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SENATE—*Wednesday, March 13, 1991*

(Legislative day of Wednesday, February 6, 1991)

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

The PRESIDENT pro tempore. Today's prayer will be offered by guest chaplain, the Reverend Clifford Paul Bruffey, chaplain, Gallaudet University, Washington, DC, with voice interpretation by the Reverend George Natonick, chaplain, Gallaudet University, Washington, DC.

Reverend Bruffey, please.

PRAYER

The Reverend Clifford Paul Bruffey, chaplain, Gallaudet University, Campus Ministry Department, 800 Florida Avenue NE., Washington, DC, offered the following prayer, which was interpreted into the English language by the Reverend George Natonick, chaplain, Gallaudet University:

God, You who created the heavens and the Earth, You who upholds all things by the word of Your power, we thank You for giving us this access into Your presence through faith and prayer.

May You also grant to these men and women assembled here a vision of Your will, so that it may be done on Earth as in Heaven. The writer of Proverbs wrote: "Where there is no vision, the people perish" (29:18).

And grant to them the wisdom and the courage to continue as the leader in this world for peace and freedom, so that by example, they can show other nations how we can live in peace, even as the Prophet Isaiah wrote: "and they shall beat their swords into plowshares, and their spears into pruning-hooks: Nation shall not lift up sword against nation, neither shall they learn war any more" (2:4).

For these blessings and guidance, I beseech You in the name of my Lord and Savior, Jesus Christ. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the previous order, the time of the two leaders is reserved.

The Chair recognizes the majority leader.

PRAYER OF REVEREND BRUFFEY

Mr. MITCHELL. Mr. President, and Members of the Senate, on behalf of all of the Members of the Senate, I welcome Reverend Bruffey and thank him for the moving prayer.

I note for the record that this is, to my knowledge, the second occasion on which the prayer has been delivered in sign language, and we welcome all of those who are here to mark the observance of this event.

My colleague, Senator KASTEN, will be making a more detailed statement and submitting a detailed statement to the RECORD on behalf of Senator HARKIN. Both of them are active in the legislation known as the "Americans With Disabilities Act" enacted last year, and both of them have had a keen interest in promoting the usage of sign as a means of full communication of the events which occur in the Senate.

Mr. President, I thank my colleagues, and again I thank Reverend Bruffey and Reverend Natonick for their presence this morning.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the order, there will now be a period for the transaction of morning business with Senators permitted to speak therein.

The Senator from Wisconsin, [Mr. KASTEN], is recognized.

WELCOMING REV. CLIFFORD PAUL BRUFFEY

Mr. KASTEN. Mr. President, it is a great honor for me to welcome Rev. Clifford Paul Bruffey and Rev. George Natonick from Gallaudet University who have led us in this morning's prayer.

Today marks only the second time in the history that the proceedings of the U.S. Senate have been opened by a deaf chaplain, and it also reminds us that we are now celebrating Deaf Awareness Week, and it reminds all of us how important it is.

I want to thank Reverend Bruffey for his truly eloquent prayer. It is a welcome reminder that we in the Chamber ought to strive for peace and freedom worldwide. This is an interest shared by the hearing-impaired Americans and all other men and women all across this country, and indeed the world over.

When we reflect on our common interest in peace and freedom, we go a long way toward bringing down the barriers of distrust and discrimination that still exist for many disabled people in this country.

Let us continue to strive to accomplish these goals. If we do this, we will not only build a better world—we will come closer to each other, and this would be a terrific result for all of us.

Mr. President, I also would like to recognize the many students, especially those from Wisconsin, that are in the gallery here today from Gallaudet University.

The PRESIDENT pro tempore. The chair calls to the attention of the Senator that under the Senate rules a Senator may not recognize the people in the galleries.

Mr. KASTEN. So to Reverend Bruffey and Reverend Natonick, let me say once again, on behalf of the whole Chamber: Welcome to the Senate, and thank you for that inspiring prayer.

ORDER OF PROCEDURE

The PRESIDENT pro tempore. Under the previous order, the first hour of morning business is under the control of the minority leader; and the time from 10 o'clock until 11 o'clock is under the control of the majority leader.

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

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DEAF AWARENESS WEEK

Mr. HARKIN. Mr. President, I am pleased to join in the celebration of National Deaf Awareness Week. I want to give special thanks to Rev. Clifford Bruffey and Rev. George Natonick from Gallaudet University for giving this morning's opening prayer.

