sources of future energy needs. Our interest in Mexican and Canadian

energy resources has been matched by a desire in both of those countries to protect their natural resources, and to use them imaginatively and sparingly for the important tasks of their own national development.

"Energy and trade are only two facets of the complex interrelationship. Migration patterns, cultural concerns and questions of national identity make difficult any simple analysis of cross border patterns.

"The simple fact is that our own needs have propelled us to look more closely than ever before at North America as an economic unit, and, not to the surprise of experts, we are discovering the strength of this continent as an economic entity. Without doubt, the United States, Canada and Mexico taken together, form the largest single, and most vital economic trading block in the world. It is the seat of three vibrant democratic nations, and the home of aspiring and energetic populations.

"The opportunities appear almost limitless, but there can be no doubt that there are significant obstacles to greater cooperation.

"The task which confronts us as nations is to develop structures which will allow us to work together to our mutual benefit.

"Legislation has been introduced into this Congress to encourage cooperation among the three nations, especially in the field of energy. Today some witnesses may speak about the proposed legislation and while this would be welcome we should not lose sight of the fact that this hearing and ones which will follow are primarily educational and informational in nature. We are looking for answers, but in fact, we are just beginning to formulate the right questions.

"We must assess the full panoply of the existing relationships. For instance, I believe that there is far more governmental contact at the state and province levels than is commonly realized. These should be adequately catalogued.

"We must know more about our ability as a government to improve existing relations. I am concerned that our relations with the two nations are too often compartmentalized within our own administration with the net result that our right hand does not know what our left is doing.

"We must study further the reactions and sentiments of the people of Canada and Mexico themselves to the possibilities of increased cooperation. No progress is likely if we are insensitive to their views. There is a long legacy in both Canada and Mexico of suspicion of American motives. We must conduct ourselves in such a way to convince our neighbors that we are interested in arrangements that help us all, not just arrangements that help us get all of theirs.

"We must seek out and listen to the views of all important elements of the American economy and pay particular attention to the concerns of this country's working men and women.

"We must honestly ask ourselves whether, given the great differences in economic development between Canada and Mexico, it makes sense to try to deal with the two nations as part of a trilateral entity. Are we better off forgetting about continentalism and focusing on promoting better bilateral relations with each? I frankly do not know the answers to these questions, and I want to have this Committee promote public discussion of them.

"The next decade may see profound change in our relations with our two neighbors, brought about by significant domestic developments in each. Mexico will undergo seri-

ous stress as it copes with the important questions that will be raised concerning the internal distribution of its new oil wealth. How this wealth will be used, by whom, and for whom, are likely to be the central issues of Mexican politics in the next decade. It will be a time of profound questioning. Similarly, in Canada, it is likely that the next decade will see a period of continued national self examination. The very unity of Canada is being called into doubt and while this is a question solely for Canadians to decide among themselves, it will be foolish for the United States to remain unaware or unconcerned about possible ramifications for ourselves.

"I am pleased that today we shall hear from not only spokesmen from the Executive Branch, but from individuals from private industry and the academic world, as well as representatives of private opinion in both Mexico and Canada. They will each express to us in their views about the need and possibility for increased hemispheric cooperation. Hopefully, today we shall begin a process—which is likely to be long and arduous—which will lead to greater understanding."

Senator BAUCUS. I hope this hearing will necessarily be the beginning of a very long search into the general question, but also one that is delicate and sensitive to the countries and the people concerned.

We will begin with our first witness, the Honorable Alan Wolff, Deputy Special Representative for Trade Negotiations. Mr. Wolff, you are certainly no stranger to this committee. We are happy to have you here. You may proceed in any manner that you wish.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. I thank the Chair. I realize we all stood seeking recognition. I think so far we have been recognized in the order we arrived, and I appreciate the Chair doing that.

(The remarks of Mr. BIDEN and Mr. SEYMOUR pertaining to the introduction of S. 618 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana [Mr. BAUCUS].

#### THE ADMINISTRATION'S NATIONAL ENERGY STRATEGY

Mr. BAUCUS. Mr. President, with the successful conclusion to the Persian Gulf war, Americans are beginning to shift their attention to some of our pressing domestic issues. With 8.2 million workers unemployed last month, pulling the economy out of the recession has to be No. 1 on our agenda.

But close behind it must be development of a national energy strategy. The war has brought home to all of us the fragility of our energy policy. And it should renew our determination to build a comprehensive policy that will help ensure our future.

Two weeks ago, the administration released its long awaited comprehen-

sive national energy strategy. But now that it has been unveiled, it is difficult to see how it could have taken 18 months to develop. It is not new and it is not comprehensive. And it certainly does not look to the future.

In fact, the administration's energy policy continues to suffer from the tunnel vision of the past 10 years. It continues to chase the mirage of cheap oil while it shuns energy conservation and efficiency.

The single-minded pursuit of oil for the past decade has kept American families and businesses vulnerable to oil price shocks. It has reduced our ability to compete with Japan, Germany, and other nations in the world marketplace. And it has contributed to global warming, air pollution, and other environmental problems.

Some have said that his strategy is flawed because it is not balanced with more conservation measures. I disagree. The administration's energy policy is flawed because it has no broader vision for the future.

The administration's policy makes drilling for oil in our offshore waters and in the Arctic refuge's wilderness a panacea. But is this really a sound energy policy?

Mr. President, only about 6.1 billion barrels of oil—some 3 percent of the Nation's total oil reserves—lie within the Arctic refuge and the undeveloped areas of the Outer Continental Shelf. Even if all these protected areas were exploited to full capacity, it would only supply about a year's worth of oil.

Furthermore, the United States has only 4 percent of the world's oil reserves, with much of what is left is inaccessible or expensive to develop. No matter how hard we try—no matter how much of our natural heritage we destroy—we will never be able to produce enough oil to insulate ourselves from oil price shocks.

After all, from virtually the start of the Persian Gulf crisis, Alaskan oil has sold for the same price as oil that was imported from the Persian Gulf. So would any oil from Arctic refuge or the OCS.

Of course, our national energy strategy must not abandon domestic oil production. Our policy should provide economic incentives to put the oil rigs in Montana and elsewhere around the country back to work extracting known oil reserves. It should encourage more thorough exploration and development of the tens of millions of acres already under lease. Strikes in some of these areas already have proven to be far more promising than originally thought.

But, unfortunately, production is not a total panacea. And it never will be. In addition to production, we must also be much more efficient. We must conserve.

Our energy appetite also is costly to the global environment. Energy con-

sumption is the single largest contributor to global warming.

The United States is the leading contributor of greenhouse gases that threaten the Earth's climate. With 5 percent of the world's population, the U.S. accounts for about 20 percent of the world's emissions. U.S. carbon dioxide emissions originate almost exclusively from burning oil and other fossil fuels.

Yet, while most of the developed countries are seeking to stabilize or reduce greenhouse gas emissions, particularly carbon dioxide, the administration comes forward with a plan that calls, not for reductions in use of fossil fuels, but for continued heavy reliance on oil and for increasing carbon dioxide emissions.

Tomorrow, the Environmental Protection Subcommittee will hold a hearing to examine these very issues.

Mr. President, the path laid out by the administration will not secure this Nation's future. Only through increased energy conservation and efficiency can we find enhanced security, a more competitive economy, and a cleaner environment.

The way to protect ourselves from huge, overnight increases in the price of oil—to prepare ourselves now for the future—is to use oil more efficiently and to become less dependent upon it.

Our energy policy should weigh our options and pick the best buys first. Clearly, we must enhance conventional and renewable production. But even more, clearly, energy efficiency is the cheapest and most immediate solution we have to increased oil prices.

The Japanese, German, Swedish, and other foreign competitors already use half as much energy per capita as we do in the United States.

By increasing automobile fuel efficiency by 1.5 miles per gallon per year over 7 years, we could save as much oil as Iraq and Kuwait would have produced. An increase in fuel economy standards to 40 miles per gallon could save as much as 8 billion to 9 billion barrels of oil by 2010.

A sound energy policy is one that plans for the future. It is one that relies primarily on energy conservation and efficiency, along with renewable energy resources, to protect America's environment and its economy. And, yes, its future.

I intend to work closely with the majority leader and my other colleagues to see that the energy bill the Senate considers later this year does just that.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair. (The remarks of Mr. GRAHAM pertaining to the introduction of S. 620 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Who seeks recognition?

Mr. EXON addressed the Chair. The PRESIDING OFFICER. The Senator from Nebraska.

#### THE STRENGTH OF THE ECONOMY

Mr. EXON. Mr. President, it is quite obvious why various important matters are being addressed on the floor of the Senate today and the latter part of last week. With the winding down of hostilities in the gulf, at least the wonderful, successful conclusion of that particular exercise and the fact that the Secretary of State is now involved in serious discussions in the region attempting to at least set the groundwork for some long-term peace in that region that we have not seen, it is obvious that the Senate is turning itself to other extremely important domestic matters, including the budget, the crime bill and the 100-day challenge that was presented to the Congress by the President in his recent address to the joint body.

I suspect, though, as we go into these troubled times, we had better have a little better understanding than I think is generally understood about the strength of the economy in the United States of America, or the lack thereof: Where are we going in the future; what are the problems that we have, finally, maybe at long last recognized from the past; what have we learned from those mistakes or actions; and how are we going to use some of the experiences that we have had with regard to charting a successful economic course for the future?

Suffice it to say the ever growing budget deficit is obviously going to continue to mushroom in the future, with the fact we have already passed legislation that in essence authorizes the national debt of the United States to keep soaring on up to about the \$5 trillion figure. To put that in perspective for just a moment, Mr. President, I would simply cite that in 1980 we were under \$1 trillion in total national debt; it is estimated that within the next couple of years, 12 years later, we are going to hit the \$5 trillion national debt figure—an astonishing increase. Nothing like it has occurred in our modern history.

Unless we are wise enough to begin to chart a different course to correct that, then the economy of the United States is going to continue to be run in a state of disrepair.

I am very much concerned about the overall standard of living of the United States of America and am wondering whether or not the current downturn we are seeing may be a signal we are going to begin to pay for the excesses of the past with some hard economic choices in the future.

Nevertheless, there are some options available to us as long as we understand what the situation is and what we face and how we can best, through study and consultation and bipartisan-ship, move into a new, aggressive future for the United States of America as we approach the beginning of a new century.

In that regard, I have two articles I will be entering into the RECORD in just a few moments by two individual Americans, Prof. Wallace C. Peterson of the University of Nebraska economics department, and Mr. Eliot Janeway. Both of these individuals are friends of mine and I listen very carefully when they speak.

First, I will briefly quote from an article written by Professor Peterson and delivered to the Missouri Valley Economics Association in March of this year. I quote from the first page:

In this paper I shall argue for a different—and I think a better—measure of recession or depression. This measure is the real income of the average worker or family. Why real income? This is because real income determines material living standards, and our standard of life is the best measure of economic progress.

Jumping then, Mr. President, to page 3 of this same article, I quote:

From a 1973 peak year of \$327.45 in constant (1982-84) dollars, real weekly earnings slipped to \$276.95 during the 1982 recession. In the recovery and long expansion of the 1980s they climbed back up to only \$270.32. Thus, 16 years after the watershed year of 1973 and in spite of the vaunted prosperity of the Reagan years, the real weekly income of a worker in 1989 was 17.4 percent below the level reached in 1973!

Jumping ahead then once again, Mr. President, to pages 10 and 11 of that article, I quote:

For example, between 1979 and 1987 the number of jobs in the American economy expanded by nearly 15 million. But of these new jobs, 50.4 percent paid an annual wage below the poverty level (\$11,610 in 1987), 37.7 percent paid a wage classified as "middle" (\$11,611 to \$49,443), and only 11.9 percent could be called "high wage" jobs (over \$46,444). Representative of many of the jobs in the broadly-based service sector are wages in retail trade, which is where many workers displaced from manufacturing eventually find themselves. Wages are not only significantly lower than wages in manufacturing, but the gap between the two sectors has worsened. In 1950, for example, weekly wages in retail trade averaged 68.7 percent of weekly earnings in manufacturing. By 1989, the ratio had dropped to 44 percent.

Moving ahead, once again, Mr. President, in that same article to pages 12 and 13, I quote:

Four-fifths of American families saw their average income decline over this period. Only families in the top 20 percent gained.

Continuing on page 13:

Closely related to this is a second factor, the increasing internationalization of the American economy. Workers in routine production activities like manufacturing find themselves competing in the global labor markets, markets in which wages are frequently much lower than in the United States. Because, too, many corporations have become genuine multinational firms, they often find it easier to shift their operations to low wage areas in the Third World rather than attempt to pass high wages on to the consumer in the domestic economy.

Finally on this same article, on pages 16 and 17, I further quote:

And finally, I would ask, where are the economists? In the January 14, 1991 issue of *Business Week*, the headline over the magazine's story about the ASSA convention in Washington, D.C. between Christmas and New Year's read, "7,000 Economists—And No Answers." This is a sad commentary on the state of the profession. Economists outside the neoclassical mainstream have a long and successful history—from the American institutionalists to John Maynard Keynes—of creating the intellectual capital that nourished liberal Western governments seeking to tame the worst excesses of market capitalism. It is time to get out of the ivory tower and get on with the business of rebuilding this stock.

Mr. President, I ask unanimous consent that following my remarks the entire article by Professor Peterson, with the attachments thereto, be printed in the RECORD.

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

(See exhibit 1.)

Mr. EXON. Mr. President, likewise I am going to quote briefly from an article that appeared in the *Atlanta Journal and Constitution* by Eliot Janeway of February 27, 1991:

The threat of a Middle Eastern oil war should serve as an invitation for the superpowers to repeat that memorable chapter of aeronautical history in an underground setting. Working together, the two countries can reactivate the Soviet Union's huge oil fields.

The closing paragraph:

The United States is overdue the satisfaction of solving one of its foreign money problems to its advantage. Substantial political and strategic benefits will follow. When they do, perhaps Washington will be emboldened to offer its perennial food surplus in further payment for cheap, good-quality Soviet oil.

Mr. President, I ask unanimous consent that the article by Mr. Janeway be printed in the RECORD.

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

(See exhibit 2.)

#### EXHIBIT 1

##### THE SILENT DEPRESSION\*

(By Wallace C. Peterson)

The words "recession" and "depression" have long been associated with substandard levels of output and employment. As is well known—even by the lay public—the standard definition of a recession is two quarters

marked by a decline in real GNP. By this standard, the nation has experienced nine recessions, including the current downturn, since the end of World War II.

In this paper I shall argue for a different—and I think better—measure of recession or depression. This measure is the real income of the average worker or family. Why real income? This is because real income determines material living standards, and our standard of life is the best measure of economic progress. A recession—or a depression—interrupts progress, so if real income stops growing, it is reasonable to regard the economy as being in a depressed state. Furthermore, this approach leads us directly to the productivity question. In the final analysis, productivity is the ultimate determinant of the economic well-being of individuals, families, and the nation.

Implicit in the argument offered in this paper is that employment as such no longer suffices as a basic measure of the economy's state of health. Since John Maynard Keynes's classic work, "The General Theory of Employment, Interest, and Income," appeared in 1936, the level of employment—or its counterpart, unemployment—has been standard macroeconomic benchmark for measuring prosperity or recession. There were good reasons for this, because over most of the post World War II period there was a strong correlation between jobs and the prosperity of the individual or family. This linkage no longer holds to the extent it once did.

If measures of real income for the worker and the family are accepted as the determining criteria for the economy's state of health, an important, even startling, conclusion follows. The economy has been in a depressed state since 1973—the last 17 years. Hence, the title, "The Silent Depression".

To develop and document this argument, I shall proceed as follows. First, I shall examine the key statistical evidence in support of the thesis. Second, I shall speculate about some of the major causes for this condition, especially those causes of an institutional nature. Finally, I shall ponder the question of whether remedies exist for this situation.

#### THE STATISTICAL EVIDENCE

The statistical evidence for the "Long Depression" thesis rests upon what has happened to real weekly earnings in the private nonagricultural economy since 1947; upon changes in median family income measured in constant dollars in the same period; and upon the path of productivity changes since the end of World War II. These data are shown in both tabular and graphic form in the statistical appendix attached to this paper. They point to the conclusion that 1973 was a watershed year for the American economy, a year in which there was a fundamental change in direction in the trend lines for these key variables. There is no obvious explanation for this change, but it did happen. The fact that this change occurred in the same year as the first oil crisis may be sheer coincidence. Or, perhaps, the oil crisis stemming from the Yom Kippur war was the catalyst that activated other disruptive forces that had been smoldering beneath the surface of economic events. Either view is speculative. The data, however, are not speculative. After we have examined these data, we can search out the causes.

Table 1 (and Figure 1) traces out the path of average weekly earnings in constant dollars in the private nonagricultural sector from 1947 through 1989. The years from 1947 through 1973 were boom years, a time that Sir John Hicks described as the "Age of

Keynes." Real weekly earnings grew at a substantial annual average rate of 1.84 percent, a trend that in combination with the increasing participation of women in the labor force put a middle class standard of life within the reach of growing numbers of American.<sup>1</sup> Abruptly after 1973 the rate of growth in real weekly earnings dropped. From a 1973 peak of \$327.45 in constant (1982-84) dollars, real weekly earnings slipped to \$276.95 during the 1982 recession. In the recovery and long expansion of the 1980s they climbed back to only \$270.32. Thus, 16 years after the watershed year of 1973 and in spite of the vaunted prosperity of the Reagan years, the real weekly income of a worker in 1989 was 17.4 percent below the level reached in 1973! During this 16 year period, weekly earnings grew at a negative annual average rate of 1.16 percent. For large numbers of Americans middle class dreams for home ownership, vacations, and college for their children turned sour.

Essentially the same story, though slightly less harsh, is true for median family income measured in constant (1988) dollars. Table 2 (Figure 2) contains median family income data for the years 1947 through 1988. As with real weekly earnings, median family income in constant dollars grew briskly from 1974 through 1973. The annual average rate of growth was 2.73 percent, a rate which would double family income in roughly a generation (25 to 30 years). It is this experience that is the source of the strengthened belief of the post World War II generation that children ought to do better economically than their parents. The rate of growth for family income between 1947 and 1973 was significantly higher than the rate of growth for real weekly earnings. The difference is accounted for the fact that, increasingly, wives and mothers are entering the work force to supplement the family income. In 1950, for example, families with a working wife had incomes 20 percent greater than those in which only the husband worked. By 1988, however, families in which the wife worked had incomes 57 percent greater than those in which the wife did not work.<sup>2</sup> This growing gap reflects not just the fact that more women in families are working, but also gains in the wages of women relative to those of men.

Again, and as with real weekly earnings, these gains came to an abrupt halt after 1973. Unlike real weekly earnings, however, the rate of growth for median family income did not turn negative. But it slowed to a mere trickle, the rate of increase for the 15 years from 1974 through 1988 being a minuscule 0.15 percent. The continued increase in working wives and mothers was the factor that saved real family income from an actual decline during these years. This near stagnation in family income since 1973 also explains why the generation that has come of age in the last decade doubts that their standard of living will even reach that of their parents, let alone exceed it.

Finally, let us turn to productivity, the most crucial variable of all. Productivity is the key to an improved standard of material life. If there is any one proposition upon which all economists can agree, this is probably it. The data on productivity changes are contained in Table 3 (Figure 3). From 1948 through 1973 productivity as measured by output per hour in the nonfarm business sector grew at an annual average rate of 2.51 percent, a rate that would double real output every 28 years. Then came the 1973 break in this healthy trend, with the overall growth in productivity dropping to 0.93 percent a

year. Unlike prior recoveries, the expansion after the 1981-82 recession resulted in only a weak recovery in productivity growth to an annual 1.58 percent rate. At this rate it would take 45 years for output to double. The mystery of the slowdown in the economy's rate of growth in productivity continues.

At this point the question of per capita income may come up. Hasn't per capita income in constant dollars been growing since 1974, and, if so, would not such growth invalidate the "silent depression" thesis? The answer to the first part of this question is yes, but not to the second part. Let us see why.

It is true that real per capita disposable income has continued to grow since the watershed year of 1973. However, there has been a sharp slowdown in the rate at which this measure has been growing. Between 1947 and 1973 real per capita income grew at an annual average rate of 2.94 percent, a rate that would allow disposable income per person to double in 24 years. Between 1974 and 1988 the annual rate of growth for this measure dropped to 1.61 percent, a rate of growth only about half the rate the economy experienced during the "Age of Keynes."<sup>3</sup> Further, at the slower 1974-1988 rate of growth, it would take almost 44 years for real per capita income to double. Thus, this slowdown in the growth rate for real per capita income reinforces the "silent depression" argument, even though the rate remained positive.

The more important issue is this: is growth in real per capita income a satisfactory measure of economic progress? This is the second part of the question previously asked. Even though it is often used for this purpose, it is, nonetheless, a seriously flawed measure. Since it is an arithmetic average, persons in the upper reaches of the income scale exert a disproportionate influence on the overall picture. Using the median rather than the mean gives us a better picture of what is actually taking place in the economy. Further, per capita figures don't capture the effect of recent changes in the distribution of income, an important part of the "silent depression" argument.

#### CAUSES OF THE SILENT DEPRESSION

Let us now turn to the matter of cause. Is it possible to identify the major economic factors responsible for the decay in economic well-being reflected in the decline in real earnings and family income, as well as the slowdown in productivity growth? The answer is yes, but it is a cautious yes. The reason is that the causal factors are of an institutional nature, wherein we find that cause and effect are often interlined. They are not the relatively simple macroeconomic variables of output and employment normally identified as the source of an economic downturn. The institutional character of the causal factors not only means that it is more difficult to describe them with precision, but complicates the problem of determining what corrective action ought to be taken. Let us now examine these factors, not necessarily in a definitive sense, but from the perspective that this is where economists ought to direct their research if we are to understand what is really happening to the American economy.

High on the list of causal factors is America's institutionalization of "military Keynesianism." Military Keynesianism is the phrase coined by Joan Robinson in her 1971 Ely Lecture to the AEA in which she described the degree to which military spending has come to fill the potential gap between private investment and full employment savings in the American economy.<sup>4</sup> The extent to which President Eisenhower's

warning about the dangers inherent in the military-industrial-complex has come true is reflected in the following facts. Between 1947 and 1989 military spending accounted for 76.7 percent of federal outlays for goods and services. Even with the Korean and Vietnam war years removed, this average is above 75 percent.<sup>5</sup> It is not unreasonable, therefore, to describe a society that for 43 years has devoted at least 75 percent of its output of collective goods at the national level to military purposes as one dominated by military Keynesianism.

One facet of this development which bears directly on America's productivity problem is the extent to which a significant portion of the nation's scientific and engineering talent has been involved in military-related research. Lloyd J. Dumas, Professor of Political Economy at the University of Texas at Dallas, estimates that in the 1970s and 1980s nearly 60 percent of federally-funded research and development activity was for "national defense." For the economy overall, Professor Dumas asserts that for at least three decades no less than 30 percent of the America's engineering and scientific personnel have been engaged in military-oriented research.<sup>6</sup> This development might not be so serious if, as the conventional wisdom has it, there were significant "spinoffs" from military to civilian technology. This, as Professor Dumas also shows, has not happened to any significant degree.<sup>7</sup> So America's widespread and continuing "brain drain" of scientific talent into military-related research must be counted as a major factor in the productivity crisis and our increasing inability to compete with Germany and Japan internationally.

In the long view, military Keynesianism and the domination of important sectors of the economy by the military-industrial-complex must be seen in the context of the provocative theory of "imperial overstretch" developed by Professor Paul Kennedy of Yale University.<sup>8</sup> Essentially, Professor Kennedy's argument is two-fold. First, every great power that has the will and determination to expand its domain and influence requires a solid economic base to support the military capability necessary for empire. Second, the cost of sustaining and projecting military power eventually exceeds and undermines the nation's economic base, leading therefore to imperial decline. This fate, Professor Kennedy argues, has overtaken the great empires of the past—from the Muslims to the British—and this, too, is the likely fate of the American empire.

A second causal factor involves significant changes in the output and employment structure of the American economy. From the perspective of the thesis of this paper, the most important development is a relentless decline in employment in manufacturing and goods production generally, plus a somewhat lesser fall in the share of the national output (GNP) originating in manufacturing and goods production. These changes are summarized in Table 4 in the Appendix.

The data can be quickly summarized. Between 1950 and 1989, manufacturing employment as a percent of all nonagricultural employment dropped from 33.7 to 18.1 percent. In the same period manufacturing output as a share of the GNP went from 29.1 to 19.7 percent, a smaller relative decline than for employment, but a decline nonetheless.

Does this matter? Or is it, as many economists maintain, simply a reflection of a "normal" process of growth, one in which the economy moves from agriculture, then to industry, and, ultimately, to knowledge-

based services as the dominant form of economic activity? Perhaps. But if we look more critically at what has happened as we move toward a "post-industrial" economy, we might not be quite so sanguine.

The deteriorating state of real weekly earnings documented earlier stems partly from what has happened to productivity. However, it is also linked directly to the above structural changes in both employment and output. As workers are displaced from manufacturing, where do they go? Obviously to the extent that they find jobs elsewhere, those jobs are somewhere within the broad array of activities loosely classified as services. But the shift of workers out of manufacturing into services does not necessarily mean they are moving into the knowledge-based services where high incomes are the norm. More typically, it is the other way around. For example, between 1979 and 1987 the number of jobs in the American economy expanded by nearly 15 million. But of these new jobs, 50.4 percent paid an annual wage below the poverty level (\$11,610 in 1987), 37.7 percent paid a wage classified as "middle" (\$11,611 to \$49,443), and only 11.9 percent could be called "high-wage" jobs (over \$46,444).<sup>9</sup> Representative of many of the jobs in the broadly-based service sector are wages in retail trade, which is where many workers displaced from manufacturing eventually find themselves. Wages are not only significantly lower than wages in manufacturing, but the gap between the two sectors has worsened. In 1950, for example, weekly wages in retail trade averaged 68.7 percent of weekly earnings in manufacturing. By 1989, this ratio had dropped to 44.0 percent.<sup>10</sup>

What are knowledge-based service jobs? Professor Robert B. Reich of the John F. Kennedy School of Government at Harvard University, describes jobs that fall into this category as those in which the people involved produce "symbolic-analytic services."<sup>11</sup> By this he means jobs that involve the manipulation of information through data, words, and oral and visual symbols. A broad array of professions and jobs—from professors to lawyers to manipulators of money to scientists writers and artists, to architects and engineers to actors and entertainers—fall into Professor Reich's "symbolic-analytic services" category. This is a heterogeneous group of workers, mostly white collar, college educated, highly skilled, and often possessing great mobility. Highly paid, these workers make up roughly 20 percent of the labor force. It is absurd to imagine that many displaced workers from manufacturing can find employment in these activities.

A third development that has an important bearing on the decay in real income involves the distribution of family income. Relevant data are found in Tables 5 and 6 in the paper's appendix. Table 5 shows the share in aggregate family income in quintals (fifths) for all families for selected years since 1950. What these data tell us is that there was a rough stability in income distribution from the end of World War II until the mid-1970s. After that family income became more unequal. By 1988 the share going to the lowest fifth of families had dropped from 5.4 percent in 1975 to 4.6 percent in 1988. This was a 14.8 percent relative decline. At the top of the scale, the highest fifth of families saw their percentage share rise in this same period from 41.1 to 44.0 percent, a 7 percent relative gain. For families in the top 5 percent of the income scale, their share rose from 15.5 percent in 1975 to 17.2 percent in 1988, a 10.9 percent relative gain.

The standard Lorenz curve percentage data contained in Table 5 do not capture the full

and dramatic magnitude of the changes in family income distribution that have been taking place in the American economy. For these we need to examine the data in Table 6. These data, also in constant dollars, show average family income arrayed by deciles (tenths). They were developed by the Congressional Budget Office.<sup>12</sup> Four-fifths of American families saw their average income decline over this period. Only families in the top 20 percent gained. For families at the very top, the gains were, indeed, spectacular. Those in the top 5 percent of the income scale had an average gain of \$31,473, or 23.4 percent. For the very rich—the top 1 percent of families—the gain averaged \$134,513, or 49.8 percent! As Kevin Phillips points out in his provocative book, "The Politics of Rich and Poor," there have been only two prior eras in American history that witnessed such a far-reaching change in the distribution of income and wealth toward families and persons at the top. The first was the Gilded Age of the late 1870s and 1880s, and the second was the 1920s.<sup>13</sup>

What accounts for this upheaval in the pattern of income distribution? Three factors are involved. The first has already been noted, namely the changing structure of employment in the United States. With the decline in employment in manufacturing, many workers have been thrust unwillingly into lower-paying work. Closely related to this is a second factor, the increasing internationalization of the American economy. Workers in routine production activities like manufacturing find themselves competing in global labor markets, markets in which wage levels are frequently much lower than in the United States. Because, too, many American corporations have become genuine multinational firms, they often find it easier to shift their operations to low wage areas in the Third World rather than attempt to pass high wages on to the consumer in the domestic economy. Finally, there are the recent changes in the tax laws, changes which have drastically reduced the degree of progression in the structure for all federal taxes.<sup>14</sup> Table 7 shows the changes in effective tax rates between 1977 and 1988 for all families arrayed by deciles. Families which benefitted most from tax law change in the 1980s are those in the top brackets. Some families in the income ranges below the top 20 percent actually experienced an increase in effective rates between 1977 and 1988. This was because of increases in Social Security taxes, whereas families at the very top—the upper 5 and 1 percent—received the most benefit from changes in the personal income taxes.

Aside from the fact that these well-documented shifts in the distribution of family income have played an important role in the deteriorating income situation for large segments of the population, they reflect another and much more ominous development. David Halberstam expressed fears about this in his recent book, "The Next Century."<sup>15</sup> Reporting on a conversation that he had with Lester Thurow, Professor of Economics and Dean of the Sloan School of Management at MIT, Halberstam said that Professor Thurow raised the disturbing question of whether America has an "establishment" or an "oligarchy." An establishment, Thurow went on to explain, consists of people at the very top—obviously wealthy—who realize that they cannot continue to succeed unless the larger society succeeds. An oligarchy, on the other hand, also involves the very wealthy at the top, but the wealthy in an oligarchy are indifferent to the fate of the rest of the society. In Thurow's view, modern-day Japan is

run by an establishment, but many Latin American countries are run by an oligarchy.<sup>16</sup> America, both Halberstam and Thurow fear, is moving toward an oligarchy. This, too, is another consequence of the institutionalization of military Keynesianism.

ARE THERE REMEDIES?

I will conclude with a few brief remarks directed toward what is, perhaps, the toughest question of all. Are there remedies for the economy's silent depression? In principle, the answer is an easy yes. It is surely not beyond the wit of economists not trapped in the mainstream to devise a policy agenda to cope with the decline in our individual strength and international competitiveness; to restore progression in our federal tax system, thus helping reverse the drift toward a bipolar society of rich and poor astride a shrinking middle; and to direct our scarce scientific and engineering talent to those areas dedicated to the enhancement, not the destruction of human life. This is not a task for mainstream economists, who, on the whole, are content with the status quo. Like modern-day Candides they see our contemporary market-based capitalistic structure as the best of all possible economic worlds. If the task is to be done at all, it will be done by those outside the mainstream.

The more question is: will it be done? A realistic answer is probably not—at least not in the foreseeable future. There are several reasons for pessimism. A year ago with the collapse of the Soviet empire in Eastern Europe there was hope that America, too, might pull back from political and military commitments that are outrunning their economic base (imperial overstretch). No longer. Irrespective of the rightness or wrongness of the Gulf war, its legacy will be a greater—not a lesser—commitment to support client states around the globe.

Second, the federal government has neither the energy, the ideas, nor the leadership to turn the nation away from the illusions of empire, and, instead, seek to build a harmonious and just society here at home. Ever since Viet Nam shattered Lyndon Johnson's dream of a "Great Society" our two-party system of national government has been in a state of near paralysis, unable to bring its power and imagination to bear on national problems that cry out for national answers—the pathology of a growing "underclass," the decay within our great cities, the crumbling infrastructure, the crisis in public education, growing chaos in our "system" of medical care, to name only the most pressing.

And finally, I would ask, where are the economists? In the January 14, 1991 issue of Business Week, the headline over the magazine's story about the ASSA convention in Washington, D.C. between Christmas and New Year's read, "7,000 Economists—And No Answers." This is a sad commentary on the state of the profession. Economists outside the neoclassical mainstream have a long and successful history—from the American institutionalists to John Maynard Keynes—of creating the intellectual capital that nourished liberal western governments seeking to tame the worst excesses of market capitalism. It is time to get out of the ivory tower and get on with the business of rebuilding this stock.

FOOTNOTES

\*Paper presented at the Missouri Valley Economics Association meeting, Kansas City, MO, February 28—March 2, 1991.

<sup>1</sup>In 1948 only one-third (32.7 percent) of women, married and unmarried, participated in the labor force. By 1973 the labor force participation rate for women had climbed to 44.7 percent. It has continued

to rise, reaching 57.4 percent in 1989. See *Economic Report of the President 1990*, p. 335.

<sup>2</sup>U.S. Department of Commerce, Current Population Reports, Series P-60, No. 167, *Trends in Income by Selected Characteristics: 1947 to 1988*, 1990, p. 19.

<sup>3</sup>*Economic Report of the President*, 1990, p. 325.

<sup>4</sup>Joan Robinson, "The Second Crisis on Economic Theory," *The American Economic Review*, May, 1972.

<sup>5</sup>*Economic Report of the President*, 1990, p. 295.

<sup>6</sup>Lloyd Jeffy Dumas, *The Overburdened Economy* (Berkeley, University of California Press, 1986), pp. 208 ff.

<sup>7</sup>*Ibid.*

<sup>8</sup>Paul Kennedy, *The Rise and Fall of the Great Powers* (New York, Random House, 1987).

<sup>9</sup>United States Senate, Committee on the Budget, *Wages of American Workers in the 1980's* (Washington, D.C., U.S. Government Printing Office, 1988), p. x.

<sup>10</sup>*Economic Report of the President*, 1990, p. 344.

<sup>11</sup>Robert B. Reich, "As the World Turns," *The New Republic*, May 1, 1988.

<sup>12</sup>Congress of the United States, Congressional Budget Office, *The Changing Distribution of Federal Taxes: 1975-1990*, October, 1987.

<sup>13</sup>Kevin Phillips, *The Politics of Rich and Poor: Wealth and the American Electorate in the Reagan Aftermath* (New York, Random House, 1990).

<sup>14</sup>The Suits Index measures the degree of progression in the tax system. It is similar to the Gini coefficient which measures the degree of inequality in the distribution of income. For the Suits Index, an increase in its value means the tax system has become more progressive; a decline, the opposite. According to the Congressional Budget Office, the Suits Index dropped from .1025 in 1977 to .0696 in 1988, a major decline (32.1 percent) in the degree of progression in federal taxes. Congressional Budget Office, op. cit., p. 77.

<sup>15</sup>David Halberstam, *The Next Century* (New York, William Morrow and Company, Inc., 1991).

<sup>16</sup>*Ibid.*, p. 124.

TABLE 1.—Earnings in constant dollars:<sup>1</sup> 1947-89

Year:	Earnings
1947	204.37
1948	203.31
1949	211.09
1950	216.31
1951	227.53
1952	228.87
1953	238.80
1954	238.84
1955	252.68
1956	260.07
1957	260.96
1958	259.79
1959	270.72
1960	272.53
1961	279.05
1962	284.47
1963	289.08
1964	294.46
1965	304.02
1966	305.00
1967	304.91
1968	309.56
1969	312.29
1970	308.84
1971	314.35
1972	327.51
1973	327.45
1974	319.43
1975	303.96
1976	308.35
1977	311.88
1978	312.42
1979	302.90
1980	285.32
1981	280.75
1982	276.95
1983	281.83
1984	281.67
1985	277.96
1986	278.14
1987	275.09
1988	272.49
1989	270.32

<sup>1</sup>Current dollars deflated by CPI (1982-84 = 100).

Source: "Economic Report of the President," 1990, pp 344, 359.

TABLE 2.—Median family income in constant dollars:<sup>1</sup> 1947–88

Year:	Income
1947	16,079
1948	15,644
1949	15,444
1950	16,292
1951	16,876
1952	17,366
1953	18,795
1954	18,326
1955	19,502
1956	20,789
1957	20,907
1958	20,823
1959	27,022
1960	22,461
1961	22,691
1962	23,331
1963	24,159
1964	25,068
1965	26,127
1966	27,501
1967	28,098
1968	29,344
1969	30,407
1970	30,084
1971	30,042
1972	31,460
1973	32,109
1974	30,960
1975	30,167
1976	31,099
1977	31,252
1978	32,006
1979	31,917
1980	30,182
1981	29,136
1982	30,161
1983	30,688
1984	31,523
1985	32,051
1986	31,796
1987	32,251
1988	33,191
1989	

<sup>1</sup>In 1988 dollars.

Source: Bureau of the Census, Current Population Reports, P-60, No. 167, "Trends in Income by Selected Characteristics: 1947 to 1988," p. 17. (By Mary F. Henson).

TABLE 3.—Annual average rate of change in productivity:<sup>1</sup> 1948–89

Year:	Rate of change
1948	3.8
1949	1.6
1950	6.5
1951	3.1
1952	2.2
1953	2.2
1954	1.4
1955	3.0
1956	.6
1957	1.9
1958	2.3
1959	3.2
1960	1.1
1961	3.1
1962	3.3
1963	3.6
1964	3.9
1965	2.6
1966	2.2
1967	2.6
1968	2.9
1969	-.3
1970	.5
1971	2.9
1972	3.0
1973	2.1
1974	-1.9
1975	1.9
1976	2.8

1977	1.7
1978	.9
1979	-1.5
1980	-.3
1981	1.1
1982	-.9
1983	2.9
1984	2.1
1985	1.3
1986	2.0
1987	1.0
1988	2.5
1989	-.7

<sup>1</sup>Output per hour per person in nonfarm business sector.

Source: "Economic Report of the President," 1990, p. 347.

TABLE 4.—OUTPUT AND EMPLOYMENT IN GOODS<sup>1</sup> PRODUCTION AND MANUFACTURING FOR SELECTED YEARS: 1950–89

Year	[In percent]			
	Output <sup>2</sup>		Employment <sup>3</sup>	
	Goods	Manufacturing	Goods	Manufacturing
1950	41.5	29.1	40.9	33.7
1955	37.7	29.9	40.5	33.3
1960	35.2	28.0	37.7	31.0
1965	35.0	28.1	36.0	29.7
1970	31.7	24.8	33.3	27.3
1975	29.7	22.4	29.4	23.8
1980	30.2	21.3	28.4	22.4
1985	27.2	19.7	22.9	19.8
1989				18.0

<sup>1</sup>Mining, Construction, and Manufacturing.  
<sup>2</sup>As a Percent of the GNP.  
<sup>3</sup>As a Percent of Nonagricultural Employment.  
 Source: "Economics Report of the President," 1990, pp. 306, 342.

TABLE 5.—DISTRIBUTION OF FAMILY INCOME BY QUINTALS FOR SELECTED YEARS: 1950–88

Year	[In percent]					
	Lowest fifth	Second fifth	Third fifth	Fourth fifth	Highest fifth	Top 5 percent
1950	4.5	12.0	17.4	23.4	42.7	17.3
1955	4.8	12.3	17.8	23.7	41.3	16.4
1960	4.8	12.2	17.8	24.0	41.3	15.9
1965	5.2	12.2	17.8	23.9	40.9	15.5
1970	5.4	12.2	17.6	23.8	40.9	15.6
1975	5.4	11.8	17.5	24.1	41.1	15.5
1980	5.1	11.6	17.5	24.3	41.6	15.3
1985	4.6	10.9	16.9	24.2	43.5	16.7
1988	4.6	10.7	16.7	24.0	44.0	17.2

Source: Bureau of the Census, Current Population Reports P-60, No. 167, "Trends in Income by Selected Characteristics," 1947–1988, p. 16 (by Mary F. Henson).

TABLE 6.—AVERAGE FAMILY INCOME IN CONSTANT DOLLARS<sup>1</sup> BY DECILES: 1977 AND 1988

Decile	1977	1988	Change	
			In dollars	In percent
1st	4,113	3,504	-609	-14.8
2d	8,334	7,669	-665	-8.0
3d	13,104	12,327	-777	-5.9
4th	18,436	17,220	-1,216	-6.6
5th	23,896	22,389	-1,057	-4.4
6th	29,824	28,205	-1,619	-5.4
7th	36,405	34,828	-1,577	-4.3
8th	44,305	43,507	-798	-1.8
9th	55,487	56,064	577	1.0
10th	102,722	119,635	16,913	16.5
Top 5 percent	134,543	166,016	32,473	23.4
Top 1 percent	270,053	404,566	134,513	49.8

Source: Congress of the United States, Congressional Budget Office, "The Changing Distribution of Federal Taxes: 1975–1990," p. 39.

TABLE 7.—EFFECTIVE FEDERAL TAX RATE FOR ALL FEDERAL TAXES<sup>1</sup> BY DECILES: 1977 AND 1988

Decile	[In percent]		
	1977	1988	Percentage change
1st	8.0	9.6	20.0
2d	8.7	8.3	-4.6
3d	12.0	13.3	10.8
4th	16.2	16.8	3.7
5th	19.1	19.2	.5

TABLE 7.—EFFECTIVE FEDERAL TAX RATE FOR ALL FEDERAL TAXES<sup>1</sup> BY DECILES: 1977 AND 1988—Continued

Decile	[In percent]		
	1977	1988	Percentage change
6th	21.0	20.9	-.5
7th	23.0	22.3	-3.0
8th	23.6	23.6	.....
9th	24.5	24.7	.8
10th	26.7	25.0	-6.4
Top 5 percent	27.5	24.9	-9.5
Top 1 percent	30.9	24.9	-19.4
All deciles	22.8	22.7	-.4

<sup>1</sup>Federal Individual Income, Corporate Income, Social Security, and Excise Taxes.

Source: Congress of the United States, Congressional Budget Office, "The Changing Distribution of Federal Taxes," 1975–90, p. 48.

EXHIBIT 2

[From the Atlanta Journal and Constitution, Nov. 18, 1990]

HELP FOR UNITED STATES LIES IN SOVIET OILFIELDS  
 (By Eliot Janeway)

After America rushed to the Soviet Union's defense in World War II, Soviet mechanics developed an impressive knack for repairing rudimentary U.S. aircraft. Teamwork between Soviet mechanics and American pilots relieved the United States of the need to move its own mechanics to the Soviet Union.

The threat of a Middle Eastern oil war should serve as an invitation for the superpowers to repeat that memorable chapter of aeronautical history in an underground setting: Working together, the two countries can reactivate the Soviet Union's huge oil fields.

For lack of U.S. equipment, the Soviet Union has been cutting back oil production when it could profit from an expansion. America, for its part, has missed a rare double opportunity to strengthen its security and its exports. Opportunities for the United States to combine good business with prudent foreign policy are all too rare, and the country's problems are too severe for it to dare ignore such a chance.

Right now the oil world is as inflammable as oil itself. As fast as oil surpluses push oil prices down, war scares reflate them. The list of "supposes" is at least as lively a source of speculation in the oil market as any hard performance count. It includes sober talk about the possible destruction of part or even all the oil reserves in Saudi Arabia. An order by Saddam Hussein would eliminate all of Kuwait's reserves in a matter of minutes.

Admittedly, loading all the Soviet Union's present oil wells with American oil equipment would not provide instant insurance against the shock of such a disaster. In fact, no one can begin to calculate how much insurance it would provide until lost time is made up in getting American oil equipment into the neglected Soviet oil fields and updating estimates of Soviet reserves.

So far neither superpower has acted to free the price of oil from the manipulation to which the Persian Gulf powers habitually subject it. The United States in particular has always invited the oil world to treat it as weak and gullible. But the simple and profitable ploy of financing and equipping the Soviet Union will quickly repair that long-standing strategic error.

The Arab world would read such joint Soviet-American action as formalizing the two superpowers' recognition of their common interest on the oil front. A long overdue decision by Moscow to stop the small oil allot-

ment it gives to Cuba for re-export would remove any doubt that the Soviet Union means to get serious about using oil to help America balance its oil economy, collecting a price paid in oil equipment.

Habitual mismanagement of resources has transformed the national strength of each superpower into a market weakness. The Soviet Union is the world's largest oil producer; its output has continued to top Saudi Arabia's, despite the recent expansion undertaken by the Saudis. But the obsolescence of the fields the Soviet Union is tapping, and the richness of the fields it is ignoring, defy description. Meanwhile, America remains unchallenged as the world's leading manufacturer of oil-producing equipment—but it is the most conspicuous absentee from the world's export boom.

In fact, the lag in U.S. oil equipment sales to the Soviets goes far to explain the lead that our industrial competitors enjoy in other markets. U.S. manufacturers wait for sales to come to them with hard cash on the table, with no recognition of the key role that government-financed export credits play in securing export sales. When the Soviet Union launched its latest program to expand oil production, Soviet authorities failed to place orders for American equipment, and the United States in turn failed to remind them.

So the Soviet Union has wound up with lots of shut oil wells, while the United States has wound up short of cash and oil but volunteering to protect creditors who are both cash- and oil-rich.

Instead, the United States could anticipate freeing its troops from the hazards of desert life and desert war by the simple and profitable expedient of equipping the Soviet Union with the products that we make best.

Secretary of Commerce Robert A. Mosbacher Sr., like President Bush an alumnus of the American oil industry, has taken steps toward this productive collaboration. He has taken a team from the U.S. oil equipment industry to the Soviet oil fields to identify their needs, as well as the opportunity for America.

The hang-up remains the need of U.S. manufacturers to get paid in dollars. The Soviet oil industry, potentially a huge dollar-earner, is choking because it is out of them. Moreover, thanks to the failure of the take-off projected for gold prices, the Russian central bank is shorter than ever of dollars.

The Commerce Department could end this frustration without any administrative pioneering. All it need do is invite the oil companies and oil equipment producers to form industry committees, as was done in time of war. If ideological objections from free marketeers on the right and trust-busters on the left are not allowed to hog-tie them in this emergency, these industry committees could be authorized to buy oil for future delivery from the Soviet Union as fast as the equipment producers supplied and installed equipment there.

As a practical matter, the dollars advanced or guaranteed by the U.S. government would never leave the United States. They would go directly to the U.S. equipment producers, and the Soviets would wind up with the equipment and the sales needed to pay for it.

The United States is overdue the satisfaction of solving one of its foreign money problems to its advantage. Substantial political and strategic benefits would follow. When they do, perhaps Washington will be emboldened to offer its perennial food surplus in further payment for cheap, good-quality Soviet oil.

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

The PRESIDING OFFICER. The Senator from Nebraska has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. KASSEBAUM. 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.

#### EXTENSION OF MORNING BUSINESS

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the period for morning business be extended for an indefinite period of time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair is pleased to recognize the Senator from Kansas for a period of time as outlined in the previous morning business order.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of Senate Joint Resolution 92 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### HUGH MORTON: A UNIQUE GUY WHO "GETS INTO EVERYTHING"

Mr. HELMS. Mr. President, well within the parameters of the familiar declaration—"braggin' ain't braggin' if you can prove it"—I intend to brag a little bit today about a fellow named Hugh Morton. Then I shall read into the RECORD some remarks by Hugh Morton, delivered February 24 on the occasion of the 215th anniversary of what is known in North Carolina as the Battle of Moore's Creek.

But first, a few inadequate words about Hugh Morton. I acknowledge up front that Hugh is a longtime friend. He is an extraordinary citizen of my State. Someone inquired of Hugh sometime back about his "line of work." Hugh replied that he is "just a photographer."

Well, Mr. President, Hugh Morton is a photographer—and, like Howard Baker, he is one of the finest in the country. But that's merely one of Hugh's constructive and appealing hobbies. He is a remarkably successful businessman. For example, he owns the beautiful Grandfather's Mountain at Linville, NC, which countless hundreds of thousands of tourists and North Carolinians have enjoyed. But, as Sam Ervin once remarked, "Hugh's into everything that's good for North Carolina."

Senator Ervin had it right: Throughout his life, Hugh Morton has indeed been "into everything"—more often

than not the result of creative ideas that occurred to him. The guy loves North Carolina passionately; he loves America fervently—as will be obvious to anyone who reads the text of his remarks back in February to which I alluded at the outset.

Few would have dreamed, back when Hugh was working to get the old U.S.S. *North Carolina* moored permanently at Wilmington, NC, that this battleship would be a top-flight tourist attraction on North Carolina's coast. Today, some of the youngsters who first examined that old battlewagon when it was opened to the public decades ago are now escorting their own grandchildren around the ship.

Hugh Morton is a well-informed, dedicated, and hard-working environmentalist. He is never a pain in the neck about it, but he has worked arduously to persuade officials of State and Federal governments to take a look at the ravages of acid rain and other destructive environmental hazards.

When the historical lighthouse at Cape Hatteras was about to fall into the waters of the Atlantic, there was Hugh Morton, just like Sam Ervin said, "getting into it." He formed a committee consisting of the leaders of North Carolina—and headed by two somewhat adversarial political figures. Hugh figured that every effort should be made to save the lighthouse. Today it still stands, and the efforts to make it permanently secure are still going on.

A few years ago, Hugh Morton teamed up with Ed Rankin to produce an enormous and handsome book containing personality sketches and splendid photographs of dozens of unique North Carolinians. The book is on display today in thousands of homes.

Parentetically, Mr. President, please allow me a few words about Ed Rankin. His full name is Edward L. Rankin, Jr., and he says he is retired—but like Hugh Morton he is "into everything" also. Ed made several forays into public life because of his many talents. He was a top assistant to U.S. Senator William B. Umstead, he was private secretary of North Carolina's Gov. Luther Hodges, he was director of administration for the State of North Carolina when Gov. Dan K. Moore was chief executive of our State. Each time, it was a case of the job seeking the man—and Ed Rankin was the man. He and Hugh Morton make a good team.

Mr. President, in conclusion let me comment on Hugh Morton's brief address on February 24 on the 215th anniversary of the Battle of Moore's Creek. Bear in mind that February 24 was the first day of the ground war in the Persian Gulf. The White House heard about Hugh's remarks and requested a copy.

Hugh sent the text of his speech, as requested. He also sent a picture he took when he went to the White House

to accept the Theodore Roosevelt Conservation Award. During the ceremony Hugh snapped a picture of President Bush at the podium. In a letter to the President, Hugh said he hoped the President would like what he said in his speech.

I can testify that George Bush did indeed like it. He liked the picture, too.

Mr. President, I think you understand why I admire and respect my friend Hugh Morton, and I ask unanimous consent that the text of his February 24 address be printed in the RECORD at the conclusion of my remarks.

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

REMARKS BY HUGH M. MORTON AT MOORE'S CREEK BATTLEGROUND ANNIVERSARY, FEBRUARY 24, 1991

I am not nearly the historian that many of you are, yet I have taken some pride in being reasonably familiar with the accomplishments of our leaders who have served as President of the United States during the 70 years of my lifetime. I have to admit, however, that I haven't really worked at knowing what President Calvin Coolidge accomplished. If I had not done a little homework to prepare for this occasion, I probably could not have named a thing.

Some of you will remember what may be President Coolidge's most memorable statement: "If you don't say something, you won't be called on to repeat it". Those choice words seem to sum up Calvin Coolidge, and the fact that my hero, Will Rogers, used Silent Cal as the butt of many of his jokes probably reinforced my impression of our most colorless President. Today I know that President Coolidge did accomplish something. He was the President who signed the bill to establish Moore's Creek National Military Park on June 2, 1926, and as long as I live I will think of him fondly for it.

You folks who are my hosts here have given me a great honor. You have invited me to be your speaker at the commemoration of a Revolutionary War conflict that was possibly the most efficiently and brilliantly conducted battle in the history of our great country. Furthermore, your invitation has come in the year when the program is dedicated to the patriotic Americans who are serving in the Persian Gulf in the most efficiently run war in which our nation has ever been a participant. I am extremely proud of the past event, and of the present, and I thank you for this opportunity to say so.

In the battle at Widow Moore's Creek, we know there were good people on both sides, because at least some soldiers on both sides were Scots. You expect a Scot to make a biased statement like that, so I have said it. But cases of some on both sides being Scot did not make them equal in their determination to fight. The Patriot Scots seemed to understand what they were fighting for better than did the Loyalist Scots who had been bribed with land and other benefits to fight in the service of the King. The Patriots were fighting for freedom.

Even taking into account the skillful planning by Patriot Colonels Alexander Lillington, Richard Caswell, and James Moore, the outcome of the battle of Moore's Creek is simply amazing. The Loyalists lost 30 killed and 40 wounded. The Patriots lost one—John Grady of Duplin County, the first North Carolinian to die in the American

Revolution. The number of casualties was small, but the casualty percentage between Loyalists and Patriots was overwhelming, and it was a true turning point in America's battle for independence.

If the measure of successful conduct of war is achieving victory while suffering a minimum number of casualties, certainly Moore's Creek stands the test of time as being one of our greatest, both in minimum casualties, and what it accomplished. One Patriot killed, 70 Loyalist casualties, that is still hard to believe. For several days after the conflict the roundup of Loyalists continued until nearly 900 had been captured, including 30 officers. This remarkable battle ended British hope of organizing meaningful Loyalist resistance in North Carolina, even though many Loyalists resided in our state.

While our spotlight today is on Moore's Creek, and on the Persian Gulf, let's go downstream from here a few miles to the U.S.S. North Carolina Battleship Memorial which is a memorial to the 10,000 North Carolinians in all of the United States military services who died in World War II. Think about that 10,000 men and women from this one state killed, not just wounded, in that one terrible war. Does it not give us something to appreciate when we realize that prior to the ground war America has suffered only about 25 dead in the Persian Gulf? We do not know how it will end, but up to now our people in the Persian Gulf have done a masterful job. Each day that passes brings new hope that we may be on the verge of victory, and to have achieved this with only 25 American dead leading into the ground war is absolutely remarkable.

I would not want to start an argument with anyone on what are the most important subjects for students to learn in school. Everyone can benefit from a well rounded education covering many things, and the basic reading, writing, and arithmetic are of course essential. I would like to add history to that essential list, because a knowledge of history allows us to benefit from the mistakes and the successes of those who have gone before us. In the case of the War in the Persian Gulf, I am convinced we have made the right decisions and the right moves up to now, and that our ability to select the right course is strongly influenced by history.

All of us know that a nobody named Adolf Hitler was able to worm his way into power in Germany, and because the world was not willing to stand up to him immediately, he was able to overrun many of his small neighbors before this country and several others recognized it for its seriousness. This experience with having to fight a tremendous war that killed 10,000 service people from North Carolina taught us a lesson. Thankfully the majority of our leaders today have wanted no part of the appeasement that leads to a big war instead of a little one. We are nipping Saddam in the bud, rather than let him gain the strength of Hitler.

Whether we will come out of the Persian Gulf without an extended and expensive ground war remains to be seen. History tells us we want to handle it right the first time, however, because we do not, in a few years, want to fight this one again. There is a further reason for not grabbing the first inadequate peace feelers. The upstart two-bit dictators of the world need to not be tempted. They need to know that they should not pull Saddam-like stunts and expect to get away with it. President George Bush has made all of the right moves up to this point, and I thank him for it.

But the Persian Gulf War is not being run only by President Bush, Secretary Cheney,

General Powell, General Schwarzkopf, and General Horner. We have over 500,000 of our people over there, and every one of them is a volunteer. There may be a few who do not understand why they are there, and of course all of them want to be home. The bulk of them know that they are fighting for the freedom of this nation and the world. Most of them are there at extreme personal and family inconvenience and sacrifice. We owe them a lot, all 500,000 of them, and none of us should ever forget it.

So today at Moore's Creek National Military Park we express our thanks to brave men for two events in our nation's history 215 years apart. Both events appear to be among the most efficiently conducted military operations our country has ever seen. Both events called upon our people to make agonizing decisions, and in both instances skillful planning and correct priorities led to the right conclusions. The Patriots in February 1776 knew they were fighting for freedom, and the Patriot missile crews and our other 500,000 patriots in February 1991 are protecting our freedom, too. Let's all of us use every opportunity to say thanks that 215 years apart, level heads have prevailed.

Thank you again for inviting me to speak at this program.

#### THE FEDERAL TRIANGLE BUILDING

Mr. MOYNIHAN. Mr. President, I would like to call the Senators' attention to an article that appeared in the Washington Post on Saturday, March 9. The article is a review by that most able reporter, Benjamin Forgey, of the new Federal Triangle project design by James Freed of the renowned architecture firm of Pei Cobb Freed & Partners.

As you know, Mr. President, we are dealing with some unfinished business here. With the authority granted by Congress in the Public Buildings Act of 1926, Mr. Andrew Mellon, then-Secretary of the Treasury, commenced a great project of Federal buildings called the Federal Triangle. Some grand buildings resulted from this effort, but with the onset of the Depression, the project just plain stopped. We were left with a parking lot of unsurpassed ugliness. And that parking lot has remained with us for over 60 years.

On August 21, 1987, President Reagan signed the Federal Triangle bill into law. We authorized a grand building nearly two-thirds the space of the Pentagon. But this is not simply a large office building. It assumes a prominent place on Pennsylvania Avenue—America's Main Street.

Too often we have permitted our public buildings to fall far short of excellence. Yet architecture is the one inescapable public art. Our public buildings speak volumes about us, about who we are, and about the dignity or disdain with which we go about this governmental enterprise of ours.

I am pleased that when the construction is done, as Mr. Forgey explains, we will be proud of what this new Federal Triangle Building will say about us. Mr. President, I ask that a copy of the

Washington Post article be reprinted in the RECORD.

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

[From the Washington Post, Mar. 9, 1991]

THE SHAPE OF THE TRIANGLE'S FUTURE

(By Benjamin Forgey)

The Federal Triangle has shamefacedly remained incomplete for more than half a century, its last piece a surface parking lot—undignified, unsightly and unpleasant. A bold plan to complete the great compound has been stalled for a couple of years in controversy about its cost, its efficacy, its ethics and even its design, by the renowned architecture firm of Pei Cobb Freed & Partners.

Questions persist about some issues, but worries about the architecture worries can cease. Though not without fault, the International Cultural and Trade Center, as the behemoth building is to be called, promises enormous visual enrichment, spatial excitement and design finesse. An immensely complicated enterprise, it'll be a building unlike any other in the Federal Triangle, but it will contribute greatly to the complex and, strangely enough, it will fit in.

In terms of sheer size and number of uses, not to mention the price tag of more than \$650 million, the ICTC project is an amazement. More than half a Pentagon big, it encompasses 3.1 million gross square feet, including four levels of underground parking for 2,500 cars. Its facilities include sizable conference rooms, exhibition halls, training centers, information exchanges, a large-screen theater and three small cinemas, a large auditorium for 800 (reduced from 1,500 for cost reasons), a small one for 300, a multimedia "World Globe," a "World Link Atrium," a presidential memorial as part of the Woodrow Wilson Center, stores, bars, restaurants, cafes and a whopping amount of federal office space.

One of the major questions concerning the design after it was first unveiled by the Pennsylvania Avenue Development Corp. as the victor in a developer-architect competition two years ago was, indeed, its compatibility with the classic revival architecture of the buildings that surround the huge, irregular site. (It's bounded by Pennsylvania Avenue NW to the north, the District Building and 14th Street to the west, and elaborate federal buildings to the south and east.)

Such concern was understandable—the Pei firm has never been identified with soft architectural insertions in the cityscape. To the contrary, its stamp ever since its founding by I.M. Pei three decades ago has been strong contrasts, succinct geometries, superb technologies and extraordinary finishes. Witness, for one good instance, Pei's own East Building of the National Gallery of Art.

From the beginning the firm's conception of the ICTC possessed powerful, daring qualities. It proposed a dramatic new public park opening off Pennsylvania Avenue and a stupendous new interior court. But its "dressing"—the elevations presented for the competition—had a parched, abstemious look. Although the competition rules established certain fundamentals of the context—heights, roof and facade materials, percentages of window openings—one could not handily imagine the new facades cozying up to the neoclassical ambience established by the Beaux-Arts architects of the original buildings.

James Freed, the partner in charge of this design, admitted as much in an interview

last winter. "It's hard for me to believe the old rules still apply," he said. "The dilemma is to maintain the dignity of the government and to celebrate the liveliness of the ICTC. One cannot just stand on dignity alone. But to design decorative moldings is something I never thought I would do."

So spoke the lifelong modernist. It's something no observer of the Pei firm ever thought it would do or could do, either. But Freed and company have perhaps surprised even themselves with the work they've done in the ensuing year. The new elevations are thoroughly satisfactory. With rusticated bases, pilastered midsections, a variety of emphatically formed pavilions and entrances, deeply framed windows and forcefully corniced tops, they demonstrate a sound understanding of the neoclassical *modus operandi*. As intended, they'll stand in contrast to but correspond kindly with their Federal Triangle companions.

To architects more comfortable with revivalist styles—to Washington's Hartman-Cox, for example—this issue of the proper dressing for the new building would not have caused great stress. But to architects such as Freed, insistent upon making "something we can relate to as a part of modern life" even in this unusually circumspect environment, it was a struggle.

Hesitant to take the Federal Triangle itself as a precedent, Freed and his colleagues (there were five younger architects on the original design team) fastened on the nearby northern elevation of Robert Mills's 19th-century Treasury Building, taking lessons from its sober rhythms. From this, they developed an archetypal elevation they called their "Rosetta stone." There's none of Mills's ornamentation (in itself quite minimal) in their facades—Freed didn't actually design any decorative moldings—but there's more variety of form, more depth and more glass.

"This is not a clone," Freed said recently, and it isn't. It is a sophisticated, highly abstracted late-20th-century version of neoclassical architecture. As appropriate for so large and prominent a structure, this one is "designed out" on all sides. Indeed, one of the delights of these facades is their variety within the overriding uniformity of stylistic vocabulary.

On 14th Street there is a graceful, subtly curved facade with end pavilions and a recessed entryway. Pennsylvania Avenue is marked by a tremendous ceremonial cylinder with raised paired columns. Even the less visible elevations (facing the District Building, for instance) are treated with systematic respect. And the eastern facade is a supple piece of work. Designed to frame the new public space, it's a contrapuntal combination of angles and curves, positive and negative spaces, and emphatic, discrete forms. It is with these calculated asymmetries that Freed best attains his risky aim of honoring the classical tradition while defying it, politely but decisively. One can rest assured that the building will respond wonderfully to Washington light.

The long arm of this facade, extending southwest at a 90-degree angle to the diagonal of Pennsylvania Avenue where it meets 13th Street, was one of Freed's bold moves at the very beginning of the design process. Alone among the competitors did he decide to complete the courtyard, framed by the existing federal hemicyle, in a truly celebratory fashion. (Intended as a noble armature for a major public park, the Grand Plaza, the hemicyle became just a forgotten Plaza for the parking lot.)

This was, in a way, an in-your-face gesture—the conventional approach would have been to shape the space with a mirror-image half-circle—but it is exceedingly promising. Freed's theory clearly was that taut opposites attract—in this case the long, straight diagonal vs. the semicircle. His belief is that the dramatic diagonal will lure people toward the space. His aim is to make this vast open space a densely populated, active zone in the heart of the Federal Triangle.

Whether this dream comes true remains a question, and not strictly an architectural one. But definitely it is possible—this is a place with amazing aesthetic and entrepreneurial potential. A lot depends on the success of this institution itself, and so far the specific components of the International Cultural and Trade Center have remained somewhat pie-in-the-sky. But the density is there—close to 10,000 federal workers in the building itself, and untold numbers of tourists and more purposeful visitors. And the infrastructure: The building will connect directly to the Federal Triangle Metro station. The ICTC could become the long-desired break in the "China Wall" of the Federal Triangle, pulling visitors toward downtown from the Mall.

A lot depends as well on continuing refinements to the architecture, particularly to the sketchy furnishings of the plaza. (Like many a modernist diagram, this one does not welcome works of art as integral to the design.) But there is no mistaking that Freed and his talented colleagues have established the groundwork with that great eastern wall. Likewise, landscape architect Peter Walker has done good homework—his plan to a bifurcated space, half paved, half green, complements Freed's concept extremely well.

Another major strength of this design, as of so many products of the Pei firm, is its command of pedestrian circulation, its artfulness and sophistication at getting people to move from here to there. In this respect, of course, the ICTC building is as complex as they come, and the architectural work in both plan and three dimensions is nothing short of dazzling. Access to the principal public areas is clear, and frequently dramatic; corridors are properly placed for maximum efficiency and best views; links between the underground, ground level and mezzanine concourses are many and delightful. And so on. Visiting this building will be a many-faceted treat.

In a way I've saved the best for last, for as good as the exterior architecture is, the principal interior public spaces promise to be even better. Or, one should say, they're of a different kind, and they're superb. "One of the big problems with a building as big as this," Freed has said, "is to know where you are. And you can only do that with architecture. You can't do it with signs and such."

Three cheers for Freed and friends. They've gone the extra mile to shape great spaces inside. The two auditoriums, for instance, stand very nearly free in the Pennsylvania Avenue lobby—they're beautifully designed events in themselves. The World Globe, described as a "scaffold for technologies that haven't been invented yet," will be in its naked state a looming spherical structure of metal trusses—quite a sight.

The World Link Atrium tops them all. Enclosed by a conical, steel-frame glass roof, screened in part by a delicate suspended scrim, supported by an independent system of steel columns, it looks in model to be breathtaking and, even, spellbindingly beautiful. It could become one of the great interior attractions in the world.

### TRIBUTE TO LOUIS GREENE

Mr. SHELBY. Mr. President, I rise today to pay homage to a dear friend and influential leader in the State of Alabama. Louis Greene will retire April after 20 years of faithful service as director of the Alabama Legislative Reference Service.

Lou was appointed director of the LRS in 1970. He has also served as secretary to the Legislative Council. As director, he has direct control over a staff of 24, with explicit responsibility for all agency duties and functions. Lou, and the Alabama Legislative Reference Service, have been widely commended during his tenure. As a State senator and chairman of the Legislative Council in the 1970's, I had the privilege of working directly with Lou and watching first hand as he established a legacy of accomplishments that will be a challenge to sustain.

Lou's work at the LRS was the culmination of a long and successful professional career. A native of Birmingham and a Montgomery resident since 1950, Lou is one of Alabama's finest citizens. He is a veteran of World War II where he served in the U.S. Army Air Corps, including combat duty in the Pacific theater. He is a graduate of the University of Alabama and received his law degree in 1950. Lou was engaged in a successful law practice in Montgomery until his appointment to the LRS' top post in 1970.

Lou has been affiliated with many professional, social, and religious organizations including the Trinity Presbyterian Church, the Montgomery Lions Club, the Montgomery Toastmaster's Club, Phi Alpha Delta Law Fraternity, the Montgomery County, AL, and American Bar Associations, and the Jackson Hospital Foundation Board of Directors.

Lou's retirement is well deserved. Now he will be able to enjoy time spent with his wife Linda, their daughter Jane, son-in-law Scott, and grandchildren Mary and Patrick.

Mr. President, it is an honor to share some of Louis Greene's immense accomplishments with my colleagues in the U.S. Senate.

### PRESIDENT BUSH SALUTES SISTER MARY FLORITA SPRINGER AS THE 394TH "DAILY POINT OF LIGHT"

Mr. PACKWOOD. Mr. President, it is a pleasure for me to rise today in honor of a remarkable, 81-year-old woman in Pendleton, OR. Her name is Sister Mary Florita Springer, and she has dedicated her life to improving the lives of others. The many contributions she has made to Oregon are best demonstrated by her work helping the elderly residents of the Umatilla Indian Reservation in my State.

Despite having suffered two heart attacks and two surgeries, Sister Florita

regularly travels 8 miles to the Umatilla Reservation outside Pendleton to visit 30 homebound elderly individuals. She spends most of her day talking with them, assisting them with chores, and offering them reading materials. After completing her visits, she goes to the senior center on the reservation to pick up hot meals and deliver them to those who are unable to prepare meals for themselves. Sister Florita goes out of her way each day to ensure that all of her friends on the reservation receive a pleasurable meal.

Sister Florita became interested in working with the residents of the Umatilla Indian Reservation after a 45-year career in teaching. For the last 15 years of her teaching career she was the principal at the St. Andrews Catholic School on the reservation. After being forced to retire from teaching because of her health conditions, Sister Florita decided to come back to the reservation as a companion to the elderly who live there. Many of her friends are the grandmothers and grandfathers of the children she used to teach. Each day Sister Florita ensures that the elderly receive the friendship and care that they so deserve.

As recognition for her hard work and dedication to improving the lives of the elderly residents of the Umatilla Reservation in Oregon, President Bush has saluted Sister Florita as the 394th "Daily Point of Light." The Daily Point of Light recognition is intended to call every individual and group in America to claim society's problems as their own by taking direct and consequential action, like the efforts taken by Sister Florita.

On behalf of Oregon, and the many people on the Umatilla Reservation in whose lives you make a difference, many thanks, Sister Florita.

### RECOGNITION OF THE CONTRIBUTION OF VERMONTERS IN THE PERSIAN GULF

Mr. JEFFORDS. Mr. President, I rise today to recognize all of the Vermonters who made a contribution to the quest to liberate Kuwait from the grasp of a tyrant. Vermonters serve in all four branches of the military and the reserves. Their tasks range from waging the battle against Iraq, to helping the Kuwaiti's start rebuilding their war-torn country. I wish to commend each and every one of them for a job well done.

Let us not forget to recognize those unsung heroes back home—the families of the soldiers—for they are the motivating factor for our troops. I remember from my days in the U.S. Navy the importance of letters and packages from home. The words of love and support mean more than anything. Husbands, wives, parents, and even children are running the show back at

home while their loved ones so bravely serve our country. The families of our service personnel deserve our respect and admiration as well.

Mr. President, I wish to call special attention to several Vermonters who I have learned were injured while serving our country:

Sgt. Michael Devost, of Rutland. Michael suffered a back injury while part of the 131st Engineering Company of the National Guard Reserve unit from Camp Johnson. I know that I join the many folks at the Shelburne Post Office in wishing for his quick recovery. I hope to see him back at home with his wife, Pam, very soon.

Sgt. Daniel D. Foss, of Burlington. Daniel, also a part of the 131st, was injured in a bulldozer accident. I am very happy to have heard recently that he will make a full recovery.

Sgt. Edward L. Gilbert, of Woodford. Edward, who is part of the 3d Armored Division, was injured by shrapnel from a land mine when driving two doctors in a jeep. Edward got an extra boost of support when he was visited by a captain from the 131st National Guard unit who brought Edward a Vermont flag. His wife, Lisa, is patiently awaiting his return home.

Mark M. Jacques, of Barre. Mark injured his back while serving with the 131st. I am very pleased to report that Mark is now at Fort Devens and is feeling much better.

Pfc. John Knapp, Jr., of Pownal. John was injured while on a tank mission to clear mines with other members of the 1st Infantry Division. I wish him a swift and complete recovery so that he may return home soon to his wife, Lisa, who is expecting a child.

Sgt. Michael J. Nauceder, of Bellows Falls. Michael also became disabled while working as a part of the 131st. I am pleased to report that he is now recovering at home with his wife, Julie.

Jeffrey "Mike" Twardy, of Shelburne. Mike was injured when an Iraqi shell hit his Bradley fighting vehicle. He is a part of the 1st Infantry Division. I just learned yesterday that Mike will be coming back to the States on Friday to continue his recovery. I wish he and his wife, Christine, all the best.

Sgt. James Verchereau, of Grand Isle. James is also a member of the 131st who suffered from a back injury. James will be coming back to the States in the next few days, and I hope that soon he will be back in Vermont with his wife, Kathy.

I am very impressed with the actions and the caring spirit of all of those involved in the war effort both in the gulf and back at home in Vermont. We owe our service personnel a debt of gratitude. Thank you for a job well done.

### U.S. FORCES: THE PRIDE OF AMERICA

Mr. THURMOND. Mr. President, I recently had the pleasure of reading an excellent editorial entitled, "U.S. Forces: The Pride of America," which appeared in the Charleston News and Courier on Friday, March 1, 1991.

The Charleston News and Courier is a fine newspaper with an outstanding reputation. It is a valuable source of information for people throughout our State and it is the oldest newspaper in South Carolina, having been founded in 1894.

I ask unanimous consent that this editorial be inserted into the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

[From the Charleston News and Courier, Mar. 1, 1991]

#### U.S. FORCES: THE PRIDE OF AMERICA

In his televised address to the nation Wednesday night announcing the Persian Gulf cease-fire, President Bush spoke glowingly of the superb performance of America's armed forces. Never before has such a massive buildup of men and material been accomplished in so short a time, and never has victory come as quickly or with such little loss of life.

"This is not a time of euphoria; certainly not a time to gloat," the president said. "But it is a time of pride—pride in our troops, pride in our friends who stood with us during the crisis, pride in our nation and the people whose strength and resolve made victory quick, decisive and just. . . . Let us give thanks to those who have risked their lives. Let us never forget those who gave their lives. May God bless our valiant military forces and their families. . . ."

The American people have just cause for pride in their armed forces. The 100-hour ground war that crushed Saddam Hussein's army would have been the fodder of novelists had it not been for the exacting, thoroughly professional performance of the men and women in uniform. If ever there was a case to be made for the efficacy of the all-volunteer military, this was it. The goals of the campaign were achieved rapidly, expertly and with an absolute minimum of casualties.

Credit for this belongs to Gen. H. Norman Schwarzkopf, the tall and affable bulldog who guided coalition forces as supreme allied commander. Not since Gen. Douglas MacArthur has America had a field commander who could manage combined operations—air, sea and land—with such economy and grace. The seriousness with which he undertook his mission was leavened by compassion and humor, and the dividends his leadership paid were summed up by the nickname his troops bestowed on him: Storm-in' Norman.

About the troops themselves, words are imperfect instruments in acknowledging their courage and professionalism. The damage they inflicted on the Iraqis is only now coming to light, but it was by every measure awesome. Forty of the enemy's 42 divisions in the theater were either eviscerated or knocked out, and the landscape was littered with the wreckage of Iraqi armor. In the final analysis, it was not so much that the Iraqis were poor soldiers who were badly led. They were up against the very best troops in the world. It was no contest from the start.

President Bush is reaping political bouquets for the way in which the White House and the administration handled the war, and the praise is richly deserved—from Defense Secretary Richard Cheney to Joint Chiefs of Staff Chairman Gen. Colin L. Powell and on down the line. It has been said before, but it merits saying again: The campaign would not, could not, have been as successful if the president had not had the self-confidence to leave the fighting to the professionals. The commander-in-chief's hands-off policy was so significant a factor in the allied victory that Gen. Schwarzkopf himself paid tribute to the president's discipline.

Even now, in the exuberance of victory, a grateful nation remembers that 79 of its sons and daughters will not return with their comrades, that 79 American homes and countless hearts are filled with agony. The wings of man's life are plumbed with the feathers of death, as Milton wrote, but the loss of even one American life in battle is a terrible price to pay.

The soldiers have done their heroic duty. It is now up to the statesmen to ensure that their sacrifice was not in vain.

### SOCIAL SECURITY NOTCH

Mr. REID. Mr. President, I join to correct a problem which plagues a special group of older Americans—those affected by the Social Security notch.

For my colleagues who may not be aware, the Social Security notch causes 10 million Americans born between the years 1917-26 to receive less in Social Security benefits than Americans born outside the notch years due to changes made in the 1977 Social Security benefit formula.

Under the current formula, benefits for retirees born in the years 1917-26 are as much as 20 percent lower than benefits received by those born before 1917.

I have felt compelled over the years to speak out about this issue and the injustice it imposes on millions of Americans. The notch issue has been debated and debated and debated over the last several years, yet no solution to it has been found. Because of this, older Americans must scrimp to afford the most basic of necessities. These are hard-working Americans we are talking about here—people who paid into Social Security year after year, until their retirement, expecting, at age 65, to reap the benefit of years of hard work.

There is no doubt in my mind that Congress and the President had good intentions when it changed Social Security benefits in 1972. Members of Congress had attempted to institutionalize Social Security cost-of-living adjustments which had previously been legislated inconsistently. Unfortunately, it soon became evident that these 1972 amendments were calculated incorrectly. In an attempt to right these formula mistakes, the Social Security notch was born. Benefits were reduced by 10 to 20 percent for all Americans born between 1917 and 1926. These Americans, now known as notch

babies, are not deserving of this treatment. They receive hundreds of dollars less in Social Security benefits than their friends and relatives who were just lucky enough to be born a few days outside the Social Security notch.

While my brief synopsis of the notch history reveals well-meaning actions on the part of the Congress to protect America's seniors, we must take responsibility without delay for the fact that to date, the actions have been disastrous. And time is running out. I do not need to tell you that our notch babies are not getting any younger.

The legislation being offered today by Senator SANFORD and me incorporates the best features of many proposals offered during past Congresses to address the notch injustice. Other legislative proposals have been incorporated into what we see before us today—a simple, uncomplicated act which will restore the fair and democratic treatment of millions of our older Americans.

What this legislation does is simple: It creates a 10-year transition formula for persons born in the years 1917 through 1926. That is it. This proposal is affordable as well—another attractive feature—it makes but a small dent in the huge Social Security trust fund surplus. Surely we can see fit to spend Social Security funds on the very people whose money was collected year after year to create them.

My mail tells woeful tales. Jack Gibson of Carson City, NV, writes:

I am a former Marine attached to the Second Marine Division during the Second World War, seeing action in the Pacific Theater of war.

I am also a second class citizen of the United States.

That is because I was born in 1920, became a working registrant of the Social Security system when it was first started, and have paid into it all my life except when I was in the Marine Corps.

Yes, I am a "Notch" baby, one of the forgotten citizens of this country. Downgraded because I, and thousands before me were born at the wrong time. Unfortunately, those born later or earlier have not had their Social Security payments "docked" due to legislation. \* \* \*

Edward Lilian of Thunder, NV, writes:

By procrastinating about the repeal of this Act, you and your peers are in fact making the decision to ignore and discriminate against us.

The legislation offered today is a responsible solution to the notch inequity. This bill will not bankrupt the Social Security System. The transition formula extends over 10 years. It increases notch babies' Social Security checks by an estimated \$37 to \$114 per month. This may not sound like much money to my colleagues who have good steady incomes, but to a senior who lives on a fixed income it is a fortune. This small amount, a fortune to some, can mean the ability to put food on the

table. It can mean the ability to purchase a vital prescription drug.

It is time for Congress to return dollars to the hands of those who earned them—Social Security beneficiaries. It is time for my fellow Members of Congress to listen to the Jack Gibsons and Edward Lilians of their respective States. It is time to destroy the Social Security notch. For millions of America's senior citizens, this will be no less than miraculous. For the 102d Congress, this will be no less than miraculous.

#### TRIBUTE TO NORTH DAKOTA'S WAYNE LUBENOW

Mr. BURDICK. Mr. President, I was saddened to learn last week of the death of Wayne Lubenow, one of my favorite writers and a personal friend. The columns he wrote are like Norman Rockwell paintings which can be enjoyed for generations to come, they so well illustrate the best of American life.

Wayne Lubenow was an eloquent salesman for North Dakota. As a tribute to him, I ask unanimous consent that a column he wrote about the State in 1962 be printed in the RECORD at this point.

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

##### NORTH DAKOTA: A BLIND DATE

What it's like, see, is getting stuck with a blind date. You hate to go because you've heard she's a dog.

But you go anyway—you find all the Miss Americas rolled into one beautiful package and you wonder how she ever got that bad image.

That's North Dakota.

She's a beauty beyond your imagination—but you have to see her to believe it.

I know, because I was invited to take a 10-day tour of my State the last week in June, compliments of the North Dakota Travel Association.

I didn't exactly do cartwheels when I was told I could tour North Dakota for 10 days. But it's 10 days off the old grind so why not?

So I went on the blind date, but only because it seemed like a duty. And there, so help me, was the queen that had been right in my backyard all these years and that I never really saw.

Ron Campbell, a member of the tour from the Regina, Sask., *Leader-Post*, had been to North Dakota before. And he told me, "Wayne, this is a new North Dakota."

I agree, but what struck me is that my blind date was twins—two North Dakotas.

First, there is the old gal—the one who has been around a long, long time. She's the breath-taking Badlands and the buttes and the forts and the history and the pioneers and the scenery that puts butterflies where your last meal should be.

She is miles and miles of sheer, untamed beauty and if you look hard into a sunset and let your imagination go, you can see the red men and the cowboys and the flag-waving cavalry.

She is mostly a western North Dakota gal, this old one, for that is where the rough country is. But you can see her, too, in the

rivers of Eastern North Dakota—but you'll be looking for sternwheelers hauling people and provisions to Dakota Territory.

Her mirror, of course, is the Theodore Roosevelt National Park with cowtown Medora as her boudoir. From there her territory stretches through the South Unit of the park, up north through the even more fabulous North Unit.

But her charm doesn't end there. It runs to places like Grassy Butte with its sod-built old post office, to the State's three Indian reservations where much of what is old and historic remains as it was.

That's old gal, the old North Dakota—and a queen she is.

But she is being challenged by a princess, a young starlet who can't possibly harm her—but who only adds to North Dakota's luster.

The debutante is the revitalization of her cities, of her commerce, and even of her lands.

Minot and her Air Base bustle; Bismark booms; Dickinson swings; Grand Forks and Fargo grow and grow.

New people, new industry, new growth.

That's what Campbell meant by a "new" North Dakota.

You see it in her new-spawned recreational areas—the Garrison Reservoir where power boats and lunker fish are the order of the day.

You see it in old Medora where private capital is making it possible to sleep in air-conditioned comfort before going out to woo that Old Gal Badlands.

You see it at Rolla in the north where the Bulova firm has established the only industrial jewel plant in all of North America and where they really do business in a small way—like some of the jewels they make are so small it takes a magnifying glass to see them.

You see it in North Dakota's highways where it's tough to find a bad road even if you were looking.

That's this new, young girl of a North Dakota—the one who builds sprawling, powerful new electric plants capable of churning out hundreds of thousands of kilowatts.

But she does it on the old gal's ancient lignite.

The cattle ranches and farms are still here, a legacy from the old days. But the roundups are apt to be with jeeps and the grain fields are filled with machines, not men.

The old people, those who still are in love with the old gal, are still here, too. But so are the new young bloods who go courting the maiden.

And that's North Dakota—two striking women, one with white hair and one with gold, and you'll love them both.

But like I say, you have to try that blind date to really believe it.

#### IN MEMORY OF SGT. DAVID Q. DOUTHIT OF ALASKA

Mr. MURKOWSKI. Mr. President, today in my home State of Alaska a funeral and burial service is being held for an American hero named David Douthit. This brave young man proudly served our country in the Persian Gulf war and lost his life just hours before the President's cease-fire order went into effect. David's death reminds us all that the price of freedom is not without human cost. It cost us the precious life of one Alaskan.

Our quick and decisive victory over Iraqi forces in Kuwait is a tribute to the men and women of our Armed Forces. Now our Nation rightfully honors these outstanding Americans for their dedication and sacrifice.

David was a 1984 graduate of Soldotna High School and served in the U.S. Army for 6 years. He has been stationed at Fort Lewis, WA, and was sent to the gulf after Christmas. He served there as a crew chief on an M-2 Bradley, armored personnel carrier.

David leaves behind his parents, Harvey and Nita Douthit, and his young wife, Jessica, who is 8 months pregnant with their first child. As one life is taken away, another comes into the world.

Alaskans have rallied around the Douthit family and the unborn child. A scholarship fund has been established and donations have been received from caring Americans throughout the Nation.

I know that David holds a special place in the heart of all Alaskans. He gave the ultimate sacrifice for our Nation and we are proud of him. The prayers of all Americans are with the families of those who were killed during the Persian Gulf war. Today, the prayers of all Alaskans are with David Douthit and his family.

#### TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,187th day that Terry Anderson has been held captive in Lebanon.

Today, Associated Press special correspondent Walter Mears offers a tribute to Terry Anderson and the other hostages still held in Lebanon. I ask unanimous consent that it be printed in the RECORD at this time.

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

##### WALTER MEARS: REMEMBERING TERRY ANDERSON AND OTHERS HELD IN LEBANON

(By Walter R. Mears)

WASHINGTON.—In a season of celebration for the freed prisoners and returning veterans of the Persian Gulf War, it's time for another sort of ceremony, a bleak one at the sixth anniversary of Terry Anderson's captivity in Lebanon.

The contrasts are jarring. So far, America's Middle East victory does not apply to Anderson or to the other five U.S. hostages, reportedly moved by their captors from Beirut to the Baalbeck area in eastern Lebanon.

The war against Iraq was won in 42 days, the ground war in 100 hours. Anderson has been held hostage for 2,187 days.

In the conflict over Kuwait, the one posted demand of his kidnapers was rendered moot. The Muslim extremists who seized Anderson on March 16, 1985, demanded the release of fellow Shiites imprisoned by Kuwait for terrorist bombings there. The last of them was freed when Iraq invaded on Aug. 2.

Syria, which joined the U.S.-led coalition against Iraq, is the dominant force in Lebanon, a position strengthened during the Persian Gulf crisis. The Syrian army controls the region where the hostages are believed held by pro-Iranian Muslim factions grouped together as Hezbollah, or the Party of God. Iran remained officially neutral in the war that drove Iraq from Kuwait.

Despite their power in the region, the Syrians have avoided confrontation with Iranian-backed factions. There are said to be about 3,000 Iranian Revolutionary Guard troops in or near Baalbeck.

Secretary of State James A. Baker III is to visit Damascus later this week, meeting with Syrian President Hafez Assad as part of the postwar quest for a comprehensive peace settlement in the Middle East.

President Bush said Baker would raise the plight of the hostages in Lebanon. "We have not forgotten them," Bush told Congress in his March 6 victory speech. "We will not forget them."

Next day at the White House, Bush's spokesman said there had to be some hope that with all the changes in the Middle East, the captors would see the futility of continuing to hold the hostages.

But on Monday, White House Press Secretary Marlin Fitzwater said the administration had no word on the whereabouts of the hostages, and nothing to indicate that they might soon be freed.

Fitzwater said there are continuing U.S. contacts abroad on the hostage situation. "I assume those are still happening, but I don't have any new breakthroughs to report or anything like that," he said.

And the last word from Hezbollah, on March 6, was that the organization would not force release of the hostages.

Such words of hope, uncertainty and intransigence have been heard again and again since the ordeal of American hostages in Lebanon began in 1983.

Anderson, 43, chief Middle East correspondent of the Associated Press, is now the longest held American hostage. The others are Thomas Sutherland, Joseph Cioppio, Jesse Turner and Alann Steen, all of whom are educators in Beirut, and Edward Austin Tracy, a writer.

There are seven other western hostages, four of them British, two German, one Italian, all believed held by the same Muslim groups.

On Friday, Anderson's family, colleagues and friends, and the families of other hostages will gather for still another anniversary observance, sponsored by an organization called No Greater Love.

This time, there will be words of thanksgiving for the release of other captives: the 21 POWs who came home on Sunday, the CBS News crew held captive for six weeks by Iraq, the 40 journalists captured last week near Basra, freed on Saturday.

There also will be demands for the same kind of U.S. and international pressure to gain release of the hostages in Lebanon.

They are fewer in number, less visible, captives of shadow factions, with not even an enemy government to be held accountable for their plight.

But the new, peaceful world order President Bush envisions will be a hollow one unless Anderson and the other hostages are at long last freed to join in it.

Mr. DOLE. 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. 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.

#### PROTESTS IN SERBIA

Mr. DOLE. Mr. President, for over a year now we have watched as the hardline Communist government of the Republic of Serbia has brutally repressed the Albanian population of Kosova. But, last weekend, the world witnessed the same brutality in Belgrade, as Serbian police—joined by Yugoslav federal troops—tried to disperse a large crowd using the same violent tactics I witnessed in the streets of Pristina last summer—clubs, tear gas, rubber bullets. Opposition leaders were arrested. Two people were killed and many more were injured.

On Saturday, tens of thousands of Serbs—mostly young Serbs—took to the streets of Belgrade to send a message to Serbian President Milosevic. These students, professors, opposition party members, and intellectuals, made their way to Belgrade's main square to say that they were fed up, fed up with communism and its control over the economy, which is in ruins; fed up with TV and radio censorship and one-sided media reporting; and finally, that they were fed up with hardliner Milosevic and his henchmen.

Today, a group of opposition party lawmakers left the Serbian Parliament to join anti-Communist protesters in yet another day of demonstrations against Milosevic's hardline government. And, according to press reports, these demonstrations are spreading to other cities.

Despite Milosevic's finger-pointing, these protesters recognize that the blame for the severe political and economic problems in Serbia does not rest with the oppressed Albanians in Kosova, or with the democratically elected non-Communist Republics of Croatia and Slovenia; they have not been persuaded by the allegations the Serbian President makes in his speeches and repeats through his puppets in the press. These thousands of Serbs realize that Milosevic himself is to blame. They know that Milosevic and his 1950's-style Communist policies are responsible for the lack of basic freedoms and the economic turmoil that has affected the lives of most Serbs.

The Milosevic myth of anti-Serbian forces and enemies of Serbia is melting away and reality is taking its place. The reality is that Milosevic and his supporters who advocate hardline communism are the real enemies of Serbia. Milosevic sent Serbian police to the streets with orders to use violence. Milosevic has strangled the press and wiped out freedom of speech. Milosevic

has brought the economy of Serbia to near ruin—despite the fact that he stole \$1.3 billion in dinars from the central government, there are still thousands of workers who have not been paid in a month, 2 months, or more.

As these demonstrations have shown to the world, the Serbian people want to get rid of communism. The Serbs want the same freedoms and opportunities that the people in Slovenia and Croatia are creating for themselves in their new democracies and free market economics.

Mr. President, the events of the past few days highlight once again who the enemies of democracy and human rights in Yugoslavia really are: the Communists in the Serbian Government and in the Yugoslav Government. These Communists may have changed their name to Socialists, but their methods and policies remain the same.

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

The PRESIDING OFFICER (Mr. BAUCUS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 624 and S. 631 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### WELCOMING THE REESTABLISHMENT OF DIPLOMATIC RELATIONS WITH ALBANIA

Mr. PELL. Mr. President, I welcome today's announcement by the State Department that the United States and Albania will reestablish diplomatic relations. Later this week, Albania's Foreign Minister will travel to Washington to formalize the reestablishment of official ties, which were broken off more than 50 years ago.

I believe that now is a particularly opportune moment to reestablish diplomatic relations with Albania. Later this month, Albania will hold elections, and in my view, by reestablishing ties with Albania, the United

States will demonstrate its support for the reform process and for increased attention to human rights issues.

For decades, Albania has lived outside the pale of European civilization. Aside from the Baltic States, Albania is the only European country that is not a member of the Commission on Security and Cooperation in Europe or CSCE. I believe that through the establishment of diplomatic relations, we in the United States have an opportunity to encourage Albania to join in that process and to play a constructive role in the new Europe.

On a personal note, I am particularly pleased by today's developments. My first assignment upon joining the United States Foreign Service shortly after World War II, was supposed to be to Tirana, Albania. Although our legation in Tirana had been closed in 1939, it was expected that with the end of the war, relations would be resumed. Regrettably, ties were not reestablished at that time.

Most would agree that Albania has been one of Europe's most closed societies, and accordingly, we have much to learn about that country, and they about ours. My hope is that our new diplomatic relationship will provide a framework for that process.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on March 11, 1991, during the recess of the Senate, received a message from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on March 11, 1991, are printed in today's RECORD at the end of the Senate proceedings.)

#### TERMINATION OF SANCTIONS WITH RESPECT TO KUWAIT—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 26

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

*To the Congress of the United States:*

I hereby provide notice, consistent with section 586C(c)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513), of my intention to terminate, in whole or in part, no sooner than 15 days after the date of this notice, the sanctions imposed with respect to Kuwait pursuant to Executive Orders Nos. 12723 and 12725.

GEORGE BUSH.

THE WHITE HOUSE, March 8, 1991.

#### COMPREHENSIVE VIOLENT CRIME CONTROL ACT OF 1991—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 27

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on the Judiciary:

*To the Congress of the United States:*

I am pleased to transmit this administration's primary legislative initiative addressing the continuing threat of violent crime in this country. This proposal, entitled the "Comprehensive Violent Crime Control Act of 1991," contains a broad spectrum of critically needed reforms to the criminal justice system, as well as new offenses and penalties for various acts of life-threatening criminal behavior. Also transmitted is a section-by-section analysis. I urge that congressional action on this initiative be completed within the next 100 days.

The enormous danger posed by violent criminals in our midst today is totally unacceptable. In 1990, more than 20,000 Americans were murdered. Our citizens are rightly demanding that elected officials act with resolve to reduce substantially the threat violent crime poses to their families and communities. The dramatic victory achieved by our military forces in the Persian Gulf serves as a model for what can be accomplished by leaders and citizens committed to achieving a common goal. It is time for all Americans to work together to take back the streets and liberate our neighborhoods from the tyranny of fear.

This legislative package is designed to address comprehensively the failures of the current criminal justice system. There must be a clear understanding on the streets of America that anyone who threatens the lives of others will be held accountable. To this end, it is essential that we have swift and certain apprehension, prosecution, and incarceration. Too many times, in too many cases, criminals go free because the scales of justice are unfairly loaded against dedicated law enforcement officials.

The core elements of my proposal are:

—*Restoration of the Federal Death Penalty* by establishing constitutionally sound procedures and adequate standards for imposing Federal death penalties that are already on the books (including mail bombing and murder of Federal officials); and authorizing the death penalty for drug kingpins and for certain heinous acts such as terrorist murders of American nationals abroad, killing of hostages, and murder for hire.

—*Habeas Corpus Reform* to stop the often frivolous and repetitive appeals that clog our criminal justice system, and in many cases effectively nullify State death penalties, by limiting the ability of Federal and State prisoners to file repetitive habeas corpus petitions.

—*Exclusionary Rule Reform* to limit the release of violent criminals due to legal technicalities by permitting the use of evidence that has been seized by Federal or State law enforcement officials acting in "good faith," or a firearm seized from dangerous criminals by a Federal law enforcement officer. This proposal also includes a system for punishing Federal officers who violate Fourth Amendment standards, as well as a means for compensating victims of unlawful searches.

—*Increased Firearms Offenses and Penalties* including a 10-year mandatory prison term for the use of a semiautomatic firearm in a drug trafficking offense or violent felony, a 5-year mandatory sentence for possession of a firearm by dangerous felons, new offenses involving theft of firearms and smuggling firearms in furtherance of drug trafficking or violent crimes, and a general ban on gun clips and magazines that enable a firearm to fire more than 15 rounds without reloading.

In addition to these proposals, my initiative contains elements designed to curb terrorism, racial injustice, sexual violence, and juvenile crime, and to support appropriate drug testing as a condition of post-conviction release for Federal prisoners.

I look forward to working with the Congress during the next 100 days on this necessary legislation.

GEORGE BUSH.

THE WHITE HOUSE, March 11, 1991.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United

States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on March 8, 1991, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 98. Joint resolution designating March 4 through 10, 1991, as "National School Breakfast Week."

Under the authority of the order of the Senate of January 3, 1991, the enrolled joint resolution was signed on March 8, 1991, during the recess of the Senate, by the President pro tempore [Mr. BYRD].

#### MESSAGES FROM THE HOUSE

At 2:34 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1281. An act making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans compensation and pensions, and urgent needs for the fiscal year ending September 30, 1991, and for other purposes.

#### MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1281. An act making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes; to the Committee on Appropriations.

#### MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1284. An act to authorize emergency supplemental assistance for Israel for additional costs incurred as a result of the Persian Gulf conflict.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-744. A communication from the Chairman of the Board of Directors of the Panama Canal Commission, transmitting a draft of proposed legislation to authorize expenditures for fiscal years 1992 and 1993, for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes; to the Committee on Armed Services.

EC-745. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report of the Department of Defense dated January 1991; to the Committee on Armed Services.

EC-746. A communication from the Acting Under Secretary of Defense (Acquisition), transmitting, pursuant to law, a report on funds obligated in the chemical warfare-chemical/biological defense programs during fiscal year 1990; to the Committee on Armed Services.

EC-747. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to Israel; to the Committee on Banking, Housing, and Urban Affairs.

EC-748. A communication from the Secretary of Transportation, transmitting, pursuant to law, a biennial report entitled "Public Transportation in the United States: Performance and Condition"; to the Committee on Banking, Housing, and Urban Affairs.

EC-749. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the third annual report for fiscal year 1990; to the Committee on Commerce, Science, and Transportation.

EC-750. A communication from the Secretary of Commerce, transmitting, pursuant to law, a draft of proposed legislation entitled "Spectrum Reallocation and Management Improvement Act of 1991; to the Committee on Commerce, Science, and Transportation.

EC-751. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report to Congress entitled "Alcohol Limits for Drivers: A Report on the Effects of Alcohol, and Expected Institutional Responses to New Limits"; to the Committee on Commerce, Science, and Transportation.

EC-752. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a draft of proposed legislation "to authorize appropriations to the National Aeronautics and Space Administration for research and development; space flight, control and data communications; construction of facilities; research and program management; and Inspector General; and for other purposes," together with a sectional analysis; to the Committee on Commerce, Science, and Transportation.

EC-753. A communication from the Deputy Associate Director for Collection and Disbursement of the United States Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-754. A communication from the Assistant General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-755. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to implement the National Energy Strategy, and for other purposes; to the Committee on Energy and Natural Resources.

EC-756. A communication from the Deputy Assistant Secretary of the Interior, transmitting a draft of proposed legislation to provide authority to the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions, and for other purposes; to the Committee on Energy and Natural Resources.

EC-757. A communication from the Assistant Secretary of Energy (Environment, Safety, and Health), transmitting, pursuant to law, notice that the annual report of the Department on progress in implementing the Superfund Amendments and Reauthorization Act will be submitted in April 1991; to the Committee on Environment and Public Works.

EC-758. A communication from the Inspector General of the Department of the Interior, transmitting, pursuant to law, an audit report entitled "Accounting for Reimbursable Expenditures of Environmental Protection Agency Superfund Money. Office of Environmental Affairs, Office of the Secretary"; to the Committee on Environment and Public Works.

EC-759. A communication from the Administrator of the Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, a report on demonstration projects authorized under the Surface Transportation and Uniform Relocation Assistance Act; to the Committee on Environment and Public Works.

EC-760. A communication from the Assistant Secretary of State (Legislative Affairs) and the Assistant Administrator of the Office of Policy, Planning, and Evaluation of the Environmental Protection Agency, transmitting jointly, pursuant to law, a report entitled "The U.S. Efforts to Address Global Climate Change" and a brochure entitled "America's Climate Change Strategy: An Action Agenda"; to the Committee on Foreign Relations.

EC-761. A communication from the Assistant Administrator of the Small Business Administration (Hearings and Appeals), transmitting, pursuant to law, a report on the Small Business Administration's revised Privacy Act system of records; to the Committee on Governmental Affairs.

EC-762. A communication from the Secretary of the Commission of Fine Arts, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during fiscal year 1990; to the Committee on Governmental Affairs.

EC-763. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the semi-annual report of the Office of Inspector General, Federal Election Commission for the period ending September 30, 1990; to the Committee on Governmental Affairs.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with-  
out amendment:

S. 483. A bill entitled the "Taconic Mountains Protection Act of 1991" (Rept. No. 102-21).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

S. 207. A bill to amend the Commodity Exchange Act to authorize appropriations for and enhance the effectiveness of the Commodity Futures Trading Commission, to curb abuses in the making of trades and the execution of orders at designated contract markets, to provide greater representation of the public interest in the governance of such contract markets, to enhance the integrity of the United States financial markets by providing for Federal oversight of margins on stock index futures, clarifying jurisdiction over innovative financial products and providing mechanisms for addressing intermarket issues, and for other purposes (Rept. No. 102-22).

S. 393. A bill to provide for fair treatment for farmers and ranchers who are participating in the Persian Gulf War as active reservists or in any other military capacity, and for other purposes.

#### 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. DOLE (for himself, Mr. HATCH, Mr. SIMPSON, Mr. MCCAIN, Mr. STEVENS, Mr. MURKOWSKI, Mr. GARN, Mr. MCCONNELL, and Mr. KASTEN):

S. 611. A bill to amend the Civil Rights Act of 1964 to strengthen protections against discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BENTSEN (for himself, Mr. ROTH, Mr. MITCHELL, Mr. FORD, Mr. PRYOR, Mr. DASCHLE, Mr. INOUE, Mr. ROBB, Mr. COCHRAN, Mr. KASTEN, Mr. NICKLES, Mr. LOTT, Mr. BAUCUS, Mr. HEINZ, Mr. BOREN, Mr. SYMMS, Mr. RIEGLE, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. ADAMS, Mr. AKAKA, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MACK, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. RUDMAN, Mr. SANFORD, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, Mr. WELLSTONE, and Mr. NUNN):

S. 612. A bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes; to the Committee on Finance.

By Mr. LEVIN:

S. 613. A bill for the relief of Miroslaw Adam Jasinski; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. BURDICK, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSTON, and Mr. INOUE):

S. 614. A bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, and Mr. LIEBERMAN):

S. 615. A bill entitled the "Environmental Marketing Claims Act of 1991"; to the Committee on Environment and Public Works.

By Mr. PELL (by request):

S. 616. A bill to authorize appropriations for Fiscal Years 1992 and 1993 for the United States Information Agency, and for other purposes; to the Committee on Foreign Relations.

By Mr. HATCH (for himself, Mr. SPECTER, Mr. SIMPSON, Mr. DOMENICI, Mr. INOUE, Mr. COCHRAN, Mr. D'AMATO, Mr. MCCAIN, Mr. BOND, and Mr. GORTON):

S. 617. A bill to reauthorize the Commission on Civil Rights; to the Committee on the Judiciary.

By Mr. BIDEN (for himself and Mr. DECONCINI):

S. 618. A bill to control and reduce violent crime; to the Committee on the Judiciary.

By Mr. BRADLEY (for himself and Mr. KENNEDY):

S. 619. A bill to establish a Link-up for Learning demonstration grant program to provide coordinated services to at-risk youth; to the Committee on Labor and Human Resources.

By Mr. GRAHAM (for himself and Mr. BRYAN):

S. 620. A bill to reform habeas corpus procedures; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 621. A bill to establish the Manzanar National Historic Site in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SIMON:

S. 622. A bill to amend title 18 of the United States Code to require drug testing for released Federal prisoners; to the Committee on the Judiciary.

By Mr. SIMON (for himself, Mr. DECONCINI, and Mr. HOLLINGS):

S. 623. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to maintain the current Federal-State funding ratio for the Justice Assistance Grant Program; to the Committee on the Judiciary.

By Mr. EXON (for himself and Mr. KERREY):

S. 624. A bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization; to the Committee on Finance.

By Mr. REID (for himself and Mr. BROWN):

S. 625. A bill to amend the Trade Act of 1974 in order to require reciprocal responses to foreign acts, policies, and practices that deny national treatment to United States investment; to the Committee on Finance.

By Mr. HEINZ:

S. 626. A bill to increase the literacy skills of commercial drivers; to the Committee on Labor and Human Resources.

By Mr. JOHNSTON (for himself and Mr. BREAUX):

S. 627. A bill to designate the lock and dam 1 on the Red River Waterway in Louisiana as the "Lindy Clairborne Boggs Lock"; to the Committee on Environment and Public Works.

By Mr. BINGAMAN:

S. 628. A bill to direct the Secretary of the Interior to conduct a study of certain historic military forts in the State of New Mexico; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO:

S. 629. A bill to establish the grade of General of the Army and to authorize the President to appoint Generals Colin L. Powell and H. Norman Schwarzkopf, Jr., to that grade; to the Committee on Armed Services.

By Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. THURMOND, and Mr. COATS):

S. 630. A bill entitled the "Money Laundering Enforcement Act"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. EXON (for himself, Mr. DANFORTH, and Mr. KASTEN):

S. 631. A bill to authorize appropriations for the Motor Carrier Safety Assistance Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR:

S. 632. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of interest paid in connection with certain life insurance contracts; to the Committee on Finance.

By Mr. CRANSTON (for himself, Mr. DECONCINI, and Mr. AKAKA):

S. 633. A bill to improve basic educational assistance benefits for members of the Armed Forces of the United States under chapter 30 of title 38, United States Code, and under chapter 106 of title 10, United States Code, and for other purposes; to the Committee on Veterans Affairs.

By Mr. KENNEDY (for himself, Mrs. KASSEBAUM, Mr. SIMON, Mr. KERRY, Mr. CRANSTON, Mr. HARKIN, Mr. MOYNIHAN, Mr. GORE, and Mr. LEVIN):

S.J. Res. 91. Joint resolution expressing the sense of the Congress regarding the political and human rights situation in Kenya; to the Committee on Foreign Relations.

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. BROWN, Mr. CHAFEE, Mr. D'AMATO, Mr. DOLE, Mr. DURENBERGER, Mr. HATCH, Mr. JEFFORDS, Mr. KASTEN, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, Mr. COATS, Mr. ADAMS, Mr. BAUCUS, Mr. BRADLEY, Mr. BREAUX, Mr. BURDICK, Mr. CRANSTON, Mr. DECONCINI, Mr. DIXON, Mr. FORD, Mr. FOWLER, Mr. GORE, Mr. HEFLIN, Mr. HOLLINGS, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mr. PELL, Mr. PRYOR, Mr. RIEGLE, Mr. BOREN, Mr. ROBB, and Mr. SARBANES):

S.J. Res. 92. Joint resolution to designate July 28, 1992, as "Buffalo Soldiers Day"; to the Committee on the Judiciary.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. D'AMATO (for himself, Mr. HEINZ, Mr. DIXON, Mr. CRANSTON, Mr. CHAFEE, Mr. HATFIELD, Mr. KERRY, Ms. MIKULSKI, Mr. GORTON, Mr. PACKWOOD, Mr. SPECTER, Mr. DODD, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. BOND, and Mr. SEYMOUR):

S. Res. 77. Resolution concerning mass transit programs; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH:

S. Con. Res. 17. Concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. MOYNIHAN, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, and Mr. SIMON):

S. Con. Res. 18. Concurrent resolution expressing the concern of the Senate for the ongoing human rights abuses in Burma and for the status of displaced Burmese and Burmese refugees; to the Committee on Foreign Relations.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. BIDEN, Mr. DECONCINI, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. DIXON, and Mr. SIMON):

S. Con. Res. 19. Concurrent resolution condemning the People's Republic of China's continuing violation of universal human rights principles; to the Committee on Foreign Relations.

By Mr. LAUTENBERG (for himself, Mr. METZENBAUM, Mr. PELL, Mr. MURKOWSKI, and Mr. KASTEN):

S. Con. Res. 20. Concurrent resolution to authorize the use of the rotunda of the Capitol for a ceremony to commemorate the days of remembrance of victims of the Holocaust; to the Committee on Rules and Administration.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. SIMON, Mr. LUGAR, Mr. MOYNIHAN, Mr. PACKWOOD, and Mr. DOLE):

S. Con. Res. 21. Concurrent resolution commending the people of Mongolia on their first multiparty elections; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE, for himself, Mr. HATCH, Mr. SIMPSON, Mr. MCCAIN, Mr. MURKOWSKI, Mr. GARN, Mr. STEVENS, Mr. MCCONNELL, and Mr. KASTEN):

S.611. A bill to amend the Civil Rights Act of 1964 to strengthen protections against discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

##### CIVIL RIGHTS ACT OF 1991

Mr. DOLE. Mr. President, America today is proudly saluting its Desert Storm heroes. These troops—men and women, black and white, native American, Hispanic, and Asian—risked their lives to rescue a nation from tyranny. This stunning military success can teach us a valuable lesson about the

kind of America we all want: An America based on equality of opportunity for all its citizens. Our military got the job done without quotas and without discrimination. If only the rest of our society can make the same claim.

Last year, President Bush stood foursquare on the side of equal opportunity by proposing his own civil rights bill, and then, in an effort to reach a negotiated compromise with the Democratic Congress, the President and his key advisers walked the extra mile, and then some, only to reject a bill that meant more to the American Trial Lawyers Association than to the cause of civil rights.

This year, the President's commitment to civil rights remains as firm as ever. In fact, he indicated this morning in a congressional leadership meeting that he wants to sign a civil rights bill.

During last Wednesday's joint session, the President denounced the scourge of discrimination, promising to draft a bill that confronts discrimination head on. Today, the President has delivered on this promise. I am joining with my distinguished colleague in the House, Republican leader BOB MICHEL, in introducing President Bush's Civil Rights Act of 1991. To his credit, the President has proposed a bill that restores the careful balance of title VII, not one that transforms title VII into a national tort law. The President has proposed a bill that stands for racial justice and equal opportunity, not quota justice and equal results.

Mr. President, the Civil Rights Act of 1991 has plenty of firepower, not only for our Nation's minorities, but for the women of America too.

It overturns the Supreme Court's Patterson decision by expanding the coverage of section 1981 to include racial harassment on the job. It overturns the Supreme Court's decision in Lorraine versus AT&T Technologies by allowing an employee to challenge a discriminatory seniority plan at any time after the plan's adoption. It overturns the Supreme Court's Wards Cove decision by shifting the burden of proof to the employer once the plaintiff shows that an employment practice causes a disparate impact. It codifies the Griggs decision by adopting word for word the so-called Griggs definition of "business necessity." And, I would add, most importantly, the Civil Rights Act of 1991 establishes, for the first time in our Nation's history, a Federal monetary remedy of up to \$150,000 for the victims of sexual harassment and harassment based on disability.

So we are going to debate these issues. I know it is good to have a nice-sounding labor bill with a "civil rights" label. But the real civil rights bill in this debate is the President's bill.

Several years ago, I stood on this floor and managed on the Republican

side the Martin Luther King holiday bill. I provided the key vote in the 25-year extension of the Voting Rights Act. I was a key player in the passage of the Americans With Disabilities Act. So I am not going to be defensive about this issue or any other civil rights issue. I do not think anyone on our side should be defensive either. If the Democrats, or a small group of liberals on the other side of the aisle working with certain civil rights activists, are going to demand we have a quota bill, then they are going to have to provide votes for the quota bill and they are going to have to provide votes to override the President's veto of a quota bill. If they want a civil rights bill, we can pass that next week.

I call upon some of my friends on the other side of the aisle. It was a party-line vote last year. It was politics, not civil rights. Politics. Those who were engaged in the negotiations were playing politics.

The President, as I said as recently as 4 hours ago, indicated to me that he wanted to sign a civil rights bill, wanted to do it this year and would like to do it as quickly as possible.

So, Mr. President, I think we have an opportunity if we want a civil rights bill. Those of us who have spotless records in the civil rights area want to be participants. We do not want to be spectators; we do not want to be run over by those who are out for political gain. We have never had a partisan civil rights bill as long as I have been here, until last year. If we want to repeat that again this year, we are going to do our best to sustain a veto.

I hope that others will be involved in the debate, not just two or three Senators on the other side of the aisle, and that we can have a civil rights bill. There is no doubt in my mind that we all pretty much agree and have pretty much the same objectives. I do not believe many Members on the other side of the aisle really want a quota bill.

So I send the bill to the desk on behalf of myself, Senator HATCH, Senator SIMPSON, Senator MCCAIN, Senator MURKOWSKI, Senator STEVENS, Senator GARN, and Senator MCCONNELL and ask for its appropriate referral.

I also ask unanimous consent that a section-by-section analysis, along with the bill, be printed in the RECORD, as well as letters from the Attorney General and other assorted material.

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

S. 611

*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 "Civil Rights Act of 1991".

##### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that additional protections and remedies under Fed-

eral law are needed to deter unlawful discrimination.

(b) **PURPOSE.**—The purpose of this Act is to strengthen existing protections and remedies available under Federal civil rights laws.

### SEC. 3. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

“(j) The term ‘complaining party’ means the Commission, the Attorney General, or a person who may bring an action or proceeding under this Title.

“(m) The term ‘demonstrates’ means meets the burdens of production and persuasion.

“(n) The term ‘justified by business necessity’ means that the challenged practice has a manifest relationship to the employment in question or that the respondent’s legitimate employment goals are significantly served by, even if they do not require, the challenged practice.

“(o) The term ‘respondent’ means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof).

“(p)(1) The term ‘harass’ means, in cases involving discrimination because of race, color, religion, sex, or national origin, the subjection of an individual to conduct that creates a working environment that would be found intimidating, hostile or offensive by a reasonable person.

“(2) The term ‘harass’ also means, in cases involving discrimination because of sex, (i) making the submission to unwelcome sexual advances by an employer a term or condition of employment of the individual; or (ii) using the rejection of such advances as a basis for employment decisions adversely affecting the individual; or (iii) making unwelcome sexual advances that create a working environment that would be found intimidating, hostile or offensive by a reasonable person.”

### SEC. 4. DISPARATE IMPACT CLAIMS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

“(k) **PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.**—Under this Title, an unlawful employment practice based on disparate impact is established only when a complaining party demonstrates that a particular employment practice causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is justified by business necessity: *Provided, however,* That an unlawful employment practice shall nonetheless be established if the complaining party demonstrates the availability of an alternative employment practice, comparable in cost and equally effective in predicting job performance or achieving the respondent’s legitimate employment goals, that will reduce the disparate impact, and the respondent refuses to adopt such alternative.”

### SEC. 5. FINALITY OF JUDGMENTS OR ORDERS.

For purposes of determining whether a litigated or consent judgment or order resolving a claim of employment discrimination because of race, color, religion, sex, national origin, or disability shall bind only those individuals who were parties to the judgment or order, the Federal Rules of Civil Procedure shall apply in the same manner as they apply with respect to other civil causes of action.

### SEC. 6. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting “(a)” before “All persons within”; and

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

“(b) For purposes of this section, the right to ‘make and enforce contracts’ shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract.

“(c) The rights protected by this section are protected against impairment by non-governmental discrimination as well as against impairment under color of State law.”

### SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by adding at the end the following sentence: “For purposes of this section, an alleged unlawful employment practice occurs 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 thereof, that 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. 8. PROVIDING FOR ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

(a) Subsection 703(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(a)) is amended by deleting the period at the end and inserting in lieu thereof “; or” and by adding at the end the following new paragraph:

“(3) to harass any employee or applicant for employment because of that individual’s race, color, religion, sex, or national origin; provided, however, that no such unlawful employment practice shall be found to have occurred if the complaining party failed to avail himself or herself of a procedure, of which the complaining party was or should have been aware, established by the employer for resolving complaints of harassment in an effective fashion within a period not exceeding 90 days.”

(b) Section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended by adding at the end the following new subsections:

“(j) **EMERGENCY RELIEF IN HARASSMENT CASES.**—An employee or other complaining party alleging a violation of section 703(a)(3) of this Title may petition the court for temporary or preliminary relief. If the complaining party establishes a substantial probability of success on the merits of such harassment claim, the continued submission to the harassment shall be deemed injury sufficiently irreparable to warrant the entry of temporary or preliminary relief. A court having jurisdiction over a request for temporary or preliminary relief pursuant to this paragraph shall assign the case for hearing at the earliest practicable date and cause such case to be expedited in every way practicable.

“(m) **EQUITABLE MONETARY AWARDS IN HARASSMENT CASES.**—

“(1) In ordering relief for a violation of section 703(a)(3) of this Title, the court may, in addition to ordering appropriate equitable relief under subsection (g) of this section, ex-

ercise its equitable discretion to require the employer to pay the complaining party an amount up to but not exceeding a total of \$150,000.00, if the court finds that an additional equitable remedy beyond those available under subsection (g) of this section is justified by the equities, is consistent with the purposes of this Title, and is in the public interest. In weighing the equities and fixing the amount of any award under this paragraph, the court shall give due consideration, along with any other relevant equitable factors, to (i) the nature of compliance programs, if any, established by the employer to ensure that unlawful harassment does not occur in the workplace; (ii) the nature of procedures, if any, established by the employer for resolving complaints of harassment in an effective fashion; (iii) whether the employer took prompt and reasonable corrective action upon becoming aware of the conduct complained of; (iv) the employer’s size and the effect of the award on its economic viability; (v) whether the harassment was willful or egregious; and (vi) the need, if any, to provide restitution for the complaining party.

“(2) all issues in cases arising under this Title, including cases arising under section 703(a)(3) of this Title, shall be heard and determined by a judge, as provided in subsection (f) of this section. If, however, the court holds that a monetary award pursuant to paragraph (1) of this subsection is sought by the complaining party and that such an award cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which such award is sought, a jury may be empaneled to hear and determine such liability issues and no others. In no case arising under this Title shall a jury consider, recommend, or determine the amount of any monetary award sought pursuant to paragraph (1) of this subsection.”

(c) Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) (as amended by section 7 of this Act) is further amended by adding at the end the following sentence: “For purposes of actions involving harassment under section 703(a)(3) of this Title, the period of limitations established under this subsection shall be tolled during the time (not exceeding 90 days) that an employee avails himself or herself of a procedure established by the employer for resolving complaints of harassment.”

### SEC. 9. ALLOWING THE AWARD OF EXPERT FEES.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting “(including reasonable expert fees up to but not exceeding \$300 per day)” after “attorney’s fee”.

### SEC. 10. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection 717(c), by striking out “thirty days” and inserting in lieu thereof “ninety days”; and

(2) in subsection 717(d), by inserting before the period “, and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties”.

### SEC. 11. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) (as amended by section 10 of this Act) is further amended—

(1) in subsection 717(a), by striking “legislative and judicial branches” and inserting in lieu thereof “judicial branch”.

(2) in subsection 717(a), by striking "in the Library of Congress" and inserting in lieu thereof: "in the Congress of the United States, or its Houses, committees, offices or instrumentalities, or the offices of any of its Members".

(3) in subsection 717(b), by striking the last sentence and inserting in lieu thereof: "With respect to the Congress of the United States, its Houses, committees, offices, and instrumentalities, and the offices of its Members, authorities granted in this subsection to the Commission shall be exercised in each House of Congress as determined by that House of Congress, and in offices and instrumentalities not within a House of Congress as determined by the Congress."

(4) in subsection 717(c), by inserting, after "Equal Employment Opportunity Commission" each time it appears, ", or a congressional entity exercising the authorities of the Commission pursuant to subsection (b) of this section,".

#### SEC. 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where knowingly and voluntarily agreed to by the parties, reasonable alternative means of dispute resolution, including binding arbitration, shall be encouraged in place of the judicial resolution of disputes arising under this Act and the Acts amended by this Act.

#### SEC. 13. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provisions of this Act to other persons and circumstances, shall not be affected thereby.

#### SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon enactment. The amendments made by this Act shall not apply to any claim arising before the effective date of this Act.

### SECTION-BY-SECTION ANALYSIS

#### SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1991."

#### SECTION 2. FINDINGS AND PURPOSE

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in employment. The purpose of this Act is to strengthen existing protections and remedies in order to deter discrimination more effectively and provide meaningful relief for victims of discrimination.

#### SECTION 3. DEFINITIONS

Section 3 adds definitions to those already in Title VII.

The definition of "demonstrates" requires that a party bear the burden of production and persuasion when the statute requires that he or she "demonstrate" a fact.

The definition of the term "justified by business necessity" is meant to codify the meaning of business necessity as used in *Griggs v. Duke Power Co.*, 400 U.S. 424, 432 (1971), and subsequent cases including *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587 n. 31 (1979). Such a definition was reaffirmed by the Court in *Wards Cove Packing Co., Inc. v. Atonio*, 109 S. Ct. 2115, 2125-2126 (1989). Even the dissent in *Wards Cove* acknowledged that "Griggs made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if it serves a

valid business purpose." See 109 S. Ct., at 2129 (Stevens, J., dissenting) (emphasis added).

The terms "complaining party" and "respondent" are defined to include those persons and entities listed in the Act. The definition of the term "harass" is explained in the analysis of Section 8 below.

#### SECTION 4. DISPARATE IMPACT CLAIMS

In *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits hiring and promotion practices that unintentionally but disproportionately exclude persons of a particular race, color, religion, sex, or national origin unless these practices are justified by "business necessity." Law suits challenging such practices are called "disparate impact" cases, in contrast to "disparate treatment" cases brought to challenge intentional discrimination.

In a series of cases decided in subsequent years, the Supreme Court refined and clarified the doctrine of disparate impact. In 1988, the Court greatly expanded the scope of the doctrine's coverage by applying it to subjective hiring and promotion practices (the Court had previously applied it only in cases involving objective criteria such as diploma requirements and height-and-weight requirements). Justice O'Connor took this occasion to explain with great care both the reasons for the expansion and the need to be clear about the evidentiary standards that would operate to prevent the expansion of disparate impact, doctrine from leading to quotas. In the course of her discussion, she pointed out:

"[T]he inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. . . . [E]xtending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met." *Watson v. Fort Worth Bank & Trust Co.*, 108 S. Ct. 2777, 2787-2788 (1988) (plurality opinion).

The following year, in *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115, 2126 (1989), the Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. Resolving an ambiguity in the prior law, the Court placed the burden on the plaintiff.

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular employment practice and demonstrates that the practice has caused a disparate impact on the basis of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative employment practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and that the respondent refuses to adopt such alternative.

The burden-of-proof issue that *Wards Cove* resolved in favor of defendants is resolved by this Act in favor of plaintiffs. *Wards Cove* is thereby overruled. On all other issues, this Act leaves existing law undisturbed.

As Justice O'Connor emphasized in her *Watson* opinion, the use of disparate impact analysis creates a very real risk that Title VII will lead to the use of quotas. Indeed, there is evidence that the adoption of disparate impact analysis by the courts has led to the use of quotas, although the extent of this phenomenon is for obvious reasons not measurable. See e.g., Hearings on H.R. 1, "Civil Rights Act of 1991," before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 102d Cong., 1st Sess., February 7, 1991 (testimony of Assistant Attorney General John R. Dunne); Hearings on S. 2104, "Civil Rights Act of 1990," before the Committee on Labor and Human Resources, U.S. Senate, 101st Cong., 2d Sess., February 23, 1990 (testimony of Professor Charles Fried); Joint Hearings on H.R. 4000, "Civil Rights Act of 1990," before the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 101st Cong., 2d Sess., March 20, 1990, vol. 2, pp. 516, 625, 633 (testimony of Glen D. Nager, Esq.); *Fortune*, March 13, 1989, at 87-88 (reporting a poll of 202 CEOs of *Fortune* 500 and Service 500 companies, in which 18% of the CEOs admitted that their companies have "specific quotas for hiring and promoting"). The use of quotas, however, represents a perversion of Title VII and of disparate impact law. As the Court noted in *Griggs*, 401 U.S., at 431: "Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed."

Because of the serious dangers inherent in the use of disparate impact analysis, any codification of a cause of action under the disparate impact theory must include evidentiary safeguards recognized in Justice O'Connor's *Watson* opinion and in Justice White's opinion for the Court in *Wards Cove*. The codification adopted in Sections 3 and 4 of this Act does so, and it is vital that courts and employers construe this Act in a manner that neither makes it possible to defend or justify the use of employment quotas nor encourages their use.

If an ability test, for example, has a disparate impact and the test is not justified by business necessity as defined in Section 3 of this Act, the test should not be used. If business necessity can be shown, then the disparate impact need not be reduced or eliminated unless the complaining party demonstrates the availability of an alternative employment practice as required by Section 4 of this Act and the respondent refuses to adopt such alternative. In neither event is an employer required or permitted to adjust test scores, or to use different cut-offs for members of different groups, or otherwise to use the test scores in a discriminatory manner. Manipulating test results in such a fashion is not an alternative employment practice of the kind that an employer must adopt to avoid liability at the surrebuttal phase of a disparate impact case. On the contrary, such discrimination violates Title VII, whether practiced by an employer, an employment agency, or any other "respondent" as defined in Section 3 of this Act. Similarly, a discriminatory practice could not be defended until Title VII on the ground that the practice was necessary or useful in avoiding the possibility of liability under the disparate impact theory. *CF.* Civil Rights Act of 1964, sec. 703(j), 42 U.S.C. 2000e-2(j).

It should be noted that in identifying the particular employment practice alleged to cause disparate impact, it is not the inten-

tion of this Act to require the plaintiff to do the impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective standards constitutes a single particular employment practice susceptible to challenge.

This approach is consistent with *Wards Cove*, see 109 S. Ct., at 2125, and has been employed since *Wards Cove* in *Sledge v. J.P. Stevens & Co.*, 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). The *Sledge* court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's personnel officers reported having no idea of the basis on which they made their employment decisions. The court held that "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of *Wards Cove*." This Act contemplates that the use of such uncontrolled and unexplained discretion is properly treated, as it was in the *Sledge* case, as one employment practice that need not be divided by the plaintiff into discrete subparts.

#### SECTION 5. FINALITY OF JUDGMENTS OR ORDERS

In *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940) (citations omitted), the Supreme Court held:

It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States . . . prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require.

In *Hansberry*, Carl Hansberry and his family, who were black, were seeking to challenge a racial covenant prohibiting the sale of land to blacks. One of the owners who wanted the covenant enforced argued that the Hansberrys could not litigate the validity of the covenant because that question had previously been adjudicated, and the covenant sustained, in an earlier lawsuit, although the Hansberrys were not parties in that lawsuit. The Illinois court had ruled that the Hansberrys' challenge was barred, but the Supreme Court found that this ruling violated due process and allowed the challenge.

In *Martin v. Wilks*, 109 S. Ct. 2180 (1989), the Court confronted a similar argument. That case involved a claim by Robert Wilks and other white firefighters that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their challenge was barred because the City's promotion process had been sanctioned in a consent decree entered in an earlier case between the City and a class of black plaintiffs, of which Wilks and the white fire-fighters were aware, but in which they were not parties. The Court rejected this argument. Instead, it concluded that the Federal Rules of Civil Procedure required that persons seeking to bind outsiders to the results of litigation have a duty to join them as parties, see Fed. R. Civ. P. 19, unless the court certified a class of defendants adequately represented by a named defendant, see Fed. R. Civ. P. 23. The Court specifically rejected the defend-

ants' argument that a different rule should obtain in civil rights litigation.

This Section codifies that holding. Had the rule advocated by the City of Birmingham in *Wilks* been adopted in *Hansberry*, one judicial decree in one case between one plaintiff and one defendant would have prevented an attack on the racial covenant by anyone who had ever heard of the original case. That is not how the Federal Rules of Civil Procedure operate. And there is no reason why a different rule should be devised to prevent civil rights plaintiffs, as opposed to persons bringing all other kinds of cases, from bringing suit.

#### SECTION 6. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Under 42 U.S.C. 1981, persons of all races have the same right "to make and enforce contracts." In *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989), the Supreme Court held: "The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the 'mak[ing] and enforce[ment]' of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, [sec.] 1981 provides no relief."

As written, therefore, section 1981 provides insufficient protection against racial discrimination in the context of contracts. In particular, it provides no relief for discrimination in the performance of contracts (as contrasted with the making and enforcement of contracts). Section 1981, as amended by this Act, will provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example) or are dismissed or denied promotions because of race. In addition, the discriminatory infringement of contractual rights that do not involve employment will be made actionable under section 1981. This will, for example, create a remedy for a black child who is admitted to a private school as required pursuant to section 1981, but is then subjected to discriminatory treatment in the performance of the contract once he or she is attending the school.

In addition to overruling the *Patterson* decision, this Section of the Act codifies the holding of *Runyon v. McCrary*, 427 U.S. 160 (1976), under which section 1981 prohibits private, as well as governmental, discrimination.

#### SECTION 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 7 overrules the holding in *Lorance v. AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it 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 with the intention of altering their contractual 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 plaintiffs to file their complaint began to run when the employer adopted the 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 plaintiffs suffered the diminution in employment status about which they complained.

The rule adopted by the Court is contrary to the position that had been taken by the Department of Justice and the EEOC. It shields 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. At that time, the controversy between an employer and an employee can be focused more sharply.

In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced either to challenge the system before they have suffered harm or to remain forever silent. Given such a choice, employees who are unlikely ever to suffer harm from the seniority system may nonetheless feel that they must file a charge as a precautionary measure—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to.

Finally, the *Lorance* rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system would be unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing their employers.

This change in the law, therefore, is warranted. Indeed, it is necessary to safeguard the same principles upheld by the Supreme Court in *Martin v. Wilks*, 109 S. Ct. 2180 (1989), which guarantees civil rights complainants a fair opportunity to present their claims in court.

#### SECTION 8. PROVIDING FOR ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

This provision is designed to redress an anomaly in current law. Title VII prohibits discrimination in employment, but provides inadequate remedies for harassment in the workplace, including sexual harassment, which the Supreme Court has recognized as actionable under Title VII. see, e.g., *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986). Such harassment frequently will not be so intolerable that an employee subjected to it immediately leaves. In such circumstances, the only remedy the victim of harassment can obtain under Title VII's remedial scheme as currently drafted is declaratory and injunctive relief against continuation of the harassment.

Such a rule is plainly inequitable. It effectively tells employers that the only consequences of creating an environment so hos-

tile to an employee that he or she is forced to sue to obtain relief is a directive to refrain in the future. This defect must be corrected.

At the same time, Title VII's existing framework, with its emphasis on conciliation and mediation, has served the country well for more than a quarter of a century as a tool for combatting discrimination. It would be most unwise to jettison or rewrite this basic statute in favor of a tort-style approach including compensatory and punitive damages at a time when our tort system is widely recognized to be in crisis. President Bush has made it clear that our civil rights laws "should not be turned into some lawyer's bonanza, encouraging litigation at the expense of conciliation, mediation, or settlement."

Section 8 is designed to meet both of these concerns. It creates a new remedy for on-the-job harassment, allowing courts to make a monetary award in addition to granting declaratory and injunctive relief. The new remedy is available on the same terms for all forms of on-the-job harassment, whether based on race, color, religion, sex, or national origin.

The new remedy created by this Section is capped at \$150,000. Courts are directed to make a monetary award when an additional equitable remedy is justified by the equities, is consistent with the purposes of Title VII, and is in the public interest. In weighing the equities and determining the amount of any award, courts are instructed to consider the nature of compliance programs implemented by the employer; the nature of the employer's complaint procedures, if any, used to resolve claims of harassment; whether the employer took prompt and effective remedial action upon learning of the harassment; the employer's size and the effect of the award on its economic viability (so that the maximum award would be available only against very large and financially secure employers); whether the harassment was willful or egregious; and the need, if any, to provide restitution for the complaining party.

This Section allows a court to make a monetary award "up to but not exceeding a total of \$150,000." This language is intended to make clear that where there are several related incidents that could arguably be subdivided into distinct unlawful employment practices, the award that can be obtained under this new provision for all of them combined is limited to \$150,000. Otherwise, plaintiffs and their lawyers will have incentives to spend resources on hair-splitting litigation over how many unlawful employment practices have occurred. \$150,000 is a large enough amount to be an adequate and effective remedy for the type of conduct sought to be prevented, and no good purpose would be served by encouraging lawyers to use their inventiveness to circumvent the limitation of \$150,000.

The substantive definition of harassment set out in Section 3 of this Act makes it an offense for an employer or its agents to harass any employee because of race, color, religion, sex, or national origin. The term "harass" encompasses "the subjection of an individual to conduct that creates a working environment that would be found intimidating, hostile or offensive by a reasonable person." The definition also explicitly defines sexual harassment to include certain conduct involving unwelcome sexual advances. The definition is intended to codify current law as stated by the Supreme Court. See *Meritor Savings Bank, supra*, 477 U.S., at 66 ("Since the Guidelines were issued, courts have uni-

formly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.").

The new provisions of Title VII established in this Section are designed to deter and provide restitution for harassment, and to encourage employers to adopt meaningful complaint procedures to redress harassment and to encourage employees to use them. The employer will not be found liable if the complaining party failed to avail himself or herself of an effective complaint procedure. In determining the appropriate remedy, moreover, courts will consider whether an employer took prompt and effective remedial action. The effect of these requirements will be to encourage preventive measures and prompt remedial action by employers and to minimize litigation, thus maximizing the speed and efficacy of relief.

This provision of the Act protects employers from liability only when they have established a procedure "for resolving complaints of harassment in an effective fashion within a period not exceeding 90 days." Procedures under which victims of harassment are required to seek relief from the same supervisor who has engaged in the harassing conduct, or under which victims would otherwise reasonably expect their complaints to result in retaliation against them rather than in a fair investigation and effective resolution of their complaint, will not insulate the employer from liability. The new provisions of Title VII allow an employee, moreover, to petition a court for emergency relief, and they provide that the continued suffering of harassment shall be assumed to be sufficient irreparable harm to warrant judicial relief, whether or not the employee has fully exhausted a complaint procedure, so long as the employee has initiated a complaint.

This Section includes a provision reaffirming that Congress intends all issues to be decided by judges, as has always been the case under Title VII. Such a provision is important in avoiding the creation of an inefficient tort-style litigation system that is foreign to the purposes of employment law. Because the courts have relatively limited experience with harassment cases, because particular cases will undoubtedly raise issues requiring clarification, and because employers therefore require the information contained in written judicial opinions to assist them in conforming their conduct with the law, it is particularly important to avoid a profusion of unexplained and inconsistent jury verdicts if possible.

Because the monetary relief authorized in these amendments to Title VII is characterized as equitable, the courts should find that bench trials are consistent with the Seventh Amendment. Because the question of constitutionality is not free from doubt, however, this Section 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 the courts conclude that the Seventh Amendment requires a jury trial on liability. See *Tull v. United States*, 107 S. Ct. 1831 (1987).

#### SECTION 9. ALLOWING THE AWARD OF EXPERT FEES

Section 9 authorizes the recovery of expert witness fees (up to but not exceeding \$300 per day) by prevailing parties according to the same standards that govern awards of attor-

ney fees under Title VII. Cf. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987). The provision is intended to allow recovery for work done in preparation for trial as well as after trial has begun, with the cap applying to each witness.

#### SECTION 10. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

Section 10 extends the period for filing a complaint against the Federal government pursuant to Title VII from 30 days to 90 days. It also authorizes the payment of interest to compensate for delay in the payment of a judgment according to the same rules that govern such payments in actions against private parties.

#### SECTION 11. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES

Section 11 extends the protections of Title VII to congressional employees on the same basis that they extend to Executive branch employees. The Executive branch, like private employers and state and local governments, is forbidden by law to discriminate on the basis of race, color, religion, sex, or national origin. The Congress, however, has exempted itself from the law. President Bush has stated that Congress "should live by the same requirements it prescribes for others" and that Congress "should join the Executive branch in setting an example for these private employers."

In addition to setting a helpful example, and providing congressional employees with the same rights enjoyed by other Americans, coverage under Title VII will provide the Congress with the valuable experience of living under the same rules that it imposes on other employers. This experience should prove useful in encouraging the Congress to give prompt and serious consideration to proposals for improving the law and enabling the Congress to resist ill-considered proposals—like the bill that President Bush vetoed on October 22, 1990—that would undermine the cause of civil rights and impose completely unjustified burdens on the employers of this nation.

It should be emphasized that this Section allows the Congress to create its own internal mechanisms for enforcing Title VII in the legislative branch. Like Executive branch employees, congressional employees would retain the right to judicial relief, but the Executive branch would have absolutely no role in enforcing Title VII against the Congress. For that reason, any objection to this Section on separation-of-powers grounds would not be well-founded.

#### SECTION 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This provision encourages the use of alternative means of dispute resolution, including binding arbitration, where the parties knowingly and voluntarily elect to use these methods.

In light of the litigation crisis facing this country and the increasing sophistication and reliability of alternatives to litigation, there is no reason to disfavor the use of such forums.

#### SECTION 13. SEVERABILITY

Section 13 states that if a provision of this Act is found invalid, that finding will not affect the remainder of the Act.

#### SECTION 14. EFFECTIVE DATE

Section 14 specifies that the Act and the amendments made by the Act take effect upon enactment, and will not apply to cases arising before the effective date of the Act.

OFFICE OF THE ATTORNEY GENERAL,  
Washington, DC, March 1, 1991.

Hon. J. DANFORTH QUAYLE,  
President of the Senate,  
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: I am pleased to transmit a legislative proposal to make several significant improvements in our Nation's employment discrimination laws, along with a section-by-section analysis explaining the proposal. This bill reflects the President's longstanding commitment, recently reaffirmed in his State of the Union Address, to strengthening the legal tools designed to eliminate the intolerable blight of discrimination from our society. This package will accomplish the four major objectives the President set out in his address to civil rights leaders on May 17, 1990.

First, as the President has said, any civil rights bill must "operate to obliterate consideration of factors such as race, color, religion, sex, or national origin from employment decisions." Under this proposal, employers will be encouraged and required to provide equal opportunity for all workers without resorting to quotas or other unfair preferences. The bill codifies a cause of action for "disparate impact," as recognized in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), which outlawed certain practices that unintentionally but disproportionately exclude individuals from certain jobs because of their race, color, religion, sex, or national origin. With respect to these "disparate impact" cases, the bill places the burden of proof on the employer to demonstrate "business necessity," thereby overruling a contrary ruling in *Wards Cove Packing Co. v. Antonio*, 109 S. Ct. 2115 (1989).

The bill greatly expands the prohibition against racial discrimination in the performance of contracts under 42 U.S.C. 1981, and overturns the decision in *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989). In addition, this proposal amends Title VII to eliminate a need less and unfair limitation on the time for filing challenges to discriminatory seniority systems, overruling *Lorance v. AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989). Similarly, in the interest of ensuring that legitimate claims can be pursued, the bill extends the time for filing a Title VII claim against the Federal government from 30 to 90 days.

The bill also permits the courts to make awards to prevailing parties for the fees of expert witnesses, and authorizes the award of interest in actions against the Federal government on the same terms on which such awards are available against other parties.

The second requirement established by the President is that a bill must "reflect fundamental principles of fairness that apply throughout our legal system." Accordingly, this bill expressly provides that the Federal Rules of Civil Procedure shall apply in determining who is bound by an employment discrimination decree, must as they apply in other civil causes of action. This provision ensures that the standard rules of joinder and intervention will operate to give all victims of illegal discrimination a fair opportunity to protect their constitutional and civil rights in court.

The third essential element of a civil rights bill is a provision to ensure that Federal law provides an adequate deterrent against sexual harassment in the workplace. Under current law, the only judicial remedy for many cases of such harassment is a directive to refrain from such conduct in the future. This cannot provide adequate deter-

rence. In order to rectify this shortcoming, the bill makes available new monetary remedies for the victims of illegal harassment under Title VII.

The President has also insisted, however, that our civil rights laws not be "turned into some lawyer's bonanza, encouraging litigation at the expense of conciliation, mediation, or settlement." Accordingly, this proposal for the creation of a new monetary remedy under Title VII provides for bench trials, and it caps the monetary award at \$150,000. The bill also includes special incentives for employers to develop and implement meaningful internal complaint procedures for harassment claims, while allowing employees to obtain emergency relief from the courts when employers fail to respond quickly and effectively to complaints of illegal behavior. More generally, the bill encourages the use of alternatives to litigation in resolving disputes under our civil rights laws.

Fourth, the President has said that the Congress should live by the same requirements it prescribes for others. Accordingly, this bill eliminates the congressional exemption from Title VII of the Civil Rights Act of 1964, and gives congressional employees the same fundamental protections that employees of the Executive branch have enjoyed for many years. The bill gives the Executive no role in enforcing the law against the Congress, allowing the Congress to establish its own mechanisms for enforcement. Congressional employees, like employees of the Executive branch, will be able to maintain a private right of action upon exhaustion of their administrative remedies.

Finally, the President has observed that the Congress must also take action in other areas to enhance equal opportunity. The elimination of employment discrimination, which is the aim of this bill, will have little meaning unless jobs are available and individuals have the skills and education needed to fill them. Nor can we expect young people to achieve their full potential if they grow up in neighborhoods and schools permeated by violence, drugs, and hopelessness. The Administration is proposing several initiatives to enable individual Americans to claim control over their own lives and futures. Enactment of those initiatives, along with this bill, will achieve real advances for the cause of equal opportunity.

Very truly yours,

DICK THORNBURGH,  
Attorney General.

Mr. HATCH. Mr. President, I am pleased to cosponsor the administration's civil rights bill. We can enact true equal opportunity legislation without creating incentives to hire and promote by quota, without stripping some innocent Americans of their right to a day in court to have their equal protection and statutory civil rights claims heard, and without providing a bonanza for lawyers.

I am pleased that the bill overturns the *Lorance v. AT&T Technologies, Inc.*, 109 S.Ct. 2261 (1989) decision and the *Patterson v. McLean Credit Union*, 109 S.Ct. 2363 (1989) decision. In *Lorance*, the Court ruled that an employee challenge to a seniority system pursuant to title VII 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 discrimination occurred at the adoption of a facially neutral seniority system which was allegedly selected for the purpose of discriminating against women. As such, the Court ruled all challenges to that system had to be made within 180 days of its adoption or they would be barred. The administration's bill eliminates this shield against these legitimate discrimination claims. Section 7 of the bill preserved title VII claims in such cases until after the "person aggrieved is injured by the application of the seniority system."

In *Patterson*, the Court construed section 1981, which bans racial discrimination in contracts, to apply only to the formation and enforcement of contracts, not to racial discrimination in the terms and conditions of the contract, such as racial harassment on the job which does not lead to dismissal. Section 6 of the administration's bill allows section 1981 claims to be based on "the making, performance, modification and termination of contracts." This section protects the employee's "enjoyment of all benefits, privileges, terms and conditions of the contract," thus overturning *Patterson* and barring, inter alia, racial harassment.

The administration's bill also adds to title VII an effective remedy for sexual and other harassment on the job. Under title VII, in certain circumstances the only remedy available for illegal harassment in the workplace is declaratory and injunctive relief against continuation of the harassment. Section 8 of the administration's bill makes available new monetary remedies for victims of illegal harassment under title VII.

These are very important and worthy provisions which we should enact. I commend the President for pressing for these changes.

With respect to the bill's provisions on the *Wards Cove v. Antonio* 109 S.Ct. 2115 (1989) decision, which I believe was correctly decided and is consistent with *Griggs v. Duke Power Company*, 401 U.S. 424 (1971), I have one reservation. I do not believe it is appropriate to shift the burden of persuasion to the employer once the plaintiff establishes a prima facie case of disparate impact for the reasons I set forth at length during last year's debate this year.

I do believe, however, this bill contains many worthy features and I want to associate myself with those provisions.

Mr. MCCAIN. Mr. President, Congress has a duty, prescribed over 200 years ago by our Founding Fathers, to further the cause of equality in our Nation, and make the American dream equally available to all. I believe that Congress has done an admirable, albeit sometimes inexcusably slow, job in fulfilling this mandate. However, Mr. President, we must do more. We must be tolerated.

This task is not taken lightly, and it is not always popular. However, I believe that Congress must act to advance the concepts of social and economic justice, even when the majority of society may not like them. I have consistently fought hard to maintain that goal, as when I voted to override former President Reagan's veto of the Civil Rights Restoration Act, and when I authored one of the main titles of the Americans With Disabilities Act.

Mr. President, a good example of the difficulties we encounter in trying to resolve these problems legislatively are the employer sanctions provisions included in the last reform of our immigration laws. I strongly favor repealing employer sanctions. Congress clearly made a mistake when it passed that law. Employer sanctions have resulted in a disparate impact on Hispanics. In my home State of Arizona there is a large population of Hispanic people who reside there legally. The case is clear, however, that employer sanctions have encouraged employers to reject Hispanic job applicants for fear they will be found to be illegal aliens. The unfortunate result is higher unemployment rates among Hispanics, and we in Congress have an obligation to rectify this situation which we created.

The example of employer sanctions serves yet another purpose Mr. President. It graphically demonstrates that our Nation must never give up our fight for equal rights. If we for but 1 minute allow our attention to wane, we will be plagued by new forms of discrimination and inequality. For this reason, I also support modifying some of the recent Supreme Court decisions.

Specifically, the decision of the Court in the Wards Cove case is incorrect. For that reason, I support returning to the standards established in *Griggs versus Duke* (1971) and reaffirmed in *New York City Transit Authority versus Beazer* (1979). Additionally, I believe that we must provide remedies for harassment in the workplace due to race, color, religion, sex, disability, or national origin. For this reason, I am proud to cosponsor Senator DOLE's Civil Rights Act of 1991.

I strongly support title VII of the Civil Rights Act of 1964, and this legislation will serve to strengthen that landmark measure. Society must be color blind in its application of law and in its offering of opportunities. Unfortunately, some legislation that has been introduced, specifically H.R. 1, does not further that goal. Nobody should be discriminated against because of race, sex, religion, or ethnic origin, and that is what title VII prohibits. However, H.R. 1, by its authors' own admission to the *New York Times*, went considerably beyond this, and would have effectively required employers to institute quotas in their hiring practices, and I cannot support that. Mr. President, quotas simply le-

gally sanction certain types of discrimination, and that is wrong.

Justice William O. Douglas made good sense when in commenting on our laws and hiring programs, he said that a university's law school admission system, "cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish."

It is unjust to discriminate against a person who is innocent of discrimination to advance another racial or ethnic person who was not discriminated against. When our laws either tolerate or require discrimination of any kind against citizens innocent of discrimination themselves, we are not serving justice, and we invite disrespect of law and tension in our society.

Mr. President, we need new civil rights legislation. We must ensure, however, that we do not repeat the mistakes of the past. To be exact, we need good civil rights legislation—legislation that will truly address the needs of America's diverse population without creating a litany of new problems. Our Nation is only as great as her citizens make her, and Americans have made our country the torchbearer of freedom, a country for all others to hold in esteem. This legislation will further that goal, and I hope for its quick passage.

By Mr. BENTSEN (for himself, Mr. ROTH, Mr. MITCHELL, Mr. FORD, Mr. PRYOR, Mr. DASCHLE, Mr. INOUE, Mr. ROBB, Mr. COCHRAN, Mr. KASTEN, Mr. NICKLES, Mr. LOTT, Mr. BAUCUS, Mr. HEINZ, Mr. BOREN, Mr. SYMMS, Mr. RIEGLE, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. ADAMS, Mr. AKAKA, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MACK, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. NUNN, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. RUDMAN, Mr. SANFORD, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, and Mr. WELLSTONE):

S. 612. A bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes; to the Committee on Finance.

SAVINGS AND INVESTMENT INCENTIVE ACT OF 1991

Mr. BENTSEN. Mr. President, I rise, along with my distinguished colleague, the Senator from Delaware, Mr. ROTH, and 73 other cosponsors to bring back the individual retirement account—the IRA. We want to bring it back for all Americans. In fact, the bill is going to improve on the traditional retirement IRA. It is going to improve the IRA in a number of ways to make it an even more powerful tool for savings in this country.

The bill will provide every American with the option to choose between tax deductible contributions to a traditional IRA or contributions to a new type of IRA. Contributions to the new type of IRA would not be tax deductible, but all interest that is earned would come back tax free.

The bill also expands on the usefulness of the IRA by letting people use their IRA's, to save for college education, first home purchases, and financially devastating medical expenses.

The new options will give individuals greater flexibility to choose the savings vehicle that best suits their particular needs.

Why do we have to bring back the IRA? First, history shows that the underlying strength of America is the kind of economic growth that creates prosperity and opportunity for all of our people. The key to maintaining that kind of economic growth is savings. And the IRA helps stimulate savings. Today personal savings in this country is at an all time low—the lowest of any of our major economic competitors. In 1990 American consumers saved less than 5 cents out of every dollar earned. Compare that to Japan, where it is 16 cents on the dollar.

Related problem we are facing in this country is a real capital crunch. As we enter the 1990's, you are seeing a difference from the situation which prevailed through most of the last decade. In the 1980's, we were able to finance our debts and our budget deficits by the Japanese and others buying our securities. Now they are seeing serious real estate valuation problems in Japanese banks and problems in the Japanese real estate market generally. There are also problems in the Japanese stock market. In turn, West German capital, is being diverted into East Germany. And then, of course, the devastation that has occurred in the Persian Gulf, and the cost of its repair will also draw capital away from the United States.

So once again we are looking at a situation where there is going to be less capital available to build those new plants, to increase productivity, to lower the trade deficit, and to keep America more competitive in the world economy.

One of the things that can help turn that around is a restoration of the IRA. People understand the IRA. They like it, they will save in it, and they will invest through it.

In 1981, when we put in the full deductibility of the IRA, and expanded its utilization, IRA savings went up 700 percent. In 1987, when the full deductibility of the IRA was cut back, we saw a steep drop in the personal savings rate in this country. Ever since that time we have seen savings rates in this country 25 percent below the levels that prevailed in the early 1980's.

You hear a few economists yet who still say that IRA contributions are a shift of existing savings, but they are looking at old data. New studies by Dr. David Wise of Harvard's Kennedy School, Dr. Steven Venti of Dartmouth, Dr. Jonathan Skinner of University of Virginia, and others show that the IRA worked at increasing savings. Since the IRA was cut back as a part of the 1986 Tax Reform Act, we saw enrollments drop by over 60 percent. We saw contributions drop by close to 70 percent.

In the last Congress at hearings in the Finance Committee, Dr. Lawrence Summers of Harvard testified that the cutbacks in IRA eligibility in 1986 caused many families that still remained eligible for IRA's to stop putting their money in. According to Dr. Summers, we saw a 40-percent decrease in participation by those persons who still remained eligible. I think one of the principal reasons was because you had a great barrage of publicity—advertising that came along around April 15—that had everyone thinking about savings, thinking about IRA's and the \$2,000 deduction they would get.

When all of that advertising stopped, you saw people turn their minds to other things. They cut back on the amount they saved for the future.

There is another reason we have to bring back the IRA. Americans are living longer. With longer periods in retirement, they will have to save more money to ensure a financially secure retirement. The Federal Government ought to be encouraging people to save, and the IRA is a proven tool to do it.

In addition, the expanded Bentsen-Roth IRA will encourage savings not only for retirement but also for two of the biggest investments people have to make in their lifetimes: their first home and college education.

Why not let the people make penalty-free withdrawals from their IRA accounts and similar section 401(k) and 403(b) plans for these specific purposes? Encouraging these savings is critical to ensuring that our children can afford to go to college. For a child born today, average college costs are expected to go to \$200,000 for 4 years at a private university and \$60,000 for public schools. Yet most Americans who expect their children to attend college

save little or nothing for that purpose. The Bentsen-Roth bill would help people use the IRA to help save for college and vocational school expenses.

People do try to save for that first home, but they find themselves in a cycle they just cannot break. Housing costs go up faster than their income and many younger Americans can never put aside enough money for the down payment.

The Bentsen-Roth bill would help young couples use the tax advantages of the IRA to open the door to that first home. The bill will also allow parents and grandparents to tap their IRA funds to help their children and grandchildren buy a first home. That makes sense, and I thank my colleague from Michigan, Senator LEVIN, for his consistent support of that proposal.

Finally, health care costs today are almost 2½ times as high as they were at the start of the 1980's. With medical costs rising faster than paychecks, typical Americans find it very difficult to hold onto their health insurance to take care of a catastrophic illness that might come along.

This bill would give people access to their IRA balance in an emergency. I think having that access will also make it more likely they will put that money aside in the first place, thus increasing savings.

There are no easy, painless answers to tough problems like high interest rates, high costs of education, housing and health care. But the newly expanded IRA can help in every instance. It will give Americans a flexible tool to save for a better tomorrow.

I know the key question that has become constant to every new idea in Government is, What will it cost? In the long run, it is going to make profit for America. It is going to build those new plants. It is going to increase income. It will result in more taxes finally being collected. But in the short term, yes, there will be a net cost, and we will pay for it.

As chairman of the Finance Committee, it is my policy to pursue only legislation that will not increase the deficit. So we are in the process of getting precise, credible cost estimates for this bill and we are developing the options to meet those costs without adding to the deficit. It will not be easy; it never is; but we will get it done.

I am pleased that so many of my colleagues on both sides of the aisle have already joined us in supporting the Bentsen-Roth IRA, now three-fourths of the Senate. I am going to call hearings in the Finance Committee very soon because I want to begin work as soon as possible on the job of enacting this important legislation. It is time that we took the IRA out of retirement and put it back to work helping Americans save for the future. The IRA allows people to invest in America's future at the same time they are invest-

ing in their own, and that is a gain for all Americans.

Mr. President, both the Senator from Delaware and I have been working on incentives for savings for many a year. I commend my colleague for the work that he has done in the past and am delighted to be working with him today on this important legislation.

I ask unanimous consent that the text of the bill and a brief summary thereof be printed in the RECORD.

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

S. 612

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) **SHORT TITLE.**—This Act may be cited as the "Savings and Investment Incentive Act of 1991".

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**TITLE I—RETIREMENT SAVINGS INCENTIVES**

**Subtitle A—Restoration of IRA Deduction**  
**SEC. 101. RESTORATION OF IRA DEDUCTION.**

(a) **IN GENERAL.**—Section 219 (relating to deduction for retirement savings) is amended by striking subsection (g) and by redesignating subsection (h) as subsection (g).

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) Subsection (f) of section 219 is amended by striking paragraph (7).

(2) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(3) Section 408(c) is amended by adding at the end thereof the following new paragraph:

"(5) **TERMINATION.**—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 1990."

(4) Subsection (b) of section 4973 is amended by striking the last sentence.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

**SEC. 102. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.**

(a) **IN GENERAL.**—Section 219, as amended by section 101, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) **COST-OF-LIVING ADJUSTMENTS.**—

"(1) **IN GENERAL.**—If this subsection applies to any calendar year, then each applicable dollar amount for any taxable year beginning in the adjustment period for such calendar year shall be equal to the sum of—

"(A) such applicable dollar amount for taxable years beginning in such calendar year, plus

"(B) \$500.

"(2) **YEARS TO WHICH SUBSECTION APPLIES.**—This subsection shall apply to any calendar year if the excess (if any) of—

"(A) \$2,000, increased by the cost-of-living adjustment for such calendar year, over

"(B) the applicable dollar amount in effect under subsection (b)(1)(A) for such calendar year,

is equal to or greater than \$500.

“(3) COST-OF-LIVING ADJUSTMENT.—For purposes of this subsection—

“(A) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

“(i) the CPI for such calendar year, exceeds

“(ii) the CPI for 1991.

“(B) CPI FOR ANY CALENDAR YEAR.—The CPI for any calendar year shall be determined in the same manner as under section 1(f)(4).

“(4) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection, the term ‘applicable dollar amount’ means the dollar amount in effect under any of the following provisions:

“(A) Subsection (b)(1)(A).

“(B) Subsection (c)(2)(A)(i).

“(C) The last sentence of subsection (c)(2).

“(5) ADJUSTMENT PERIOD.—For purposes of this subsection, the term ‘adjustment period’ means, with respect to any calendar year to which this subsection applies, the period—

“(A) beginning on the 1st day of the calendar year following such calendar year, and

“(B) ending on the last day of the next calendar year to which this subsection applies.”

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking “in excess of \$2,000 on behalf of any individual” and inserting “on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)”.

(2) Section 408(b)(2)(B) is amended by striking “\$2,000” and inserting “the dollar amount in effect under section 219(b)(1)(A)”.

(3) Section 408(j) is amended by striking “\$2,000”.

**Subtitle B—Nondeductible Tax-Free IRAs**

**SEC. 111. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.**

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

**“SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.**

“(a) GENERAL RULE.—Except as provided in this section, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

“(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term ‘special individual retirement account’ means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

“(c) TREATMENT OF CONTRIBUTIONS.—

“(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

“(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

“(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

“(B) the amount so allowed.

“(3) ROLLOVER CONTRIBUTIONS.—

“(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless such contribution consists of a payment or distribution out of another special individual retirement account.

“(B) COORDINATION WITH LIMIT.—A rollover contribution shall not be taken into account for purposes of paragraph (2).

“(d) TAX TREATMENT OF DISTRIBUTIONS.—

“(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

“(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

“(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

“(B) CROSS REFERENCE.—

“**For additional tax for early withdrawal, see section 72(t).**

“(C) ORDERING RULE.—

“(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

“(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

“(II) then from other contributions (and earnings allocable thereto) in the order in which made.

“(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

“(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

“(iv) CONTRIBUTIONS IN SAME YEAR.—Under regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

“(3) ROLLOVERS.—

“(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred to another special individual retirement account.

“(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred from another special individual retirement account shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the account from which transferred.”

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t), as amended by section 201(c), is amended by adding at the end thereof the following new paragraph:

“(8) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

“(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

“(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A).

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end thereof the following new sentence: “For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219

shall be computed without regard to section 408A.

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

“Sec. 408A. Special individual retirement accounts.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

**TITLE II—PENALTY-FREE DISTRIBUTIONS**

**SEC. 201. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES OR TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

“(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii)—

“(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)); or

“(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year.”

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—Section 72(t)(3)(A) is amended by striking “(B)”.

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraphs:

“(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

“(A) IN GENERAL.—The term ‘qualified first-time homebuyer distribution’ means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the child or grandchild of such individual.

“(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term ‘qualified acquisition costs’ means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

“(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

“(i) FIRST-TIME HOMEBUYER.—The term ‘first-time homebuyer’ means any individual if such individual (and if married, such individual’s spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

“(ii) PRINCIPAL RESIDENCE.—The term ‘principal residence’ has the same meaning as when used in section 1034.

“(iii) DATE OF ACQUISITION.—The term ‘date of acquisition’ means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, the requirements of subparagraph (A) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or distributions for qualified higher education expenses (as defined in section 72(t)(7)) are made, and"

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or for the payment of qualified higher education expenses (as defined in section 72(t)(7))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after the date of the enactment of this Act.

#### BENTSEN-ROTH IRA

##### MAKE DEDUCTIBLE IRA'S AVAILABLE TO ALL AMERICANS

Under the Bentsen-Roth proposal, all Americans would once again be eligible for fully deductible IRAs.

Under current law, only those who are not covered by any other pension arrangement and those with incomes under \$25,000 for individuals and \$40,000 for married couples are allowed to fully deduct IRA contributions. Annual IRA contributions cannot exceed \$2,000 per individual. The \$25,000 and \$40,000 income thresholds are not indexed for inflation with the result that fewer and fewer Americans are eligible for IRAs each year.

#### PROVIDE TAXPAYERS WITH ANOTHER IRA OPTION

Each individual would have the option of contributing \$2,000 per year either to a traditional IRA or to a new type of IRA. The individual could contribute the full \$2,000 to either type of account or could allocate any portion of the \$2,000 limit to the different accounts (e.g., \$1,000 to a traditional IRA and \$1,000 to the new type of IRA). The \$2,000 limit would also be indexed to reflect inflation.

Contributions to the new type of IRA would not be tax deductible, but if the assets remained in the account for at least 5 years all income would be tax-free when it is withdrawn. A 10% penalty would also apply to earnings withdrawn within the first 5 years.

#### PENALTY-FREE IRA WITHDRAWALS FOR FIRST-TIME HOMEBUYERS, EDUCATION EXPENSES AND FINANCIALLY DEVASTATING MEDICAL EXPENSES

The Bentsen-Roth IRA proposal would provide exemptions from the 10% penalty tax for withdrawals which are used to buy a first home, to pay educational expenses or to defray financially devastating medical expenses.

Under current law, withdrawals from IRAs are generally subject to a 10% penalty if made prior to age 59½. There are no exceptions to this 10% penalty for withdrawals used for first-time home purchases, higher education expenses, or medical expenses.

Young couples, their parents or their grandparents could draw down IRAs to pay for first-time home purchases without paying the 10% penalty tax for early withdrawals.

Parents or grandparents could draw down IRAs without penalty to pay for the education of their child or grandchild. High school students with part-time jobs could put their earnings into a tax-favored IRA and withdraw the money later for college tuition without penalty. An individual wanting to go back to school after a few years in the work force could use the IRA to save for anticipated education expenses.

Individuals with medical expenses (for themselves or their dependents) in excess of 7.5% of their income could make penalty-free withdrawals to help cover those expenses.

#### PENALTY-FREE WITHDRAWALS FROM 401(K) AND 403(B) PLANS FOR FIRST HOME PURCHASES AND EDUCATIONAL EXPENSES

Under the Bentsen-Roth bill, employees could make penalty-free withdrawals of their own contributions to 401(k) and 403(b) plans to assist with first-home purchase or educational expenses. These rules would be similar to the expanded rules provided for IRAs. Penalty-free withdrawals from 403(b) and 401(k) plans for high medical expenses are already permitted.

Section 401(k) and 403(b) plans are employer-provided retirement plans that allow employees to make tax-free contributions out of their paychecks. Under current law, once an employee makes a contribution to a 401(k) or 403(b) plan, withdrawals are generally subject to a 10% penalty tax similar to that applied to early withdrawals from IRAs.

#### SUPER IRA

Mr. ROTH. Mr. President, it is, indeed, an honor and a privilege for me to join our distinguished chairman, Senator BENTSEN, today, to announce the introduction of a granddaddy of an IRA plan, with wide bipartisan support, both on the Finance Committee and in the Senate. This is a matter that has been of great interest to both of us

down through the years. I think by our bipartisan approach, we have an opportunity to move this country ahead.

Mr. President, as early as the late seventies, throughout the eighties, and now into the nineties, I have realized the tremendous need for the IRA. I promoted it in 1981, tried to save it in 1986 and, indeed, am heartened by the prospect of this legislation. Bentsen-Roth is a bill that we have worked long and hard to achieve, a bill that I believe is extremely well-conceived and one that promotes the two most important concerns facing us today: the family and the future of our economy.

Never have these two concerns been more important than they are right now—at a time when the family is being recognized, once again, as the most valuable unit of our society, and when the global community is redefining the nature of superpowers, not by the strength of their arms, but by the strength of their economies.

It is clear Congress not only understands these changes, and what they represent to the future of our country, but is willing to advance—in a strong bipartisan way—this proposal that addresses the needs of the changing environment.

You see, what sets this bill apart from other efforts in other years to restore the IRA is the fact that almost everyone seems to be working together this time. The fact that 71 Senators, including 13 on the Finance Committee, have joined together makes the passage of this legislation much more likely this year.

I believe this growing consensus demonstrates that Members are in agreement concerning the fact that if America is to compete in the emerging global community—if we are to have jobs and security for our families here at home—Americans must increase their rate of savings.

Congress understands that the issue of savings in this country has reached crisis proportions. The Chairman of the Federal Reserve, Alan Greenspan, recently told the Senate Banking Committee that the single most important long-term economic issue for America is that of national savings.

I believe it is the responsibility of Congress to make the job of saving as attractive as possible for the American family. And I strongly believe that the Tax Code is the best way to increase the national savings trade.

We all know the statistics: The Japanese save at a rate approximately four times that of our countrymen, largely—I believe—because of tax incentives they enjoy that encourage savings.

Japan has the highest personal saving rate among advanced nations. Consequently, that country enjoys ample funds needed to finance capital investment in the best and most productive equipment. That country's businesses and workers have the most advanced

tools available in the global marketplace.

Meanwhile, the U.S. Government levies a heavy tax burden on saving and capital. Though the American economy has many strengths, our tax policy hampers our ability to compete with the advantages offered by Japan. Our punitive antisavings and anti-investment Tax Code is crippling our competitiveness at a turning point in economic history.

We must remember that we cannot tax ourselves into prosperity. By suppressing saving and capital investment now, we are crippling our economy for the challenges of the future.

To reverse this process, one of the most important questions we must answer is how to encourage Americans to save more. And frankly, I believe the Bentsen-Roth bill provides a significant part of that answer.

This bill has been crafted not only to encourage those who traditionally save, but to bring new savers into the act.

This bill recognizes that there are other important reasons for Americans to save long term, besides the pressing economic needs of our country and the savers' respective needs for retirement.

For example, our young people today are finding an almost impossible time scraping together a downpayment for that first home. Our families are finding it more difficult to save for their children's college education. And, our older Americans are worrying about their security as retirement approaches, not to mention the escalating costs associated with health care.

Given these basic—but most important—necessities, the best answer to meet our savings needs is a bill that allows Americans to save for what they need most. And that is the approach that Senator BENTSEN and I have taken in drafting this legislation. This legislation allows savers the chance to use the IRA to help them pay for a college education, buy their first home or pay for financially strapping health costs.

Under these three conditions, the IRA savings can be withdrawn penalty free, and the best part is that is multi-generational in approach. In other words, grandparents, parents, and children can use their IRA savings to look after each other. The grandparents can help with the education of grandchildren.

Grandchildren can withdraw penalty free to provide health care for their dependent grandparents.

Parents can help with the first-time home purchases of their children, as well as use their IRA's to pay for college.

By allowing Americans the ability to withdraw IRA savings—savings once reserved for retirement only—for these additional purposes, without a penalty for early withdrawal, we have greatly enhanced the flexibility of the IRA and

strongly encouraged Americans to put more savings away.

This is what real "Empowerment" is all about—empowerment for the family—empowerment because once again Americans can save for their own, and their family's own, self-reliance.

As I mentioned earlier, this new IRA offers a renewed opportunity to increase America's competitiveness in the emerging global economy. It is an opportunity borne by the fact that savings equal investment, investment equals jobs, and jobs equal a strong, vibrant economy. It has been estimated that after the first year this legislation is enacted, IRA deposits will increase to as much as \$40 billion.

This represents long-awaited capital that the U.S. needs for investment, manufacturing, education, infrastructure, and other important goals.

With a Japanese savings rate of about four times the United States rate, and a cost of capital of about one-fourth that of the United States, it is no wonder that we are lagging behind in the international race to compete in the world.

Added savings of \$40 billion and more from increasing annual IRA deposits is likely to be the best solution. And do not forget the benefit to the already weakened financial infrastructure in this country. The estimated deposits in U.S. banks in the first year alone from this legislation would be about \$16 billion—money needed to provide productive loans and investment in this country for years to come.

Perhaps with the added savings from IRA's we can further our own investment in the United States rather than U.S. investments by foreign countries.

In fact, in recent years, over half of net domestic investment has been financed by capital from abroad. While this foreign saving has contributed to U.S. economic growth over the years, we are beginning to see why continued reliance on these inflows is not a viable policy.

Over long periods, for advanced countries, the rate of domestic investment tracks closely the supply of domestic saving. Ultimately, the United States must move from a position of current account deficit to surplus and capital outflow, as foreigners receive the returns on their investment in the United States. If that is to happen without a relative reduction in U.S. living standards, U.S. productive capacity must be increased and so must U.S. savings.

It is clear to see why Bentsen-Roth is a bill whose time has come. However—once again—the most important reason to pass it is to meet the needs of the most basic unit of our society. It is time we get back to the family. Only by allowing American families the opportunity—and even the right—to strengthen themselves can we expect society to be strengthened as a whole.

We have tried to work around this elementary truth for years now—some thinking that Government programs can replace the basic family unit.

Fortunately, we have come full circle—back to the understanding that it was family and community values that built a strong America, and it will be those same values that ensure a bright and prosperous future.

Mr. HEINZ. Mr. President, I am pleased to join a majority of my colleagues today in cosponsoring legislation designed not only to reinstate pre-1986 tax treatment of individual retirement accounts [IRA's], but to improve them as well. This bill addresses a problem that has concerned me for some time—the continually declining savings rate in this country.

According to the Department of Commerce Bureau of Economic Analysis—national income accounts—net private domestic saving in this country, which averaged 8 percent of the gross national product [GNP] between 1960 and 1981, steadily declined in the 1980's, and dropped from 5.3 to 4.2 percent between 1986—when the Congress repealed tax-deferred IRA contribution treatment for many Americans—and 1990.

A recent study conducted by professors Steven F. Venti of Dartmouth and David A. Wise of Harvard concludes that the reinstatement of tax-deductible IRA's would lead to higher personal savings. The study also presents evidence suggesting that the majority of IRA savings from 1982-85 represented "new" savings, not a shift from one form of savings to another, but a reduction in consumption and tax burden.

The low U.S. private savings rate contributes to high real costs of capital and higher trade deficits. Increased savings will lower interest rates, increase domestic investment, reduce Federal borrowing costs, and increase productivity and growth. It is because I believe that it would be irresponsible not to act to correct the pervasive problem of our declining net savings rate, that I have joined with Senators BENTSEN and ROTH in cosponsoring this bill today. However, I believe that this bill is just a first step to achieving the important goals of an increased net savings rate, a competitive net investment rate, and a lower cost of capital in this country. That is why I plan to introduce legislation in the near future that will expand upon this legislation and encompass a plan to achieve these goals.

The initiative which we are introducing today, will reinstate the tax-deductibility of IRA contributions for all Americans, or in the alternative allow tax-free earnings to investors, providing tremendous incentive for Americans to save rather than consume. In addition to providing many with a cushion for retirement, it will allow early penalty-free withdrawal for cer-

tain expenses: education; home ownership; and, catastrophic medical costs. All of which will help provide a better quality of life for Americans investing in IRA's.

In addition to providing for an expanded IRA with early withdrawal options for these certain justifiable reasons, the bill I plan to soon introduce will also provide an additional incentive to those who invest their IRA contributions in equities, which should improve the investment rate considerably. My bill will more directly address the "cost of capital" issue as well. It will allow for indexing of one's basis for inflation, so that upon the sale of capital assets individuals will no longer be taxed on illusory or phantom gain attributable solely to inflation.

As we discuss the merits of this IRA bill—and we most certainly will over the coming weeks—I ask that my colleagues keep an open mind and consider expanding the good idea embodied in the Bentsen-Roth bill to meet all the goals I have outlined today. It is only by achieving these goals that we can ensure America's future—both in terms of offering the best quality of life for its citizens and as an economic leader in the new global marketplace; something that is of vital importance to us all.

Mr. LEVIN. Mr. President, I am pleased to join with Senator BENTSEN in introducing this legislation to expand the eligibility for tax deductible contributions to individual retirement accounts. This legislation will help to address the need from both an individual and national perspective to increase savings. In doing so, I will correct a mistake which was made in the Tax Reform Act of 1986 and which, in fact, was one of the reasons why I voted against that bill.

I am particularly gratified to see that the legislation introduced today includes in it a provision which was embodied in legislation I introduced last year dealing with the use of IRA funds by first time home buyers. I believe that IRA funds are an important pool of savings which might make the purchase of a home more affordable. At the same time, I recognize that many first time home buyers have not worked long enough to make significant contributions to their own IRA's. Therefore, last year I introduced S. 2517, which provided that penalty free withdrawals from IRA's for the first time purchase of a home could be made not only by the first time home buyers themselves, but also by their parents and grandparents on their behalf. I believe this provision will provide first time home buyers with an additional option in their efforts to make the American dream of home ownership a reality for them.

Mr. SEYMOUR. Mr. President, I rise today as an original cosponsor of the Super IRA bill introduced by my dis-

tinguished colleagues, Senators BENTSEN and ROTH.

As many of my colleagues have explained, this bill allows individuals to withdraw money, penalty-free, from their IRA accounts for first-time home purchases, college education costs, and financially devastating medical expenses. These are three very important basic needs that ensure quality-of-life of all Americans.

Quite simply, housing and education costs have priced too many families out of the American dreams of college and home ownership. And the way the laws are written now, we are, in effect, penalizing young people and middle-income families who want to save money. This bill restores the incentives for Americans to save for some of the most important investments they will ever make.

For example, in California, the Housing Affordability Index for January 1991 indicated that only 21 percent of the households in my State could qualify for a median priced single family home. For first-time home buyers, the median cost of a home is currently \$160,000, requiring a downpayment of \$24,000.

This measure is designed to provide new mechanisms for the first time home buyer to save for a downpayment. Under this bill, families will be able to tap into their IRA accounts for a downpayment to purchase their first home. Furthermore, parents and grandparents will be able to assist their children without penalty for early withdrawal of their retirement savings.

All Americans, particularly those of us with children, are also concerned that access to higher education remains a reality. It is a proven fact that an educated population provides for a stronger, more powerful economy, creates more jobs, and costs the States far less in welfare rolls. The Federal Government must do all that it can to assist families as they work and save to ensure that our Nation's youth can get a college education.

This year, the Regents of the University of California voted to increase the tuition at their campuses by 40 percent. Over the past decade, the cost of attending a public university in California rose approximately 45 percent, and conservative estimates suggest that costs could increase by as much as 60 percent by the year 2000. At that time, the average total cost of attending a public university in California may reach \$80,000 to \$100,000.

Mr. President, ensuring that young Americans are not priced out of higher education must be a top priority, and this bill represents a vital step in the right direction.

Another potential burden for families that have worked hard and saved for a home and set aside money for their children's education, is the risk that unexpected medical costs can destroy

those savings. This bill will give families peace of mind in the knowledge that their IRA funds are available for such emergencies.

This bill is not a panacea to the problems of affordable housing, college education expenses, and catastrophic illness costs, but it does give the working men and women of America an additional tool to provide for these expenses. This measure proactively encourages our young people and their families to save for their futures with the knowledge that the Government isn't going to penalize them for making a sound investment.

Mr. President, in the California Senate, I introduced similar proposals to assist first-time home buyers and parents of college-bound children, and am proud to be a part of this valuable and timely Federal legislation.

Mr. DOMENICI. Mr. President, I am pleased to join Senator BENTSEN, Senator ROTH, and many of my other colleagues in introducing the super IRA legislation.

The bill would give all Americans the right to invest in an individual retirement account. The bill is flexibly designed to meet the needs of every American family by giving them the choice between making a tax deductible contribution to a traditional IRA; a nondeductible contribution to a back-ended IRA; or splitting a contribution between the two types of accounts.

The legislation would restore the universal availability of the pre-1986, traditional IRA. The traditional IRA allows amounts up to \$2,000 to be contributed each year. The contribution is tax deductible, but the interest income would be taxed upon withdrawal after age 59½.

Under the back-ended plan, initial contributions would not be tax deductible, but if the contribution remains in the account for at least 5 years, all income would be tax-free when it is withdrawn.

There is also a "Plus" component to either IRA plan. The legislation recognizes the hopes, dreams and expensive reality of buying a first home, paying for college or meeting unexpected medical bills. The legislation allows early, penalty free withdrawals for each of these three good purposes. This is why the proposal is called "IRA Plus."

College costs a lot.

For a child born today, the day this bill is introduced, the average undergraduate college education is expected to exceed \$200,000 for private universities and \$60,000 for state run universities.

Financing college must be nationally recognized as a partnership among parents, students, institutions of higher education and the Federal Government. Super IRA's are important to that partnership.

Buying a first home costs a lot too.

Individuals age 25 to 34 are the group statisticians call the "principal household-forming section of the population." This is the age group some of us think of as our sons and daughters. Research shows that for these 25 to 34 year-olds the primary impediment to homeownership is saving for the down payment. Super IRA's can remove that impediment. It provides an incentive for young families to save for a first-time home. It allows parents and grandparents to withdraw funds to help with that first-time home purchase too. The proposal recognizes that families like, and need, to help each other.

It doesn't take much of an illness to have a catastrophic impact on the family budget. For this reason Super IRA's would allow penalty free withdrawals to defray financially devastating medical expenses.

IRA's are a simple and effective savings plan. They are easily understood and can be set up with a minimum amount of paperwork and red tape. It is a flexible program enabling IRA participants to exercise their own freedom of investment choice through a variety of financial institutions that offer a broad selection of investment products.

Congress knows that IRA's were popular and widely used by American families prior to 1986.

Savings in the U.S. has been declining and the experts are puzzled as to the reasons why. We do know that as the baby boom generation has matured, we have experienced a national emphasis upon consumption.

One of the baby boomers that I saw recently wore a button, "Immediate gratification is not soon enough." We need to change that attitude. We need to provide better incentives for Americans to save. And since we know that Americans like, understand, and will contribute to IRA's, Super IRA's could be the mechanism to help change the "consume it now" culture.

Changing the attitude toward savings is vital to our economic well being. A country that saves more, prospers more.

Higher rates of savings leads to greater national wealth and a higher standard of living for the future. Higher rates of savings lead to a lower cost of capital that can make us more competitive. Lower costs of capital means that the boss can build that additional factory and provide more and better jobs.

During meetings of the National Economic Commission countless economists testified that increasing America's savings rate was as important as reducing the deficit and that both were the most pressing issues facing the long term economic prosperity of this Nation.

When Americans save, they are really investing in America and our Tax Code should reflect that national priority. Our major trading partners encour-

age saving in their tax code, and so should we.

When Congress legislates changes in the Tax Code which create initiatives for increasing saving and investment, it unfortunately reduces revenues and results in a higher deficit. We will not increase overall saving in our country if private saving is increased at the expense of government dissaving. Economists tell us the best way to improve saving in the United States is to reduce the Federal deficit—I am not about to abandon that goal.

It's a fact of life and the law of the land that enacting "IRA Plus" would require Congress to "pay as you go." We need to find a revenue offset, and my support of this bill is contingent on finding that offset.

We do not have an estimate for the revenue loss resulting from this proposal yet. But I suspect it will be significant. I commend the Chairman and Senator ROTH for their recognition that an offset must be found before this legislation can be enacted.

I look forward to working with the committee to increase America's saving rate.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

#### SUPER IRA LEGISLATION PROVIDES

Each individual would have the option to contribute \$2,000 per year to a traditional IRA or a new IRA Plus. The individual could contribute the full \$2,000 to either type of account or could allocate any portion of the \$2,000 limit to the different types of accounts.

Contributions to the new type of IRA would not be tax deductible, but if the assets remained in the account for at least 5 years all income would be tax-free when it is withdrawn.

A 10% penalty would apply to withdrawals within the first five years.

Provides Penalty-Free IRA Withdrawals for First-Time Homebuyers, Education Expenses and Devastating Medical Expenses.

Singles, young couples, their parents or their grandparents would be allowed to withdraw IRA funds, penalty free to pay for:

First-time home purchases for themselves, for children or grandchildren;

Education for children or grandchildren;

Taxpayers incurring medical expenses for themselves or their dependents in excess of 7.5% of their income could make penalty-free withdrawals to help cover those expenses.

Section 401(k) and 403(b) Plans are employer-provided retirement plans that allow an employee to make tax-free contributions out of their paychecks. Once an employee makes a contribution to a 401(k) or 403(b) plan, withdrawals are generally subject to a 10 percent penalty tax similar to that applied to early withdrawals from IRAs.

Employees would be allowed to make penalty-free withdrawals of their contributions to 401(k) and 403(b) plans for first-time home purchases or educational expenses. Rules would be similar to the expanded rules provided for IRSS. Penalty-free withdrawals from 403(b) and 401(k) plans for medical expenses are already permitted.

#### CURRENT LAW

All individuals are eligible to make IRA contributions, but only those who are not covered by any other pension plan and those with incomes under \$25,000 for individuals or under \$40,000 for married couples are allowed to fully deduct their IRA contributions.

Withdrawals are subject to ordinary income tax and a 10 percent penalty if the withdrawal is made prior to age 59½.

Mr. ADAMS. Mr. President, I rise today to support legislation that once again makes IRA's a vital component of our Nation's effort to increase its savings rate. I congratulate the distinguished chairman of the Senate Finance Committee for moving ahead on this issue and introducing his bill at this time.

We all recognize that in order to remain competitive in a rapidly evolving world community, we must improve our national savings rate. Savings provides the necessary capital for public and private investment, increases productivity, keeps interest rates low and enhances our competitive edge.

And yet, the United States has fallen far behind in this key economic indicator. Over the last decade, our national savings rate has been lower than anytime since World War II. In 1989, U.S. consumers saved less than 5 cents of every dollar compared to about 16 cents for the Japanese. This is simply unacceptable.

It is time for America to start saving now so we can reinvest in our future.

As a result of the 1986 Tax Reform Act, participation in an Individual Account was strictly limited. This legislation will bring back universal access to IRA's. Not only does this bill reestablish the incentives to save through an IRA, it also allows penalty free withdrawals for American families to buy their first home, pay for a child's education as well as the devastating effects of a catastrophic illness.

I am pleased that this bill addresses these key issues for middle income America.

Today, American families are being priced out of the real estate market. In Washington State alone, the average price of a home has doubled since 1980. The price has risen so fast that the average family is forced to accumulate a sizable down payment before purchasing their first home. This legislation gives young couples and their families the opportunity to use savings in IRA's to meet those needs.

Over the last 10 years, Federal assistance for students attending college has been significantly reduced. At the same time, the cost of attending a 4 year college or university has nearly doubled. By creating a savings program where a family can plan for the future, we can guarantee the dream of a college education remains a reality.

And finally, this bill enables families to use their IRA's as a security net in the event of a catastrophic illness in the family. No one can adequately pre-

pare emotionally or financially for a catastrophic illness. But by allowing penalty free withdrawal from an IRA, we can help families meet the financial burden placed upon them in times of a health crisis.

Mr. President, the bill before us today is long overdue. We must stop the consumption binge we've been on for the last 10 years. We must create incentives to save and reinvest in our future and our children's future. This bill is a step in the right direction.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. BURDICK, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSTON, and Mr. INOUE):

S. 614. A bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes; to the Committee on Finance.

COVERAGE OF CERTAIN CHIROPRACTIC SERVICES  
 • Mr. DASCHLE. Mr. President, I rise today to reintroduce legislation to expand the range of services for which chiropractors can be reimbursed under the Medicare Program. This bill advances a couple of objectives that we all should have for the health care system in the United States. First, it addresses issues of consistency and equity by removing outdated vestiges of still-pronounced discrimination against chiropractic practitioners in the Medicare Program. Second, the bill recognizes the enormous emerging pluralism in the health care field and contributes to improving both access to care and the means for containing health care costs by affording patients greater freedom to choose less expensive forms of diagnosis and treatment.

Existing Medicare law strictly limits reimbursement for chiropractic services to manual manipulation of the spine and only to correct a subluxation. In a dramatic example of twisted logic, the law explicitly requires a diagnostic x ray before chiropractic treatments can be initiated, but denies the chiropractor reimbursement for the x ray itself. Medicare patients must either pay for the x ray out of their own pockets, a cost that many cannot afford, or pass through the "gateway" controlled by other medical providers, whose x rays, typically far more expensive, are reimbursable under the program.

My bill lends some common sense to the Medicare Program. By rectifying the inconsistency in existing law, it ensures that the program's beneficiaries enjoy equitable access to a health care service much in demand, and it permits reimbursement to chiropractors for services for which they are fully licensed throughout the country and that they routinely provide to patients: Diagnostic x rays, diagnostic, physical examinations, and manual

manipulation of the spine for a subluxation and other conditions.

I grew up in a community where chiropractors perform a valuable service by providing an alternative to allopathic medicine. The nearly 200 chiropractors in South Dakota serve the State well. In rural States like mine, chiropractors are often an essential source of health care delivery. Sometimes they are the only health providers in a community. In rural States across the country the chiropractic profession plays an integral role in the health care system.

But the issue is even larger than one of correcting inequities in the law and recognizing the contributions of chiropractors alone. We are constantly searching for ways to give more Americans greater access to quality health care, and to facilitate that availability of care in the most cost effective manner. One proven way to make progress toward those goals is to exploit the talent and dedication represented in the diversity of practitioners increasingly involved in the delivery of health care services in the United States. Competition among different kinds of providers and access to less expensive forms of care have to be emphasized, if we are ever to control escalating health care costs. Yet this competition, with the beneficial choices it brings, is virtually impossible when Federal programs like Medicare deny reimbursements for services offered by whole groups of licensed professionals. This shortsighted policy limits freedom of choice for health care consumers, and may force them to settle on more expensive care than is actually required.

At a time when soaring health care costs are threatening both the quality and the economic stability of our national health care delivery system, the cost savings potential of conservative, nonhospital-based chiropractic care should be fully explored. The bill that I am introducing today will help to provide access to quality care at a reasonable cost. Beyond the particulars of Medicare reimbursement for chiropractic services, I hope that it will foster vigorous discussion of alternative health care delivery models. I urge my colleagues in the Senate to support this measure to ensure that Medicare patients have the access they desire to the benefits of chiropractic care. •

By Mr. LAUTENBERG (for himself and Mr. LIEBERMAN):

S. 615. A bill entitled the "Environment Marketing Claims Act of 1991"; to the Committee on Environment and Public Works.

ENVIRONMENTAL MARKETING CLAIMS ACT OF 1991

• Mr. LAUTENBERG. Mr. President, today I am reintroducing the Environmental Marketing Claims Act of 1991. This bill will require the EPA to establish uniform, accurate standards and

definitions for environmental marketing claims. In so doing, this bill will give consumers reliable and consistent guidance to help them compare environmental marketing claims. It will prevent the use of fraudulent, deceptive, and misleading environmental marketing claims, and encourage the development of innovative technologies and practices that favor natural resource conservation and environmental protection.