From the inauguration of the first deaf president at Gallaudet University, to the passage of landmark legislation prohibiting discrimination on the basis of disability, the past 3 years have been a time of great accomplishments, renewed hope, increased rights, and opportunities for deaf and hearing-impaired Americans.

No one can forget the events of March 1988, when the students and faculty at Gallaudet University protested the decision to bypass two qualified deaf candidates for president and choose a hearing candidate. Their demonstration captured the hearts of the Nation and their victory was cheered by hearing and nonhearing Americans alike.

As chairman of the Senate Subcommittee on Disability Policy, I have been proud to work with deaf citizens in passing legislation to provide them with the tools and opportunities they need to chart their own futures.

July 26, 1990, was one of the proudest days of my political career, when more than 2,000 Americans joined in celebration of the enactment of the Americans With Disabilities Act, the ADA. On that day, we sent the message to the Nation that individuals with disabilities are entitled to be treated with dignity and respect and that they can, and will be judged as individuals on the basis of their abilities, not on the basis of ignorance, irrational fears, or patronizing attitudes.

The ADA is without exaggeration the most critical legislation affecting people with disabilities ever considered by Congress. It will provide access to jobs, services provided by State and local governments, public accommodations, transportation, and telecommunications. However, a very important issue was not covered in the ADA—broader access to television.

Today, television has become a pervasive and integral vehicle for sharing information in American society. It is not only an entertainment medium. Television provides a vital link to the world, providing news, emergency, and educational programming. Unfortunately, many Americans with hearing loss are denied full and equal access to the critical source of information. The promise of full integration into the mainstream of society will not become a reality for the deaf and hard of hearing community until equal access to the television is assured.

The Television Decoder Circuitry Act, now law, addresses this situation by requiring that by 1993, all televisions with screens 13 inches or larger have built-in decoder circuitry to display closed-captioned television transmissions.

Mr. President, last month, the House of Representatives began close-captioning its floor proceedings, gavel to gavel. While the Senate has passed legislation calling for its floor proceedings to be close-captioned, unfortunately it has yet to take this critical action. I am hopeful that in the very near future, the Senate's proceedings will be accessible to all Americans.

Again, I want to thank Reverends Bruffey and Natonick for sharing their gift of communication with us. I also want to thank Senators MITCHELL, DOLE, and KASTEN for making this session of morning business accessible to the 22 million Americans with hearing impairments.

ORDER OF PROCEDURE

The PRESIDENT pro tempore. Has the Senator from Wisconsin asked unanimous consent that he be given control of the time on behalf of the minority leader?

Mr. KASTEN. Mr. President, I ask unanimous consent that I be given control of the time of the minority leader this morning.

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

Mr. KASTEN. I yield such time as he may desire to the Senator from California.

The PRESIDENT pro tempore. The Senator from California [Mr. SEYMOUR] is recognized.

MISS CAROL BURNETT

Mr. SEYMOUR. Mr. President, I rise today to pay tribute to a woman who through her gift for comedy and commitment to entertainment has proven herself to be one of our national treasures.

Thirty-five years ago, this legendary star of stage, screen, and television began pursuing a career in show business armed with an uncanny cometic sense and a professional persistence of vision that was then and remains uniquely hers.

Mr. President, I speak of Miss Carol Burnett.

Through the generous loan of a wealthy stranger, Miss Burnett was given the opportunity to move to New York where she channeled her talent into the many avenues of success she has achieved today.

When the stranger made her the loan, Miss Burnett was abided by two conditions—never to reveal her benefactor's name, and if she did become successful, to help others. To this day she has relentlessly pursued her commitment to that pledge.

Toward helping others, Carol Burnett has established scholarships at Emerson College in Boston and at UCLA where she has been named a Franklin D. Murphy Associate and is a member of the board of trustees.

Miss Burnett created "The Carol Burnett Musical Theater Competition," among UCLA Theater Arts students to encourage the study and practice of musical comedy in the theater; and has also established two $100,000 scholarships for the study of journalism ethics at the University of Hawaii School of Journalism and at the University of California-Berkeley's Graduate School of Journalism.

Outside the entertainment industry, Miss Burnett is well known for her work as an active member of the board of directors and major contributor to the Heredity Disease Foundation—one of the Nation's foremost facilities in investigating the causes and cures for such deadly heredity diseases as Huntington's pancreatic cancer and hemophilia—as well as her work for the March of Dimes Foundation.

Carol's remarkable achievements have come about because 35 years ago, she made a pledge to a wealthy stranger that she would help others. Thirty-five years later, she continues to aspire to that goal.