Mr. President, the United States is facing growing environmental problems like global warming, lack of landfill space, and air and water pollution. Today, more than ever, people realize one of the easiest and most effective ways they can help address these problems is through their consumer choices. National surveys have shown that 90 percent of American consumers would look for environmentally preferable products and pay more for them. Surveys also show that over 50 percent of American consumers would switch supermarkets and shop at one that offered environmentally sensitive products and practices.

American businesses realize the growing consumer demand for products that don't harm or are less harmful to the environment. They have responded with a plethora of environmental claims on products and packages. Now, practically everywhere consumers look, they are bombarded with products claiming to be better for the environment. Unfortunately, not all these claims are reliable, and many of them are deceptive and misleading.

Mr. President, instead of environmental consumerism, we are getting environmental confusion. When a product claims it is "environmentally safe," what does that mean? Does that mean that it didn't use harmful materials or processes during manufacturing or that it was made from recycled materials, or that it is biodegradable? Does it mean all of these? Perhaps it means something else altogether.

There are other, more specific claims that have some meaning to consumers and have the potential to let the marketplace help in addressing environmental problems, but these claims are sometimes misused or misleading. A product labeled "biodegradable" for example, must ultimately end up in a place where there is air, water, and microorganisms to break down the material for it to biodegrade. But most of the stuff we throw away in our trash cans never gets a chance to biodegrade because it goes to landfills that lack microorganisms, circulating air, and water necessary for biodegradation to occur.

Mr. President, I commend those manufacturers that honestly want to respond to consumer demand for environmentally preferable products. They, as much as anyone, want to play by a common set of rules. The American

people want to see firms invest in equipment or processes that can back up environmental claims. But companies won't want to do it if their competitors can make the same claim without the same commitment.

Without any direction, the good-willed consumer who wants to do something to protect our environment is being confused, misled, and sometimes deceived.

Mr. President, it is a basic role of Government to establish common standards, measures, and definitions by which competition can take place fairly in the free market. A free market depends on it.

A free market also depends on free and accurate information. Information is power. This legislation will empower consumers with the understanding about environmental claims they need to help protect the environment.

Mr. President, the Environmental Marketing Claims Act of 1990 will make sure that consumers are getting the truth about the environmental products they buy. This bill sets up an independent advisory board of environmentalists, consumer and industry representatives to advise the EPA on standards and definitions governing the use of environmental marketing claims.

The bill also sets forth criteria to be considered by the board and the EPA to ensure that environmental claims are based on the best scientific information available and that the same claims meet the same standards. When a manufacturer claims a product is made from recycled materials, consumers have the right to know whether it is made from 10- or 90-percent recycled materials and whether those materials are useful byproducts from manufacturing or whether they are postconsumer materials taken out of the waste stream.

By requiring the EPA to develop regulations based on the best available technology and the most recent scientific knowledge, this legislation will encourage the development of innovative technologies and practices to be adopted by industry in considering the environmental effects when producing products and packaging.

Mr. President, I have worked closely with State attorneys general, environmental groups, and industry representatives in developing this legislation. It builds on a recent resolution by the National Association of Attorneys General that calls on the Federal Government to establish uniform national guidelines for environmental marketing claims. A similar resolution was adopted earlier this year by the National Association of Consumer Agency Administrators. And it has the support of a variety of national environmental organizations.

Industry is ready for regulations governing environmental marketing

claims that would allow industry to compete on a level playing field. Consumers are eager to get the information they need to make informed choices according to their environmental preferences. The time for Congress to act is now, before consumers get so disillusioned that they won't believe any environmental claim they see.

I urge my colleagues to support this legislation so that industry and consumers can act consistently and effectively to help protect our environment through the free and "green" marketplace.

I ask unanimous consent that a copy of the bill be printed in the RECORD as well as letters of support of the bill.

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

S. 615

*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 "Environmental Marketing Claims Act of 1991".

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds and declares that—

- (1) the United States is facing growing environmental problems such as global climate change, waste disposal, and air and water pollution;
- (2) environmental marketing claims convey information about products and influence purchasing decisions;
- (3) national surveys have shown that over 90 percent of American consumers would pay more for environmentally preferable products;
- (4) conveying accurate and reliable environmental information in environmental marketing claims will be of great use to the consumers willing to change their purchasing patterns;
- (5) environmental marketing claims are largely unregulated and can be deceptive; and
- (6) deceptive environmental marketing claims exploit genuine consumer concern and may confuse consumers so as to impede the effectiveness of the use of legitimate environmental marketing claims addressing environmental problems.

(b) PURPOSES.—The purposes of this Act are to—

- (1) prevent the use of fraudulent, deceptive, and misleading environmental marketing claims;
- (2) empower consumers with reliable and consistent guidance to facilitate value comparisons with respect to environmental marketing claims;
- (3) establish uniform, accurate standards and definitions that reflect the best available manufacturing practices, products, and packaging;
- (4) encourage the development of innovative technologies and practices to be adapted by manufacturers in considering the environmental effects when producing products and packages; and
- (5) encourage both consumers and industry to adopt habits and practices that favor natural resource conservation and environmental protection.

**SEC. 3. DEFINITIONS.**

For the purposes of this Act—

(1) the term "product" means any commodity, good, or item distributed for promotional use, rent, lease, or sale through retail or wholesale sales agencies or instrumentalities for consumption or use;

(2) the term "package" means the coating, covering, container, or wrapping used during a product life cycle (including any outer container, wrapping, or label used in the retail display of any product);

- (3) the term "life cycle" includes the—
- (A) extraction;
  - (B) processing and manufacturing;
  - (C) transportation and distribution;
  - (D) use; and
  - (E) management as waste.

of raw materials used in the manufacture of a product or package, and of the product or package, including the energy consumption associated with the activities described in subparagraphs (A) through (E);

(4) the term "environmental marketing claim" means any symbols or terms that are on a label, package, or product or that are used in promotion or advertising to inform consumers about the environmental impact or environmental attributes of a product or package during any part of its life cycle;

(5) the term "label" means any written, printed, or graphic material affixed to, appearing upon a product or package, or appearing upon a shelf or display area that refers to a product of package;

(6) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(7) the term "end product" means only those items that are designed to be used until disposal; items designed to be used in production of a subsequent item are excluded;

(8) the term "postconsumer material" means only those products or packages generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste except that such term shall not include wastes generated during the production of an end product;

(9) the term "preconsumer material" means waste generated during production which cannot be returned to the same production process, nor used by another company to make a product similar to the original product, nor used by the same parent company to manufacture a different product, and includes all wastes generated during the intermediate steps in producing an end product by succeeding companies;

(10) the term "secondary material" means any preconsumer material, postconsumer material, or any combination thereof.

**SEC. 4. ENVIRONMENTAL LABELING REGULATORY PROGRAM.**

The Administrator shall establish by regulation an environmental marketing claims regulatory program. The purpose of such a program shall be to carry out the provisions of this Act.

**SEC. 5. INDEPENDENT ADVISORY BOARD.**

(a) ESTABLISHMENT.—The Administrator shall establish by regulation not later than 180 days after the date of enactment of this Act, an Independent Advisory Board (hereafter in this Act referred to as the "Board") to advise and make recommendations to the Administrator, as provided in subsection (c), concerning the regulation of environmental marketing claims.

(b) MEMBERSHIP.—(1) The Board shall consist of 15 members, including 4 ex officio members, who shall be appointed by the Administrator as follows:

(A) Three members who are recognized as consumer advocates, one of which is a recognized expert in marketing or consumer perception.

(B) Five members representative of industry and manufacturing, including—

- (i) One retailer;
- (ii) One manufacturer;
- (iii) One recognized waste management expert in the private sector; and
- (iv) One end user of post-consumer materials.

(C) 3 members representative of environmental organizations, of which 1 member is a recognized expert in soil science or environmental toxicology.

(D) Two members who shall serve ex officio who are officers or employees of State government, and of which—

(i) One member is recognized expert in consumer protection; and

(ii) One member who is recognized as a waste management, pollution reduction, or pollution prevention expert.

(E) One member who is an officer or employee of a local government and is engaged in pollution prevention or waste management or a municipal recycling program or consumer protection who shall serve ex officio.

(F) One member who is an officer or employee of the National Institute of Standards and Technology, who shall serve ex officio.

(2) Members of the Board serving ex officio shall have no vote.

(3) The Chairman of the Board shall be designated by the Administrator. The Board shall meet at the call of the Administrator or the Chairman.

(c) ADMINISTRATIVE MATTERS.—(1) The Board shall conduct its business in open meetings (subject to any requirement for privacy in personal matters and review of confidential information under any provision of law), and may hold hearings to seek public comment and participation in formulating recommendations for the definitions and standards described in section 6(a).

(2) Members of the Board who are not otherwise employed by the Federal Government may be allowed 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 Government service.

(d) ANNUAL REPORT.—Not more than 180 days after the initial meeting of the Board, and annually thereafter, the Chairman of the Board shall submit to the Administrator a report that outlines the activities and recommendations of the Board relating to the items described in section 6. The initial report shall include the recommendations described in section 6(a).

#### SEC. 6. REGULATION OF ENVIRONMENTAL MARKETING CLAIMS.

(a) RECOMMENDATIONS BY THE BOARD.—Recommendations by the Board to the Administrator, shall include definitions and standards to be used in regulating environmental marketing claims. In making such recommendations, the Board shall consider the requirements for final regulations described in subsections (b) and (c), and shall consider available studies, standards, and other information that the Chairman of the Board determines to be appropriate.

(b) FINAL REGULATIONS.—(1) The Administrator, after considering the recommendations of the Board described in subsection (a), shall, not later than 15 months after the date of enactment of this Act, issue proposed regulations and not later than 18 months after the date of the enactment of this Act,

promulgate final regulations governing the use of environmental marketing claims, including statements to the effect that a product or package is—

- (A) source reduced;
- (B) refillable;
- (C) reusable;
- (D) recyclable;
- (E) has a recycled content;
- (F) compostable;
- (G) ozone neutral;
- (H) nontoxic; or
- (I) otherwise related to an environmental impact or attribute.

(2) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that an environmental marketing claim shall be related to a specific environmental impact or attribute in such a manner as to ensure that such environmental marketing claims is not false, misleading, or deceptive and meets the requirements of paragraph (c)(2); except that this shall not preclude the use of general environmental seals of approval if the administrator determines that such seals are awarded according to objective criteria that promote environmentally preferable products and packages.

(3) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that an environmental marketing claim has been substantiated on the basis of the best available scientific information.

(4) In promulgating the regulations described in paragraph (1), the Administrator shall assign a product to a category or subcategory for the purpose of such regulations according to the following criteria:

- (A) the composition of the product; and
- (B) the packaging of the product.

(5) In establishing product categories for the purposes of the regulations, as described in paragraph (1), the Administrator may establish a category for a specific type of product, or may assign a product to a general category on the basis of the function of the product.

(6) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that environmental marketing claims shall make a clear distinction between the product and any accompanying packaging unless the claim applies to both.

(7) The Administrator shall include the following requirements in the final regulations described in paragraph (1):

(A)(i) An environmental marketing claim relating to "recycled content" shall be used only in connection with a product or package containing postconsumer materials if the percentage of recycled material is specified in the claim and, except as provided in clause (ii), the post-consumer material shall be no less than 25 percent, by weight from the effective date of the regulations until the year 2000 and no less than 50 percent by weight on or after the year 2000.

(ii) Notwithstanding clause (i), an environmental marketing claim relating to "recycled content" may be used in connection with a product or package that contains a percentage of post-consumer materials that is less than the percentage specified in clause (i), if a manufacturer, retailer, or distributor, or other person responsible for the use of such environmental marketing claim includes in such claim a sentence (in which the terms described in the regulation promulgated under section 6 are displayed no more prominently than other words in the sentence) that states the percentage (by weight) of post-consumer and secondary ma-

terials used in such product or package and no symbols are used in such claim.

(B) An environmental marketing claim relating to the "recyclable" nature of a product or package shall be used only in connection with a product or package for which a manufacturer, retailer, distributor, or other person responsible for the use of such environmental marketing claim is able to demonstrate, to the satisfaction of the Administrator, that such product or package shall be recycled, at a minimum rate of 25 percent per annum from the effective date of the regulation until the year 2000, and at a minimum rate of 50 percent per annum on or after the year 2000.

(C) An environmental marketing claim relating to the "reusable" or "refillable" nature of a product or package shall be used only in connection with a product or package that is reused for the original purpose of the product or package, an average of 5 times or more.

(D) No environmental marketing claim relating to the "biodegradable", "compostable", "decomposable", "degradable", "photodegradable" nature of a product, package or material, or any like term or terms, shall be used in connection with a product, package or material unless a manufacturer, retailer, distributor or other person responsible for the use of such environmental marketing claim is able to demonstrate, to the satisfaction of the Administrator, that such product, package or material—

(i) will decompose completely and safely in such a waste management system or systems through natural chemical and biological processes into basic natural constituents, containing no synthetic or toxic residues, within an amount of time compatible with such system or systems;

(ii) will not release or produce at any time toxic or synthetic substances that may be harmful to humans, other organisms or natural ecological processes, including during the management process and any subsequent application or use of products or by-products of the process, such as use of the product or by-product of composting as a soil amendment or mulch; and

(iii) shall be managed, at a minimum rate of 25 percent per annum from the effective date of the regulation until the year 2000 and at a minimum rate of 50 percent per annum on or after the year 2000 of all such products, packages or material, in a waste management system or systems which are protective of human health and the environment, and for which the Administrator determines the claim is a relevant and environmentally desirable and significant characteristic.

Any such environmental claim shall clearly specify the applicable management system or systems and specify that such claim applies only to products, packages or material that are managed in such a system or systems.

(8) In promulgating the regulations described in paragraph (1), the Administrator may authorize the use of an environmental marketing claim to be used in a retail outlet through a point-of-purchase display for any package, product, or material for which it can be demonstrated that a recycling, reuse or composting program serves the community in which the retail outlet is located and meets the requirements of paragraph (7) for that claim. Such a claim shall not appear on the package, product or material itself and shall clearly indicate the specific program or programs which meet the requirements of paragraph (7). Such a claim shall not be used

in connection with any package, product or material distributed in commerce in any community not served by a program which meets the requirements of paragraph (7).

(c) **ADDITIONAL REGULATIONS.**—(1) The Administrator may, at any time after the date of the promulgation of the regulations required under subsection (b), promulgate such additional regulations or make changes in existing regulations as the Administrator determines, on the basis of the criteria described in subparagraphs (A) and (B) of paragraph (2), to be necessary to carry out the purposes of this Act.

(2) In establishing and reviewing the regulations described in subsection (b), or in any additional regulations promulgated under this subsection, the Administrator shall determine whether the regulations—

(A) reflect the best available use and the best available technology that will encourage higher performance levels in products and packaging in meeting the objectives of reducing negative environmental impacts and improving environmental attributes; and

(B) reflect the most recent scientific and practical knowledge of technological advances and improvements in manufacturing techniques and waste management.

(3) Not later than 3 years after the date of the promulgation of the final regulations described in subsection (b) or any additional regulations promulgated under this subsection, and every 3 years thereafter, the Administrator shall review such regulations.

(4)(A) An interested individual (including a representative of industry, an interested citizen, or a representative of an environmental organization), may petition the Administrator to initiate rulemaking procedures with respect to promulgating additional regulations under this section.

(B) Not later than 60 days after receiving a petition described in subparagraph (A), the Administrator shall determine whether to accept or deny the petition and shall publish the petition in the Federal Register, along with an explanation of the reasons for such determination. If the Administrator issues a decision accepting the petition, the Secretary shall issue a proposed regulation to take the action requested in the petition not later than 90 days after the date of such decision.

(d) **LIMITATIONS.**—An environmental marketing claim:

(1) may be made two years after the enactment of this Act only if the environmental characteristic made in the claim uses terms which are defined by regulations of the Administrator;

(2) may not state the absence of an environmental attribute unless—

(i) the attribute is a usual characteristic of the product or package, or

(ii) the Administrator by regulation permits such a statement on the basis of a finding that such a statement would assist consumers making value comparisons with respect to environmental claims among products and packages and the statement discloses that the environmental attribute is not a usual characteristic of the product or package;

(3) may not be made if the Administrator by regulation prohibits the claim because the claim is misleading in light of another environmental characteristic of the product or package.

#### SEC. 7. CERTIFICATION.

(a) **FILING OF A CERTIFICATION.**—Not later than 6 months after the date of the promulgation of any regulation under section 6, any manufacturer or any other person who in-

tends to use an environmental marketing claim for which the Administrator has promulgated a regulation shall first submit a certification to the Administrator that the environmental marketing claim intended to be used meets the requirements of this Act. Such certification shall be in such form as the Administrator shall prescribe by regulation and shall contain such information as the Administrator determines to be appropriate.

(b) **DISAPPROVAL OF CERTIFICATION.**—The Administrator may, at any time, disapprove the certification provided under subsection (a) if the Administrator determines that the environmental marketing claim that the manufacturer or other person intends to use does not meet the requirements of the regulations promulgated under section 6 of this Act.

(c) **RECERTIFICATION.**—Any person using an environmental marketing claim shall resubmit a certification to the Administrator that the environmental marketing claim used meets the requirements of the Act if:

(1) changes have been made in the product or package that would affect its ability to meet the regulatory requirements of the environmental marketing claim previously used for such a product or package, or;

(2) new regulations have been promulgated under this Act relating to the environmental claim being used.

Such recertification shall be submitted to the Administrator within 6 months of the occurrence of either event described in paragraphs (1) and (2) of this subsection.

#### SEC. 8. PROHIBITION.

It shall be unlawful for any person to:

(a) fail or refuse to comply with—

(1) any regulation promulgated under section 6(b) of this Act; or

(2) any order issued by the Administrator to carry out any such regulation;

(b) use an environmental marketing claim for which the Administrator has issued a regulation under section 6 if—

(1) the person has failed to file a certification as required by section 7; or

(2) the Administrator has disapproved a certification under section 7; or

(c) use an environmental marketing claim that is inconsistent with the requirements of section 6(d).

#### SEC. 9. PENALTIES.

(a) **CIVIL.**—(1) Any person who violates a provision of section 8 of this Act shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for the purpose of this subsection, constitute a separate violation of section 8 of this Act.

(2)(A) A civil penalty for a violation of section 8 of this Act shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and the gravity of the violation, and with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior related violations, the degree of

culpability, and such other matters as the Administrator determines to be appropriate.

(3) Any person who has requested a hearing with respect to the assessment of a civil penalty in accordance with paragraph (2)(A) and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If a person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3); or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) **CRIMINAL.**—Any person who knowingly or willfully violates any provision of section 8 of this Act, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than 1 year, or both.

(c)(1) The authorized fines provided in subsections (a) and (b) shall be adjusted for inflation every 5 years as provided in this subsection.

(2) Not later than December 1, 1993, and December 1 of each fifth calendar year thereafter, the Secretary shall prescribe and publish in the Federal Register a schedule of maximum authorized fines that shall apply for violations that occur after January 1 of the year immediately following such publication.

(3) The schedule of maximum authorized fines shall be prescribed by increasing the amounts in each of the subsections referred to in paragraph (1) by the cost-of-living adjustment for the preceding 5 years. Any increase determined under the preceding sentence shall be rounded to—

(A) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(B) in the case of penalties greater than \$10,000 but less than or equal to \$100,000 the nearest multiple of \$5,000;

(C) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(D) in the case of penalties greater than \$200,000 the nearest multiple of \$25,000.

(4) For purposes of this subsection:

(A) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(B) The term "cost-of-living adjustment for the preceding 5 years" means the percentage by which—

(i) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(ii) the Consumer Price Index for the month of June preceding the date on which the maximum authorized fine was last adjusted.

#### SEC. 10. STATE ENFORCEMENT.

Proceedings for the enforcement, or to restrain violations of section 8 may also be brought in the name of a State in which the product or package that is the subject matter of the proceedings is located. If a State intends to bring such a proceeding, the State shall notify the Administrator at least 30 days before such proceeding is brought.

#### SEC. 11. CITIZENS SUITS.

(a) IN GENERAL.—(1) Except as provided in subsection (b), any person may commence a civil action against—

(A) any person who is alleged to be in violation of this Act (including the Government of the United States, to the extent allowable by law); or

(B) the Administrator to compel the Administrator to carry out ministerial duties assigned to the Administrator under this Act.

(2) Any civil action under this subsection shall be brought in the United States district court of the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. The district court shall have jurisdiction to order all necessary injunctive relief and to impose any civil penalty.

(b) LIMITATIONS.—(1) No civil action may be commenced to restrain any violation of section 8 of this Act—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation to—

(i) the Administrator; and  
(ii) to the person who is alleged to have committed such violation;

(B) if the Administrator has commenced a proceeding for the issuance of an order to require compliance with the regulation or requirement and is diligently pursuing such proceeding or has issued an order to carry out the regulation or requirement described in section 8 and is diligently pursuing the enforcement of such order.

(C) if the Attorney General has commenced a civil action in a court of the United States to require compliance with the regulation, requirement, or order described in subparagraph (B) and is diligently prosecuting such civil action.

(2) No civil action may be recommended against the Administrator under subsection (a)(1)(B) before the expiration of a 60-day period after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action.

(c) INTERVENTION.—(1) If a proceeding or civil action described in subsection (b) is commenced by the Administrator or the Attorney General after the giving of notice by a person (other than the Administrator or Attorney General) described in subsection (a), such person may intervene as a matter of right in such proceeding or action.

(2) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) NOTICE.—Notice under this section shall be given in such a manner as the Administrator shall prescribe by regulation.

(e) ATTORNEYS FEES AND COURT COSTS.—(1) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such award is appropriate.

(f) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions may be consolidated and tried in accordance with section 1407 of title 28, United States Code, and the rules promulgated pursuant to such section 1407.

#### SEC. 12. PUBLIC INFORMATION CAMPAIGN.

The Administrator shall conduct a public information and education campaign, including public service advertising, in order to enable consumers to—

(1) recognize environmental marketing claims regulated under this Act and be able to distinguish them from other environmental marketing claims,

(2) have information about the criteria used by the Administrator in establishing standards and definitions for environmental marketing claims, and

(3) have a better understanding about the effects that products and packages can have on the environment.

#### SEC. 13. STATUTORY CONSTRUCTION.

(a) RIGHT TO SEEK ENFORCEMENT.—Nothing in section 10 shall restrict any right which any person (or class of persons) may have under any other statute or under common law to seek enforcement of any regulation promulgated under section 6 of this Act.

(b) ACTIONS AGAINST ADVERTISERS.—Nothing in this Act shall be construed so as to alter the right under any other provision of law or under common law of a person or government to commence an action against an advertiser related to the use of false or misleading environmental marketing claims.

(c) STANDARDS.—Nothing in this act shall be construed so as to prohibit a State from enacting and enforcing a standard or requirement with respect to the use of an environmental marketing claim that is more stringent than a standard or requirement relating to an environmental marketing claim established or promulgated under this Act.

#### SEC. 14. CONFORMING AMENDMENT.

Section 11 of the Fair Packaging and Labeling Act (15 U.S.C. 1460) is amended—

(1) by striking "or" at the end of subsection (b);

(2) by striking the period at the end of subsection (c) and inserting ", or"; and

(3) by adding at the end of the section the following new subsection:

"(d) the Environmental Marketing Claims Act of 1990".

#### SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of carrying out the provisions of this Act, there are authorized to be appropriated \$10,000,000 for fiscal years 1992, 1993, and 1994.

STATE OF MINNESOTA,

OFFICE OF THE ATTORNEY GENERAL,

October 17, 1990.

Re Environmental Marketing Claims Act of 1990.

Hon. FRANK R. LAUTENBERG,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing on behalf of the Attorneys General of California, Massachusetts, Minnesota, Missouri and Texas to express support for the Envi-

ronmental Marketing Claims Act of 1990. In December of 1989, we joined with the Attorneys General of several other states to form a Task Force to investigate the most recent marketing trend: the promotion of products as "environmentally friendly." Although we are excited about the potential of the "green revolution" to encourage the manufacture and use of products that are less harmful to the environment, we are concerned about the alarming rise in the number of confusing and misleading environmental claims.

As members of the Task Force, we have strongly advocated uniform national standards for environmental marketing claims. In March of this year, we joined with the other members of the Task Force to urge the National Association of Attorneys General to endorse a resolution calling on the Federal Trade Commission and the Environmental Protection Agency to work jointly with the states to develop uniform national guidelines for environmental marketing claims with input from environmental groups, consumer groups and members of the business community. The resolution was adopted unanimously.

Your proposed legislation provides a framework for this national regulation and standardization of environmental claims. We commend you for developing and sponsoring this important legislation. By providing for aggressive state and federal enforcement efforts, we believe that this legislation will greatly curtail the exploitation of consumers and the environmental that results from confusing and deceptive environmental marketing claims.

Best regards,

HUBERT H. HUMPHREY III,  
Attorney General.

STATE OF NEW YORK,

DEPARTMENT OF LAW,

New York, NY, October 17, 1990.

Re Environmental Marketing Claims Act of 1990.

Hon. FRANK R. LAUTENBERG,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to express my support for the Environmental Marketing Claims Act of 1990. Greenmarketing, the selling of the environment, is clearly becoming the marketing craze of the 1990's. As consumers become more conscious and concerned about the environmental impact of the products that they purchase, environmental issues drive their purchasing decisions. Unfortunately, many companies are capitalizing on this genuine consumer concern by marketing products in a deceptive manner.

My office has been actively investigating companies that are engaging in deceptive and misleading environmental advertising. In June I filed suit against Mobil Chemical Corp. for making false claims about the alleged environmental benefits of its Hefty trash bag. Just today I announced a settlement that New York, together with nine other States, reached with the manufacturer of "Bunnies Biodegradable Disposable Diapers". Our agreement will require the company to immediately cease all advertisements which misleadingly claim that the diapers benefit the environment.

It is estimated that disposable diapers comprise as much as 2 percent of all municipal waste disposed of in landfills. Bunnies, by marketing their diapers as biodegradable, tried to exploit the interests of people who want the convenience of disposable diapers but are concerned about the waste problem

they create. Although labeled "BIO-DEGRADABLE", Bunnies diapers, like any organic waste, will take decades to degrade in our nation's landfills. Deceptive environmental claims like this are proliferating.

Consequently, there is clearly a real need for national standards for environmental marketing claims. In March of this year I endorsed a resolution of the National Association of Attorneys General calling on the Federal Trade Commission and the Environmental Protection Agency to work jointly with the States to develop uniform national guidelines for environmental advertising with input from environmental groups, consumer groups and members of the business community. This resolution was adopted unanimously.

Your proposed legislation provides a framework for such national standards. Further, by providing for both State and Federal enforcement, I believe that this legislation can effectively put an end to deceptive environmental marketing.

Very truly yours,

ROBERT ABRAMS,  
Attorney General.

ENVIRONMENTAL DEFENSE FUND,  
Washington, DC, February 24, 1991.

Hon. FRANK R. LAUTENBERG,  
Senate Hart Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: Consumers have a critical role to play in shifting our industrial production systems toward more environmentally benign processes and products. The resurgence of environmental awareness among American consumers is a trend that product manufacturers cannot afford to ignore.

Unfortunately, many such manufacturers appear all too willing to substitute false or misleading claims for actual environmental improvements in the products they sell. To make matters worse, in the current climate where consumers find it hard to distinguish marketing hype from genuine environmental improvements in products, many responsible manufacturers see little incentive to improve their products or advertise those improvements.

This situation threatens to transform the positive potential of green marketing into little more than another case of consumer confusion and cynicism. This is why the Environmental Defense Fund (EDF) heartily supports your efforts to provide a consistent and sound basis for environmental marketing claims that would provide a level playing field for all manufacturers and a means of accountability to consumers for such claims.

The "Environmental Marketing Claims Act of 1991" which you are introducing would require the Federal Government to develop and enforce measurable standards and definitions for the use of key terms in environmental marketing. These standards and definitions would be technology-forcing in nature, recognizing the need for manufacturers to continually seek improvements in their products and packaging. Equally important, the Act provides for both citizen enforcement and additional efforts on the part of State governments to assure responsible green marketing.

Based on a number of years of experience in this area, EDF has become convinced that only through the establishment and aggressive enforcement of clear regulatory definitions and standards will consumer interests be served and protected—interests that, in our consumer-oriented society, need to be marshalled to support environmental renovation and innovation of the products we all use.

EDF commends your efforts in this area, and hopes that the "Environmental Marketing Claims Act of 1991" will be enacted into law at the earliest possible date.

Sincerely,

RICHARD A. DENISON, Ph.D.,  
Senior Scientist.

ENVIRONMENTAL ACTION, INC.,  
October 17, 1990.

Hon. FRANK LAUTENBERG,  
Senate Hart Office Building,  
Washington, DC.

DEAR SENATOR LAUTENBERG: Environmental Action, Inc. is pleased to express its strong support for the Environmental Marketing Claims Act of 1990. This bill represents an effective, timely, and no-nonsense approach to the important issue of environmental marketing and the misuse of misleading environmental claims in advertising.

American consumers are more aware today than ever that they can make a contribution to environmental protection by exercising "environmental choice" at the supermarket check-out stand. Polls consistently find the majority of consumers willing to choose products on the basis of their environmental attributes.

Product manufacturers are racing to tap the buying power of the new American green consumer. But some have been more interested in the "green" of the dollar than the green of the Earth. The past year has seen an explosion of false or misleading environmental claims designed to cash in on this new consumer awareness. Products with negligible levels of recycled material are labeled "recycled," plastic bags are labeled "degradable," and some aerosol products announce that they are "ozone-friendly."

Such terms are meaningless in the absence of standards governing their use. The Environmental Marketing Claims Act of 1990 directs the U.S. Environmental Protection Agency to set such standards at the national level. This bill builds on efforts already underway in States around the country to regulate the use of environmental claims on product labels or in advertising.

Environmental Action, Inc. again congratulates you for taking the lead on this important issue. We strongly support passage of this bill.

Sincerely,

RUTH CAPLAN,  
Executive Director.

NATURAL RESOURCES DEFENSE COUNCIL,  
New York, NY, October 16, 1990.

Senator FRANK LAUTENBERG,  
Senate Hart Office Building, Constitution Avenue and 2nd Street NE, Washington, DC.

DEAR SENATOR LAUTENBERG: As you are well aware, consumer products carrying misleading environmental claims have proliferated as the public interest in a clean environment has mounted. Regrettably, the Federal Government has been slow to respond to this problem. As a consequence, the American consumer has been left in the dark, forced to sort out confusing or misleading statements for him/herself. For at least these reasons, your truth in labelling initiative, the Environmental Marketing Claims Act of 1990, provides an essential tool now missing from the arsenal of consumer protection. The Earth does not benefit from public relations or other symbolic measures. Moreover, upstanding American firms that show a true respect for our environment should not have to compete with unscrupulous marketers who proffer misleading environmental claims. The passage of this initia-

tive will truly benefit the environment and the economy. You should be applauded for your well thought-out initiative which we strongly endorse.

Best Regards,

ALLEN HERSHKOWITZ, Ph.D.  
Senior Scientist.

CONSUMERS UNION,  
Washington, DC, October 12, 1990.

Hon. FRANK LAUTENBERG,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LAUTENBERG: Consumers Union would like to thank and congratulate you on the introduction of your bill to establish a national standard for environmental marketing claims.

Increased concern with the environment has brought with it a host of confusing and sometimes misleading claims in the marketplace that products are "green" or environmentally "friendly". It is difficult and often impossible for consumers to sort out and evaluate these claims. Further, there is no official standard by which to judge the honesty and accuracy of environmental marketing claims and no specific charge to any governmental authority to prosecute those that are false, misleading or deceptive.

Your bill sets forth a proposal to establish appropriate standards that can serve both to guide marketers who would make such claims and agencies who would be responsible for preventing deception. We are happy to endorse the principles in your bill and look forward to working with you to see that these principles become law.

Sincerely,

MARK SILBERGELD,  
Director,  
Washington Office.●

By Mr. PELL (by request):

S. 616. A bill to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Information Agency, and for other purposes; to the Committee on Foreign Relations.

U.S. INFORMATION AGENCY AUTHORIZATION ACT,  
FISCAL YEARS 1992 AND 1993

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Information Agency, and for other purposes.

This proposed legislation has been requested by the U.S. Information Agency, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Director of the U.S. Information Agency, which was received on March 5, 1991.

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

## S. 616

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SHORT TITLE

SEC. 101. This title may be cited as the "United States Information Agency Authorization Act, Fiscal Years 1992 and 1993."

## AUTHORIZATION OF APPROPRIATIONS

SEC. 102. In addition to amounts otherwise available for such purposes, there are authorized to be appropriated for the United States Information Agency to carry out international information, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, as amended, the Mutual Educational and Cultural Exchange Act of 1961, as amended, Reorganization Plan No. 2 of 1977, the Radio Broadcasting to Cuba Act, as amended, the Television Broadcasting to Cuba Act, the Inspector General Act of 1978, as amended, the Center for Cultural and Technical Interchange Between East and West Act of 1960, the National Endowment for Democracy Act, as amended, and for other purposes authorized by law:

(a) For operating and special program accounts including "Salaries and Expenses," "Educational and Cultural Exchange Programs," "Broadcasting to Cuba," "Office of the Inspector General," "East-West Center," and "National Endowment for Democracy," \$960,969,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993 consistent with the Budget Enforcement Act of 1990 (P.L. 101-508) (hereafter "BEA").

(b) For the capital "Radio Construction" account, \$98,043,000 for the fiscal year 1992 and such sums as may be necessary for fiscal year 1993 consistent with the BEA.

## CHANGES IN ADMINISTRATIVE AUTHORITIES

SEC. 103. Section 701 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1476) is amended—

(1) by deleting subsection (d); and  
(2) by redesignating subsection (e) as subsection (d) and amending the latter subsection to read as follows (with new language underlined):

"(d) The provisions of this section shall not apply to or affect in any manner, permanent appropriations, trust funds, and other similar accounts administered by the United States Information Agency as authorized by law, or appropriations made available under continuing resolutions."

SEC. 104. Section 705 (a)(7) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1477s(a)(7)) is amended by replacing "\$250,000" with "\$500,000."

SEC. 105. Section 801 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1471) is amended by inserting the words "and television" after the word "radio" in clause (3) of the section.

SEC. 106. Section 804(9) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474(9)) is amended to read as follows:

"(9) pay to or for individuals, not United States Government employees, participating in activities conducted under this Act, the costs of emergency medical expenses, preparing and transporting to their former homes the remains of such participants or their dependents who die while away from their homes during such participation, health and accident insurance premiums for participants, per diem in lieu of subsistence at rates prescribed by the Director of the Agency, and such other costs as are necessary for

the successful accomplishment of the purposes of this Act;

Provided, That in lieu of purchasing or providing funds for the purchase of health and accident insurance for such participants, provide health and accident insurance benefits for the participants by means of a program of self-insurance."

SEC. 107. Section 247, Part D, Pub. L. 101-246, Television Broadcasting to Cuba Act (22 U.S.C. 1465ee.) is amended by adding the following new subsection (c):

"(c) Amounts appropriated to carry out the purposes of this part are authorized to remain available until expended."

SEC. 108. Section 810 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1475e) is amended to read in relevant part as follows (with new language underlined):

## "SEC. 810. USE OF CERTAIN FEES AND PAYMENTS.

"Notwithstanding section 3302 of title 31, United States Code, or any other law or limitation of authority, fees and other payments received by or for the use of the United States Information Agency from or in connection with English-teaching and library services, selected advisory services rendered to foreign students regarding study in the United States, \* \* \* are\* authorized to be credited each fiscal year \* \* \*."

SEC. 109. Section 204 of Pub. L. 100-204 is hereby repealed.

SEC. 110. It is requested that there be included in the Authorization Act a provision reading substantially as follows: "Notwithstanding the provisions of any other law or limitation of authority, the United States Information Agency and the Ministry of Foreign Affairs, Union of Soviet Socialist Republics, shall be permitted to establish, maintain and operate reciprocal cultural-information centers in Moscow and Washington, D.C., respectively, in accordance with the provisions of the document entitled 'Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Establishment of Cultural-Information Centers of the United States of America and the Union of Soviet Socialist Republics,' which was signed in Washington, D.C. on May 31, 1990, by the Director of the United States Information Agency, and Aleksey A. Obukhov, Deputy Foreign Minister of the Union of Soviet Socialist Republics."

SEC. 111. Section 804 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474) is amended—

(1) By deleting the word "and" at the end of clause (19);

(2) By replacing the period at the end of clause (20) with a semicolon; and

(3) By adding the following new clauses:

"(21) incur expenses authorized by the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.);

"(22) furnish living quarters as authorized by 5 U.S.C. 5912; and

"(23) provide allowances as authorized by 5 U.S.C. 5921-5928."

SEC. 112. Special Immigrant Status for Certain Employees of the United States Information Agency.

(1) The Immigration and Nationality Act is amended by adding the following new section after Section 216A (8 U.S.C. 1186b).

\*(Note: The word "are" is substituted for the present word "is" simply as a grammatical correction.)

"Section 216B Conditional permanent resident status for certain USIA employees:

(a) Conditional Basis for Admission: Conditional immigrant visas may be issued to employees of the United States Information Agency beginning fiscal year 1992 in a number not to exceed one hundred per fiscal year. Upon enactment, one hundred fifty additional visas shall be available to present USIA employees. Such employees shall be identified by the Director of USIA, and, if otherwise admissible, shall be admitted conditionally for a period not to exceed four years. Spouses and dependent children of such employees accompanying or following to join the alien employee may also be admitted as conditional permanent residents but shall not be subject to numerical limitation.

(b) Removal of Conditional Basis: Persons admitted under this provision shall be eligible for removal of the conditional basis of their admission for permanent resident status after one year, upon certification by the Director of USIA to the Attorney General; the Attorney General shall remove the conditional basis of his or her admission, if the alien is otherwise admissible, effective as of the date of such certification.

(c) Termination of Status: At any time during such four year period, the Director of USIA may certify to the Attorney General that such conditional status with respect to any alien should be terminated. Upon receipt of such notice, the Attorney General shall terminate such status and the alien and any other family members admitted with such alien shall be subject to deportation proceedings. The conditional status of any alien, admitted under this provision who has not had the conditional basis of his or her admission removed by a date four years after such admission, shall be deemed to have been terminated.

Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by adding the following:

"(K) an immigrant who is employed by the United States Information Agency for service in the United States, and his or her accompanying spouse and children, under conditions set forth in Section 216B of this Act."

(2) Section 804(1) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474(1)) is amended by inserting the words "or as immigrants under section 101(a)(27)(K) of that Act (8 U.S.C. 1101(a)(27)(K))" immediately after the words "as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))."

## SECTION-BY-SECTION ANALYSIS

## AUTHORIZATION OF APPROPRIATIONS

(Note: The title "Smith-Mundt Act", as used in this analysis, means the United States Information and Educational Exchange Act of 1948, as amended, and the title "Fulbright-Hays Act" means the Mutual Educational and Cultural Exchange Act of 1961, as amended.)

## Section 101—Short Title

This section is self-explanatory.

## Section 102—Authorization of Appropriations for the Fiscal Years 1992 and 1993

Section 102(a) of the United States Information Agency Authorization Act, Fiscal Years 1992 and 1993, authorizes the appropriation of \$960,969,000 in Fiscal Year 1992 and such sums as may be necessary consistent with the Budget Enforcement Act of 1990 in Fiscal Year 1993 for operating and special program accounts. These amounts are requested to cover Agency operating costs, in-

cluding Salaries and Expenses, Educational and Cultural Exchange Programs, Broadcasting to Cuba, the Office of the Inspector General, the East-West Center and the National Endowment for Democracy.

The following table compares the Agency's 1992 request for authorization with the appropriations enacted for 1991.

Appropriations	1991 estimate	1992 estimate	Increase/decrease
Salaries and expenses	\$652,757	\$692,275	\$39,518
Educational and cultural exchange programs	163,151	172,500	9,349
Broadcasting to Cuba	31,069	38,988	7,919
Office of the Inspector General	4,023	4,206	183
East-West Center	25,000	23,000	(2,000)
National Endowment for Democracy	25,000	30,000	5,000
<b>Total, operating and special accounts</b>	<b>899,00</b>	<b>960,969</b>	<b>61,969</b>

For 1993, given the worldwide uncertainties and the need for maximum flexibility, the Agency requests such sums as may be necessary.

**CHANGES IN ADMINISTRATIVE AUTHORITIES**

*Section 103—Continuing Resolutions without Prior Authorization*

Congress frequently funds ongoing government operations at the beginning of the fiscal year through short-term Continuing Resolutions (CRs), pending final passage of appropriation acts. Traditionally, Section 701 of the Smith-Mundt Act has been construed to require the prior authorization of any USIA appropriation—including CRs.

Currently, this provision of law must be explicitly waived every time Congress funds USIA under a CR when, as is frequently the case, Congress has not yet enacted authorization legislation for the Agency. The purpose of this proposed amendment is only to eliminate the need for such a waiver. We will still need authorization for regular appropriations, so that no real authorizing committee jurisdiction will be bypassed. Since the amendment will simplify the appropriations process, the appropriations committees should support it. Incidentally, the deletion of present subsection (d) is recommended solely because it has long since been obsolete.

*Section 104—Increase in Smith-Mundt Act Reprogramming Threshold*

For years, the Agency has had to report any resource shift between elements (reprogramming) in excess of the lesser of \$250,000 or 10 percent of an element's resources to the Authorizing and Appropriations Subcommittees. Last year, the Appropriations Subcommittees raised this limit to \$500,000. We propose to make the authorization and appropriation requirements uniform by amending section 705(a)(7).

*Section 105—Extending Administrative Authorities to the Television Operations at USIA*

The purpose of this proposed amendment is to give the Agency the same express authority to purchase, rent, construct, improve, maintain, and operate facilities for television transmission and reception as the Agency now has with respect to radio transmission and reception facilities.

*Section 106—Health and Accident Insurance and Related Benefits for Participants in Activities under Smith-Mundt and Fulbright-Hays Acts*

Agency American Participant Speakers (AMPARTS) travel under the authority of either the Smith-Mundt or the Fulbright-Hays Act, depending largely on whether the purpose of their trips is to explain government policies or to participate in exchanges of information or ideas. However, because of dif-

fering language in the two Acts—i.e., Section 804(9) of Smith-Mundt and Section 104(e)(1) of Fulbright-Hays—AMPARTS traveling under the authority of the Fulbright-Hays Act are entitled to health and accident insurance and related benefits not provided to AMPARTS traveling under Smith-Mundt. This amendment would correct this disparity.

In addition, the amendment would give the Agency flexibility to choose between (1) the purchase of commercial health and accident insurance, the premiums for which have been constantly and sharply increasing or (2) the provision of health and accident insurance as a self insurer. AID has had a similar self-insurance program in effect for over ten years, and the Agency is advised that it has been very satisfactory and cost-effective.

Incidentally, it should be noted that while the amendment expressly authorizes a self-insurance program only for Smith-Mundt AMPARTS, the Agency would also be authorized to establish such a program for Fulbright-Hays AMPARTS because of the derivative authority contained in Section 108(d) of the Fulbright-Hays Act.

*Section 107—Television Broadcasting to Cuba Act: Availability of No-year Funds*

This is essentially a technical amendment in that the Agency's current appropriations Act (Pub.L. 101-515) already provides that funds appropriated for TV Marti are authorized to remain available until expended—i.e., "no-year" funds. However, this is not specifically authorized by the TV Marti Act itself. The amendment would simply make the authority for TV Marti expressly parallel the authority for Radio Marti appropriations, as well as the no-year funding authority provided under both the Smith-Mundt Act and the Fulbright-Hays Act.

*Section 108—Recycling of Fees Received from Selected Educational Advisory Services*

Currently, Section 810 of the Smith-Mundt Act permits the Agency to receive and recycle payments received by or for the use of USIA from or in connection with publications, English teaching, library, motion pictures and television programs. This amendment would give the Agency authority to receive and recycle fees for certain selected services relating to advising foreign students about studying in the U.S. Such fees would be used in support of related advisory needs.

We also urge that the words "and other payments" be inserted immediately after the word "fees" in Section 810. The word "payments" had always appeared in the section prior to its amendment by the Authorization Act for FY 90-91 (Pub. L. 101-246), and even in both the House and Senate bills underlying that Act. Inclusion of only the word "fees" is much too restrictive and, for example, might cast doubt on the Agency's right to reuse money received from the sale of publications.

*Section 109—Repeal of Section 204 of Pub. L. 100-204 (USIA Posts and Personnel Overseas)*

This provision prohibits the closing of overseas posts, except in certain limited circumstances, and prohibits the elimination of American positions overseas until the ratio between USIA American positions in the U.S. and overseas is the same as that existing in 1981. Because of the staff increases in the U.S. that took place in the 1980's related to the modernization of the Voice of America, the expansion of television and exchanges, and the establishment of radio and TV broadcasting to Cuba, compliance with this provision is impossible.

As the world situation changes, we may well decide that certain branch posts may no longer serve a useful purpose. This may become a more pressing alternative as our resource base shrinks. Finally, and perhaps most important, closing or opening overseas posts is—and should remain—an Executive Branch authority.

*Section 110—Reciprocal U.S. and Soviet Union Cultural-Information Centers*

This provision is essentially self-explanatory. It would, in effect, create an exception to current U.S. legislation that bans the opening of any new Soviet office in this country pending resolution of the problem of the new U.S. Embassy in Moscow. We believe that the matter of allowing the Soviet Union to establish a cultural-information center in the United States should be treated separately from the U.S. Embassy controversy.

*Section 111—Additional Basic Authorities under Smith-Mundt Act*

These amendments are technical changes urged by Appropriations Committee staffs. At present, the authority to pay certain expenses and allowances covered by the amendments is repeated each year in our appropriation acts. The amendments would make such authority permanent, simplifying the annual appropriations process. The amendments would provide permanent authority for payment of certain allowances and expenses authorized by the Foreign Service Act of 1980 and other legislation.

*Section 112—Special Immigrant Status for Certain Employees of United States Information Agency*

This special immigrant status would: (1) allow affected employees to travel freely in and outside the United States; (2) allow spouses and children to work, because they are immigrants; (3) allow employees to fulfill residency requirements regarding in-state tuition; (4) allow dependent children to remain in the U.S. after age 21, without changing status; and (5) guarantee retirement coverage for the employees. Furthermore, the Agency would be relieved of the necessity of filing for Third Preference.

The Director of the Agency would be authorized to make certifications and would communicate these certifications to the Attorney General who would remove the conditional status of the visa. The Director would be completely free to make or withhold such certifications.

It should also be noted that if the Agency did not want or need to bring a person into the United States as a special immigrant, it could bring him or her in under the H-visa or, pursuant to a bona fide training program, the J-visa.

U.S. INFORMATION AGENCY,  
Washington, DC, March 4, 1991.

Hon. DAN QUAYLE,  
President of the Senate.

DEAR MR. PRESIDENT: Pursuant to the United States Information and Educational Exchange Act of 1948, as amended, the Mutual Educational and Cultural Exchange Act of 1961, as amended, Reorganization Plan No. 2 of 1977, the Radio Broadcasting to Cuba Act, the Inspector General Act of 1978, as amended, the Center for Cultural and Technical Interchange Between East and West Act of 1960, the National Endowment for Democracy Act, as amended, I am submitting the enclosed proposed legislation to authorize appropriations for the United States Information Agency for Fiscal Years 1992 and 1993 to enable the Agency to carry out international information and educational and

cultural exchange programs. A section-by-section analysis further explaining the proposed legislation is also enclosed.

The Office of Management and Budget advises that there is no objection to the submission of this proposed legislation to Congress and that its enactment would be in accord with the program of the President.

Sincerely,

BRUCE S. GELB,  
Director.●

By Mr. HATCH (for himself, Mr. SPECTER, Mr. SIMPSON, Mr. DOMENICI, Mr. INOUE, Mr. COCHRAN, Mr. D'AMATO, Mr. MCCAIN, Mr. BOND, and Mr. GORTON):

S. 617. A bill to reauthorize the Commission on Civil Rights; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT

Mr. HATCH. Mr. President, I, along with nine of my colleagues, am introducing the U.S. Commission on Civil Rights Reauthorization Act of 1991. This bill reauthorizes the U.S. Commission on Civil Rights for 10 years. Presently, the Commission's authorization expires on September 30, 1991.

The Commission was originally established in 1957 and reauthorized for short periods thereafter. In 1983, the Commission was reconstituted, with four members appointed by the President, and two each appointed by the President pro tempore of the Senate and by the Speaker of the House. Senate confirmation is not required (42 U.S.C. 1975 et seq.).

The Commission's general mission has remained the same: to investigate allegations of discriminatory denial of voting rights; to study and collect information concerning legal developments constituting discrimination; appraise Federal laws and policies regarding discrimination, and serve as a national clearinghouse of information on discrimination.

I have not always agreed with the Commission's position on issues over the years, but I believe it has the potential to play a role in the Nation's continuing commitment to eradicate discrimination in American life. In my view, Congress should reauthorize the commission for a lengthy time—10 years—and allow it to do its work unimpeded by periodic fear that it may not be reauthorized.

● Mr. MCCAIN. Mr. President, I am proud to be an original cosponsor of the U.S. Commission on Civil Rights Reauthorization Act of 1991. Quick passage of this measure will help our Nation eliminate all forms of discrimination.

The Commission on Civil Rights has performed a valuable service for our citizens, and the Commission must be allowed to continue its important work. Since its creation in 1957, the Commission on Civil Rights has been tasked to collect and study information on discrimination or denials of

equal protection of the laws due to race, color, religion, sex, age, disability, and national origin. The Commission also studies and makes findings of fact on the administration of justice in such areas as voting rights, enforcement of Federal civil rights laws, and equality of opportunity in education, employment, and housing. The Commission then reports its findings to the President and Congress so that the lawmaking and executive branches may act on them.

The job that the Commission on Civil Rights performs is not an easy one, and one that is not always popular. I, myself, have not always agreed with the Commission's findings on issues. I believe, however, that the Commission has proved extremely important in eradicating discrimination from the American landscape, and that it should be allowed to continue its mission without constant and continual congressional intervention.

Last year the Congress passed—with my strong support—and the President signed, the landmark Americans With Disabilities Act. This year, the Congress will likely debate additional civil rights legislation. The effectiveness of these measures and their successful implementation is not always easy to discern, and the Commission can play a vital role in monitoring the effects of laws enacted by the Congress to promote equal opportunity.

Mr. President, equality of opportunity is one of the cornerstones our Nation was built upon. However, this principle that makes our country so great is also very tenuous. We must be vigilant in our protection of equal opportunity, and the Commission on Civil Rights will help us do exactly that. Mr. President, the Commission should be reauthorized, and I urge my colleagues to support this measure.●

By Mr. BIDEN (for himself and Mr. DECONCINI):

S. 618. A bill to control and reduce violent crime; to the Committee on the Judiciary.

VIOLENT CRIME CONTROL ACT OF 1991

Mr. BIDEN. Mr. President, I rise today to introduce the Violent Crime Control Act of 1991, the most comprehensive anticrime initiative I have ever proposed. It is my belief that this legislation would make tremendous strides toward restoring safety and sanity to our Nation's dangerous streets.

America needs a crime bill and it can have one in 100 days. But it must be a crime bill that is tougher than the one the President proposed yesterday, in at least two important respects:

First, it must ban the killer assault weapons used by drug-dealers and terrorists.

Second, it must do more to add new police officers to the front lines of the war on crime.

If anyone doubts that such action is needed, I urge them to take a look at a report that the Judiciary Committee majority staff is releasing today.

This report, entitled "Fighting Crime in America: An Agenda for the 1990's," contains new data that illustrates how horrible the crime problem has become.

Among the report's findings:

The year 1990 set a national record for murders, a national record for assaults, and a national record for robberies. Last year's increase in murder and rape was the largest 1-year jump in more than a decade. And every American—every American—is four times more likely to be victimized by a violent crime today than he or she was in 1960. The fact is this: more Americans were killed on our streets over the past 8 weeks than were killed by enemy soldiers during Operation Desert Storm.

Yet if the report we are releasing today contains some depressing, stark facts, it also contains some rather simple—but important—solutions for meeting this crisis.

And these solutions form the core of the legislation I am proposing today: a bill, I am proud to say, that was endorsed last month by my colleagues in the Senate Democratic Conference.

Before I discuss our bill, I want to say a few things about the President's 100 days.

I have little doubt that Congress can pass a crime bill in 100 days. In fact, we could have passed a crime bill last year had the special interests in the gun lobby not worked to stall, delay, and ultimately kill the bill because of its ban on deadly assault weapons.

Simply put: If the President would join the Congress in banning the murderous weapons that are killing police officers, children and countless innocent bystanders, we could easily pass a crime bill within the next 100 days.

The report we are releasing today makes clear what America must do to end its rapidly rising crime rates:

First, we must get the people who commit crimes out of the community, and we must punish them severely for their actions;

Second, we must stop people from committing crimes before they happen; and

Third, we must get the deadly weapons off the streets.

On the first of these goals, our bill has little difference from the President. We disagree not in what the President proposes—but what he opposes—not in what he includes but in what he excludes.

Like the President's bill, our bill:

Imposes the death penalty for the largest number of offenses in U.S. history—indeed, our bill covers even more capital offenses than does the President's.

It extends the death penalty for drug killers, terrorists, and the murderers of law enforcement officers.

It shortens the appeals process for capital offenders.

And, it increases penalties for criminals who commit gun offenses.

We have no disagreement with the President over whether we must punish criminals severely. On this point, both proposals are in agreement. Our differences with the President start with the second goal, the question of whether more must be done to prevent crimes in the first place.

Here, we think that much more must be done—not just to punish criminals—but also to make our streets safer from mayhem in the first place.

On this point, the findings of our new staff report are worth noting. It shows:

In 1950, America had three police officers per violent crime. Yet today, the ratio is just the reverse—three violent crimes per officer.

After 18 months of the administration's war on drugs, the number of police officers on our streets today is only 1 percent higher than it was when the President's effort was launched.

And the administration's 1992 budget actually proposes a cut in Federal aid sent to local law enforcement agencies.

Our streets are unsafe because our police forces are undermanned and overwhelmed. They can never be safe again until we reverse this imbalance.

That's why our bill, unlike the President's, includes funding for thousands of new police officers, FBI agents, DEA agents, and other law enforcement officers. We don't want to just punish murderers, we want to prevent murders.

And it's why our bill includes three new initiatives that the President's plan ignores: a comprehensive new program to combat juvenile gangs; more help for rural areas that are suffering rising crime rates; and emergency aid to the places hardest hit by drugs.

And it is why we are pushing an important initiative called the Violence Against Women Act, which would tackle the escalating problems of rape, domestic violence, and sexual assault.

The Violence Against Women Act, along with Senator DECONCINI's motorcycle gang bill are further aspects of our anticrime agenda that are not adequately addressed by the President's plan.

Finally, and again, unlike the President's bill, our bill addresses a third goal of any substantial crime legislation; getting killer assault weapons off the streets.

Our bill includes the so-called DeConcini amendment, a measure adopted by the Senate last year to ban the manufacture and sale of 14 deadly assault weapons.

These guns are the weapons of choice for drug dealers and international terrorists. They have no legitimate purpose and they must be controlled be-

fore they kill any more of our law-abiding citizens.

Unfortunately, the President's bill is silent in this respect. Instead of controlling assault weapons, the President proposes to increase the penalties on those who use such guns to commit crimes.

Mr. President, I say this in response: We agree that gun criminals should face stiffer punishments, but we also think that we should get the most deadly weapons off the streets before they are used to kill or maim anyone else.

In sum: The President wants to punish crime—and so do we—but we also want to do more to prevent crime, and make our cities and towns safer for all Americans.

Can the Congress meet the challenge to pass a crime bill in 100 days? I am convinced that if the President works with us, this ambitious goal can be achieved.

But for this goal to be a meaningful one, the crime bill we pass must be a meaningful one. Our goal should not be to pass just any crime bill within 100 days, but rather, to enact a comprehensive, valuable piece of crime-fighting legislation in that period.

To achieve that end, the President must help us in two ways: First, he must prevent his allies in the gun lobby from blocking this bill, and indeed, he should join us in coming up with an agreeable proposal to limit these weapons; and second, he must work with us putting aside the rhetoric of partisanship on crime to reach an accord on a bill that we can all support.

None of us here in Congress or at the White House, Republican or Democrat—can afford to wait any longer to start to tackle this crisis.

Hopefully, if we all work together, we can make progress to combat death and violent aggression on this home front as swiftly and decisively as we achieved this same end in the gulf.

I urge my colleagues to review our new majority staff report and join me in supporting the Violent Crime Control Act.

I ask unanimous consent that the full text of my bill, along with a side-by-side comparison of it to the President's bill, and some summary materials, be printed in the RECORD.

Mr. President, I rise today to introduce a voluminous piece of legislation, but I think an important one—I hope my colleagues see it that way—the Violent Crime Control Act of 1991. This is the most comprehensive anticrime initiative I have ever introduced in the 18 years I have been here, and it is my belief that this legislation would make tremendous strides toward restoring safety and sanity to our Nation's streets and neighborhoods.

Mr. President, before I say my little piece here, let me point out that the

President announced yesterday that violent crime is going to be his No. 1 domestic initiative. I hope that doesn't mean we are going to back off on the fight against drugs. The President laid out a crime bill, a crime bill all of which we passed last year here in the Senate. It ultimately failed because of a Presidential threat of a veto because we in the Senate included a provision eliminating 14 assault-style weapons—the so-called DeConcini bill.

Mr. President, I want to say at the outset about the death penalty that I do not think many of us in here—I know the Senator from Florida, because he knows so much about this area and has worked so hard in it so long when he was a Governor and since he has been here—disagree. Few of us disagree—at least I do not, nor does the Senator from Florida—on reinstating the death penalty.

Our bill last year provided for the death penalty. And the bill this year provides for a death penalty—total of 44 offenses for which you can receive death as the penalty. That is more than what the President is proposing.

There is also a proposal the President has to change the habeas corpus law. The Senator, as an attorney and former attorney general, knows full well what that means. It means that there are people who have been put on death row, and who are filing frivolous and successive petitions that are taking up the courts' time and everyone's time.

But we can change habeas corpus tomorrow, and it will have no effect on the crime rate; zero. Those folks on death row are not shooting people. Yet, if you listen to some of my colleagues talk, they will tell you: "If we get the death penalty and we get a change in habeas corpus, well, we will change the world. Our streets will be safer."

Now, I support the death penalty. I am going to try to pass it again through this legislation. We passed it here in the Senate, and passed it in the House, and we are going to pass it again. That is not a big problem.

But with the Federal death penalty, Mr. President, if you add up all the potential people who will be put to death and convicted for all the crimes we include, you are not talking about more than a dozen folks a year. Heck, there are far more murders right here in the city of Washington. We are not talking about a lot of people.

The point I wanted to make is this: It is not what the President has proposed in his legislation that I oppose; it is what he does not propose. We will change the habeas corpus law to provide for only one appeal, one bite out of the apple. We have some disagreement among ourselves and with the President over the nuances. We will settle that. And we will pass a death penalty.

As I said, I spoke to a group of attorneys general this morning—and you

spoke to them just prior to my speaking to them, Mr. President—Republicans and Democrats alike. And the attorneys general all nodded like you did when I said the following: Assuming what the President proposed on the exclusionary rule is constitutional, which it is not; and assuming we allow people to go in and knock down people's doors without a search warrant, and say: "Golly, I made mistake;" and assuming they can prove they made a mistake, it is all right. Assume that is the case. Add up all the cases where a conviction has been overturned because the evidence was illegally seized, or where the prosecutor did not go forward because the evidence that he had at his disposal or her disposal was tainted because it was illegally seized. Add it all up. What does it add up to? 1 percent, 2 percent, 5 percent; an outrageous 15 percent of all the crimes committed? That would be bizarre, but let us say it is that.

The combination, Mr. President, of habeas corpus, restoration of the death penalty, and exclusionary rule, on the best day, would account for a very small percentage of the violent crime that is committed out there.

Mr. President, I am going to put in the RECORD "Fighting Crime in America; Agenda for the Nineties," a majority staff report. I am proud to say, Mr. President, that every staff report we have put out in the Judiciary Committee in recent years has been met with universal approval by conservatives, liberals, Democrats, Republicans, good guys, and bad guys. No one has disputed thus far, that I am aware of, the credibility of the reports we file.

Mr. President, we do not need, really, more studies and reports. We know the problem. The problem is that the streets are not safe.

There are three pieces to the problem. One, once you convict these folks, what do you do with them? The President and JOE BIDEN are in full agreement: You give death if it is a crime that warrants death. You radically limit the habeas corpus appeals. And you also allow the police some more flexibility relative to seized evidence. So far, so good.

Now, Mr. President, comes the hard part: Doing something about crime. The hard part, now. The hard part is, Mr. President, you have to deal with what this report and every other report shows. The murder rate is the highest it has ever been in the history of America—the highest ever. And although I have been wrong about many things—and if you stick around longer, I will be wrong again—there is one thing I was right about: last year I said that we were going to have the highest murder rate in history and we did. It did not take a genius to figure it out.

We have a higher rate merely because more people are shooting other people. As the head of the Trauma Division at

Einstein Medical Center—one of the best trauma hospitals and emergency hospitals in the world—testified before my committee, she said, "Senator, 5, 7, 12, 15 years ago, when my trauma team had somebody, when that little blue light goes on, we had someone with a 22-caliber bullet in the skull somewhere, we had a chance to save them, or there may have been a 22-caliber slug in the shoulder or a Saturday night special in the leg. Senator, we do not get those anymore. When that little blue light goes on—I guess it varies from hospital to hospital what color light—when the light goes on, my trauma team heads down to meet the ambulance. Instead of a 22-caliber bullet lodged in the lung, the lung has been blown out of the body of the person because it is a 38-caliber gun that had done it." Or, "Senator, we don't get one-shot victims anymore. There are shots from their groin to their ears. So I have to worry about saving the leg, the intestines, the heart, and then the brain, all in one patient because they are the victims of semiautomatic weapons. When they fire those things, the bullets just scatter."

It does not take a genius to figure it out. Guns, guns, new guns, powerful guns, nonsporting guns are responsible for these murders. So I reintroduced the DeConcini assault weapon provision in this bill. Now, I tell you, Mr. President, that is not going to stop the murder rate. I am going to hear from my colleagues and the president of the NRA that people kill people, guns do not kill people. Well, let us assume that is true. I accept that. All I want to do, Mr. President, is to make it a little bit harder, a little bit harder for these guns to find their way into the hands of young people, drug lords, nondrug lords, local corner bosses.

I was asked, I say to my friend from Florida, to go to a small dinner with the President of Colombia. I do not often stay in Washington to go to those dinners, but there were six people or eight people invited. I sat with him. Do you know what he said to me? He said, "Can you do anything to help? The Medellin cartel boys fly into Florida, walk into a gun store, and they buy these things."

Now, those who have a second amendment argument, I just say to them, if you think people should not have Abrams tanks in their backyards, you have already crossed the constitutional line. If you can ban any weapon from anyone, you can ban any other weapon. So, Mr. President, we must deal with guns.

The second important thing in this legislation, Mr. President, is the only thing that is going to affect crime: More personnel, more police officers on the street for State and local governments, and the Federal Government. The President does not propose adding any new police officers. I want to fight

crime. We need police officers to fight crime. Since the President has been President and his major new effort is under way, there has been a 1 percent increase in the number of police officers on the street. In the year 1960, if my recollection serves me correctly, we had as many police officers. It is a different world. The President proposes nothing for this.

The President also proposed nothing to deal with another obvious crime problem, violence against women. Mr. President, rape and violent assault are growing at record rates. I have introduced an entire crime bill just to address violence against women. The President has refused to support it as if it is not a problem. I know he is concerned. But violent assaults against young men, Mr. President, have decreased 12 percent in the last 15 years, while against women, they are up 50 percent.

Now what is this about? Mr. President, I heard my distinguished friend, the Republican leader, talk about the civil rights bill, asking whether it is politics or not. Well, Mr. President, we can have a crime bill in 15 minutes, 15 days, not 100 days, if the administration is willing to deal with what is not in this bill—assault weapons, more police officers, and violence against women.

Mr. President, when the first drug bill was introduced by the President of the United States, it banned the sale of assault weapons manufactured abroad. The President ultimately backed off his position. He is incredibly popular now. He has political capital that he is spending and he should spend to make his point relative to the Democrats, as he should. By the way, I am not complaining about that; he should use that capital. But I respectfully suggest that he consider using some of that political capital with the NRA. Over 85 percent of the people in this country, Mr. President, think we should do something about those 14 assault weapons—Uzis and Streetsweepers, and I will not go through all of them. Now is the time to expend a little bit of that capital.

So, Mr. President, I stand ready as chairman of the Judiciary Committee, and I am sure all my colleagues in the Senate and the House stand ready, to work with the President today, tomorrow, until it is done, to move on establishing the death penalty and reforming habeas corpus. But we must also provide more police, more protection, fewer assault weapons, and more help to women who are victims of crime.

I thank the Chair.

I ask unanimous consent that, along with the bill, a copy of "Fighting Crime in America, An American Agenda," and also a side-by-side comparison of this bill that I am sending to the desk be printed in the RECORD.

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

S. 618

*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 "Violent Crime Control Act of 1991".

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

**TITLE I—SAFER STREETS AND NEIGHBORHOODS**

Sec. 101. Short title.

Sec. 102. Grants to State and local agencies.

**TITLE II—DEATH PENALTY**

Sec. 201. Short title.

Sec. 202. Constitutional procedures for the imposition of the sentence of death.

Sec. 203. Specific offenses for which death penalty is authorized.

Sec. 204. Applicability to uniform code of military justice.

Sec. 205. Death penalty for murder by a Federal prisoner.

Sec. 206. Death penalty for civil rights murders.

Sec. 207. Racial Justice Act of 1991.

**TITLE III—DEATH PENALTY FOR MURDER OF LAW ENFORCEMENT OFFICER ACT.**

Sec. 301. Death penalty for the murder of Federal law enforcement officials.

Sec. 302. Death penalty for the murder of State officials assisting Federal law enforcement officials.

**TITLE IV—DEATH PENALTY FOR DRUG CRIMINALS ACT**

Sec. 401. Short title.

Sec. 402. Death penalty for certain drug criminals.

Sec. 403. Drug distribution conspiracies.

Sec. 404. Drug import and export conspiracies.

Sec. 405. Drug distribution to minors or by employing minors.

Sec. 406. Export and import of major drug quantities.

Sec. 407. Distribution of major drug quantities.

**TITLE V—PREVENTION AND PUNISHMENT OF TERRORIST ACTS**

Sec. 501. Short title.

**Subtitle A—Punishing Domestic and International Terrorist Acts**

**PART I—TERRORIST DEATH PENALTY ACT OF 1991**

Sec. 511. Short title.

Sec. 512. Terrorist death penalty offense: terrorist acts abroad.

**PART II—TERRORIST ACTS COMMITTED IN THE UNITED STATES**

Sec. 521. Criminal offense for domestic terrorist acts.

**PART III—INCREASING PENALTIES FOR INTERNATIONAL TERRORIST ACTS**

Sec. 531. Penalties for international terrorist acts.

Sec. 532. Clerical amendments.

**Subtitle B—Preventing Domestic and International Terrorist Acts**

**PART I—ATTACKING THE INFRASTRUCTURE OF TERRORIST ORGANIZATIONS**

Sec. 541. Providing material support to terrorists.

Sec. 542. Forfeiture of assets used to support terrorists.

**PART II—ELECTRONIC COMMUNICATIONS**

Sec. 545. Cooperation of telecommunications providers with law enforcement.

**PART III—COOPERATION OF WITNESSES IN TERRORIST INVESTIGATIONS**

Sec. 551. Short title.

Sec. 552. Alien witness cooperation.

Sec. 553. Conforming amendment.

**Subtitle C—Preventing Aviation Terrorism**

Sec. 561. Preventing acts of terrorism against civilian aviation.

**Subtitle D—Preventing Economic Terrorism**

Sec. 571. Counterfeiting U.S. currency abroad.

Sec. 572. Economic Terrorism Task Force.

**Subtitle E—Authorizations to Expand Counter-Terrorist Operations by Federal Agencies**

Sec. 581. Authorization of appropriations.

**TITLE VI—DRIVE-BY-SHOOTING ACT**

Sec. 601. Short title.

Sec. 602. New offense for the indiscriminate use of weapons to further drug conspiracies.

**TITLE VII—ASSAULT WEAPONS**

Sec. 701. Short title.

Sec. 702. Unlawful acts.

Sec. 703. Definitions.

Sec. 704. Secretary to recommend designation as assault weapon.

Sec. 705. Enhanced penalties.

Sec. 706. Disability.

Sec. 707. Study by Attorney General.

Sec. 708. Sunset provision.

**TITLE VIII—POLICE CORPS AND LAW ENFORCEMENT TRAINING AND EDUCATION ACT**

Sec. 801. Short title.

Sec. 802. Purposes.

Sec. 803. Establishment of office of the police corps and law enforcement education.

Sec. 804. Designation of lead agency and submission of State plan.

**Subtitle A—Police Corps Program**

Sec. 811. Definitions.

Sec. 812. Scholarship assistance.

Sec. 813. Selection of participants.

Sec. 814. Police corps training.

Sec. 815. Service obligation.

Sec. 816. State plan requirements.

Sec. 817. Authorization of appropriations.

**Subtitle B—Law Enforcement Scholarship Program**

Sec. 821. Definitions.

Sec. 822. Allotment.

Sec. 823. Program established.

Sec. 824. Scholarships.

Sec. 825. Eligibility.

Sec. 826. State plan requirements.

Sec. 827. Local application.

Sec. 828. Scholarship agreement.

Sec. 829. Authorization of appropriations.

**Subtitle C—Reports**

Sec. 831. Reports to Congress.

**TITLE IX—FEDERAL LAW ENFORCEMENT AGENCIES**

Sec. 901. Short title.

Sec. 902. Authorization for Federal law enforcement agencies.

**TITLE X—HABEAS CORPUS REFORM ACT**

Sec. 1001. Short title.

Sec. 1002. Special habeas corpus procedures in capital cases.

Sec. 1003. Law controlling in Federal habeas corpus proceedings.

**TITLE XI—PUNISHMENT OF GUN CRIMINALS**

Sec. 1101. Short title.

Sec. 1102. Death penalty for gun murders.

Sec. 1103. Increased penalties for violent gun crimes.

Sec. 1104. Sentencing guidelines for new penalties.

Sec. 1105. Possession of an explosive during the commission of a felony.

Sec. 1106. Increased penalty for knowingly false, material statement in connection with the acquisition of a firearm from a licensed dealer.

Sec. 1107. Clarification of penalty enhancement.

Sec. 1108. Penalties for improper transfer, stealing firearms, or smuggling a firearm in drug-related offense.

Sec. 1109. Theft of firearms and explosives.

Sec. 1110. Bar on sale of firearms and explosives to or possession of firearms and explosives by persons convicted of a violent or serious drug misdemeanor.

Sec. 1111. Permitting consideration of pretrial detention for certain firearms and explosives offenses.

Sec. 1112. Disposition of forfeited firearms.

Sec. 1113. Clarification of "burglary" under the armed career criminal statute.

Sec. 1114. Clarification of definition of conviction.

**TITLE XII—PRISON FOR VIOLENT DRUG OFFENDERS**

Sec. 1201. Regional prisons.

**TITLE XIII—BOOT CAMPS**

Sec. 1301. Boot camps.

**TITLE XIV—YOUTH VIOLENCE ACT**

**Subtitle A—Increasing Penalties for Employing Children to Distribute Drugs Near Schools and Playgrounds.**

Sec. 1401. Strengthening Federal penalties.

**Subtitle B—Anti-gang Grants**

Sec. 1411. Grant program.

Sec. 1412. Conforming amendments.

Sec. 1413. Treatment of violent juveniles as adults.

Sec. 1414. Serious drug offenses by juveniles as Armed Career Criminal Act predicates.

**TITLE XV—RURAL CRIME AND DRUG CONTROL ACT**

**Subtitle A—Fighting Drug Trafficking in Rural Areas**

Sec. 1501. Authorizations for rural law enforcement agencies.

Sec. 1502. Rural drug enforcement task forces.

Sec. 1503. Cross-designation of Federal officers.

Sec. 1504. Rural drug enforcement training.

**Subtitle B—Increasing Penalties for Certain Drug Trafficking Offenses**

Sec. 1511. Short title.

Sec. 1512. Strengthening Federal penalties.

**Subtitle C—Rural Drug Prevention and Treatment**

Sec. 1521. Rural substance abuse treatment and education grants.

Sec. 1522. Clearinghouse program.

Subtitle D—Rural Land Recovery Act  
 Sec. 1531. Director of rural land recovery.  
 Sec. 1532. Assets forfeiture.  
 Sec. 1533. Prosecution of clandestine laboratory operators.

**TITLE XVI—DRUG EMERGENCY AREAS ACT OF 1991**

Sec. 1601. Short title.  
 Sec. 1602. Drug emergency areas.

**TITLE XVII—DRUNK DRIVING CHILD PROTECTION ACT**

Sec. 1701. Short title.  
 Sec. 1702. State laws applied in areas of Federal jurisdiction.  
 Sec. 1703. Common carriers.

**TITLE XVIII—COMMISSION ON CRIME AND VIOLENCE**

Sec. 1801. Establishment of commission.  
 Sec. 1802. Purpose.  
 Sec. 1803. Responsibilities of the commission.  
 Sec. 1804. Commission members.  
 Sec. 1805. Administrative provisions.  
 Sec. 1806. Report.  
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**TITLE XIX—PROTECTION OF CRIME VICTIMS**

Sec. 1901. Short title.  
 Sec. 1902. Victims' rights.  
 Sec. 1903. Services to victims.  
 Sec. 1904. Amendment of restitution provisions.  
 Sec. 1905. Amendment of bankruptcy code.  
**TITLE XX—CRACK HOUSE EVICTION ACT**  
 Sec. 2001. Eviction from places maintained for manufacturing, distributing, or using controlled substances.  
 Sec. 2002. Use of civil injunctive remedies, forfeiture sanctions, and other remedies against drug offenders.

**TITLE XXI—ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION**

Subtitle A—Establishment of an Organized Crime and Dangerous Drugs Division in the Department of Justice

Sec. 2101. Short title.  
 Sec. 2102. Findings.  
 Sec. 2103. Purposes.  
 Sec. 2104. Establishment of organized crime and dangerous drugs division.  
 Sec. 2105. Assistant Attorney General for organized crime and dangerous drugs.  
 Sec. 2106. Deputy Assistant Attorney General.  
 Sec. 2107. Administrative organization of the division.  
 Sec. 2108. Coordination and enhancement of field activities.

Subtitle B—International Prosecution Teams

Sec. 2111. International prosecution teams.

**TITLE XXII—EXCLUSIONARY RULE**

Sec. 2201. Searches and seizures pursuant to an invalid warrant.

**TITLE XXIII—DRUG TESTING**

Sec. 2301. Federal prisoner drug testing.

**TITLE I—SAFER STREETS AND NEIGHBORHOODS**

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Safer Streets and Neighborhoods Act of 1991".

**SEC. 102. GRANTS TO STATE AND LOCAL AGENCIES.**

Paragraph (5) of section 1001(a) of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(5) There are authorized to be appropriated \$1,000,000,000 for fiscal year 1992 and such sums as may be necessary in fiscal years 1993 and 1994 to carry out the programs under parts D and E of this title."

**SEC. 103. CONTINUATION OF FEDERAL STATE FUNDING FORMULA.**

Section 504(a)(1) of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by section 211 of the Department of Justice Appropriations Act, 1990 (Public Law 101-162) and section 601 of the Crime Control Act of 1990 (Public Law 101-647), is amended by striking "1991" and inserting in lieu thereof "1992".

**TITLE II—DEATH PENALTY**

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Federal Death Penalty Act of 1991".

**SEC. 202. CONSTITUTIONAL PROCEDURES FOR THE IMPOSITION OF THE SENTENCE OF DEATH.**

(a) IN GENERAL.—Part II of title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

**"CHAPTER 228—DEATH SENTENCE**

**"Sec.**

"3591. Sentence of death.

"3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified.

"3593. Special hearing to determine whether a sentence of death is justified.

"3594. Imposition of a sentence of death.

"3595. Review of a sentence of death.

"3596. Implementation of a sentence of death.

"3597. Use of State facilities.

"3598. Special provisions for Indian country.

**"§ 3591. Sentence of death authorized**

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381 of this title;

"(2) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(3) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(D) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

**"§ 3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified**

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

"(1) IMPAIRED CAPACITY.—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) MINOR PARTICIPATION.—The defendant is punishable as a principal (as defined in section 2 of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) FORESEEABILITY.—The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) YOUTH.—The defendant was youthful, although not under the age of 18.

"(6) NO PRIOR CRIMINAL RECORD.—The defendant did not have a significant prior criminal record.

"(7) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(8) OTHER DEFENDANTS.—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

"(9) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

"(10) OTHER FACTORS.—Other factors in the defendant's background or character that mitigate against imposition of the death sentence.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PRIOR ESPIONAGE OR TREASON OFFENSE.—The defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by law.

"(2) GRAVE RISK TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security.

"(3) GRAVE RISK OF DEATH.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (3), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy).

"(2) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(4) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(5) HEINOUS, CRUEL, OR DEPRAVED.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(6) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(7) PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(8) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism.

"(9) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) CONVICTION FOR SERIOUS FEDERAL DRUG OFFENSES.—The defendant had previously been convicted of violating title II or title III of the Controlled Substances Act for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

"(12) CONTINUING CRIMINAL ENTERPRISE INVOLVING DRUG SALES TO MINORS.—The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of section 408(c) of the Controlled Substances Act and that violation involved the distribution of drugs to persons

under the age of 21 in violation of section 405 of such Act.

"(13) HIGH PUBLIC OFFICIALS.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution or adjudication of an offense, and includes those engaged in corrections, parole, or probation functions.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

**"§ 3593. Special hearing to determine whether a sentence of death is justified**

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, subject to the Federal Rules of Evidence and Federal Rules of Criminal Procedure. The government and 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 the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur with the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (2) or (3), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether a sentence of death shall be imposed rather than some other lesser sentence. The jury or the court, if there is no jury, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence, and the jury shall be so instructed.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of 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 the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

#### "§ 3594. Imposition of a sentence of death

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

#### "§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) The court of appeals shall address all substantive and procedural issues raised on the appeal of a sentence of death, and shall consider whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the special finding of the existence of an aggravating factor required to be considered under section 3592.

"(2) Whenever the court of appeals finds that—

"(A) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the admissible evidence adduced does not support the special finding of the existence of the required aggravating factor; or

"(C) other legal error requires reversal of the sentence of death,

the court shall remand the case for reconsideration under section 3593 or impose a sentence other than death. In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

#### "§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for 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, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

"(b) PREGNANT WOMAN.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(c) MENTAL CAPACITY.—A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

#### "§ 3597. Use of State facilities

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee 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 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

#### "§ 3598. Special provisions for Indian country

"Notwithstanding sections 1152 and 1153 of this title, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction."

(b) AMENDMENTS TO CHAPTER ANALYSIS.—The chapter analysis of part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

#### "228. Death sentence ..... 3591". SEC. 203. SPECIFIC OFFENSES FOR WHICH DEATH PENALTY IS AUTHORIZED.

(a) CONFORMING CHANGES IN TITLE 18.—Title 18, United States Code, is amended as provided in the following sections:

(1) AIRCRAFTS AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(2) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy."

(3) EXPLOSIVE MATERIALS.—(A) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(B) Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(C) Section 844(i) of title 18, United States Code, is amended by striking the words "as provided in section 34 of this title".

(6) MURDER.—(A) The second undesignated paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;"

(B) Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and"

(7) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(8) **NONMAILABLE INJURIOUS ARTICLES.**—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the paragraph.

(9) **PRESIDENTIAL ASSASSINATIONS.**—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President."

(10) **WRECKING TRAINS.**—The second to the last undesignated paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(11) **BANK ROBBERY.**—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(12) **HOSTAGE TAKING.**—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(13) **RACKETEERING.**—(A) Section 1958 of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than \$50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than \$250,000, or both".

(B) Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than \$250,000, or both; and for kidnaping, by imprisonment for any term of years or for life, or a fine of not more than \$250,000, or both;"

(14) **GENOCIDE.**—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than \$1,000,000 or imprisonment for life," and inserting "where death results, a fine of not more than \$1,000,000, or imprisonment for life or a sentence of death,".

(b) **CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.**—Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

**SEC. 204. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.**

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

**SEC. 205. DEATH PENALTY FOR MURDER BY A FEDERAL PRISONER.**

(a) **IN GENERAL.**—Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

**"§ 1118. Murder by a Federal prisoner**

"(a) **OFFENSE.**—Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) **DEFINITIONS.**—For the purposes of this section—

"(1) the term 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) the term 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death; and

"(3) the term 'murders' means committing first degree or second degree murder as defined by section 1111 of this title."

(b) **AMENDMENT TO CHAPTER ANALYSIS.**—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"1118. Murder by a Federal prisoner."

**SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.**

(a) **CONSPIRACY AGAINST RIGHTS.**—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death."

(b) **DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.**—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death."

(c) **FEDERALLY PROTECTED ACTIVITIES.**—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) **DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.**—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

**SEC. 207. RACIAL JUSTICE ACT OF 1991.**

(a) **SHORT TITLE.**—This section may be cited as the "Racial Justice Act of 1991".

(b) **FINDINGS.**—The Congress finds that—  
(1) section 5 of the fourteenth amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the fourteenth amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

(c) **AMENDMENT TO TITLE 28.**—

(1) **PROCEDURE.**—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

**"CHAPTER 177—RACIALLY DISCRIMINATORY CAPITAL SENTENCING**

**"Sec.**

**"2921. Definitions.**

**"2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern.**

**"2923. Data on death penalty cases.**

**"2924. Enforcement of the chapter.**

**"2925. Construction of chapter.**

**"§ 2921. Definitions**

"For purposes of the chapter—

"(1) the term 'a racially discriminatory pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon persons of one race than upon persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race, and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"(4) the term 'State or Federal entity' means any State, the District of Columbia, the United States, any territory thereof, and any subdivision or authority of any of these entities that is empowered to provide by law that death be imposed as punishment for crime.

**"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern**

"(a) **PROHIBITION.**—It is unlawful to impose or execute sentences of death under color of State or Federal law in a racially discriminatory pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any law if that person's death sentence furthers a racially discriminatory pattern.

"(b) **ESTABLISHMENT OF A PATTERN.**—To establish that a racially discriminatory pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) **PRIMA FACIE SHOWING.**—(1) To establish a prima facie showing of a racially dis-

criminatorial pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportionate to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportionate to their representation among persons against whom death-eligible crimes have been committed.

"(2) To rebut a prima facie showing of a racially discriminatory pattern, a State or Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the pattern.

#### \*§ 2923. Data on death penalty cases

"(a) DESIGNATION OF AGENCY.—Any State or Federal entity that provides by law for death to be imposed as a punishment for any crime shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) RESPONSIBILITIES OF CENTRAL AGENCY.—Each central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) RESPONSIBILITY OF LOCAL OFFICIAL.—(1) Each local official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the local official or agency shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) PERTINENT DATA.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

#### \*§ 2924. Enforcement of the Chapter

"(a) ACTION UNDER SECTIONS 2241, 2254, OR 2255 OF THIS TITLE.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"(b) DETERMINATION BY A STATE COURT.—Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2922 shall be presumed to be correct unless—

"(1) the State is in compliance with section 2923;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim which were substantially equivalent to those provided by subsection (a); and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

#### \*§ 2925. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922."

(2) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

#### "177. Racially Discriminatory Capital

Sentencing ..... 2921."

(d) ACTIONS PRIOR TO THE DATE OF ENACTMENT.—No person shall be barred from raising any claim under section 2922 of title 28, United States Code, as added by this section, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the section nor by reason of any adjudication rendered prior to its enactment.

#### TITLE III—DEATH PENALTY FOR MURDER OF LAW ENFORCEMENT OFFICER ACT

##### SEC. 301. DEATH PENALTY FOR THE MURDER OF FEDERAL LAW ENFORCEMENT OFFICIALS.

Section 1114(a) of title 18, United States Code, is amended by striking "punished as provided under sections 1111 and 1112 of this title," and inserting "punished, in the case of first degree murder, by a sentence of death or life imprisonment as provided under section 1111 of this title, or, in the case of manslaughter, as provided under section 1112 of this title."

##### SEC. 302. DEATH PENALTY FOR THE MURDER OF STATE OFFICIALS ASSISTING FEDERAL LAW ENFORCEMENT OFFICIALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

#### "§ 1119. Killing persons aiding Federal investigations

"Whoever intentionally kills—

"(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation—

"(A) while the victim is engaged in the performance of official duties;

"(B) because of the performance of the victim's official duties; or

"(C) because of the victim's status as a public servant; or

"(2) any civilian or witness assisting a Federal criminal investigation, while that assistance is being rendered and because of it; shall be subject to the death penalty under chapter 228 of this title."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1119. Killing persons aiding Federal investigations."

#### TITLE IV—DEATH PENALTY FOR DRUG CRIMINALS ACT

##### SEC. 401. SHORT TITLE.

This title may be cited as the "Death Penalty for Drug Criminals Act of 1991".

##### SEC. 402. DEATH PENALTY FOR CERTAIN DRUG CRIMINALS.

The Controlled Substances Act (21 U.S.C. sec. 401 et seq.) is amended by adding after section 408 the following:

##### "SEC. 409. DEATH PENALTY AUTHORIZED FOR CERTAIN DRUG CRIMINALS."

##### SEC. 403. DRUG DISTRIBUTION CONSPIRACIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (a) as follows:

"(a) DRUG DISTRIBUTION CONSPIRACIES.—Whoever, during the course of a conspiracy prohibited by section 406 of the Controlled Substances Act, (21 U.S.C. 846), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life."

##### SEC. 404. DRUG IMPORT AND EXPORT CONSPIRACIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (b) as follows:

"(b) DRUG IMPORT AND EXPORT CONSPIRACIES.—Whoever, during the course of a conspiracy prohibited by section 1013 of the Controlled Substances Import and Export Act, (21 U.S.C. 963), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life."

##### SEC. 405. DRUG DISTRIBUTION TO MINORS, NEAR SCHOOLS, OR BY EMPLOYING MINORS.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (c) as follows:

"(c) DRUG DISTRIBUTION TO MINORS, NEAR SCHOOLS, OR WHILE EMPLOYING PERSONS UNDER 18 YEARS OF AGE.—Whoever, during the course of an offense punishable under section 405 of the Controlled Substances Act (21 U.S.C. 845), section 405A of the Controlled Substances Act (21 U.S.C. 845A), or section 405B of the Controlled Substances Act (21 U.S.C. 845B), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or imprisonment for life."

**SEC. 406. EXPORT AND IMPORT OF MAJOR DRUG QUANTITIES.**

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (d) as follows:

"(d) **DRUG IMPORT AND EXPORT.**—Whoever, during an offense prohibited by section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life."

**SEC. 407. DISTRIBUTION OF MAJOR DRUG QUANTITIES.**

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (e) as follows:

"(e) **DRUG DISTRIBUTION.**—Whoever, during the course of an offense punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life."

**TITLE V—PREVENTION AND PUNISHMENT OF TERRORIST ACTS**

**SEC. 501. SHORT TITLE.**

This Act may be cited as the "Comprehensive Counter-Terrorism Act of 1991".

**Subtitle A—Punishing Domestic and International Terrorist Acts**

**PART I—TERRORIST DEATH PENALTY ACT OF 1991**

**SEC. 511. SHORT TITLE.**

This part may be cited as the "Terrorist Death Penalty Act of 1991".

**SEC. 512. TERRORIST DEATH PENALTY OFFENSE: TERRORIST ACTS ABROAD.**

Paragraph (1) of subsection 2331(a) of title 18, United States Code, is amended to read as follows:

"(1) if the killing—

"(A) is a first degree murder as defined in section 1111(a) of this title, be punished by death or imprisonment for any term of years or for life, fined under this title, or both; or

"(B) is a murder other than a first degree murder as defined in section 1111(a) of this title, be fined under this title, imprisoned for any term of years or for life, or both;"

**PART II—TERRORIST ACTS COMMITTED IN THE UNITED STATES**

**SEC. 521. CRIMINAL OFFENSE FOR DOMESTIC TERRORIST ACTS.**

Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter 113B:

**"CHAPTER 113B—TERRORIST ACTS COMMITTED IN THE UNITED STATES**

"Sec. 2336. Terrorist acts committed in the United States.

"Sec. 2337. Providing material support to terrorists.

**"§ 2336. Terrorist acts committed in the United States**

"(a) **HOMICIDE.**—Whoever, acting as an agent of a foreign power, kills another person, with the intent specified in subsection (d) of this section, shall

"(1) if the killing—

"(A) is a first degree murder as defined in section 1111(a) of this title, be fined under this title, punished by death or imprisonment for any term of years or life, or both; or

"(B) is a murder other than a first degree murder as defined in subsection 1111(a) of this title,

be fined under this title, imprisoned for any term of years or for life, or both;

"(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned for not more than twenty years, or both; and

"(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned for not more than ten years, or both.

"(b) **ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.**—Whoever, acting as an agent of a foreign power, with the intent specified in subsection (d) of this section, attempts to kill, or engages in a conspiracy to kill—

"(1) in the case of an attempt to commit a killing that is a murder as defined in section 1111(a) of this title, shall be fined under this title, imprisoned for any term of years or life, or both; and

"(2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, shall be fined under this title or imprisoned for any term of years or for life, or both.

"(c) **OTHER VIOLENT TERRORIST ACTS.**—Whoever, acting as an agent of a foreign power, with the intent specified in subsection (d) of this section, engages in physical violence that results in serious bodily injury shall be fined under this title or imprisoned for not more than ten years, or both.

"(d) **INTENT TO COMMIT TERRORIST ACTS.**—For the purposes of this section, a person possesses an intent to commit a terrorist act, if such person intends—

"(1) to intimidate or coerce a civilian population;

"(2) to influence the policy of a government by intimidation or coercion; or

"(3) to affect the conduct of a government by assassination, kidnapping, or other violent act.

"(e) **DEFINITION.**—For purposes of this section and section 2337 of this title, the term 'agent of a foreign power' shall have the same meaning as in section 101(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b))."

**PART III—INCREASING PENALTIES FOR INTERNATIONAL TERRORIST ACTS**

**SEC. 531. PENALTIES FOR INTERNATIONAL TERRORIST ACTS.**

Section 2331 of title 18, United States Code, as amended by subtitle A of this title, is further amended—

(1) in subsection (a)—

(A) in paragraph (2) by striking "ten" and inserting "twenty"; and

(B) in paragraph (3) by striking "three" and inserting "ten".

(2) in subsection (c) by striking "five" and inserting "ten".

**SEC. 532. CLERICAL AMENDMENTS.**

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 113A the following new item:

"113B. Terrorist Acts Committed in the United States ..... 2336".

**Subtitle B—Preventing Domestic and International Terrorist Acts**

**PART I—ATTACKING THE INFRASTRUCTURE OF TERRORIST ORGANIZATIONS**

**SEC. 541. PROVIDING MATERIAL SUPPORT TO TERRORISTS.**

Part I of title 18, United States Code, as amended by title I of this Act, is further

amended by adding a new section 2337 as follows:

**"§ 2337. Providing material support to terrorists**

"Whoever knowingly, acting as an agent of a foreign power, with the intent to further a violation of section 1203, 2331, or 2336 of this title—

"(1) provides material support or resources; or

"(2) conceals or disguises the nature, location, source or ownership of material support or resources,

that are used or intended to be used to violate section 1203, 2331, or 2336 of this title shall be fined under this title or imprisoned for not more than ten years, or both. For the purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, communications equipment, facilities, weapons, personnel and other physical assets."

**SEC. 542. FORFEITURE OF ASSETS USED TO SUPPORT TERRORISTS.**

Chapter 46 of title 18, United States Code, is amended—

(1) in section 981(a)(1) by inserting at the end thereof the following:

"(D) Any property, real or personal, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of section 1203, 2331, 2332, 2336, or 2337 of this title."; and

(2) in section 982(a) by inserting at the end thereof the following:

"(3) Any property, real or personal, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of section 1203, 2331, 2336, or 2337 of this title."

**PART II—ELECTRONIC COMMUNICATIONS**

**SEC. 545. COOPERATION OF TELECOMMUNICATIONS PROVIDERS WITH LAW ENFORCEMENT.**

It is the sense of Congress that providers of electronic communications services and manufacturers of electronic communications service equipment shall ensure that communications systems permit the government to obtain the plain text contents of voice, data, and other communications when appropriately authorized by law.

**PART III—COOPERATION OF WITNESSES IN TERRORIST INVESTIGATIONS**

**SEC. 551. SHORT TITLE.**

This part may be cited as the "Alien Witness Cooperation Act of 1991".

**SEC. 552. ALIEN WITNESS COOPERATION.**

Chapter 224 of title 18, United States Code, is amended by—

(1) redesignating section 3528 as 3529;

(2) adding at the end of section 3529, as redesignated, the following new paragraph:

"As used in section 3528, the terms 'alien' and 'United States' shall have the same meanings given to them in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(3) inserting after section 3527 the following new section 3528:

**"§ 3528. Aliens; waiver of admission requirements**

"(a) **IN GENERAL.**—Upon authorizing protection to any alien under this chapter, the United States shall provide such alien with appropriate immigration visas and allow such alien to remain in the United States so long as that alien abides by all laws of the United States and guidelines, rules and regulations for protection. The Attorney General may determine that the granting of perma-

nent resident status to such alien is in the public interest and necessary for the safety and protection of such alien without regard to the alien's admissibility under immigration or any other laws and regulations or the failure to comply with such laws and regulations pertaining to admissibility.

"(b) ALIEN WITH FELONY CONVICTIONS.—Notwithstanding any other provisions of this chapter, an alien who would not be excluded because of felony convictions shall be considered for permanent residence on a conditional basis for a period of two years. Upon a showing that the alien is still being provided protection, or such protection remains available to the alien in accordance with provisions of this chapter, or such alien is still cooperating with the government, and has maintained good moral character, the Attorney General shall remove the conditional basis of the status effective as of the second anniversary of the alien's obtaining the status of admission for permanent residence. Permanent resident status shall not be granted to an alien who would be excluded because of felony convictions, unless the Attorney General determines, pursuant to regulations which shall be prescribed by him, that granting permanent residence status to such alien is necessary in the interests of justice, and comports with safety of the community.

"(c) LIMIT ON NUMBER OF ALIENS.—The number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year. The decision to grant or deny permanent resident status under this section is at the discretion of the Attorney General and shall not be subject to judicial review."

#### SEC. 553. CONFORMING AMENDMENT.

The analysis for chapter 224 of title 18, United States Code, is amended by—

(1) redesignating the item for section 3528 as section 3529; and

(2) adding after the item for section 3527 the following:

"3528. Aliens; waiver of admission requirements."

#### Subtitle C—Preventing Aviation Terrorism SEC. 561. PREVENTING ACTS OF TERRORISM AGAINST CIVILIAN AVIATION.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

#### "§ 36. Violations of Federal aviation security regulations.

"Whoever willfully violates a security regulation under part 107 or 108 of title 14, Code of Federal Regulations (relating to airport and airline security) shall be fined under this title or imprisoned for not more than one year, or both."

(b) TABLE OF SECTIONS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Violation of Federal aviation security regulations.

#### Subtitle D—Preventing Economic Terrorism SEC. 571. COUNTERFEITING U.S. CURRENCY ABROAD.

(a) IN GENERAL.—Chapter 25 of title 18, United States Code, is amended by adding before section 471 the following new section:

#### "§ 470. Counterfeit acts committed outside the United States.

"Whoever, outside the United States, engages in the act of—

"(1) making, dealing, or possessing any counterfeit obligation or other security of the United States; or

"(2) making, dealing, or possessing any plate, stone, or other thing, or any part thereof, used to counterfeit such obligation or security,

if such act would constitute a violation of section 471, 473, or 474 of this title if committed within the United States, shall be fined under this title, imprisoned for not more than 15 years, or both."

(b) TABLE OF SECTIONS.—The table of sections for chapter 25 of title 18, United States Code, is amended by adding before section 471 the following:

"471. Counterfeit acts committed outside the United States."

(c) TABLE OF CHAPTERS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item for chapter 25 and inserting the following:

#### "25. Counterfeiting and forgery ..... 470". SEC. 572. ECONOMIC TERRORISM TASK FORCE.

(a) ESTABLISHMENT AND PURPOSE.—There is established an Economic Terrorism Task Force to—

(1) assess the threat of terrorist actions directed against the United States economy, including actions directed against the United States government and actions against United States business interests;

(2) assess the adequacy of existing policies and procedures designed to prevent terrorist actions directed against the United States economy; and

(3) recommend administrative and legislative actions to prevent terrorist actions directed against the United States economy.

(b) MEMBERSHIP.—The Economic Terrorism Task Force shall be chaired by the Secretary of State, or his designee, and consist of the following members:

(1) the Director of Central Intelligence;

(2) the Director of the Federal Bureau of Investigation;

(3) the Director of the United States Secret Service;

(4) the Administrator of the Federal Aviation Administration;

(5) the Chairman of the Board of Governors of the Federal Reserve;

(6) the Under Secretary of the Treasury for Finance; and

(7) such other members of the Departments of Defense, Justice, State, Treasury, or any other agency of the United States government, as the Secretary of State may designate.

(c) ADMINISTRATIVE PROVISIONS.—The provisions of the Federal Advisory Committee Act shall not apply with respect to the Economic Terrorism Task Force.

(d) REPORT.—Not later than 180 days after the date of enactment of this Act, the chairman of the Economic Terrorism Task Force shall submit a report to the President and the Congress detailing the findings and recommendations of the task force. If the report of the task force is classified, an unclassified version shall be prepared for public distribution.

#### Subtitle E—Authorizations To Expand Counter-Terrorist Operations by Federal Agencies SEC. 581. AUTHORIZATIONS OF APPROPRIATIONS.

There is authorized to be appropriated in each of the fiscal years 1992, 1993 and 1994, in addition to any other amounts specified in

appropriations Acts, for counter-terrorist operations and programs:

(1) for the Federal Bureau of Investigation, \$25,000,000;

(2) for the Department of State, \$10,000,000;

(3) for the United States Customs Service, \$7,500,000;

(4) for the United States Secret Service, \$2,500,000;

(5) for the Bureau of Alcohol, Tobacco and Firearms, \$2,500,000;

(6) for the Federal Aviation Administration, \$2,500,000; and

(7) for grants to State and local law enforcement agencies, to be administered by the Office of Justice Programs in the Department of Justice, in consultation with the Federal Bureau of Investigation, \$25,000,000.

#### TITLE VI—DRIVE-BY-SHOOTING ACT SEC. 601. SHORT TITLE.

This title may be cited as the "Drive-By-Shooting Prevention Act of 1991".

#### SEC. 602. NEW OFFENSE FOR THE INDISCRIMINATE USE OF WEAPONS TO FURTHER DRUG CONSPIRACIES.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

#### "§ 36. Drive-by-shooting

"(a) OFFENSE AND PENALTIES.—

"(1) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection (b) and, with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons causing grave risk to human life shall be punished by a term of not more than 25 years, or by fine as provided under this title, or both.

"(2) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection (b) and, with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons and who kills one of those persons shall be sentenced according to the terms of section 1111 of this title, including a sentence of death or life imprisonment without release.

"(b) MAJOR DRUG OFFENSE DEFINED.—A major drug offense within the meaning of subsection (a) is one of the following:

"(1) a continuing criminal enterprise, punishable under section 403(c) of the Controlled Substances Act (21 U.S.C. 848(c));

"(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846) or punishable under section 1013 of the Controlled Substances Import and Export Control Act (21 U.S.C. 963); or

"(3) an offense involving major quantities of drugs and punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) or section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1))."

(b) TABLE OF SECTIONS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Drive-by-shooting."

#### TITLE VII—ASSAULT WEAPONS SEC. 701. SHORT TITLE.

This title may be cited as the "Antidrug, Assault Weapons Limitation Act of 1991".

#### SEC. 702. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

"(r)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapon.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent.

"(4) Any current owner of an assault weapon that requires retention of form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5), request a copy of such form from any licensed dealer, as defined in this title, in accordance with such regulations.

"(5) The Secretary shall, within 90 days after the date of enactment of this subsection, prescribe regulations for the request and delivery of such form 4473, or equivalent."

#### SEC. 703. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(25) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR-70 (SC-70),

"(D) Colt AR-15 and CAR-15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC-9, and

"(I) Street Sweeper and Striker 12."

#### SEC. 704. SECRETARY TO RECOMMEND DESIGNATION AS ASSAULT WEAPON.

Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

##### "§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons."

#### SEC. 705. ENHANCED PENALTIES.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is an assault weapon, to imprisonment for 10 years," after "sentenced to imprisonment for five years,".

#### SEC. 706. DISABILITY.

Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

#### SEC. 707. STUDY BY ATTORNEY GENERAL.

(a) IN GENERAL.—The Attorney General is authorized and directed to investigate and study the effect of the provisions of this title and the amendments made by this title and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this title.

(b) REPORT.—No later than 30 months after the date of enactment of this title, the Attorney General shall prepare and submit to the Senate of the United States, a report setting forth in detail the findings and determinations made pursuant to subsection (a).

#### SEC. 708. SUNSET PROVISION.

Unless otherwise provided, this title and the amendments made by this title shall become effective 30 days after the date of enactment of this title. This title, except for section 407, shall be effective for a period of 3 years. At the end of such 3-year period this title and the amendments made by this title, except for section 407, shall be repealed.

### TITLE VIII—POLICE CORPS AND LAW ENFORCEMENT TRAINING AND EDUCATION ACT

#### SEC. 801. SHORT TITLE.

This title may be cited as the "Police Corps and Law Enforcement Training and Education Act".

#### SEC. 802. PURPOSES.

The purposes of this title are to—

(1) address violent crime by increasing the number of police with advanced education and training on community patrol;

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement; and

(3) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel both through increasing the educational level of existing officers and by recruiting more highly educated officers.

#### SEC. 803. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in subtitle A and the Law Enforcement Scholarship program established in subtitle B and shall have authority to promulgate regulations to implement this title.

#### SEC. 804. DESIGNATION OF LEAD AGENCY AND SUBMISSION OF STATE PLAN.

(a) LEAD AGENCY.—A State that desires to participate in the Police Corps program under subtitle A or the Law Enforcement Scholarship program under subtitle B shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b); and

(2) administering the program in the State.

(b) STATE PLANS.—A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this title;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program;

(4) if the State desires to participate in the Police Corps program under subtitle A, meet the requirements of section 816; and

(5) if the State desires to participate in the Law Enforcement Scholarship program under subtitle B, meet the requirements of section 826.

#### Subtitle A—Police Corps Program

#### SEC. 811. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director;

(3) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(4) the term "participant" means a participant in the Police Corps program selected pursuant to section 813;

(5) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; and

(6) the term "State Police Corps program" means a State police corps program approved under section 816.

#### SEC. 812. SCHOLARSHIP ASSISTANCE.

(a) SCHOLARSHIPS AUTHORIZED.—(1) The Director is authorized to award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d).

(2)(A) Except as provided in subparagraph (B) each scholarship payment made under this section for each academic year shall not exceed—

(i) \$10,000; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$13,333.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed \$40,000.

(4) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(5)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) REIMBURSEMENT AUTHORIZED.—(1) The Director is authorized to make payments to a participant to reimburse such participant for the costs of educational expenses if such student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d).

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) \$10,000; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$13,333.

(C) The total amount of payments made pursuant to subparagraph (A) to any one student shall not exceed \$40,000.

(c) USE OF SCHOLARSHIP.—Scholarships awarded under this subsection shall only be used to attend a 4-year institution of higher education.

(d) AGREEMENT.—(1) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director. Each such agreement shall contain assurances that the participant shall—

(A) after successful completion of a baccalaureate program and training as prescribed in section 814, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(B) complete satisfactorily—

(i) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study);

(ii) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 814; and

(C) repay all of the scholarship or payment received plus interest at the rate of 10 percent in the event that the conditions of subparagraphs (A) and (B) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) In the event that a scholarship recipient is unable to comply with the repayment

provision set forth in subparagraph (B) of paragraph (1) because of a physical or emotional disability or for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from participants who violate the agreement described in paragraph (1).

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or dependent child's gross income shall not include any amount paid as scholarship assistance under this section or as a stipend under section 814.

(g) APPLICATION.—Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

(h) DEFINITION.—For the purposes of this section the term "institution of higher education" has the meaning given that term in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

#### SEC. 813. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 815(c)(5), including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an

appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this title, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 815, and such a participant shall be subject to the same benefits and obligations under this subtitle as other participants, including those stated in section (b)(1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 815, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this Act that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation on the police forces within the State is substantially less than in the population of the State as a whole. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the

event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(f) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

#### SEC. 814. POLICE CORPS TRAINING.

(a) IN GENERAL.—(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director shall contract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this subtitle.

(2) The Director is authorized to enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces), to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director is authorized to enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) TRAINING SESSIONS.—A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director.

(c) FURTHER TRAINING.—The 16 weeks of Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 816 shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) COURSE OF TRAINING.—The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge

and understanding of legal processes and law enforcement.

(e) EVALUATION OF PARTICIPANTS.—A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) STIPEND.—The Director shall pay participants in training sessions a stipend of \$250 a week during training.

#### SEC. 815. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon satisfactory completion of the participant's course of education and training program established in section 814 and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 812, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 812(d)(1)(C) shall not apply.

#### SEC. 816. STATE PLAN REQUIREMENTS.

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 813;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

#### SEC. 817. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle \$400,000,000 for fiscal year 1992 and such sums as are necessary to carry out the subtitle for fiscal years 1993, 1994, 1995, and 1996.

##### Subtitle B—Law Enforcement Scholarship Program

#### SEC. 821. DEFINITIONS.

As used in this subtitle—

(1) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies and related expenses;

(2) the term "institution of higher education" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

(3) the term "law enforcement position" means employment as an officer in a State or local police force, or correctional institution; and

(4) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

#### SEC. 822. ALLOTMENT.

From amounts appropriated under the authority of section 829, the Director shall allocate—

(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State; and

(2) 20 percent of such funds to States on the basis of the State's shortage of law enforcement personnel and the need for assistance under this subtitle.

#### SEC. 823. PROGRAM ESTABLISHED.

(a) IN GENERAL.—From amounts available pursuant to section 822 each State shall pay the Federal share of the cost of awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education.

(b) FEDERAL SHARE.—(1) The Federal share of the cost of scholarships under this subtitle shall not exceed 60 percent.

(2) The non-Federal share of the cost of scholarships under this subtitle shall be supplied from sources other than the Federal Government.

(c) **RESPONSIBILITIES OF THE DIRECTOR.**—The Director shall be responsible for the administration of the program conducted pursuant to this subtitle and shall, in consultation with the Assistant Secretary for Postsecondary Education, promulgate regulations to implement this subtitle.

(d) **SPECIAL RULE.**—Each State receiving an allotment under section 823 shall ensure that each scholarship recipient under this subtitle be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(e) **SUPPLEMENTATION OF FUNDING.**—Funds received under this subtitle shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

#### SEC. 824. SCHOLARSHIPS.

(a) **PERIOD OF AWARD.**—Scholarships awarded under this subtitle shall be for a period of one academic year.

(b) **USE OF SCHOLARSHIPS.**—Each individual awarded a scholarship under this subtitle may use such scholarship for educational expenses at any accredited institution of higher education.

#### SEC. 825. ELIGIBILITY.

An individual shall be eligible to receive a scholarship under this subtitle if such individual has been employed in law enforcement for 2 years immediately preceding the date for which assistance is sought.

#### SEC. 826. STATE PLAN REQUIREMENTS.

A State law enforcement scholarship plan shall—

(1) contain assurances that the State shall make scholarship payments to institutions of higher education on behalf of individuals receiving financial assistance under this subtitle;

(2) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel;

(3) contain assurances that the State shall promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in high schools and community colleges; and

(4) contain assurances that the State shall not expend for administrative expenses more than 8 percent of Federal funds received under section 823.

#### SEC. 827. LOCAL APPLICATION.

(a) **IN GENERAL.**—Each individual desiring a scholarship under this subtitle shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for which financial assistance is sought.

(b) **PRIORITY.**—In awarding scholarships under this subtitle, each State shall give priority to applications from individuals who are—

(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State; and

(2) pursuing an undergraduate degree.

#### SEC. 828. SCHOLARSHIP AGREEMENT.

(a) **IN GENERAL.**—Each individual receiving a scholarship under this subtitle shall enter into an agreement with the Director.

(b) **CONTENTS.**—Each agreement described in subsection (a) shall—

(1) provide assurances that the individual shall work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

(2) provide assurances that the individual will repay all of the scholarship assistance awarded under this title in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of the agreement under paragraph (1) are not complied with except where the individual—

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which an individual receiving a scholarship under this subtitle may seek employment in the field of law enforcement in a State other than the State which awarded such individual the scholarship under this subtitle.

(c) **SERVICE OBLIGATION.**—(1) Each individual awarded a scholarship under this subtitle shall work in a law enforcement position in the State which awarded such individual the scholarship for a period of one month for each credit hour for which financial assistance is received under this subtitle.

(2) For purposes of satisfying the requirement specified in paragraph (1) each individual awarded a scholarship under this Act shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

#### SEC. 829. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle \$30,000,000 for fiscal year 1992 and such sums as are necessary to carry out the subtitle for fiscal years 1993, 1994, 1995, and 1996.

#### Subtitle C—Reports

#### SEC. 831. REPORTS TO CONGRESS.

(a) **ANNUAL REPORTS.**—No later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program authorized by subtitle A, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic dispersion of participants in the Police Corps program;

(3) state the number of present and past scholarship recipients under subtitle B, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have served in law enforcement;

(4) describe the geographic, racial, and gender dispersion of scholarship recipients under subtitle B; and

(5) describe the progress of the programs authorized by this title and make recommendations for changes in the programs.

(b) **SPECIAL REPORT.**—Not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to Congress containing a plan to expand the assistance provided under subtitle B to Federal law enforcement officers. Such plan shall contain information of the number and type of Federal law enforcement officers eligible for such assistance.

#### TITLE IX—FEDERAL LAW ENFORCEMENT AGENCIES

##### SEC. 901. SHORT TITLE.

This title may be cited as the "Federal Law Enforcement Act of 1991".

##### SEC. 902. AUTHORIZATION FOR FEDERAL LAW ENFORCEMENT AGENCIES.

There is authorized to be appropriated for fiscal year 1992, \$345,500,000 (which shall be in addition to any other appropriations) to be allocated as follows:

(1) For the Drug Enforcement Administration, \$100,500,000, which shall include:

(A) not to exceed \$45,000,000 to hire, equip and train not less than 350 agents and necessary support personnel to expand DEA investigations and operations against drug trafficking organizations in rural areas;

(B) not to exceed \$25,000,000 to expand DEA State and Local Task Forces, including payment of state and local overtime, equipment and personnel costs; and

(C) not to exceed \$5,000,000 to hire, equip and train not less than 50 special agents and necessary support personnel to investigate violations of the Controlled Substances Act relating to anabolic steroids.

(2) For the Federal Bureau of Investigation, \$98,000,000, for the hiring of additional agents and support personnel to be dedicated to the investigation of drug trafficking organizations;

(3) For the Immigration and Naturalization Service, \$45,000,000, to be further allocated as follows:

(A) \$25,000,000 to hire, train and equip no fewer than 500 full-time equivalent Border Patrol officer positions;

(B) \$20,000,000, to hire, train and equip no fewer than 400 full-time equivalent INS criminal investigators dedicated to drug trafficking by illegal aliens and to deportations of criminal aliens.

(4) For the United States attorneys, \$45,000,000 to hire and train not less than 350 additional prosecutors and support personnel dedicated to the prosecution of drug trafficking and related offenses;

(5) For the United States Marshals Service, \$10,000,000;

(6) For the Bureau of Alcohol, Tobacco and Firearms, \$15,000,000 to hire, equip and train not less than 100 special agents and support personnel to investigate firearms violations committed by drug trafficking organizations, particularly violent gangs;

(7) For the United States courts, \$20,000,000 for additional magistrates, probation officers, other personnel and equipment to address the case-load generated by the additional investigative and prosecutorial resources provided in this title; and

(8) For Federal defender services, \$12,000,000 for the defense of persons prosecuted for drug trafficking and related crimes.

#### TITLE X—HABEAS CORPUS REFORM ACT

##### SEC. 1001. SHORT TITLE.

This title may be cited as the "Habeas Corpus Reform Act of 1991".

**SEC. 1002. SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES.**

Part VI of title 28 of the United States Code is amended by inserting following chapter 153 the following new chapter:

**"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES**

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

"2258. Filing of habeas corpus petition; time requirements; tolling rules.

"2259. Evidentiary hearings; scope of Federal review; district court adjudication.

"2260. Certificate of probable cause inapplicable.

"2261. Counsel in capital cases; trial and post-conviction; standards.

"2262. Law controlling in Federal habeas corpus proceedings; retroactivity.

**"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment**

"(a) This chapter shall apply to cases arising under section 2254 of this title brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable fees and litigation expenses of competent counsel consistent with section 2261 of this title.

"(c)(1) Upon receipt of notice that counsel has been appointed to represent a prisoner under sentence of death after the prisoner's conviction and sentence have been upheld on direct review in a State court of last resort or in the Supreme Court of the United States if application is made to that court, the State court of last resort shall enter an order confirming the appointment and shall direct its clerk to forward the record of the case to the attorney appointed.

"(2) Upon receipt of notice that counsel has been offered to, but declined by, a prisoner described in paragraph (1), the State court of last resort shall direct an appropriate court or judge to hold a hearing, at which the prisoner and the attorney offered to the prisoner shall be present, to determine whether the prisoner is competent to decide whether to accept or reject the appointment of counsel and whether, if competent, the prisoner knowingly and intelligently waives the appointment of counsel. The court or judge shall report its determinations to the State court of last resort, which shall review the determinations for error. If the State court of last resort concludes that the prisoner is incompetent and does not waive counsel, the court shall enter an order confirming the appointment of the attorney assigned to the prisoner by the appointing authority and shall direct the clerk to forward the record to the attorney appointed. If the court concludes that the prisoner is competent and waives counsel, the court shall enter an order that counsel need not be appointed and shall direct the clerk to forward the record to the prisoner.

"(3) Nothing in this section requires the appointment of counsel to a prisoner who is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner in State collateral proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel appointed under this chapter during State or Federal collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under this chapter or section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal post-conviction proceedings.

**"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions**

"(a) Upon the entry in the State court of last resort of an order pursuant to section 2256(c) of this title, a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed pursuant to section 2254 of this title. The application must recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 of this title within the time required in section 2258 of this title;

"(2) upon completion of district court and court of appeals review under section 2254 of this title the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254 of this title.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented by the prisoner in the State or Federal courts, and the failure to raise the claim is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence;

"(2) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt on the offense or offenses for which the death penalty was imposed; or

"(3) a stay and consideration of the requested relief are necessary to prevent a miscarriage of justice.

**"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules**

"Any petition for habeas corpus relief under section 2254 of this title must be filed in the appropriate district court not later than 365 days after the date of filing in the State court of last resort of an order issued in compliance with section 2256(c) of this title. The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner seeks review of a capital sentence that has been affirmed on direct appeal by the court of last resort of the State or has otherwise become final for State law purposes;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for post-conviction review pending before a State court of competent jurisdiction and if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for post-conviction review until final disposition of the case by the State court of last resort, and further until final disposition of the matter by the Supreme Court of the United States, if a timely petition for review is filed; and

"(3) during an additional period not to exceed 90 days, if counsel for the State prisoner—

"(A) moves for an extension of time in the United States district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254 of this title; and

"(B) makes a showing of good cause for counsel's inability to file the habeas corpus petition within the 365-day period established by this section.

**"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication**

"(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

"(1) determine the sufficiency of the evidentiary record for habeas corpus review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

Upon the development of a complete evidentiary record under this subsection, the district court shall rule on the merits of the claims properly before it.

"(b)(1) Except as provided in paragraph (2), a district court may refuse to consider a claim under this section if—

"(A) the prisoner previously failed to raise the claim in State court at the time and in the manner prescribed by State law;

"(B) the State courts, for that reason, refused or would refuse to entertain the claim; and

"(C) such refusal would constitute an adequate and independent State law ground that would foreclose direct review of the State court judgment in the United States Supreme Court.

"(2) A district court shall consider a claim under this section if the prisoner shows that the failure to raise the claim in a State court was due to the ignorance or neglect of the prisoner or counsel or if the failure to consider such a claim would result in a miscarriage of justice.

**“§2260. Certificate of probable cause inapplicable**

“The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

**“§2261. Counsel in capital cases; trial and post-conviction; standards**

“(a) A mechanism for the provision of counsel services to indigents sufficient to invoke the provisions of this chapter under section 2256(b) of this title shall provide for counsel to—

“(1) indigents charged with offenses for which capital punishment is sought;

“(2) indigents who have been sentenced to death and who seek appellate or collateral review in State court; and

“(3) indigents who have been sentenced to death and who seek certiorari review in the United States Supreme Court.

“(b)(1) In the case of an appointment made before trial, at least one attorney appointed under this chapter must have been admitted to practice in the court in which the prosecution is to be tried for not less than 5 years, and must have had not less than 3 years' experience in the trial of felony prosecutions in that court.

“(2) In the case of an appointment made after trial, at least one attorney appointed under this chapter must have been admitted to practice in the court of last resort of the State for not less than 5 years, and must have had not less than 3 years' experience in the handling of appeals in that State's courts in felony cases.

“(3) Notwithstanding paragraphs (1) and (2) of this subsection, a court, for good cause and upon the defendant's request, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration of the seriousness of the possible penalty and the unique and complex nature of the litigation.

“(c) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or issues relating to sentence, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefor, under subsection (d). Upon finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment of such services nunc pro tunc.

“(d) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to an attorney appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (c), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of this subsection.”

**SEC. 1003. LAW APPLICABLE IN CHAPTER 153 PROCEEDINGS.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

**“§2255A. Law applicable**

“(a) Except as provided in subsection (b) of this section, each claim under this chapter

shall be governed by the law existing on the date the court determines the claim.

“(b) In determining whether to apply a new rule, the court shall consider—

“(1) the purpose to be served by the new rule;

“(2) the extent of the reliance by law enforcement authorities on a different rule; and

“(3) the effect on the administration of justice of the application of the new rule.

“(c) For purposes of this section, the term ‘new rule’ means a sharp break from precedent announced by the Supreme Court of the United States that explicitly and substantially changes the law from that governing at the time the claimant's sentence became final. A rule is not new merely because, based on precedent existing before the rule's announcement, it was susceptible to debate among reasonable minds.”

(b) CHAPTER ANALYSIS.—The chapter analysis of chapter 153 of title 28, United States Code, is amended by adding at the end thereof the following:

“2255A. Law applicable.”

**TITLE XI—PUNISHMENT OF GUN CRIMINALS**

**SEC. 1101. SHORT TITLE.**

This title may be cited as the “Gun Criminals Punishment Act of 1991”.

**SEC. 1102. DEATH PENALTY FOR GUN MURDERS.**

Section 924(c) of title 18, United States Code, is amended by—

(1) inserting “(A)” after “(1)”;

(2) designating the second sentence as subparagraph (B);

(3) designating the third and fourth sentences as subparagraph (D); and

(4) inserting before subparagraph (D) the following:

“(C) Whoever violates the terms of subparagraph (A) and, with the intent to kill, discharges a firearm that kills another person, shall be sentenced to death or life imprisonment without release.”

**SEC. 1103. INCREASED PENALTIES FOR VIOLENT GUN CRIMES.**

(a) IN GENERAL.—Section 924(c)(1) of title 18, United States Code, is amended by—

(1) striking subparagraph (A) and inserting the following:

“(A) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States—

“(i) carries, possesses, or discharges a firearm, with the intent to injure another person, shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 5 to 10 years;

“(ii) carries, possesses or discharges a firearm that is an assault weapon, shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 10 to 15 years; or

“(iii) carries, possesses or discharges a firearm that is a machine gun, an explosive device, or is equipped with a firearm silencer or firearm muffler, shall be sentenced to imprisonment for 30 years.”; and

(2) striking subparagraph (B), as designated by section 1102 of this Act, and inserting the following:

“(B) In the case of a second conviction under this subsection, such person shall be

sentenced to imprisonment for 20 years and, if the firearm is an assault weapon, a machinegun, an explosive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment.”

“(b) SENTENCING GUIDELINES FOR NEW PENALTIES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission, shall promulgate guidelines or amend existing guidelines to provide for a sentencing enhancement in accord with the provisions of subsection (c)(1)(A) of section 924 of title 18, United States Code.”

**SEC. 1104. POSSESSION OF AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.**

(a) POSSESSION OF EXPLOSIVES.—Section 844(h) of title 18, United States Code, is amended by striking “carries an explosive during” and inserting “carries or otherwise possesses an explosive during”.

(b) PENALTY.—Section 844(h) of title 18, United States Code, is amended by striking “ten years” and inserting “twenty years”.

**SEC. 1105. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.**

Section 924(a) of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B), by striking “(a)(6),”; and

(2) in subsection (a)(2), by inserting “(a)(6),” after “subsections”.

**SEC. 1106. CLARIFICATION OF PENALTY ENHANCEMENT.**

Section 924(c)(1)(D) of title 18, United States Code, is amended by striking “convicted of a violation of” and inserting “sentenced pursuant to”.

**SEC. 1107. PENALTIES FOR IMPROPER TRANSFER, STEALING FIREARMS, OR SMUGGLING A FIREARM IN DRUG-RELATED OFFENSE.**

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

“(i) Whoever knowingly fails to acquire form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined not more than \$1,000 (in accordance with section 3571(e) of this title), imprisoned for not more than 6 months, or both.”

**SEC. 1108. THEFT OF FIREARMS AND EXPLOSIVES.**

Section 844 of title 18, United States Code, is amended by adding at the end the following:

“(k) Whoever steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 20 years, or fined under this title, or both.”

**SEC. 1109. BAR ON SALE OF FIREARMS AND EXPLOSIVES TO OR POSSESSION OF FIREARMS AND EXPLOSIVES BY PERSONS CONVICTED OF A VIOLENT OR SERIOUS DRUG MISDEMEANOR.**

(a) FIREARMS.—Sections 842(d)(2) and 922(d)(1) of title 18, United States Code, are each amended by inserting “, or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the penalty imposed was greater than 6 months (it is a bar to a prosecution under this paragraph that the conviction for a misdemeanor drug or narcotic offense oc-

current prior to the date of enactment of the Violent Crime Control Act of 1991" after "crime punishable by imprisonment for a term exceeding one year";

(b) **EXPLOSIVES.**—Sections 842(i)(1) and 922(g)(1) of title 18, United States Code, are each amended by inserting "or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the maximum penalty is greater than 6 months (it is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug or narcotic offense occurred prior to the date of enactment of the Violent Crime Control Act of 1991)" after "crime punishable by imprisonment for a term exceeding one year";

**SEC. 1110. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.**

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking "or" after the semicolon in subparagraph (C);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting after subparagraph (C) the following:

"(D) an offense under section 844(a) that is a violation of subsection (d), (h), or (i) of section 842 or an offense under section 924(a) that is a violation of subsection (d), (g), (h), (i), (j), (o), (q), or (s) of section 922; or"

**SEC. 1111. DISPOSITION OF FORFEITED FIREARMS.**

Subsection 5872(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5872(b)), is amended to read as follows:

"(b) **DISPOSAL.**—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) The Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) If the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) If the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearm; and

"(4) No decision or action of the Secretary pursuant to this subsection shall be subject to judicial review."

**SEC. 1112. CLARIFICATION OF "BURGLARY" UNDER THE ARMED CAREER CRIMINAL STATUTE.**

Section 924(e)(2) of title 18, United States Code, is amended by adding at the end thereof the following:

"(D) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense."

**SEC. 1113. CLARIFICATION OF DEFINITION OF CONVICTION.**

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, or expunction of the original conviction."

**TITLE XII—PRISON FOR VIOLENT DRUG OFFENDERS**

**SEC. 1201. REGIONAL PRISONS.**

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

(1) The total population of Federal, State, and local prisons and jails increased by 84 percent between 1980 and 1988 and currently numbers more than 900,000 people.

(2) More than 60 percent of all prisoners have a history of drug abuse or are regularly using drugs while in prison, but only 11 percent of State prison inmates and 7 percent of Federal prisoners are enrolled in drug treatment programs. Hundreds of thousands of prisoners are not receiving needed drug treatment while incarcerated, and the number of such persons is increasing rapidly.

(3) Drug-abusing prisoners are highly likely to return to crime upon release, but the recidivism rate is much lower for those who successfully complete treatment programs. Providing drug treatment to prisoners during incarceration therefore provides an opportunity to break the cycle of recidivism, reducing the crime rate and future prison overcrowding.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for the fiscal year ending September 30, 1991, the following amounts:

(1) \$600,000,000 for the construction of 10 regional prisons; and

(2) \$100,000,000 for the operation of such regional prisons for one year.

Such amounts shall be in addition to any other amounts authorized to be appropriated to the Bureau of Prisons.

(c) **LOCATION AND POPULATION.**—The regional prisons authorized by this section shall be located in places chosen by the Director of National Drug Control Policy, after consulting with the Director of the Bureau of Prisons, not less than 6 months after the effective date of this section. Each such facility shall be used to accommodate a population consisting of State and Federal prisoners in proportions of 20 percent Federal and 80 percent State.

(d) **ELIGIBILITY OF PRISONERS.**—The regional prisons authorized by this section shall be used to incarcerate State and Federal prisoners who have release dates of not more than 2 years from the date of assignment to the prison and who have been found to have substance abuse problems requiring long-term treatment.

(e) **STATE RESPONSIBILITIES.**—(1) The States shall select prisoners for assignment to the regional prisons who, in addition to satisfying eligibility criteria otherwise specified in this section, have long-term drug abuse problems and serious criminal histories. Selection of such persons is necessary for the regional prison program to have the maximum impact on the crime rate and future prison overcrowding, since such persons are the ones most likely to commit new crimes following release. Prisoners selected for assignment to a regional prison must agree to the assignment.

(2) Any State seeking to refer a State prisoner to a regional prison shall submit to the Director of the Bureau of Prisons (referred to as the "Director") an aftercare plan setting forth the provisions that the State will make for the continued treatment of the prisoner in a therapeutic community following release. The aftercare plan shall also contain provisions for vocational job training where appropriate.

(3) The State referring the prisoner to the regional prison (referred to as the "sending State") shall reimburse the Bureau of Prisons for the full cost of the incarceration and treatment of the prisoner, except that if the prisoner successfully completes the treatment program, the Director shall return to the sending State 25 percent of the amount paid for that prisoner. The total amount returned to each State under this paragraph in each fiscal year shall be used by that State to provide the aftercare treatment required by paragraph (2).

(f) **POWERS OF THE DIRECTOR.**—(1) The Director shall have the exclusive right to determine whether or not a State or Federal prisoner satisfies the eligibility requirements of this section, and whether the prisoner is to be accepted into the regional prison program. The Director shall have the right to make this determination after the staff of the regional prison has had an opportunity to interview the prisoner in person.

(2) The Director shall have the exclusive right to determine if a prisoner in the regional treatment program is complying with all of the conditions and requirements of the program. The Director shall have the authority to return any prisoner not complying with the conditions and requirements of the program to the sending State at anytime. The Director shall notify the sending State whenever such prisoner is returned that the prisoner has not successfully completed the treatment program.

**TITLE XIII—BOOT CAMPS**

**SEC. 1301. BOOT CAMPS.**

(a) **IN GENERAL.**—Not later than 1 year after the effective date of this section, the Attorney General shall establish within the Bureau of Prisons 10 military-style boot camp prisons (referred to in this title as "boot camps"). The boot camps will be located on closed military installations on sites to be chosen by the Director of National Drug Control Policy, after consultation with the Director of the Bureau of Prisons, and will provide a highly regimented schedule of strict discipline, physical training, work, drill, and ceremony characteristic of military basic training as well as remedial education and treatment for substance abuse.

(b) **CAPACITY.**—Each boot camp shall be designed to accommodate between 200 and 300 inmates for periods of not less than 90 days and not greater than 120 days. Not more than 20 percent of the inmates shall be Federal prisoners. The remaining inmates shall be State prisoners who are accepted for partici-

pation in the boot camp program pursuant to subsection (d).

(c) **FEDERAL PRISONERS.**—Section 3582 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(e) **BOOT CAMP PRISON AS A SENTENCING ALTERNATIVE.**—(1) The court, in imposing sentence in the circumstances described in paragraph (2), may designate the defendant as eligible for placement in a boot camp prison. The Bureau of Prisons shall determine whether a defendant so designated will be assigned to a boot camp prison.

“(2) A defendant may be designated as eligible for placement in boot camp prison if—

“(A) the defendant—

“(i) is under 25 years of age;

“(ii) has no prior conviction for which he or she has served more than 10 days incarceration; and

“(iii) has been convicted of an offense involving a controlled substance punishable under the Controlled Substances Act or the Controlled Substances Export and Import Act, or any other offense if the defendant, at the time of arrest or at any time thereafter, tested positive for the presence of a controlled substance in his or her blood or urine; and

“(B) the sentencing court finds that the defendant's total offense level under the Federal sentencing guidelines is level 9 or less.

“(3) If the Director of the Bureau of Prisons finds that an inmate placed in a boot camp prison pursuant to this subsection has willfully refused to comply with the conditions of confinement in the boot camp, the Director may transfer the inmate to any other correctional facility in the Federal prison system.

“(4) Successful completion of assignment to a boot camp shall constitute satisfaction of any period of active incarceration, but shall not affect any aspect of a sentence relating to a fine, restitution, or supervised release.”

(d) **STATE PRISONERS.**—(1) Any person who has been convicted of a criminal offense in any State, or who anticipates entering a plea of guilty of such offense, but who has not yet been sentenced, may apply to be assigned to a boot camp. Such application shall be made to the Bureau of Prisons and shall be in the form designated by the Director of the Bureau of Prisons and shall contain a statement certified by counsel for the applicant that at the time of sentencing the applicant is likely to be eligible for assignment to a boot camp pursuant to paragraph (2). The Bureau of Prisons shall respond to such applications within 14 days so that the sentencing court is aware of the result of the application at the time of sentencing. In responding to such applications, the Bureau of Prisons shall determine, on the basis of the availability of space, whether a defendant who becomes eligible for assignment to a boot camp prison at the time of sentencing will be so assigned.

(2) A person convicted of a State criminal offense shall be eligible for assignment to a boot camp if he or she—

(A) is under 25 years of age;

(B) has no prior conviction for which he or she has served more than 10 days incarceration;

(C) has been sentenced to a term of imprisonment that will be satisfied under the law of the sentencing State if the defendant successfully completes a term of not less than 90 days nor more than 120 days in a boot camp;

(D) has been designated by the sentencing court as eligible for assignment to a boot camp; and

(E) has been convicted of an offense involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or any other offense if the defendant, at the time of arrest or at any time thereafter, tested positive for the presence of a controlled substance in his or her blood or urine.

(3) If the Director of the Bureau of Prisons finds that an inmate placed in a boot camp prison pursuant to this subsection has willfully refused to comply with the conditions of confinement in the boot camp, the Director may transfer the inmate back to the jurisdiction of the State sentencing court.

(4) Each State that refers a prisoner to a boot camp shall reimburse the Bureau of Prisons for—

(A) 80 percent of the cost incurred by the Bureau of Prisons for incarceration and treatment and other services to such prisoner that successfully completes the program; and

(B) 100 percent of such costs for each prisoner that enters a boot camp but does not successfully complete the program.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$150,000,000 for fiscal year 1992 of which not more than \$12,500,000 shall be used to convert each closed military base to a boot camp prison and not more than \$2,500,000 shall be used to operate each boot camp for one fiscal year. Such amounts shall be in addition to any other amounts authorized to be appropriated to the Bureau of Prisons.

#### TITLE XIV—YOUTH VIOLENCE ACT

##### Subtitle A—Increasing Penalties for Employing Children to Distribute Drugs Near Schools and Playgrounds

###### SEC. 1401. STRENGTHENING FEDERAL PENALTIES.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended as follows:

(1) at the end of subsection (b) by adding the following:

“(c) Notwithstanding any other provision of law, any person at least 18 years of age who knowingly and intentionally—

“(1) employs, hires, uses, persuades, induces, entices, or coerces, a person under 18 years of age to violate any provision of this section; or

“(2) employs, hires, uses, persuades, induces, entices, or coerces, a person under 18 years of age to assist in avoiding detection or apprehension for any offense of this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, or fine, or both, up to triple that authorized by section 841(b) of this title.”;

(2) in subsection (c) by—

(A) striking “(c)” and inserting in lieu thereof “(d)”;

(B) inserting “or (c)” after “imposed under subsection (b)”;

(C) inserting “or (c)” after “convicted under subsection (b)”;

(3) in subsection (d) by striking “(d)” and inserting in lieu thereof “(e)”.

##### Subtitle B—Anti-gang Grants

###### SEC. 1411. GRANT PROGRAM.

The Juvenile Justice and Delinquency Prevention Act of 1974 is amended in part B by—

(1) inserting after the heading for such part the following:

“Subpart I—General Grant Programs”;

and

(2) adding at the end thereof a new subpart II, as follows:

#### “Subpart II—Juvenile Drug Trafficking and Gang Prevention Grants

##### “FORMULA GRANTS

“SEC. 231. (a) The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective programs including education, prevention, treatment and enforcement programs to reduce—

(1) the formation or continuation of juvenile gangs; and

(2) the use and sale of illegal drugs by juveniles.

“(b) The grants made under this section can be used for any of the following specific purposes:

“(1) To reduce the participation of juveniles in drug related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools;

“(2) To reduce juvenile involvement in organized crime, drug and gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles;

“(3) To develop within the juvenile justice system, including the juvenile corrections system, new and innovative means to address the problems of juveniles convicted of serious, drug-related and gang-related offenses;

“(4) To reduce juvenile drug and gang-related activity in public housing projects;

“(5) To provide technical assistance and training to personnel and agencies responsible for the adjudicatory and corrections components of the juvenile justice system to identify drug-dependent or gang-involved juvenile offenders and to provide appropriate counseling and treatment to such offenders;

“(6) To promote the involvement of all juveniles in lawful activities, including in-school and after-school programs for academic, athletic or artistic enrichment that also teach that drug and gang involvement are wrong.

“(7) To facilitate Federal and State cooperation with local school officials to develop education, prevention and treatment programs for juveniles who are likely to participate in the drug trafficking, drug use or gang-related activities;

“(8) To prevent juvenile drug and gang involvement in public housing projects through programs establishing youth sports and other activities, including girls and boys clubs, scout troops, and little leagues;

“(9) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system; with the highest possible priority to providing drug abuse treatment to drug-dependent pregnant juveniles and drug-dependent juvenile mothers; and

“(10) To provide education and treatment programs for youth exposed to severe violence in their homes, schools or neighborhoods.

“(c) Of the funds made available to each State under this section (Formula Grants) 50 percent of the funds made available to each State in any fiscal year shall be used for juvenile drug supply reduction programs and 50 percent shall be used for juvenile drug demand reduction programs.

##### “SPECIAL EMPHASIS DRUG DEMAND REDUCTION AND ENFORCEMENT GRANTS

“SEC. 232. (a) The purpose of this section is to provide additional Federal assistance and support to identify promising new juvenile drug demand reduction and enforcement pro-

grams, to replicate and demonstrate these programs to serve as national, regional or local models that could be used, in whole or in part, by other public and private juvenile justice programs, and to provide technical assistance and training to public or private organizations to implement similar programs. In making grants under this section, the Administrator shall give priority to programs aimed at juvenile involvement in organized gang- and drug-related activities, including supply and demand reduction programs.

"(b) The Administrator is authorized to make grants to, or enter into contracts with, public or private non-profit agencies, institutions, or organizations or individuals to carry out any purpose authorized in section 231. The Administrator shall have final authority over all funds awarded under this subchapter.

"(c) Of the total amount appropriated for this subchapter, 20 per centum shall be reserved and set aside for this section in a special discretionary fund for use by the Administrator to carry out the purposes specified in section 231 as described in section 232(a). Grants made under this section may be made for amounts up to 100 per centum of the costs of the programs or projects.

**"AUTHORIZATION**

"SEC. 233. There is authorized to be appropriated \$100,000,000 in fiscal year 1992 and such sums as may be necessary in fiscal year 1993 to carry out the purposes of this subpart.

**"ALLOCATION OF FUND**

"SEC. 234. Of the total amounts appropriated under this subpart in any fiscal year the amount remaining after setting aside the amounts required to be reserved to carry out section 232 (Discretionary Grants) shall be allocated as follows:

"(1) \$400,000 shall be allocated to each of the participating States;

"(2) Of the total funds remaining after the allocation under paragraph (a), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of juveniles of such State bears to the population of juveniles of all the States.

**"APPLICATION**

"SEC. 235. (a) Each State applying for grants under section 231 (Formula Grants) and each public or private entity applying for grants under section 232 (Discretionary Grants) shall submit an application to the Administrator in such form and containing such information as the Administrator shall prescribe.

"(b) To the extent practical, the Administrator shall prescribe regulations governing applications for this subpart that are substantially similar to the applications required under part I (general juvenile justice formula grant) and part C (special emphasis prevention and treatment grants), including the procedures relating to competition.

"(c) In addition to the requirements prescribed in subsection (b), each State application submitted under section 231 shall include a detailed description of how the funds made available shall be coordinated with Federal assistance provided in parts B and C of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 and by the Bureau of Justice Assistance under the Drug Control and System Improvement Grant program.

**"REVIEW AND APPROVAL OF APPLICATIONS**

"SEC. 236. The procedures and time limits imposed on the Federal and State Governments under sections 505 and 508, respectively, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 relating to the review of applications and distribution of Federal funds shall apply to the review of applications and distribution of funds under this subpart."

**SEC. 1412. CONFORMING AMENDMENTS.**

(a) TITLE II.—Section 291 of title II of the Juvenile Justice Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) in subsection (a)—  
(A) in paragraph (1) by striking "(other than part D)";

(B) and by striking paragraph (2) in its entirety; and

(2) in subsection (b) by striking "(other than part D)".

(b) PART D.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 is hereby repealed.

(c) PART E.—Part E of title II of such Act is redesignated as part D.

**Subtitle C—Juvenile Penalties**

**SEC. 1421. TREATMENT OF VIOLENT JUVENILES AS ADULTS.**

(a) JURISDICTION OVER CERTAIN FIREARMS OFFENSES.—Section 5032(a) of title 18, United States Code, as so designated by this section, is amended by striking "922(p)" and inserting "924 (b), (g), or (h)".

(b) ADULT STATUS OF JUVENILES WHO COMMIT FIREARMS OFFENSES.—Section 5032(d) of title 18, United States Code, is amended—

(1) by striking "A juvenile" and inserting "(1) Except as provided in paragraphs (2) and (3), a juvenile";

(2) by striking ", except that," and designating the following matter up to the semicolon as paragraph (2);

(3) by striking "however" after the semicolon and designating the remaining matter as paragraph (3); and

(4) by inserting in paragraph (2) "or section 924 (b), (g), or (h) of this title," after "959".

(c) FACTORS FOR TRANSFERRING A JUVENILE TO ADULT STATUS.—Section 5032(e) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Evidence";

(2) by striking "intellectual development and psychological maturity;" and inserting "level of intellectual development and maturity; and";

(3) by inserting ", such as rehabilitation and substance abuse treatment," after "past treatment efforts";

(4) by striking "; the availability of programs designed to treat the juvenile's behavioral problems"; and

(5) by adding at the end the following:  
"(2) In considering the nature of the offense, as required by this subsection, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use and distribution of controlled substances or firearms. Such factors, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of such factors shall not preclude a transfer to adult status."

**SEC. 1422. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.**

(a) ACT OF JUVENILE DELINQUENCY.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of clause (i);

(2) by striking out "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding a new clause (iii), as follows:  
"(iii) any act of juvenile delinquency that if committed by an adult would be punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)); and".

(b) SERIOUS DRUG OFFENSE.—Section 924(e)(2)(C) of title 18, United States Code, is amended by adding "or serious drug offense" after "violent felony".

**TITLE XV—RURAL CRIME AND DRUG CONTROL ACT**

**Subtitle A—Fighting Drug Trafficking in Rural Areas**

**SEC. 1501. AUTHORIZATIONS FOR RURAL LAW ENFORCEMENT AGENCIES.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new paragraph:

"(7) There are authorized to be appropriated \$50,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 to carry out part O of this title."

(b) AMENDMENT TO BASE ALLOCATION.—Section 1501(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "\$100,000" and inserting in lieu thereof "\$250,000".

**SEC. 1502. RURAL DRUG ENFORCEMENT TASK FORCES.**

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, shall establish a Rural Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural lands.

(b) TASK FORCE MEMBERSHIP.—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

- (1) State and local law enforcement agencies;
- (2) the Drug Enforcement Administration;
- (3) the Federal Bureau of Investigation;
- (4) the Immigration and Naturalization Service; and

(5) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management, and such other Federal law enforcement agencies as the Attorney General may direct.

**SEC. 1503. CROSS-DESIGNATION OF FEDERAL OFFICERS.**

The Attorney General shall cross-designate up to 100 law enforcement officers from each of the agencies specified under section 1502(b)(5) with jurisdiction to enforce the provisions of the Controlled Substances Act on non-Federal lands to the extent necessary to effect the purposes of this title.

**SEC. 1504. RURAL DRUG ENFORCEMENT TRAINING.**

(a) SPECIALIZED TRAINING FOR RURAL OFFICERS.—The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated

\$1,000,000 in each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of subsection (a) of this section.

**Subtitle B—Increasing Penalties for Certain Drug Trafficking Offenses**

**SEC. 1511. SHORT TITLE.**

This subtitle may be cited as the "Ice Enforcement Act of 1991".

**SEC. 1512. STRENGTHENING FEDERAL PENALTIES.**

(a) **LARGE AMOUNT.**—Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in clause (vii) by striking "or" at the end thereof;

(2) by inserting "or" at the end of clause (viii); and

(3) by adding a new clause (ix) as follows: "(ix) 25 grams or more of methamphetamine, its salts, isomers, and salts of its isomers, that is 80 percent pure and crystalline in form."

(b) **SMALLER AMOUNT.**—Section 401(b)(1)(B) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(B)) is amended as follows:

(1) at the end of clause (vii) by striking "or";

(2) by inserting at the end of clause (viii) the word "or"; and

(3) by adding a new clause (ix) as follows: "(ix) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers, that is 80 percent pure and crystalline in form."

**Subtitle C—Rural Drug Prevention and Treatment**

**SEC. 1521. RURAL SUBSTANCE ABUSE TREATMENT AND EDUCATION GRANTS.**

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end thereof the following new section:

**"SEC. 509H. RURAL SUBSTANCE ABUSE TREATMENT.**

"(a) **IN GENERAL.**—The Director of the Office for Treatment Improvement (hereafter referred to in this section as the "Director") shall establish a program to provide grants to hospitals, community health centers, migrant health centers, health entities of Indian tribes and tribal organizations (as defined in section 1913(b)(5)), and other appropriate entities that serve nonmetropolitan areas to assist such entities in developing and implementing projects that provide, or expand the availability of, substance abuse treatment services.

"(b) **REQUIREMENTS.**—To receive a grant under this section a hospital, community health center, or treatment facility shall—

"(1) serve a nonmetropolitan area or have a substance abuse treatment program that is designed to serve a nonmetropolitan area;

"(2) operate, or have a plan to operate, an approved substance abuse treatment program;

"(3) agree to coordinate the project assisted under this section with substance abuse treatment activities within the State and local agencies responsible for substance abuse treatment; and

"(4) prepare and submit an application in accordance with subsection (c).

"(c) **APPLICATION.**—

"(1) **IN GENERAL.**—To be eligible to receive a grant under this section an entity shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

"(2) **COORDINATED APPLICATIONS.**—State agencies that are responsible for substance abuse treatment may submit coordinated

grant applications on behalf of entities that are eligible for grants pursuant to subsection (b).

"(d) **PREVENTION PROGRAMS.**—

"(1) **IN GENERAL.**—Each entity receiving a grant under this section may use a portion of such grant funds to further community-based substance abuse prevention activities.

"(2) **REGULATIONS.**—The Director, in consultation with the Director of the Office of Substance Abuse Prevention, shall promulgate regulations regarding the activities described in paragraph (1).

"(e) **SPECIAL CONSIDERATION.**—In awarding grants under this section the Director shall give priority to—

"(1) projects sponsored by rural hospitals that are qualified to receive rural health care transition grants as provided for in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987;

"(2) projects serving nonmetropolitan areas that establish links and coordinate activities between hospitals, community health centers, community mental health centers, and substance abuse treatment centers; and

"(3) projects that are designed to serve areas that have no available existing treatment facilities.

"(f) **DURATION.**—Grants awarded under subsection (a) shall be for a period not to exceed 3 years, except that the Director may establish a procedure for renewal of grants under subsection (a).

"(g) **GEOGRAPHIC DISTRIBUTION.**—To the extent practicable, the Director shall provide grants to fund at least one project in each State.

"(h) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section there are authorized to be appropriated \$25,000,000 for each of the fiscal years 1992 and 1993."

**SEC. 1522. CLEARINGHOUSE PROGRAM.**

Section 509 of the Public Health Service Act (42 U.S.C. 290aa-7) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period; and

(3) by adding at the end thereof the following new paragraphs—

"(5) to gather information pertaining to rural drug abuse treatment and education projects funded by the Alcohol, Drug Abuse, and Mental Health Administration, as well as other such projects operating throughout the United States; and

"(6) to disseminate such information to rural hospitals, community health centers, community mental health centers, treatment facilities, community organizations, and other interested individuals."

**Subtitle D—Rural Land Recovery Act**

**SEC. 1531. DIRECTOR OF RURAL LAND RECOVERY.**

Each of the task forces established under section 1502(a) shall include one Director of Rural Land Recovery whose duties shall include the coordination of all activities outlined under this subtitle.

**SEC. 1532. ASSET FORFEITURE.**

(a) The assets seized from rural clandestine methamphetamine and other dangerous drugs laboratory operations and their operators shall be used primarily to fund the decontamination of the property and immediate environment chemically fouled by the operations or operators.

(b) Any assets that remain after the execution of provisions contained in subsection (a) shall be used to decontaminate properties

chemically fouled by other such clandestine laboratory operations and operators throughout the jurisdiction of the task force.

**SEC. 1533. PROSECUTION OF CLANDESTINE LABORATORY OPERATORS.**

(a) State and Federal prosecutors, when bringing charges against the operators of clandestine methamphetamine and other dangerous drug laboratories shall, to the fullest extent possible, include, in addition to drug-related counts, counts involving infringements of the Resource Conservation and Recovery Act or any other environmental protection Act, including—

(1) illegal disposal of hazardous waste; and

(2) knowing endangerment of the environment.

(b) State and Federal prosecutors and private citizens may bring suit against the operators of clandestine methamphetamine and other dangerous drug laboratories for environmental and health related damages caused by the operators in their manufacture of illicit substances.

**TITLE XVI—DRUG EMERGENCY AREAS ACT OF 1991**

**SEC. 1601. SHORT TITLE.**

This title may be cited as the "Drug Emergency Areas Act of 1991".

**SEC. 1602. DRUG EMERGENCY AREAS.**

Subsection (c) of section 1005 of the National Narcotics Leadership Act of 1988 is amended to read as follows:

"(c) **DECLARATION OF DRUG EMERGENCY AREAS.**—

"(1) **PRESIDENTIAL DECLARATION.**—(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

"(B) For the purposes of this subsection, the term "major drug-related emergency" means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"(2) **PROCEDURE FOR DECLARATION.**—(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

"(B) Any request made under clause (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude that effective response to save lives, and to protect property and public health and safety, that Federal assistance is necessary.

"(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

"(D) As part of a request for a declaration by the President under this subsection, and

as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall—

“(i) take appropriate response action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

“(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

“(iii) submit a detailed plan outlining the State and/or local government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible quantitative goals) and timetables and shall specify how Federal assistance provided under this subsection is intended to achieve such goals.

“(E) The Director shall review any request submitted pursuant to this subsection and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

“(3) FEDERAL MONETARY ASSISTANCE.—(A) The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, \$50,000,000.

“(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

“(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

“(D) Any State or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

“(4) NONMONETARY ASSISTANCE.—In addition to the assistance provided under paragraph (3), the President may—

“(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

“(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

“(5) ISSUANCE OF IMPLEMENTING REGULATIONS.—Not later than 90 days after the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

“(6) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General shall conduct an audit of any Federal assistance (both monetary and nonmonetary) of an amount greater than \$100,000 provided to a State or local government under this subsection, including an evaluation of the effectiveness of such assistance based on the goals contained in the application for assistance.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, 1994, 1995, and 1996, \$300,000,000 to carry out the purposes of this subsection.”

**TITLE XVII—DRUNK DRIVING CHILD PROTECTION ACT**

**SEC. 1701. SHORT TITLE.**

This title may be cited as the “Drunk Driving Child Protection Act of 1991”.

**SEC. 1702. STATE LAWS APPLIED IN AREAS OF FEDERAL JURISDICTION.**

Section 13(b) of title 18, United States Code, is amended by—

(1) striking “For purposes” and inserting “(1) Subject to the provisions of paragraph (2) and for purposes”; and

(2) adding at the end thereof the following:

“(2) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than one year and an additional fine of not more than \$1,000, or both, if—

“(A) a non-driving minor was present in the motor vehicle when the offense was committed; and

“(B) the law of the State, territory, possession, or district applicable to the offense does not provide an additional term of imprisonment for an act described in subparagraph (A).”

**SEC. 1703. COMMON CARRIERS.**

Section 342 of title 18, United States Code, is amended by—

(1) inserting “(a)” before “Whoever”; and

(2) adding at the end thereof the following:

“(b) In addition to any term of imprisonment imposed for an offense under subsection (a), the punishment for such offense shall include an additional term of imprisonment of not more than one year and an additional fine of not more than \$1,000, or both, if a non-driving minor was present in the common carrier when the offense was committed.”

**TITLE XVIII—COMMISSION ON CRIME AND VIOLENCE**

**SEC. 1801. ESTABLISHMENT OF COMMISSION.**

There is established a commission to be known as the “National Commission on Crime and Violence in America”. The Commission shall be composed of 22 members, appointed as follows:

(1) 6 persons by the President;

(2) 8 persons by the Speaker of the House of Representatives, two of whom shall be appointed on the recommendation of the minority leader; and

(3) 8 persons by the President pro tempore of the Senate, six of whom shall be appointed on the recommendation of the Majority Leader of the Senate and two of whom shall be appointed on the recommendation of the Minority Leader of the Senate.

**SEC. 1802. PURPOSE.**

The purposes of the Commission are as follows:

(1) To develop a comprehensive and effective crime control plan which will serve as a “blueprint” for action in the 1990s. The re-

port shall include an estimated cost for implementing any recommendations made by the commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control plan.

(4) To recommend improvements in the coordination of local, State and Federal crime control efforts.

**SEC. 1803. RESPONSIBILITIES OF THE COMMISSION.**

The commission shall be responsible for the following:

(1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.

(2) Examining the impact that changes to state and Federal law have had in controlling crime and violence.

(3) Examining the problem of youth gangs and provide recommendations as to how to reduce youth involvement in violent crime.

(4) Examining the extent to which assault weapons and high power firearms have contributed to violence and murder in America.

(5) Convening field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other citizens that wish to participate.

(6) Review all segments of our criminal justice system, including the law enforcement, prosecution, defense, judicial, corrections components in developing the crime control plan.

**SEC. 1804. COMMISSION MEMBERS.**

(a) CHAIRPERSON.—The President shall designate a chairperson from among the members of the Commission.

(b) COMPOSITION OF MEMBERSHIP.—The Commission members will represent a cross-section of professions that include law enforcement, prosecution, judges, corrections, education, medicine, business, religion, military, welfare and social services, sports, entertainment, victims of crime, and elected officials from State, local and Federal Government that equally represent both political parties.

**SEC. 1805. ADMINISTRATIVE PROVISIONS.**

(a) FEDERAL AGENCY SUPPORT.—All Federal agencies shall provide such support and assistance as may be necessary for the Commission to carry out its functions.

(b) EXECUTIVE DIRECTOR AND STAFF.—The President is authorized to appoint and compensate an executive director. Subject to such regulations as the Commission may prescribe, staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) DETAILED FEDERAL EMPLOYEES.—Upon the request of the chairperson, the heads of executive and military departments are authorized to detail employees to work with the executive director without regard to the provisions of section 3341 of title 5, United States Code.

(d) TEMPORARY AND INTERMITTENT EMPLOYEES.—Subject to rules prescribed by the commission, the chairperson may procure temporary and intermittent services under section 3108(b) of title 5, United States Code, but at a rate of base pay not to exceed the

annual rate of base pay for GS-18 of the General Schedule.

#### SEC. 1806. REPORT.

The Commission shall submit a final report to the President and the Congress not later than one year after the appointment of the Chairperson. The report shall include the findings and recommendations of the Commission as well as proposals for any legislative action necessary to implement such recommendations.

#### SEC. 1807. TERMINATION.

The Commission shall terminate 30 days after submitting the report required under section 1806.

### TITLE XIX—PROTECTION OF CRIME VICTIMS

#### SEC. 1901. SHORT TITLE.

This title may be cited as the "Victims' Rights and Restitution Act of 1991".

SEC. 1901A. Section 1402 of the Victims of Crime Act of 1984, as amended, is amended—

(a) by striking subsection (c) and redesignating (d), (e), (f) and (g) as subsections (c), (d), (e), and (f), respectively; and

(b) by adding a new subsection (c) to read as follows:

"(c) Availability of funds for expenditure; grant program percentages

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows

"(A) Of the first \$100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants provided in section 10603 of this title.

"(B) The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(D) The next \$4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under subsection 10603(a) of this title.

"(E) The next \$2,200,000 deposited in the Fund in a particular fiscal year shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(F) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (E) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.

#### SEC. 1902. VICTIMS' RIGHTS.

(a) BEST EFFORTS TO ACCORD RIGHTS.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b).

(b) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

(5) The right to confer with attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) NO CAUSE OF ACTION OR DEFENSE.—This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b).

#### SEC. 1903. SERVICES TO VICTIMS.

(a) DESIGNATION OF RESPONSIBLE OFFICIALS.—The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) IDENTIFICATION OF VICTIMS.—At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c); and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) DESCRIPTION OF SERVICES.—(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 1902(b)(4), is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) NO CAUSE OF ACTION OR DEFENSE.—This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

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

(1) the term "responsible official" means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

#### SEC. 1904. AMENDMENT OF RESTITUTION PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "(a) The court" and inserting "(a)(1) The court";

(B) striking "may order" and inserting "shall order"; and

(C) adding at the end thereof the following new paragraph:

"(2) In addition to ordering restitution of the victim of the offense of which a defend-

ant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

“(A) the criminal episode during which the offense occurred; or

“(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.”;

(2) in subsection (b)(1)(A) by striking “impractical” and inserting “impracticable”;

(3) in subsection (b)(2) by inserting “emotional or” after “resulting in”;

(4) in subsection (c) by striking “If the Court decides to order restitution under this section, the” and inserting “The”;

(5) by striking subsections (d), (e), (f), (g), and (h); and

(6) by adding at the end thereof the following new subsections:

“(d)(1) The court shall order restitution to a victim in the full amount of the victim’s losses as determined by the court and without consideration of—

“(A) the economic circumstances of the offender; or

“(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

“(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

“(A) the financial resources and other assets of the offender;

“(B) projected earnings and other income of the offender; and

“(C) any financial obligations of the offender, including obligations to dependents.

“(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

“(4) An in-kind payment described in paragraph (3) may be in the form of—

“(A) return of property;

“(B) replacement of property; or

“(C) services rendered to the victim or to a person or organization other than the victim.

“(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

“(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

“(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

“(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the vic-

tim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

“(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

“(A) any Federal civil proceeding; and

“(B) any State civil proceeding, to the extent provided by the law of the State.

“(h) A restitution order shall provide that—

“(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to the clerk of the court for accounting and payment by the clerk in accordance with this subsection;

“(2) the clerk of the court shall—

“(A) log all transfers in a manner that tracks the offender’s obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

“(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

“(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

“(i) a penalty assessment under section 3013 of title 18, United States Code;

“(ii) restitution of all victims; and

“(iii) all other fines, penalties, costs, and other payments required under the sentence; and

“(3) the offender shall advise the clerk of the court of any change in the offender’s address during the term of the restitution order.

“(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

“(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant’s employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant’s ability to comply with the restitution order.

“(k) An order of restitution may be enforced—

“(1) by the United States—

“(A) in the manner provided for the collection and payment of fines in subchapter (B) of chapter 229 of this title; or

“(B) in the same manner as a judgment in a civil action; and

“(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

“(1) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.”.

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

“(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.”; and

(4) by adding at the end thereof the following new subsection:

“(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.”.

SEC. 1905. AMENDMENT OF BANKRUPTCY CODE.

(a) AMENDMENT OF CHAPTER 5.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking “or” at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting “; or”; and

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

“(11) to the extent that such debt arises from a proceeding brought by a governmental unit to recover a civil or criminal restitution, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit.”.

(b) AMENDMENT OF CHAPTER 13.—Section 1322(a) of title 11, United States Code, is amended—

(1) by striking “and” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting “; and”; and

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

“(4) provide for the full payment, in deferred cash payments, of all claims that are nondischargeable under section 523(a)(11).”.

TITLE XX—CRACK HOUSE EVICTION ACT

SEC. 2001. EVICTION FROM PLACES MAINTAINED FOR MANUFACTURING, DISTRIBUTING, OR USING CONTROLLED SUBSTANCES.

Section 416 of the Controlled Substances Act (21 U.S.C. 856) is amended by adding at the end thereof the following:

“(c) The Attorney General may bring a civil action against any person who violates the provisions of this section. The action may be brought in any district court of the United States or the United States courts of any territory in which the violation is taking place. The court in which such action is brought shall determine the existence of a violation by a preponderance of the evidence,

and shall have the power to assess a civil penalty of up to \$100,000 and to grant such other relief including injunctions and evictions as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law."

**SEC. 2002. USE OF CIVIL INJUNCTIVE REMEDIES, FORFEITURE SANCTIONS, AND OTHER REMEDIES AGAINST DRUG OFFENDERS.**

The Attorney General shall—

(1) aggressively pursue the use of criminal penalties authorized by section 1963 of title 18, United States Code, civil remedies authorized by section 1964 of title 18, United States Code, and other equitable remedies against drug offenders, including injunctions, stay-away orders, and forfeiture sanctions; and

(2) submit a report to Congress annually on the manner and extent to which such remedies are being used and the effect of such use in curtailing drug trafficking.

**TITLE XXI—ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION**

**Subtitle A—Establishment of an Organized Crime and Dangerous Drugs Division in the Department of Justice**

**SEC. 2101. SHORT TITLE.**

This title may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1991".

**SEC. 2102. FINDINGS.**

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives significant weight to—

(A) the prosecution of drug related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and groups;

(3) the structure of the Department of Justice Criminal Division is inadequate to address such drug-related problems; and

(4) the prosecutorial resources devoted to such problems have been inadequately organized.

**SEC. 2103. PURPOSES.**

The purposes of this title are to—

(1) establish a new division in the Department of Justice by combining the resources of the Criminal Division and the United States Attorneys offices used for the eradication of organized crime, narcotics, and dangerous drugs with additional resources needed to pursue civil sanctions;

(2) enhance the ability of the Department of Justice to deal with international criminal activity;

(3) enhance the ability of the Department of Justice to maintain a vigorous criminal and equally important civil assault upon organized criminal groups and narcotics traffickers both domestic and international;

(4) enhance the ability of the Department of Justice to attack money laundering activities, both domestic and international; and

(5) maintain the level of effort of the Department of Justice against traditional organized crime activity through the maintenance of independent strike forces.

**SEC. 2104. ESTABLISHMENT OF ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.**

(a) **ESTABLISHMENT.**—There is established within the Department of Justice, the Organized Crime and Dangerous Drugs Division,

which shall consist initially of the following units and programs of the Department of Justice as they were organized and were functioning on September 30, 1989:

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program.

(b) **TRANSFER.**—(1) There are transferred to the Organized Crime and Dangerous Drugs Division—

(A) all functions of each office and program described under subsection (a) (1), (2), (3), and (4) exercised on September 30, 1989; and

(B) all personnel and available funds of each such office and program.

(2) For the purposes of paragraph (1)(A) the term "functions" means all duties, obligations, powers, authorities, responsibilities, rights, privileges, activities, and programs.

**SEC. 2105. ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME AND DANGEROUS DRUGS.**

(a) **ASSISTANT ATTORNEY GENERAL.**—There shall be at the head of the Organized Crime and Dangerous Drugs Division established by this title, an Assistant Attorney General of the Department of Justice for the Organized Crime and Dangerous Drugs Division, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) report directly to the Attorney General of the United States;

(3) coordinate all activities and policies of the Division with the Director of National Drug Control Policy; and

(4) ensure that all investigations and prosecutions are coordinated within the Department of Justice to provide the greatest use of civil proceedings and forfeitures to attack the financial resources of organized criminal and narcotics enterprises.

(b) **COMPENSATION.**—(1) Section 5315 of title 5, United States Code, is amended by striking out:

"Assistant Attorneys General (10)."

and inserting in lieu thereof:

"Assistant Attorneys General (11)."

(2) The Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

**SEC. 2106. DEPUTY ASSISTANT ATTORNEY GENERAL.**

(a) **ESTABLISHMENT.**—There is established the position of Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division, who shall report directly and be responsible to the Assistant Attorney General of the Organized Crime and Dangerous Drugs Division.

(b) **COMPENSATION.**—The Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid the rate of basic pay payable for level V of the Executive Schedule.

**SEC. 2107. ADMINISTRATIVE ORGANIZATION OF THE DIVISION.**

There shall be established within the Organized Crime and Dangerous Drugs Division such sections and offices as the Attorney General shall deem appropriate to maintain or increase the level of enforcement activities in the following areas:

(1) Criminal Racketeering (including of all activities and personnel transferred from the

Organized Crime and Racketeering Section dealing with criminal investigation and prosecution of traditional organized crime, other than civil proceedings or forfeiture);

(2) Criminal Narcotics Trafficking (including all activities and personnel transferred from the Criminal Division and the Organized Crime Drug Enforcement Task Force Program dealing with large scale drug trafficking);

(3) Money laundering (including all activities transferred from the Criminal Division and Organized Crime Drug Enforcement Task Force Program dealing with money laundering investigations and the negotiation of international agreements on financial crimes);

(4) Asset Forfeiture (including all activities and personnel transferred from the Criminal Division dealing with asset forfeiture);

(5) International Crime (indicating the activities and functions set forth in Subtitle B of this title); and

(6) Civil Enforcement (including activities and personnel currently engaged in civil enforcement of the drug and racketeering laws and such additional personnel as may be added pursuant to this Act).

**SEC. 2108. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.**

(a) **ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.**—The Attorney General shall establish no fewer than 20 field offices of the Organized Crime and Dangerous Drug Division. All such field offices of the Division shall be known as Organized Crime and Dangerous Drug Strike Forces.

(b) **OFFICES IN SAME AREA.**—If two or more sections of the Division establish field offices in the same metropolitan area, such offices shall—

(A) be in the same location;

(B) coordinate activities; and

(C) be organized as separate sections of a strike force.

(c) **TRANSITION.**—(1) Consistent with the provisions of this title—

(A) the Organized Crime and Racketeering Section of the Criminal Division is redesignated as the Criminal Racketeering Section of the Organized Crime and Dangerous Drug Division; and

(B) the Organized Crime Strike Forces are redesignated as the field offices of the Division.

(2) Not later than 180 days after the date of the enactment of this subtitle, the Attorney General shall transfer all attorneys and support staff assigned to the Organized Crime Drug Enforcement Task Forces before such date to the Organized Crime and Dangerous Drug Division and designated the Criminal Narcotics Section. The Assistant Attorney General for such Division shall assign such personnel to the field offices of the Division, with the initial assignments being made to the cities where units of such Task Forces were located before the date of enactment of this subtitle.

(3)(A) Consistent with the provisions of this title, the Asset Forfeiture Office of the Criminal Division is redesignated as the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division.

(B) Not later than 180 days after the date of the enactment of this subtitle, the Assistant Attorney General shall establish field offices of the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division which shall include—

(i) agents from the United States Drug Enforcement Administration, the Federal Bu-

reau of Investigation, the Internal Revenue Service, and United States Marshals Office; and

(ii) other individuals experienced, trained and expert in complex financial transactions involving cash, notes, securities, and similar negotiable instruments, with a special expertise in banking matters and business dealings.

(d) DIFFERENT ORGANIZATIONAL STRUCTURE.—Nothing in subsection (c) shall prevent the Attorney General, consistent with the purposes of this title and the provisions of section 2107, from instituting a different organizational structure within the Organized Crime and Dangerous Drug Division as the Attorney General shall deem appropriate following a period of transition.

(e) STRIKE FORCES PLANS.—(1) The agents assigned to the Organized Crime and Dangerous Drug Strike Forces (including all agents assigned to the Organized Crime Drug Enforcement Task Forces program before the date of enactment of this title) shall be dedicated exclusively to and located with the Strike Forces so that the Strike Forces personnel may develop expertise and function as a working unit.

(2) The agents assigned to the Strike Forces from the various participating agencies shall be given credit for the work of the Strike Forces, regardless of the statutory authority used to prosecute Strike Forces cases.

(f) REPORT.—Not later than 1 year after the date of the enactment of this title, the Assistant Attorney General for Organized Crime and Dangerous Drugs in consultation with the Director of National Drug Control Policy, shall report to the Congress on the areas of the United States (especially the southwest border of the United States) that may require increased assistance from the Department of Justice through the establishment of additional strike forces.

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated \$45,000,000 for salaries and expenses of the Organized Crime and Dangerous Drug Division of the Department of Justice for fiscal year 1992.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1992 fiscal year budget submitted by the President to the Congress for fiscal year 1992, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1992; and

(B) used to increase the number of field attorneys and related support staff by no fewer than 100 full-time equivalent positions over such personnel levels employed at the Department of Justice on September 30, 1989, assigned to the Organized Crime and Racketeering Section Strike Forces and Organized Crime Drug Task Forces.

#### Subtitle B—International Prosecution Teams

##### SEC. 2111. INTERNATIONAL PROSECUTION TEAMS.

(a) FINDINGS.—The Congress finds that—

(1) Drug trafficking, organized crime, and money laundering are problems that are international in scope.

(2) The traditional focus of United States law enforcement agencies on domestic criminal activity has restricted the development of the necessary expertise and coordination to address the international aspects of these problems adequately.

(3) The Justice Department must expand its resources and reorganize its component

to engage in new responsibilities and activities involving international crime.

(4) Other agencies, particularly those involved in intelligence gathering, international banking, foreign policy, and national defense, must coordinate their activities with the Justice Department to support its effort to combat international crime.

(b) INTERNATIONAL DRUG ENFORCEMENT TEAMS.—In addition to the components and functions otherwise specified in this chapter, the Organized Crime and Dangerous Drug Division shall include no fewer than 10 International Drug Enforcement Teams devoted exclusively to investigating prosecuting and supporting the investigation and prosecution of international drug cases. Such teams shall be responsible for developing expertise in handling civil and criminal cases involving extradition, money laundering, drug-related corruption, and other complex cases relating to international drug trafficking.

(c) RELATIONSHIP OF TEAM MEMBERS.—Organized Crime and Dangerous Drug Division personnel assigned to the International Drug Enforcement Teams shall work closely with, and where practical be co-located with, agents and liaison personnel of the various law enforcement, diplomatic, intelligence, and military agencies who shall be assigned as necessary to the enforcement teams.

(d) GOALS.—The teams shall be organized to—

(1) increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy;

(2) direct intelligence efforts toward gathering information and evidence that can be used by civilian authorities in criminal and civil cases while protecting the assets and methods of United States agencies;

(3) improve coordination among United States and foreign agencies responsible for law enforcement, foreign policy, and international banking;

(4) target resources toward cases with maximum impact on international narcotics trafficking;

(5) gain the cooperation of private entities in the United States and foreign countries whose cooperation in cases involving money laundering and other drug-related financial crimes is essential; and

(6) assist other countries to enact laws and negotiate treaties to assist in the suppression of international money laundering and narcotics trafficking.

#### TITLE XXII—EXCLUSIONARY RULE

##### SEC. 2201. SEARCHES AND SEIZURES PURSUANT TO AN INVALID WARRANT.

(a) IN GENERAL.—Chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following new section:

###### “§2237. Evidence obtained by invalid warrant

“Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in reasonable reliance on a warrant issued by a detached and neutral magistrate ultimately found to be invalid, unless—

“(1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

“(2) the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant;

“(3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

“(4) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid.”.

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following:

“2237. Evidence obtained by invalid warrant.”.

#### TITLE XXIII—DRUG TESTING

##### SEC. 2301. FEDERAL PRISONER DRUG TESTING.

(a) SHORT TITLE.—This section may be cited as the “Federal Prisoner Drug Testing Act of 1991”.

(b) CONDITIONS OF PROBATION.—Section 3563(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking out “and”;

(2) in paragraph (3), by striking out the period and inserting in lieu thereof “; and”;

(3) by adding a new paragraph (4), as follows:

“(4) for a felony, a misdemeanor, or an infraction, that the defendant—

“(A) pass a drug test prior to the imposition of such sentence; and

“(B) refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the court) for use of a controlled substance”;

(4) by adding at the end thereof the following: “No action may be taken against a defendant pursuant to a drug test administered in accordance with paragraph (4) unless the drug test confirmation is a urine drug test confirmed using gas chromatography techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy.”.

(c) CONDITIONS ON SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: “The court shall also order, as an explicit condition of supervised release, that the defendant pass a drug test prior to the commencement of service of such sentence and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the court) for use of a controlled substance. No action may be taken against a defendant pursuant to a drug test administered in accordance with the provisions of the preceding sentence unless the drug test confirmation is a urine drug test confirmed using gas chromatography techniques or such test as the Director of the Administrative Office of the United States Court after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy.”.

(d) CONDITIONS ON PAROLE.—Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: “In every case, the Commission shall also impose as a condition of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. No action may be taken against a defendant pursuant to a drug test administered in accordance with the provisions of the preceding sentence unless the drug test confirmation is a urine drug test confirmed using gas chromatography techniques or such test as the Director of the Administrative Office of

the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy."

**FIGHTING CRIME IN AMERICA: AN AGENDA FOR THE 1990's**

(A Majority Staff Report Prepared for the Use of the Committee on the Judiciary, U.S. Senate, March 12, 1991)

INTRODUCTION BY SENATOR JOSEPH R. BIDEN, JR., CHAIRMAN, SENATE COMMITTEE ON THE JUDICIARY

A few days ago, Attorney General Dick Thornburgh convened a "Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties," a meeting of federal, state and local law enforcement officials. As the findings in this report dramatically illustrate, the summit could not have come at a more important time. The nation's law enforcement community faces tougher challenges than at any point in our nation's history:

1990 was the bloodiest year in modern U.S. history, with the murder toll jumping to an all-time record of 23,200.

FBI data indicate that in 1990, the nation saw more rapes, more robberies and more assaults than in any year in the nation's history.

Since 1960, the violent crime total grew more than 12 times faster than the U.S. population.

In 1990, the nation had more than three police officers to respond to every one violent crime committed. In 1960, the nation had fewer than one police officer for every three violent crimes.

The number of police officers on the streets of the 10 largest U.S. cities is barely one percent higher than it was when the Administration's first drug strategy was released in September 1989—more than 18 months ago.

The epidemic of violent crime has swept the entire nation. No region, state, city or town has been spared the enormous outbreak. Even those living in rural America, just as those from suburban and urban areas, are seeing the deadly rise of violent crime.

The President has just announced a new crime bill that does not do nearly enough to combat this epidemic. The Administration's proposal does nothing to reverse the fundamental fact that state and local law enforcement officers on the front lines of the fight against violent crime and drug trafficking are increasingly out-gunned, undermanned and ill-equipped for the new challenges of law enforcement in the 1990s.

The Administration's current policies would continue many of these dangerous trends and, in some cases, actually make the problem far worse.

Equipping the nation's law enforcement community to meet the challenges of the 1990s is a daunting task. It will require more than a "Summit" with an agenda dictated by federal officials. Instead, charting an ambitious new course for the law enforcement in the 1990s will require a truly national consensus among federal, state and local officials on the tough issues confronting our nation's police officers.

Politically sensitive issues, such as the deadly flow of military-style assault weapons and inadequate funding for state and local law enforcement agencies, must be confronted directly. And state and local law enforcement officials—the front-line of our defense against violent crime and drug trafficking—must have a meaningful opportunity to present their views on the nature

of the problems and their suggestions on how to better structure our attack.

Although a national response to the violent crime and drug trafficking problems will require a comprehensive attack on a wide variety of fronts, any credible response must include a number of fundamental proposals. At a minimum, I believe an effective Law Enforcement Agenda for the 1990s should include:

Banning the manufacture and sale of deadly, military-style assault weapons;

Boosting federal aid to state and local law enforcement agencies to \$1 billion for police, prosecutors, and prisons, while rejecting Administration mandates on states that would require state and local agencies to fire thousands of police officers.

Expanding the use of joint federal-state asset forfeiture operations to strike at the underpinnings of drug trafficking rings, reversing Justice Department proposal for 15 percent "tax" on state-local forfeiture proceeds;

Creating a new \$100 million initiative to fight violent juvenile gangs;

Easing the state prison crisis by establishing regional prisons for federal and state drug offenders and creating highly-disciplined boot camps on closed military bases.

Reforming federal criminal law by enacting the death penalty, exclusionary rule and habeas corpus provisions passed by the Senate in S. 1970 during the 101st Congress.

No one person or agency has all the answers to solving the violent crime and drug trafficking problems. However, we do know that certain initiatives work, and that with adequate funding and support, we can equip our nation's law enforcement officers with the weapons and tools they need to meet the challenges of the 1990s.

I am releasing this report today in response to the dramatic findings of the majority staff of the Senate Judiciary Committee on the extent of the violent crime problem in America and the wholly inadequate effort we are waging to curtail this crisis. As we focus our attention on the President's bill and our competing proposal, I hope we will take a hard look at the ever-increasing rate of violent crime, the Administration's current response, and the fundamental choices we must make if we are to reverse these deadly trends and end the epidemic of violence gripping this country.

**FACTUAL FINDINGS REPORTED IN: FIGHTING CRIME IN AMERICA**

1990 was the bloodiest in United States history, with the murder toll jumping to an all time record of 23,200.

FBI data indicate that in 1990 the nation saw more rapes, more robberies, and more assaults than any year in the nation's history.

The 1989-90 murder increase was the largest one-year increase in the murder toll in more than ten years; the 1989-90 rape increase was the largest one-year increase in the rape total since 1978-79.

Every American is more than four times more likely to be the victim of violent crime today than in 1960.

Since 1960, the violent crime total has grown more than 12 times faster than the population.

In 1990, the nation had more than three police officers for every one violent crime. In 1960, the nation had fewer than one police officer for every three violent crimes.

The number of police officers on the streets of the 10 largest U.S. cities is only one percent higher than it was when the Ad-

ministration's first drug strategy was released in September 1989.

The Administration's 1992 budget proposal actually cuts federal aid to state and local law enforcement.

If the Administration's proposed mandates become law, state and local law enforcement agency would have to fire more than 5,000 police officers to pay for the Administration's programs.

If every dollar in aid to state and local law enforcement proposed by the Administration was used to train and hire police officers, not more than 13,000 officers could be added—only a 2% increase.

**CHAPTER I—THE DEADLY RISE OF VIOLENT CRIME**

American streets and neighborhoods are under seige. Violent crime has leapt to levels never seen in our nation's history. The record murder toll of 1990 left more than 23,200 Americans killed. The most recent FBI data indicate that 1990 also set bloody records for every other violent crime—rape, robbery and assault. All told, a record total of nearly two million Americans were the victims of a violent crime last year.

The epidemic of violent crime has swept the entire nation—no region, state, city or town has been spared the enormous outbreak. Even those living in rural America, as well as those from suburban and urban areas, are seeing the deadly rise of violent crime.

The rise in violent crime is sped by the rise of new dangerous criminals. First, youths in organized, sophisticated and violent drug trafficking activities: what were once loosely-knit groups of juveniles involved in petty crimes have become powerful, organized gangs intent on killing to gain and keep control over the lucrative drug trade. Second, as FBI experts detailed at a Senate Judiciary Committee hearing this past fall, the rise of new Asian gangs, or "Tongs."

The sudden, shocking rise in violent crime can be blamed on at least three other factors—drugs, deadly weapons, and demographic trends. Drug violence is on the rise, as the quality of cocaine drops and drug gangs battle for turf. Military-style assault weapons are turning many neighborhoods into battlefields. And a boom in the teenaged population makes for record numbers of teen criminals—and teen victims.

*1990's record-setting crime totals*

A Senate Judiciary Committee majority staff report, "1990 Murder Toll—Initial Projections," first predicted the grim murder record in July. Unfortunately, FBI reports completed in October also noted the record pace of the deadly carnage. And the final tallies from cities and states around the country confirm the worst expectations: more Americans were murdered in 1990 than in any single year in our history.

Today, based on the initial reports from several localities and FBI crime data released in October, it is clear that all other violent crimes—rape, robbery and assault—hit record levels in 1990. This means that more than 1.8 million Americans were murdered, raped, robbed or assaulted in 1990. "This total means that more than 200 Americans were attacked by a violent criminal in every hour of every day of 1990."

Just as the total number of violent crimes committed rose to a new record in 1990, the violent crime rate was the highest the nation has ever suffered. This rate, 715.7 per 100,000 Americans, means that "Americans are more likely than ever before to be the victims of a violent crime." This record rate also means that America's rising crime rate

is not merely the result of this country's escalating population.

The FBI's October report indicated a 10% increase in the number of rapes over the first six months of 1989. Final crime tallies provided by several localities and states support the view that the nation suffered a record number of rapes last year.

Last year also saw a record number of robberies—a total of about 630,000. This total, based on FBI information from the first six months of 1990, represents a 9% increase over the 1989 total. And based on the Department of Justice publication, "Criminal Victimization in the United States, 1988," these 630,000 robberies resulted in economic loss totaling more than \$1.2 billion. Of course, the dollar loss of a violent crime is only a tiny portion of the losses suffered by the victim.

The only other category of violent crime—aggravated assaults—reached a new record in 1990—nearly 1,050,000. The 10% increase in aggravated assaults sets another grim record: the rate of assaults (413.8 per 100,000 Americans) is now higher than at any time in our nation's history. "This means that we and our loved ones are at greater risk of being beaten by a violent criminal than ever before."

#### 1990's record carnage—The shocking historical context

The increase in 1990's murder toll—1,700 more Americans were murdered in 1990 than in 1989—is the largest one-year increase in more than a decade. Not since 1979, has the nation seen such a sudden and terrifying rise in the number of murders. One also has to look back more than a decade to match the current rise in the number of rapes.

Of course, even 1990's record increases in murders, rapes and all violent crimes represent only an incremental change from the previous year. The horror of the nation's record levels of violent crime is more properly seen when one compares the America of 1990 with the America of 1960. The comparison reveals the brutal changes that the American people are enduring. In those 30 years, violent crime increased more than 12-times faster than the population.<sup>1</sup> Murder grew nearly 4-times faster. Rape grew more than 12-times faster. And assault grew 13-times faster.

These figures plainly show an America that has grown vastly more dangerous in just three decades. Just how much more dangerous? Every American is more than four times more likely to be the victim of a violent crime today than in 1960. And, as noted above, in 1990 every hour saw 200 Americans become the victim of a violent criminal; while in 1960 fewer than 35 Americans were victimized every hour. This is the shocking historical context for 1990's record violence.

#### America's record violence—the most violent nation

The enormous increases in violent crime in the United States are setting records not just at home, but also abroad. We are the most violent and self-destructive nation on earth.

In 1990, the United States led the world with its murder, rape, and robbery rates.<sup>2</sup>

<sup>1</sup>According to the U.S. Census Bureau the population grew by about 41 percent from 1960 to 1990. According to the FBI's Uniform Crime Reporting program, the violent crime total grew by about 516 percent from 1960 to 1990.

<sup>2</sup>United States Department of Justice, Bureau of Justice Statistics Special Report, *International Crime Rates*, May 1988. (This section's discussion reports on all four violent crimes except one, assault, because the BJS publication includes data only on

murder, rape, and robbery.) The international data is compared to figures described in the FBI's Uniform Crime Reports.

When viewed from the national perspective, these crime rates are sobering. When viewed from the international perspective, they are truly embarrassing.

In 1990, no nation had a higher murder rate than the United States. What is worse, no nation was even close. For example, our murder rate quadrupled Europe's.

In 1990, we doubled (and more) the murder rate in Northern Ireland, which is in the midst of a civil war.

Last year, our murder rate was 11 times that of Japan, nearly nine times that of England, over four times that of Italy, and nine times that of Egypt and Greece.

In 1990, no nation had a higher rape rate than the United States. Worse still, the gap in rape rates is even wider than the gap in murder rates.

Last year, American women were eight times more likely to be raped than European women.

In 1990, the rape rate in the United States was 20 times higher than it was in Portugal, 26 times higher than in Japan, 15 times higher than in England, eight times higher than in France, 23 times higher than in Italy, and 46 times higher than in Greece.

In 1990, no nation had a higher robbery rate than the United States. In fact, the magnitude of difference between our robbery rate and those of other countries is unparalleled.

In 1990, the U.S. robbery rate was nearly 150 times higher than in Japan.

Last year, the robbery rate in the United States was over 10 times higher than in Switzerland, nearly six times higher than in England, over seven times higher than in Italy, 17 times higher than in New Zealand, 47 times higher than in Ireland, and over 100 times higher than in Greece.

These figures are stunning. We expect the United States to lead the world in industrial production, arts and sciences, and standard of living. We do not expect this country to lead the world in violent crime as well. Just think:

If we had England's murder rate, the number of homicides in this country would be around 2,500 instead of 23,200.

If we had Italy's rape rate, the number of women who suffered known sexual assaults in this country would be about 4,500 instead of more than 100,000.

If we had Japan's robbery rate, the number of robberies in this country would be 4,500 instead of 630,000.

The comparisons detailed above give us a new perspective; they help us locate ourselves in world. It is obvious that we cannot like what we see—and that to remedy the situation we will need, among other things, greatly enhanced law enforcement efforts.

#### New criminal agents—Growing threats

Today, as never before, cities and neighborhoods, even those without long histories of youth gang activity, have been literally overrun by drug-fueled gang violence. In other words, while youth gangs are not new, today's level of youth gang violence, organization and sophistication is unprecedented.

Los Angeles County presents us with one of the best documented cases of the rise of youth gangs and their attendant violence. After several decades of slow growth in gangs and gang activity, Los Angeles County had an estimated 400 gangs and 45,000 gang members in 1985. Five years later, the number of gangs had exploded to 800, with more than 90,000 members.

murder, rape, and robbery.) The international data is compared to figures described in the FBI's Uniform Crime Reports.

With a doubling of gang membership, gang-related murders have increased even faster—tripling from 1985 to 1990.

Another startling trend is youth gang activity is its sudden emergence in cities that do not have a long history of gang involvement. Cities and neighborhoods from Washington to Florida—and many states in between—are finding it difficult to cope with the unprecedented and unexpected gang presence.

At a Senate Judiciary Committee hearing convened this fall, FBI agents and experts detailed the recent rise of new Asian gangs, or "Tongs." While the leaders of these gangs are usually young men in their twenties, the rank and file members of the gangs are as young as 14. The new gangs are made more dangerous by the fact that they prey on their fellow immigrants—many of whom are not comfortable with, or unable to communicate with, local law enforcement.

#### Drugs, deadly weapons and demographic changes—Other causes of the record carnage

Law enforcement officials, medical doctors, and leading academic researchers identified three major causes of the sudden rise of criminal violence at a Senate Judiciary Committee hearing conducted in July. These three major factors—drugs, deadly weapons and demographic changes—signal that, unless action is taken today, 1990 will be only the first of several more record-breaking years.

The DEA's intelligence reports from around the country indicate that cocaine is becoming more scarce—street buys were revealing less pure cocaine selling at higher prices.<sup>3</sup> The Senate Judiciary Committee heard testimony that while this pressure on the cocaine dealers was good news, more violence was also likely to erupt:

As hardcore addicts seek scarcer drugs;  
As buyers grow dissatisfied with low-purity cocaine; and  
As drug dealers and drug gangs fight over smaller turf.

Another cause of the record-breaking violence is the presence of deadly, highpowered weapons on the streets. Compared to the .22 caliber "Saturday Night Special" once common in the hands of criminals, the military-style assault weapons now found on America's streets cause much greater carnage.

Drug gangs and drug dollars are putting assault weapons in the hands of teen criminals—contributing to a teen murder rate that is rising four times faster than the adult murder rate.<sup>4</sup>

The nation's leading police organizations—including the Fraternal Order of Police, the International Association of Chiefs of Police, and the National Association of Police Organizations—all have called for a ban on military-style assault weapons. Many of the most respected law enforcement professionals have pointed out the deadly violence caused by these weapons and the national need for a ban on military-style assault weapons. Below are two examples:

<sup>3</sup>According to the Drug Enforcement Administration, from 1989 to 1990, the purity of retail-level cocaine dropped 20% while the base price for a retail-level gram rose 43%. The purity data compares the 1989 year-end average with the average purity of cocaine through November of 1990. The price data compares the 1989 year-end base price with the base price of the third quarter (July through September) of 1990—the latest data available.

<sup>4</sup>Federal Bureau of Investigation figures show a 16% rise in the murder rate among 15-19 year-olds, compared to a 4% increase in the overall murder rate between 1988 and 1989.

"[L]aw enforcement is suffering because of these guns."—Jack Lawn, Former Administrator, Drug Enforcement Administration.

"It's time we put an end to the carnage and havoc that occurs whenever an assault weapon gets in the hands of the wrong people."—Charles Reynolds, President, International Association of Chiefs of Police.

One other cause of the record surge of violent crime involves demographic trends. Leading researchers have pointed out that the boom in the teenaged population leads to record levels of violent teen criminals, and teen victims.

The boom in violent crime in the 1960's and 1970's—the violent crime rate in 1975 was more than double the rate in 1965—coincided with the baby-boom generation entering the "high-crime" years of their late teens and early adulthood. The dip in violent crime rates in the early 1980's coincides with the decline in the number of Americans in the "high-crime" age group.

Thus, it is ominous that 1990 marks the beginning of a new crime wave, as the children of the baby-boomers enter their "high-crime" years. The so-called "baby-boomer-ang" may mean that 1990 was just the first of many record-setting years of violent crime.<sup>5</sup>

CHAPTER II—THE CHALLENGES CONFRONTING AMERICA'S "WAR ON CRIME"

The nation's state and local law enforcement officers on the front lines against violent criminals and drug traffickers are outgunned, under-manned and ill-equipped for the new challenges of law enforcement in

<sup>5</sup>Federal Bureau of Investigation reports indicate a violent crime rate of 203 per 100,000 Americans in 1965, and a rate of 490.7 per 100,000 Americans in 1975—2.4-times the 1965 rate.

<sup>6</sup>Professor James A. Fox is one of the leading researchers to have noted the impact of demographic trends on crime. His *Forecasting Crime Data* (Lexington, Massachusetts: Lexington Books, D.C. Heath, 1978) is one of the seminal works on the phenomenon.

the 1990's. Indeed, all elements of our criminal justice system are approaching collapse. The backlog of criminal cases before the nation's courts is crippling the nation's ability to fairly and effectively administer justice. And, our nations' prisons and jails are filled well-beyond the capacity they are designed and staffed to handle.

The pending collapse of our nations' criminal justice system sets in motion a disastrous upward spiral of violent crime. Recent increases in violent crime are overwhelming the criminal justice systems ability to arrest, adjudicate and punish violent criminals. This means that each violent criminal faces a lower risk of being arrested, convicted and punished. This may allow violent criminals to actually remain on the street committing ever more heinous crimes, and even give some non-violent offenders the time to become violent criminals—further overwhelming the nation's criminal justice system.

Challenges facing State and local law enforcement

Out-gunned:

The deadly flow of military-style assault weapons onto America's streets and into the hands of violent criminals means that all too frequently the superior firepower belongs to criminals, not law enforcement. The nation's law enforcement officials are unified in their demand to get these deadly weapons off our streets. The nation can no longer afford to allow its law enforcement officials to be outgunned by vicious criminals.

The lethal mixture of drugs, youth gangs and military-style assault weapons is seen in an ever-increasing number of cities and neighborhoods. Drug dollars have brought high-powered weaponry into the hands of teenaged gang members, and the shrinking supply of cocaine pits the drug dealers and drug gangs against each other in deadly combat. In the past year, few law enforcement

departments did not see an innocent victim of gang- or drug-related crossfire.

And, just as no citizen is safe, no law enforcement officer is safe when criminals are armed with high-powered weaponry capable of ripping through steel or concrete. The nation's law enforcement officers who daily risk their lives to protect all of us deserve the most protection we can offer them.

Under-manned:

America's law enforcement officials are at a great disadvantage in their battle against crime than ever before. Senator Arlen Specter pointed out just how extreme this disadvantage has become when he cited the research of two Northwestern University criminologists<sup>7</sup>: In 1950, the nation had more than three sworn police officers for every one violent crime. But, in 1990, the nation had fewer than one sworn police officer for every three violent crimes.

This fact illustrates just how much the balance has tipped—from one favoring law enforcement to one favoring violent criminals. This reversal parallels the huge rise of all violent crimes from 1960 to 1990 (as was pointed out above), as well as the fact that, violent crime has increased 12-times faster than the population.

This broad historical trend is confirmed by the disturbing trends in the number of state and local law enforcement official protecting the nation's ten largest cities. Overall, the number of police officers on the streets of the ten largest U.S. cities is only one percent higher than it was when the Administration's first drug strategy was released in September 1989. The state of law enforcement in some of these cities is even more disturbing.

<sup>7</sup>Herbert Jacob and Robert Lineberry, "Government Response to Crime" (Northwestern University Center for Urban Affairs and Public Policy Research) January, 1982, p. 23.

THE NUMBER OF POLICE OFFICERS IN  
AMERICA'S 10 LARGEST CITIES

City	1988	1989	1990	Percent	
				1988-89	1989-90
New York	26,723	26,858	25,649	-3.24	-.81
Los Angeles	7,553	7,893	8,395	4.50	6.36
Chicago	12,163	11,828	11,975	-2.75	1.24
Houston	4,270	4,088	4,115	-4.26	-.66
Philadelphia	6,063	6,263	6,500	3.30	3.87
San Diego	1,783	1,857	1,846	6.85	-.59
Detroit	3,572	4,756	4,562	33.15	-4.98
Phoenix	1,801	1,917	2,019	6.44	5.32
San Antonio	1,415	1,486	1,590	2.41	6.33
Dallas	2,381	2,472	2,649	3.82	7.16
Total	67,715	68,418	69,290	1.04	1.27

It is evident from this table that largest cities all across the country have experienced only minor increases—if they experienced increases at all—in the number of sworn officers on their streets. To expect so few police to keep the peace in increasingly troubled times is simply unreasonable.

These ten largest American cities span the country—from East Coast to West and from North to South. And still, the problem is more widespread than even this chart would lead one to believe. Second tier cities, the ones that round out the "top 20" of America's largest metropolitan areas, experienced similarly slow growth in their police forces while their crime rates soared. To take just two examples: Baltimore and Milwaukee now have fewer sworn police officers than they did when President Bush first announced his national drug strategy.

Something is wrong when troop strength is reduced during a "war." To be sure, police officers are not the only "soldiers" in the "war on drugs." There are the thousands of teachers and health care providers and community leaders and others that are helping America fight the drug epidemic. But putting fewer state and local police on the street—particularly when the bulk of the President's strategy concerns law enforcement programs—is not only unexpected, it is unconscionable.

Obviously, there is a great deal of room for federal law enforcement efforts in the "drug war." Federal agents are productively at work on our country's borders and in our towns, but state and local police remain the "front line troops." It is these people who have the greatest contact with, and influence over, America's citizenry. Again, the way to put the current drug epidemic behind us has little to do with the Administration's current policies of limited direct funding to state and local governments that has helped bring about the current, unfortunate trend toward barely increased—and sometimes decreased—law enforcement presence in America's cities and towns.

#### Ill-prepared for the new challenges of the 1990s

The national epidemic of violent crime is exacerbated by the new challenges facing the law enforcement officers on the front lines. New criminal elements are growing in every area of the country—the sudden shift of youth gangs into highly organized and violent drug-dealing organizations and the emerging presence of Asian gangs, or "Tongs," as noted by the FBI are but two of new challenges facing law enforcement today.

There are other challenges taxing our already overwhelmed state and local enforcement agencies. One such problem is the recently recognized toll of drugs and crime in rural America. Drugs have indeed infected all areas of the nation, bringing all their attendant crime and, in particular, violent

crime to neighborhoods once thought to be safe havens from the crime problem.

Much of the recent outbreak of violent crime in rural America is the direct result of the burgeoning epidemic of methamphetamine, particularly in its highly-addictive smokable form called "ice." For several reasons, while urban areas are the center of the cocaine and heroin distribution networks, rural areas are the center of methamphetamine and "ice" trafficking. The two most important reasons for the spread of "ice" in rural areas are, first, methamphetamine manufacturing is safest in rural areas because the chemical process has such a strong signature odor. And, second, the major distributors of methamphetamine are motorcycle gangs—historically and today most active in rural America.

All these factors have recently come together to yield what may be the origins of an epidemic—not only of "ice," but also of drug-fueled violent crime. Already, local law enforcement agencies are seeing the spread of violent crime into America's rural communities.

#### Challenges facing prosecutors and judges

The flood of violent crime, as well as that of drug-related crime, is clogging the nation's courtrooms. Prosecutors and judges must make and accept plea bargains with even serious, violent offenders. Criminal cases drag on for years. In sum, these bottlenecks rob the nation of an effective criminal justice system.

Information provided by the Administrative Office of the United States Courts indicates the vast backlog of federal criminal cases and illustrates the problems facing every state and municipal courtroom. The Administrative Office projected a 31 percent increase in the number of criminal drug cases filed in federal District Courts from 1989 to 1990. Thus, even if there was no increase in non-drug criminal cases, the number of criminal case filings in 1990 would have increased nearly 10 percent over 1989 due to the drug crime caseload. And, of course, all criminal filings are increasing, though perhaps not as dramatically as are criminal drug cases.

The impact on state and municipal courtrooms is even more extreme. Indeed, the backlog in the federal criminal justice system has increased the backlog in state courts. In many districts, U.S. attorneys have established formal or informal guidelines that establish minimum thresholds for drug cases—drug traffickers caught with less than these pre-determined minimums are often transferred to already overburdened state prosecutors.

Another indicator of the backlog in state and local courtrooms is the number of arrests. According to the FBI Crime Reporting Program, the number of arrests for violent crimes increased even faster than the number of violent crimes. The most recent FBI information on arrests exhibits a 9.5 percent increase in the number of arrests for a violent crime between 1988 and 1989. During the same period, violent crime increased by about 5 percent. Because the violent crime total increased by 10 percent from 1989 and 1990, the flood of criminal cases into federal, state and municipal courtrooms will surely increase.

#### Challenges for the corrections system

The nation's prisons and jails are in crisis. More than any other element of our criminal justice system, the nation's ability to punish violent criminals effectively has been degraded by the epidemic of violent crime.

Overcrowding in jails and prisons means that corrections officers can neither treat nor rehabilitate the nation's offenders. The overwhelmed courts have too little time to determine which low-level, non-violent offenders could be given less expensive alternative sanctions. And, the juvenile corrections system is falling apart.

According to the U.S. Department of Justice, the nation's prisons are operating at between 109 percent and 125 percent of capacity.<sup>8</sup> More than 40 states are under court order to reduce prison overcrowding and improve prison conditions. Swift and certain punishment is the only way to keep our streets and neighborhoods safe from America's most violent criminals. Unfortunately, as the Justice Department reports, "many States have provisions for sentence reductions, rollbacks, early releases, and other mechanisms to reduce prison populations."<sup>9</sup> Even if, as is likely, it is only minor offenders who are released, the corrections system is clearly losing chances to stop criminal careers before they progress into violent pathologies.

Unfortunately, most inmates are drug addicts when they enter our corrections system. Almost all inmates will be released to return to our streets and neighborhoods. Thus, it is particularly frightening reality that about six of every seven of these addicts will leave prison or jail without receiving drug treatment. The absolute numbers are even more frightening—for out of the nearly 10 million offenders who enter the nation's prisons or jails in the past year, nearly 3.6 million criminals who entered prison or jail as a drug addict left without having been treated for their addiction.<sup>10</sup>

Prison cells are among the most expensive elements in the criminal justice system. Because they are so expensive, prison cells must be used sparingly—reserved for the violent criminals who present a clear danger to the community. This fact should also guide our criminal justice system to punish non-serious, non-violent offenders with intermediate sanctions. Such intermediate sanctions can, for these non-serious, nonviolent offenders, fulfill the goals of our justice system—punishment, incapacitation, and rehabilitation.

The list of proven intermediate, or alternative, sanctions includes home detention, often monitored with electronic bracelets, and intensive supervision of offenders released on probation or parole. Military-style boot camp prisons have been effective for non-violent and first-time drug offenders. Boot camp prisons require inmates to follow rigorous regime of physical exercise, job training and drug treatment programs.

#### Juvenile corrections

The nation's juvenile corrections system is falling apart. Juvenile detention centers are vastly overcrowded, and scarce juvenile court resources, and growing caseloads for counselors and social workers have created a "revolving door" juvenile justice system. Serious juvenile offenders are often returned to the streets just days after arrest. First-time offenders are lost in the system, never receiving the counselling and guidance that might reverse the slide towards a violent

<sup>8</sup> U.S. Bureau of Justice Statistics, "BJS Data Report, 1989," December, 1990.

<sup>9</sup> Ibid, page 79.

<sup>10</sup> Prison and jail population, drug use and drug treatment information provided by U.S. Bureau of Prisons, Bureau of Justice Statistics, National Institute of Justice and from the American Jail Association.

criminal career. Plainly, the system is nearly bankrupt of promise or punishment.

#### Helping victims

The costs of violent crime on victims is staggering. The economic costs alone—in the form of medical bills, lost wages and property loss—reached almost \$4 billion in 1987. When non-violent crimes are added, the cost reached almost \$15 billion.

Tragically, crime victims receive little assistance in their interaction with the justice system. Only 11 percent of violent crime victims in the United States received any victim advice, assistance or compensation from authorities.

#### Conclusion

The nation's state and local law enforcement officers—our front lines in the "war" against violent criminals and drug traffickers—are out-gunned, under-manned and ill-equipped for the new challenges of law enforcement in the 1990s. Law enforcement is out-gunned because of the deadly flow of military-style assault weapons to the streets and to vicious criminals. Law enforcement is under-manned—relative to violent crime the nation has fewer law enforcement officers than ever before. And, law enforcement is ill-prepared to meet the new challenges offered by violent youth and drug gangs, as well the challenge of crime in rural America.

Indeed, all elements of the criminal justice system are suffering from the epidemic of violent crime sweeping the nation. Bottlenecks in the nation's state and municipal courtrooms delay the swift and equitable delivery of justice. And, the nation's adult and juvenile corrections systems are plagued by chronic overcrowding of the prisons and jails intended for the most dangerous offenders, and too few intermediate sanctions, such as military-style boot camp prisons, for non-violent offenders. In sum, our criminal justice system is nearing collapse under the strain of the record violent crime totals.

#### CHAPTER III—AN ALTERNATIVE LAW ENFORCEMENT AGENDA FOR THE 1990S

As the preceding chapters demonstrate, the nation faces greater challenges today to its public safety than at any time in U.S. history. Unfortunately, the Administration's response to these challenges will do little to reverse these dangerous trends. In some cases, the Administration's response will actually make the problems far worse.

The course that the Administration has charted to address these challenges, however, is not the only one available. Numerous sound proposals have been offered to reverse the current trends in violent crime, proposals that the Administration has either ignored or rejected outright. Outlined below are ten critical areas where the Administration's response is inadequate, followed by proposals that should reverse the current trends in violent crime by equipping us with the tools we need to meet the challenges of the 1990s and beyond.

##### 1. The "Thin Blue Line:" State and Local Law Enforcement

State and local law enforcement agencies have been called the "thin blue line" that separates peaceful, law-abiding neighborhoods from the violence-plagued streets of many U.S. cities, much of it drug related. However, despite the Administration's claim that it will make fighting street crime a high priority, America's "thin blue line" is stretched to the breaking point.

The number of police officers on the streets of the ten largest U.S. cities is barely one percent higher today than when this Administration took office.

And, even this meager increase would be reversed under the Department of Justice's proposals. Although the Justice Department has requested \$490 million in fiscal 1992 in funding for the state and local law enforcement block grant program—the same amount Congress appropriated last year—several other initiatives will cost state and local agencies millions of dollars in federal aid.

The Department is attempting to cut federal aid to state and local agencies by more than \$50 million by requiring that several separate programs—including the RISS projects (regional criminal intelligence systems) and the expansion of the FBI's National Crime Information Center—be funded through these grants.<sup>11</sup>

The Administration has also short-changed state and local agencies by shifting \$20 million that Congress had earmarked for state and local drug-fighting agencies to increase the budgets of federal agencies, a move that the Justice Department's Inspector General recently found to be a violation of law.<sup>12</sup>

Finally, the Administration is proposing to cut federal aid to state and local jurisdictions which do not institute costly new criminal justice drug testing programs. These federal mandates will cost at least \$250 million according to Administration estimates, a move which could force state and local law enforcement agencies to fire up to 5,000 police officers.<sup>13</sup>

Any effective response to the violent crime problem must provide more police officers to protect our communities and take back our streets. Accordingly, federal aid to state and local law enforcement agencies should be increased to \$1 billion—a rough doubling of the existing federal commitment. This additional funding could be used to hire up to 5,000 additional police officers and 5,000 additional prosecutors at the state and local level. These resources could also be used to improve every component of the criminal justice system, including, police, prosecutors, courts and corrections.

Moreover, Congress should reject the Administration's attempts to cut tens of millions of dollars in federal aid to state and local enforcement through costly new mandates, program "consolidations" that—in reality—cut aid to state and local agencies, and budget tricks that seek to augment the budgets of federal agencies at the expense of state and local law enforcement.

##### 2. Killer Assault Weapons

The single most serious challenge facing the nation's law enforcement community is the proliferation of deadly, military-style assault weapons in the hands of violent gangs, drug traffickers and other organized criminal rings. Unfortunately, the Administration's response to this threat has been guided more by special interest politics, than by concern for police officers in the streets.

The Administration has steadfastly opposed a ban on the manufacture and sale of military-style assault weapons. Even when the Administration has attempted to take a

strong stand against assault weapons, it has quickly reversed itself.

Despite the Administration's high-profile announcement in early 1989 that banned the importation of several types of assault weapons, the Administration later reversed itself, permitting the importation of seven types of highly dangerous military-style weapons that had previously been banned.

The White House balked at the recommendations of senior officials from the Bureau of Alcohol, Tobacco and Firearms (BATF) to close a loophole in an earlier Administration order that banned the importation of five types of assault rifles. The loophole allowed the importation of 25 other types of assault weapons—five times the number that were banned.

In 1989, the Administration initially announced that it would support a 15-round limit on the ammunition capacity of military-style assault weapons. A year later, the Administration reversed itself.

Congress should pass and the President should sign the DeConcini Assault Weapons Control Act, which passed the Senate in the 101st Congress. This legislation has been endorsed by virtually every major law enforcement organization in the country, including the Fraternal Order of Police, International Association of Chiefs of Police, National Troopers Coalition, National Sheriffs Association, National Association of Police Organizations, National Organization of Black Law Enforcement Executives, Police Executive Research Forum and the Federal Law Enforcement Officers Association.

The DeConcini bill would ban the possession, sale, importation and manufacture of 14 of the most deadly assault weapons. The bill would not apply to weapons owned by private citizens, but it would require record-keeping for all future transfers of such weapons to assist law enforcement officials in keeping them out of the hands of youths, drug dealers and dangerous criminals.

##### 3. Gang and Drug Violence

The rise of violent gangs has fueled much of the increase in violent crime and homicide recently. What were once loosely-knit groups of juveniles involved in petty crimes have become powerful, organized gangs intent on controlling the lucrative drug trade through intimidation and murder. In addition, FBI agents and other experts have begun to detail the rise of new Asian gangs, including the "Tongs" and "Triads." Many of the leaders of these gangs are young men in their late teens or early twenties, while gang members are as young as 14. Like the violent youth gangs in Los Angeles and other U.S. cities, the emerging Asian gangs are actively engaged in the drug trade.

The Administration's response to these problems would actually increase the dangerous rise in gang violence and drug trafficking. First, the Administration has tried to cripple the federal agency devoted exclusively to reducing juvenile drug, gang and other criminal activity—the Office of Juvenile Justice and Delinquency Prevention. The Administration has targeted the office for an 85 percent cut in funding.

Recently, the Administration unveiled a major "new" initiative to combat organized crime, including emerging juvenile and Asian drug gangs. The centerpiece of the plan is to increase the number of FBI agents and U.S. prosecutors assigned to organized crime cases. More FBI resources are certainly needed: Despite repeated Administration pledges to boost FBI resources devoted to organized crime and drug cases, budget short-falls forced the Bureau to cut 42 agents

<sup>11</sup>The programs targeted for elimination or "consolidation" include: Regional Information Sharing System (\$14 million), the FBI's National Crime Information Center (\$22 million), National Institute of Corrections Technical Assistance Grants (\$3 million), and the State Justice Institute (\$12 million).

<sup>12</sup>Inspection Report I-91-01: Office of Justice Programs, Office of the Inspector General, Department of Justice, January 1991, pp. 9-11.

<sup>13</sup>Letter to Chairman Joseph R. Biden, Jr., from Joseph H. McHugh, Director of Congressional Relations, Office of National Drug Control Policy, January 18, 1991.

from its drug enforcement efforts and 16 agents from its commitment to the Organized Crime-Drug Enforcement Task Forces since January 1990.

The Administration's new-found interest in a crackdown on organized crime and gang activities is ironic. Less than 12 months ago, the Administration lobbied aggressively against provisions in S. 1972, introduced by Senator Joseph R. Biden, Jr., which would have boosted the drug and organized-crime fighting budgets of the FBI and U.S. Attorneys' offices by \$57 million and \$24 million, respectively.<sup>14</sup>

The Federal government must adopt an aggressive program to reverse the current trends in violent gang and juvenile drug activities. First, Congress should enact a \$100 million initiative to fight violence and drug activities by youth gangs. Since the majority of juvenile gang and drug activities falls within the jurisdiction of state and local agencies, the bulk of this new funding should go directly to state and local police, sheriffs, prosecutors and juvenile enforcement agencies. Second, Congress should boost funding for the FBI by \$98 million to add 1,000 new agents to the Bureau's drug and organized crime program.

Finally, Congress should enact a series of legislative proposals to strengthen federal criminal laws relating to gang violence. These proposals include a new federal offense for "drive by shootings" committed in furtherance of drug conspiracies, along with the "Outlaw Street and Motorcycle Gang Control Act of 1991" introduced by Senator DeConcini. The legislation would establish a national tracking system for violent gangs and boost federal firearms penalties, including making it illegal to transfer a firearm if the seller had reason to know that it would be used in drug trafficking or violent crime.

#### 4. Federal-State Forfeiture Operations

Asset forfeiture laws—which empower law enforcement agencies to freeze and seize the profits of drug dealing and other criminal activities—have become a powerful law enforcement weapon in the fight against drug traffickers and organized crime rings. These laws have also become an important avenue for federal-state cooperative investigations. Under the "equitable sharing" provisions of the Comprehensive Crime Control Act of 1984, state agencies that participate in forfeiture operations prosecuted in federal court are entitled to a share of any monies recovered, based on the level of the state or local agencies involvement. More than \$177 million was transferred to state and local agencies in 1990 through the equitable sharing law.

Recent Justice Department proposals, however, could reverse the trend toward federal-state cooperative efforts. The department has proposed a 15 percent "tax" on state-local forfeiture cases to cover "administrative expenses" for cases processed in federal courts. The "15-percent off-the-top" proposal, however, ignores the fact that many of these cases are developed, investigated and prepared almost entirely by state and local authorities, with only nominal involvement of federal prosecutors.

Congress should reject the 15 percent tax on joint federal-state forfeiture proceeds. In fact, Congress should consider legislation to expand cooperative forfeiture operations, including efforts to end the lengthy delays in

the transfer of equitable sharing proceeds to state and local agencies.

#### 5. Addressing the Corrections Crisis

The Administration's response to the overcrowding problem in the federal prison system has been one of its most successful law enforcement initiatives. The Department of Justice has won consistent funding increases to expand the federal prison capacity—a direction supported by Congress at every step.

At the same time, the department has failed to launch any new initiatives to address the prison crisis at the state level. In fact, the department has largely ignored recent congressional directives to ease the state prison crisis by transferring surplus federal property to state corrections agencies for use as prisons and military-style boot camps. Congress conferred the authority to transfer surplus federal property to state agencies in the 1984 Comprehensive Crime Control Act and re-affirmed this mandate in the Anti-Drug Abuse Act of 1986.

However, only one property—a water storage site on the North Bend National Guard Station in Oregon—was selected and conveyed to a state corrections agency in a recent 12-month period.<sup>15</sup>

If the Federal government is serious about reversing the dangerous trends in murder, robbery, rape and other serious crimes, it must address the state prison crisis. Although the Federal government alone cannot solve the problem, it can move forward on a number of promising initiatives to help remedy the situation. First, the Administration can move aggressively to transfer federal properties—including closed military bases—to state corrections agencies—a move that could save state agencies tens of millions of dollars at little or no cost to U.S. taxpayers.

Second, the Administration should launch a major new effort to identify cost-effective "intermediate sanctions" for low-level, non-violent offenders, particularly drug offenders. Intermediate sanctions—including military-style boot camps, home detention, and supervised drug testing programs—can provide punishments that are more than a slap on the wrist, but less severe and less expensive than lengthy prison terms.

Finally, the federal government should create 10 regional prisons to house federal, state and local drug offenders, as originally proposed by Senator Biden in S. 2650, the National Drug Strategy Act. The recidivism rate for criminals with drug problems can be significantly reduced by providing effective drug treatment to inmates before their release. Such a policy is not based on misguided notions of rehabilitation, but rather on the practical knowledge that even a 50 percent effective treatment rate can reduce repeat criminal behavior, thus decreasing drug-related violent crime and reducing the ever-increasing cost of incarcerating state and federal prisoners.<sup>16</sup>

#### 6. Violent Crime and Drug Trafficking in Rural America

Violent crime and drug trafficking is tearing apart the social fabric in rural America. Admittedly, the bulk of traditional crime and drug activities in rural areas has occurred outside the jurisdiction of federal agencies. However, with the rise of sophisti-

cated regional and interstate drug trafficking networks in rural locales, particularly large-scale methamphetamine operations, rural enforcement agencies have neither the manpower nor the equipment to respond adequately.

By focusing its law enforcement efforts in major cities, the Administration has neglected its responsibilities to the nation's rural communities. In fact, the Department of Justice has consistently fought congressional initiatives that could help reverse the alarming rates of violent crime and drug trafficking in rural areas, including efforts to boost DEA agents in rural areas, increase federal aid to rural law enforcement agencies and expand training opportunities for rural police officers and drug investigators.<sup>17</sup>

The Federal government must undertake an ambitious program to tackle the rural crime and drug problems. First, Congress and the President should provide \$50 million in federal aid to boost police, prosecutors and other law enforcement officials in rural areas. Second, federal law enforcement agencies—particularly the Drug Enforcement Administration and the Federal Bureau of Investigation—should increase their presence in rural areas. The Attorney General should coordinate these additional resources through the creation of Rural Drug Enforcement Task Forces in every federal judicial district that includes significant rural areas. These task forces would be headed by the local U.S. attorney and include personnel from the DEA, FBI, U.S. Park Police, Bureau of Land Management, and state and local law enforcement agencies. Fourth, the Federal Law Enforcement Training Center in Glynn, Georgia, should develop a specialized course tailored to the needs and challenges of rural law enforcement officials and expand the number of rural officers that receive training.

#### 7. Protecting the Rights of Crime Victims

All too often, the criminal justice system ignores the rights of crime victims, attaching more importance to the rights of criminals and the need for speedy prosecutions than to the concerns of the victims of crime.

The Administration has devoted much rhetoric to the rights of crime victims, yet it has done little to advance their rights in the form of legislative or executive branch initiatives. As detailed in chapter II, only 11 percent of the victims of violent crimes receive any assistance or advice from victims assistance officials; the number actually receiving compensation is much smaller still.

Congress should take the lead in responding to the needs of crime victims. First, Congress should consider removing the "cap" on the Crime Victims Fund, or at the very least, significantly increasing the amount of the cap. In addition, Congress should enact legislation to require mandatory restitution to the victims of federal crimes. A similar provision passed the Senate during the 101st Congress.

#### 8. Federal Criminal Law Reform

The centerpiece of the Administration's violent crime program is the reform of federal criminal law with respect to the death penalty, exclusionary rule and habeas corpus. The Administration's proposals—particularly the death penalty—sound "tough" on crime, but their toughness is more apparent than real.

Since November 1988, the Attorney General has had the authority to seek the death pen-

<sup>14</sup> See *The President's Drug Strategy: One Year Later*, Staff Report of the Majority Staffs of the Senate Judiciary Committee and International Narcotics Control Caucus, September 1990, pp. 47-8.

<sup>15</sup> Among several studies which make the same point, the Treatment Outcomes Prospectives—the so-called "TOPS" study—confirms that drug treatment reduces criminality significantly.

<sup>17</sup> See Letter to Chairman Joseph R. Biden, Jr., from Bruce C. Navarro, Acting Assistant Attorney General, U.S. Department of Justice, March 19, 1990.

<sup>14</sup> Letter to Chairman Joseph R. Biden, Jr., from Bruce C. Navarro, Acting Assistant Attorney General, U.S. Department of Justice, March 19, 1990.

alty in any case where a drug kingpin commits or orders a murder. During the 28 months the law has been in effect, no drug kingpin has yet been given a death sentence. In fact, there are currently only four cases underway where the Justice Department is seeking the death penalty.

Three potential death sentences during a period in which more than 50,000 Americans were killed. This cannot be considered a serious solution to America's crime problem.

The promises of exclusionary rule and habeas corpus reform as the answers to violent crime in America are similarly misleading. The Administration's exclusionary rule proposals would apply only to federal cases. And habeas corpus reform would have little impact on crime in the streets: habeas petitions, by definition, are filed by prisoners who are already incarcerated and who seek review of their state court convictions.

Nonetheless, enactment of the federal death penalty, and reform of the exclusionary rule and habeas corpus procedures, will have some impact. Both Houses of Congress passed legislation in the 101st Congress to accomplish such reform; unfortunately, final language could not be resolved in the final hours of the session.

Congress should expand the federal death penalty, and reform the exclusionary rule and habeas corpus procedures; legislation to accomplish these goals should be enacted in the 102nd Congress.

But the promise of such reform should not be overstated. Severe penalties for the most heinous violent crimes are necessary to deter and punish such acts. But stiff laws on the books are no substitute for catching and prosecuting criminals. Without the necessary resources to put violent criminals behind bars, expanding the federal death penalty amounts to little more than a symbolic gesture that diverts our attention from what we can do effectively to reduce the dangerous trends in violent crime.

#### 9. National Commission on Crime and Violence in America

The Attorney General's law enforcement summit was held amidst the backdrop of the nation's bloodiest year in history, with a record murder toll and sharp increases in the rate of robbery, assault, rape and other violent crimes.

The Attorney General could have seized upon this moment to chart a new direction for the law enforcement community in the 1990s, building a national consensus among federal, state and local elected leaders, law enforcement professionals and other experts on how to reverse the alarming trends in violent crime. Unfortunately, the agenda of the summit was dictated by federal officials, allowing little opportunity for state and local law enforcement officials to offer their suggestions on how to address the violent crime problem. Moreover, the carefully scripted agenda side-stepped the tough issues confronting the nation's law enforcement community, including the deadly flow of assault weapons into the hands of violent criminals and inadequate federal aid to address the crises in our courts and corrections systems.

Many of the current success stories in the fight against crime and drug trafficking can be traced to the President's Commission on Law Enforcement and the Administration of Justice, created by President Lyndon Johnson in the late 1960s. Responding to the rising tide of violent crime in the streets of America, the President's Commission charted an ambitious new course that attacked the crime problem on a number of fronts. For example, the Commission drafted

the early versions of the Omnibus Crime Control and Safe Streets Act of 1968, which overhauled federal crime and drug trafficking laws, authorized court-approved wiretaps and committed the federal government to support state and local law enforcement agencies.

The President should convene a National Commission on Crime and Violence in America to chart a course for the nation to respond to the violent crime and drug trafficking problems into the 21st century. The Commission's agenda should not be dictated by federal officials, but rather should be developed by members of the Commission. The membership should include law enforcement officials from federal, state and local agencies, elected officials from all levels of government, and experts from a wide variety of academic and professional disciplines, including the medical, business, military, religious and entertainment fields.

#### 10. The Emerging Threats

Much of the violent crime problem in America is fueled by drug trafficking. To prevent future increases in violent crime, we must respond to the emerging drug threats in this country. In particular, there is substantial evidence that crystalline methamphetamine—commonly called "ice"—and cheap, extremely-pure Southeast Asian heroin, including new forms of smokable heroin, may trigger new drug epidemics in the 1990s, bringing with them an inevitable increase in drug-related violent crime.

The Administration has taken a complacent approach to these emerging drug crises. The January 1991 National Drug Control Strategy dismisses these threats, arguing that "there is no solid evidence that any recent increase in heroin use has occurred" and that "ice continues to be used primarily in Hawaii and the Far West." After downplaying the threat, the strategy simply calls for lengthy studies and research of the problems.

The story of our failure to foresee—and prevent—the crack cocaine epidemic is one of the most significant public policy mistakes in modern history. Though U.S. officials had several years notice that the outbreak was coming, they took little action until it was too late. If we endorse the folly of the Administration's current complacency, history may repeat itself.

Congress must take steps to respond to the emerging threats of methamphetamine and heroin before they reach epidemic proportions. The DEA should increase the number of agents stationed in Pacific Rim countries, where much of the heroin and methamphetamine is produced and transported. Federal laws should be strengthened to better control the sale of ephedrine and other precursor chemicals used to produce methamphetamine. And Federal law enforcement officials should initiate prosecutions of clandestine methamphetamine laboratories under the criminal and civil provisions of federal environmental laws, particularly in cases where there is insufficient evidence to bring criminal charges under traditional drug laws.<sup>18</sup>

<sup>18</sup> For a complete list of initiatives to combat the emerging methamphetamine and heroin problems, see *Fighting Drug Abuse: New Directions for Our National Strategy*, Staff Report by the Majority Staffs of the Senate Judiciary Committee and International Narcotics Control Caucus, February 1991, pp. 126-67.

#### APPENDIX I—SUMMARY OF PROPOSALS

##### Violent Crime Control Act of 1991

Title I. Safer Streets and Neighborhoods Act: Authorizes \$1 billion in aid to state and local law enforcement agencies.

Title II. Federal Death Penalty Act: Authorizes the death penalty for 30 offenses (includes the Racial Justice Act).

Title III. Death Penalty for Murder of Law Enforcement Officer Act: Authorizes the death penalty for the murder of federal law enforcement agents and state law enforcement agents working with the federal government.

Title IV. Death Penalty for Drug Criminals Act: Authorizes the death penalty for drug offenders who murder.

Title V. Anti-Terrorist Crime Act: Authorizes the death penalty for terrorist murders committed at home or abroad, boosts penalties, and creates new offenses to counter terrorism.

Title VI. Drive-by-Shooting Act: Increases penalties for drive-by-shootings in furtherance of drug conspiracies; authorizes the death penalty for drive-by-shootings that result in murder.

Title VII. Assault Weapons: Bans the manufacture and assembly of 14 domestic assault weapons (the "DeConcini bill").

Title VIII. Police Corps: Grants college scholarships to students who commit to 4 years service as police officers and provides educational opportunities for in-service police officers (based on the Sasser-Specter-Graham amendment to S. 970, 101st Congress).

Title IX. Federal Law Enforcement Act: Boosts funding for DEA, FBI, and INS agents.

Title X. Habeas Corpus Reform: Limits death-row prisoners to one habeas corpus petition.

Title XI. Punishment of Gun Criminals: Toughens penalties for use of a firearm during any violent or drug crime.

Title XII. Prison for Violent Drug Offenders Act: 10 regional prisons to treat 8,000 state and federal prisoners addicted to drugs.

Title XIII. Boot Camps: Authorizes the Attorney General to create 10 military style boot camps for young drug offenders.

Title XIV. Youth Violence Act: Provides \$100 million in grants to fight juvenile gangs and the use of illegal drugs by juveniles.

Title XV. Rural Crime and Drug Control Act: Provides \$50 million and other measures to control the supply of drugs in rural America and \$25 million for drug treatment and prevention efforts targeting rural America.

Title XVI. Drug Emergency Areas Act: Provides \$300 million in federal aid to those cities and communities hardest hit by the drug crisis (based on Biden-Specter-Kennedy bill).

Title XVII. Drunk Driving Child Protection Act: Boosts penalties for drunk driving when a child is present in the vehicle.

Title XVIII. The Commission on Violence in America: Creates a national commission to establish a plan for combatting violence in American society.

Title XIX. Victims of Crime Act: Creates a victim "bill of rights" and mandates victim restitution.

Title XX. Crack House Eviction Act: Beefs up Attorney General's authority to shut down crack houses (based on Kennedy amendment to S. 970, 101st Congress).

Title XXI. Organized Crime Division: Establishes an organized crime and dangerous drug division within the Department of Justice.

Title XXII. Exclusionary Rule: Codifies existing law on the exclusionary rule.

Title XXIII. Drug Testing: Requires drug tests for all federal prisoners on parole, probation, or supervised release.

APPENDIX II—COMMISSION ON VIOLENCE IN AMERICA

TITLE —COMMISSION ON CRIME AND VIOLENCE

SEC. 1801. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the "National Commission on Crime and Violence in America". The Commission shall be composed of 22 members, appointed as follows:

- (1) 6 persons by the President;
- (2) 8 persons by the Speaker of the House of Representatives, two of whom shall be appointed on the recommendation of the minority leader; and
- (3) 8 persons by the President pro tempore of the Senate, six of whom shall be appointed on the recommendation of the Majority Leader of the Senate and two of whom shall be appointed on the recommendation of the Minority Leader of the Senate.

SEC. 1802. PURPOSE.

The purposes of the Commission are as follows:

- (1) To develop a comprehensive and effective crime control plan which will serve as a "blueprint" for action in the 1990s. The report shall include an estimated cost for implementing any recommendations made by the commission.
- (2) To bring attention to successful models and programs in crime prevention and crime control.
- (3) To reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control plan.
- (4) To recommend improvements in the coordination of local, State and Federal crime control efforts.

SEC. 1803. RESPONSIBILITIES OF THE COMMISSION.

The commission shall be responsible for the following:

- (1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.
- (2) Examining the impact that changes to state and Federal law have had in controlling crime and violence.
- (3) Examining the problem of youth gangs and provide recommendations as to how to reduce youth involvement in violent crime.
- (4) Examining the extent to which assault weapons and high power firearms have contributed to violence and murder in America.
- (5) Convening field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other citizens that wish to participate.
- (6) Review all segments of our criminal justice system, including the law enforcement, prosecution, defense, judicial, corrections components in developing the crime control plan.

SEC. 1804. COMMISSION MEMBERS.

(a) CHAIRPERSON.—The President shall designate a chairperson from among the members of the Commission.

(b) COMPOSITION OF MEMBERSHIP.—The Commission members will represent a cross-section of professions that include law enforcement, prosecution, judges, corrections, education, medicine, business, religion, military, welfare and social services, sports, entertainment, victims of crime, and elected

officials from State, local and Federal Government that equally represent both political parties.

SEC. 1805. ADMINISTRATIVE PROVISIONS.

(a) FEDERAL AGENCY SUPPORT.—All Federal agencies shall provide such support and assistance as may be necessary for the Commission to carry out its functions.

(b) EXECUTIVE DIRECTOR AND STAFF.—The President is authorized to appoint and compensate an executive director. Subject to such regulations as the Commission may prescribe, staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) DETAILED FEDERAL EMPLOYEES.—Upon the request of the chairperson, the heads of executive and military departments are authorized to detail employees to work with the executive director without regard to the provisions of section 3341 of title 5, United States Code.

(d) TEMPORARY AND INTERMITTENT EMPLOYEES.—Subject to rules prescribed by the Commission, the chairperson may procure temporary and intermittent services under section 3108(b) of title 5, United States Code, but at a rate of base pay not to exceed the annual rate of base pay for GS-18 of the General Schedule.

SEC. 1806. REPORT.

The Commission shall submit a final report to the President and the Congress not later than one year after the appointment of the Chairperson. The report shall include the findings and recommendations of the Commission as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1807. TERMINATION.

The Commission shall terminate 30 days after submitting the report required under section 1806.

CRIME BILL SIDE-BY-SIDE—Continued

Provision	Biden bill	Bush bill
10. Habeas Corpus.	Limits death-row prisoners to one habeas corpus petition, if prisoners are given adequate counsel.	Effectively eliminates federal court review of state criminal convictions.
11. Gun-Related Penalties.	Toughens penalties for gun use during any violent or drug-related crime.	Adds to current penalties for gun-related offenses.
12. Violent Drug-Crime Prison.	Establishes 10 regional prisons to treat State and Federal drug-addicted prisoners.	No provision.
13. Boot Camps.	Expands Federal funding for State "boot camp" programs.	Do.
14. Violent Youths.	Provides \$100 million to combat juvenile gangs and drug abuse among youths and increases penalties for most serious offenses.	Increases some penalties for serious juvenile offenses.
15. Rural Crime and Drugs.	Provides, for rural areas, \$50 million for anti-drug law enforcement and \$25 million for drug treatment and prevention.	No provision.
16. Drug Emergency Areas.	Provides \$300 million to cities hardest hit by the drug crisis.	Do.
17. Drunk Driving.	Boosts penalties for drunk driving when a child is present in the vehicle.	Do.
18. Anti-Violence Commission.	Creates a national commission to plan against violence in America.	Do.
19. Victims of Crime.	Creates a victim "bill of rights," mandates victim restitution, and removes cap on victim's fund.	Do.
20. Crack House Eviction.	Expands the Attorney General's authority to close crack houses.	Do.
21. Organized Crime Division.	Establishes an Organized Crime and Dangerous Drugs Division within the Department of Justice.	Do.
22. Exclusionary Rule.	Codifies existing law on the exclusionary rule.	Creates a "good faith exception" that even applies in cases when no search warrant is obtained.
23. Drug Testing.	Requires drug tests for all Federal prisoners on parole, probation, and supervised release. (Simon bill).	Similar provision.

Violent Crime Control Act of 1991

Title I. Safer Streets and Neighborhoods Act: Authorizes \$1 billion in aid to state and local law enforcement agencies.

Title II. Federal Death Penalty Act: Authorizes the federal death penalty for 30 offenses (includes the Racial Justice Act).

Title III. Death Penalty for Murder of Law Enforcement Officer Act: Authorizes the death penalty for the murder of federal law enforcement agents and state law enforcement agents working with the federal government.

Title IV. Death Penalty for Drug Criminals Act: Authorizes the death penalty for drug offenders who murder.

Title V. Anti-terrorist Crime Act: Authorizes the death penalty for terrorist murders committed at home or abroad, boosts penalties, and creates new offenses to counter terrorism.

Title VI. Drive-by-Shooting Act: Increases penalties for drive-by-shootings in furtherance of drug conspiracies; authorizes the death penalty for drive-by-shootings that result in murder.

Title VII. Assault weapons: Bans the manufacture and assembly of 14 domestic assault weapons (the "DeConcini bill").

Title VIII. Peace Corps: Grants college scholarships to students who commit to 4 years service as police officers and provides educational opportunities for in-service police officers (based on the Sasser-Specter-Graham amendment to S. 1970, 101st Congress).

CRIME BILL SIDE-BY-SIDE

Provision	Biden bill	Bush bill
1. Safe Streets.	Authorizes \$1 billion in aid to State and local law enforcement agencies.	No provision, and Bush's budget cuts aid to State and local agencies by almost \$100 million (down to \$450 million).
2. Death Penalty.	Authorizes the death penalty for 30 Federal offenses.	Authorizes the death penalty for 30 Federal offenses.
3. Murder of Law Enforcement Agents.	Authorizes the death penalty for the murder of Federal law enforcement agents and State law agents working with the Federal Government.	Authorizes the death penalty for the murder of Federal law enforcement agents only.
4. Death Penalty (Drug Crimes).	Authorizes the death penalty for murderous drug offenses.	Authorizes the death penalty for "drug kingpins."
5. Anti-Terrorism.	Authorizes the death penalty for murderous terrorist acts and boosts other terrorist-related penalties.	Authorizes the death penalty for murderous terrorist acts.
6. Drive-by-Shooting.	Increases penalties for drug-related drive-by-shootings, including death penalty provisions.	No provision.
7. Assault Weapons.	Bans the manufacture and assembly of 14 domestic assault weapons. (DeConcini bill).	Bans only foreign-made assault weapons.
8. Police Corps.	Grants college scholarships to students who commit to 4 years service as police officers and provides in-service educational opportunities. (Sasser-Specter-Graham Proposal).	No provision.
9. Federal Law Enforcement.	Boosts funding for DEA, FBI, and INS agents.	Proposes modest increases for the DEA, FBI, and other agencies.

Title IX. Federal Law Enforcement Act: Boosts funding for DEA, FBI, and INS agents.

Title X. Habeas Corpus reform: Limits death-row prisoners to one habeas corpus petition.

Title XI. Punishment of gun criminals: Toughens penalties for use of a firearm during any violent or drug crime.

Title XII. Prison for Violent Drug Offenders Act: 10 regional prisons to treat 8,000 state and federal prisoners addicted to drugs.

Title XIII. Boot camps: Authorizes the Attorney General to create 10 military style boot camps for young drug offenders.

Title XIV. Youth Violence Act: Provides \$100 million in grants to fight juvenile gangs and the use of illegal drugs by juveniles.

Title XV. Rural Crime and Drug Control Act: Provides \$50 million and other measures to control the supply of drugs in rural America and \$25 million for drug treatment and prevention efforts targeting rural America.

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Title XX. Crack House Eviction Act: Beefs up Attorney General's authority to shut down crack houses (based on Kennedy amendment to S. 1970, 101st Congress).

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Title XXII. Exclusionary Rule: Codifies existing law on the exclusionary rule.

Title XXIII. Drug Testing: Requires drug tests for all federal prisoners on parole, probation, or supervised release.

#### Detailed Summary of Biden Crime Bill

#### Title I—Safer Streets and Neighborhoods Act

Title I authorizes \$1 billion in aid to state and local law enforcement agencies for fiscal year 1992.

#### Title II—Federal Death Penalty Act

Title II authorizes the death penalty for the same 30 federal offenses proposed by Senator Thurmond last year in S. 32, and passed by the Senate in S. 1970. Four offenses have been added for civil rights murders. Like S. 1970, Title II bars the execution of persons under the age of 18 and the mentally retarded. This title also includes Senator Kennedy's Racial Justice Act.

#### Title III—Death Penalty for Murder of Law Enforcement Officer Act

Title III authorizes the death penalty for the murder of federal law enforcement officers. It also creates a new death penalty offense for the murder of state law enforcement officers working with federal agents.

#### Title IV—Death Penalty for Drug Criminals Act

Title IV authorizes the death penalty for drug criminals who murder, creating 5 new death penalty offenses. These new offenses cover murders committed during drug conspiracies, during the sale of large drug quantities, or during drug sales to minors.

#### Title V—Anti-Terrorist Crime Act

Title V is a comprehensive anti-terrorism initiative. It allows the FBI to go after criminals who finance and arm terrorist groups; and provides \$75 million to significantly boost the number of FBI agents and other federal state and local law enforcement agents devoted to counter-terrorism efforts.

#### Title VI—Drive-by-Shooting Act

Title VI attacks the increasing threat posed by drug-related drive-by-shootings. Federal law punishes murders and gun crimes but provides no separate penalties for indiscriminately spraying bullets into a crowded car or playground. This title creates a special offense for drug-related drive-by-shootings, punishable for up to 25 years, and authorizes the death penalty if the shooting results in murder.

#### Title VII—Assault Weapons

Title VII is the "assault weapon" ban authored by Senator DeConcini and passed last year by the Senate in S. 1970. It bans 14 specific weapons, barring all domestic manufacture and assembly of those 14 weapons.

#### Title VIII—Police Corps

Title VIII is identical to the Sasser-Specter-Graham "Police Corps" amendment that passed the Senate as part of S. 1970. It contains two major parts: Subtitle A authorizes \$400 million to create a "police corps" by funding \$10,000/year scholarships for those college students who commit to 4 years' service as police officers; Subtitle B provides \$30 million in scholarships for officers already serving in state and local police departments.

#### Title IX—Federal Law Enforcement Act

Title IX substantially increases the number of federal agents handling drug and violent crime cases. It authorizes funds for 1000 more FBI agents, 400 more DEA agents, 500 more border patrol agents, 400 more INS agents investigating drug crimes, and 350 more federal prosecutors. Additional sums are also provided for public defenders, the marshal's service, and the courts.

#### Title X—Habeas Corpus Reform

Title X limits death row prisoners to one habeas corpus petition. Prisoners have one year to file that petition. In return, States must provide competent counsel in capital cases. Title X was authored by Senator Biden and introduced last session in S. 1757.

#### Title XI—Punishment of Gun Criminals

Title XI stiffens penalties for use of a firearm during any violent or drug crime. Possession or discharge of a firearm would yield a penalty up to 10 years; possession or discharge of an assault weapon would yield a penalty up to 15 years. In addition, this title includes several other technical provisions amending current gun laws that were originally proposed last year by the Administration in S. 1225.

#### Title XII—Prison for Violent Drug Offenders Act

Title XII creates 10 regional prisons, each accommodating 8,000 state and federal prisoners addicted to drugs. These new facilities will ease prison overcrowding and, at the same time, separate prisoners with drug problems from the general prison population. Prisoners will receive in-prison drug treatment and preparation for their eventual return to the community. States will reimburse the Federal Bureau of Prisons for the cost of the program, but will receive partial reimbursement for prisoners who successfully complete the program.

#### Title XIII—Boot Camps

Title XIII authorizes \$150 million for the conversion and operation of 10 closed military bases as boot camps. Each boot camp will accommodate up to 300 inmates under the age of 25, for a 3-4 month program similar to military basic training, including strict discipline, physical training, work, and drills.

#### Title XIV—Youth Violence Act

Title XIV targets youth offenders and youth gangs. It creates a new \$100 million anti-drug anti-gang initiative in the Justice Department to combat drug and gang activity by juveniles, funding ten local programs that focus their efforts both on stopping juvenile drug crime and offering better alternatives to youth gangs. In addition, this title provides further protection for youth by stepping up penalties for drug dealers who use young persons to evade current laws restricting the sale of drugs 1000 feet from a school. And, finally, this title expands prosecutors' reach to certain serious juvenile offenders involved in gun offenses.

#### Title XV—Rural Crime and Drug Control Act

Title XV is a comprehensive rural drug initiative. It focuses federal law enforcement efforts on rural areas by creating rural anti-drug task forces in every area with a significant rural population and provides additional manpower by authorizing the Attorney General to assign hundreds of federal law enforcement agents for use in rural areas. This title also expands drug abuse treatment and prevention efforts for rural America, based on proposals authored by Senators Baucus and Pryor.

#### Title XVI—Drug Emergency Areas Act

Title XVI creates a new \$300 million program to provide emergency assistance to state and local areas beset by intransigent drug and crime problems. Modeled on the federal disaster relief program, it authorizes the President to declare "drug emergency areas" and send aid directly to those areas. A bipartisan alternative to the President's "high intensity" drug trafficking plan, this proposal helps more places with more money and gets the aid directly to those who need it most.

#### Title XVII—Drunk Driving Child Protection Act

Title XVII increases existing penalties for drunk driving where a child is in the car. Offenders would be subject to an additional year in jail and a \$1,000 fine on top of existing penalties if minors were in the vehicle.

#### Title XVIII—The Commission on Violence in America

Title XVIII creates a national commission to establish a plan for combatting violence in American society. The resulting strategy will help guide law enforcement's fight against crime into the 21st century.

#### Title XIX—Victims of Crime Act

Title XIX boosts aid to crime victims by eliminating the cap on the crime victims fund. In addition, this title includes a victim "bill of rights" and requires that defendants pay crime victims' expenses. This "mandatory" restitution law, authored by Senator Nickles and passed last year in S. 1970, strengthens current law which leaves victims payments up to judges' discretion.

#### Title XX—Crack House Eviction Act

Title XX adds one more weapon in the Attorney General's arsenal to shut down crack houses and shooting galleries. Authored by Senator Kennedy and passed as part of S. 1970, it authorizes a new civil remedy to

evict drug offenders from crack houses and allows civil penalties of up to \$100,000.

**Title XXI—Organized Crime Division**

Title XXI establishes an organized crime and dangerous drug division within the Department of Justice. The proposal will centralize and expand the federal law enforcement effort against high-level drug traffickers, organized crime, and international drug cartels.

**Title XXII—Exclusionary Rule**

Title XXII codifies existing law on the exclusionary rule. Taken from the Supreme Court's decision in *United States v. Leon*, this title provides that evidence will not be excluded from criminal trials if the officer reasonably believed "in good faith" that the warrant he obtained complied with the law.

**Title XXIII—Federal Prisoner Drug Testing**

Title XXIII requires drug tests for all federal prisoners who have been released from prison but are on parole, probation, or supervised release. This title was authored by Senator Simon and passed by the Senate as part of S. 1970.

*Crimes where death penalty would be reinstated*

- Destruction of aircraft.
- Destruction of motor vehicle.
- Murder of family member of Federal Official.
- Murder of Member of Congress, Cabinet, or Supreme Court.
- Espionage.
- Transporting explosives with intent to kill.
- Arson of Federal property.
- Arson of property in Interstate Commerce.
- Murder of nuclear regulatory inspector.
- Murder in territorial jurisdiction of the U.S.
- Murder of Federal official.
- Mailing of injurious articles.
- Assassination of the President.
- Wrecking a train.
- Bank robbery.
- Treason.
- Aircraft hijacking.
- Murder of Agriculture Department official.
- Murder of Federal witness.
- Murder of horse inspector.
- Murder of poultry inspector.
- Murder of egg products inspector.

*New crimes punishable by death (proposed last year)*

- Genocide.
- Murder of foreign official.
- Kidnapping.
- Hostage taking.
- Murder-for-hire.
- Murder in aid of racketeering.
- Murder by prisoners serving life sentences.

*Additional crimes punishable by death (newly proposed)*

1. Civil rights conspiracy.
2. Deprivation of rights by States.
3. Deprivation of federal rights.
4. Deprivation of religious rights.
5. Murder of state official assisting federal officials.
6. Drive-by-shooting murder.
7. Terrorist murder abroad.
8. Terrorist murder in this country.
9. Conspiracy to distribute drugs.
10. Conspiracy to import/export drugs.
11. Drug sales to or use of minors.
12. Sale of major drug quantities.
13. Import/export of major drug quantities.
14. Murder by firearm.

Note: In each case, the death penalty would apply only where death results from the criminal act.

By Mr. BRADLEY (for himself and Mr. KENNEDY):

S. 619. A bill to establish a Link-up for Learning demonstration grant program to provide coordinated services to at-risk youth; to the Committee on Labor and Human Resources.

LINK-UP FOR LEARNING DEMONSTRATION GRANT ACT

Mr. BRADLEY. Mr. President, I rise today to introduce the Link-Up for Learning Act. I'm very pleased to announce also that Senator KENNEDY, the able chairman of the Senate Committee on Labor and Human Resources, joins me as a cosponsor of this bill.

Mr. President, the poverty, hunger, illness, and family breakdown that is the tragic condition of too many American children has placed tremendous stresses on our educational system. When we look at the failures of American education, at declining test scores, at the difficulty businesses have in finding young workers with basic skills, we have to face up to the fact that many youngsters come to school unready to learn.

An empty stomach, pregnancy, homelessness, chronic illness, sleepless nights spent listening to a domestic fight in the next room or a gunfight in the street can make it impossible to focus the mind on reading, spelling, and multiplication tables. America's teachers know this, and they work hard to help each student overcome the barriers to learning. In any circumstances, this is a daunting proposition. But with class sizes of 30 students or more, inadequate facilities and stressful classroom settings, this can be a nearly impossible task. The Link-Up for Learning Act will help schools, families and teachers connect students with the social services that will help them come to school ready to learn.

Link-Up for Learning recognizes that in every region of the country, services for children are available from many private and local government agencies. But too often neither parents nor teachers are aware of all the possibilities, so children's needs go unmet. Bringing together families, teachers, school personnel, and community social-service providers will make it possible to see all of a child's needs so that all the adults involved can work together to help that child reach his or her fullest potential.

There is no single model for connecting schools, families and social-service providers. The Link-Up for Learning bill, by establishing a \$50 million demonstration grant program in the Department of Education, will help various localities explore what works to meet the learning needs of at-risk kids in their schools. The common thread to all the projects will be that the districts must already be eligible to receive chapter I funds for disadvantaged students.

I expect that some of the projects funded will draw on New Jersey's School Based Youth Services Programs [SBYSP], which offer one of the most successful models for connecting schools with social services. The 29 centers established by this program offers a one-stop approach for students or dropouts between the ages of 13 and 19 who want an opportunity to complete their education or obtain other services. Many new projects will look at other ways to make the whole array of social services available to a particular young person or family.

Other programs, I expect, will link educational programs designed to address or prevent a particular problem with community-based programs in the same area. The Healthy Mothers/Healthy Babies Initiative underway in 10 New Jersey cities offers a good example of this approach. Schools, prenatal care providers, social service agencies, and community and church groups work together to educate young mothers and to keep both mother and infant healthy. A successful program can help the mother complete her schooling and help her child grow up ready to learn, thus preventing two human tragedies.

I mention these models only as examples of how connecting schools, families, and community resources can help save children. The purpose of this bill is to unleash the creativity in our schools and communities to come up with new and better ways to make this connection.

Before closing, I need to acknowledge the enormous contribution made by the Nation's school boards and their National Association to this effort. These community-minded individuals have always been at the forefront of creating an effective school program. Their development and support for this Link-Up for Learning is proof of their commitment, and I thank them for it.

Mr. President, if we fail to educate the children who are poor in America today, we will consign one in five Americans to a future of failure and low productivity. The millions of children who are victims of abuse and neglect each year, the 100,000 who are homeless, the millions who come from single-parent families bring enormous new problems to our schools. Teachers know that if they can find a way to address these problems, the process of learning can begin and succeed. Link-Up for Learning will help those kids find a way out of their problems so they can concentrate on learning and achieving the full potential of their minds and bodies.

I ask unanimous consent that the text of the bill and a brief summary be printed following my remarks.

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

S. 619

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 "Link-up for Learning Demonstration Grant Act".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) growing numbers of children live in an environment of social and economic conditions that greatly increase the risk of academic failure when such children become students;

(2) more than 20 percent of the Nation's children live in poverty while at the same time the Nation's infrastructure of social support for such children has greatly eroded, for example, 40 percent of eligible children do not receive free or reduced price lunches or benefit from food stamps, 25 percent of such children are not covered by health insurance, and only 20 percent of such children are accommodated in public housing;

(3) many at-risk students suffer the effects of inadequate nutrition and health care, overcrowded and unsafe living conditions and homelessness, family and gang violence, substance abuse, sexual abuse, child abuse, involuntary migration, and limited English proficiency that often create severe barriers to learning the knowledge and skills needed to become literate, independent, and productive citizens;

(4) almost half of all children and youth live in a single parent family for some period of their lives, resulting in greatly reduced parental involvement in their education;

(5) high proportions of disadvantaged and minority children live with never married mothers or teenage mothers who have extremely limited resources available for early childhood development and education;

(6) large numbers of children and youth are recent immigrants or children of recent immigrants with limited English proficiency and significant unmet educational needs;

(7) services for at-risk students are fragmented, expensive, overregulated, often ineffective and duplicative, and focused on narrow problems and not the needs of the whole child and family;

(8) school personnel and other support service providers often lack knowledge of and access to available services for at-risk students and their family in the community, are constrained by bureaucratic obstacles from providing the services most needed, and have few resources or incentives to coordinate services;

(9) service providers for at-risk students such as teachers, social workers, health care givers, juvenile justice workers and others are trained in separate institutions, practice in separate agencies, and pursue separate professional activities that provide little support for coordination and integration of services;

(10) coordination and integration of services for at-risk students emphasizing prevention and early intervention offers a great opportunity to break the cycle of poverty that leads to academic failure, teenage parenthood, leaving school, low skill levels, unemployment, and low income; and

(11) coordination of services is more cost effective for schools and support agencies because it reduces duplication, improves quality of services, and substitutes prevention for expensive crisis intervention.

**SEC. 3. PURPOSES.**

(a) IN GENERAL.—It is the purpose of this Act to make demonstration grants to eligi-

ble entities to improve the educational performance of at-risk students by—

(1) removing barriers to such student's learning;

(2) coordinating and enhancing the effectiveness of educational support services;

(3) replicating and disseminating programs of high quality coordinated support services;

(4) increasing parental educational involvement;

(5) improving the capacity of school and support services personnel to collaborate educational services;

(6) integrating services, regulations, data bases, eligibility procedures and funding sources whenever possible; and

(7) focusing school and community resources on prevention and early intervention strategies to address student needs holistically.

(b) ADDITIONAL PURPOSES.—It is also the purpose of this Act to foster planning, coordination, and collaboration among local, county, State, and Federal educational and other student support service agencies and levels of government, nonprofit organizations, and the private sector to improve the educational performance of at-risk students by—

(1) identifying and removing unnecessary regulations, duplication of services, and obstacles to coordination;

(2) improving communication and information exchange;

(3) creating joint funding pools or resource banks;

(4) providing cross-training of agency personnel; and

(5) increasing parental and community involvement in education.

**SEC. 4. GRANTS AUTHORIZED.**

(a) IN GENERAL.—The Secretary is authorized to award grants to eligible entities to pay the Federal share of the costs of the activities described in section 7.

(b) SPECIAL CONSIDERATION.—In awarding grants under this Act, the Secretary shall give special consideration to—

(1) providing an equitable geographic distribution of such grants;

(2) providing grants to eligible recipients serving urban and rural districts with high proportions of at-risk students;

(3) awarding grants for programs involving interagency teams of collaborators providing case management services; and

(4) providing grants to eligible recipients serving areas that experience a significant increase in the number of at-risk students.

(c) DURATION.—Grants made under this Act may be awarded for a period of not more than 3 years if the Secretary determines that the eligible recipient has made satisfactory progress toward the achievement of the program objectives described in the application submitted pursuant to section 8.

**SEC. 5. ELIGIBILITY.**

(a) IN GENERAL.—For the purposes of this Act the term "eligible entity" means—

(1) at least one local educational agency in partnership with at least one public agency;

(2) at least one nonprofit organization, institution of higher education, or private enterprise in partnership with at least one local educational agency; or

(3) a local educational agency that is receiving assistance under the Head Start Transition Project Act in partnership with any agency designated as a Head Start agency under the Head Start Act.

(b) SPECIAL RULE.—An eligible entity shall only be eligible for a grant under this Act if at least one local educational agency participating in the partnership is eligible to re-

ceive financial assistance under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

**SEC. 6. TARGET POPULATION.**

In order to receive a grant under this Act, an eligible entity shall serve—

(1) educationally deprived students and their families, students eligible to be counted under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 and their families, or students participating in school-wide projects assisted under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 and their families; and

(2) any school, grade span, or program area if the program design is of adequate size, scope and quality to achieve program outcomes.

**SEC. 7. AUTHORIZED ACTIVITIES.**

(a) IN GENERAL.—Each eligible entity receiving a grant under this Act may use such grant for programs that—

(1) plan, develop, coordinate, acquire, expand, or improve school-based or community-based education support services through cooperative agreements, contracts for services, or direct employment of staff to strengthen the educational performance of at-risk students, including support services such as child nutrition and nutrition education, health education, screening and referrals, student and family counseling, substance abuse prevention, extended school-day enrichment and remedial programs, before and after school child care, tutoring, mentoring, homework assistance, special curricula, family literacy, and parent education and involvement activities;

(2) plan, develop, and operate with other agencies a coordinated services program for at-risk students to increase the access of such students to community-based social support services including child nutrition, health and mental health services, substance abuse prevention and treatment, foster care and child protective services, child abuse services, welfare services, recreation, juvenile delinquency prevention and court intervention, job training and placement, community-based alternatives to residential placements for students with disabilities, and alternative living arrangements for students with dysfunctional families;

(3) develop effective strategies for coordinated services for at-risk students whose families are highly mobile;

(4) develop effective prevention and early intervention strategies with other agencies to serve at-risk students and their families;

(5) improve interagency communications and information-sharing, including developing local area telecommunications networks, software development, data base integration and management, and other applications of technology that improve coordination of services;

(6) support co-location of support services in schools, cooperating service agencies, community-based centers, public housing sites, or other sites nearby schools, including rental or lease payments, open and lock-up fees, or maintenance and security costs necessary for the delivery of services for at-risk students;

(7) design, implement, and evaluate unified eligibility procedures, integrated data bases, and secure confidentiality procedures that facilitate information-sharing;

(8) provide at-risk students with integrated case planning and case management services through staff support for interagency teams of service providers or hiring school-based support services coordinators;

(9) subsidize the coordination and delivery of education related services to at-risk students outside the school site by entities such as public housing authorities, libraries, senior citizen centers, or community-based organizations;

(10) provide staff development for teachers, guidance counselors, administrators, and public agency support services staff, including cross-agency training in service delivery for at-risk students;

(11) plan and operate one-stop school-based or nearby community-based service centers to provide at-risk students and their families with a wide variety and intensity of support services such as information, referral, expedited eligibility screening and enrollment and direct service delivery; and

(12) support dissemination and replication of a model coordinated educational support services program to other local educational agencies including dissemination and replication of materials and training.

**(b) LIMITATIONS.—**

(1) **PLANNING.**—Not more than one-third of each grant received under this Act shall be used for planning a coordinated services program.

(2) **DELIVERY OF SERVICES.**—Not more than 50 percent of each grant received under this Act shall be used for the delivery of services.

(3) **SUPPLEMENT AND NOT SUPPLANT.**—Grant funds awarded under this Act shall be used to supplement and not supplant the funds that would otherwise be available from non-Federal sources for the activities assisted under this Act.

**SEC. 8. APPLICATIONS.**

(a) **IN GENERAL.**—Each eligible entity desiring a grant under this Act shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(b) **CONTENTS.**—Each application submitted pursuant to subsection (a) shall—

(1) describe the activities and services for which assistance is sought;

(2) identify the degree of need for a coordinated services plan among the students served by the program;

(3) describe the expected improvement in educational outcomes for at-risk students served by the program;

(4) describe how the eligible entity will assess the educational and other outcomes of support services provided by each public agency participating in the partnership;

(5) contain a description of how the eligible entity will improve the educational achievement of at-risk students through more effective coordination of support services, staff development and cross-agency training, and the educational involvement of parents;

(6) describe how the eligible entity will continue the support services assisted under this Act after the Federal assistance provided under this Act is terminated; and

(7) provide evidence of the capacity of the program to serve as a model program for replication by local educational agencies.

**(c) ADVISORY COUNCIL.—**

(1) **ESTABLISHMENT.**—Each eligible entity desiring a grant under this Act shall establish a coordinated services advisory council to develop the application submitted pursuant to subsection (a).

(2) **COMPOSITION.**—The advisory council described in paragraph (1) shall consist of the head of each public agency participating in the partnership, a member of the local board of education, and the superintendent of schools, or the designees of such individuals,

and representatives of parents, students, and the private sector.

(d) **REVIEW OF APPLICATIONS.**—The Secretary shall review applications submitted pursuant to subsection (a) with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, as appropriate.

**SEC. 9. FEDERAL INTERAGENCY TASK FORCE.**

(a) **ESTABLISHMENT AND COMPOSITION.**—There is established a Federal Interagency Task Force (in this section referred to as the "Task Force") consisting of the Secretaries of Education, Housing and Urban Development, and Health and Human Services, and the heads of other Federal agencies as appropriate.

(b) **DUTIES.**—The Task Force shall identify means to facilitate interagency collaboration at the Federal, State, and local level to improve support services for at-risk students. The Task Force shall—

(1) identify, and to the extent possible, eliminate program regulations or practices that impede coordination and collaboration;

(2) develop and implement whenever possible plans for creating jointly funded programs, unified eligibility and application procedures, and confidentiality regulations that facilitate information-sharing; and

(3) make recommendations to Congress concerning legislative action needed to facilitate coordination of support services.

**SEC. 10. STUDY.**

(a) **STUDY.**—The Secretary shall conduct a study of the grants awarded under the Act to identify—

(1) the regulatory and legislative obstacles encountered in developing and implementing coordinated support services programs; and

(2) the innovative procedures and program designs developed pursuant to this Act.

(b) **REPORT.**—The Secretary shall report the results of the study conducted pursuant to subsection (a) to the Congress with recommendations for further legislative action to facilitate coordinated support services.

**SEC. 12. PAYMENTS; FEDERAL SHARE.**

(a) **PAYMENTS.**—The Secretary shall pay to each eligible entity having an application approved under section 8 the Federal share of the cost of the activities described in the application.

(b) **FEDERAL SHARE.**—The Federal share shall be 50 percent.

**SEC. 13. DEFINITIONS.**

For the purpose of this Act—

(1) the term "local educational agency" has the same meaning provided in section 1471(12) of the Elementary and Secondary Education Act of 1965; and

(2) the term "Secretary", unless otherwise specified, means the Secretary of Education.

**SEC. 14. AUTHORIZATION OF FUNDS.**

There are authorized to be appropriated \$50,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993 and 1994 to carry out the provisions of this Act.

**SUMMARY OF THE LINK-UP FOR LEARNING DEMONSTRATION GRANT ACT**

**1. PURPOSE AND TARGET POPULATION**

Growing numbers of children live in economic conditions that greatly increase their risk of academic failure when they enter school. The Link-Up for Learning Demonstration Grant bill provides funds to coordinate educational and social support services for at-risk youth in our nation's elementary and secondary schools, and enhances the effectiveness of these services. The legislation targets educationally disadvantaged students and their families.

**2. ELIGIBILITY AND AUTHORIZED USES OF FUNDS**

A Chapter One eligible school district collaborating with a public agency, a non-profit organization, an institution of higher education, or a Head Start agency may apply for a 3 year grant. Recipients may use funds to coordinate and improve access to school-based or community-based education support services for disadvantaged youngsters. Such services can include nutrition, health screening and referrals, counseling, substance abuse prevention, extended school day programs, tutoring, literacy, parent education and involvement, child abuse services, welfare services, juvenile delinquency, job training and placement and others. Funds may also be used to establish "one-stop shopping" locations for services in schools, community centers, public housing sites or other central locations, to facilitate interagency communication, design unified eligibility procedures, coordinate case management, and train staff across agencies.

**3. LIMITATIONS AND APPLICATIONS**

Special consideration in awarding grants is given to urban and rural areas with high proportions of at-risk students. Not more than one-third of each grant shall be used for planning a coordinated service program and not more than 50 percent of each grant shall be used for the delivery of services. The federal share of the cost of the activities shall be 50 percent.

**4. OTHER PROVISIONS**

The bill establishes a Federal Interagency Task Force to facilitate interagency collaboration at the federal, state and local levels. Finally, it directs the Secretary of Education to conduct a study of funded projects and make recommendations to Congress to improve coordination of educational support services.

**5. AUTHORIZED APPROPRIATIONS**

\$50 million is authorized for demonstration grants in Fiscal Year 1992 and such sums as are necessary are authorized in Fiscal Years 1993 and 1994.

**Mr. KENNEDY.** Mr. President, I strongly support the Link-Up for Learning bill that Senator BRADLEY is introducing and I am proud to be a sponsor of this important idea in education.

Children are America's most valuable resource. They represent our Nation's future. The ability of the United States to compete successfully in the global marketplace of the 21st century depends directly on the education we provide for all children today.

However, more children are coming to school each year with a multitude of needs including health care, nutrition, and counseling against violence, child abuse, drug abuse, and other impediments to effective learning.

A growing number of today's students live under social, economic and family circumstances that deny them the support needed to become productive citizens in tomorrow's world. Every 8 seconds of the school day, an American child drops out of school. Every 53 minutes, a child dies because of poverty—10,000 a year. Every day, 100,000 children are homeless.

Today schools are being asked to do far more than merely educate our children. These at-risk students require

myriad of social services which our schools have neither the financial nor the professional resources to provide by themselves. Other public agencies and nonprofit organizations can provide these services, such as public health agencies, community based organizations, social workers, drug counselors, and many others. But these services are often fragmented, distributed across various agencies and hindered by bureaucratic and jurisdictional constraints. Children and their families are asked to go door to door to obtain the services they need, and not surprisingly, many of them never get there.

A recent report by the Committee for Economic Development, "The Unfinished Agenda: A New Vision for Child Development and Education," urges the Nation "to develop a comprehensive and coordinated strategy of human investment, one that redefines education as a process that begins at birth and encompasses all aspects of children's early development, including their physical, social, emotional, and cognitive growth."

The Link-Up for Learning bill will bring together educational and support services for at-risk students to provide "one-stop shopping" or colocation of services at a school, a community center, or other centralized location. Linking up schools and community support services for the at-risk student population will allow us to reach students efficiently and effectively, so that fewer students fall through the cracks.

Under the link-up for learning bill, a chapter 1 eligible school district collaborating with one or more public service agencies may receive funds to coordinate and improve access to support services for disadvantaged students and their families. These may include services such as nutrition, health screening and referrals, counseling, substance abuse prevention, extended school day programs, tutoring literacy, parent education and involvement, child abuse services, welfare services, juvenile delinquency, job training and placement, and others.

Funds may also be used to facilitate interagency communication, design unified eligibility procedures, coordinate case management, and train staff across agencies. Additionally, the bill establishes a Federal interagency task force to facilitate interagency collaboration at the Federal, State, and local levels.

Finally, the bill directs the Secretary of Education to conduct a study of funded projects and make recommendations to Congress to improve coordination of education support services; \$50 million is authorized for learning demonstration grants in fiscal year 1992 and such sums as are necessary are authorized in fiscal year 1993 and 1994. The return of this investment would be

vast in terms of the improved educational performance of at-risk students.

Successful collaboration between service agencies and the schools will not be achieved easily. Services have historically been provided within, rather than across, service categories. Each agency, including the school district, is used to its own priorities, eligibility criteria, funding sources, and legislative and regulatory restrictions.

We have been able to bridge these differences in some areas, but we have not made sufficient inroads among the school-age population. However, this link-up for learning initiative, proposed by the National School Board Association, endorses the one-stop shopping approach which is gaining momentum and bringing together parents, educators, and social service providers to deliver services.

The successful education of at-risk students requires coordinated services and an interagency focus on children and their families that is not constrained by jurisdictional and bureaucratic lines. We must begin to approach children as whole individuals, not as a series of isolated problems and needs.

The concept embodied in the link-up for learning bill can serve as a significant first step to improving the educational success of at-risk children.

It is my intention to build on this initiative so that over the next few months we will develop and move a comprehensive support services package for preschool as well as school-age children and their families.

By Mr. GRAHAM (for himself and Mr. BRYAN):

S. 620. A bill to reform habeas corpus procedures; to the Committee on the Judiciary.

#### HABEAS CORPUS REFORM ACT

Mr. GRAHAM. Mr. President, I rise to introduce legislation on the topic of habeas corpus reform, legislation which is cosponsored by our distinguished colleague, the Senator from Nevada, Senator BRYAN.

We have just heard from the chairman of the Judiciary Committee, Senator BIDEN, as he discussed the broad outlines of a comprehensive anticrime bill that he has introduced. One of the key elements of his proposal, as of the proposal which the President announced yesterday, is reform in our habeas corpus system. The fact that both the chairman of the Judiciary Committee and the President and the House and the Senate collectively in 1990 have recognized the importance of legislation to reduce frivolous and stale habeas corpus claims by inmates who are serving capital punishment sentences is indicative of the growing recognition of the urgency of resolving this issue.

Unfortunately, in 1990, time ran out before the respective measures could be reconciled. We must not let the mo-

mentum of 1990 and the consensus behind this issue be lost.

The consensus that reform is needed is clear on both sides of the aisle. A number of proposals have been and will be considered. The most widely publicized recommendations are those by a special commission appointed by Supreme Court Justice William Rehnquist and chaired by former Supreme Court Justice Lewis Powell. This distinguished commission, made up of five Federal judges, pooled their practical experience and sought outside advice on options for habeas corpus reform.

Their proposals, generally referred to as the Powell proposals, establish a new statute of limitations on filing Federal habeas corpus claims.

Our bill does likewise.

Mr. President, currently there is little or no incentive for State inmates serving under sentence of death to file petition for Federal habeas corpus relief until an execution date is set. Unlike most other areas of habeas corpus relief where the inmate has an incentive to file petitions on a timely and urgent basis in order to secure the relief, when a person is serving under a death sentence, the incentives are just the opposite, to use the process in order to delay a final adjudication.

The setting of an execution date usually results in a flurry of chaos from both the defendant's counsel, the prosecutor, and multiple courts. Justice is not well served under this scenario, for the inmate or for the State. This bill, like the Powell proposal, allows inmates 6 months to file Federal habeas petitions, from the time a sentence has been affirmed on direct appeal and collateral representation has been appointed.

Mr. President, there is a second issue and that is the issue of accessibility of competent counsel for indigent defendants facing capital sentences. I applaud the Powell Commission of identifying a critical element in habeas corpus reform. Inadequate representations at trial and on appeal are often the underlying cause for the plurality of claims which slow the finality of a State court judgment. This is not to say that there is not a pool of fine, qualified lawyers available to handle capital cases. However, virtually every witness appearing last year before the Judiciary Committee on this topic lamented the accessibility of good lawyers for indigent inmates.

The State of Florida, by statute, has created public defender offices to provide competent counsel at trial level, an office of capital collateral representative to provide competent counsel for collateral appeals in capital cases.

The bill Senator BRYAN and I are introducing would encourage States to establish competency standards at the trial and appellate level in exchange

for the benefits of a 6-months time limit. This bill gives great flexibility to the State in determining the standards of competence.

Third, the various proposals address the concept of successive petitions. The question is, after the 6-months filing limit has passed, under what conditions can an inmate raise an unheard claim in Federal court?

Mr. President, one of the most frequently used and, in my judgment, abused provisions of the Federal habeas corpus process is the successive petition. In a hypothetical but typical case, a person awaiting the execution of the State sentence has been delayed until a death warrant is signed. Shortly before the death warrant is to reach its maturity, a petition is filed in Federal court raising some item of alleged unconstitutional behavior or procedure at the trial level. That matter then is resolved over an extended hearing process and appeal in the Federal judicial system.

Assuming, as is generally the case, that that claim is found to be without merit, then a second death warrant is signed. Again, a matter of days, sometimes hours of the maturity of that death warrant, a second petition is filed raising another alleged constitutional imperfection. These successive petitions and long periods of litigation over each successive petition have had the effect of drawing out the time between original sentence and execution of the sentence by a decade or more.

In my judgment, these successive petitions should be limited only to the most extenuating circumstances. In most cases, the petitioner should be required to bring all of his Federal constitutional claims in his initial petition.

Mr. President, in the legislation which Senator BRYAN and I will file today, we have provided for the following circumstances in which there can be a successive petition. That can occur when it is the result of State action which was in violation of the Constitution of the United States. It can occur as a result of a Supreme Court recognition of a new Federal right that is retroactively applicable. And it can occur when it is based on a factual predicate that could not have been discovered through the exercise of reasonable diligence and time to present the claim for State or Federal post-conviction review. And in all of these cases, the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt in the offense or in the validity of sentence of death. Those would be the extenuating circumstances under which a successive petition could be allowed.

The Powell Commission would allow successive petitions only when the claim raises questions regarding the guilt or innocence of the prisoner. We

agreed successive petitions should be allowed in only very limited circumstances. However, successive petitions should be allowed in questions relating to the sentence of death when the facts underlying the claim undermine the court's confidence in the validity of that sentence.

Mr. President, the bill we introduced today incorporates the wisdom of the Powell Commission on almost every item. We have accepted its suggestions on limiting time, on giving States flexibility in assigning competent counsel in these cases, and in limiting successive petitions to truly extenuating circumstances.

Mr. President, this legislation will be a test of the public's confidence in our judicial system and it will be a test of the credibility of the congressional process. There is no aspect of our criminal justice system which has raised greater doubt in the public's mind in the credibility of deterrence and the confidence in justice than has the matter in which habeas corpus has been abused in our Federal judicial system.

Mr. President, there has been no greater test of this Congress' true commitment to criminal justice reform than the way in which it will deal with habeas corpus. It is hard to explain to a citizen, Mr. President, how a proposal which has passed this Senate on multiple occasions and last year passed both the Senate and the House of Representatives and still languishes unenacted.

One of the reasons that has occurred has been because we have fallen into the pattern of only considering anticrime bills against the deadline of a session adjournment. We have passed major crime or drug bills in 1986, in 1988, and in 1990, although in 1990, much of the work of both the House and the Senate vanished in a conference committee.

The President has now challenged us, Mr. President, to pass anticrime legislation within 100 days. I hope that we will accept that challenge with enthusiasm. This bill, Mr. President, demonstrates that we are serious about habeas corpus reform, we are serious about protecting the constitutional rights of defendants, and we are serious about securing order and finality in capital cases.

Mr. President, I ask unanimous consent that a copy of the bill, as submitted, be printed in the RECORD followed by a brief description of the provisions of the bill.

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

S. 620

*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 "Habeas Corpus Reform Act of 1991".

#### SEC. 2. SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES.

(a) IN GENERAL.—Part IV of title 28, United States Code, is amended by inserting immediately following chapter 153 the following new title:

#### "CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"2256. Application of chapter to prisoners in State custody subject to capital sentence and appointment of counsel

"2257. Mandatory stays of execution and successive petitions

"2258. Filing of habeas corpus petition

"2259. Certificate of probable cause inapplicable

"2260. Counsel in capital cases

"§ 2256. Application of chapter to prisoners in State custody subject to capital sentence and appointment of counsel

"(a) APPLICABILITY OF CHAPTER TO CASES.—This chapter shall apply to cases arising under section 2254 of this title brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if subsection (b) is satisfied.

"(b) APPLICABILITY OF CHAPTER TO STATES.—This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable fees and litigation expenses of competent counsel consistent with section 2260 of this title.

"(c) RULE FOR PREVIOUS COUNSEL.—No counsel appointed pursuant to subsection (b) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(d) INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel appointed under this chapter during State or Federal collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under this chapter or section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal post-conviction proceedings.

"§ 2257. Mandatory stays of execution and successive petitions

"(a) IN GENERAL.—Upon the entry in the appropriate State court of record of an order pursuant to section 2260 of this title, a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed pursuant to section 2254 of this title. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) DURATION OF STAY.—A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 of this title within the time required in section 2258 of this title;

"(2) upon completion of district court and court of appeals review under section 2254 of this title the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254 of this title—

"(A) before a court of competent jurisdiction;

"(B) in the presence of counsel; and

"(C) after having been advised of the consequences of his decision.

"(c) SUCCESSIVE PETITIONS.—If one of the conditions provided in subsection (b) is satisfied, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented by the prisoner in State or Federal courts, and the failure to raise the claim is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal post-conviction review; and

"(2) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt of the offense or offenses for which the death penalty was imposed, or in the validity of the sentence of death.

#### "§ 2258. Filing of habeas corpus petition

"(a) FILING OF PETITIONS.—Any petition for habeas corpus relief under section 2254 of this title must be filed in the appropriate district court not later than 180 days after the date of filing in the appropriate State court of record of an order issued appointing collateral counsel in compliance with section 2260 of this title.

"(b) TIME REQUIREMENTS.—The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner seeks review of a capital sentence that has been affirmed on direct appeal by the court of last resort of the State or has otherwise become final for State law purposes;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for post-conviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for post-conviction review until final disposition of the case by the State court of last resort; and

"(3) during an additional period not to exceed 90 days, if counsel for the State prisoner—

"(A) moves for an extension of time in the United States district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254 of this title; and

"(B) makes a showing of good cause for counsel's inability to file the habeas corpus

petition within the 180-day period established by this section.

The tolling rule established by this subsection shall not apply during the pendency of a petition for certiorari before the Supreme Court following such State post-conviction review.

#### "§ 2259. Certificate of probable cause inapplicable

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

#### "§ 2260. Counsel in capital cases

"(a) IN GENERAL.—A mechanism for the provision of counsel services to indigents sufficient to invoke the provisions of this chapter shall—

"(1) provide for counsel to—

"(A) indigents charged with offenses for which capital punishment is sought;

"(B) indigents who have been sentenced to death and who seek appellate or collateral review in State court; and

"(C) indigents who have been sentenced to death and who seek certiorari review in the United States Supreme Court; and

"(2) provide for the entry and filing of an order in an appropriate State court of record appointing one or more counsel to represent the prisoner except upon a judicial determination (after a hearing, if necessary) that—

"(A) the prisoner is not indigent; or

"(B) the prisoner knowingly and intelligently waives the appointment of counsel.

"(b) STANDARDS FOR COUNSEL.—

"(1) IN GENERAL.—(A) Except as provided in paragraph (2), at least one attorney appointed pursuant to this chapter before trial, if applicable, and at least one attorney appointed pursuant to this chapter after trial, if applicable, shall have been certified by a statewide certification authority. The States may elect to create one or more certification authorities (but not more than three such certification authorities) to perform the responsibilities set forth in subparagraph (B).

"(B) The certification authority for counsel at any stage of a capital case shall be—

"(i) a special committee, constituted by the State court of last resort or by State statute, relying on staff attorneys of a defender organization, members of the private bar, or both;

"(ii) a capital litigation resource center, relying on staff attorneys, members of the private bar, or both; or

"(iii) a statewide defender organization, relying on staff attorneys, members of the private bar, or both.

"(C) The certification authority shall—

"(i) certify attorneys qualified to represent persons charged with capital offenses or sentenced to death;

"(ii) draft and annually publish procedures and standards by which attorneys are certified and rosters of certified attorneys; and

"(iii) periodically review the roster of certified attorneys, monitor the performance of all attorneys certified, and withdraw certification from any attorney who fails to meet high performance standards in a case to which the attorney is appointed, or fails otherwise to demonstrate continuing competence to represent prisoners in capital litigation.

"(2) EXCEPTION FOR STATES WITHOUT STATE SYSTEMS.—In a State that has a publicly-funded public defender system that is not organized on a statewide basis, the require-

ments of paragraph (1) shall be deemed to have been satisfied if at least one attorney appointed pursuant to this chapter before trial shall be employed by a State funded public defender organization, and if the highest court of the State finds on an annual basis that the standards and procedures established and maintained by such organization (which have been filed by such organization and reviewed by such court on an annual basis) insure that the attorneys working for such organization demonstrate continuing competence to represent indigents in capital litigation.

"(c) NONCOMPLYING STATES.—

"(1) BEFORE TRIAL.—If a State has not elected to comply with the provisions of subsection (b), in the case of an appointment made before trial, at least one attorney appointed under this chapter must have been admitted to practice in the court in which the prosecution is to be tried for not less than 5 years, and must have not less than 3 years' experience in the trial of felony prosecutions in that court.

"(2) AFTER TRIAL.—If a State has not elected to comply with the provisions of subsection (b), in the case of an appointment made after trial, at least one attorney appointed under this chapter must have been admitted to practice in the court of last resort of the State for not less than 5 years, and must have had not less than 3 years' experience in the handling of appeals in that State courts in felony cases.

"(d) DIFFERENT ATTORNEY.—Notwithstanding any other provision of this section, a court, for good cause, and upon the defendant's request, may appoint another attorney whose background, knowledge or experience would otherwise enable the attorney to properly represent the defendant, with due consideration of the seriousness of the possible penalty and the unique and complex nature of the litigation.

"(e) PAYMENT FOR ADDITIONAL SERVICES.—Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or issues relating to sentence, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment of reasonable fees and expenses therefor, under subsection (f). Upon finding that timely procurement of such services could not practically await prior authorization, the court may authorize the provision of any payment of services nunc pro tunc.

"(f) ATTORNEY COMPENSATION.—Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to an attorney appointed under this subsection (other than State employees) and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (c), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of this subsection."

(b) AMENDMENTS TO TABLE OF CHAPTERS.—The table of chapters for part IV of title 28, United States Code, is amended by inserting after the item for chapter 153 the following:

"154. Special habeas corpus procedures in capital cases ..... 2256"  
HABEAS CORPUS REFORM ACT OF 1991  
APPOINTMENT OF COUNSEL

The bill requires states who want to enforce the statute of limitations provided by

this bill to provide and set standards for qualified counsel for defendants charged with capital crimes and for habeas corpus petitioners under sentence of death.

#### STATUTE OF LIMITATIONS

Prisoners would have six months to file a federal habeas petition after the appointment of collateral counsel. The time is tolled during state collateral proceedings, but not during U.S. Supreme Court review after the state post-conviction review.

#### PROCEDURAL DEFAULT

The bill makes no changes in the current case law limiting the ability of an inmate to raise a procedurally defaulted claim in federal court.

#### SUCCESSIVE PETITIONS

The bill allows successive petitions only if the failure to raise the claim previously is:

The result of State action in violation of the Constitution or laws of the United States;

The result of the Supreme Court recognition of a new federal right that is retroactively applicable; or

Based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for state or federal post-conviction review;

And if the facts underlying the claim would be sufficient to undermine the court's confidence in the jury's determination of guilt or in the validity of the sentence.

By Mr. CRANSTON:

S. 621. A bill to establish the Manzanar National Historic Site in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

#### MANZANAR NATIONAL HISTORIC SITE

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to establish the Manzanar National Historic Site in the State of California. The legislation is identical to H.R. 543 sponsored in the House by Congressmen LEVINE, THOMAS, and MATSUI.

As many of my colleagues will recall, Manzanar was one of the 10 permanent Japanese-American relocation camps used during World War II. Located at the foot of the eastern slope of the Sierra Nevada mountain range approximately 175 miles north of Los Angeles, the Manzanar War Relocation Center was occupied from the spring of 1942 to the end of 1945. The entire Manzanar reservation covered some 6,000 acres, with a 500-acre living area and adjacent agricultural land, a reservoir, airport, cemetery, and sewage treatment plant. Although only the camp auditorium and a few other structures remain, the National Park Service believes that Manzanar offers the best opportunity among the camps for interpretation of the World War II relocation program.

Manzanar already is recognized as historically significant and has been designated a national historic landmark. However, this designation alone is insufficient to protect Manzanar's cultural resources and there have been some instances of vandalism. Additionally, although the Eastern California Museum in Independence has a good

collection of Manzanar artifacts, there is no interpretive information at the site itself.

In 1989, as part of a feasibility study of sites associated with the Pacific campaign of World War II, the National Park Service issued a report outlining alternatives for management of Manzanar as a national historic site. This legislation implements the Park Service alternative which protects the most land and provides the greatest opportunities for the visiting public.

The bill designates a 500-acre Manzanar National Historic Site, encompassing the entire living area of the camp, the camp auditorium, and the cemetery. It authorizes the Secretary of the Interior to enter into cooperative agreements with public and private entities for management and interpretive programs and with the State of California for law enforcement and firefighting services. It recognizes existing grazing rights in the area subject to terms and conditions the Secretary may impose to protect the historic and other resources of Manzanar.

The bill also authorizes the Secretary to acquire land and improvements within the site by donation, exchange, or purchase with donated or appropriated funds. The land is entirely owned by the Los Angeles Department of Water and Power. However, no land acquisition is contemplated except for a less-than-fee interest as deemed necessary to manage and protect resources and provide for visitor use. The Park Service is proposing acquisition of the former camp auditorium owned by Inyo County and relocation of the county maintenance facility at an estimated cost of \$750,000 to \$1 million.

Finally, the bill establishes an advisory commission composed of former internees of the Manzanar relocation camp, local residents, native Americans, and the general public.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 621

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. ESTABLISHMENT.

(a) IN GENERAL.—In order to provide for the protection and interpretation of historical and cultural resources associated with the relocation of Japanese-Americans during World War II, there is hereby established the Manzanar National Historical Site (hereinafter in this Act referred to as the "site").

(a) AREA INCLUDED.—The site shall consist of the lands and interests in lands within the area generally depicted as Alternative 3 on map 3, as contained in the Study of Alternatives for Manzanar War Relocation Center, map number 80,002 and dated February 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Inte-

rior. The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the site.

#### SEC. 2. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the site in accordance with this Act and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467.).

(b) DONATIONS.—Notwithstanding any other provision of law, the Secretary may accept and expend donations of funds, property, or services from individuals, foundations, corporations, or public entities for the purpose of providing services and facilities which he deems consistent with the purposes of this Act.

(c) COOPERATION AGREEMENTS WITH STATE.—In administering the site, the Secretary is authorized to enter into cooperative agreements with public and private entities for management and interpretive programs with the site and with the State of California, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.

(d) COOPERATIVE AGREEMENTS WITH OWNERS.—The Secretary may enter into cooperative agreements with the owners of properties of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement.

(e) With respect to lands acquired by the United States pursuant to this Act, the Secretary shall permit movement of livestock across such lands in order to reach adjacent lands, if the party seeking to make such use of the acquired lands was authorized to make such use as of the date of enactment of this Act; but any such use shall be subject to such terms, conditions, and requirements as the Secretary may impose in order to protect the natural, cultural, historic, and other resources and values of the acquired lands.

#### SEC. 3. ACQUISITION OF LAND.

The Secretary may acquire land or interests in land, and improvements thereon, within the boundaries of the site by donation, purchase with donated or appropriated funds, or exchange.

#### SEC. 4. ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Manzanar National Historic Site Advisory Commission (hereinafter in this Act referred to as the "Advisory Commission"). The Advisory Commission shall be composed of former internees of the Manzanar relocation camp, local residents, representatives of Native American groups, and the general public appointed by the Secretary to serve for terms of 2 years. Any member of the Advisory Commission appointed for a definite term may serve after the expiration of his term until his successor is appointed. The Advisory Commission shall designate one of its members as Chairman.

(b) **MANAGEMENT AND DEVELOPMENT ISSUES.**—The Secretary, or his designee, shall from time to time, but at least semiannually, meet and consult with the Advisory Commission on matters relating to the development, management, and interpretation of the site.

(c) **MEETINGS.**—The Advisory Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the site. Advisory Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

(d) **EXPENSES.**—Members of the Advisory Commission shall serve without compensation as such, but the Secretary must pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairman.

(e) **CHARTER.**—The provisions of section 14(b) of the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776), are hereby waived with respect to this Advisory Commission.

(f) **TERMINATION.**—The Advisory Commission shall terminate on 10 years after the date of enactment of this Act.

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this Act.

By Mr. SIMON:

S. 622. A bill to amend title 18 of the United States Code to require drug testing for released Federal prisoners; to the Committee on the Judiciary.

#### FEDERAL PRISONER DRUG TESTING ACT OF 1991

• Mr. SIMON. Mr. President, I rise today to introduce legislation to mandate drug testing for Federal prisoners as a condition of probation, parole, or supervised release.

Mr. President, between 1980 and 1987, the number of defendants sentenced to Federal prison for drug offenses almost tripled. This is the fastest growing segment of the Nation's prison population. Nearly 50 percent of those prisoners are serving sentences for drug-related offenses. Many of them were using illegal drugs prior to or during the commission of the crime for which they were imprisoned.

Unfortunately, illegal drug use and drug-related activity does not necessarily cease as a result of incarceration. Surprisingly, many inmates carry out well-organized criminal endeavors with drugs and other contraband smuggled in by staff and visitors.

But currently, there is no requirement for mandatory drug-testing to determine whether a soon-to-be released inmate is using one or more illegal substances. Nor is being drug-free a condition of release.

As a result of this gap in our system, prisoners using drugs are released and returned to our communities. One could predict that a prisoner using drugs would, upon release, commit drug offenses or other crimes either while under the influence of drugs or in order to obtain illegal drugs. A cycle of crime, arrest, prosecution, and incarceration is perpetuated. This is obvi-

ously unacceptable. This situation certainly helps to explain a recidivism rate that, according to the Bureau of Prisons, is as high as 43 percent for Federal prisoners.

To break this destructive cycle, we in Congress must act to ensure that inmates using illegal drugs are not eligible for release into our communities.

In furtherance of this goal, my legislation provides that any Federal inmate eligible for supervised release or parole must pass a urinalysis test before release and two tests after release from a Federal correctional facility. Federal probationers must also pass two such tests.

An inmate who fails the first urinalysis test will continue serving the imposed prison sentence until he or she passes a random urinalysis test. Supervised releases and probationers face revocation of the sentence and return to prison if they test positive for an illegal substance.

Mr. President, the benefits of this legislation to our communities and our criminal justice system are potentially great. I urge the cosponsorship and support of my colleagues. •

By Mr. SIMON (for himself, Mr. DECONCINI, and Mr. HOLLINGS):

S. 623. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to maintain the current Federal-State funding ratio for the Justice Assistance Grant Program; to the Committee on the Judiciary.

#### FUNDING FOR STATE AND LOCAL LAW ENFORCEMENT ANTIDRUG ABUSE AND ANTIDRUG CRIME PROGRAMS

• Mr. SIMON. Mr. President, I rise today to introduce important legislation that will maintain funding for State and local law enforcement programs aimed at combating drug use and related crime.

Our Nation is faced with a terrible public safety and public health crisis. While Government studies and surveys indicate a decrease in the level of casual drug use, evidence also suggests that there are more hardcore cocaine users than ever. The ravaging effects of illegal drug use and drug abuse do not discriminate between young and old, rich and poor, or black and white. We, as a Nation, are all victims.

The drug problem must be approached through a wide variety of prevention, education, treatment, interdiction, and law enforcement initiatives. I have vigorously supported treatment and education along with user accountability as part of an overall effort to reduce demand for drugs. I have also supported law enforcement efforts to thwart the distribution and availability of illegal drugs by supporting law enforcement efforts against dealers and distributors.

The public safety threat posed by the drug problem is national in scope, but it manifests itself differently through-

out our communities. State and local law enforcement officers monitor drug use trends in our communities and put themselves at risk every day as they pursue drug dealers and distributors. State and local law enforcement is the backbone of the antidrug criminal justice effort.

The Federal Government is an important source of funding for many State and local law enforcement efforts. The Department of Justice, through the Bureau of Justice Assistance, distributes block grant funds to support many antidrug abuse efforts carried out by State and local law enforcement agencies. States administer the overall programs, distributing the block grant funding to support local law enforcement. Last year, I introduced legislation, which was ultimately passed as part of the Crime Control Act of 1990, to maintain the funding ratio at a 75 to 25 Federal-State cash match formula for fiscal year 1991. That is, local governments must pay 25 percent of the program costs, while the Federal Government pays the remaining 75 percent of the program costs.

The legislation I rise to introduce today will maintain this cash match formula for fiscal year 1992. Without passage of this legislation, States will be required to pay for 50 percent of the costs of this critical law enforcement program. Thus, local governments will be required to pay significantly more to maintain even the current level of antidrug programming.

The Illinois Criminal Justice Information Authority along with representatives from local law enforcement have impressed upon me the importance of the current Federal funding formula to their continued antidrug efforts. Local authorities truly depend on this passthrough aid. Local governments already contribute a significant percentage of their overall criminal justice resources to these programs. If their share of the financial burden is increased, many communities would be forced to end their participation in the State-administered Federal grant program. Given the critical role of local law enforcement in the fight against drug abuse we cannot afford to have that happen.

The President's 1992 budget provides \$490 million for this antidrug abuse law enforcement block grant—this is the same level of funding requested in the President's 1991 budget. According to Federal Funds Information for States—a joint service of the National Conference of State Legislatures and the National Governor's Association Center for Policy Research—my home State of Illinois would have access to roughly \$16.8 million in fiscal year 1992 Federal funds under the program. Under the current 75 to 25 funding formula Illinois local government payments would total roughly \$5.6 million. If the funding formula is changed to 50

to 50, Illinois would have to contribute \$16.8 million of its own funds to match the Federal contribution. This is a difference of \$11.2 million. This increased cost to the State and local units of government would force many of them to end their participation in the program.

Mr. President, we cannot afford to inhibit local law enforcement's access to this critical Federal aid. My proposal will endure their continued participation in the Block Grant Program. It will allow local law enforcement continued access to the financial and technical assistance they need to improve their criminal justice systems, thereby maximizing the protection of the people of Illinois and in the rest of the Nation from drug-related crime. I strongly urge the cosponsorship and support of this important criminal justice measure.●

By Mr. EXON (for himself and Mr. KERREY):

S. 624. A bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization; to the Committee on Finance.

REPEAL TAX ON CERTAIN GAMES OF CHANCE

Mr. EXON, Mr. President, today I am introducing legislation to repeal a tax added in the 1986 tax reform on funds raised of nonprofit organizations through certain games of chance. My colleague from Nebraska, Senator KERREY, is joining me in this bill, which is companion legislation to H.R. 862, recently introduced in the House of Representatives by Representative HOAGLAND and identical to legislation we introduced during the 1990 session of Congress.

The issue arises from the 1986 Tax Reform Act. It had an obscurely worded section which made fundraising proceeds from nonprofit organizations' games of chance subject to the unrelated business income tax, although the 1986 change exempted organizations in North Dakota. The result is the nonprofit groups must pay taxes on those funds at corporate income tax rates. Another part of the problem arises due to many nonprofit groups having no knowledge of the existence of the added tax until last year. My bill would repeal the 1986 tax change retroactive to its effective date.

For example, in my home State of Nebraska, various churches, charities, veterans groups, and other nonprofit organizations use pull-tab lottery cards for fundraising, known locally as "pickle cards" because traditionally they were often held for sale in old large pickle jars. Pickle card fundraising is limited under state law only to nonprofit organizations, so there is no issue of unfair competition with private business if the proceeds are not taxed. It wasn't until last year that these nonprofit groups learned that the

IRS says they owe back taxes to October 22, 1986, with interest and penalty on the funds they raised. Of course, in most cases the nonprofits had no idea they owed the tax and the funds are now long spent for the charitable purposes of the organization. The threat of an IRS seizure of charitable property for unpaid back taxes which the groups had no knowledge they even owed and do not now have the funds to pay is a serious problem.

Of course, the Federal budget deficit problem and the budget agreement enforcement provisions passed last year create a huge barrier for any bill which proposes to reduce Federal tax revenue in any amount, no matter how fair and reasonable. Therefore, I hope that by working with members of the Senate Finance Committee that a way can be found to address the concerns I have outlined through some means as part of a larger legislative package with offsetting budget savings, so as not to increase the Federal deficit in any amount and still achieve fairness in this area.

Mr. President, I ask unanimous consent that a copy of the bill and a copy of a letter dated August 23, 1990, from the Joint Committee on Taxation with a revenue estimate for the changes I am proposing be included in the RECORD.

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

S. 624

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. THE CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

Section 1834 of the Tax Reform Act of 1986 is repealed for games conducted after October 22, 1986, and subparagraph (A) of section 311(a)(3) of the Tax Reform Act of 1984 shall be applied and administered as if such section 1834 (and the amendments made by such section 1834) had not been enacted.

JOINT COMMITTEE ON TAXATION,  
Washington, DC, August 23, 1990.

HON. J. JAMES EXON,  
United States Senate, Washington, DC.

DEAR SENATOR EXON:

This is in response to your request dated March 26, 1990, for a revenue estimate of a proposal to exempt from the unrelated business income tax (UBIT) certain nonprofit organizations running games of chance.

The proposal would exempt from UBIT income from games of chance conducted in States that, as of October 5, 1983, had a law in effect permitting the conduct of such games so long as the activities were run by nonprofit organizations. Two alternatives are proposed. The first alternative would eliminate UBIT liability from October 23, 1986, and thereafter. The second alternative would repeal UBIT liability from October 23, 1986, to December 31, 1989, only.

We estimate that these two alternatives would reduce Federal budget receipts by the following amounts:

Item:	Fiscal Years—					
	1991	1992	1993	1994	1995	1991-95
Repeal UBIT from October 23, 1986 and thereafter ...	-53	-35	-4	.....	.....	-92
Repeal UBIT from October 23, 1986 through December 31, 1989	-40	-21	.....	.....	.....	-61

I hope this information is helpful to you. If we can provide further assistance, please do not hesitate to let me know.

Sincerely,

RONALD A. PEARLMAN.

Mr. KERREY, Mr. President, I rise today to join my senior colleague from the State of Nebraska, Mr. EXON, in introducing legislation to repeal a Federal tax provision that imposes a serious handicap on the fundraising and operating abilities of charitable organizations, such as churches, baseball teams, labor unions, veterans' groups, and other nonprofit organizations in the State of Nebraska. This legislation is identical to a bill we introduced last March, S. 2308.

This provision, incorporated into the 1986 Tax Reform Act, calls for the collection of Federal income taxes, or unrelated business income tax [UBIT], on the proceeds received by charitable organizations from games of chance. It requires not only the payment of the future tax liability of funds collected, but also the payment of taxes back to 1986. The bill we are introducing today calls for a straightforward repeal of the provision included in the 1986 act and the return of the law to its status prior to passage of the 1986 act.

In Nebraska, many charities perform their fundraising activities by means of a pull-tab lottery system called "pickle cards." Although never mentioned in the 1986 Tax Reform Act's official committee report and not enforced or apparently noticed by the Internal Revenue Service until last year, the collection of taxes on pickle card proceeds will have a devastating effect on the groups reliant on pickle cards for fundraising.

The effect of the collection of these taxes will be felt by a variety of groups performing important functions in the State of Nebraska. For example, a number of parish schools utilize pickle card revenues to finance athletic, transportation, equipment, and tuition

programs for students. Others negatively affected by this provision include the Septemberfest Salute to Labor; the Omaha Hearing School; the O'Neill Senior Center; numerous athletic associations, such as the Grover Little League and the Lincoln Swim Club; the Knights of Columbus, along with other fraternal organizations; and other groups providing special services to their communities.

Our colleague from Nebraska, Representative HOAGLAND, has recently introduced identical legislation, H.R. 862, in the House.

In a day when we, as a nation, have been forced to rely more on private and nonprofit resources to provide important and needed support for our communities, we must modify this provision that could wreak financial havoc on those organizations, groups and associations that must make up the shortfall.

I urge that our colleagues give this legislation their consideration and approval.

By Mr. REID (for himself and Mr. BROWN):

S. 625. A bill to amend the Trade Act of 1974 in order to require reciprocal responses to foreign acts, policies, and practices that deny national treatment to U.S. investment; to the Committee on Finance.

FAIR INVESTMENT ACT OF 1991

• Mr. REID. Mr. President, today I am introducing the Fair Investment Act of 1991. This legislation is a companion bill to legislation Congressman TOM CAMPBELL is introducing in the House today.

The Fair Investment Act of 1991 is a direct response to the unfair business practices of Japan, Korea, and other countries.

We all know about the unfair trading practices of Japan and Korea. They slap obscenely high tariffs on American beef and cars so that our products cannot be sold in their countries. Then, they turn around and flood this country with cheap products and consistently undersell us. And they do this at the very time that the American taxpayer is paying for their military defense. We are subsidizing their national security so that they can take advantage of us economically.

The untold story is what the Japanese and Koreans are doing to us through unfair investment practices.

The Japanese are the most extreme in their unfairness. Consider what they think is fair investment in the United States.

The Japanese have penetrated just about every American industry. These incursions have had more than a few big ticket items. In 1989, Sony Corp. paid \$3.4 billion for Columbia Pictures. Late in 1990, MCA, another entertainment giant, was bought by the Japanese. Rockefeller Center, the home of

NBC and one of the most prestigious addresses in New York City, now has a Japanese landlord. Seventy percent of Honolulu is controlled by Japanese investors.

It's no wonder the Organization for Economic Cooperation and Development calls our economy the most open in the world. If other nations played by our rules, we would be in good shape; but they don't.

In contrast to our free and open markets, Japan is practically off-limits to American investors. For years, many United States manufacturers have tried to sell their goods in Japan—only to face repeated delays and setbacks.

The primary problem is that the Japanese distribution system has not accommodated American goods. For example, Japanese auto dealers often refuse to sell American-made cars. The alternative—establishing an entirely separate distribution system—is prohibitively expensive in most instances. Only a few American companies, such as the Amway Corp., have been able to establish their own, independent distribution systems to achieve market penetration.

Japan may be the worst offender, but it is hardly alone in this international double standard.

South Korea has flooded the American car market with Hyundais during the past several years. They like free trade when they come to America. They hate it on their own door step. And they have proven it in their investment policies, by outlawing foreign investment in 28 lucrative industries, including farming, publishing, and radio and television broadcasting.

This double standard is also practiced by European countries—who also rely on American military power to gain an economic advantage over us.

France will not grant most-favored-nation status to the United States or other countries outside the European Community. Approval to invest in France is sometimes even linked to specific requirements like maintaining a positive balance of trade. Recent cases have demonstrated that U.S. firms have had difficulty in obtaining such approval.

But it remains the Japanese who perpetuate the cruelest hoax on America—talking about free trade and open investment, while closing their borders in an economic move that mortally damages American workers and businesses.

Japan's economy is dominated by a shadow government of business leaders who make many of the decisions affecting that country's industrial, economic and trade policies. This internal cartel of interlocking corporations is known as keiretsu. Because of the keiretsu, economic power in Japan is extremely concentrated, even to the detriment of the vast majority of Japanese citizens.

This tightly knit control group is closed to all newcomers—Japanese as well as foreign. Most Japanese investors cannot penetrate the powerful, secretive keiretsu.

These are the Japanese men who make it almost impossible for American retailers to establish a presence in Japan. They keep restrictive laws on the books in Japan, such as the legal right of small store owners to contest the opening of large department stores in their neighborhoods.

An American retailer can expect to wait 10 years before opening doors for customers. Ten years is a long time to receive any return on an investment. And that's only if the American investor gets past all the Government regulations and potential lawsuits from small store owners.

One of the most egregious examples of discrimination occurs against Americans who merely want to invest in the Japanese capital markets. While the Japanese continue to buy controlling interests in American companies and freely enter our corporate board rooms as voting members of corporate boards of directors, they prohibit Americans from doing the very same thing in their country. They will sell us the stock and take our money, but they won't allow us to vote as stockholders.

Mr. T. Boone Pickens' experiences as a shareholder of Koito Manufacturing Co. are a perfect example of this unfairness.

He is now the company's largest shareholder, but Mr. Pickens cannot even get a look at the company books and records. Representation on the Koito Board is out of the question. The corporate insiders controlling Koito do not want a foreigner to have a look at how their system operates.

This outrageous behavior has even prompted ordinary Japanese citizens to write in support of Pickens' efforts.

Last year, a small businessman from Japan testified anonymously before a House Subcommittee on the anti-competitive behavior of keiretsu. Testifying from behind a cloak so the keiretsu could not retaliate against him, this brave Japanese businessman described how he is forced to accept arbitrary price cuts, hire particular individuals and blacklist suppliers who act independently of the keiretsu.

The Fair Investment Act of 1991 would stop the double standard that allows Japan and other countries to take our money without giving anything in return.

This legislation would use the successful carrot and stick approach. If foreign countries practice fair investment and don't discriminate against us, we won't retaliate against them. But if they discriminate against our businessmen, then they shouldn't expect to get a free ride in this country.

It's a question of fairness, that's all. If they play fair, so will we.

To achieve this reciprocal relationship, the Fair Investment Act amends section 301(c) of the Trade Act of 1974 (19 U.S.C. section 2411(c)) to authorize reciprocal responses to foreign acts, policies and practices that deny national treatment of U.S. investments. My bill merely seeks the creation of the level playing field that has been talked about but has never materialized.

The current administration, like its predecessor, views open investment and free trade as the two policy components to cure our foreign trade ills. Unfortunately, the pursuit of these policies has done nothing to improve our staggering trade deficit. I think I know why. Only our Government has a truly open and free trade policy.

The Japanese Government does everything in its power to preserve, protect, and defend Japanese industry. It's time we in the United States did the same thing for our economy.

We in Congress must pass legislation that encourages a reciprocal trade relationship. The policymakers in the administration must implement fair investment and fair trade policies. Failing to place Japan on the Super 301 list demonstrates they have not yet learned the wisdom of those kind of policies.

Mr. President, Congress is watching the implementation of our trade policies very carefully and it appears Americans keep getting shortchanged in these matters. Therefore, it is time to give our trade negotiators the proper tools. The legislation I am introducing today does just that. It puts a nation's money where its mouth is. If a nation really had free trade laws, then it will receive the benefit of America's open market. If it places restrictions on foreign investment in its economy, then America will place the same restrictions on investments here. This is a reasonable response to a situation that has grown out of control. ●

By Mr. HEINZ:

S. 626. A bill to increase the literacy skills of commercial drivers; to the Committee on Labor and Human Resources.

#### COMMERCIAL DRIVERS LITERACY PROGRAM

● Mr. HEINZ. Mr. President, in 1986 Congress enacted the Commercial Motor Vehicle Safety Act. The law is primarily intended to eliminate the practice of holding multiple driver's licenses which enable unsafe drivers to flimflam law enforcement by handing over whichever license has the fewest violations against it. Now, drivers who don't turn in multiple licenses face fines and possible imprisonment.

Another provision requires all drivers to obtain a commercial driver's license [CDL] by April 1992. Commercial vehicle operators must take both a written and driving skills test. Passing the driving test ought to be comparatively

easy. Most drivers on the road today have excellent driving records and years of experience.

For some, however, getting through the written test will be a whole other story. The sample driver's manuals that I've seen are proof positive that it will not be easy for those who do not have sharp literacy skills. Many of the older, experienced drivers have not taken such a written test since high school. They need remedial literacy training. If they do not get it, we could lose the experienced drivers we want in control of the big rigs and vehicles that get our goods to market and our children to school.

For this reason, I am again introducing legislation that would provide financial assistance targeted at programs that would raise the literacy skills of commercial drivers. During the past Congress, this legislation passed both the Senate and the House but in separate legislation and therefore did not become law.

Eligible grantees include colleges and universities, approved apprentice programs, private employers, and unions.

I have received letters from many organizations in support of this effort. I ask unanimous consent that the following letters be printed in the RECORD:

June 30, 1989, from Service Employees;

June 13, 1989, from International Brotherhood of Electrical Workers;

June 5, 1989, from Teamsters.

I also ask unanimous consent that an editorial from the Pittsburgh Press and an article from the Journal of Commerce entitled, "Truck Drivers Get Jitters Over 1992 License Rules" be printed in the RECORD at this point.

Mr. President, we have all heard the regrettable reports concerning this Nation's illiteracy rate. The commercial drivers who need literacy training earn a good living. They are making substantial contributions to the American economy. It is not right for them to lose their jobs or their rigs—for which some have mortgaged their homes—because they could not pass a written test. They want to pass. They want to possess good reading skills.

I urge my colleagues to join me in helping to raise the literacy skills of these hard-working Americans. We can't afford to lose them.

I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 626

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SEC. 1. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

Part C of the Adult Education Act (20 U.S.C. 1211 et seq.) is amended by inserting at the end thereof the following new section 373:

#### "SEC. 373. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

"(a) PROGRAM AUTHORIZED.—The Secretary is authorized to make grants on a competitive basis to pay the Federal share of the costs of establishing and operating adult education programs which increase the literacy skills of eligible commercial drivers so that such drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

"(b) FEDERAL SHARE.—The Federal share of the costs of the adult education programs authorized under subsection (a) shall be 50 percent. Nothing in this subsection shall be construed to require States to meet the non-Federal share from State funds.

"(c) ELIGIBLE ENTITIES.—Entities eligible to receive a grant under this section include—

"(1) private employers employing commercial drivers in partnership with agencies, colleges, or universities described in paragraph (2);

"(2) local educational agencies, State educational agencies, colleges, universities, or community colleges;

"(3) approved apprentice training programs; and

"(4) labor organizations, the memberships of which includes commercial drivers.

"(d) REFERRAL PROGRAM.—Grantees shall refer individuals who are identified as having literacy skill problems to appropriate adult education programs as authorized under this Act.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'approved apprentice training programs' has the meaning given such term in the National Apprenticeship Act of 1937.

"(2) The term 'eligible commercial driver' means a driver licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$3,000,000 for each of fiscal years 1992 and 1993."

SERVICE EMPLOYEES  
INTERNATIONAL UNION,  
Washington, DC, June 30, 1989.

Hon. JOHN HEINZ,  
U.S. Senate, Washington, DC.

DEAR SENATOR HEINZ: On behalf of the 925,000 members of the Service Employees International Union, I'd like to extend my appreciation for your recent introduction of S. 1098, the bill providing for the remedial training of commercial drivers.

As you are aware, there has been a very direct impact felt by commercial drivers around the country due to the new testing imposed by the Commercial Motor Vehicle Code. Despite years of experience driving school buses and other vehicles, many are ill-prepared to take the written exams required under the new regulations.

We have received numerous inquiries from SEIU members with a confusion shared by many of their employers on the full scope and extent of the new tests. Even if they have spotless driving records, the anxiety of retaining their jobs often masks their true abilities when put to the written test.

Again, thank you for the initiative you have shown in recognizing those drivers who, with minimal guidance and assistance, can continue to move our country's people and goods around safely and effectively. Please let me know if we can be of any assistance to

you in making S. 1098 pass swiftly through the Congress.

Sincerely,

JOHN J. SWEENEY,  
International President.

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS,  
Washington, DC, June 13, 1989.

Hon. JOHN HEINZ,  
U.S. Senate, Washington, DC.

DEAR SENATOR HEINZ: When Congress passed the Commercial Motor Vehicle Safety Act of 1986, none of us realized at the time that certain provisions of the law would adversely affect those drivers of commercial vehicles who do not possess literacy skills sufficient to pass the written examination to secure a commercial driver's license.

Because the livelihood of our members who fall within this category is in jeopardy, we brought this matter to your attention. Not only did you fully understand the problems of these workers, but you did something about it. You assisted them by introducing S. 1098.

On behalf of the members of the International Brotherhood of Electrical Workers, and all others who you are attempting to help by your efforts, I thank you.

With best wishes, I am,

Sincerely,

J.J. BARRY,  
International President.

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS,  
Washington, DC, June 5, 1989.

Hon. JOHN HEINZ,  
U.S. Senate, Washington, DC.

DEAR SENATOR HEINZ: The Commercial Motor Vehicle Safety Act of 1986 created a federal standard for the issuance of a commercial driver's license by the states. As you are aware, all commercial drivers must now pass a written and a driving skills test before obtaining this national license. Many states, including Pennsylvania, are rewriting their motor vehicle codes to satisfy the demands of this new federal standard. Some states have already implemented their commercial license programs which include the required testing provisions.

A number of drivers have experienced difficulty in passing the written part of the license test. This failure is based on individual reading abilities and not on the qualifications or driving skills of these drivers. Recently you introduced S. 1098, which would provide for a federal grant program to allow labor organizations to establish and maintain adult education programs to increase the literacy skills of commercial drivers. As General President of the International Brotherhood of Teamsters, which represents thousands of commercial drivers, I fully endorse and support your proposal. Your legislation will allow many drivers, who are competent and capable, to continue as productive and safe operators of commercial vehicles.

On behalf of Teamsters everywhere, I commend you and offer our deep appreciation for your efforts in this area.

Sincerely,

WILLIAM J. MCCARTHY,  
General President.

[From the Pittsburgh Press, June 13, 1989]  
LITERACY BEHIND THE WHEEL

Over the next few years, it may not be unusual to see a trucker devouring the contents of a training manual along with his meat and potatoes at a truck stop. It's a

scope that's sure to materialize as commercial drivers begin studying for an exam they must take to qualify for a national driver's license that the federal government will require by April 1992.

The national license, mandated by Congress two years ago, will be required of all drivers of buses, trucks of more than 28,000 pounds or those that haul hazardous materials. The aim of the national licensing system is to prevent long-haul drivers from holding several state licenses so they can avoid suspensions for traffic citations.

We were pleased with the establishment of a national system and we are even more gratified by a spin-off development: Many truckers will try to improve their reading and writing skills in an attempt to pass the exam.

Test study manuals and the tests themselves, although supposedly written at a sixth or seventh-grade level, are baffling many truckers. In California, where the tests already are being administered, more than a third of the drivers failed on their first try.

The problem is not the drivers' skills behind the wheel but their lack of skills behind a pencil and paper. Their reading and writing levels are not good enough to understand the 100-page manuals, leaving them ill-prepared for the tests.

Responding to the situation, the American Trucking Association and some unions in the industry are urging individual trucking companies to set up literacy and preparation courses for their drivers. And Sen. John Heinz, R-Pa., wants Congress to put some of its money where its laws are.

Senator Heinz has introduced legislation to provide up to \$10 million in matching funds over the next two years to help pay for literacy training for the drivers.

Although it would be impossible to quantify, it is beyond doubt that a more literate truck driver would be a safer truck driver. Imagine the danger potential that exists when, say, a trailer truck driver who can't read or who has only minimal reading skills comes upon an unfamiliar direction sign at 55 mph.

We share the notion that trucking companies should help their drivers prepare for tests by improving their literacy skills. And will think Congress should do its part, too, by providing the matching funds Sen. Heinz is seeking.

[From the Journal of Commerce, Nov. 16, 1990]

TRUCK DRIVERS GET JITTERS OVER 1992  
LICENSE SALES  
(By Tom Belden)

HARRISBURG, Pa.—A new fear is gripping the highways.

Will the nation's 5 million commercial truck and bus drivers meet one of the biggest challenges they will have to face in the next few years?

To keep their jobs, every truck and bus driver in the country will have to take and pass a new commercial driver's license test by April 1, 1992—a test rumored to be so tough that many drivers fear they will fail it.

That's why a group of drivers paused Tuesday in a windblown parking lot at a truck stop on Interstate 81 to hear what they could do about it.

There's a fear out there," said Pete Dannecker, director of safety and recruiting for Jones Motor Group, an irregular route truckload and flatbed carrier in Spring City, Pa. "There are people who've been driving a truck for 20 years, at 100,000 miles a year,

many of them without an accident, and they don't know what to expect."

Jones found an innovative way to get drivers' attention at the sprawling Truckstops of America Plaza here. It built an information booth on wheels to teach interested drivers how to pass the test.

A quick, free browse through its Hot Shot InfoExpress—operated by a Jones subsidiary, Hot Shot Express—could be just what a driver needs to pass the test, Jones official said.

Tuesday's stop on I-81 just east of Harrisburg was the first in a 13-state tour of truck stops planned for the next few months.

The InfoExpress is stocked with free information, including copies of the licensing procedure in every state that has established one so far.

The licensing requirement is part of the Federal Commercial Motor Vehicle Safety Act, passed by Congress in 1986. Responding to demands to weed out reckless commercial drivers, the law mandated that each state set up a stricter testing program.

As good as the new system promises to be for highway safety, there is widespread fear among drivers about flunking the test and losing their livelihood, both Jones officials and truckers said.

Many drivers haven't taken a test of any kind since high school, and some also will have trouble passing because of their literacy level, the officials said.

Hermon Jones of Roseland, La., a driver for Bendix Transportation Management, pronounced the InfoExpress "great" as he picked up information Tuesday. "I know I've got to study for it," he said of the test.

"We're talking about it out here and a lot of guys don't think they'll be able to pass it," he added. "A lot of guys are thinking about getting out of trucking because they can't pass it."

In addition to the free information, the InfoExpress will offer 30-minute training sessions conducted by David Derr, a former Jones driver who now is a field recruiter and instructor.

Most of the portable InfoExpress building is set up like a mini-classroom, where Mr. Derr will offer test-taking advice and seminars on study techniques.

"I had to stop here today anyway, but this is an interesting thing to listen to," said Lawrence Moss of Atlanta, a long-haul driver who works for Arthur H. Fulton Inc., a Stephens City, Va., trucking company.

Mr. Moss said truck stops and the CB radio airways are abuzz with drivers' talk about the test. Rumors are rampant about which states have the toughest exams, he said.

He has heard that some states have had trouble getting their programs started and that some will have much tougher tests than others.

"Right now it's confusing to a lot of the drivers," Mr. Moss said. He is hoping that some consideration will be given to experienced and safe drivers such as himself. In 17 years of driving, he hasn't had an accident or a ticket, he said.

As of Monday, Pennsylvania became the 26th state to join a national computer network that eventually will hold the licensing records of all commercial drivers, said Doug Tobin, director of the Pennsylvania Department of Transportation's Bureau of Vehicle Licensing.

The network was developed to deal with one of the biggest problems in trying to get bad truck and bus drivers off the road. It will be used to make sure drivers with multiple violations in one state can't be licensed in another state and continue driving.

"The hope is to reduce the incidence of heavy motor vehicle accidents across the country by standardizing and computerizing records nationally, and by eventually weeding out bad drivers," Mr. Tobin said.●

By Mr. JOHNSTON (for himself and Mr. BREAUX):

S. 627. A bill to designate the lock and dam 1 on the Red River Waterway in Louisiana as the "Lindy Claiborne Boggs Lock"; to the Committee on Environment and Public Works.

LINDY CLAIBORNE BOGGS LOCK

● Mr. JOHNSTON. Mr. President, I am pleased to submit today legislation designating lock and dam 1 on the Red River Waterway as the "Lindy Claiborne Boggs Lock."

Throughout her distinguished service in the House of Representatives, Lindy had a keen interest in the Red River Waterway, and was a strong and key advocate for it through her membership on the House Appropriations Committee's Subcommittee on Energy and Water Development from 1977 until her retirement last year. Lindy recognized the importance this project has for economic development throughout Louisiana, including the future importance it will have for the Port of New Orleans. Born on Brunswick Plantation in Pointe Coupee Parish, and the daughter of a Point Coupee Levee Board member, she also knew well and fully understood the importance of this project to central Louisiana. Therefore, designating this first lock the "Lindy Claiborne Boggs Lock" is especially fitting, and I urge my colleague to approve this small tribute to this remarkable former member of the Louisiana delegation.●

● Mr. BREAUX. Mr. President, I rise today to cosponsor Senator JOHNSTON's bill which will designate lock and dam 1 of the Red River Waterway in Louisiana as the Lindy Boggs Lock. While serving as a member of the House Appropriations Committee, Congresswoman Boggs was instrumental in providing funding for the Red River Waterway project. Upon completion, the Red River Waterway project is expected to improve economic development in Louisiana by providing greater inland waterway commerce to and from the Mississippi River. Naming the first lock and dam of this mammoth project after her, is a small but fitting tribute.

While I was a Member of the House of Representatives, I had the privilege to work with Congresswoman Boggs for 14 years. Her leadership and outstanding history of public service has provided a fine model for all elected officials. The designation of this lock and dam is just one of several upcoming tributes to thank Mrs. Boggs for her many fine years of service and I urge my colleagues to join me in showing our appreciation to Mrs. Boggs.●

By Mr. BINGAMAN:

S. 628. A bill to direct the Secretary of the Interior to conduct a study of certain historic military forts in the State of New Mexico; to the Committee on Energy and Natural Resources.

BOOTS AND SADDLES: HISTORIC NEW MEXICO FORTS STUDY ACT

● Mr. BINGAMAN. Mr. President, I rise today to introduce important legislation, Boots and Saddles: Historic New Mexico Forts Study Act. This bill authorizes the study of seven historic forts occupied during the Civil War and Indian campaigns in New Mexico. I am pleased that my colleague, Senator DOMENICI, is joining me as a cosponsor.

The bill will advance public appreciation and understanding of these forts, which played a key role in the economic development of the American frontier.

The forts are an important relic of our national history, but a relic that is deteriorating because of weathering, unsupervised visits, and the lack of maintenance. There is an urgent need to protect these significant historic properties. A comprehensive study is necessary to find appropriate means for systematic stabilization, restoration, and interpretation.

The bill would authorize a 1-year study of these forts by the Secretary of the Interior. The Secretary, acting through the Bureau of Land Management and the National Park Service, would develop alternative means of preserving and interpreting these forts.

The study would include assessing the feasibility of establishing guided tours which would encompass common themes and link appropriate sites. Visitors may be able to visit the forts by already established highways or could hike or ride horseback along the historical trails that linked the forts.

The territory of New Mexico was crossed by a large number of trails and routes in the 1800's. Numerous forts were located along these travelways. Because of the arid climate and sparse population of the Southwest, the physical evidence of many of these forts remains. A representative sample of these forts, including related sites such as way stations, should be nationally recognized for their historic significance.

Seven significant forts are included in this measure: Fort Bayard, Fort Craig, Fort Cummings, Fort Seldon, Fort Stanton, Fort Sumner, and Fort Union.

Fort Bayard was constructed in 1866 and played a key role in the campaigns against Geronimo. By the late 1870's, the fort housed almost 400 officers, enlisted men, and Navajo scouts.

Fort Craig was the largest Civil War fort in the West. Built in 1854, it guarded the Jornada del Muerto Trail and the Rio Grande Valley. The largest Civil War battle in New Mexico took place just a few miles north of the fort in 1862. This battle contributed to the

end of Confederate aspirations in the Southwest.

Fort Cummings protected the Butterfield stage route between San Diego and San Antonio. This fort was a base of operations for the Apache wars against Indian leaders such as Geronimo and Cochise.

Established in 1865, Fort Seldon protected settlers from desperados and Apache raids. The son of the post commander was Douglas MacArthur, who lived at the fort and later became Supreme Commander of the Allied Forces in the Pacific during World War II.

Fort Stanton was founded in 1855 as a military outpost during the Indian Wars. It was abandoned by Union troops in 1861 and occupied by Confederate forces until they retreated into Texas after the Battle of Glorieta. In 1862, Kit Carson reoccupied the fort as a center for his campaign against the Apaches and Navajos.

Fort Sumner represents the U.S. Government's policy of repressing Indian resistance to American expansion through forced settlement on military reservations. Kit Carson invaded the Apache and Navajo homelands and forced many of them onto Fort Sumner, where they remained for 5 years.

The principal quartermaster depot of the Southwest, Fort Union guarded the Santa Fe Trail, which served as the main supply artery for Federal forces.

These forts represent an important period in American history, the study of which will contribute to an understanding of the frontier. Yet, until recently, these forts have been neglected to the point that they have deteriorated. In light of the precarious state of preservation at most of these sites and the urgent need to protect and manage them, increased cooperation between Federal and State agencies and private citizens is necessary for systematic stabilization, restoration and interpretation of these valuable cultural resources.

Interpretive efforts would be improved with cooperation between State and Federal agencies. Financial resources, personnel, and expertise could be shared to increase efficiency. The development of a management plan would guide resource management and protection, visitor use, interpretation, and boundary adjustments.

Such an effort would help preserve and protect an irreplaceable part of our heritage. Tourists in New Mexico often cite the State's cultural resources as their primary reason for visiting. A national study of these forts and related sites would bring more effective interpretation and appreciation of these unique links to the past.

For these reasons, I urge my colleagues to support this important legislation, and I ask unanimous consent that the full text of the bill appears in the RECORD following my statement.

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

S. 628

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 "Boots and Saddles: Historic New Mexico Forts Study Act of 1991".

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) the study and interpretation of historic cavalry forts occupied during the Civil War and Indian campaigns in New Mexico could contribute to an understanding of the American frontier;

(2) the forts are deteriorating due to natural weathering, unsupervised human visitation, and lack of maintenance and repair; and

(3) in light of the declining condition of most of these significant historic properties, it is necessary to determine, through a comprehensive study, the appropriate means to stabilize, restore, and interpret these sites.

**SEC. 3. STUDY AND REPORT BY THE BUREAU OF LAND MANAGEMENT AND THE NATIONAL PARK SERVICE.**

(a) **STUDY.**—The Secretary of the Interior, acting through the Director of the Bureau of Land Management and the Director of the National Park Service, shall conduct a study of the following historic forts in the State of New Mexico occupied during the Civil War and Indian campaigns:

- (1) Fort Stanton;
- (2) Fort Union;
- (3) Fort Sumner;
- (4) Fort Cummings;
- (5) Fort Seldon;
- (6) Fort Bayard; and
- (7) Fort Craig.

(b) **REPORT.**—Not later than 1 year from the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(c) **STUDY CONTENT.**—The study shall develop alternative means of preserving and interpreting the forts referred to in subsection (a) including—

- (1) the study of related historic properties;
- (2) the feasibility of establishing guided tours which may encompass common themes and link appropriate sites; and
- (3) such other information as the Secretary may deem necessary.

**SEC. 4. APPROPRIATION AUTHORIZATION.**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.◊

By Mr. D'AMATO:

S. 629. A bill to establish the grade of General of the Army and to authorize the President to appoint Generals Colin L. Powell and H. Norman Schwarzkopf, Jr., to that grade; to the Committee on Armed Services.

**GENERAL OF THE ARMY**

◊ Mr. D'AMATO. Mr. President, I rise today to introduce legislation establishing the grade of General of the Army, establishing procedures for its award, and authorizing the President to appoint Generals Colin L. Powell

and H. Norman Schwarzkopf, Jr., to this grade. My legislation is identical to H.R. 1052, a measure introduced in the House by Representative BILBRAY.

Together, Gen. Colin Powell and Gen. Norman Schwarzkopf planned and led a military campaign that produced a critically important victory for the United States, our coalition partners, Israel, and world peace. They accomplished a task that many said could not be done at all, or could only be done at a prohibitive cost in lives, treasure, and harm to U.S. long-term interests, in a quick, clean, and masterful fashion.

For this achievement, both General Powell and General Schwarzkopf deserve the opportunity, should the President choose to appoint them, to wear the five stars this Nation has accorded to its most successful wartime military leaders. This legislation establishes the rank of General of the Army, provides for Presidential appointment and Senate confirmation, establishes the occupants of the position's precedence and their compensation, and authorizes the President to appoint these two victorious leaders to that grade.

I introduce this measure today to follow up on a letter I wrote to President Bush on February 28, urging him to honor Generals Powell and Schwarzkopf with 5 stars. I urge all of my colleagues to join with me in support of this measure and work for its swift passage.

If appointed and confirmed, General Powell and General Schwarzkopf would join such American heroes as "Black Jack" Pershing, Dwight Eisenhower, Chester W. Nimitz, George Marshall, Hap Arnold, and Douglas MacArthur in the pantheon of those who wore five stars. None of these heroes is still living—Omar Bradley, "the Soldiers' General," was the last to pass away.

Some may say that the accomplishments of General Powell and General Schwarzkopf in Operations Desert Shield and Desert Storm do not measure up to the standards our World War I and World War II leaders had to meet. I disagree. While Saddam Hussein did not bestride the world the way the Kaiser or Hitler did, the very task of holding together and leading a much more diverse coalition in a volatile and dangerous region of the world was made just that much harder.

I call to my colleagues' attention the political aspect of the achievement our victory in Desert Storm represents. The critics claimed we could never hold the coalition together. They claimed that if we could hold it together, it could not be successful in combat.

Just as Dwight Eisenhower held the Allies together against Hitler's Germany, Norman Schwarzkopf held together an even more unusual—indeed, unprecedented—coalition against Sad-

dam Hussein. Just as George Marshall gave Eisenhower, Bradley, MacArthur, and Arnold the tools they needed to win the war, Colin Powell did the same for Norman Schwarzkopf.

Their achievement deserves recognition—more tangible recognition than parades and medals. I ask that you join me in supporting this measure to give the President the opportunity to give them that recognition.◊

By Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. THURMOND, and Mr. COATS):

S. 630. A bill entitled the "Money Laundering Enforcement Act"; to the Committee on Banking, Housing, and Urban Affairs.

**MONEY LAUNDERING ENFORCEMENT ACT**

Mr. D'AMATO. Mr. President, I am pleased to introduce, together with Senators DECONCINI, THURMOND, and COATS, the Money Laundering Enforcement Act. Much of this legislation was contained in S. 2651, which I introduced in the last Congress. Most of that bill was adopted by the Senate Banking Committee last year as part of its comprehensive money laundering bill, S. 3037. Unfortunately, S. 3037 was not passed by the full Congress. That bill has been reintroduced in the current session as S. 305 by Senator KERRY, and cosponsored by myself and Senators RIEGLE, GARN, METZENBAUM, GRAHAM, BRYAN, and DIXON.

The international drug trade grosses \$300 billion to \$500 billion a year, 80 percent of that money is pure profit that needs to be laundered.

This bill combats the use of so-called money transmitters and other nonbank financial institutions, and the use of the international wire transfer and other fund transfer systems, to launder money.

Illegal money transmitters—illegal storefronts posing as travel agencies, telegraph offices, or other businesses that launder drug money—are an increasingly important part of the worldwide drug trade and the illegal money laundering industry.

In one recent money transmitter case, Treasury agents have identified hundreds of millions of dollars that were laundered.

At a conference on money transmitters sponsored by the Treasury Department's Financial Crimes Enforcement Network [FinCEN] in January, New York State officials discussed another money transmitter case that involved \$100 million in laundered drug money.

At the conference, one prosecutor described these money transmitters as "all service providers for drug dealers." Often they have monthly meetings to coordinate their activities, and besides laundering money, they deal in phony immigration and other identification documents.

The battle against illegal money transmitters has barely begun. For the

most part, we have left the fight to a handful of State investigators.

As Timothy Mahoney, the director of special investigations for the New York State Banking Department testified before the Senate Banking Committee:

As banks became more sophisticated in reporting currency transactions, drug dealers became more creative and began to rely increasingly on unlicensed and illegal money transmitters, on check cashers, and on money order vendors, all users and sources of huge amounts of cash \* \* \*. It is primarily the unlicensed money transmitter who provides the best means of laundering money and is most often used to structure illegal transactions.

On November 15, 1989, then-Assistant Treasury Secretary for Enforcement Salvatore R. Martoche testified before the House Banking Committee:

Investigations by law enforcement authorities show that wire transfers increasingly are becoming the method of choice to launder money.

In an April 28, 1989, submission to the drug czar, the American Bankers Association stated:

Wire transfers, which are essentially unregulated, have emerged as the primary method by which high volume launderers ply their trade.

A September 25, 1989, article in the New York Times, entitled, "Unassuming Storefronts Believed to Launder Drug Dealers' Profits" quotes State banking regulators as saying that storefront money-transmitting and check-cashing operations are sending billions of dollars to drug dealers in South America and Asia.

Unfortunately, as the House Banking Committee noted in its report (No. 101-446) on its money laundering bill last year: "Certain States have recognized a need for more effective regulation of these businesses, but most States have yet to act. Those who have required some form of licensure usually have little manpower available to properly supervise and monitor the activities of these business establishments."

The Money Laundering Enforcement Act addresses these problems with provisions that:

First, require the Treasury Department to issue regulations directing banks to identify their money transmitter and other nonbank financial institution customers;

Second, require the Treasury Department to share this information with State agencies so the States can investigate whether such institutions are in compliance with State law;

Third, make it a Federal crime to operate a money transmitter business in violation of State law, add that crime to the list of Federal RICO offenses, and provide for the seizure of all the illegal business' property;

Fourth, the Treasury Department already has authority to impose special reporting rules on financial institutions in certain geographic areas—for example, they can be required to report

cash transactions of less than \$10,000. But if the banks tell their customers these rules are in effect, it defeats the whole purpose. Section 4, therefore, prohibits financial institutions from telling customers they are subject to geographic targeting;

Fifth, section 5 relates to record-keeping for international fund transfers. It requires the Treasury Department to issue recordkeeping regulations for domestic depository institutions making international fund transfers, and for international fund transfer orders made by money transmitters and check cashers, and by businesses that issue or redeem money orders, travelers' checks, or other similar instruments that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings;

Sixth, section 6 directs the Department of Treasury, in consultation with the Department of Justice and the Drug Enforcement Administration, to report on the advantages and disadvantages of changing the size, denominations, or color of U.S. currency or of providing that the color of U.S. currency in circulation in foreign countries be of a different color than currency circulating in the United States.

Seventh, section 7 provides that structuring transactions to avoid the \$3,000 identification requirement of 31 U.S.C. 5325 is prohibited. This section also contains provisions necessary to bring the financial enforcement program in the United States into conformity with the recommendations of the Financial Action Task Force [FATF] on money laundering. Section 7 authorizes the Treasury Secretary to require by regulation the reporting of suspicious transactions by any financial institution subject to the Bank Secrecy Act. A financial institution, bank or nonbank, would also be prohibited from warning its customer if it made a suspicious transaction report.

Section 7 also authorizes the Treasury Secretary to require financial institutions subject to the Bank Secrecy Act to have antimoney laundering programs which include, at a minimum, development of internal policies, procedures, and controls, designation of a compliance officer, an ongoing employee training program, and an independent audit function to test the program. The procedures would be geared at money laundering generally whether or not a customer dealt in cash;

Eighth, since the inception of the Right to Financial Privacy Act [RFP], pursuant to an exception in 12 U.S.C. 3404(c), financial institutions have been able to report, in good faith, possible violations of law or regulation to Federal authorities without notice to the suspected customer and free from civil liability under the RFP. Nevertheless, banks have advised that there are other concerns beyond liability under privacy laws that in some in-

stances complicate their treatment of suspicious transactions. For instance, they fear possible defamation actions or that if they sever relations with a customer, they may risk liability under the Fair Credit Reporting Act, or for breach of contract.

Section 8(a) addresses these concerns by extending the protection of 12 U.S.C. 3404(c) to a financial institution that severs relations with a customer or refuses to do business because of activities underlying a suspicious transaction report, and by specifying that the financial institution that acts in good faith in reporting a suspicious transaction is protected from civil liability to the customer under any theory of State or Federal law.

Section 8(b) is necessary to facilitate the work of Treasury's new Financial Crimes Enforcement Network [FinCEN]. FinCEN plans not only to analyze financial records to facilitate investigations and prosecution by non-Treasury agencies, but to integrate such records with other available records for further analysis to identify new targets for criminal investigation. The amendment provides that an agency can transfer records obtained in accordance with the RFP to FinCEN for criminal law enforcement purposes without customer notice. FinCEN also would be able to disseminate the results of its analysis, whether based in whole or in part on records obtained subject to the RFP, to the appropriate agency for criminal investigation without customer notice.

Ninth, section 9 provides for a study by the Secretary of the Treasury to survey methods and technologies that may be used in the production of U.S. currency denominations of \$10 or more, to make those notes—including presently circulating currency—traceable by an electronic scanning device, and to assess and evaluate the cost of implementing the methods and technologies surveyed, and the amount of time needed to implement each.

Together, these provisions give our regulatory and law enforcement agencies more ability to combat the multibillion dollar criminal money laundering enterprises operating in league with drug traffickers. When it comes to drug dealers and money launderers, we need the strongest possible laws to put them out of business and behind bars. We need to take everything they have—because right now they are taking everything we have.

Mr. President, I ask unanimous consent that the Money Laundering Enforcement Act be printed in its entirety, together with a section-by-section analysis, and I urge my colleagues to give the Money Laundering Enforcement Act their full support.

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

S. 630

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.**

This Act may be cited as "The Money Laundering Enforcement Act."

**SEC. 2. IDENTIFICATION OF FINANCIAL INSTITUTIONS.**

(a) A new section 5327 is added to title 31, United States Code, as follows:

**"§ 5327. Identification of financial institutions**

"By January 1, 1992, the Secretary shall prescribe regulations providing that each depository institution identify its customers which are financial institutions as defined in section 5312(a)(2) (H) through (Y) and the regulations thereunder and which hold accounts with the depository institution. Each depository institution shall report the names of and other information about these financial institution customers to the Secretary at such times and in such manner as the Secretary shall prescribe by regulation. No person shall cause or attempt to cause a depository institution not to file a report required by this section or to file a report containing a material omission or misstatement of fact. The Secretary shall provide these reports to appropriate state financial institution supervisory agencies for supervisory purposes."

(b) Section 5321 of title 31, United States Code, is amended by adding a new subparagraph (a)(7) as follows:

"(7)(A) The Secretary may impose a civil penalty on any person who willfully violates any provision of section 5327 or a regulation prescribed thereunder.

"(B) The amount of any civil money penalty imposed under subparagraph (A) shall not exceed \$10,000 per day for each day a report is not filed or a report containing a material omission or misstatement of fact remains on file with the Secretary."

**SEC. 3. PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES.**

(a) Chapter 95 of title 18, United States Code, is amended by adding the following Section:

**"§ 1960. Prohibition of illegal money transmitting businesses**

"(a) Whoever intentionally conducts, finances, manages, supervises, directs, or owns all or part of an illegal money transmitting business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal money transmitting business' means a money transmitting business which—

"(i) is an intentional violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves one or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in a single day;

"(2) 'money transmitting' includes but is not limited to transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile or courier; and

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) If one or more persons conduct, finance, manage, supervise, direct, or own all

or part of a money transmitting business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

"(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General."

(b) The chapter analysis for chapter 95 of title 18, United States Code, is amended by adding at the end the following item: "1960. Prohibition of illegal money transmitting businesses."

(c) Paragraph (1) of Section 1961 of title 18, United States Code, is amended by inserting after "section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire)," "section 1960 (relating to the prohibition of illegal money transmitting businesses)."

**SEC. 4. NONDISCLOSURE OF ORDERS.**

Section 5326 of title 31, United States Code, is amended by adding at the end the following:

"(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of our terms of the order to any person except as prescribed by the Secretary."

**SEC. 5. PROVISIONS RELATING TO RECORD-KEEPING WITH RESPECT TO CERTAIN INTERNATIONAL FUNDS TRANSFERS.**

Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829(b)) is amended—

(1) by striking "(b) Where" and inserting "(b)(1) Where"; and

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

"(2) FUNDS TRANSFERS.—

"(A) IN GENERAL.—By October 1, 1991, the Secretary, after consultation with the Board of Governors of the Federal Reserve System and State Banking Departments, shall prescribe such final regulations as may be appropriate to ensure that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

"(i) involve international transactions; and

"(ii) direct transfers of funds over wholesale funds transfer systems or on the books

of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments as will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(B) FACTORS FOR CONSIDERATION.—In prescribing the regulations required under subparagraph (A), the Secretary shall consider—

"(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

"(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

"(C) AVAILABILITY OF RECORDS.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary upon request."

**SEC. 6. REPORT ON CURRENCY CHANGES.**

The Secretary of the Treasury, in consultation with the Attorney General and the Administrator of Drug Enforcement, shall report 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, not later than 90 days after the date of enactment of this Act, on the advantages for money laundering enforcement, and any disadvantages, of—

(1) changing the size, denominations, or color of United States currency; or

(2) providing that the color of United States currency in circulation in countries outside the United States will be of a different color than currency circulating in the United States.

**SEC. 7. SUSPICIOUS TRANSACTIONS AND FINANCIAL INSTITUTION ANTI-MONEY LAUNDERING PROGRAMS.**

(a) Section 5324 of title 31, United States Code, is amended by adding the words "or section 5325 or the regulations thereunder" after the words "section 5313(a)," each time they appear.

(b) Section 5318 of title 31, United States Code, is amended by adding new subsections (g) and (h), as follows:

"(g)(1) The Secretary may prescribe that financial institutions report suspicious transactions relevant to possible violation of law or regulation.

"(2) A financial institution may not notify any person involved in the transaction that the transaction has been reported.

"(3) The provisions of section 1103(c) of the Right to Financial Privacy Act of 1978 (title XI of Public Law 95-630, as amended, 12 U.S.C. 3403(c)) shall apply to reports of suspicious transactions under this section.

"(h) In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to have anti-money laundering programs, including at a minimum, the development of internal policies, procedures and controls, designation of a compliance officer, an ongoing employee training program, and an independent audit function to test the program. The Secretary may promulgate minimum standards for such procedures."

**SEC. 8. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.**

(a) Section 1103(a) of the Right to Financial Privacy Act of 1978, (title XI of Public Law 95-630, as amended, 12 U.S.C. 3403(c)), is amended—

(1) by deleting the words, "in this chapter";

(2) by adding the words, "as defined in 31 U.S.C. 5312 and the regulations thereunder," after the words "financial institution" in the first sentence; and

(3) by removing the period at the end thereof and adding the following: "or for refusal to do business with any person before or after disclosure of a possible violation of law or regulation made in good faith to a Government authority."

(b) Section 1112 of the Right to Financial Privacy Act of 1978 (title XI of Public Law 95-630, as amended, 12 U.S.C. 3412) is amended—

(1) in paragraph (f)(1), by adding the words "or Secretary of the Treasury" after words "Attorney General";

(2) in paragraph (f)(1)(A) by adding the words "and in the case of the Secretary of the Treasury, a violation of section 1956 or 1957 of title 18, United States Code" after the word "law";

(3) in paragraph (f)(2) adding the words "Department of the Treasury" after the words "Department of Justice"; and

(4) by adding a new subsection (g) as follows:

"Financial records originally obtained by an agency in accordance with this chapter may be transferred to the Secretary of the Treasury for analysis and use by the Financial Crimes Enforcement Network ("FinCEN") for criminal law enforcement purposes without customer notice."

#### SEC. 9. ELECTRONIC SCANNING STUDY.

Section 102, Public Law 101-647, is hereby repealed and replaced with the following language:

##### "ELECTRONIC SCANNING STUDY

"(1) Not more than 30 days after the date of enactment of this section, the Secretary of the Treasury (referred to as the "Secretary") shall initiate an in-house study to—

"(A) survey methods and technologies that may be used in the production of United States currency, issued under section 411 of title 12, United States Code, in denominations of \$10 or more, to make those notes (including presently circulating currency) traceable by an electronic scanning device; and

"(B) make an assessment and evaluation of the cost of implementing the methods and technologies surveyed and the amount of time needed to implement each."

#### SECTION-BY-SECTION ANALYSIS OF THE MONEY LAUNDERING ENFORCEMENT ACT

Section 2 provides for the identification of money transmitters and other non-bank financial institutions by requiring the Treasury Department to issue regulations by January 1, 1992 requiring that depository institutions (banks, saving associations, and credit unions) identify their non-bank financial institution customers: money transmitters, check cashers, foreign exchange dealers, issuers and redeemers of traveller's checks, and casinos. To help state regulators, the bill provides that Treasury will provide the list to state supervisory agencies for supervisory purposes, because, as many witnesses have testified before the Banking Committee, the sharing of information is crucial in the battle against drug dealing and money laundering. Section 2 also authorizes the Treasury Department to impose a civil penalty on any person who willfully violates section 5327 or a regulation prescribed thereunder.

Section 3 makes it a federal crime to operate a money transmitting business in viola-

tion of state law, and adds such crime to the list of federal RICO offenses contained in title 18, Section 1961.

Section 4. The Treasury Department already has authority to impose special reporting rules on financial institutions in certain geographic areas. For example, they can be required to report cash transactions of less than \$10,000. But if the banks tell their customers these rules are in effect, it defeats the whole purpose. Section 5, therefore, prohibits financial institutions from telling customers they are subject to geographic targeting.

Section 5 relates to record keeping for International Fund Transfers. It requires the Treasury Department to issue record keeping regulations for domestic depository institutions making international fund transfers, and it also requires Treasury to issue record keeping rules for international fund transfer orders made by money transmitters and check cashers, and businesses that issue or redeem money orders, travelers' checks or other similar instruments.

Section 6 directs the Department of Treasury, in consultation with the Department of Justice and Drug Enforcement Administration, to report on the advantages and disadvantages of changing the size, denominations, or color of U.S. currency or of providing that the color of U.S. currency in circulation in foreign countries be of a different color than currency circulating in the U.S. A number of proposals have been suggested in reference to the issue of changing currency. The Drug Enforcement Administration, in a December 12, 1989 letter to the Department of Treasury, asked for consideration of printing two distinct forms of currency, one to serve as legal tender exclusively in the U.S. and the other form for use outside the U.S. Former Secretary of the Treasury Donald Regan, in a September 18, 1989 New York Times article, advocated a similar idea. His suggestion is as follows:

To get at the cash dealings of drug wholesalers, retailers, street pushers, we should print new \$50 and \$100 bills—either of a different color, or size, than the current ones. With only a 10-day warning, we should make all \$50 and \$100 bills obsolete—no longer acceptable as legal tender. Everyone would have to exchange their large bills for new ones. Banks and other financial institutions would have to keep a record of any cash transactions over \$1,000. Reports would be furnished to the Comptroller and I.R.S. by name and taxpayer identification.

Section 7(a) is a technical amendment changing the anti-structuring provision of the Bank Secrecy Act, 31 U.S.C. 5324, to specify that structuring transactions to avoid the \$300 identification requirement of 31 U.S.C. 5325 is prohibited.

In section 6185(b) of the Anti-Drug Abuse Act of 1988, Congress added section 5325 to guard against the practice of "smurfing" drug proceeds by cash purchases of monetary instruments at amounts below the \$10,000 reporting threshold. Section 5325 prohibits the cash purchase of certain monetary instruments—bank checks, cashier's checks, traveler's checks, money orders—in amounts greater than \$3000 to non-account holders unless the financial institution verifies the identification of the purchaser.

Treasury has issued regulations under section 5325, 31 C.F.R. 103.29, which require that financial institutions maintain a log of cash purchases of these instruments over \$3000 which included a notation of the identification exacted for non-account holders.

However, section 5324 only refers to structuring to avoid the Currency Transaction

Report requirement. Therefore, the proposed amendment is needed because under the current law it could be argued that customer structuring of transactions or smurfing to avoid the \$3000 identification requirement would not be a violation of the Bank Secrecy Act.

Section 7(b). This section contains provisions necessary to bring the financial enforcement program in the United States into conformity with the recommendations of the Financial Action Task Force ("FATF") on money laundering.

The FATF was convened by the 1989 G-7 Summit to study the state of international cooperation on money laundering and measures to improve cooperation in international money laundering cases. The group was composed of fifteen financial center countries and the European Community. After several meetings of experts from law enforcement, justice and finance ministries, and bank supervisory authorities, in April 1990, the group issued a comprehensive report with 40 action recommendations for comprehensive domestic anti-money laundering programs and improved international cooperation in money laundering investigations, prosecutions, and forfeiture actions. The recommendations of the group have become the world model for effective anti-money laundering measures.

President Bush and the other heads of state and government endorsed the report of the Financial Action Task Force at the Houston Economic Summit last summer, and the financial ministries of non-G-7 participants also endorsed the report.

The Houston Summit reconvened the Task Force for another year. The mandate of the reconvened Task Force is to study possible complements to the original recommendations, to assess implementation of the recommendations, and to study how to expand the number of countries that subscribe to the recommendations. The reconvened Task Force is currently meeting. The original members have been joined by six other European countries and Hong Kong and the Gulf Cooperative Council.

By their endorsement, the Task Force members are committed to take necessary legislative and regulatory measures to implement the recommendations. Most of the recommendations reflect measures already in place in the United States, because the United States. Nevertheless, to fully measure up to the recommendations, our anti-money laundering program requires some refinements which the amendments in this section address.

First, the Task Force recommendations (recommendation 9) provide that the same anti-money laundering measures recommended for banks be put in place for non-bank financial institutions, such as the requirement to report suspicious transactions possibly indicative of money laundering (recommendation 16), and to create anti-money laundering programs (recommendation 20).

Experience in the United States and abroad indicates that as banks become more effective in guarding against money laundering, money launderers turn to non-bank financial institutions, such as money transmitters, casas de cambio and telegraph companies.

Many of these institutions are subject to the recordkeeping and reporting requirements of the Bank Secrecy Act, but unlike banks are not required to report suspicious transactions nor to have compliance programs to guard against money laundering. See e.g., 12 CFR 12.11 (relating to reports to

suspected crimes by national banks); 12 CFR 21.21 (relating to procedures for monitoring Bank Secrecy Act compliance by national banks).

Proposed section 31 U.S.C. 5318(g) authorizes the Treasury Secretary to require by regulation the reporting of suspicious transactions by any financial institution subject to the Bank Secrecy Act. Also in furtherance of the FATF recommendations, a financial institution, bank or non-bank, would be prohibited from warning its customer if it made a suspicious transaction report (recommendation 17).

Under the Right to Financial Privacy Act ("RFPFA"), 12 U.S.C. 3403(c), a financial institution may report a suspicious transaction free from civil liability for not notifying its customer, but is not specifically prohibited from warning the customer.

The FATF concluded that in order for suspicious transactions reporting to be effective there must be a prohibition from notifying the persons involved in the suspicious transaction. Also, as discussed below, in a related amendment, it is proposed to extend the customer liability protection of the RFPFA to all financial institutions subject to the Bank Secrecy Act, not just to the banking institutions generally subject to the RFPFA.

Proposed section 31 U.S.C. 5318(h), which tracks the language of FATF recommendation 20, would authorize the Secretary to require financial institutions subject to the Bank Secrecy Act to have anti-money laundering programs which include, at a minimum, development of internal policies, procedures, and controls, designation of a compliance officer, an ongoing employee training program, and an independent audit function to test the program. The Secretary would be able to promulgate minimum standards for such procedures.

This recommendation was based on the regulations the U.S. bank regulators have in place pursuant to 12 U.S.C. 1818 to ensure Bank Secrecy Act compliance. See, e.g., 12 CFR 21.21. The Secretary already has authority under 31 U.S.C. 5318 to promulgate procedures to ensure compliance with requirements of the Bank Secrecy Act. This amendment would eliminate the requirement that the procedures be linked to a Bank Secrecy Act requirement, i.e., currency transaction reporting. The procedures would be geared at money laundering generally whether or not a customer dealt in cash. For instance, this authority could be used to require that anti-money laundering programs include "know your customer" procedures.

The Department of the Treasury envisions that the authority of proposed section 5318 (g) and (h) could be used with respect to any institution subject to the Bank Secrecy Act under 31 U.S.C. 5312 whether or not that institution is required to report currency transactions under the Bank Secrecy Act.

Section 8(a). Since the inception of the Right to Financial Privacy Act, pursuant to an exception in section 1103(c), 12 U.S.C. 3404(c), financial institutions have been able to report, in good faith, possible violations of law or regulation to federal authorities without notice to the suspected customer and free from civil liability under the RFPFA.

At the Administration's request in the Anti-Drug Abuse Act of 1986 and 1988, Congress further clarified this provision to specify what information a financial institution could give regarding the customer and the suspicious activity, and that the protection preempted any state law requiring notice to the customer. These changes were added to ensure that financial institutions

would not be inhibited from reporting suspected violations, especially money laundering and Bank Secrecy Act reporting violations.

Nevertheless, banks have advised that there are other concerns beyond liability under privacy laws that in some instances complicate their treatment of suspicious transactions. For instance, they fear possible defamation actions or that if they sever relations with a customer, they may risk liability under the Fair Credit Reporting Act, 15 U.S.C. 1691, et seq., or for breach of contract. See Ricci V. Key Bancshares of Maine, 768 F.2d 456 (1st Cir. 1985). However, if they continue relations with the customers, they fear that they may be implicated in any illegal activity.

In many cases, after a suspicion has been reported, Federal authorities will encourage financial institutions to continue dealing with a suspicious customer so his activities may be monitored. Unfortunately, there is a question whether, in all cases, law enforcement follow-up with financial institutions on the disposition of suspicious activity reports. In any event, financial institutions should be free to sever relations with the customer based on its suspicions or on information about a customer received from law enforcement.

Section 8(a) addresses these concerns by extending the protection of Section 1103(c) to a financial institution that severs relations with a customer or refuses to do business because of activities underlying a suspicious transaction report and by specifying that the financial institution that acts in good faith in reporting a suspicious transaction is protected from civil liability to the customer under any theory of state or Federal law.

As discussed above, the amendment extends the protection of section 1103(c) to the wide range of bank and non-bank institutions subject to the Bank Secrecy Act, 31 U.S.C. 5312. Currently, the protection may apply to financial institutions as defined in section 1101 of the RFPFA, 12 U.S.C. 3401, e.g., banks, credit unions, savings associations. Non-bank financial institutions may similarly be inhibited from reporting suspicious transactions by fear of civil liability for defamation or breach of contract or under financial or consumer privacy laws.

The protection would apply to all institutions enumerated in 31 U.S.C. 5312 (subject to the Bank Secrecy Act) whether or not the Secretary has exercised his regulatory authority to require a type of institution to report currency transactions under the Bank Secrecy Act.

For instance, travel agencies and insurance companies are listed in section 5312 as financial institutions subject to the Bank Secrecy Act, but have not been required to comply with any of the requirements of the Bank Secrecy Act by regulation. Instead, these institutions report cash received in excess of \$10,000 to the Internal Revenue Service under section 6050I of the Internal Revenue Code, which establishes the currency reporting regime for trades or businesses not subject to BSA reporting. Nevertheless, under this amendment because travel agencies and insurance companies are within the Bank Secrecy Act definition of financial institution, the RFPFA protection of section 1103(c) would extend to them if they report suspicious transactions, in good faith, to a federal authority.

Section 8(b). Section 1112 of the RFPFA, 12 U.S.C. 3412, provides that agencies that obtain financial records in accordance with the RFPFA (either after customer notice or pur-

suant to an authorized notice exception) notify a customer if it transfers the records to another agency.

The amendment in section 8(b) is necessary to facilitate the work of Treasury's new Financial Crimes Enforcement Network (FinCEN). FinCEN plans not only to analyze financial records, including records subject to the RFPFA, e.g., records received by administrative subpoena, to facilitate investigations and prosecution by non-Treasury agencies, but to integrate such records with other available records for further analysis to identify new targets for criminal investigation. Treasury is concerned that this further use, independent of the needs of the agency that originally received the records in accordance with the RFPFA, could be considered as a transfer of the records to Treasury necessitating customer notice under section 1112 of the RFPFA.

The amendment adds a new subsection 1112(g) to provide that an agency can transfer records obtained in accordance with the RFPFA to FinCEN for criminal law enforcement purposes without customer notice. FinCEN also would be able to disseminate the results of its analysis whether based in whole or in part on records obtained subject to the RFPFA to the appropriate agency for criminal investigation without customer notice.

Section 9 provides for a study by the Secretary of the Treasury to survey methods and technologies that may be used in the production of United States currency denominations of \$10 or more, to make those notes (including presently circulating currency) traceable by an electronic scanning device, and to assess and evaluate the cost of implementing the methods and technologies surveyed, and the amount of time needed to implement each.

By Mr. EXON (for himself, Mr. DANFORTH, and Mr. KASTEN):

S. 631. A bill to authorize appropriations for the Motor Carrier Safety Assistance Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MOTOR CARRIER SAFETY ASSISTANCE PROGRAM REAUTHORIZATION ACT

Mr. EXON. Mr. President, I am pleased today to introduce the Motor Carrier Safety Assistance Program Reauthorization Act of 1991 [MCSAP]. This legislation is a continued effort to improve safety in the heavy truck and bus industry.

Congress created MCSAP in 1982. This program provides grants to States for roadside inspections of commercial vehicles and drivers, as well as safety audits at the terminal of truck and bus companies. MCSAP currently funds 1.15 million roadside inspections, and about 10,000 safety audits annually. This bill would provide funding for MCSAP of \$65 million for fiscal year 1992; \$70 million for fiscal year 1993; \$75 million for fiscal year 1994; \$80 million for fiscal year 1995; and \$85 million for fiscal year 1996.

Congress has supported safety initiatives in past Congress' to improve the safety of commercial vehicles on our Nation's highways. To continue this effort, I am delighted to work with Senator DANFORTH and Senator KASTEN to

introduce the Motor Carrier Safety Assistance Program Reauthorization Act of 1991. This bill will continue the existing program which is widely regarded as a successful Federal/State partnership, by making some modifications intended to better direct the program at the cause of accidents involving commercial motor vehicles.

This bill will include programmatic changes that will require a State to meet the administrative requirements for grant qualifications in order to receive money from MCSAP, such as designating a State lead agency to administer the plan, using uniform forms for recordkeeping and inspections, and participation in data bases on drivers, vehicle inspections, and traffic accidents. The bill will also strengthen the program beginning with fiscal year 1993 by requiring a State to conduct increased enforcement in a number of areas including: drug interdiction; drug and alcohol enforcement; checking the status of drivers' CDL's; traffic safety enforcement in relation to commercial vehicle safety; and hazardous materials efforts.

Other provisions of the bill will include initiatives designed to penalize those who violate out-of-service orders; establish guidelines that clearly delineate what is a compatible State safety rule regarding interstate-intrastate compatibility; establish a drug-free zone around truck stops by doubling the penalty levels for those persons convicted of selling drugs within 1,000 feet of a truck stop; and also require DOT to conduct a rulemaking on the need to adopt methods for improving truck braking performance. The rulemaking would be comprehensive addressing basic brake problems, such as the compatibility between tractor brakes and trailer brakes, and methods of ensuring effective brake timing.

I am committed to working with my colleagues to ensure passage of this important legislation.

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. 631

*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 "Motor Carrier Safety Assistance Program Reauthorization Act of 1991".

**SEC. 2. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.**

(a) AMENDMENT TO TITLE 23, U.S.C.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

**"§411. Motor carrier safety assistance program**

"(a) GRANTS—The Secretary is authorized to make grants to eligible States for the de-

velopment or implementation, or both, of programs for—

"(1) the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(2) effective enforcement of State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

A State shall be eligible to receive grants under this section only if the State has a plan approved by the Secretary under subsection (b).

**"(b) STATE PLANS.—**

"(1) SUBMISSION.—The Secretary shall formulate procedures for a State to submit annually a plan where the State agrees to adopt, and to assume responsibility for enforcing—

"(A) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(B) State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

"(2) APPROVAL.—Subject to paragraph (3), a State plan submitted under paragraph (1) shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section, and the plan—

"(A) designates the State motor vehicle safety agency responsible for administering the plan;

"(B) ensures that the State motor vehicle safety agency has or will have the legal authority, resources, and qualified personnel necessary for administering the plan;

"(C) ensures that the State will devote adequate funds for administering the plan;

"(D) provides a right of entry and inspection to carry out the plan;

"(E) provides that the State motor vehicle safety agency will adopt uniform reporting requirements and use uniform forms for recordkeeping, inspections, and investigations, as may be established and required by the Secretary;

"(F) provides that all required reports be submitted to the State motor vehicle safety agency and that the agency make the reports available to the Secretary, upon request;

"(G) ensures State participation in motor carrier information systems, including data bases containing data and information on drivers, vehicle inspections, driver operating compliance with applicable traffic safety laws and regulations, vehicle safety and compliance reviews, traffic accidents, and the weighing of vehicles;

"(H) ensures that commercial motor vehicle size and weight inspection activities will not diminish the effectiveness of other safety initiatives;

"(I) gives satisfactory assurances that the State will conduct effective activities—

"(i) to remove impaired commercial motor vehicle drivers from our nation's highways by increasing enforcement of regulations on the use of alcohol and controlled substances

and by ensuring ready roadside access to alcohol detection and measuring equipment, and to provide an appropriate level of training to its Motor Carriers Safety assistance Program officers and employees on the recognition of drivers impaired by alcohol or controlled substances;

"(ii) to promote enforcement of the requirements relating to the licensing of commercial motor vehicle drivers, especially including the checking of the status of commercial driver's licenses;

"(iii) to increase enforcement of State or local traffic safety laws and regulations that affect commercial motor vehicle safety; and

"(iv) to improve enforcement of hazardous materials transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspections of the loads of commercial motor vehicles transporting hazardous materials;

"(J) gives satisfactory assurances that the State will promote—

"(i) effective interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and to provide training on appropriate strategies for carrying out such interdiction activities; and

"(ii) effective use of trained and qualified officers and employees of political subdivisions or local governments in the enforcement of regulations affecting commercial motor vehicle safety and hazardous materials transportation safety; and

"(K) ensures that fines imposed and collected by the State will be reasonable and appropriate.

**"(3) ADDITIONAL PLAN REQUIREMENTS.—**

"(A) SAFETY AND DRUG ENFORCEMENT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle safety (including commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), exclusive of Federal funds and State matching funds required to receive Federal funding, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years.

"(B) WEIGHT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle size and weighing activities, exclusive of Federal funds, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years. In order to be authorized to use funds under this section to enforce commercial motor vehicle size and weight requirements, a State in its State plan submitted under this subsection shall certify that such size and weight activities will be coupled with an appropriate form of commercial motor vehicle safety inspection and will be directly related to a specific commercial motor vehicle safety problem in that State, in particular that funds for size and weight enforcement activities will be—

"(i) conducted at locations other than fixed weight facilities;

"(ii) used to measure or weigh vehicles at specific geographical locations (such as steep grades or mountainous terrains), where the weight of a vehicle can significantly affect the safe operation of that vehicle; or

"(iii) used at sea ports of entry into and exit from the United States, with a focus on intermodal shipping containers.

"(C) TRAFFIC SAFETY ENFORCEMENT.—The Secretary shall not approve a State plan that provides for funds received under this section to be used to enforce traffic safety regulations applicable to commercial motor vehicles, unless the State certifies in the plan that such traffic safety enforcement will be coupled with an appropriate form of a commercial motor vehicle safety inspection.

"(D) MAINTENANCE OF EFFORT.—The Secretary shall not approve any plan under this section which agency and upon the Secretary's own inspection. A written statement of the evaluation shall be prepared every three years.

"(B) WITHDRAWAL OF APPROVAL.—After providing a State with notice and an opportunity to comment, whenever the Secretary finds that a State plan is not being followed, or has become inadequate to ensure the enforcement of—

"(i) Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders, and

"(ii) State or local traffic safety laws and regulations applicable to commercial motor vehicles,

the Secretary shall notify the State that approval of the State plan is being withdrawn and shall specify the Secretary's reasons for such withdrawal. The plan shall cease to be an approved plan upon receipt by the State of the notice of withdrawal, and the Secretary shall permit the State to modify and resubmit the plan in accordance with this subsection.

"(C) JUDICIAL REVIEW.—A State may seek judicial review of notice of withdrawal of approval, pursuant to chapter 7 of title 5, United States Code, in the appropriate United States Court of Appeals. The State may retain jurisdiction in any administrative or judicial enforcement proceeding commenced before the withdrawal of the approval of the State plan, if the issues involved do not directly relate to the reasons for the withdrawal of approval.

"(4) COORDINATION OF SAFETY PLANS.—The State motor vehicle safety agency shall coordinate the plan prepared under this subsection, with the highway safety plan developed under section 402 of this title. Such coordination shall include consultation with the Governor's Highway Safety Representative and representatives of affected industries to ensure effective implementation of the purposes of this section.

"(c) FEDERAL SHARE OF COSTS.—By grants authorized under this section, the Secretary shall reimburse a State an amount not to exceed 80 percent of the costs incurred by that State in the development or implementation, or both, of programs as described under subsection (a). In determining such costs incurred by the State, the Secretary shall include in-kind contributions by the State.

"(d) ALLOCATIONS.—

"(1) DEDUCTION FOR ADMINISTRATION.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary may deduct, for administration of this section for that fiscal year, not to exceed one percent of the funds available for that fiscal year. At least one-half of the funds so de-

ducted for administration shall be used for training of non-Federal inspectors to carry out the purposes of this section.

"(2) ALLOCATION CRITERIA.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary, after making the deduction authorized by paragraph (1), shall allocate, among the States with plans approved under subsection (b), the available funds for that fiscal year, pursuant to criteria established by the Secretary.

"(e) AVAILABILITY, RELEASE, AND REALLOCATION OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary until expended. Allocations to a State shall remain available for expenditure in that State for the fiscal year in which they are allocated and one succeeding fiscal year. Funds not expended by a State during those two fiscal years shall be released to the Secretary for reallocation. Funds made available under part A of title IV of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2301 et seq.) which, as of October 1, 1992, were not obligated shall be available for reallocation and obligation under this section.

"(f) OBLIGATION OF FUNDS.—Approval by the Secretary of a grant to a State under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by that State in development or implementation, or both, of programs as described under subsection (a).

"(g) PAYMENTS TO STATES.—The Secretary shall make payments to a State of costs incurred by it under this section, as reflected by vouchers submitted by the State. Payments shall not exceed the Federal share of costs incurred as of the date of the vouchers.

"(h) FUNDING.—

"(1) AVAILABILITY.—To incur obligations to carry out the purposes of this section, there shall be available to the Secretary out of the Highway Trust Fund not to exceed \$70,000,000 for fiscal year 1993, \$75,000,000 for fiscal year 1994, \$80,000,000 for fiscal year 1995, and \$85,000,000 for fiscal year 1996.

"(2) ENFORCEMENT.—Of funds made available under this subsection for any fiscal year, not less than \$7,500,000 each year shall be used to pay for traffic enforcement activities focused upon commercial motor vehicle drivers, if such activities are coupled with an appropriate type of inspection for compliance with the commercial motor vehicle safety regulations. Of the funds made available under this subsection for each of fiscal years 1993 and 1994, not less than \$1,500,000 shall be used to increase enforcement of the licensing requirements of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) by Motor Carrier Safety Assistance Program officers and employers, specifically including the cost of purchasing equipment for and conducting inspections to check the current status of licenses issued pursuant to that Act.

"(3) RESEARCH AND DEVELOPMENT.—Not less than \$500,000 but not more than \$2,000,000 of the funds made available under this subsection for any fiscal year shall be available for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to promote the purposes of this section and which are beneficial to all jurisdictions. Such funds shall be announced publicly and awarded competitively, whenever practicable, to any of the eligible States for 100 percent of the State costs, or to other persons as determined by the Secretary. The reports required

under section 5 of the Motor Carrier Safety Assistance Program Reauthorization Act of 1991 and the development of the model program and procedures required under section 7 of that Act shall be funded under this paragraph.

"(4) PUBLIC EDUCATION.—Not less than \$350,000 of the funds made available under this subsection for any of fiscal year shall be available to eligible States to help educate the motoring public on how to share the road safely with commercial motor vehicles.

"(i) DEFINITIONS.—As used in this section, the term—

"(1) 'commerce' means—

"(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

"(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

"(2) 'commercial motor vehicle' means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property—

"(A) if the vehicle has a gross vehicle weight rating of 10,001 or more pounds;

"(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

"(C) if the vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) and are transported in a quantity requiring placarding under regulations issued by the Secretary under that Act.

"(3) 'controlled substance' has the meaning such term has under section 102(b) of the Controlled Substances Act (21 U.S.C. 802(b)).

"(4) 'State' means any one of the 50 States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, or the Virgin Islands."

"(b) AMENDMENT TO SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—

"(1) ELIGIBLE EXPENDITURES.—Section 402 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302) is amended by adding at the end the following new subsection:

"(e) After the date of enactment of this subsection, a State with a plan approved under subsection (b)(1) of this section may be reimbursed by the Secretary under this part for expenditures in enforcing State or local traffic laws or regulations designed to promote the safe operation and driving of commercial motor vehicles, or for activities described under section 411(b)(2) (I) and (J) of title 23, United States Code, or both."

"(2) FUNDING.—Section 404(a)(2) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304(a)(2)) is amended—

"(A) by striking "1988 and" and inserting in lieu thereof "1988,"; and

"(B) by inserting immediately before the period at the end of the following: ", and \$65,000,000 per fiscal year for fiscal year 1992".

"(c) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following new item:

"411. Motor carrier safety assistance program."

SEC. 3. NEW FORMULA FOR ALLOCATION OF MCSAP FUNDS.

Within 6 months after the date of the enactment of this Act, the Secretary of Trans-

portation by regulation shall develop an improved formula and processes for the allocation among eligible States of the funds made available under the Motor Carrier Safety Assistance Program. In conducting such a revision, the Secretary shall take into account ways to provide incentives to States that demonstrate innovative, successfully, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety, including traffic safety enforcement and size and weight enforcement activities that are coupled with Motor Carrier Safety Assistance Program inspections; to increase compatibility of State commercial motor vehicle safety and hazardous materials transportation regulations with the Federal safety regulations; and to promote other factors intended to promote effectiveness and efficiency that the Secretary determines appropriate.

#### SEC. 4. VIOLATIONS OF OUT-OF-SERVICE ORDERS.

Section 12008 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2707) is amended by adding at the end the following new subsection:

##### "(g) VIOLATION OF OUT-OF-SERVICE ORDERS.—

"(1) REGULATIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations of out-of-service orders by persons operating commercial motor vehicles.

"(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

"(A) any operator of a commercial motor vehicle who is found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 90 days and shall be subject to a civil penalty of not less than \$1,000;

"(B) any operator of a commercial motor vehicle who is found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 1 year and not more than 5 years and shall be subject to a civil penalty of not less than \$1,000; and

"(C) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be subject to a civil penalty of not more than \$10,000.

"(3) DEADLINES.—The regulations required under paragraph (1) shall be developed pursuant to a rulemaking proceeding initiated within 60 days after the date of enactment of this subsection and shall be issued not later than 12 months after such date of enactment."

#### SEC. 5. REPORTS.

Within two years after the date of enactment of this Act, the Secretary of Transportation shall submit, to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives, reports on—

(1) the effectiveness of the motor carrier inspection decal issued by the Commercial Vehicle Safety Alliance, ways to increase the use of that decal, and an analysis of whether the Federal Highway Administration should require the acceptance of the decal by States participating in the Motor Carrier Safety Assistance Program; and

(2) the effectiveness and acceptance of the uniform financial penalty recommendations

of the Commercial Vehicle Safety Alliance, and the need for and practicality and feasibility of the Secretary issuing regulations requiring uniformity (within certain ranges) in the issuance of financial penalties resulting from violations found during inspections sponsored by the Motor Carrier Safety Assistance Program.

#### SEC. 6. INTRASTATE COMPATIBILITY.

Within 9 months after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety law and regulations under the Motor Carrier Safety Assistance Program. Such guidelines and standards shall, to the extent practicable, allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In the review of State plans and the allocation or granting of funds under section 411 of title 23, United States Code, as added by this Act, the Secretary shall ensure that such guidelines and standards are applied uniformly.

#### SEC. 7. ENFORCEMENT OF BLOOD ALCOHOL CONCENTRATION LIMITS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall consult with representatives of law enforcement organizations and affected industries, and if appropriate contract with law enforcement organizations, to develop a model program and procedures for Motor Carrier Safety Assistance Program officers and employees to enforce the .04 percent blood alcohol concentration limit established by regulation pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

#### SEC. 8. FHWA POSITIONS.

To help implement the purposes of this act, the Secretary of Transportation in fiscal year 1992 shall employ and maintain thereafter two additional positions at the headquarters of the Federal Highway Administration in excess of the number of employees authorized for fiscal year 1991 for the Federal Highway Administration.

#### SEC. 9. DRUG FREE TRUCK STOPS.

(a) SHORT TITLE.—This section may be cited as the "Drug Free Truck Stop Act".

(b) FINDINGS.—The Congress finds that—

(1) the illegal use of controlled substances by operators of commercial motor vehicles represents an enormous threat to the safety of all motorists and their passengers on the Nation's roadways; and

(2) as indicated by numerous studies, congressional hearings, and investigations, individuals often use the areas surrounding roadside truckstops and roadside rest areas as sites for the distribution of these controlled substances to the operators of commercial motor vehicles.

(c) AMENDMENT TO CONTROLLED SUBSTANCES ACT.—

(1) IN GENERAL.—In light of the findings in subsection (a), part D of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting immediately after section 408 the following new section:

##### "TRANSPORTATION SAFETY OFFENSES

"SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck or safety rest area is (except as provided in subsection (b)) punishable—

"(1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 401(b) of this title; and

"(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana.

"(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both; and

"(2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense.

"(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

"(d) For purposes of this section—

"(1) the term 'safety rest area' has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

"(2) the term 'truck stop' means any facility (including any parking lot appurtenant thereto) with the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act."

(2) CONFORMING AMENDMENTS.—

(A) CROSSREFERENCE.—Section 401(b) of such Act (21 U.S.C. 841(b)) is amended by striking "or 405B" each place it appears and inserting in lieu thereof "405B, or 409".

(B) TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting, immediately after the item relating to section 408, the following:

"Sec. 409. Transportation safety offenses."

(d) SENTENCING GUIDELINES.—

(1) PROMULGATION OF GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 409 of the Controlled Substances Act, as added by subsection (c), shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(B) in no event less than level 26.

(2) IMPLEMENTATION BY SENTENCING COMMISSION.—If the sentencing guidelines are amended after the date of enactment of this Act, the Sentencing Commission shall imple-

ment the instruction set forth in paragraph (1) so as to achieve a comparable result.

(3) LIMITATION.—The guidelines referred to in paragraph (2), as promulgated or amended under such paragraph, shall provide that an offense that could be subject to multiple enhancements pursuant to such paragraph is subject to not more than one such enhancement.

#### SEC. 10. IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) RULEMAKING PROCEEDING.—Section 9107 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Public Law 100-690, subtitle B of title IX; 102 Stat. 4530) is amended—

(1) by striking "REPORT ON" in the heading;

(2) by inserting "(a) REPORT.—" immediately before "Not later than"; and

(3) by adding at the end the following new subsection:

"(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later than July 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than April 1, 1992."

(b) CONFORMING AMENDMENT.—The table of contents contained in section 9101(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (102 Stat. 4527) is amended by striking "Report on improved" in the item relating to section 9107 and inserting in lieu thereof "Improved".

#### SEC. 11. COMPLIANCE REVIEW PRIORITY.

If the Secretary of Transportation identifies a serious pattern of violations of State or local traffic safety laws or regulations, or commercial motor vehicle safety rules, regulations, standards, or orders, among the drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary shall ensure that such motor carrier receives a high priority for safety reviews, compliance reviews, and other inspection or audit activities.

By Mr. PRYOR:

S. 632. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of interest paid in connection with certain life insurance contracts; to the Committee on Finance.

#### TAX TREATMENT OF CERTAIN INTEREST

• Mr. PRYOR. Mr. President, today I am introducing a bill to limit certain excessive practices involving business-owned life insurance products. While businesses have traditionally used life insurance policies for sound business purposes, some extreme marketing practices have developed that must be addressed in order to preserve the integrity of business-owned life insurance.

The bill specifically targets two problems. The first issue involves a company's ability to inflate interest rates on insurance policies, thereby allowing loan rates greatly in excess of

the current cost of money. To address this problem, the bill sets a limit on deductible policy loan interest so that only that amount of interest that does not exceed the competitive price of money on the open market may be deducted. The limitation is defined in terms of Moody's cost of money index—a standard already used by the insurance industry in other contexts. A related problem also addressed is a company's ability to create much larger dividends with which it can pay premiums on a tax-free basis during the 4 years in which premiums must be paid.

The second issue addressed in the bill involves so-called janitor insurance. Janitor insurance refers to the practice of insuring all or most of a company's employees in order to generate tax-free funds earmarked for benefits limited to senior officers or some other group. Although it is technically possible that such products might be created, after review it seems difficult to find any company that has actually bought such a program.

However, even the possibility of such excessive use of tax benefits raises a problem. Insuring many to benefit a few is inconsistent with widely accepted nondiscrimination concepts and would also circumvent the \$50,000 loan interest deduction limitation. To eliminate this potential practice, my proposal would subject business life insurance policies to the following new rules.

First, under this legislation, employees who are to be insured by their company must be notified of the fact, and given the opportunity to decline such coverage. Second, when an employer uses life insurance to legitimately provide for its employees, each and every employee who is covered by a life insurance policy will have to be eligible to receive the benefits of that policy. These rules, however, will not affect insurance arrangements that are not tied to employee benefit programs, such as key man and buy-sell programs.

Mr. President, I firmly believe that business-owned life insurance is a valuable insurance product for business use. Business-owned life insurance policy benefits are an absolute necessity for safeguarding against corporate losses in the event of an untimely death. Businesses have a long history of using insurance policies to supplement employee benefit or compensation programs, and when not excessive, such practices should be allowed to continue.

It is my intention to discourage use of life insurance to facilitate the funding of postretirement or other employee benefits in a way that would violate the principles contained in this legislation, from this day forward. Therefore, I hereby put on notice any prospective purchaser or seller of this type of program that I will attempt to make sure that any program put in

place from this day forward which violates the principles of this legislation will be subject to the loss and/or limitation of the interest deduction provisions contained in this legislation.

I welcome any additional comments or suggestions regarding this legislation. With refinement of the rules regarding business-owned life insurance, such as the refinements proposed in this bill, I think we can curb possible excesses relating to such policies and maintain the integrity of business-owned life insurance policies. Mr. President, I ask unanimously consent that the full text of the bill be printed in the RECORD at the appropriate point.

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

S. 632

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. TREATMENT OF INTEREST PAID IN CONNECTION WITH CERTAIN INSURANCE CONTRACTS.

(1) EXCESS INTEREST.—Subsection (a) of section 264 of the Internal Revenue Code of 1986 (relating to certain amounts paid in connection with insurance contracts) is amended by inserting after paragraph (4) the following:

"(5) Any amount of interest paid or accrued on any indebtedness with respect to a life insurance policy, to the extent that the amount of such interest is in excess of the amount computed by use of the highest of the following rates:

"(A) A rate determined in accordance with section 3(a)(1) (or its successor provision) of the Model Policy Loan Interest Rate Bill of the National Association of Insurance Commissioners.

"(B) A rate determined in accordance with sections 3(b)(1) and 3(d) (or their successor provisions) of the Model Policy Loan Interest Rate Bill of the National Association of Insurance Commissioners.

"(C) A rate 1 percent above the lowest rate that is guaranteed to be credited over the life of the policy by the insurer.

For purposes of applying subparagraphs (A) and (B), if at any time there is no Model Policy Loan Interest Rate Bill of the National Association of Insurance Commissioners or if a rate cannot be established under section 3(a)(1) or sections 3(b)(1) and (d) (or their successor provisions) of such Bill, then the rate to be used shall be a substantially similar rate determined under regulations prescribed by the Secretary."

(b) MODIFICATION TO SECTION 264(c)(1).—Subsection (c) of section 264 of such Code is amended by adding at the end the following new sentence: "For purposes of applying paragraph (1), the payment of more than 25 percent of any annual premium on a contract purchased or carried pursuant to a plan referred to in subsection (a)(3) by the direct or indirect application of any dividend, distribution, or surrender proceeds from such contract shall be deemed a payment made by means of indebtedness."

(c) CONSENT OF ELIGIBILITY TEST.—Section 264 of such Code is amended by adding at the end thereof the following new subsection:

"(d) \$50,000 EXEMPTION LIMIT OF SUBSECTION (A)(4) NOT TO APPLY TO CERTAIN POLICIES.—

"(1) IN GENERAL.—In the case of a life insurance policy described in paragraph (2), subsection (a)(4) shall be applied without regard to the provision limiting its application to indebtedness in excess of \$50,000.

"(2) POLICIES TO WHICH PARAGRAPH (1) APPLIES.—A life insurance policy is described in this paragraph if such policy covers the life of any individual—

"(A) who was not afforded the opportunity to decline to be insured under such policy, or

"(B) to the extent that the insurance is purchased or continued pursuant to a funded or unfunded plan of employee compensation or benefits (whether or not the insurance is an asset of the plan, if, at the later of the inception of the policy or the inception of the plan, such individual with respect to such plan

"(i) is not a current participant, or

"(ii) is not a future participant under circumstances in which the employee's future participation is dependent solely upon any one or more of the following:

"(I) the attainment of plan specified service or age,

"(II) the continuation of full-time employment, or

"(III) the attainment of retirement status."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts purchased on or after March 12, 1991.\*

By Mr. CRANSTON (for himself, Mr. DECONCINI, and Mr. AKAKA):

S. 633. A bill to improve basic educational assistance benefits for members of the Armed Forces of the United States under chapter 30 of title 38, United States Code, and under chapter 106 of title 10, United States Code, and for other purposes; to the Committee on Veterans' Affairs.

EDUCATIONAL BENEFITS INCREASE

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am pleased to introduce S. 633, the proposed Montgomery GI Bill Amendments of 1991. I am joined in this by my good friends from Arizona [Mr. DECONCINI] and Hawaii [Mr. AKAKA]. This bill would amend chapter 30 of title 38, United States Code, to increase the monthly rates paid to active duty servicemembers under the All-Volunteer Force Educational Assistance Program. It would also increase rates paid to members of the Selected Reserve who participate in the educational assistance program established in chapter 106 of title 10.

Mr. President, there has been no COLA in the MGIB rates since the program was enacted in 1984. The cost of education at 4-year public colleges has increased by 43.2 percent over the last 6 years and overall inflation as measured by the Consumer Price Index has been 36.5 percent.

Those who have kept our Nation strong and who served in the Persian Gulf certainly deserve to have GI bill benefits that are not so seriously eroded by inflation. To address the diminished purchasing power of MGIB benefits, this bill would provide, effective April 1, 1991, and increase in the MGIB for active duty servicemembers from

\$300 to \$425 a month for full-time pursuit for those serving on active duty for 3 years or more and from \$250 to \$350 for full-time pursuit for those who serve 2 years on active duty and 4 years in the reserves. For full-time pursuit under chapter 106, my legislation would increase the monthly rate from \$140 to \$200, from \$105 to \$150 for three-quarter pursuit, and from \$70 to \$125 for half-time pursuit. These rates approximate the cost increases for education since 1984.

This bill also contains a provision that would increase the monthly payroll deduction for chapter 30 participants—paid during the first 12 months of their commitment—from \$100 to \$120, effective October 1, 1991—in keeping with increases in the lower enlisted pay rates.

Mr. President, I urge my colleagues to support this legislation, which would provide for a reasonable increase in the value of the Montgomery GI bill education benefits.

Mr. President, I ask unanimous consent that the full 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. 633

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. INCREASE IN THE AMOUNT OF MONTGOMERY GI BILL EDUCATIONAL ASSISTANCE PAYMENTS.

(a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM.—Section 1415 of title 38, United States Code, is amended—

(1) in subsection (a)(1), by striking out "\$300" and inserting in lieu thereof "\$425"; and

(2) in subsection (b)(1), by striking out "\$250" and inserting in lieu thereof "\$350".

(b) AMOUNT OF BENEFIT PAYMENTS UNDER SELECTED RESERVE PROGRAM.—Section 2131(b) of the title 10, United States Code, is amended—

(1) by striking out "(b) Except" and inserting in lieu thereof "(b)(1) Except";

(2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), (D), respectively;

(3) in subparagraph (A), as so redesignated, by striking out "\$140" and inserting in lieu thereof "\$200";

(4) in subparagraph (B), as so redesignated, by striking out "\$105" and inserting in lieu thereof "\$150"; and

(5) in subparagraph (C), as so redesignated, by striking out "\$70" and inserting in lieu thereof "\$120".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to payments of educational assistance made for an approved program of education pursued on or after April 1, 1991.

SECTION 2. INCREASE IN MONTHLY CONTRIBUTION FOR BASIC EDUCATIONAL ASSISTANCE UNDER CHAPTER 30 OF TITLE 38.

(a) CONTRIBUTION FOR SERVICE ON ACTIVE DUTY.—Section 1411(b) of title 38, United States Code, is amended by striking out "\$100" and inserting in lieu thereof "\$120".

(b) CONTRIBUTION FOR SERVICE IN SELECTED RESERVE.—Section 1412(c) of such title is

amended by striking out "\$100" and inserting in lieu thereof "\$120".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to reductions in pay made on or after October 1, 1991.

By Mr. KENNEDY (for himself, Mrs. KASSEBAUM, Mr. SIMON, Mr. KERRY, Mr. CRANSTON, Mr. HARKIN, Mr. MOYNIHAN, Mr. GORE, and Mr. LEVIN):

S.J. Res. 91. Joint resolution expressing the sense of the Congress regarding the political and human rights situation in Kenya; to the Committee on Foreign Relations.

POLITICAL AND HUMAN RIGHTS SITUATION IN KENYA

Mr. KENNEDY. Mr. President, last July the administration suspended military aid to Kenya to protest the Moi government's brutal crackdown on citizens seeking democracy in that country. That step brought hope to the people of Kenya and put the United States on the side of freedom and justice in that troubled land.

Unfortunately, the administration has now abandoned the Kenyan people and their struggle for democracy by deciding to restore military aid despite the Government's continuing crackdown.

I am therefore today introducing legislation condemning human and civil rights violations in Kenya and putting the United States once again on the side of freedom. The bill suspends fiscal year 1990 military aid to the Government of Kenya until it restores democratic freedoms and releases persons detained for the peaceful expression of their political views.

Government security forces in Kenya continue to arrest, detain, and assault peaceful advocates of human rights and democratic reforms. This tragic cycle of violence and repression in Kenya is of deep concern to all friends of democracy.

The United States should not be supporting a Government that refuses to recognize its citizens' most basic human and civil rights. America has a heritage of standing with the forces of freedom, not with those who would repress it.

The Kenyan Government became a hallmark of democracy in Africa after its independence from Great Britain in 1963. Its adoption of a constitution that recognizes the basic rights of all citizens ensured the country's political stability for three decades and cemented a strong relationship with the United States. This stability, however, is now threatened by the government's rejection of the constitutional rights of its citizens.

During the past year, the Kenyan Government mounted a campaign against citizens who criticized President Daniel arap Moi, the nation's single party system, and the Govern-

ment's failure to respect the civil liberties of Kenyan citizens.

President Moi publicly denounced the concept of a pluralistic democracy in Kenya and called for the detention of individuals seeking to create an opposition party. At least 22 peaceful demonstrators were killed by security forces. Hundreds more were arrested, including former Cabinet Ministers Kenneth Matiba and Charles Rubia and leading advocates of multiparty democracy.

This assault on freedom of expression has also been directed against the press and human rights attorneys. In July, security forces arrested Gitobu Imanyara, the editor of the *Nairobi Law Monthly*, for accusing President Moi of undermining the Kenyan Constitution. The crackdown on human rights attorneys compelled Gibson Kuria, a world-renowned champion of human rights, to flee his country and seek safe refuge in the United States.

In response to the Government crackdown and pressure from Congress, the Bush administration suspended \$10 million in military assistance to the Government of Kenya for fiscal year 1990. In addition, the Congress enacted into law legislation suspending military and economic support funds to Kenya for fiscal year 1991 unless and until the Kenyan Government restored democratic freedoms to its citizens.

Since that time, the Government of Kenya has taken several half-steps toward that goal. The secret ballot was reestablished, the arbitrary expulsion of members from Kenya's single party was abolished, and the tenure of judges was restored.

At the same time, however, the Government reaffirmed that Kenya would remain a single-party state, and extended its crackdown on dissidents and proponents of multiparty democracy. Some Cabinet Ministers called upon their supporters to take violent action against Government critics and encouraged extralegal assaults on human rights activists.

The State Department's own "Country Reports on Human Rights Practices for 1990" details extrajudicial killings; cruel, inhuman, and degrading treatment of prisoners and detainees by Kenyan security forces; arbitrary arrests and detentions; denial of fair public trials; and lack of respect for civil liberties.

Former Cabinet Minister Kenneth Matiba, who was arrested on July 4, 1990 for advocating a multiparty system, continues to be detained in solitary confinement without charge. Matiba has been denied proper medical care for so long that his physical condition may be life-threatening.

Despite these continuing abuses of human and civil rights by Government security forces, last month the administration released to the Kenyan Government \$5 million of the suspended \$10

million in United States military aid for fiscal year 1990.

These funds were released to the Kenyan Government as an expression of United States gratitude for Kenya's support during the gulf war and for its willingness to accept as refugees United States-trained Libyan rebels who had escaped from Chad.

Certainly, the United States is grateful to Kenya for these acts. If the gulf war has taught us anything, though, it is that the United States should not enter into close friendships with brutal dictators and that it should take a strong stand on the side of freedom.

By presenting the Government of Kenya with \$5 million in military assistance, the administration has taken a confusing and inappropriate step. Releasing these funds sent precisely the wrong signal to the Moi government regarding the seriousness with which our Government views human rights abuses.

Within days of President Bush's announcement of the release of these funds, the Moi government escalated its crackdown on advocates of multiparty democracy. Gitobu Imanyara, the editor of the "*Nairobi Law Monthly*," was again arrested by security forces and copies of his magazine were seized from newsstands across the country. Earlier this week, the Moi government announced that Imanyara would be tried on charges of treason.

In addition, security forces detained Luke Obuk, who had been working closely with Oginga Odinga to establish an opposition party in Kenya. Moi has ordered the detention of individuals advocating the establishment of new parties despite the fact that the arrest of persons peacefully expressing their political views violates both Kenya's Constitution and the International Covenant on Civil and Political Rights, to which Kenya is a signatory.

The measure that I am introducing today condemns the Kenyan Government's hostility toward human rights and fundamental freedoms and its arrest and detention of Kenyan citizens for the peaceful expression of their political views.

It calls upon the Kenyan Government to end the intimidation and harassment of citizens who are critical of Government policies and those working for democracy in Kenya, particularly individuals within the church, the press, and the legal and academic communities. In addition, it calls upon the Government to implement safeguards to ensure unrestricted freedom of the press and the independence of the judiciary, and to guarantee due process and other fundamental civil and human rights for individuals imprisoned and detained by the Government.

This legislation would suspend all remaining military assistance to the Government of Kenya for fiscal year

1990 unless and until President Bush reports to Congress that the Government of Kenya has taken steps to:

First, charge and try or release all prisoners, including persons detained for political reasons;

Second, end all physical abuse or mistreatment of prisoners;

Third, restore the independence of the judiciary; and

Fourth, restore freedoms of expression.

No military funds for fiscal year 1990 could be expended for Kenya until 30 days after the administration certifies to Congress that these steps had been taken.

The United States should lose no time in responding to the current situation in Kenya. If we want to build on our long and positive relationship with the Kenyan people, we should make certain that we are supporting progress toward a democratic system that guarantees fundamental rights of freedom and liberty, not a police state of repression and intolerance.

This legislation would ensure the termination of United States support for Government-sponsored human and civil rights violations in Kenya. I urge my colleagues to approve it.

Mrs. KASSEBAUM. Mr. President, I rise today to join with Senators KENNEDY and SIMON in introducing legislation regarding the political and human rights situation in Kenya.

Over the past 2 years, I have become increasingly dismayed by the repressive actions taken by the regime of President Moi in Kenya. At one time, an economically successful and politically open Kenya served as a model for all of Africa.

Yet, President Moi has placed at risk much of the progress achieved in the first two and a half decades of independence by instituting a policy suppressing basic human rights. He has seized and detained democratic activists, banned publications, and adopted constitutional changes which bring into question the independence of the judiciary.

Many of us held the hope over the past 2 months that President Moi had begun to change his policies by slowly opening up the political system. For example, at the December conference of the Kenya African National Union, queue-voting was abolished.

Yet, once again, after taking some small steps forward, President Moi seems to be taking several giant steps back. Just last week, the Government seized Mr. Gitobu Imanyara, editor of the highly respected *Nairobi Law Monthly*. Mr. Imanyara has been charged for sedition because he published an editorial critical of Government policies.

Furthermore, Mr. Luke Obok, a close associate of Mr. Oginga Odinga, was arraigned on charges of sedition last week. Mr. Odinga, a prominent demo-

cratic activist, announced on February 13 the formation of a new political party.

We also remain deeply concerned about the three political prisoners held without charge in Kenyan prisons, Mr. Kenneth Matiba, Mr. Charles Rubia, and Mr. Raila Odinga. Amnesty International has alleged that Kenyan officials have seriously mistreated Mr. Matiba, a former cabinet minister.

President Moi argues that he must pursue these policies to maintain stability and curb tribal rivalries. Yet, I believe the contrary is true: President Moi's repressive and paranoid policies put Kenya on the road to political instability and chaos.

Liberia and Somalia stand out as examples where repressive dictatorships—which ignored basic human rights—deteriorated into political anarchy and civil war, where thousands died and millions fled their homes.

Political stability and peaceful change in Kenya will only emerge from permitting freedom of expression—not by choking these freedoms.

Because Kenya is an important United States ally, Washington has a special role to play in promoting human rights in Kenya. The United States traditionally supplies Nairobi with nearly \$50 million in aid, one of the largest amounts in all of sub-Saharan Africa.

The legislation we introduce today calls upon the Kenyan Government to end the intimidation and harassment of those critical of Government policies. Furthermore, we call upon the Kenyan Government to implement safeguards to protect the freedom of the press and the independence of the judiciary.

Most importantly, this legislation takes the remaining fiscal year 1990 military funds to Kenya and conditions further release of this money on the Kenyan Government meeting certain human rights conditions. These conditions, outlined in the fiscal year 1991 foreign operations appropriations legislation, include charging or releasing all political prisoners, ceasing mistreatment of prisoners, restoring the independence of the judiciary, and assuring freedom of expression.

Two weeks ago, when the U.S. Government released \$5 million of the fiscal year 1990 military funds, several of us were concerned that such an action sent a mixed signal to President Moi, conveying the position that friendly actions outweigh human rights concerns.

This legislation sends a clear and firm message to the Kenyan Government: We are deeply concerned about the future of Kenya, and because of this concern, we cannot ignore the continued suppression of basic human rights and civil liberties in Kenya.

Mr. SIMON. Mr. President, Kenya and the United States have been friends for many years and we want

that friendship to continue. But some of us here have been concerned about the deteriorating human rights situation in Kenya. Last summer, in response to the Kenyan Government crackdown on human rights and democracy advocates, I asked the administration to hold \$10 million in fiscal year 1990 military aid to Kenya. We were in agreement then that we should send that important signal.

Recently, however, the administration made a unilateral decision to release \$5 million of that military aid to Kenya. The administration justification for the decision was that the Kenyans had assisted in evacuating Americans from Mogadishu during the Somalia crisis, that the Kenyans had taken in Libyan rebels from Chad after the change in leadership there, and that the Kenyans had made some modest steps forward on the human rights situation.

I strongly disagree with the administration's decision. That is why I join Senator KENNEDY and Senator KASSEBAUM in introducing legislation to impose on the remaining fiscal year 1990 military funds the same human rights requirements Congress has imposed on the fiscal year 1991 aid to Kenya.

At a time when human rights concerns should have been at the top of our list, it lingered at the bottom. Although the Kenyan Government addressed inequities in voting requirements by scrapping of queue-voting and the 70 percent rule, the Government has yet to address the fundamental human rights problems of freedom of expression, no detention without charge or trial, release of political detainees, freedom of the press, to name a few.

What was the signal we ended up sending to the Kenyan Government? Just last Friday, Gitobu Imanyara, the editor of the Nairobi Law Monthly, was arrested and earlier this week was charged with sedition. The publication has been harassed by the Government for some time. Recently, the Nairobi Law Monthly ran an article on Mr. Oginga Odinga, his new National Democratic Party, and the party platform. This free expression then became a new reason for the Government to target the monthly. In addition, Luke Obok, an associate of Mr. Odinga's, was recently arrested, and Mr. Odinga's son Raila, continues to be held in solitary confinement. And the Scotland Yard report on the mysterious death of Foreign Minister Robert Ouko last February has not yet been released to the public.

Last summer, after active debate on establishing a multiparty system in Kenya, the Government imprisoned former Cabinet Ministers Kenneth Matiba, and Charles Rubia, and riots broke out in Nairobi and neighboring towns; at least 20 people died and 70 were injured. Over 1,000 people were ar-

rested, 100 of which were charged with sedition. Since that time, there has been no meaningful improvement in the human rights situation to warrant release of \$5 million in military aid to Kenya. That is why today, I urge my colleagues to support this effort, and recommend the following report of Africa Watch on the situation in Kenya.

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

AFRICA WATCH OPPOSES RESTORATION OF MILITARY AID TO KENYA

Africa Watch, the human rights monitoring organization affiliated with Human Rights Watch, strongly opposes the Bush Administration's recent announcement of the release of \$5 million in military aid to Kenya. The reasons given to the Congress for the release of the aid are said to be Kenya's assistance in the evacuation of US nationals from Mogadishu and Khartoum, Kenya's acceptance of some 200 Libyan rebels who were evacuated from Chad, and alleged improvements in human rights.

Africa Watch views this freeing of military assistance as wholly inconsistent with Section 597 of the Foreign Operations and Related Programs Appropriations Act of 1991, which conditions military assistance and Economic Support Funds (ESF) to Kenya on the Kenyan Government taking steps to charge and try or release all prisoners, cease physical abuse of prisoners, restore the independence of the judiciary, and restore freedoms of expression.

Kenya has not taken the steps necessary to address the conditions of the Act, and in some instances human rights have actually deteriorated. For example, in December, the government-controlled parliament passed a "Nongovernmental Organizations Registration Act," which requires all private organizations to register with the authorities, and restricts direct foreign assistance to nongovernmental groups. Key church officials have announced their intention not to register, and Kenyan human rights advocates fear yet another showdown between President Moi and the Kenyan churches. Kenyan human rights advocates speculate that the purpose of the registration requirement is for the Kenyan government—which is notoriously corrupt—to have access to overseas funds given to private groups for its own purposes.

Africa Watch's evaluation of the Kenyan Government's lack of compliance to the Congress's human rights requirements follows.

(1) CHARGE AND TRY OR RELEASE ALL PRISONERS, INCLUDING ANY PERSONS DETAINED FOR POLITICAL REASONS

Despite continued protests by many international human rights groups, the Kenyan government persists in detaining multiparty advocates and others critical of the government. To date, three prominent multiparty advocates remain detained without charge or trial, and four individuals remain in custody while awaiting trial for "sedition". In addition, at least 20 individuals have been released on bail but face charges of possessing seditious publications. Most recently, in October 1990, eight men and women were detained, and six of them presently face charges of treason or concealment of treason. Africa Watch remains concerned not only about the three prominent Kenyans detained without charge, but also fears that other individuals who have been charged

with criminal offenses may have been imprisoned and charged solely because of their political beliefs and are unlikely to receive a fair trial.

**Detention without charge or trial:** Since their arrest in July 1990, prominent multi-party advocates Kenneth Matiba, Charles Rubia and Raila Odinga remain imprisoned under Kenya's Public Security Regulations, which allow for indefinite detention without charge or trial. Matiba and Rubia, both prominent businessmen and ex-government ministers, were arrested on July 4, several days before a planned demonstration in support of political pluralism. Arrested at the same time was Raila Odinga, who is also a prominent advocate of multi-party politics and a former political prisoner. It is believed that his detention was designed to silence both him and his father, a former Vice-President and a vocal critic of the present government. The government has not publicly given any precise reason for the detention of Matiba, Rubia and Odinga, and does not appear to be moving towards either charging or releasing the detainees.

**Detention on charges of sedition and possessing seditious publications:** Equally worrying is the detention on July 11, 1990, of four individuals charged with holding a seditious meeting and possessing seditious or banned publications. They are: George Anyona, an ex-member of parliament and former political prisoner, Ngoto Kariuki, a former Dean at University of Nairobi and a former political prisoner; Edward Oyugi, a professor and a former political prisoner; and Frederick Kathangu, a government official and businessman. Among the allegedly seditious publications in question was an issue of *Africa Confidential*, a well-known subscription newsletter which had not previously been banned.

Given the past record of the Kenyan security forces and the serious restrictions placed upon Kenya's judiciary, Africa Watch is concerned not only about detainees who are imprisoned without charge, but also fears that individuals who have been charged may not receive fair trials. In past cases, Kenyan security forces have used coercion and torture to extract false confessions or guilty pleas, political detainees have been denied adequate access to defense attorneys, and politically sensitive trials have resulted in questionable verdicts and sentences.

A prominent example of Kenya's flawed judicial system was the sentencing in March 1990, of Reverend Lawford Ndege Imunde to six years in prison for the possession of a "seditious" publication. After his trial and sentencing, Rev. Imunde swore in a signed affidavit that while in incommunicado detention he was kicked and beaten by police officers, denied adequate food and sleep, subjected to a mock execution, and was coerced by the police into signing a false guilty plea. In addition, Rev. Imunde was misled into believing that he would receive a light sentence, and was denied access to his attorney. The alleged "seditious publication" in Rev. Imunde's possession was his private personal diary, presumably not a publication at all, into which, Rev. Imunde claims the security forces inserted passages criticizing the government.

In addition to the above individuals, many others, at least 20, have been detained, charged with the possession of seditious or prohibited publications, and then released on bail. Given the past history of abuses, Africa Watch is concerned that many of these individuals may have been arrested solely for their peaceful non-violent political activi-

ties, and urges the Kenyan government to drop charges against all of these charged with possessing or distributing seditious or prohibited publications.

**Detentions of individuals charged with treason and possibly tortured:** In October 1990, eight individuals were arrested and charged with treason or concealment of treason. The charges seem to be based on the arrest of self-exiled Kenyan opposition leader Koigi wa Wamwere, and the leveling of treason charges against him. The specific charges alleged that Wamwere, the leader of the Kenyan Patriotic Front (KPF), and six other individuals detained at the same time intended to violently overthrow the Kenyan government.

Arrested at the same time as Wamwere were two prominent lawyers, Rumba Kinuthia and Mirugi Kariuki, and several of Wamwere and Kinuthia's relatives. Government allegations, which themselves have been inconsistent, claim that weapons were found at both lawyers' residences, and they were accomplices to Wamwere's plot. Both allegations have subsequently been refuted by the lawyers' families and by journalists present at the scenes of arrest. Although the two lawyers have been charged with treason, Africa Watch is concerned that they have been targeted because of their activities in support of human rights and multi-party democracy. Mirugi Kariuki was previously detained without charge in 1986, and brought a legal suit against the government alleging that he was tortured while in custody. Since his release, Kariuki has litigated several cases involving land seizures by the government. Rumba Kinuthia has also been involved in defending political prisoners and was among a group of lawyers who accused the government of rigging the elections of the Law Society of Kenya. Africa Watch is concerned that these individuals may have been subjected to torture, and fears that should they come to trial, there is little hope that the trial will be fair and impartial.

#### Recommendations

Immediately release Kenneth Matiba, Charles Rubia, Raila Odinga, and any other detainees held without charge; drop all charges on individuals charged with possessing "seditious" or prohibited literature;

Insure that Koigi wa Wamwere and all others held and charged with treason receive a fair and impartial trial, with special attention to serious allegations that some of the detainees may have been tortured and coerced into making false statements.

#### (2) CEASE ANY PHYSICAL ABUSE OR MISTREATMENT OF PRISONERS

Recent statements by several prisoners indicate that the pattern of mistreatment and torture of prisoners, a pattern documented by Amnesty International and Africa Watch, continues today. The most severe mistreatment and torture appears to occur while prisoners are held incommunicado without charge or trial immediately after arrest. Recurring statements indicate that prisoners are often held for extended periods of time in cells flooded with water, are deprived of food and sleep, and are subjected to death threats and degrading psychological intimidation. Conditions for detainees who have been charged or who are held at official prisons are also extremely harsh. Prisoners consistently complain about being made to sleep on concrete floors, being denied adequate food and clothing, and having restricted access to medical care, family visits and reading material. In addition, most recent political detainees have been held at Kamiti Maximum

Security Prison, in a wing reserved for psychologically disturbed inmates where conditions have been described by a former detainee as "barbaric."

The case of Kenneth Matiba: Matiba, who was arrested in July 1990, has been held in a special wing at Kamiti Maximum Security Prison designated for the criminally mentally ill and for inmates awaiting execution. Inmates in this wing reportedly cry and sing incessantly, and the constant noise, combined with poor food and inadequate reading material, have raised Mr. Matiba's blood pressure to dangerous levels. Mr. Matiba fears that the government has moved him to this wing, and is denying him adequate medical attention, in order to kill him. During a consultation with his doctor in October, prison authorities did not allow Mr. Matiba's doctor to pass on to him appropriate medicine to control his blood pressure. Instead, they demanded that Mr. Matiba's doctor write a prescription for the drugs and hand it over to the prison doctor, who would then purchase the medicine and deliver it to Mr. Matiba. The doctor complied with this procedure, but the drugs took over three weeks to reach Matiba, and even then were not the drugs specified by his doctor. In addition, during the October consultation Matiba's doctor requested permission for a follow up visit within three weeks. The prison authorities refused to allow another appointment until January 24, 1991, and have refused repeated pleas to move Matiba to a different wing of the prison. Matiba's doctor came away from the January consultation with increased concern about the prisoner's health.

The case of Gitobu Imanyara: Imanyara, the editor of *The Nairobi Law Monthly*, a journal focusing on constitutional and human rights issues, was arrested most recently on July 5, 1990, and released on bail on July 30. After his release, Imanyara complained of ill treatment while in detention. Imanyara said that he was held incommunicado for six days in a windowless cell in the psychiatric ward of Kamiti Prison. He described conditions as "squalid and degrading." Prisoners were supplied with a single chamber pot, to be used as both a wash basin and a toilet, and were denied toilet paper or tooth brushes. Mentally ill, and sometimes violent inmates also made constant noise, and some screamed throughout the nights.

The case of George Anyona: George Anyona is among a group of prominent Kenyans and former political prisoners who were arrested on July 11, 1990, and charged with sedition and possessing seditious or prohibited literature. Anyona himself was a former Member of Parliament and a former political prisoner detained in 1977 and 1982. During several court appearances in August and September 1990, Anyona described torture and ill-treatment while in detention. Anyona stated that he and three other prisoners were held in cells flooded with water, were kept permanently handcuffed in dimly lit cells, were made to sleep on a cold concrete floor with only two blankets, and were given food "unfit for human consumption" at unusual hours. Sanitation was non-existent. Prisoners could not wash and, according to Anyona, had to "wade through urine and human feces while queuing for the toilet in our bare feet which have sores." In addition, Anyona has been denied adequate access to his lawyer and denied all access to his family. After his initial complaints in court of torture and ill-treatment, Anyona stated that he was later "threatened, harassed and intimidated" by two prison guards.

At Anyona's court appearances, the state counsel, Bernard Chunga, rejected his com-

plaints stating that "prison is not a holiday resort." The Chief Magistrate, instead of ordering an independent investigation or probing the allegations himself, merely directed the prison authorities to investigate Anyona's charges. At the time of this writing, Anyona remains detained at Kamiti Prison.

The case of Koigi wa Wamwere: The recent arrest of Koigi wa Wamwere, a self-exiled critic of the government, has prompted additional allegations of torture and ill-treatment while in police custody. In an affidavit filed on December 17, 1990, before the High Court in Nairobi, Wamwere testified that he had been tortured in Nyayo House, the headquarters of the security police. Wamwere stated that he was held in a cell whose floor was covered with human feces, was stripped naked and handcuffed, denied food and sleep for days at a time, forced to use his cell as a toilet, and denied medical attention. While under interrogation with his eyes blindfolded Wamwere stated that he was coerced, by death threats and by hearing simulated cries which his interrogators claimed came from his mother, into signing various false statements. These statements were confessions of organizing a group which received guerilla training in Uganda and Libya and was being funded by Scandinavian government and human rights groups such as Africa Watch and Amnesty International. The false statements also said that he transported weapons into Kenya with the purpose of attempting to violently overthrow the government.

Continuing legal suits against the government for practicing torture: In addition to the recent charges of torture and ill-treatment, the Kenyan government has recently imprisoned Mirugi Karivki, a lawyer and former political prisoner who along with two other detainees filed a suit against the government in 1987 alleging torture. Significant government pressure was brought against Kariuki to withdraw his suit, but he refused and remained imprisoned until June 1989. During this time, Gibson Kamau Kuria, a human rights lawyer who filed the torture complaints on behalf of Kariuki, was himself detained and tortured, and subsequently brought his own suit against the government. At present neither Kariuki nor Kamau Kuria's suits have been heard in court, and Kariuki is imprisoned and faces treason charges (which carry a mandatory death penalty) while Kamau Kuria has been forced to flee Kenya and seek political asylum in the United States.

### (3) RESTORE THE INDEPENDENCE OF THE JUDICIARY

After heavy criticism from both the local and international communities regarding the human rights situation in Kenya, the Kenyan government decided to move towards restoring the tenure of judges. However, instead of merely revoking the 1988 amendment to the constitution which had removed the security of tenure, the government has proposed the creation of a new commission which would investigate complaints against judges and if necessary, dismiss them. As the constitution is now being interpreted, President Moi individually has the power to appoint and dismiss judges. This new proposal, although it would devolve some of the president's power and influence, would still leave the judiciary extremely vulnerable to the influence of the executive.

Under the new proposal, the president would be vested with the power to create an appointed commission which would enquire into the conduct of judges. The new proposal is similar to provisions in the original con-

stitution (i.e. prior to the 1988 amendment which removed the security of tenure) in that the President would appoint members of this judicial commission. However, in the original provision the judges appointed by the president had been from other commonwealth countries (such as India, Canada, and Australia), thus ensuring the judicial commission's independence. Also, as originally envisioned, the Kenyan members of the judicial commission would enjoy the security of tenure and thus also remain independent.

In the recent proposal, however, the president would appoint at least five members of a commission drawn exclusively from Kenyan judges, counsels, and advocates. Without the original security of tenure, these individuals would be vulnerable to influence by the executive or the party. For instance if the president appoints counsels and advocates for the commission, they may not exercise independence since they are not covered by the security of tenure.

The historical record indicates that President Moi might not appoint independent members of the bar to such a judicial commission. During his twelve year rule, Moi has dismissed or retired several judges who delivered judgements independently of the political considerations of the ruling party, KANU. Among the judges who were retired or dismissed were: O'Connor, Chesoni, Scofield, Madan, Simpson, Suchdeva, Mbaya, and Platt.

Experience shows that within the present one-party system, even the restoration of the security of tenure might not ensure the independence of the judiciary. Two cases—Mr. James Wagala vs. John Anguka, civil case No. 727, and High Court case No. 1523 or 1988—illustrate this point. In both cases the court ruled that it did not have any jurisdiction to hear a case involving KANU election disputes, thus signaling its subservience to the single party and the president.

In addition, the simple restoration of the security of tenure without other accompanying moves towards increased respect for human rights and the rule of law, such as restoring the freedoms of expression and association, and freedom from arbitrary arrest and torture, would do little to guarantee either an independent judiciary or the right of all Kenyans to a fair and impartial trial.

The trial and sentencing of Rev. Lawford Ndege Imunde, an outspoken multi-party advocate, is a prominent example of the need to accompany the restoration of judicial tenure with other reforms, especially ensuring that Kenyan security forces stop the practice of holding detainees in incommunicado detention and cease using torture and coercion to extract false statements (see above). The sentencing of Rev. Imunde, and the past trials of many other Kenyans under the vague charges of possessing seditious or prohibited literature or coerced through torture and intimidation into making false statements, indicates that the restoration of tenure, as an isolated step, will do little to free Kenya's judiciary from the influence of the executive and the ruling party.

#### Recommendations

Immediately restore the security of tenure for all judges through the repeal of the 1988 constitutional amendment (which had revoked the tenure guaranteed in the constitution);

Insure that the mistreatment of all detainees, and especially those held on account of their political opinions, cease immediately.

### (4) RESTORE THE FREEDOM OF EXPRESSION

Although President Moi has declared that he supports freedom of expression, and the

Kenyan Constitution protects that right, the government has repeatedly taken actions that curtail that freedom. Members of Parliament who have expressed any opposition to the policies of the KANU-led government have been suspended from parliament and have lost their party membership. After suspending members of parliament who criticized the Moi regime, the government then carried out a crackdown against outspoken professors at Nairobi University who voiced their opposition to one-party rule. Student unions were also targeted for harassment and repression. Student demonstrations were met with violent police suppression. Professors and student leaders were detained, and at least one student leader died in prison after reportedly being tortured.

In 1982, the government banned the University Staff Union and detained several of its leaders. The Kenyan Civil Servants Union was also banned. Tribal welfare associations, such as the GEMA, Akamba Union, Abaluya, Luo Union and others were also banned. They remain banned.

Journalist and lawyers who voiced criticisms of the government were also targeted (see above). Three major publications, Beyond, Financial Review, and Development Agenda, were subsequently banned. Beyond, a publication associated with the National Council of Churches of Kenya was banned in March 1988 after questioning the results of the February/March parliamentary elections. Beyond's editor, Bedan Mbugua, was arrested, charged with the technical offense of failing to submit annual sales returns to the Registrar of Books, and was sentenced to nine months in prison. After serving two weeks, Mbugua was released on bail, pending appeal of the sentence. In August 1989, after intense international pressure and extensive court appearances, Mbugua was acquitted by the Court of Appeals. However, the ban on the magazine is still in place.

Financial Review, which also criticized the fairness of the elections, was also banned, and its editor, Peter Kareithi, was arrested and detained for several days. And Development Agenda was banned after publishing only two issues, even though it had published nothing critical of the government. It is believed that the magazine was banned because its publisher was associated with persons who had fallen out of favor with President Moi.

There have been other, brief bannings. After reporting on governmental corruption, the largest-selling daily newspaper, The Daily Nation, was banned from covering parliamentary proceedings, a move probably intended to cripple the paper's circulation. After four months, and soaring sales, the government revoked the ban. And in the summer of 1990, The Nairobi Law Monthly was banned briefly for reporting on human rights abuses and for criticizing one-party rule. In the summer of 1990, the magazine's editor, Gitobu Imanyara, was arrested twice within a week. Imanyara was originally detained in July and held alongside Kenneth Matiba and Charles Rubia without charge. Imanyara was released without charge on July 25, 1990, only to be rearrested the next day, and charged with issuing a seditious publication—namely the April/May edition of the Nairobi Law Monthly—and charged with two other technical offenses relating to the production of the magazine. Though Imanyara was released on bail, his court case has yet to be resolved. Observers believe that the real motivation behind the criminal charges levied against him is to draw Imanyara into a lengthy legal battle and thus silence his magazine.

As noted above, a number of persons have been arrested for merely possessing banned editions of *Beyond*, and *Financial Review*, and even for possessing editions of *Africa Confidential*, a British newsletter which had not previously been banned. In addition, police have invaded press conferences and confiscated cameras and film. On June 21, lawyer Paul Muite held a press conference to recount and protest the harassment and intimidation he and his clients had suffered. Sixteen officers entered the conference and declared it illegal.

In another case of infringement on the right to freedom of expression, 24 people were arrested in Nakuru and Nairobi on July 6 and charged with offenses relating to the production, distribution and possession of popular music cassettes, considered "subversive" by the government.

Outspoken members of the clergy have also faced repression. In August 1990, Rev. Henry Okullu was attacked verbally by KANU's youth wing while he was giving a sermon in Nyaza. According to reports, the youths shouted at the bishop not to preach subversion. It was also reported that the youths were brought to the church in a vehicle belonging to a party official and a member of parliament. President Moi himself has denounced leading church figures, and repeatedly stated that the church should not involve itself in "politics."

#### Recommendations

The bans on *Beyond*, *Financial Review*, and *Development Agenda* should be lifted immediately;

The government should cease its threats to ban *The Nairobi Law Monthly*, *Finance*, or any other publication;

The government must cease its harassment of journalists, including the use of criminal charges to intimidate journalists who are exercising their constitutionally guaranteed right to freedom of expression; and

The government should lift the bans on the University Staff Union, the Kenya Civil Servants Union and all other unions.

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. BROWN, Mr. CHAFEE, Mr. D'AMATO, Mr. DOLE, Mr. DURENBERGER, Mr. HATCH, Mr. JEFFORDS, Mr. KASTEN, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, Mr. COATS, Mr. ADAMS, Mr. BAUCUS, Mr. BRADLEY, Mr. BREAUX, Mr. BURDICK, Mr. CRANSTON, Mr. DECONCINI, Mr. DIXON, Mr. FORD, Mr. FOWLER, Mr. GORE, Mr. HEFLIN, Mr. HOLLINGS, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mr. PELL, Mr. PRYOR, Mr. RIEGLE, Mr. BOREN, Mr. ROBB and Mr. SARBANES):

S.J. Res. 92. Joint resolution to designate July 28, 1992, as "Buffalo Soldiers Day"; to the Committee on the Judiciary.

#### BUFFALO SOLDIERS DAY

Mrs. KASSEBAUM. Mr. President, in the summer of 1867, an Army cavalry regiment rode west out of Fort Leavenworth. The troops were headed across the Kansas prairie to their new post on the frontier.

They were traveling to Fort Hays, KS, where their first assignment would be to protect the frontier lines of the Kansas-Pacific Railroad. The troops in that newly formed 10th Cavalry Regiment were "green." Few had fought in the Civil War. None had served before it.

Their story is typical of many frontier soldiers. But these men were not typical soldiers. They were African-Americans—the first to serve the U.S. regular Army during peacetime. Congress had voted in 1866 to authorize the Department of War to create six African-American regiments in the regular army—the 9th and 10th Cavalries, and four infantry regiments.

By August, the 10th Cavalry had arrived at Fort Hays. On August 2, a group of Cheyenne warriors attacked F Company while it was on patrol. After the battle, an Army scout overheard the Indians speaking with respect about this first encounter with Black soldiers. The warriors called them "Buffalo Soldiers" because they fought with the fierceness of a cornered buffalo. The name stuck.

For more than eight decades—from their creation in 1866 until the Army was integrated in 1952—the Buffalo Soldiers served the United States with dedication. Words such as "bravery," "discipline," "fearlessness," and "endurance" consistently showed up in official reports about these troops. In campaigns from the American West to Cuba to the Philippines, these soldiers continually earned a place in our Nation's history.

They earned their place, Mr. President, but they have yet to take it. You will not find the story of the Buffalo Soldiers in our history textbooks. You will be hard-pressed to find it at all.

Our popular culture has virtually ignored the role of African-Americans in the Old West. For most Americans, the Wild West is John Wayne, not Henry Flipper. That must change.

I believe these soldiers deserve proper recognition. I share that belief with a dedicated group of Kansans and other people working to build a monument to the Buffalo Soldiers at Fort Leavenworth. At the center of this monument will stand a bronze statue of a Buffalo Soldier atop his mount. The site is a grassy area where Buffalo Soldiers once pitched their tents.

The inspiration for this monument came in 1982 from then-Brig. Gen. Colin Powell, who at the time was the deputy commander at Fort Leavenworth. When General Powell arrived, the only sign that Buffalo Soldiers ever had been stationed there were two small, gravel alleys named for the 9th and 10th Cavalries.

Mr. President, I ask unanimous consent that the letter from General Powell be printed in the RECORD at this point.

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

WASHINGTON, DC, February 22, 1991.

HON. NANCY LANDON KASSEBAUM,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR KASSEBAUM: I am very grateful you invited me to provide a letter expressing my thoughts about the Buffalo Soldiers. I'm also thankful for your efforts on behalf of those soldiers and especially for introducing in the U.S. Senate the Joint Resolution to designate July 28, 1992 as "Buffalo Soldier Day."

When I was a brigadier general and assigned to Fort Leavenworth in 1982, I was jogging around the post one day and noticed a couple of gravel alleys that were named "9th and 10th Cavalry Streets." I wondered if that were all there was to commemorate those great soldiers. I wondered if on one of America's most historic Army posts, a post where the 10th Cavalry spent so much of its garrison life, a post in the center of the region where both the 9th and 10th Cavalry spent so much of their blood, I wondered if those gravel alleyways were all there was to signify their presence, all there was to commemorate their incredible contribution to the settlement of the American West.

And so I looked around some more. And on the entire post all I could find to commemorate two of the greatest regiments in the Army were those two alleys. That was a situation that I believed had to be changed. So a few of us set in motion a project to honor the Buffalo Soldiers. You, Senator, now co-chair the committee that grew from that project. Your committee oversees the construction of a proper monument to those great soldiers—a monument not simply to honor Buffalo Soldiers; instead, to honor all black soldiers who have served this nation over its long history.

Since 1641 there has never been a time in this country when blacks were unwilling to serve and sacrifice for America. From pre-Revolutionary times through the Revolutionary War, through every one of our wars and on up to the present, black men and women have willingly served and died. But it is also a part of our history that for most of that time blacks served without recognition or reward for the contribution they made for our freedom—for the freedom they did not enjoy here in their own beloved native land. The Buffalo Soldiers are a symbol—one chapter in a proud and glorious history.

To remind me of that history I have a painting that hangs on a wall in my office directly across from my desk. From that painting, Colonel Benjamin H. Grierson, 10th Cavalry Regimental Commander, Lieutenant Henry O. Flipper, the first black graduate of West Point, and a troop of Buffalo Soldiers constantly look at me. They remind me of my heritage and of the thousands of African-Americans who went before me and who shed their blood and made their sacrifices so that I could be Chairman of the Joint Chiefs of Staff. They look at me and make sure that I will never forget the courage and the determination of African-Americans who defied all odds to fight for their country, and who wore the uniform of the U.S. Army as proudly and as courageously as any other American who ever wore it.

The legacy of that pride and courage motivates every black soldier, sailor, airmen, Marine and Coast Guardsman taking part today in Operation Desert Storm, and every black man and woman who helps man the ramparts of freedom around the world from Japan to

Panama to Germany. It's as if a full century had passed in the blink of an eye and Frederick Douglass' words were suddenly and vividly fulfilled: "Once let the black man get upon his person the brass letters, 'U.S.', let him get an eagle on his button, and a musket on his shoulder and bullets in his pocket, and there is no power on earth which can deny that he has earned the right to citizenship in the United States." Amen.

Sincerely,

COLIN L. POWELL,  
Chairman, Joint Chiefs of Staff.

Mrs. KASSEBAUM. General Powell began planning a more fitting monument. He left Fort Leavenworth before construction began, but others took up his cause.

It is proper that we recognize the accomplishments of the Buffalo Soldiers. These troops accomplished more with less than any other fighting men. Most of the first Buffalo Soldiers were freed slaves. They lived in inadequate housing and received the worst food and equipment. They were subjected to racial discrimination by white officers and white troops.

These men were common soldiers. No great generals rode with them. In fact, many people at the time had little respect for them. Gen. George Custer was offered command of the 10th Cavalry but considered them inferior soldiers and declined.

But they were not inferior. They were exemplary.

Their morale remained high and their desertion rate was the lowest in the Army. They repeatedly were cited for heroism and dedication to duty. The Buffalo Soldiers have been honored for their bravery and service more than any other American military unit. Their many honors include: at least 20 Congressional Medal of Honor winners; 4 Campaign Citations in the Indian Wars; Campaign Citations for the Spanish-American War, the Philippine Insurrection and the Mexican Expedition; the French Campaign World War I Citation; 5 Unit Citations from World War II; 10 Unit Citations from the Korean conflict; 3 Presidential Unit Citations; a Navy Unit Commendation; a Philippine Presidential Citation; and 2 Republic of Korea Presidential Citations.

These men participated in many prominent events in our history. In the late 19th century, they fought a series of wars in the West. They rode with Maj. Gen. Philip H. Sheridan in western Kansas and rescued Maj. George A. Forsyth and his scouts from an island in the rising Republican River.

They guarded wagon trains, protected railroads and settlements, surveyed roads and built forts, including what later became Fort Sill, OK. At Fort Sill, Lt. Henry Flipper, the first African-American to graduate from West Point, used his engineering skills to construct a drainage ditch that other officers said could not work.

That site now is a national historic landmark.

The soldiers built or renovated dozens of posts and camps and constructed thousands of miles of roads and telegraph lines. Their patrols yielded maps of uncharted wilderness that paved the way for pioneer settlers. They assisted civil authorities in controlling mobs, and pursued outlaws and cattle thieves. In 1916, they accompanied Gen. John J. Pershing into Mexico in pursuit of the outlaw Pancho Villa.

The Buffalo Soldiers fought in the Spanish-American War and served with Maj. Gen. Joseph Wheeler. They charged up San Juan Hill and rescued Teddy Roosevelt and the Rough Riders.

Men from every State became Buffalo Soldiers. Their places of service included Louisiana, Montana, Nebraska, New York, Oklahoma, Texas, Utah, Vermont, and Virginia. They served with Harry Truman in the First World War. They fought and died in the Second World War and in Korea.

Today, I am introducing legislation along with 40 cosponsors, to designate July 28, 1992, Buffalo Soldiers Day and to call upon the President to urge the American people to observe that day with ceremonies and activities. On that day—the 126th anniversary of the act that created the 9th and 10th Cavalries—the Buffalo Soldiers monument at Fort Leavenworth will be dedicated.

I believe it is fitting for this Congress to show its respect for the Buffalo Soldiers through this declaration. My hope is that this declaration and the monument's dedication will represent not the end of our efforts but the beginning of a movement to give the Buffalo Soldiers their proper place in history. They deserve no less.

I believe the Buffalo Soldiers are a fundamental part of the American Story. They are not solely black American heroes—they are American heroes. They represent the ability to achieve despite adversity.

Only one episode of one television western show focused mainly on African-Americans. On November 22, 1968, the episode of the show "The High Chapparral" was titled "The Buffalo Soldiers." The show depicted the soldiers on patrol near the Mexican border early this century. Even that show contained many flaws, but it stands alone to represent the Buffalo Soldiers in Western legend.

I strongly agree with a statement made about these troops in that 1968 episode:

The Buffalo Soldiers of yesterday were the stuff of which legends are made and hope rekindled \* \* \* all of us can recall and cherish the historic and continuing contribution of the black American to the life and progress of our nation.

Mr. DOLE. Mr. President, I am pleased to join Senator KASSEBAUM in cosponsoring the resolution designat-

ing July 28, 1992, as "Buffalo Soldiers Day."

It was 125 years ago when Congress, responding to the courageous Civil War service of black Americans, voted to create six regular Army regiments of black American soldiers.

The most famous of these regiments were the 9th and 10th Cavalries who were stationed at Greenville, LA, and Fort Leavenworth, KS. From these stations, the Buffalo Soldiers—so named because they fought as fiercely as buffaloes—would earn a distinguished place in American history.

It was the Buffalo Soldiers who protected the railroad construction workers, allowing them to succeed in their mission of uniting a nation.

It was the Buffalo Soldiers who, for 20 years, fought to protect those unable to defend themselves in the settling of the West.

The Buffalo Soldiers were with Teddy Roosevelt and the Rough Riders during the Spanish-American War, and they were there when Billy the Kid and Pancho Villa were captured.

It was the Buffalo Soldiers, who, despite being subjected to constant discrimination and receiving the worst equipment and food, still maintained the lowest desertion rate and the highest morale in the Army.

In 1982, Gen. Colin Powell, then serving as deputy commander at Fort Leavenworth, set into motion the effort to construct a monument to these American heroes. This monument will be dedicated in Fort Leavenworth on July 1992.

The monument, along with the designation of July 28 1992, as "Buffalo Soldiers Day" will ensure that the contributions and courage of these Americans are remembered in our history books and in our hearts.

#### ADDITIONAL COSPONSORS

S. 15

At the request of Mr. BIDEN, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 15, a bill to combat violence and crimes against women on the streets and in homes.

S. 20

At the request of Mr. ROTH, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Washington [Mr. GORTON], the Senator from Arizona [Mr. MCCAIN], the Senator from New Hampshire [Mr. SMITH], and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 20, a bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes.

S. 64

At the request of Mr. BINGAMAN, the name of the Senator from Illinois [Mr.

SIMON] was added as a cosponsors of S. 64, a bill to provide for the establishment of a National Commission on a Longer School Year, and for other purposes.

S. 65

At the request of Mr. NICKLES, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 65, a bill to make the 65 miles-per-hour speed limit demonstration project permanent and available to any State.

S. 102

At the request of Mr. COHEN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 102, a bill to amend title IV of the Higher Education Act of 1965 to allow resident physicians to defer repayment of title IV student loans while completing accredited resident training programs.

S. 104

At the request of Mr. PRESSLER, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Idaho [Mr. CRAIG] 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. 140

At the request of Mr. DOMENICI, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 167

At the request of Mr. RIEGLE, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 167, a bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds.

S. 173

At the request of Mr. HOLLINGS, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 173, a bill to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, and for other purposes.

S. 190

At the request of Mr. GRAHAM, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 190, a bill to amend 3104 of title 38, United States Code, to permit veterans who have a service-connected disability and who are retired members of the Armed Forces to receive compensation, without reduction, concurrently with retired pay reduced on the basis of the degree of the disability rating of such veteran.

S. 250

At the request of Mr. FORD, the name of the Senator from New York [Mr.

MOYNIHAN] was added as a cosponsor of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 257

At the request of Mr. METZENBAUM, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 257, a bill to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

S. 264

At the request of Mr. COCHRAN, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 264, a bill to authorize a grant to the National Writing Project.

S. 284

At the request of Mr. LIEBERMAN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of payments under life insurance contracts for terminally ill individuals.

S. 316

At the request of Mr. CRAIG, the name of the Senator from Utah [Mr. GARN] 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. 323

At the request of Mr. CHAFEE, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 349

At the request of Mr. BUMPERS, the name of the Senator from Texas [Mr. BENTSEN] 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. 377

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 377, a bill to amend the International Air Transportation Competition Act of 1979.

S. 384

At the request of Mr. MCCAIN, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 384, a bill to delay the effective date of reductions in the CHAMPUS mental health benefit, and for other purposes.

S. 391

At the request of Mr. REID, the name of the Senator from Iowa [Mr. HARKIN]

was added as a cosponsor of S. 391, a bill to amend the Toxic Substances Control Act to reduce the levels of lead in the environment, and for other purposes.

S. 401

At the request of Mr. DOMENICI, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor 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. 420

At the request of Mr. SARBANES, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 420, a bill to increase to \$50,000 the maximum grant amount awarded pursuant to section 601 of the Library Services and Construction Act.

S. 463

At the request of Mr. HATFIELD, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 463, a bill to establish within the Department of Education an Office of Community Colleges.

S. 487

At the request of Mr. GLENN, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 487, a bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare Program.

S. 493

At the request of Mr. KENNEDY, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 493, a bill to amend the Public Health Service Act to improve the health of pregnant women, infants, and children through the provision of comprehensive primary and preventive care, and for other purposes.

S. 523

At the request of Mr. SIMON, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 523, a bill to authorize the establishment of the National African-American Memorial Museum within the Smithsonian Institution.

S. 534

At the request of Mr. LOTT, the names of the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BURNS], the Senator from Maine [Mr. COHEN], the Senator from New York [Mr. D'AMATO], the Senator from Illinois [Mr. DIXON], the Senator from Kansas [Mr. DOLE], the Senator from Utah [Mr. GARN], the Senator from Tennessee [Mr. GORE], the Senator from Florida [Mr. GRAHAM], the Senator from Hawaii [Mr. INOUE], the Senator from Massachusetts [Mr. KERRY], the Senator from Arizona [Mr. MCCAIN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Michigan

[Mr. RIEGLE], the Senator from Tennessee [Mr. SASSER], the Senator from Illinois [Mr. SIMON], the Senator from Colorado [Mr. WIRTH], the Senator from Alaska [Mr. STEVENS], the Senator from Missouri [Mr. BOND], the Senator from Oklahoma [Mr. BOREN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Idaho [Mr. CRAIG], the Senator from Arizona [Mr. DECONCINI], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. EXON], the Senator from Ohio [Mr. GLENN], the Senator from Washington [Mr. GORTON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. LUGAR], the Senator from Georgia [Mr. NUNN], the Senator from Nevada [Mr. REID], the Senator from Virginia [Mr. ROBB], the Senator from Alabama [Mr. SHELBY], the Senator from Wyoming [Mr. WALLOP], the Senator from Nevada [Mr. BRYAN], the Senator from New York [Mr. MOYNIHAN], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 534, a bill to authorize the President to award a gold medal on behalf of the Congress to Gen. H. Norman Schwarzkopf, and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 565

At the request of Mr. WARNER, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 565, a bill to authorize the President to award a gold medal on behalf of the Congress to Gen. Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 567

At the request of Mr. SANFORD, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 567, a bill to amend title II of the Social Security Act to provide for a gradual period of transition (under a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927, and related beneficiaries, and to provide for increases in such workers' benefits accordingly, and for other purposes.

S. 591

At the request of Mr. BRYAN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 591, a bill to require airbags for certain newly manufactured vehicles.

S. 593

At the request of Mr. CHAFEE, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 593, a bill to amend title 23, United States Code, to control billboard adver-

tising adjacent to Interstate Federal-aid primary highways, and for other purposes.

S. 596

At the request of Mr. MITCHELL, the names of the Senator from Nebraska [Mr. KERREY], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 596, a bill to provide that Federal facilities meet Federal and State environmental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements.

SENATE JOINT RESOLUTION 6

At the request of Mr. JOHNSTON, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Alabama [Mr. SHELBY], and the Senator from Nevada [Mr. REID] were added as cosponsors of Senate Joint Resolution 6, a joint resolution to designate the year 1992 as the "Year of the Wetlands."

SENATE JOINT RESOLUTION 49

At the request of Mr. SARBANES, the names of the Senator from Georgia [Mr. FOWLER] and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Joint Resolution 49, a joint resolution to designate 1991 as the "Year of Public Health" and to recognize the 75th Anniversary of the founding of the Johns Hopkins School of Public Health.

SENATE JOINT RESOLUTION 52

At the request of Mr. DECONCINI, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Joint Resolution 52, a joint resolution to designate the months of April 1991 and 1992 as "National Child Abuse Prevention Month."

SENATE JOINT RESOLUTION 65

At the request of Mr. D'AMATO, the name of the Senator from Idaho [Mr. CRAIG] 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 69

At the request of Mr. RIEGLE, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Joint Resolution 69, a joint resolution to designate the week commencing May 5, 1991, through May 11, 1991, as "National Correctional Officers Week."

SENATE JOINT RESOLUTION 70

At the request of Mr. LIEBERMAN, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Joint Resolution 70, a joint resolution to establish April 15, 1991, as "National Recycling Day."

SENATE JOINT RESOLUTION 72

At the request of Mr. SPECTER, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Joint Resolution 72, a joint resolution to designate the week of Sep-

tember 15, 1991, through September 21, 1991, as "National Rehabilitation Week."

SENATE JOINT RESOLUTION 73

At the request of Mr. SPECTER, the names of the Senator from Missouri [Mr. BOND], the Senator from Maine [Mr. COHEN], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 73, a joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 79

At the request of Mr. D'AMATO, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Mississippi [Mr. COCHRAN], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 79, a joint resolution authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week."

SENATE JOINT RESOLUTION 85

At the request of Mr. KASTEN, the names of the Senator from Connecticut [Mr. DODD], the Senator from Washington [Mr. GORTON], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 85, a joint resolution authorizing and requesting the President to appoint General Colin L. Powell and General H. Norman Schwarzkopf, Jr., United States Army, to the permanent grade of General of the Army.

SENATE CONCURRENT RESOLUTION 14

At the request of Mr. LEVIN, his name was added as a cosponsor of Senate Concurrent Resolution 14, a concurrent resolution requesting the United States Trade Representative to enforce the rights of United States beer exporters against unjustified treatment by Canadian provincial liquor control boards.

SENATE CONCURRENT RESOLUTION 16

At the request of Mr. MACK, the names of the Senator from Texas [Mr. GRAMM], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Hawaii [Mr. AKAKA], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Concurrent Resolution 16, a concurrent resolution urging Arab states to recognize, and end the state of belligerency with, Israel.

At the request of Mr. ROBB, the names of the Senator from Florida [Mr. GRAHAM], the Senator from New Jersey [Mr. BRADLEY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Kentucky [Mr. FORD], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Concurrent Resolution 16, supra.

## SENATE RESOLUTION 41

At the request of Mr. LIEBERMAN, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Resolution 41, a resolution to establish April 15, 1991, as "National Recycling Day."

## SENATE RESOLUTION 71

At the request of Mr. SPECTER, the names of the Senator from Idaho [Mr. CRAIG], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Resolution 71, a resolution to encourage the President of the United States to confer with the sovereign state of Kuwait, countries of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals, including President Saddam Hussein, involved in the planning or execution of crimes against peace, war crimes, and crimes against humanity as defined under international law.

## SENATE RESOLUTION 72

At the request of Mr. KASTEN, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Wisconsin [Mr. KOHL], the Senator from Hawaii [Mr. AKAKA], the Senator from Illinois [Mr. SIMON], the Senator from Connecticut [Mr. DODD], the Senator from North Dakota [Mr. BURDICK], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from South Dakota [Mr. DASCHLE], the Senator from Maryland [Mr. SARBANES], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Resolution 72, a resolution to express the sense of the Senate that American small businesses should be involved in rebuilding Kuwait.

## SENATE CONCURRENT RESOLUTION 17—RELATIVE TO CERTAIN REGULATIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Mr. HATCH submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

## S. CON. RES. 17

Whereas it is in the public interest to reduce the frequency of workplace accidents and the human and economic costs associated with such injuries;

Whereas workplace accidents involving powered industrial trucks are often the result of operation by poorly trained, untrained, or unauthorized operators;

Whereas Federal regulations promulgated by the Occupational Safety and Health Administration and codified at 29 C.F.R. 1910.178 require that operators of powered industrial trucks be trained and authorized;

Whereas existing regulations lack any guidelines to measure whether operators of powered industrial trucks are in fact trained and authorized;

Whereas operator training programs have been demonstrated to reduce the frequency and severity of workplace accidents involving powered industrial trucks; and

Whereas a petition to amend existing regulations to specify the proper components of a training program for operation of powered industrial trucks has been pending before the Occupational Safety and Health Administration since March 1988: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That the Occupational Safety and Health Administration is requested to publish, before the expiration of the 102nd Congress, proposed regulations amending 29 C.F.R. 1910.178 that specify the components of an adequate operator program and that only trained employees be authorized to operate powered industrial trucks.

## SENATE CONCURRENT RESOLUTION 18—RELATIVE TO HUMAN RIGHTS IN BURMA

Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. MOYNIHAN, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, and Mr. SIMON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

## S. CON. RES. 18

Whereas since September 1988 the people of Burma have been subject to a military dictatorship which has surpassed massive prodemocracy demonstrations;

Whereas the State Law and Order Restoration Council has not transferred legal authority to a civilian government as required by the results of the May 1990 elections, in which the National League for Democracy received some 60 percent of valid votes cast and over 80 percent of parliamentary seats;

Whereas, on January 31, 1991, the United States Department of State submitted to the Congress its annual Country Reports on Human Rights Practices, and therein reported that Burma's deplorable human rights situation did not improve in 1990, citing torture, disappearances, arbitrary arrests and detentions, unfair trials and compulsory labor, among other violations.

Whereas the State Law and Order Restoration Council has led a campaign to decimate the National League for Democracy (NLD) through press attacks, blocked publications, office raids and the imprisonment of hundreds of NLF officials;

Whereas the Government of Burma has been hostile to outside scrutiny of its human rights record and has been unwilling to provide meaningful access to international and nongovernmental organizations concerned about human rights;

Whereas Burma has not met the certification requirements listed in section 802(b) of the Narcotics Control Trade Act of 1986;

Whereas an estimated 50,000 Burmese have fled to the border between Thailand and Burma and at least 2,000 Burmese students have fled to Bangkok since 1988;

Whereas while Thai authorities have permitted temporary safe haven to thousands of displaced Burmese and Burmese refugees in Thailand, the Government of Thailand has not yet permitted comprehensive United Nations protection and assistance for Burmese in Thailand;

Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That the Congress—

(1) calls upon the State Law and Order Restoration Council to cede legal authority to a civilian government as mandated by the elections of May 1990;

(2) condemns the arrest and detention of Burmese citizens for the peaceful expression of their political views;

(3) condemns the Government of Burma's disregard of human rights and fundamental freedoms;

(4) urges the President to impose additional economic sanctions upon Burma as specified in section 138 of the Customs and Trade Act of 1990;

(5) calls upon the United Nations Human Rights Commission to seek greater access to Burma for its Expert on human rights in Burma, and to continue and expand its scrutiny over the human rights situation in the country.

(6) urges the United States, through the Secretary of State, to affirm its support for the resettlement of Burmese asylum seekers who are without other safe and reasonable alternatives; and

(7) urges the Government of Thailand to accord all displaced Burmese and Burmese asylum seekers temporary safe haven, protection against return of those who might face persecution or other threats to their lives or freedoms upon return to Burma, and access to procedures for third country resettlement for those Burmese refugees who are without safe and reasonable alternatives.

Mr. CRANSTON. Mr. President, I rise today to submit a concurrent resolution with the support of Senators MITCHELL, PELL, MOYNIHAN, KERRY, AKAKA, GORE, KENNEDY, ROBB, DECONCINI, and SIMON condemning brutal human rights abuses in Burma.

The situation in Burma is deteriorating daily. The military junta in charge—the State Law and Order Restoration Council—has kept most of the world ignorant of developments in that distant land: few tourists are allowed in and even fewer journalists or human rights observers. I was denied a visa to Burma last summer when I applied.

We must do what we can to retract this dark curtain of secrecy that has been drawn across Burma.

Democracy's back is being broken by Burma's military junta. In elections last May the opposition National League for Democracy won an overwhelming victory in the first multiparty elections in 28 years. The progovernment National Unity Party even lost the soldier's vote. Since then, the generals have systematically reasserted their control, forcibly relocating and razing the residences of opposition strongholds, arresting the few remaining opposition leaders not already jailed, and now are trying to intimidate the Buddhist monks who have on September 6, essentially excommunicated the military by refusing to bless or perform religious services for them.

During peaceful demonstrations in 1988, the military killed at least 3,000. The Burmese military reportedly use civilians as "human minesweepers" in their war with ethnic insurgents. The State Department in its 1990 human rights report concluded that "torture, beatings, and mistreatment of political detainees were commonplace." In its 1991 report incidents of torture, dis-

appearances, arbitrary arrests and detentions, unfair trials and compulsory labor are just some of the other human rights violations attributed to the Burmese Government.

Since July 1989, Aung San Suu Kyi, a central opposition leader and daughter of one of Burma's national heroes, has been under house arrest.

The United States claims it has no leverage over Burma, having ended all aid including drug enforcement assistance. But the United States continues to encourage foreign investment and United States public condemnation of human rights conditions have not been sufficiently vehement to discourage our friends in the region—the Thais, Singaporeans, Malaysians, Chinese, and Koreans—from discontinuing their trade and aid including military assistance. In addition, with the exception of humanitarian relief, no aid should be provided by any multilateral agency, including for antidrug programs.

Before the Burmese rejected his nomination, Frederick Vreeland, President Bush's nominee to be ambassador, testified before my subcommittee that it was his opinion that sanctions were "inescapable, at this point."

Now is the time for the President to act.

The resolution I am offering urges the United States to take stricter measures toward the Government of Burma by implementing economic sanctions as required in the Customs and Trade Act of 1990.

With this resolution, the Congress sends a clear signal of our concern over events in Burma. I urge my colleagues to join me in this initiative.

#### SENATE CONCURRENT RESOLUTION 19—RELATIVE TO HUMAN RIGHTS VIOLATIONS IN THE PEOPLE'S REPUBLIC OF CHINA

Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. BIDEN, Mr. DECONCINI, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. DIXON, and Mr. SIMON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

##### S. CON. RES. 19

Whereas the President has stated that it is the goal of the United States to seek a new world order in which respect for the rule of law and the fundamental rights of all people are the international standard;

Whereas the People's Republic of China as a member state of the United Nations have assumed an obligation to embrace and uphold international human rights standards embodied in the United Nations Charter and the Universal Declaration of Human Rights;

Whereas the United States Department of State has submitted to the Congress on January 31, 1991, its annual Country Reports on Human Rights Practices, and therein reported that observance of human rights in China fell far short of internationally recognized norms in 1990, citing torture, deten-

tion, unfair trials and the restrictions of religious practices among other violations;

Whereas the Amnesty International and Asia Watch have reported that thousands of Chinese citizens have been arrested and detained for prolonged periods without charges for activities related to the pro-democracy movement and the 1989 demonstrations, and that an indeterminate number are still in detention;

Whereas the Government of the People's Republic of China recently convicted and sentenced persons involved in the 1989 pro-democracy movement who the United States Department of State declared had committed no crime other than the peaceful advocacy of democracy, including Chinese student leader Wang Dan, human-rights advocate Ren Wandong, and intellectuals Wang Juntao and Chen Ziming;

Whereas the AFL-CIO and the Hoover Institution for War, Revolution and Peace report that the People's Republic of China continues to export goods produced in forced labor camps to the United States;

Whereas the government of the People's Republic of China continues to provide lethal military assistance to the murderous Khmer Rouge forces in Cambodia;

Whereas the United States Department of State, human, rights organizations including Amnesty International and Asia Watch, and the international press continue to report human rights violations in Tibet, including the use of excessive force on peaceful demonstrations, arbitrary arrest and detention, unfair trials, torture and death from torture, the restriction of religious practices, and systematic pattern of discrimination, among other violations;

Whereas the government of the People's Republic of China continues to imprison Tibetans for the peaceful expression of their political, cultural and religious views, including Tamdin Sithar, Yulo Dawa Tsering, Turing Chungdak, Ngawang Puchung, Tseten Norgye, Lhakpa Tsering, Dawa Dolma, Tenzin Phuntsog, Agyal Tsering and Ngawang Youdon;

Whereas the government of the People's Republic of China maintains a vast penal system in the Qinghai and Xinjiang provinces of China for the purpose of detaining political dissidents and has refused any access by international human rights organizations and the International Committee of the Red Cross to these prisons;

Whereas the government of the People's Republic of China persecutes and unjustly imprisons sectarian religious leaders for attempting to practice their faith;

Whereas the Amnesty International reports that after abbreviated trials at least 50 persons were summarily executed before the opening of the Asian Games as a deterrent against pro-democracy protests during the Games; Now, therefore

*Resolved by the Senate (the House of Representatives concurring), That the Congress—*

(1) condemns the government of the People's Republic of China's gross violations of internationally recognized human rights in China, including Tibet;

(2) condemns the arrest and detention of Chinese citizens for the peaceful expression of their political, cultural, and religious views;

(3) calls upon the government of the People's Republic of China to release the number and names of political and religious prisoners in China, including Tibet, the charges laid against them, and the dates scheduled for their trials;

(4) calls upon the Government of China to allow international human rights organiza-

tions to observe the trials of political prisoners and the Chinese judicial process, and to allow the International Red Cross to visit detention and reeducation centers and prisons;

(5) calls upon the Government of the People's Republic of China to cease its support of the Khmer Rouge forces in Cambodia; and

(6) urges the President to inform Chinese leaders that the persistence of human rights abuses and continued detention of political prisoners will have a negative effect upon decisions to renew most-favored-nation trade status.

Mr. CRANSTON. Mr. President, today I am submitting a concurrent resolution on behalf of myself and Senators MITCHELL, PELL, KERRY, BIDEN, DECONCINI, AKAKA, GORE, KENNEDY, ROBB, DIXON, and SIMON condemning the continuing abuse of human rights in the People's Republic of China. We must not permit these gross violations of internationally recognized human rights go unnoticed.

Most recently, the Chinese Government exploited the Middle East crisis by accelerating trials of dissidents and intellectuals who had committed no other crime than the peaceful advocacy of democracy, hoping that as the world was preoccupied with reestablishing freedom in the Persian Gulf, no one would notice the continued suppression of freedom in China.

But we did notice.

As the State Department noted in its 1990 human rights report issued last month, in China "observance of human rights fell far short of internationally recognized norms." Incidences of torture, detention, unfair trials, and the restriction of religious practices, are some common human rights violations by the Chinese Government.

Numerous other reports, such as those by Asia Watch and Amnesty International, also document efforts by Chinese authorities to stifle efforts by any citizens to promote democracy.

For the record, Mr. President, I request that a publication of the Lawyers Committee for Human Rights, entitled "People's Republic of China: Trials of Pro-Democracy Activists," be included following my statement. This excellent report details how little respect the Chinese Government has for basic human rights.

In recent testimony before the Foreign Relations Committee, Assistant Secretary Richard Schifter remarked that the United States should "continue to urge governments which deliberately violate the human rights of their citizens to cease and desist."

Mr. President, it is time that the Congress voiced as one its concern over the failure of improvement in China's human rights conditions.

Nor should we forget China's illegal occupation and terrorization of Tibet where China has done its best to not only rob a culture but eradicate one.

We must have a consistent American policy opposing human rights abuses

wherever they occur—not finding excuses to ignore them when it is convenient. Unfortunately, the President has already waived several of the 1989 congressionally mandated sanctions, including:

Granting a waiver of the suspension of military sales for the sale of 4 Boeing 757-200 commercial jets with navigation systems that could be converted to military use;

Permitting Chinese military officers to return to work at two United States facilities where they had been assisting American engineers in upgrading China's F-8 fighter with United States avionics;

Allowing high-level meetings between United States and Chinese officials despite an ostensible ban on such meetings, with President Bush meeting most recently the Chinese Foreign Minister in the White House;

Waiving congressionally imposed prohibitions on export licenses for three United States made communications satellites to be launched on Chinese missiles; and

Refusing to impose new restrictions on Eximbank funding for China which Congress enacted in H.R. 2494, the International Development and Finance Act of 1989.

Mr. President, this resolution represents a large step toward correcting the direction of U.S. foreign policy. I intend to hold hearings on China as we approach the time to reconsider renewing China's most-favored-nation status. I believe their human rights conduct should be a key factor in determining whether or not we grant that renewal.

Many of my colleagues have already joined in this resolution. I welcome more.

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

[From Lawyers Committee for Human Rights, NEW YORK, NY, Feb. 12, 1991]

PEOPLE'S REPUBLIC OF CHINA: TRIALS OF PRO-DEMOCRACY ACTIVISTS

In recent weeks the government of the People's Republic of China (PRC) has tried and convicted more than two dozen students and intellectuals accused of engaging in "counter-revolutionary activities" during the 1989 pro-democracy movement.<sup>1</sup> According to information available to the Lawyers Committee, these trials have not met international fair trial standards such as are found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These standards include the right of a criminal defendant to a public hearing by competent, independent and impartial tribunal; the right to adequate time and facilities to communicate with counsel of one's own choosing and to prepare a defense; the right to present evidence and witnesses on one's behalf; and the right to

have one's case reviewed by a higher tribunal.<sup>2</sup>

On January 5, 1991 the official Xinhua news agency announced that seven political activists were convicted for inciting "subversion against the people's government and the overthrowing of the socialist system during the 1989 turmoil and rebellion."<sup>3</sup> Those convicted included four student leaders on the government's "21 most-wanted" list: Zheng Xuguang, 22, from the Beijing Aerospace and Aeronautics University; Zhang Ming, 23, from Qinghua University; Wang Youcai, 24, a physics graduate from Beijing University; and Ma Shaofang, 26, from Beijing Film Academy. All had leadership positions with the now-banned Beijing Students Autonomous Federation, which played a key role in the spring demonstrations. They received prison terms ranging from two to four years. Two other students convicted of minor offenses had criminal punishment waived.<sup>4</sup>

On January 26, 1991, the government announced a second round of convictions. Six persons received prison terms ranging from two to seven years. Three persons were convicted but exempted from criminal punishment. At least eighteen others were released without trial after authorities found "they committed only minor crimes and have shown repentance and performed meritorious services."<sup>5</sup> Forty-five more persons were released after investigation by the Public Security Bureau (the police) without having been formally arrested.<sup>6</sup> All had been in detention since being apprehended following the June 1989 crackdown.<sup>7</sup>

Among those recently sentenced to prison terms are:

Wang Dan, a 22-year-old history student at Beijing University, headed the government's 21 most-wanted list. Prior to the Tiananmen Square demonstrations, he had promoted campus discussions on political reform. He was among the student leaders who organized student protest marches and was the author of an article in May 1989 that called for political reform.<sup>8</sup> He was arrested on July

<sup>1</sup> See International Covenant on Civil and Political Rights, art. 14. Although the PRC is not a party to the Covenant, the Covenant provides the fullest expression of basic fair trial rights as they exist under international law.

<sup>2</sup> Xinhua news agency, Jan. 5, 1991, as reported in Foreign Broadcast Information Service, "China: Daily Report" [hereinafter FBIS], Jan. 7, 1991, at 15. A month after the Tiananmen Square crackdown, the Chinese government issued a circular which listed five categories of offenses under which individuals may be detained. These are: (1) "propagating and actively supporting the spread of bourgeois liberalization"; (2) "supporting, organizing and participating in the counter-revolutionary rebellion"; (3) leading illegal organizations formed during the protests in April and May 1989; (4) working with "enemy organizations outside the country"; and (5) committing violent crimes during the demonstrations such as "smashing, burning and killing." Punishment for any of these crimes range "from prison to reform through labor and in extreme cases execution." Circular, July 9, 1989 as reported in Hong Kong Standard, July 11, 1989.

<sup>3</sup> New York Times, Jan. 6, 1991.

<sup>4</sup> Xinhua news agency, as reported in UPI, Jan. 26, 1991.

<sup>5</sup> Xinhua news agency, Jan. 27, 1991.

<sup>6</sup> For detailed descriptions of persons in detention, see Amnesty International, "People's Republic of China: A New Stage of Repression" Dec. 1990; Asia Watch, "Update on Arrests in China," Jan. 30, 1991; Asia Watch, "Rough Justice in Beijing," Jan. 17, 1991.

<sup>7</sup> Wang wrote: "We make no attempt to conceal the aim of the current student movement, which is to exert pressure on the government to promote the progress of democracy. \* \* \* People's yearning for democracy, science, human rights, freedom, reason and equality, which lack a fundamental basis in

2, 1989. According to a notice posted outside the Intermediate People's Court in Beijing, Wang was convicted on charges of "agitating counter-revolutionary propaganda" and sentenced to four years' imprisonment.<sup>9</sup>

Ren Wandong, a 46-year-old factory accountant, is a long-time human rights activist who was imprisoned in 1979-83 for his essays written during the Democracy Wall movement in the late 1970s. One of the few Democracy Wall activists to give speeches in Tiananmen Square, Ren distributed articles he had written calling for respect for the rule of law and freedom of expression. He was arrested in his home on June 9, 1989; in March 1990 his family received a notice that he would be charged with "counter-revolutionary incitement" but the formal charges may not have been filed until November. On January 26, 1991, the official Xinhua news agency reported that Ren "was found guilty of grave crimes and showed no repentance." He was sentenced to a seven-year prison term.

Bao Zunxin, in his fifties, is a philosopher and leading intellectual. Prior to the June 1989 crackdown, Bao had written several petitions to the government calling for reform and the release of political prisoners. He had also attempted to organize intellectuals in support of the student demonstrators. He was arrested on July 7, 1989 and was included in a September 1989 government list of "Major criminals on Ministry of Public Security wanted lists who have now either been caught or have turned themselves in." On January 26, 1991, he was sentenced to five-years' imprisonment for "agitating counter-revolutionary propaganda."<sup>10</sup>

Guo Haifeng, a 24-year-old Beijing University student, was at one time chairperson of the Beijing Students Autonomous Federation. On April 24, 1989, Guo and two other students attempted to petition the government to rehabilitate posthumously former party secretary-general Hu Yaobang. According to official accounts, he was apprehended on June 4, 1989 "by the martial law enforcement troops while he and a gang of ruffians were trying to set fire to an Army unit's armored vehicle."<sup>11</sup> Guo's trial began on January 9, 1991, but his family reportedly was not notified by the court and had to search for a lawyer willing to attend the sentencing and file an appeal. On January 26, 1991, the Beijing Intermediate People's Court sentenced him to four-year's imprisonment for "counter-revolutionary sabotage."<sup>12</sup>

Liu Zihou, a 34-year-old worker at the Beijing Aquatic Products Company, was arrested on June 18, 1989 and accused of being the head of the illegal Capital Workers' Special Picket Corps. He was convicted for "incitement to armed rebellion." Unlike the students and intellectuals convicted, Liu's sentence has not been announced. A court spokesperson told a reporter only that Zihou had received a "relatively lenient sentence of several years in prison."<sup>13</sup>

On February 12, the government announced sentences in the cases of four persons charged with "conspiracy to overthrow the government." Two of the defendants received 13-year prison terms, one a six-year sentence and one was "exempt from criminal

China, have once again been aroused." Quoted in the UPI, Jan. 23, 1991.

<sup>9</sup> UPI, Jan. 23, 1991.

<sup>10</sup> See Asia Watch, "Update on Arrests in China," Jan. 30, 1991 at 4-5.

<sup>11</sup> Beijing Radio, June 10, 1989.

<sup>12</sup> Asia Watch, "Update on Arrests" in China, Jan. 30, 1991 at 4.

<sup>13</sup> UPI, Feb. 4, 1991.

<sup>1</sup> The Criminal Law of the PRC, arts. 90 to 104, sets out various "crimes" of counter-revolution, "including sedition, organizing a counter-revolutionary group and spreading counter-revolutionary propaganda."

punishment." By law, conviction for sedition carries a minimum ten-year prison term but can result in the death penalty if the case is considered "especially serious."<sup>14</sup> Those convicted were:

Economist Chen Ziming, 38, and journalist Wang Juntao, 32, were each sentenced to 13 years' imprisonment. According to the Xinhua news agency, they were found guilty of forming illegal organizations and conducting a "series of activities to subvert the government." They were also found to have organized and directed "the interception of and attacks against the armed forces that were enforcing martial law and helping safeguard public order."<sup>15</sup> Prior to the trial, the government had labeled Chen and Wang as the "black hands" (conspirators) behind the 1989 student movement.<sup>16</sup> In the mid-1980s Chen organized the private Social and Economic Sciences Research Institute, which promoted political and economic reform. Wang was an editor of the Institute's now-banned *Economic Studies Weekly*, which often criticized government economic policies and reported on the 1989 student demonstrations. In May 1989 Chen and Wang organized an association dedicated to advancing "freedom, democracy, the rule of law and civilization," which the government declared illegal after the June crackdown. Both were arrested in October or November 1989 and have been detained incommunicado in Quincheng prison since that time.<sup>17</sup>

Liu Gang, a 29-year-old physics graduate from Beijing University, received a six-year sentence for "committing serious crimes." This was reported as a "mitigated sentence" because he had shown a willingness to repent.<sup>18</sup> Liu has for several years spoken out for greater respect for human rights in China. He was listed third on the government's 21 most-wanted list and was a prominent member of the Beijing Students Autonomous Federation. In July 1989, the Chinese press accused him of organizing a "democracy salon," whose proceedings were evidence of an attempt "to overthrow the leadership of the Chinese Communist Party and the socialist system."<sup>19</sup>

Chen Xiaoping, 29, a constitutional law scholar at the University of Politics and Law in Beijing and long-time human rights advocate, was exempted from criminal punishment. Xinhua reported that this was because he had surrendered voluntarily to the authorities and had shown repentance.<sup>20</sup> During student demonstrations in 1985, when he was a doctoral candidate in Beijing University's law department, Chen wrote in a wall poster: "China's constitution guarantees freedom of expression and assembly. Yet they tear down posters and arrest peaceful demonstrators. China should either follow its own laws or face up to its actual policies honestly, and delete these bogus rights from the constitution."<sup>21</sup> As a result of his statements, he was denied a prestigious job with the Legal Commission of the Standing Com-

mittee on the National People's Congress. In 1989, he played a leading role in organizing the Beijing Citizens Autonomous Union, an activist group that sought to include students, workers and intellectuals. He was arrested shortly after June 4, 1989.<sup>22</sup>

#### PRINCIPAL LEGAL CONCERNS

The Lawyers Committee believes that the trials of pro-democracy activists have not met international fair trial standards or fair trial provisions under Chinese law. As one journalist wrote about the Chinese criminal justice system, it presents "a facade that provides for strict legal procedures, but in practice permits caprice, secrecy and intimidation. To read the Chinese legal code, one might think that the system is well developed and orderly; in practice, many of the legal guarantees seem meaningless."<sup>23</sup> In crucial respects, including the right to a public trial, access to an attorney, and the opportunity to present a defense, Chinese legal practice is at odds with Chinese and international law. The recent trials of pro-democracy activists is disturbing testimony to the lack of respect for the rule of law in the PRC.

#### *Prolonged Detention Without Charge or Trial*

Those recently prosecuted for their participation in the pro-democracy movement have been held in apparent violation of Chinese law. Families of detained pro-democracy activists reported that they received formal notification of arrest only in late November 1990.<sup>24</sup> This notification, coming as long as 18 months after apprehension, far exceeds provisions of the PRC Criminal Procedure Law, which requires that persons detained by the Public Security Bureau be formally arrested within ten days following detention.<sup>25</sup> Moreover, under the procedural law, the maximum period for which the authorities may detain a person before formally deciding to prosecute or granting a release is five and a half months.<sup>26</sup>

#### *Closed Trials*

The recent trials of political activists have not been open to the public in contravention of international standards providing for open trials<sup>27</sup> and provisions of Chinese law. The PRC Constitution at article 125 states that

<sup>22</sup> See Asia Watch, "Update on Arrests in China," Jan. 30, 1991.

<sup>23</sup> WeDunn, "In Murky Trials, China Buries Tiananmen Affair," *New York Times*, Jan. 20, 1991.

<sup>24</sup> On November 24, 1990, relatives of Wang Juntao, 32, and possibly Chen Ziming, 38, editors of the now banned *Economic Studies Weekly*, received notices from the Public Security Bureau that indicated the filing of formal charges was imminent.

<sup>25</sup> PRC, Criminal Procedure Law (1980), art. 48. Art. 48 provides that if the Public Security Bureau or the procuratorate does not approve an arrest within ten days of detention, "the detained person or his family has the right to demand release, and the public security organ or the people's procuratorate shall immediately release him."

<sup>26</sup> See Criminal Procedure Law, arts. 92, 93, 97 & 99. Further extension may only occur with the approval of the Standing Committee of the National People's Congress. Asia Watch believes that the pro-democracy activists may have been held under a form of administrative detention called "shelter and investigation" (shourong schencha), which is of questionable legal basis. See Asia Watch, "Rough Justice in Beijing," Jan. 17, 1991 at 4-5. In an interview with the Lawyers Committee, a PRC judge said that "in many cases," criminal and political suspects remain detained beyond the legal limit, even when the procuratorate finds "there is not enough evidence [to convict the person]." He added that the procuratorate often is "not willing to release the defendant because they think the defendant must have committed a crime, or that maybe they can find evidence later on."

<sup>27</sup> See Universal Declaration, art. 11; International Covenant on Civil and Political Rights, art. 14.

"[a]ll cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public." The Criminal Procedure Law at article 111 provides that the "people's courts shall conduct adjudication of cases in the first instance in public. However, cases involving state secrets or the private affairs of individuals are not to be heard in public. \* \* \* The reasons for not hearing it in public shall be announced in court."<sup>28</sup>

The Chinese government has insisted that the trials of pro-democracy activists have been held in public.<sup>29</sup> The Xinhua news agency reported that 60 people and relatives of some of the defendants attended the first set of trials held in January 1991<sup>30</sup> and that "more than 300 local residents" attended the second set of trials in mid-January.<sup>31</sup> However, the authorities closely controlled admission to the trials and some family members of those being tried were excluded.<sup>32</sup> Wang Dan's family learned about his trial on the morning it took place.<sup>33</sup> The wife of human rights advocate Ren Wandong reported that she was not even notified of the trial of her husband, which began on January 9, 1991.<sup>34</sup> The wives of both men were detained briefly by the authorities after they tried to petition for open trials for their husbands.<sup>35</sup>

On December 22, 1990, the Lawyers Committee made a request to the PRC Ministry of Justice to send a delegation to China to monitor trials of pro-democracy activists; to date the Lawyers Committee has not received a reply. Efforts by foreign news agencies, diplomats in Beijing and international human rights organizations to attend the trials have also been unsuccessful.<sup>36</sup> One court spokesperson said that the ban on foreign observers was based on the court's informal interpretation of an internal Supreme Court regulation.<sup>37</sup> This regulation has not been made public.

<sup>28</sup> Criminal Procedure Law, art. 111.

<sup>29</sup> Xinhua news agency, Jan. 5, 1991, as reported in FBIS, Jan. 7, 1991, at 15; see also statement of Wang Mingdi, deputy director of the Academic Research Committee of Law on Reform through Labor of Chinese Law Society, in *South China Morning Post*, Dec. 4, 1990.

<sup>30</sup> Xinhua news agency, as reported in *China News Digest*, Jan. 5, 1991.

<sup>31</sup> Xinhua news agency, as quoted in *Washington Post*, Jan. 27, 1991.

<sup>32</sup> It is the practice in China for the authorities to issue tickets for entrance to trials. According to a PRC judge, this is done in order to control the number of people attending because courtrooms are usually small and can accommodate only a limited number of people. In ordinary criminal cases, no one is denied admission in court hearings. But the judge conceded that admission tickets for trials of "serious" cases are issued by local Communist Party leaders at their discretion.

<sup>33</sup> *New York Times*, Jan. 27, 1990.

<sup>34</sup> *New York Times*, Jan. 20, 1991.

<sup>35</sup> See "Silence in Court," *Far Eastern Economic Review*, Jan. 31, 1991.

<sup>36</sup> An official of the Beijing High People's Court told journalists that the trial of student leader Wang Dan "is not open to foreigners." A six-member delegation from the Hong Kong Federation of Students was denied entry to the court to monitor the proceedings against Wang. Twice journalists were asked by security officers to move away from a board where the notice of Wang's trial was posted. *Agence France Presse*, Jan. 23, 1991, as reported in FBIS, Jan. 23, 1991.

<sup>37</sup> UPI, Jan. 29, 1991. "If there is such an order then we've been given the royal runaround," one diplomat was quoted as saying. "We've been told all day that the trials are open." *Associated Press*, Jan. 9, 1991.

<sup>14</sup> Criminal Code of the PRC, art. 104.

<sup>15</sup> Xinhua news agency, as reported in *Reuters*, Feb. 12, 1991.

<sup>16</sup> *South China Morning Post*, June 21, 1990, as reported in FBIS, June 21, 1990 at 8.

<sup>17</sup> See Asia Watch, "Rough Justice in Beijing," Jan. 17, 1991 at 15-25.

<sup>18</sup> Xinhua news agency, as reported in *Reuters*, Feb. 12, 1991.

<sup>19</sup> *Beijing Daily*, July 25, 1989, quoted in *Amnesty International, Urgent Action*, Jan. 25, 1991.

<sup>20</sup> Xinhua news agency, as reported in *Reuters*, Feb. 12, 1991.

<sup>21</sup> Quoted in *Amnesty International*, "The People's Republic of China: A New Stage in the Repression," Dec. 1990 at 13.

*Limitations on the Right to Counsel and to Present a Defense*

Right to counsel during criminal proceedings in the PRC is always limited, but during the recent trials of pro-democracy activists it was even further circumscribed. The PRC Constitution and the Criminal Procedure Law provide that a criminal defendant has a right to defend himself<sup>38</sup> and obtain a lawyer or have one provided for him.<sup>39</sup> By law, defense counsel may meet with the defendant in custody to prepare a case.<sup>40</sup> However, the Criminal Procedure Law stipulates that the defendant may only appoint counsel, or have a lawyer designated by the government to defend him, after the people's court has decided to open the court session and adjudicate the case.<sup>41</sup> As a result, the defendant is not entitled to counsel during the preliminary investigation and may be subjected to repeated interrogations over the course of many months without ever being able to meet with an attorney. Defendants typically do not have access to a lawyer until the prosecution issues a formal indictment and the trial date is set, which may be as few as seven days before the trial.<sup>42</sup> According to friends and family members of Chen Ziming, he began a hunger strike on February 7 in order to delay the start of his trial so that his attorney would have adequate time to prepare his defense.<sup>43</sup>

The government has imposed further restrictions on the right to counsel of detained pro-democracy activists. Foreign news agencies reported that the Ministry of Justice required that lawyers seeking to represent pro-democracy activists receive its approval. Most defendants were represented by lawyers chosen by the Justice Ministry<sup>44</sup> or who were on a list that the Ministry compiled.<sup>45</sup> Wang Dan's lawyer was appointed for him by the government from the Beijing No. 1 Law Office.<sup>46</sup> In an instance of an exception that proves the rule, the Beijing Intermediate People's Court notified Liu Gang before his trial that he could choose his defense lawyer.<sup>47</sup>

Under Chinese law, defense counsel are entitled—in fact have a duty—to protect the legal interests of their clients. Lawyers are responsible for "safeguarding the lawful rights and interests of the defendant"<sup>48</sup> and for presenting "materials and opinions proving that the defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility."<sup>49</sup> Defense lawyers are also permitted by law to present and question witnesses and evidence during the trial.<sup>50</sup>

In practice the right to present a defense does not meet international fair trial standards.<sup>51</sup> The rights of a criminal defendant in China are sharply undermined by the strong presumption of guilt existing in the criminal justice system. Trials, especially for serious crimes such as "counter-revolutionary activity," are conducted under a procedure openly known in China as "verdict first, trial second." Before a trial commences, the three-member collegial panel of the trial-level People's Court meets and discusses the case based on information provided by the procurator. The panel then presents its findings to the adjudication committee, a body set up in each court to supervise judicial work. These findings include a discussion of the crime with which the defendant should be charged, the evidence applicable in court, and the sentence to be imposed. The adjudication committee has authority to accept or reject the findings of the collegial panel. Decisions are reported and discussed with the relevant Communist Party political-legal committee, especially in serious cases. According to a PRC judge, "political-legal committees have the right to make the final decision," and in some areas decide almost all cases prior to trial.<sup>52</sup> An article in a Chinese legal magazine in 1987 concluded this "makes the open trial degenerate into a mere formality \* \* \* and inevitably results in false and unjust cases. \* \* \* To put the matter more sharply, the practice of 'deciding on verdicts before trial' amounts simply to a refurbished version of the presumption of guilt."<sup>53</sup>

An additional factor limiting the role of defense attorneys and thus infringing upon the fair trial rights of the accused is the long-held tenet of criminal justice in the PRC of "leniency for those who confess, severity for those who resist."<sup>54</sup> Typically, repentance for one's misdeeds plays a far greater role in determining the court's sentence than the presentation of exculpatory evidence. This was evident in the recent court decisions involving pro-democracy activists. According to the government, Wang Dan, who headed the government's 21 most-wanted list, received a four-year sentence, lenient by PRC standards, because he "committed serious crimes but has shown such repentance as confessing his own crimes and exposing others."<sup>55</sup> Liu Xiaobo, a prominent literary critic and long-time dissident, was convicted but exempted from punishment; the government said that Liu had "committed serious crimes but has acknowledged them, showed repentance and performed some major meritorious services."<sup>56</sup> By con-

trast, Ren Wandong, who was also charged with counter-revolutionary activities, received a seven-year term. The government stated that he "was found guilty of grave crimes and showed no repentance." Chen Ziming and Wang Juntao, who received 13-year sentences, were reported by the official news agency as having "so far shown no willingness to repent." According to a source quoted by UPI, Chen "did not acknowledge his guilt, and denied all of the charges against him."<sup>57</sup>

Because of the strong presumption of guilt against the defendant and the emphasis on repentance as the basis for determining sentences, defense lawyers typically devote their energies to showing the remorse of their clients and pleading for a lenient sentence.<sup>58</sup> During the recent trials, the government adopted measures that further weaken the defendant's right to prepare a defense. According to the Hong Kong Federation of Students, which conducted a secret trip to the PRC in January, all lawyers representing pro-democracy activists were required to submit their defenses to the Ministry of Justice for prior approval. Not only strategies, but all statements, had to be approved beforehand by the Justice Ministry.<sup>59</sup> Moreover, according to news reports, lawyers were only permitted to present mitigating circumstances on behalf of their clients; pleas of not guilty were forbidden.<sup>60</sup> The Justice Ministry reportedly informed law professors in Beijing that if they represented pro-democracy activists, they would be allowed to file not guilty pleas.<sup>61</sup> According to "an informed source" quoted in the South China Morning Post, "If, out of reasons including sympathy for the accused, the lawyer resorts to unapproved strategies in court, he will be penalized."<sup>62</sup>

**LIMITATIONS ON THE RIGHT TO APPEAL**

Under Chinese law, appeals must be filed within ten days of judgment,<sup>63</sup> except for appeals of certain capital offenses where the period is only three days.<sup>64</sup> In the past, persons convicted of crimes were deterred from exercising their right to appeal for fear of in-

<sup>38</sup> UPI, Feb. 12, 1991.

<sup>39</sup> See, e.g., Randle Edwards, "Civil and Social Rights: Theory and Practice in Chinese Law Today," in *Human Rights in Contemporary China*, (New York: Columbia University Press, 1986) at 63-67.

<sup>40</sup> South China Morning Post, Dec. 28, 1990.

<sup>41</sup> New York Times, Jan. 28, 1991; Hong Kong Standard, Jan. 10, 1991.

<sup>42</sup> Washington Post, Jan. 21, 1991.

<sup>43</sup> South China Morning Post, Dec. 28, 1990. These restrictions are not unprecedented. An article in a Chinese legal magazine recently stated: "Lawyers \* \* \* suffer interference in their work from party and government organs, especially from the organs of judicial administration. For example, some justice bureaus have a regulation that if a lawyer wishes to present a defense of 'not guilty' in a criminal case, then he must first obtain authorization from the party organization of the justice bureaus of question. Faxue, No. 2, 1988, at 43-45, as quoted in Amnesty International, "People's Republic of China," Aug. 1989 at 43.

<sup>44</sup> Criminal Procedure Law, art. 131.

<sup>45</sup> The shortened appeal period was adopted by the Standing Committee of the National People's Congress during an "anti-crime campaign" in 1983. It applies to crimes of homicide, robbery, rape, causing explosions, arson, spreading poisons, breaching dikes or undermining transportation or electric power equipment and "other activities that seriously threaten public security." See Resolution of September 2, 1983 adopted by the Standing Committee of the National People's Congress Regarding the Procedure for Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security, reprinted in *Civil Law and Criminal Procedure of the PRC*, (Beijing: 1984) at 246.

and to appeal the judgment with the agreement of the defendant (art. 129).

<sup>51</sup> The International Covenant on Civil and Political Rights at art. 14 provides, *inter alia*, that a criminal defendant is entitled "to defend himself in person or through legal assistance of his own choosing"; "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witness against him"; and "not be compelled to testify against himself or to confess guilt."

<sup>52</sup> Lawyers Committee Interviews.

<sup>53</sup> Faxue, Science of Law, 1987 at 15-16, cited in Amnesty International, "People's Republic of China," Aug. 1989 at 40-41.

<sup>54</sup> See Shao-chuan Leng, Justice in Communist China, (Dobbs Ferry, New York: Oceana Publications: 1967) at 162.

<sup>55</sup> Washington Post, Jan. 27, 1990. The Post suggests that the government's claim may have been fabricated to discredit Wang among members of the pro-democracy movement.

<sup>56</sup> The "meritorious services" may have referred to his role in trying to persuade student demonstrators to leave Tiananmen Square the night of the military attack.

<sup>38</sup> PRC Constitution, art. 125.

<sup>39</sup> Criminal Procedure Law, arts. 26 & 27.

<sup>40</sup> Id., art. 29.

<sup>41</sup> Id., art. 110.

<sup>42</sup> See id., art. 110.

<sup>43</sup> AP, Feb. 10, 1991.

<sup>44</sup> UPI, Jan. 29, 1991.

<sup>45</sup> South China Morning Post, Dec. 28, 1990.

<sup>46</sup> New York Times, Jan. 28, 1991.

<sup>47</sup> Hong Kong Standard, Feb. 1, 1991, as reported in FBIS, Feb. 1, 1991 at 18. The Standard considered this to be "an extraordinary concession in the dissident trials."

<sup>48</sup> Criminal Procedure Law, art. 28.

<sup>49</sup> Id.

<sup>50</sup> Id., arts. 114, 115 & 118. To prepare for the defense, the defense counsel is authorized by law to "consult the materials of the case, acquaint himself with the circumstances of the case," and interview and correspond with the defendant if he is held in custody (art. 29). At the trial, the defender has the right to put questions to the defendant and the witnesses (arts. 114, 115); to apply for the notification of new witnesses for the obtaining of new material evidence (art. 117); to participate in debate (art. 118);

curing heavier punishment.<sup>65</sup> The Criminal Procedure Law specifically stipulates that in adjudicating a case appealed by a defendant, the appellate court may not increase the criminal punishment.<sup>66</sup> Should a case be successfully appealed, however, the appellate court may remand the case to the court of first instance,<sup>67</sup> which is not bound by the above provision and hence may increase the sentence. More fundamentally, during the pre-trial discussions in which a verdict is reached, the trial court will frequently consult with the higher court in reaching a decision; as a result, a higher court will be predisposed to a verdict before the case even reaches it on appeal. To the extent that a defendant is faced with constraints and limitations in the full and effective exercise of the right to appeal, there is an effective denial of this right as guaranteed under international fair trial standards.<sup>68</sup>

CONCLUSIONS AND RECOMMENDATIONS

The Lawyers Committee urges the PRC government to release all persons who are being detained for the peaceful exercise of the fundamental rights to expression, association and assembly. Trials conducted should meet fair trial standards as provided under international law. These standards have not been met in the recent trials of pro-democracy activists.

(1) Pro-democracy activists have been detained without charge in contravention of both Chinese and international law. Those who were not promptly charged with a legally-cognizable offense should be released immediately.

(2) The recent trials have denied access to foreign journalists and diplomats, monitors from international human rights organizations, and some family members of the accused. Trials should be fully open to the public.

(3) Cases have apparently been tried under the procedure known as "verdict first, trial second." International law requires trials to be conducted before a tribunal that is fair, independent and impartial.

(4) Chinese law permits detainees to be held without access to an attorney for as long as seven days before trial. As a result, the defendants have insufficient time to prepare a legal defense. International fair trial standards call for adequate time and facilities to prepare a defense. Persons taken into custody should have prompt access to an attorney.

(5) Defendants have been required to pick an attorney from government-provided lists or have had an attorney chosen for them by the government. Defendants must have an opportunity to obtain the counsel of their choice.

(6) Because of the strong presumption of guilt and the emphasis placed on repentance in the Chinese criminal justice system, lawyers are effectively prevented from defending the innocence of their clients in court. During the recent trials, lawyers have reportedly been prevented from filing pleas of not guilty. International fair trial standards re-

quire that defendants and their counsel be given the opportunity to present in court all witnesses and evidence in their defense.

(7) The right to appeal a case to a higher tribunal is undermined in China by the involvement of higher courts in the trial court verdict and the fear that an appeal could ultimately result in a higher sentence. To meet the international standard for the right of appeal, the government must permit appeals to a higher court that took no part in the initial decision.

SENATE CONCURRENT RESOLUTION 20—RELATING TO THE USE OF THE ROTUNDA OF THE CAPITOL TO COMMEMORATE THE DAYS OF REMEMBRANCE OF VICTIMS OF THE HOLOCAUST

Mr. LAUTENBERG (for himself, Mr. METZENBAUM, Mr. PELL, Mr. MURKOWSKI, and Mr. KASTEN) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration.

S. CON. RES. 20

Whereas the United States Holocaust Memorial Council, established pursuant to the Act entitled "An Act to establish the United States Holocaust Memorial Council" (36 U.S.C. 1401), has designated April 7 through April 14, 1991, and April 26 through May 3, 1992, as "Days of Remembrance of Victims of the Holocaust"; and

Whereas the United States Holocaust Memorial Council has recommended that a one-hour ceremony be held at noon on April 11, 1991, and at noon on April 30, 1992, consisting of speeches, readings, and musical presentations as part of the days of remembrance activities: Now, therefore, be it,

*Resolved by the Senate (the House of Representatives concurring),* That the rotunda of the United States Capitol is hereby authorized to be used on April 11, 1991, from 8 a.m. until 3 p.m. and on April 30, 1992, from 8 a.m. until 3 p.m. for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust. Physical preparations for the conduct of the ceremony shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

• Mr. LAUTENBERG. Mr. President, today I am introducing a resolution to reserve the Capitol rotunda for a ceremony to commemorate the victims of the Holocaust. The commemorative ceremony is a way of remembering the victims of the Holocaust and serves to remind all of the apathy that gave rise to this period of unprecedented evil.

As an original member of the President's Commission on the Holocaust, I supported the initial call to remember the victims of the Holocaust through a week-long series of activities. Among the programs initiated by the Commission was an initial commemorative service held in the Capitol rotunda. This annual ceremony still serves as an example for remembering the victims of the Holocaust.

There is so much we can learn from that unforgettable period. Perhaps the greatest lesson was portrayed by Elie Wiesel, Nobel laureate and chairman of the President's Commission on the Hol-

ocaust. He wrote in the original report, "the most vital lesson to be drawn from the Holocaust era is that Auschwitz was possible because the enemy of the Jewish people and of mankind \* \* \* succeeded in dividing, in separating, in splitting human society. \* \* \* And not enough people cared."

If we are going to pass the lessons of the Holocaust era on to future generations, we must publicly remember the evil and suffering that occurred. There is no more fitting place to commit ourselves to this cause than the rotunda of our Capitol, which exemplifies the greatness of the world's largest and strongest democracy.●

SENATE CONCURRENT RESOLUTION 21—COMMENDING THE PEOPLE OF MONGOLIA ON THEIR FIRST MULTIPARTY ELECTIONS

Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. SIMON, Mr. LUGAR, Mr. MOYNIHAN, Mr. PACKWOOD and Mr. DOLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 21

Whereas the people of Mongolia had the first multiparty elections of their seventy year history in July of 1990 and have taken great strides toward a multiparty, pluralistic and democratic government;

Whereas the newly elected government of Mongolia has pledged to continue a peaceful transition to a democratic government and has committed to accept and implement free market and free trade principles;

Whereas the congressional leadership welcomed the President of the newly elected government on his first State visit to the United States in January;

Whereas President Bush has requested the granting of Most Favored Nation status to the Mongolian People's Republic;

Whereas Mongolia has asked for economic assistance to bolster its movement toward democracy and economic reform;

Whereas Mongolia presents the world with an admirable example of the peaceful conversion to free world values and democratic principles: Now, therefore,

*Resolved by the Senate (the House of Representatives concurring),* That the Congress—

(1) hereby offers its congratulations to the people of Mongolia for a generally free and fair election process and looks forward to growth and development of United States-Mongolia relations on issues of mutual interest, such as regional stability, trade, and human rights.

(2) commends the political leaders and parties of Mongolia that worked together to achieve the creation of democratic pluralism and free market institutions and urges the United States Government to continue to grant all appropriate economic and technical assistance to Mongolia and its people.

(3) welcome the people of Mongolia into the community of free nations.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President and requests that he further transmit such copy to the Government of Mongolia.

<sup>65</sup> See Jerome Cohen, *The Criminal Process in the People's Republic of China*, (Cambridge: Harvard Univ. Press, 1968) at 556-63.

<sup>66</sup> Criminal Procedure Law, art. 137. This provision "does not apply to a case where a people's procuratorate presents a protest or a private prosecutor presents an appeal." *Id.*

<sup>67</sup> *Id.*, art. 138.

<sup>68</sup> The International Covenant on Civil and Political Rights at art. 14(4) states that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

SENATE RESOLUTION 77—  
SUPPORTING MASS TRANSIT

Mr. D'AMATO (for himself, Mr. HEINZ, Mr. DIXON, Mr. CRANSTON, Mr. CHAFEE, Mr. HATFIELD, Mr. KERRY, Ms. MIKULSKI, Mr. GORTON, Mr. PACKWOOD, Mr. SPECTER, Mr. DODD, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. BOND, and Mr. SEYMOUR) submitted the following resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. RES. 77

Whereas, the events of the Persian Gulf have brought to the forefront the need to conserve energy and reduce reliance on energy imports.

Whereas, the transportation sector uses 63 percent of the petroleum consumed in the United States. And, automobiles and light trucks account for 40 percent of petroleum consumption.

Whereas, fuel efficiency of mass transit is markedly higher than the average commuter auto.

Whereas, a single person commuting via transit can save 200 gallons of gasoline a year.

Whereas, a subway train can carry up to 34,000 passengers per hour resulting in 30,000 less vehicles on our roads.

Whereas, bus service has the capability to reduce vehicle traffic by 90 cars every time it makes its rounds.

Whereas, the efficient movement of goods, people and services depends on a reliable mass transportation system.

Whereas, chronic congestion of our Nation's highways erodes our ability to meet clean air goals and contributes to lost productivity.

Whereas, last fall Congress increased its commitment to transit infrastructure by increasing revenues into the mass transit account of the highway trust fund.

Whereas, Congress should continue that commitment by allowing those funds to be invested.

Whereas, the Omnibus Budget Reconciliation Act of 1990 provides for increased transportation funding.

Whereas, higher fuel costs, persistent pollution problems, the increasing dependency of elderly citizens on public transportation, the mainstreaming of disabled people and growing congestion of urban corridors will increase the demands on mass transit. Therefore be it

*Resolved, it is the Sense of the Senate, That the 1991 reauthorization of mass transit programs be considered as part of the solution to these and many other national problems.*

• Mr. D'AMATO. Mr. President, I rise today to introduce legislation that expresses a strong sense of the Senate that a national commitment be made to our mass transit programs. I am pleased to be joined by Senators HEINZ, DIXON, CRANSTON, CHAFEE, HATFIELD, KERRY, MIKULSKI, GORTON, PACKWOOD, SPECTER, DODD, MOYNIHAN, LIEBERMAN, KENNEDY, LAUTENBERG, and BOND.

Mr. President, as ranking member of the Banking Subcommittee on Housing and Urban Affairs, I will be working to reauthorize the transit programs which expire on September 30. Fiscal constraints are staring us right in the face but our infrastructure needs have

never been greater. It is a critical time for transit.

No one knows better than our transit authorities that times are tough. It is difficult, if not impossible, just to keep pace. Fiscal pressures are forcing service cuts and fare increases across this Nation. While revenue is falling the responsibilities of our mass transit systems are growing.

In addition to the traditional role of moving people, goods, and services efficiently, our systems are relied upon more and more to reduce congestion and pollution by getting people off the roads. Transit must also meet the needs of the disabled.

I believe the resolution speaks for itself. Now more than ever, mass transit should be looked to as part of a solution to many national problems.

Mr. President, I ask unanimous consent that the text of our resolution be printed in its entirety at the conclusion of my remarks. •

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL  
RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, March 20, 1991, at 9:30 a.m., in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on S. 341, the National Energy Security Act of 1991, title XI concerning corporate average fuel economy.

For further information, please contact Karl Hausker, chief economist, at (202) 224-3329.

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on S. 343, a bill to provide for continued U.S. leadership in high performance computing.

The hearing will take place on Thursday, April 11, at 2 p.m., in room SD-366 of the Dirksen Senate Office Building, First and C Streets NE, Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Paul Barnett.

For further information, please contact Paul Barnett of the committee staff at 202/224-7569.

Mr. FORD. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on the Department of Energy's Superconducting Super Collider Program.

The hearing will take place on Tuesday, April 16, at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building, First and C Streets NE, Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Paul Barnett.

For further information, please contact Paul Barnett of the committee staff at 202/224-7569.

SPECIAL COMMITTEE ON AGING

Mr. PRYOR. Mr. President, I would like to announce for the public, that the Senate Special Committee on Aging has scheduled a hearing to examine the effectiveness of the evaluation program for health maintenance organizations [HMO's] treating Medicare recipients.

The hearing will take place on Wednesday, March 13, 1991, beginning at 10 a.m. in room 628 of the Dirksen Senate Office Building.

For further information, please contact Portia Mittelman, staff director at (202) 224-5364.

AUTHORITY FOR COMMITTEES TO  
MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MITCHELL. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a business meeting on Wednesday, March 13, 1991, beginning at 9:20 a.m., in 485 Russell Senate Office Building to adopt the committee rules.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

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

SUBCOMMITTEE ON TERRORISM, NARCOTICS AND  
INTERNATIONAL OPERATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 12, at 2 p.m. to hold a hearing on the Foreign Relations Authorization Act for fiscal years 1992 and 1993.

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

COMMITTEE ON ENERGY AND NATURAL  
RESOURCES

Mr. MITCHELL. 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. March 12, 1991, to receive testimony on S. 341, the National Energy Security Act of 1991, title IX concerning provisions which authorize a competitive oil and gas leasing program for the coastal plain of the Arctic National Wildlife Refuge in Alaska [ANWR].

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

## ADDITIONAL STATEMENTS

## THE MYTH OF LINKAGE

• Mr. DeCONCINI. Mr. President, on August 12, 1990, Saddam Hussein attempted to cover his bloody aggression against Kuwait by asserting that his withdrawal from the emirate was linked to the resolution of all of the Middle East's ills. The region's problems are legion and were present well before Saddam became a threat to his people, much less the entire world.

As we have seen, the Arab members of the international coalition united against Saddam's aggression saw through Hussein's pretense. The fact that he was using linkage to cover his illegal acts is proven by his abandonment of those Arabs who rallied to his cause—Iraqi, Palestinian, and Jordanian alike. He has callously forgotten his people and the serious issues affecting Middle Eastern peace and security while trying to cover up what his hubris needlessly brought to thousands of his people. But sooner or later his people will learn the truth and Saddam will be exposed before his people as he has exposed himself before the world.

What remains in his wake are shattered lives, destroyed nations, and all of the Middle East's ills which he vainly sought to exploit for his own interests. There is a seed of hope, however, that through regional cooperation these issues may finally be resolved.

Saddam's scheme did not succeed. Egypt remained a strong partner in the coalition, and Syrian troops fought alongside Western forces as Saddam attempted to drag Israel into a fight in which it had no quarrel. What initially was a case of Iraq's Arab belligerence against Kuwait, a peaceful Arab country, Saddam tried—and failed miserably—to turn into a case of the "Arab nation" against Israel, the "Zionist entity."

Saddam Hussein rained Scud missiles on innocent civilians in populated areas and tried to divert the world's attention from his rape of Kuwait. The world would not be diverted. Indeed, sympathy for the plight of the Israeli innocents increased. The Arab coal-

ition partners even grudgingly accepted the reality that Israel had a right to retaliate for Iraq's attacks against a sovereign nation.

By this act, Saddam may have laid the groundwork for a solution which years of shuttle diplomacy had failed to accomplish. The fact that Arab nations—*de jure* at war against Israel—were able to state that Israel has a right to defend itself against attack may be the necessary turning point which could result in recognition of Israel's right to exist within secure borders.

Egypt had made peace with Israel and, while not a warm and friendly peace, it is one which has endured through many difficult moments. As with any two sovereign nations, differences remain on a number of issues. But these are discussed and ultimately worked through to a resolution. Egypt's example of an honorable peace is one for the rest of the Arab world to emulate.

Other states in the region also have problems with Israel. Syria desires the return of the Golan Heights. Saudi Arabia would like to see real peace in Lebanon. Jordan's problems are too numerous to mention here, but it has its own internal problems which will not be easily resolved. All of these Arab nations have different ideas over what Israel's borders should be. Many other problems separate Arab from Arab. The security of Lebanon and Syria's role in that devastated nation are just the most visible of these questions.

Saddam's war should demonstrate to the Arab States that Israel is a reliable partner which truly desires peace. Now they should acknowledge the importance of secure borders for all nations. If Kuwait and Saudi Arabia deserve them, then so does Israel.

Saddam Hussein's ill-advised attempt at linkage did not help the Palestinians; in fact, it may have hurt their cause. These people have been poorly served by their so-called leaders. By siding with a nation which tried to justify its aggression, their cause was weakened—not only in the West but also among many of their Arab brethren. The Saudis had previously provided enormous financial support for the PLO and its efforts. The Kuwaitis not only quietly gave contributions to the PLO, they also provided many jobs to Palestinians working in Kuwait, enabling these workers to send money back to their families in the West Bank and Jordan.

Iraq's invasion changed all of that. The more Yasser Arafat kissed and embraced Saddam, the less inclined have the Saudis become to continue their support. Some quietly stated they would reevaluate their financial support. The Saudi Ambassador to the United States, Prince Bandar bin Sultan, in an interview with the Los Angeles Times referred to Arafat as a clown.

He said the Saudis would "distinguish between Arafat and leadership of the Palestinians, and between the Palestinians and their cause." Also, the Palestinians in Kuwait have become refugees once again. It is difficult to comprehend why they would call Saddam their savior when he only added to their pain and increased their suffering.

Israel remains threatened. Seeing thousands of Palestinians rejoicing when Iraqi Scud missiles landed in Israel did nothing to assuage their sense of insecurity. Arafat's open support of Saddam's efforts has wiped out any hope that the Government of Israel can trust a man and an organization which refuse to condemn acts of terrorism and which so brazenly sided with a man who did everything in his power to incite yet another war against Israel.

It is incumbent upon Israel's neighbors to recognize the reality which Israel faces and also to publicly recognize the reality of Israel. By removing the threat to Israel's existence which is posed by the continuing state of war from its neighbors, Israel can then turn to resolving the issue which has torn at the very fabric of Israeli society—the rights of the Palestinian people. Most Israelis recognize that they have a human rights problem on their hands for their treatment of the Palestinians in the West Bank and Gaza Strip. But, under a state of siege by its neighbors, the Israelis are unable to rationally address this issue. The sooner there is peace with Israel's neighbors, the sooner there will be peace with the Palestinians.

There are many areas of contention in the Middle East which will require the combined effort of all of the states in the region if they are to be resolved. One of the most pressing is that of water and water distribution. From Turkey to Egypt, access to water has the potential for increasing the destabilization of the region. We have only to examine the problems among California, Colorado, and Arizona to understand the importance of this issue. However, resolution of the dispute between Israel and the Arab States other than Egypt must be addressed if we are to witness real progress toward regional security, arms control, and a resolution of the Palestinian issue.

Israel is willing to be a good partner on these issues, if given a chance. It may not happen overnight—longstanding animosities are difficult to overcome—but it can happen if all parties are willing to set aside the rhetoric of generations and sit at the same table. As we awaken from Saddam's nightmare, a new day may be dawning in the Middle East. Let us not miss this opportunity. •

## PUBLISHERS PRESS

• Mr. McCONNELL. Mr. President, I rise today to recognize two outstanding Kentucky businessmen for their commitment to family, hard work, and a sense of community. These three elements have been the building blocks for their successful, expanding printing business known as Publishers Press in Shepherdsville and Lebanon Junction, KY.

Under the watchful care of fifth generation owners Nick and Michael Simon, the company has grown from a mere 40 employees in 1958 to 1,045 today. Publishers Press now prints 20 million copies of magazines a year. As the largest employer in Bullitt County, it has annual sales of \$75 million a year, a \$20 million payroll, and a client list that boasts a variety from the Catholic Diocese of Louisville to the late pop artist Andy Warhol.

Beyond responsible fiscal management and an impressive list of clients, the Simons take pride in "[erasing] \* \* \* the line between workers and management," according to Nick Simon. He meets with employees once a month, pays employees a quarterly bonus, and constantly upgrades and expands employee benefits. Training and equipment, too, are part of the emphasis at Publishers. Clients as well as employees spend time learning the company and the business from beginning to end, from printing, to paste-up to binding. And it is a long company tradition to maintain cutting-edge printing equipment. This allows Publishers to nurture existing market niches and capture new ones. It is all these factors, combined with an unshakable commitment to customer service, that have allowed Publishers to maintain a 20-percent annual growth rate.

I salute these Kentuckians for their outstanding achievements, and ask that their inspiring story of dedication be inserted in the RECORD.

The article follows:

[From the Lexington (KY) Herald-Leader, Mar. 11, 1991]

**MAGAZINE PUBLISHER PRESSES AHEAD IN BULLITT: PUBLISHERS PRESS KEEPS EXPANDING OPERATIONS**

(By Jacalyn Carfagno)

SHEPHERDSVILLE.—Nick Simon trotted into the vast open spaces of the new Publishers Press plant in Lebanon Junction last week, a bag of green apples under his arm.

The apples were for employees who had wondered why Simon, the president of the company, didn't bring more when he came in munching one on his last visit. On this visit, apples aside, Simon was there to see the new magazine binding machine, which was fired up for the first time that day.

The 115,000-square-foot Lebanon Junction plant is the most recent expansion for Publishers. Unseated by freeway construction, Publishers moved in 1958 from Louisville to nearby Shepherdsville with 40 employees.

It grew into a company whose 1,000-plus employees print 20 million copies of magazines a year. Publishers squeezed as much as it could onto 13 acres in Shepherdsville,

averaging a building permit every two months for the last several years. Last year, Publishers found a 376-acre site 15 minutes south in Lebanon Junction.

My father would have gotten a kick out of this," said Simon, as he looked around the plant. He and his brother, Michael, are the fifth generation of Simons to run the company.

The binder was the first of the giant machines to run at the new plant. By late spring, Publishers will have two presses humming and soon will have an additional 200 employees at work in Lebanon Junction.

Nick Simon's father, Frank E. Simon, died in May just as construction started at Lebanon Junction. Nick, now 32, and Michael, 31, thought about delaying construction, but decided that was not what Frank would have wanted. "He was always go, go, go, full speed ahead," Nick Simon said.

Frank Simon's drive, combined with risk taking and luck, made Publishers Press the largest employer in Bullitt County. Bolstered by a client list that has stretched from the Catholic Diocese of Louisville to pop artist Andy Warhol, Publishers has grown 15 percent to 20 percent a year in the last decade, over and above inflation.

A little more than 20 years ago, Frank Simon bet the store on high quality and quick turn-around in what the magazine industry calls a short- or medium-range run—10,000 to 100,000 copies.

Interview Magazine, the monthly founded by Warhol, is one of Publishers' largest jobs at 230,000 magazines a month. But the majority of its work is made up of much smaller runs. In January, for instance, Publishers printed 344 titles. Publishers counts itself among the top 10 percent of the short-run magazine publishers.

"We were at the right place at the right time" to capture a share of that market, said Michael Simon, executive vice president. And Publishers provided the goods. "The majority of our growth has come from reputation as opposed to aggressive marketing," he said.

The fast growth has not spoiled Publishers, said Edward Bowen, editor in chief of The Blood-Horse, a client since 1987. "It's amazing that you can have the feeling of a family in a company that large," he said. Bowen said the family feeling went beyond ownership to the Simons' relationship with their employees.

"We try to erase the line between workers and management," Nick Simon said.

Simon works on that through monthly meetings with employees, which were started by his father. With no other managers present, the employees bring their questions and complaints to the top.

This month, questions covered topics ranging from a pothole to the work schedule for the Fourth of July to health insurance for retirees and how the minimum-wage increase would affect salaries.

Publishers' \$20 million annual payroll starts with entry-level salaries just above minimum wage and runs up to about \$15 an hour for skilled craftsmen, Nick Simon said. None of the employees belongs to a union, he said.

Publishers also pays each employee a quarterly bonus of as much as four or five days' pay. The Simons gradually have increased other benefits to include a retirement fund, general health insurance, and dental and eye care.

Publishers' investment in its employees, and its product, goes beyond wages and benefits to training and equipment. In the mid-

'80s, as the Simons explored ways to maintain quality in the face of explosive growth, they set up a training department. Every new employee spends 40 hours learning the company, the business, his job and what comes before and after.

Technical courses prepare people to move up to more skilled jobs. Publishers also pays for about 120 clients a year to come to two-day sessions. They learn everything about printing, from paste-up to binding.

As for keeping up with printing technology, Nick Simon's answer was simple: "We just try to buy the newest gadget if we need it." That follows in the tradition of his father, who "borrowed almost as much as his entire net worth" to buy a web press that would allow him to capture a larger share of the small-run magazine market, Nick Simon said.

"We plow all the money back into the business," he said. "We've never paid a dividend in 125 years." Publishers, for example, has paid \$5 million in cash of the \$8 million invested in the plant and equipment at Lebanon Junction.

The Blood-Horse is a magazine that requires all the technological capacity and personal service the Simons have brought to bear at Publishers. "We are a problem for printers," said Bowen the editor in chief. The Blood-Horse uses a lot of color inside the magazine and, because it reports on the thoroughbred world on a weekly basis, has a quick turnaround.

"It takes a very good printer" to meet the demand for quality. The Blood-Horse requires within a budget it can afford "and to do it lickety-split," Bowen said.

"I never sense that my problem is put behind someone else's. That has to be based on a true concern for their clients," he said.

At Publishers, Michael Simon and five employees make up the marketing staff. In contrast, the customer service department has more than 100 workers. Although Nick Simon described Publishers as "a lean operation," the service staff is not eyed for cuts. "A lot of companies would look at that as overhead and try to carve on that, but we don't," Nick Simon said.

The Simons, with their recent expansion at Lebanon Junction, figure they can keep up the 20 percent annual growth.

Ron Davis, chief economist at Printing Industries of America, agreed that the future is bright for short-run magazine printers who can control costs and maintain quality.

"That's the growth segment," he said. "We're really into an era of micromarketing rather than mass marketing."

Advertisers are eager to buy space in magazines that focus on a particular group while trade and business associations have upgraded to slick magazines with high-quality color.

"We could have another 1,000 people working here," Nick Simon said, looking at the open ground around the new plant. •

**ANNIVERSARY OF LITHUANIAN DECLARATION OF INDEPENDENCE**

• Mr. SIMON. Mr. President, March 11, 1990, was a historic day for the people of Lithuania. On March 11 of last year, after 40 years of illegal Soviet occupation, the newly elected Lithuanian Parliament declared Lithuania once again to be an independent state. Today, I want to recognize this brave step by a country of 4 million people who want nothing more than to be free.

The Soviet Government has not been serious about Lithuanian and the Baltic States. In Lithuania alone, Moscow has tried an economic blockade, delayed negotiations and even killed people in the Lithuanian capital of Vilnius. Now the Soviets are resorting to disrupting the flow of mail between Lithuania and the United States. We ought to support these brave people who have not lost their desire to be free.

On February 9 of this year, 90 percent of the Lithuanian people voted on a referendum calling for independence. The Soviet Union declared this referendum null and void. Latvia and Estonia held similar votes a few weeks ago, also with positive results for freedom.

These states earned the right to determine their own futures. The Administration has recently made some efforts by supplying the Baltic States with emergency medical aid and delaying loans for American-Soviet joint ventures. The United States needs to go further by internationalizing the negotiations between Lithuania, Latvia, Estonia, and the Soviet Union. We formed a 28-nation coalition to oust Iraq from Kuwait; we can at least bring the topic of the Baltic up at the United Nations.

During our Revolutionary War, the young United States of America would not have survived without the support of France. As a symbol of self-determination, the United States has an obligation to help the democratic forces in Lithuania, Latvia, and Estonia.■

#### TRIBUTE TO STEPHEN T. BOW

● Mr. McCONNELL. Mr. President, it is my distinct pleasure at this time to recognize the remarkable achievements of Mr. Steve T. Bow, president and chief executive officer of Blue Cross and Blue Shield of Kentucky. Both his work with Blue Cross and Blue Shield and his ongoing work with the State of Kentucky and the city of Louisville have secured his position in the community in the truest meaning of the word "citizen."

Mr. Bow serves as a member of the board of directors of many institutions, including the Kentucky Chamber of Commerce, Berea College, the Greater Louisville Economic Development Council, and the Metro United Way. He has received such honors as Kentucky Citizen of the Year, the United Negro College Fund's Frederick D. Patterson Award, and County Volunteer of the Year. All told, Steve Bow contributes between 75 and 100 hours of work either overseeing nearly every department within the offices of Blue Cross and Blue Shield or volunteering his time to the community.

Since his arrival in May 1989, Bow has piloted Blue Cross and Blue Shield of Kentucky as president and chief executive officer, and during this time,

he has turned what many brokers termed "an institution with a uncertain future" into "an aggressive marketing firm with a confident future."

This homegrown product from Burkesville, KY, has proven himself to be a constructive force for the State and its people. He has garnered praise and respect from professional colleagues to basic policyholders, whose interests he must protect. Mr. Bow practices what he preaches, going beyond the basic business concerns to sharing his personal time with others.

At this time, I ask that two articles from the Louisville Courier-Journal on Mr. Bow and the changes within Blue Cross and Blue Shield of Kentucky be printed with this statement in the RECORD.

The articles follow:

[From the Louisville Courier-Journal, Feb. 28, 1991]

#### BOW INHERITED KNACK FOR FIXING (By Ben Z. Hershberg)

Stephen T. Bow is a tall, trim man whose youthful style and energy contradict his white hair and the 59 years of age listed on his resume.

His personal, down-to-earth manner and his rural Kentucky accent also contrast with the corporate power and prominence he's gained as president of the state's largest health insurer.

Bow, born in Burkesville, spent his youth on family farms in Kentucky and Indiana. Later, he traveled roads in the South during the summer selling Bibles to pay for his living expenses at Berea College.

Those early experiences seem to have little in common with his career. In recent years he managed regional offices for Metropolitan Life Insurance Co. in San Francisco and Chicago, far away in distance and style from the small farms where he was reared.

Yet Bow finds a common thread running through those experiences.

In much the same way that his father liked to pick up old, run-down farms, shape them up and move on, Bow said, he enjoys the challenge of trimming costs, boosting sales and creating more efficient operations.

For example, during 1984, his first full year in charge of Metropolitan's San Francisco office, Bow said, he cut expenses by \$14 million and helped boost productivity and income.

Now, as the top executive overseeing more than 2,000 employees at Blue Cross, he's taking similar steps. A few months after joining the health insurer in May 1989, Bow began cutting its work force and pricing insurance premiums more carefully to improve profitability. He also has tried to improve the company's overall responsiveness to the public—and its own employees.

Sometimes, however, Bow's outgoing style has backfired.

One evening during July 1989, two months after his arrival, recalled J. Hartlage, a claims manager, Bow walked by and complimented him effusively on changes he had made in the department and said he was glad Hartlage was on the team.

At 8 a.m. the next morning, Hartlage was laid off after 21 years with Blue Cross because of the corporate reorganization. Hartlage now works as a claims supervisor for the Prudential Services Co.

Bow, when asked about the incident, said his timing was bad. But he didn't know

Hartlage was to be laid off, and he was trying to encourage everyone.

Rhonda Burns, a secretary in the corporate audit department, said Bow's management style is still outgoing. And she thinks it's effective.

"He's been in our area numerous times," always saying hello to employees, Burns said. "He's super, outgoing person."

These days, Bow travels a few days a month for Blue Cross and puts in 70 to 75 hours a week on company business, he said.

However, his schedule of Blue Cross affairs has eased from his first months with the company, so that he can now spend a couple of days a week at the Kentucky Home Mutual Insurance Co. office in downtown Louisville, Bow said.

Blue Cross affiliated with Kentucky Home last year and soon will begin selling group life insurance provided by Kentucky Home with its health insurance, receiving a fee for distributing the life insurance. It used to have a similar arrangement with an out-of-state insurer, but now will have more control of the life insurance policies and premiums, which should help both companies' growth, Bow said.

The insurance, executive still seems more comfortable selling life insurance than health insurance, which is much less predictable and generally less profitable than life policies.

As he explained, with a laugh, "sane people sell life insurance, insane people sell health insurance."

Bow is married and has twin sons who are 15 years old and four daughters ranging in age from 31 to 39. He lives in Anchorage, Ky. His hobbies include reading, painting and golf.

[From the Courier-Journal, Feb. 24, 1991]

#### STRENGTHENED BLUE CROSS SEES TEST AHEAD (By Ben Z. Hershberg)

Most of Blue Cross and Blue Shield of Kentucky Inc.'s vital signs are strong today.

But the health insurance industry is entering tougher times, observers say, with the economy weakening, medical costs soaring and competition among insurers heating up to a fever pitch it hasn't reached for the last two years.

Even company President Stephen T. Bow, credited with reviving Blue Cross in recent years, warns that many insurers are offering premiums that seem too low to cover costs. And he thinks many of them are likely to start losing money as the industry dives toward the bottom of a three-year cycle of profitability and losses later this year.

How Blue Cross fares is critical to Kentucky.

The company sets insurance premiums and pays for the medical care of nearly 900,000 people statewide, many of them in rural areas where there are few health-care alternatives.

Its success or failure also will affect most of the state's hospitals, for which Blue Cross is a major source of funds.

In Louisville, as the leader of not-for-profit hospitals' efforts to compete with Humana Inc., Blue Cross' growth or decline will largely determine the number of patients they treat.

Four years ago Blue Cross losses alarmed many.

Buffeted by soaring medical costs and intense competition with Humana and others, the stodgy and once-dominant insurer in Kentucky and Louisville lost nearly \$100 million in 1987 and 1988. If losses had continued

at that rate, Blue Cross would have been insolvent within three years.

Shaken by the financial threat, Blue Cross management didn't renew many money-losing insurance contracts in 1987 and 1988, including a large health plan for state employees. And it boosted rates sharply on other unprofitable lines.

As a result, the company lost thousands of customers and touched off widespread criticism by state officials and consumers. But the groundwork for its financial improvement in the last two years was laid partly by those controversial steps.

Bow, who had been a Metropolitan Life Insurance Co. executive in San Francisco, stepped into the storm in May 1989, eight months after the resignation of his predecessor, Douglas Sutherland.

By July 1989 Bow had started cutting costs through layoffs and early retirements. By year end 359 people—nearly 16 percent of the work force—had been cut from the payroll.

Bow also brought in or promoted a host of new executives. And he worked to make the company more responsive to the public.

William Davenhall, a Louisville health-care consultant who has observed Blue Cross for many years, called the changes impressive.

"Blue Cross has gone from being an elephant to being a gazelle," he said.

"But they are still in the same jungle."

Continued survival depends on how quickly the company can react to changes in the turbulent health-care environment without slipping too often. Davenhall and other industry observers said. That environment, if anything, is getting more complex and difficult, Davenhall said.

Kevin Russell, a vice president of Hyers & Levy Inc., a nationally prominent Louisville actuarial firm, agreed that Blue Cross's financial condition seems to have improved a great deal.

Like other analysts, he believes the health-insurance industry remains turbulent and seems to follow a three-year cycle. In the first year, companies typically hold down premiums to increase their business. After losing money for a year or two, they raise their prices and profitability. Then they repeat the same cycle.

"The disturbing thing is that losses appear to be getting larger and gains appear to be getting smaller," Russell said.

Bow acknowledges that he can't promise the health insurer will never again report losses. "We're not immune to them," he said, adding that he believes Blue Cross is now prepared to ride out such problems.

Some of the company's vital statistics bear him out.

Through nine months of 1990 Blue Cross made more than twice as much money as it made in all of 1989. The company added \$41.7 million of net income to Blue Cross financial reserves in that nine-month period bringing total reserves to \$154,962,000.

Insurers use reserves to cover losses in difficult times. The level of Blue Cross reserves at the end of September would last the company for 2.5 months if income were interrupted and claims were incurred at the rate of recent months. The industry likes to maintain reserves that would last for 3 months, a goal, Bow wants to reach and exceed in the next few months.

The company also added more than 44,000 new members, or more than 5 percent, to its health plans in 1990 bringing total enrollment to 871,976 people.

In addition, company expenses in 1990 were equal to about 10.1 percent of the premiums

it collected, down from 12.3 percent in 1989 and 11.4 percent in 1988.

A lower ratio of expenses to premiums in the insurance industry indicates a company is more efficient. Bow wants to get expenses below 10 percent, which would be a low level for a health insurer.

Outside observers and some former employees agree that Blue Cross has changed greatly in the last two years. But some of them believe morale is still low within the organization and that some departments are disorganized.

"My impression is, the new leadership is very desirous of creating a high state of responsiveness to physicians and policy holders," said Arnold Belker, president of the Jefferson County Medical Society.

"I'm not sure they've done it."

On occasion his office or patients get told different things by different people in Blue Cross in response to the same questions, Belker said, adding that it takes time to implement fundamental changes in attitude and performance in an organization as large as Blue Cross.

J. Hartlage, a former Blue Cross claims manager who now is an associate claims manager for the Prudential Services Co., said friends still working at Blue Cross often tell him morale is low, with many people fearing their jobs are in jeopardy.

Phil Fister, a unit specialist in Blue Cross's national accounts department, disagreed. The long-time Blue Cross employee said, "You hear rumors about different things, that there might be more cutbacks through attrition. That's what I think's going to happen."

Even with such uncertainties, Fister said he believes Blue Cross workers are more confident about the future than they were two years ago.

Hartlage and others said some appointments also have affected morale within the company, including the hiring last year of Greg Miller as vice president of cost containment. He is the son of former board chairman Joe Miller, who still is a director of Blue Cross.

Bow rejects any suggestion of nepotism in his appointments. Greg Miller had worked in Chicago for the American Medical Association's insurance agency, which sells malpractice and other insurance to doctors, Bow said. So he was well qualified.

Like Fister, many people outside the company also are more confident about its future than they were a few years ago.

Insurance broker Marvin Smith noted that Blue Cross has gone from a service-type organization focused on paying claims quickly to an aggressive marketing firm.

A few years ago, Humana Inc.'s marketing-oriented insurance division "was just doing a number on them," said Smith, whose company, Insuramax Inc., sells both companies' coverage.

Blue Cross traditionally dominated the Louisville health-insurance market, he said. But Humana marketed its insurance plan so aggressively that within a few years it managed to share the Louisville insurance business about equally with Blue Cross—each with about 40 percent. (Another 15 to 20 percent of the insurance customers locally are self-insured or insured through other companies.)

Smith thinks Blue Cross is giving a much better account of itself today than it did a few years ago, marketing more aggressively and effectively than it used to.

However, Blue Cross still has some problems in dealing with outside brokers like

himself, Smith said. It sometimes takes longer than he expects to get Blue Cross to quote premiums or provide other information for prospective clients, he said. He also thinks there's a chance for new rate wars in the Louisville insurance business.

Blue Cross is introducing a health plan, Preferred Option, that seems to be modeled on Humana's fast-growing Kentucky Physicians Plan, Smith said. Both health plans tightly control which doctors and hospitals their patients can use in return for lower premiums.

Blue Cross hopes to control premiums for Preferred Option because most of the city's not-for-profit hospitals and a doctors' organization own 49 percent of it. Blue Cross owns the balance.

The hope is that hospitals and doctors will offer lower charges in exchange for a larger share of the health-care market and a share of the profits.

Smith believes Preferred Option will grow rapidly because it will be priced competitively.

What's unknown, both Smith and Davenhall said, is whether it will mostly attract customers from other Blue Cross health plans or from Humana and other insurers.

If it attracts primarily people, who already were Blue Cross customers, the insurer could just end up with a smaller share of the profits it might have earned without Preferred Option.

Whether that will cut Blue Cross profits isn't clear. But the company's overall strength will become apparent in the next year or two if the tough competition develops that Bow expects.

Already, Bow said, he sees many insurers, whom he declined to name, pricing their health plans at money-losing levels.

Blue Cross is observing the market and may have to do some "barebones pricing" itself to keep attracting new customers, he said.

That's admittedly risky. But Bow stressed that the company has no intention of putting itself back into the precarious position it was a few years ago, although it won't intentionally set rates so low it loses money.

Blue Cross can succeed, Bow said, by responding to consumer needs even in the most competitive market.

"If you let the customer do what the customer wants," Bow said, "the company comes out fine." ●

#### S. 596—FEDERAL FACILITY COMPLIANCE ACT

● Mr. REID. Mr. President, I am pleased to rise today to express my support for the legislation introduced recently by Majority Leader MITCHELL, the Federal Facilities Compliance Act. This is an important piece of legislation that has far-reaching implications for a number of Federal agencies. When enacted, this legislation will provide a measure of assurance that the Federal Government will comply with the requirements of the Resource Conservation and Recovery Act in the same manner that it must comply with other comprehensive environmental laws. It is time that the Federal Government becomes a responsible neighbor to the public in the vicinity of Federal installations; we should send a clear signal

that the public should not be exposed to the health consequences of waste mismanagement by the Federal Government.

Every year Federal facilities generate and dispose of huge quantities of hazardous waste. Such waste includes radioactive materials, heavy metals, acids, and nitrates. All of these can cause major environmental problems if not managed properly. All too frequently, reports of waste mismanagement surface in the press; it is highly likely that major environmental insults still have not been discovered or reported to appropriate authorities. It is one thing when a private corporation abuses the environment, but, in the minds of many, wholly another when the Federal Government is the abuser.

The Federal Government has been notably slow to comply with Federal and State environmental laws. In some instances, regulations are not heeded and facility staff or contractors shy away from reporting abuses; coverups do occur. Recently, the Department of Justice has decided to prosecute the contractors involved with the coverup of a 20,000-gallon spill of jet fuel at the Fallon Naval Air Station in Nevada. The arm of the law cannot stop at the gate of Federal facilities; the public in the vicinity of Federal facilities warrant no less protection than the public in the vicinity of private companies.

I have long been concerned with the failure of those Federal facilities that are located in Nevada to comply with Federal and State environmental laws. In particular, the Department of Energy has been slow to meet environmental regulations at the Nevada test site. Last month, the Office of Technology Assessment released its report "Complex Cleanup" that deals with the environmental problems at the DOE weapons complex sites; it concluded that DOE "has yet to establish the credibility and capability necessary for the massive cleanup" that lies ahead.

It is unfortunate that we cannot rely solely upon the goodwill of the Departments of Energy and Defense to get their house in order. The cleanup efforts that they are undertaking today are still subject to the same priority setting machinations that go on in every agency. The proper management of hazardous waste materials cannot be subject to reactive management.

Mr. President, concern for the environment and the public that lives in the vicinity of Federal installations must be ingrained into the mindset of Federal employees and contractors. Changing the mindset is a slow and arduous process. The Federal Government must set the example for others to follow rather than to ridicule.●

#### ONE YEAR ANNIVERSARY OF LITHUANIAN INDEPENDENCE

● Mr. D'AMATO. Mr. President, exactly 1 year ago yesterday, a new, democratically elected government of Lithuania declared the restoration of its lost, post-1940 independence. The entire world looked on with total amazement and disbelief as the small state of Lithuania and its people stood up to the giant Soviet bear and reasserted their overwhelming desire for self-determination and freedom.

Much has happened in that year. Lithuania withstood a severe Soviet economic blockade, but suffered as a massive invasion of Soviet military. Interior and black beret troops came rumbling into the country and capital city of Vilnius, resulting in the death of 15 innocent people on "Bloody Sunday."

I recently returned from Lithuania, where I met with President Landsbergis and saw for myself how the Lithuanian Parliament building stood surrounded by rings of barricades awaiting an onslaught of Soviet troops, which lurk quietly on the streets and back lots of Vilnius. I saw for myself how Soviet troops have occupied the Vilnius television tower and broadcast center, and where, to this very day, Soviet troops occupy that facility, while imported Soviet commentators preach KGB propaganda. And I saw for myself how committed the people of Lithuania, both young and old, remain to total independence. It is a commitment which will not go away.

Four weeks ago the people of Lithuania held a national plebiscite, one of the oldest concepts of democracy, in which they voted overwhelmingly, over 90 percent, for independence. While over 80 percent of Lithuania's population is Lithuanian, the remaining 20 percent of the population is comprised of various other minorities, primarily Russian and Polish, who also voted in large numbers for independence. It should come as no surprise that freedom and self-determination are concepts that only dictators oppose. Just recently this Nation undertook a heroic battle to restore freedom and fight oppression in the Persian Gulf. While that battle was victorious we must not forget the people of Lithuania, and the other Baltic States, who are held illegally by an ominous empire whose days are numbered.

Mr. President, the people of Lithuania deserve their independence. Perhaps more than any other nation, the people of Lithuania, Latvia, and Estonia have had to endure a daily hell for nearly 50 years. Life in the Soviet Union is not easy, and the yoke of Soviet oppression destroyed the once flourishing democracies of the Baltic countries, and now subjects the people to a standard of living barely above that of a Third World country. The people of the Baltic States need our

help and they need our assistance to end their nightmarish occupation by the Soviet Union.

Mr. President, I stand here today and call on my colleagues to continue the battle for the oppressed peoples of Lithuania. For too long, Mr. President, we have given the Soviets a free hand to work their will in the Baltic States. Even in light of our nonrecognition policy, which does not recognize the illegal occupation of Lithuania, Latvia, and Estonia by the Soviet Union, we have done too little for too long.

What is even more outrageous is the fact that even Mr. Gorbachev's own committee of the Supreme Soviet, created to investigate the legality of the Soviet annexation of the Baltic States, found that the Soviet occupation was indeed illegal under the Hitler-Stalin pact; yet, we in the West have failed to take the appropriate steps to recognize Lithuania's independence.

The Lithuanian democratic movement has been peaceful and just. We in the United States must recognize that Lithuania suffered a grave injustice with the outbreak of World War II. This injustice must be addressed so that the last remaining vestige of World War II, the illegal annexation of the Baltic States by the Soviet Union, can finally be put to rest.

Eastern Europe now glows in the reborn spirit of democracy. We in the West must make sure that freedom will not be lost to another generation of Lithuanians. May God bless the people of Lithuania and the hundreds of thousands of American-Lithuanians who continue the drive for the full restoration and recognition of Lithuania's independence on its first-year anniversary.●

#### NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee has received a request for a determination under rule 35 for Mr. John Barnes, a member of the staff of Senator GRASSLEY to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs in conjunction with the U.S.-Asia Institute, from March 25 to April 5, 1991.

The committee has determined that participation by Mr. Barnes in the program in China, at the expense of the Chinese People's Institute of Foreign Affairs and the U.S.-Asia Institute, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Mr. Dan Berkovitz, a member of the staff of Senator BURDICK, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs in conjunction with the U.S.-Asia Institute, from March 23-April 5, 1991.

The committee has determined that participation by Mr. Berkovitz in the program in China, at the expense of the Chinese People's Institute of Foreign Affairs and the U.S.-Asia Institute, is in the interest of the Senate and the United States.●

#### S. 364, BUSINESS AND EDUCATION PARTNERSHIP ACT

● Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 364, the Business and Education Partnership Act of 1991. I commend my colleague from Connecticut, Senator LIEBERMAN, for his commitment to developing a better educated, more highly skilled work force, and for introducing legislation to help accomplish this goal.

It is clear, Mr. President, that unless we do something to bridge the gap between the poor performance of today's students and the growing demand for a highly educated work force, we will soon find it impossible as a nation to compete effectively in the world market.

The truth of this is not lost on the American business community, which spends roughly \$30 billion a year on worker training and education. Citibank is one of a growing number of U.S. companies that have decided it is in their own best interest to invest in the education of tomorrow's workers. Last May, the company said it would invest \$20 million over the next 10 years to improve urban schools. Their aim is simple: to ensure that the students they support are prepared either for college or for employment when they complete secondary school.

Mr. President, that is precisely the aim of this legislation. S. 364 provides incentives for the establishment of several types of business/education partnership programs designed to provide training for the college-bound and the noncollege-bound, as well as those in the work force in need of basic skills training or retraining to keep up with advances in technology.

Specifically, S. 364 will authorize the Secretary of Education to make grants to business and education partnerships to establish several high schools of science and mathematics, model technology high schools, and experimental

"Governor's Model Schools." The success of the Bronx High School of Science in producing leaders and scholars in the sciences demonstrates the potential of specialized curriculum schools in revitalizing our Nation's command of math and science. I believe that the innovative programs supported by this legislation can be equally successful in producing workers with the technical knowledge needed to compete in our modern economy.

Mr. President, I again commend Senator LIEBERMAN for his leadership in promoting a skilled work force by encouraging partnerships between business and education. I encourage my colleagues to join me as a cosponsor of S. 364, and I urge its prompt passage.●

#### BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the most recent budget scorekeeping report for fiscal year 1991, prepared by the Congressional Budget Office under section 308(b) of the Congressional Budget Act of 1974, as amended. This report serves as the scorekeeping report for the purposes of section 605(b) and section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by \$1.7 billion in budget authority, and under the budget resolution by \$1.3 billion in outlays. Current level is \$1 billion below the revenue target in 1991 and over the 5 years, 1991-95.

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.

The report follows:

U.S. CONGRESS,  
Congressional Budget Office,  
Washington, DC, March 12, 1991.  
Hon. JIM SASSER,  
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1991 and is current through March 8, 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.

Since my last report, dated March 4, 1991, the Congress has cleared for the President's signature H.R. 180, Veterans' Education, Employment and Training Amendments. This action increases the current level estimates of budget authority and outlays.

Sincerely,

ROBERT D. REISCHAUER,  
Director.

#### THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 1ST SESS., AS OF MAR. 8, 1991

[In billions of dollars]

	Revised on-budget aggregates <sup>1</sup>	Current level <sup>2</sup>	Current level +/- aggregates
<b>On-budget:</b>			
Budget Authority .....	1,189.2	1,187.5	-1.7
Outlays .....	1,132.4	1,131.1	-1.3
<b>Revenues:</b>			
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	-.3
Guaranteed loan commitments .....	107.2	106.9	-.3
Debt subject to limit .....	4,145.0	3,353.5	-791.5
<b>Off-budget:</b>			
<b>Social Security Outlays:</b>			
1991 .....	234.2	234.2	—
1991-95 .....	1,284.4	1,284.4	—
<b>Social Security revenues:</b>			
1991 .....	303.1	303.1	—
1991-95 .....	1,736.3	1,736.3	—

<sup>1</sup> 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).

<sup>2</sup> 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; \$1 billion in budget authority and \$2 billion in outlays for debt forgiveness for Egypt and Portland; 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 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 MAR. 8, 1991

[In millions of dollars]

	Budget authority	Outlays	Revenues
<b>I. Enacted in previous sessions:</b>			
Revenues .....	—	—	834,910
Permanent appropriations and trust funds .....	725,105	633,016	—
Other legislation .....	664,057	676,371	—
Offsetting receipts .....	-210,616	-210,616	—
<b>Total enacted in previous sessions</b> .....	<b>1,178,546</b>	<b>1,098,770</b>	<b>834,910</b>
<b>II. Enacted this session: Extending IRS Deadline for Desert Storm Troops (P.L. 102-2)</b> .....	—	—	-1
<b>III. Continuing resolution authority</b> .....	—	—	—
<b>IV. Conference agreements ratified by both Houses: Veterans' education, employment and training amendments (H.R. 180)</b> .....	2	2	—
<b>V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in revised on-budget aggregates</b> .....	-6,307	799	—
<b>VI. Economic and technical assumption used by Committee for Budget Enforcement Act estimates</b> .....	15,000	31,300	-29,500
<b>On-budget current level</b> .....	<b>1,187,484</b>	<b>1,131,115</b>	<b>805,409</b>
<b>Revised on-budget aggregates</b> .....	<b>1,189,215</b>	<b>1,132,396</b>	<b>805,410</b>
<b>Amount remaining:</b>			
Over budget resolution .....	—	—	—
Under budget resolution .....	1,731	1,281	1

Note.—Numbers may not add due to rounding.●

#### COMMENDING CHRISTOPHER J. MANGI

● Mr. D'AMATO. Mr. President, I rise today to congratulate Christopher J. Mangi on being presented with the American Red Cross Certificate of Merit.

This citation is the highest award that is given by the Red Cross to a person who saves or sustains a life by using skills and knowledge learned in a Red Cross course. Mr. Mangi was trained in Red Cross CPR at the Nassau County Chapter. He performed CPR on a victim of an apparent heart attack, Frank N. Rocco, and continued this lifesaving effort until relieved by advanced medical personnel.

The Certificate of Merit, which is signed by President Bush, commends Mr. Mangi for selfless and humane action in saving a human life. I would like to take this opportunity to salute this fine individual for performing such an heroic deed.♦

#### MEASURE PLACED ON THE CALENDAR—H.R. 751

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 751, the National Literacy Act, it be placed on the calendar.

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

#### EXECUTIVE SESSION

##### EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 17. James E. Denny, to be an Assistant Commissioner of Patents and Trademarks; Calendar 18. Maurice O. Ellsworth, to be U.S. attorney for the District of Idaho; Calendar 19. Montgomery Tucker, to be U.S. attorney for the Western District of Virginia; and Calendar 20. Ronald G. Woods, to be U.S. attorney for the Southern District of Texas.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

##### DEPARTMENT OF COMMERCE

James Edward Denny, of Maryland, to be an Assistant Commissioner of Patents and Trademarks.

##### DEPARTMENT OF JUSTICE

Maurice Owens Ellsworth, of Idaho, to be U.S. attorney for the District of Idaho for the term of 4 years.

E. Montgomery Tucker, of Virginia, to be U.S. attorney for the Western District of Virginia for the term of 4 years.

Ronald G. Woods, of Texas, to be U.S. attorney for the Southern District of Texas for the term of 4 years.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to the consideration of legislative business.

#### EXECUTIVE CALENDAR UNANIMOUS-CONSENT AGREEMENT

##### NOMINATION OF ROCKWELL A. SCHNABEL

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged from further consideration of the nomination of Rockwell A. Schnabel to be Deputy Secretary of the Department of Commerce and that the Senate proceed to the immediate consideration of the nomination; that the nomination be confirmed; that the motion to reconsider be tabled; and that the President be notified of the Senate's action.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

#### COMMENDING THE PEOPLE OF MONGOLIA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Concurrent Resolution 21, commending the people of Mongolia on their first multiparty elections, submitted earlier today by Senators CRANSTON, MITCHELL, PELL, KERRY, AKAKA, GORE, KENNEDY, ROBB, SIMON, LUGAR, MOYNIHAN, and PACKWOOD and now at the desk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 21) commending the people of Mongolia on their first multi-party elections.

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.

Mr. CRANSTON. Mr. President, it is with great pleasure today that I submit a concurrent resolution with the support of Senators MITCHELL, PELL, KERRY, AKAKA, GORE, KENNEDY, ROBB, SIMON, LUGAR, MOYNIHAN, and PACKWOOD commending the people of Mongolia on the first multiparty elections.

I have the honor of being the only United States Senator to have visited Mongolia, and since my 1987 visit, it is with great pride that I have watched the growth of this infant democracy.

In the past year, Mongolia has taken major strides toward completing a peaceful transition to a democratic government and embracing free market and trade principles. At present, elected officials in Mongolia are draft-

ing a new constitution. As the International Human Rights Law Group observed last November, "the electoral process fundamentally changed the landscape of Mongolian politics."

I am pleased to note that United States-Mongolian relations have increased steadily over the last 3 years. Most recently, the congressional leadership welcomed the President of the newly elected government on his first state visit to the United States. During this visit the United States and Mongolia signed a trade agreement, providing most-favored-nation status. Furthermore, the Peace Corps has recently sent its first delegation of volunteers to Mongolia and the Agency for International Development [AID] is beginning a small technical assistance program. These represent small, positive steps toward a close relationship for which the administration is to be commended.

Soviet-Mongolian relations also have changed. The Soviet Union has been removing its troops from Mongolia and has stopped its foreign aid program to Mongolia. Mongolia owes the Soviet Union a billion rubles. Mongolia has therefore asked several members of the international community for economic assistance to bolster its movement toward democracy and economic reform.

Mr. President, during this critical phase of its development Mongolia is in need of support as it finds a place in the New World Order.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 21) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

##### S. CON. RES. 21

Whereas the people of Mongolia had the first multiparty elections of their seventy year history in July of 1990 and have taken great strides toward a multiparty, pluralistic, and democratic government;

Whereas the newly elected government of Mongolia has pledged to continue a peaceful transition to a democratic government and has committed to accept and implement free market and free trade principles;

Whereas the congressional leadership welcomed the President of the newly elected government on his first state visit to the United States in January;

Whereas President Bush has requested the granting of most-favored-nation status to the Mongolian People's Republic;

Whereas Mongolia has asked for economic assistance to bolster its movement toward democracy and economic reform;

Whereas Mongolia presents the world with an admirable example of the peaceful conversion to free world values and democratic principles: Now, therefore,

*Resolved by the Senate (the House of Representatives concurring), That the Congress*

(1) hereby offers its congratulations to the people of Mongolia for a generally free and fair election process and looks forward to growth and development of United States-Mongolia relations on issues of mutual inter-

est, such as regional stability, trade and human rights.

(2) commends the political leaders and parties of Mongolia that worked together to achieve the creation of democratic pluralism and free market institutions and urge the United States Government to continue to grant all appropriate economic and technical assistance to Mongolia and its people.

(3) welcomes the people of Mongolia into the community of free nations.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President and requests that he further transmit such copy to the Government of Mongolia.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. I also ask unanimous consent I be made a cosponsor of the resolution.

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

#### ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the distinguished Republican leader be recognized to address the Senate and that upon the completion of his remarks, the Senate stand in recess, as under the order, until 9 a.m. tomorrow morning.

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

The Republican leader is recognized.

#### CAMPAIGN FINANCE REFORM

Mr. DOLE. Mr. President, I want to speak about campaign finance reform.

The Senate Rules Committee held its first hearing on the politically contentious issue of campaign finance reform.

Two more hearings are scheduled for later this week.

Once the hearings are completed, the Rules Committee will undoubtedly report out S. 3, the democratic campaign finance reform bill introduced this past January.

At the committee markup, I am afraid it is going to be a strict party-line vote—9 Democrats versus 7 Republicans, no amendments, no compromise, no bipartisanship, and a far cry from the recent recommendations of another committee of the Senate; the Ethics Committee.

#### ETHICS COMMITTEE RECOMMENDATIONS

In its preliminary report on the so-called Keating five investigation, the Ethics Committee "urges the leadership of both the Senate and the House to work together in a bipartisan manner to address the urgent need for comprehensive campaign finance reform."

That is a direct quote.

It is not my recommendation, nor is it the recommendation of the Republican Policy Committee.

It is a recommendation of the Ethics Committee, and it is one that I fully endorse.

Mr. President, if we are to achieve meaningful reform this session, we must have the commitment to place the national interest above partisan political advantage.

That is why I proposed the appointment last year of a six-member bipartisan panel of campaign finance experts.

That is why I introduced a bill earlier this year, whose provisions are closely modeled after the bipartisan panel's recommendations.

And that's why I have written to the distinguished majority leader.

I want to say that Senator MITCHELL has very graciously and positively responded to my letter and agreed we must continue to search for a compromise solution that will break the partisan deadlock in the Senate.

Mr. President, I planned on testifying before the Rules Committee but because, I think, due to the pro forma nature of the hearings, with a parade of witnesses with a foregone conclusion, that it would probably be in the better interest to try to save that time and use it to negotiate when that bill reaches the floor.

I might add, I have spoken with the distinguished Senator from Oklahoma [Mr. BOREN] who certainly is prepared, as he has been in the past, to sit down and work out a bipartisan compromise. I had a feeling in today's Republican policy luncheon that it was pretty much the same attitude. The White House, represented by Chief of Staff John Sununu also indicated that if there could be some consensus reached, that he thought it might have the backing of the White House, of the President.

Let us face it. There are some basic differences, public financing and expenditure caps. And there may be some way to resolve those. It seems to me there are opportunities we have not explored. It cannot happen unless we have bipartisanship. Maybe it is necessary just to have the pro forma hearings to get something to the floor. I have no particular quarrel with that.

I do not know when the bill is coming out of the committee. I understand there may be some interest in moving to campaign finance reform earlier rather than later. Certainly we have no objection to that. But I wanted to indicate to anybody who had an interest, I am interested in working out a bipartisan campaign finance reform package.

#### ETHICS COMMITTEE AND SOFT MONEY

Mr. President, I might add—as a footnote—that one of the key issues in the Ethics Committee's investigation centers around the solicitation of funds for so-called tax-exempt, get-out-the-vote organizations.

The facts show that these funds were solicited from Charles Keating and theoretically used for nonpartisan purposes.

No proposal can legitimately bear the name reform if it fails to purge this sewer money from the campaign finance pipeline.

This is the worst kind of money in politics—undisclosed, unregulated, and, in many instances, virtually unlimited.

#### "CUT-AND-PASTE" VETO STRATEGY

Mr. President, last year, both the Senate and the House each passed partisan campaign finance reform bills.

Both bills, however, were victims of Congress' failure to work out the major differences in conference.

Now, some may suggest that last year's Senate and House bills ought to be passed again, but with a new twist.

Instead of making an effort in conference to draft a comprehensive set of rules for the entire Congress, the theory goes that two different sets of campaign finance rules ought to be established—one for the Senate and a second set of rules for the House.

This strategy would allow the Democratic majorities in both Houses to pass their partisan bills on a fast-track basis, and quickly send the combined product to President Bush for the expected veto.

Mr. President, this cut-and-paste veto strategy may be good politics.

But it makes for lousy policy.

It will be unacceptable to the President, and it will be unacceptable to the American people, who are demanding nothing less than a comprehensive, bipartisan reform package.

I am interested, as is the majority leader, in bipartisanship. I think we demonstrated that last year. I am prepared to do what I can on this side, although I must say my views may not be shared by every Republican, just as the majority leader's views may not be shared by every Democrat.

I guess the point I would make today is let us not have partisan bills unless everything else fails. Then I would certainly agree with anyone on the majority. If the Republicans in this case, the minority, fails to participate and cooperate, whatever, then there is not much left to the majority leader except to pass what he can. We might not appreciate that, might object to it, but we would understand that is the case.

With 1992 coming up, I know there are a lot of Members who must dread getting into fundraising again without some light at the end of the tunnel, without some way to figure out what we are going to be able to do and whether we can do anything with broadcast time, whether we can limit the source of campaign contributions by reduction in PAC contributions, by eliminating the amount we might raise out of State, and the question of how much you can raise in your own State. They are all questions which I believe

are crying for answers that can be found if we work together.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I be permitted to address the Senate.

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

Mr. MITCHELL. Mr. President, I thank the distinguished Republican leader for his comments and assure him and all Members of the Senate that we really do want to try to achieve a bipartisan consensus on campaign finance reform this year. The legislation that will be reported by the committee is, as the distinguished Republican leader described, a beginning, a first step in a process that we hope will reach passage of a bill that a broad and large majority of the Senate on both sides of the aisle can support.

The distinguished Republican leader and I have been engaged in this discussion now for 2 years, and I must say that although we did not reach agreement finally last year, we surely all learned a lot more and did close the gap significantly.

While, as the Republican leader has pointed out, there still remain substantial and honest differences between the two parties on the best method of achieving reform, there is I think a very widespread consensus on the need for reform and the desirability for reform.

So I just wanted to say that as I responded positively to the Republican leader's letter to me, I also wanted to respond positively to his statement. It is my hope that we can get together very shortly—I have already asked my staff to contact the Republican leader's staff; I believe that has been done—and get perhaps another working group of Senators to see if we cannot go that last step and reach that final agreement but, if not, at least close the gap still further. So that remains my intention.

I do not believe that is inconsistent with action relatively early in this session. This is a high priority, and I do hope to bring it forward as soon as possible. But I certainly do not intend to do that in any way that would foreclose the kind of continuing effort to achieve a bipartisan agreement as has been suggested. So I simply want to assure the Republican leader and all Senators of my hope and intention in that regard.

Mr. DOLE. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. DOLE. I think the record should reflect that we have started staff negotiations already, a member of my staff and a member of the majority leader's staff. I know there is interest among other members on the Rules Committee and off the Rules Committee. I have discussed this with the distinguished Senator from Kentucky [Mr. McCONNELL] who has been a leading

spokesman on the Republican side. There is no doubt in my mind it is probably going to end up to be the responsibility of the leadership in the final analysis to then see if we can sell it to our colleagues. We may not be able to. I do not know where we come down. But I think we are both prepared to make the effort.

I thank the majority leader.

Mr. MITCHELL. Yes; I want to assure the Republican leader that the distinguished Senator from Oklahoma [Mr. BOREN] who has been, of course, the author of the legislation before us in the last two Congresses, is also very much interested in proceeding with the effort to achieve bipartisan consensus.

SIGNING OF SENATE PROCEEDINGS

Mr. MITCHELL. Mr. President, I ask unanimous consent that on tomorrow, from 9 to 9:30 a.m., a signer for the hearing impaired be permitted to sign during the session of the Senate.

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair on behalf of the Vice President, pursuant to Public Law 94-304, as amended by Public Law 99-7, appoints the Senator from Idaho, Mr. CRAIG, to the Commission on Security and Cooperation in Europe, vice the Senator from Idaho, Mr. McClure.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow, and that the Journal of proceedings be deemed approved at that time; that the time for the leaders be reserved for their use later in the day; that there be a period for morning business until 11 a.m. with Senators permitted to speak therein, with the hour between 9 a.m. and 10 a.m. to be under the control of the Republican leader and the time between 10 a.m. and 11 a.m. to be under the control of the majority leader.

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

PROGRAM

Mr. MITCHELL. Mr. President, for the information of Senators, we had hoped to be able to proceed to S. 578, the authorization bill for the Desert Storm supplemental appropriations bill, and for other purposes, notably including benefits for military personnel and their families, and we made good progress on the matter today. But

rather than delaying the Senate further, and to give us more time to complete our preparation for consideration by the Senate of the measure we are going to go out shortly for the evening. It is my expectation and intention to proceed to that measure tomorrow morning at or around 11 a.m. following the morning business to which I have just alluded. I will be meeting later this evening with the distinguished Republican leader and possibly with other interested Senators in that regard.

So the Senate should be aware that I expect that we will be on that bill tomorrow throughout the day and into the evening. I apologize for any inconvenience caused to Senators by our inability to complete our discussions on the matter and have it ready for today. I know the distinguished chairman of the Armed Services Committee is ready and anxious to proceed with the bill, and I hope we will be able to do so at or about 11 a.m. tomorrow.

Mr. DOLE. Let me underscore what the distinguished majority leader has indicated. We are hopefully very close to some agreement on the so-called benefits package. We have agreed on, I think, the major outlines of the package. There are one or two issues that remain. I would hope we would reach the agreement. It is a responsible package. It is not one that is wide open, so I think it is a responsible package. I hope we can conclude that this evening; if not, tomorrow morning.

RECESS UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9 a.m. tomorrow.

Thereupon, at 6:10 p.m., the Senate recessed until Wednesday, March 13, 1991, at 9 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate March 11, 1991, under authority of the Order of the Senate of January 3, 1991:

THE JUDICIARY

WILLIAM HAROLD ALBRITTON III, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA VICE JOEL F. DUBINA, ELEVATED.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. EDWARD W. CLEXTON, JR., U.S. NAVY. xxx-x.

IN THE NAVY

THE FOLLOWING-NAMED COMMANDERS IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF CAPTAIN, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICERS

To be captain

VICTOR H. ACKLEY  
ROGER CLINTON ADAMS  
JOHN LOUIS AHART  
TIMOTHY MICHAEL AHERN  
GIDEON WILCOX ALMY, III

- JAMES BENJAMIN ANDERSEN  
ROBERT EARL ANNIS  
KEITH STUART ARMSTRONG  
JOHN SCOTT ATKINSON, JR  
SIMEON HAILE AUSTIN  
KERMIT ARNOLD AYRES  
ORDALE PAUL BABIN, JR  
WILLIAM BRADLEY BACON  
STEWART ROLAND BARNETT, III  
GARY ALLEN BARRETT  
JOHN MICHAEL BARRY  
WILLIAM EDWARD BAUMGARTNER  
DON FRANKLIN BEACH  
DREW WENTZ BEASLEY  
LARRY VERNON BEATTY  
CHARLES BARRY BECKMAN  
ROBERT DENTON BERGER  
RICHARD ALLEN BLACK  
JAMES ANDREW BOLCAR  
PHIL WARREN BOLIN  
MICHAEL OSCAR BORNS  
EDWIN HARRY BOUTON, JR  
JOHN CHARLES BRANDES  
THOMAS LEINBACH BRETTINGER  
JOHN RICHARD BROWN  
RANDALL RAY BROWN  
TOMMY RAYMOND BROWN  
JAMES BRANTLEY BRYANT  
GREGORY CLINTON BUTLER  
CYRUS HUGH BUTT, IV  
JOHN THOMAS BYRD  
EDWARD FRANCIS CAFFREY, JR  
CHARLES DANIEL CAREY, III  
RODNEY LEN CASEY  
LEE WESLEY CHAMPAGNE  
JOHN VICTOR CHENEVEY  
AUGUSTUS WALTER CLARK, III  
JOHN HERBERT COCOWITCH  
CHRISTOPHER WARREN COLE  
FRED GORDON COLE  
ROBERT SAMUEL COLLINS  
ROBERT JOSEPH COLUCCI  
LARRY EARL COOK  
ARTHUR THOMAS COOPER  
WARD JOSEPH COOPER  
THOMAS CHARLES CORCORAN  
KEVIN JOSEPH COSGRIFF  
RICHARD ALLEN CROSBY  
ROBERT EDWARD CYBORON  
CHARLES JOSEPH DALE  
THOMAS LEE DANIELS  
JOHN RAY DAVIS  
CAROLYN FAYE DEAL  
WILLIAM NELSON DEAVER, JR  
MARGARET SUZANNE DEBIEN  
RICHARD HOWARD DEJABGHER  
JOHN PARR DINGER  
FRANK JOSEPH DOBRYDNEY  
JACK DAVID DODD  
JAMES EDWARD DOLLE  
LEO G. DOMINIQUE  
DALE MARTIN DOORLY  
WILLIAM EDWARD DOUD, JR  
TERRY SCOTT DOUGLAS  
RICHARD ARTHUR DRYDEN  
RAYMOND ANDREW DUFFY  
DAVID WAYNE DUMA  
MICHAEL GORDON DUNCAN  
FRANKLIN THOMAS DUNN  
PATRICK WILLIAM DUNNE  
MANUEL YGNACIO DURAZO, JR  
JAMES LEIGHTON DURHAM  
DAVID ALAN DUVAL  
RONALD JAMES EDINGTON  
JOEL MARTIN EDMONDSON  
JOHN KARSON ELDRIDGE  
DEAN WILLIAM ELLERMAN, JR  
DAVID ROY ELLISON  
MORRIS EUGENE ELSEN  
RICHARD HAROLD ENDERLY  
JOSEPH EARL ENRIGHT  
DANIEL EDWARD ERNDLE  
DAVID ALAN ERSEK  
GREGORY WILLIAM ERTTEL  
EDWARD JOSEPH FAHY, JR  
MICHAEL EDWARD FEELY  
TOM STEVEN FELLIN  
WILLIAM WOODROW FETZER, JR  
MICHAEL PATRICK FINN  
CHARLES PARKER FINNEY  
CHARLES BAXTER FITCHET  
THOMAS JOHN FLAHERTY
- PETER ANDREW FLANNERY  
DONALD LAMAR FOULK, JR  
JOHN WILLI FRANCIS POWELL ALEXANDER FRASER, JR  
THOMAS LEE FREELAND  
MICHAEL FRIMENKO, JR  
WILSON JOHN FRITZCHMAN  
THOMAS WILLIAM FROHLICH  
VERONICA ZASADNI FROMAN  
RICHARD HARRISON FUNKE, III  
DANIEL EVANS GABE  
DANIEL WEBSTER GABRIEL, JR  
MICHAEL GATTRELL GAFFNEY  
CHARLES THOMAS GAMBER  
CHARLES EUGENE GIGER  
CHARLES RODNEY GIRVIN, III  
JOE ANDERSON GOODMAN  
GARY ANTHONY GRADISNIK  
KEVIN PATRICK GREEN  
MICHAEL JEFFREY GREEN  
BRENTON CLAIR GREENE  
EVERETT LEWIS GREENE  
CHARLES HENRY GRIFFITHS, JR  
LINDA KATHERINE GROVES  
FRANCIS BUNYAN GRUBB, JR  
STANLEY DOUGLAS GUERTIN  
JERRY MICHAEL HAGGERTY  
KEITH DENNIS HAHN  
GARRY RICHARD HALL  
WILLIAM LAWRENCE HAMILTON  
SUSAN COLBETH HAMMER  
LYNNE ELLEN HANEL  
WILLIAM RICHARD HANSELL, JR  
GREGORY PAUL HARPER  
DAVID THOMAS HART, JR  
BRADD CROUCH HAYES  
JAMES ALFRED HAYES  
KENNETH FLOYD HEIMGARTNER  
WILLIAM HELFEN  
MARC ARNOLD HELGESON  
JOHN WILLIAM HENSON  
RONALD EDWARD HEWETT  
ROBERT ARTHUR HIGGINS  
GEORGE THOMAS HODERMARSKY  
GERALD LEE HOEWING  
MARK ALLAN HOKE  
JAMES WARREN HOLLENBACH  
JAMES CURTIS HOLLOWAY  
GARRY HOLMSTROM  
ROGER KEITH HOPE  
DAVID CLAY HULL  
ROBERT LEO HUME  
JOHN PAUL JARABAK, JR  
JOHN PHILLIP JEFFCOAT  
WILLIAM FROST JENKINS  
CHRISTOPHER HARRY JOHNSON  
LARRY CHARLES JOHNSON  
DARRELL WAYNE JONES  
KENNETH STERLING JORDAN  
MELVIN KAAHANUI  
MICHAEL HERBERT KACZMAREK  
TIMOTHY JOHN KEATING  
JAMES DAVID KEEN  
MICHAEL JOHN KEHOE  
EDWARD WILLIAM KELLY  
CURTIS ALLEN KEMP  
DAVID CARL KENDALL  
JAY ROSS KISTLER, JR  
WILLIAM EDWARD KRAYER  
WILLIAM ROBERT LARGE, III  
DAVID ALLEN LARSON  
GREGG DAVID LARSON  
LARRY DEAN LARUE  
PATRICK HUBERT LAWLESS  
JEFFREY ALLEN LEHMAN  
BRUCE STUART LEMKIN  
GERARD THOMAS LENNON, JR  
KIRK THOMAS LEWIS  
STANLEY JOHN LICHWALA  
BRUCE RICHARD LINDER  
JAMES EARL LINQUIST  
DONATO ANTHONY LIUZZI  
WALTER RICHARD LOHRMANN  
MICHAEL WILLIAM LONGWORTH  
KEVIN FRANCIS LOVER  
ROY ALAN LUNDEEN
- DENNIS MICHAEL LUNGHOFER  
WILLIAM DANIEL LYNCH  
LAWRENCE JOHN MACK, JR  
THOMAS LYLE MACKENZIE  
JAMES FREDERICK MADER  
THOMAS WALTER MADER  
STEPHEN LAURANCE MADEY, JR  
VAUGHN EUGENE MAHAFFEY  
JAMES RAYMOND MARIS  
RICHARD BRUCE MARVIN  
WALTER BLACK MASSENBURG  
MICHAEL GEORGE MATHIS  
JOHN DONALD MAXEY  
JACK BRIAN MAYBERRY  
MICHAEL PATRICK MCBRIDE  
MICHAEL J. MCCABE  
MICHAEL JAMES MCCAMISH  
THEODORE KERSHAW MCCARLEY  
FRANKLIN BOYD MCCARTY  
JAMES LENUS MCCLANE  
BRUCE PATRICK MCCLURE  
RYAN JOSEPH MCCOMBIE  
MICHAEL PATRICK MCGAHAN  
JOHN BURKE MCGILL  
JOHN WILLIAM MCGILLVRAJ, JR  
JOHN CHRISTIAN MCKAMEN  
JAMES HENRY MCPHEETERS, JR  
GEORGE RANDOLPH MCWILLIAMS  
JOHN THOMAS MEISTER  
JOSEPH A. MEYERTHOLEN, JR  
MICHAEL EDWARD MIDDLETON  
DAVID DAMIEN MILLER  
DONALD PETER MILLER  
DONALD KEEPERS MISKILL, JR  
GEORGE LARS MOE  
FRANK WILLIAM MONTESANO  
GLENN HAROLD MONTGOMERY  
RONALD BERTRAM MOORE  
JOHN THERRELL MORRIS  
JOHN PRESCOTT MORSE  
STEPHEN E. MOTOLENICH, JR  
GARY STEVE MOWREY  
DENNIS GEORGE MURPHY  
CRAIG HARLAND MURRAY  
ALBERT CLINTON MYERS  
LINDA GAIL NEVINS  
MICAIAH WILSON NEWMAN  
RAYMOND JOHN NICHOLS, JR  
WILLIAM JEFFREY NIDENDENTAL  
EUGENE KEITH NIELSEN  
CHRISTOPHER ALAN NINTZEL  
JOHN BYARD NOLL  
THOMAS FRANCIS NOONAN  
RICHARD DOUGLAS NORRIS  
WILLIAM AUGUSTINE NURTHEN  
KENNETH LEROY OBANNON  
PAUL ODELL, JR  
BRENDAN JAMES ODONNELL  
RICHARD EARL ONEAL  
DALE EVERETT ONYON  
RICHARD BERRYMAN ORMSBEE  
DWAYNE ARTHUR OS Lund  
VERNON HOLMES OVERALL  
RUSSELL TILLMAN PALSGROVE  
RICHARD JOSEPH PARISH  
EDWARD JAMES PARKS  
JOHN JAMES PAULSON  
ROBERT LEE PAYNE, JR  
STEPHEN PELSTRING  
THOMAS ARCADE PERKINS, III  
JAMES SMITH PERRY  
OLIVER HAZARD PERRY, III  
MICHAEL EDWARD PERSSON  
RONALD RAY PETERMAN  
WAYNE ALBERT PETERS  
JOHN NOEL PETRIE  
STEVEN EARLE PILNICK  
DAVID PEARCE POLATTY, III  
RICHARD HARLEY PORRITT, JR  
GEORGE ALVA POWELL  
DAVID WAYNE PRATHER  
JESSE ALLEN PRESCOTT, III
- HENRY SLATER PREVETTE, JR  
DAVID ALAN RANNELLS  
DALE ARTHUR RAUCH  
FRANK WILLIAM REIFSNYDER, JR  
ISAAC EUGENE RICHARDSON, III  
KENNETH ALAN RICHARDSON  
MICHAEL EUGENE RIORDAN  
ROBERT DAVID RISH  
JAMES ANDREWS ROBB  
WILLIAM HENRY ROBERSON, III  
DANA ALAN ROBERTS  
TIMOTHY ARTHUR ROCKLEIN  
RICHARD LEE RODGERS  
SCOTT CRAIG RONNIE  
JIM ALLISON ROSS  
RONALD ARTHUR ROUTE  
RICHARD CHARLES RUBEL  
DENNIS LEO RYAN, III  
JACK JOSEPH SAMAR, JR  
JOHN RUSSELL SANDERS  
TERRY LEE SANDIN  
JOHN BENJAMIN SANDKOPF  
PETER WILLIAM SCHEMPF  
JOHN R. SEELEY, JR  
PETER JAY SELDE  
PETER SCOTT SEMKO  
MARVIN THOMAS SERHAN  
DAVID REGINALD SHAW  
HAROLD LEO SHEPFIELD  
WILBUR FRENCH SHEPHERD  
MICHAEL DAVID SHUTT  
STEPHEN DOUGLAS SITLER  
CHARLES RICHARD SKOLDS  
STEVEN GREGORY SLATON  
PATRICK JOHN SLATTERY  
DOUGLAS ARTHUR SMART  
AUDREY LORRAINE SMITH  
CHARLES HUGHES SMITH  
RICHARD MARKLEY SMITH  
PHILLIP LEE SOWA  
ROBERT GEORGE SPEER  
WILLIAM WARREN SPOTTS  
THOMAS ALON STARK  
CHARLES NEWTON STARNES, JR  
PAUL HAROLD STEVENS  
FRANK WOOD STEWART  
RICHARD MAXWELL STEWART  
WILLIAM DAVID STEWART  
LARRY RODGER STRATTON  
CLIFFORD JOHN STROHOFER, JR  
STANLEY ROBERT SZEMBORSKI  
KEVIN JAMES TACKETT  
RICHARD WILLIAM TALIPSKY  
DENZIL DELANE THIES  
DOUGLAS SCOTT THOMPSON  
ARNE RAYMOND THORGERSON  
WILLIAM ROBERT TOWCIMAK, JR  
THOMAS LEE TRAVIS  
MICHAEL ALBERT TRUDELL  
WILLIAM CHARLES TURVILLE, JR  
GEORGE EDMUND VOELKER  
JAMES BARRY WADDELL  
RANDALL DOUGLAS WAGNER  
ROBERT CHARLES WAGONER  
MARY ANNE WALKER  
DAVID KITTS WALLACE  
CHRISTOPHER EDWARD WEAVER  
CARL EUGENE WEISCOFF  
CHRISTOPHER LEE WEISS  
DAVID CRAIG WELLING  
MARK DONALD WESSMAN  
RICHARD ELLIOTT WESTCOTT  
DEWEY LALAND WHITMIRE  
BRYAN DOUGLAS WIGGINS, JR  
RONALD LUTHER WIGGINS, JR  
TED SHANNON WILE  
ROBERT FREDERICK WILLARD  
GARY EUGENE WILLIAMS  
THURMAN LAMAR WILLIS  
THOMAS MICHAEL WITTKAMP  
WILLIAM WARREN WITTMANN  
GREGORY CARROLL WOOLDRIDGE
- JOHN ROBERT WRIGHT  
JAMES MEREDITH WYLIE, JR  
PAUL ANTHONY ZAMBERNARDI
- WILLIAM BEIGLER ZELL, JR  
THOMAS STEPHEN ZYSK
- ENGINEERING DUTY OFFICERS
- To be captain
- JAMES DEVENS BARRON, JR  
JOSEPH ANTHONY CARNEVALE, JR  
OSIE V. COMBS, JR  
JON RICHARD CUMMINGS  
JAMES BRUCE GALLEMORE  
MICHAEL THOMAS GEHL  
JAMES MAX HADDOCK  
WILLIAM LOYD HATCHER, III  
DENNIS DEAN HERGENRETER  
DANIEL GEORGE HICKEY  
JAMES HARVEY HOFFMAN  
PETER JOHN IBERT  
ANTHONY WILLIAM LENGERICH
- AERONAUTICAL ENGINEERING DUTY OFFICERS (AERONAUTICAL ENGINEERING)
- To be captain
- TERRY PAUL EARGLE  
ROBERT NORMAN FREEDMAN  
ROBERT WILLIAM JACOBS  
JAMES WILLIAM LOISELLE  
JOHN HARVEY LONG  
PATRICK MICHAEL O'CONNELL
- DAVID CARLYLE OFFERDAHL  
WILLIAM LENARD POSNETT, III  
MICHAEL DENNIS REDSHAW  
FREDERICK G. SCHOBERT, JR
- AERONAUTICAL ENGINEERING DUTY OFFICERS (AVIATION MAINTENANCE)
- To be captain
- WILLIAM PATRICK ENGLEHART  
SHARON MCCUE GURKE  
STEPHEN CRAIG HEILMAN
- MICHAEL CHRISTIAN KIEM  
DONALD S. RICE  
GALBRAITH DENNY WILLIAMS, JR
- SPECIAL DUTY OFFICERS (CRYPTOLOGY)
- To be captain
- WILLIAM DAVID HENRY  
JOHN PATRICK ONEILL, JR  
CHARLES FREDERICK POPKAS
- GEORGE MARKS SCHU  
KENNETH ERVIN VERBRUGGE  
JERRY EUGENE WALTON
- SPECIAL DUTY OFFICERS (INTELLIGENCE)
- To be captain
- MARCIA MATARESE  
BARKELL  
DONALD HALL BARRETT  
MICHAEL PATRICK DERUSSO
- JACOB FREDERIC KNECHT, JR  
WAYNE IRVIN PERRAS  
PERRY MICHAEL RATLIFF  
DENNIS ALLAN WINTER
- SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)
- To be captain
- STEPHEN HARVEY CLAWSON
- MARK DICKENS NEUHART
- SPECIAL DUTY OFFICERS (OCEANOGRAPHY)
- To be captain
- ROBERT THOMAS PEARSON  
DONALD A. ROMAN
- WILLIAM LEROY SHUTT
- LIMITED DUTY OFFICERS (LINE)
- To be captain
- ROBERT SAGELEY ERSKINE  
ELMER HEATH MANN  
WILLIE J. MEAD
- THOMAS JOHN PRUTER  
CARL EMORY RHUDY
- Executive nominations received by the Senate March 12, 1991:
- SMALL BUSINESS ADMINISTRATION
- PATRICIA F. SAIKI, OF HAWAII, TO BE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, VICE SUSAN S. ENGELEITER, RESIGNED.
- THE JUDICIARY
- MARILYN L. HUFF, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA VICE WILLIAM B. ENRIGHT, RETIRED.
- U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
- WELDON W. CASE, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1993, VICE CLARENCE J. BROWN.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 12, 1991:

DEPARTMENT OF COMMERCE

JAMES EDWARD DENNY, OF MARYLAND, TO BE AN ASSISTANT COMMISSIONER OF PATENTS AND TRADE-MARKS.

ROCKWELL ANTHONY SCHNABEL, OF CALIFORNIA, TO BE DEPUTY SECRETARY OF COMMERCE.

DEPARTMENT OF JUSTICE

MAURICE OWENS ELLSWORTH, OF IDAHO, TO BE U.S. ATTORNEY FOR THE DISTRICT OF IDAHO FOR THE TERM OF 4 YEARS.

E. MONTGOMERY TUCKER, OF VIRGINIA, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF VIRGINIA FOR THE TERM OF 4 YEARS.

RONALD G. WOODS, OF TEXAS, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF TEXAS FOR THE TERM OF 4 YEARS.

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