It is an honor to join in the celebration today of her 35th anniversary in show business, and a pleasure for me to have this opportunity to extend my personal congratulations to her. She richly deserves to have her very own day declared.

I applaud her for her devotion to inspiring young entertainers and furthering the efforts of education in broadcasting, and I challenge others to take an example from her generosity to humanitarian efforts.

Through the laughter she inspires with her brilliance as a comedian, through her expertise as a dramatic actress and with her musical ability, she has brought laughter and joy to the lives of countless people all over the world.

It is my most sincere hope, as she gathers today in Los Angeles with friends, family and those who honor her, that she knows we wish her many more years of health, happiness, and friendship and that we feel truly blessed by her presence among us. God bless.

Mr. KASTEN addressed the Chair.

The PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

PROGROWTH AGENDA

Mr. KASTEN. Mr. President, I am especially pleased to address the Senate today because we have such an important national victory to celebrate. In the Persian Gulf war, the American people demonstrated that we are still capable of greatness.

In fact, it has already become something of a Washington cliche to assert that we have to start showing as much

leadership in our domestic policy as we showed in the gulf.

What I am here to say is that we must do this—we can do it and we will do it. I do not believe this just because I am optimistic—I believe we can be successful because we have done it before.

In the 1980's, the combination of progrowth incentives for families and small businesses and a renewed confidence in Presidential leadership did in fact revitalize our economy.

We created over 20 million new jobs.

We ended the double-digit inflation that was placing the basic needs of life beyond the means of many American families.

We brought down the interest rates that were stifling homeownership, discouraging investment and closing plants all over America.

Most important of all, we reduced the burden of spiraling income taxes on American families.

Our tax-cutting policies sparked the longest peacetime expansion in our history. Today, however, a whole new framework of tax and regulatory burdens has brought a temporary halt to America's growth miracle.

In his speech last week, President Bush proclaimed that "Our first priority is to get the economy rolling again." We Republicans have a specific agenda to get America moving again.

Our incentive-based policies—when enacted—will create more jobs, more family income, more wealth, and more opportunity than any government make-work program or mandate.

The centerpiece of this progrowth agenda is a cut in the capital gains tax.

This issue has been demagogued as being a tax cut for the wealthy. Let me set the record straight: Those of us who support a capital gains cut freely admit that it will benefit those who invest in America's economic future. It is about time for the other side to admit that it will also greatly benefit everyone else.

Here is how capital gains work. If you buy a home in Wausau, WI, for $60,000 and it appreciates in value to $100,000—the $40,000 profit is called a capital gain.

Over half of the people in this country at some point in their lives realize a capital gain when they sell their homes, land or farms; cash in their retirement nest egg; or sell their shares in a friend's small business.

When you take a capital gain, the Federal Government takes away a 28-percent share. If you include the effect of inflation in pushing up the price of your investment, the Feds take away even more of your gain—in some cases leaving you poorer than when you started!

In many respects, the capital gains tax is an unfair tax. It hurts all Americans. Let me read an excerpt of a letter I received from Henry and Marcella Herrerd from Wausaukee, WI:

> There is another very important aspect that needs to be emphasized too. It's this. Too many in the press and also in Congress have labeled this tax a means to soak the rich—always implying the very rich. They miss the mark completely, ignoring what the capital gains tax does to middle income people and especially people who have saved and invested all their lives in order to assure their own security and independence.

America was built on the idea that today's poor can be tomorrow's rich. But our high capital gains tax actually punishes the kinds of activities—saving, investing, and risk taking—that promote upward mobility in our society.

Let me cite an example: Suppose two mid-level managers of IBM or General Motors decide that they want to go out and start their own small business. If the business is successful, it will create new jobs for the unemployed, generate new revenues for the Government, and perhaps lead to the next great technological innovation—the kind that will expand our economy and raise our standard of living.

Good economics, good politics and just plain common sense says we ought to encourage—and reward—these would-be entrepreneurs.

But our high capital gains tax is a Berlin Wall to economic success. The rich stay rich, and the poor and middle income are denied the tools to become rich.

Because the Government takes away almost one-third of the profits off the top, these would-be entrepreneurs will have a hard time attracting investors.

Besides, who in their right mind is going to invest in a risky venture when they can invest in safe bets like CD's or Government bonds—and pay the same rate of tax?

This is just crazy economic policy. Most of our allies and international competitors know it. That is why most of them—like South Korea, Hong Kong, and Germany—do not tax capital gains at all.

Imagine that! A former Communist state—East Germany—by becoming part of West Germany—will have a more progrowth tax system than we have here in the United States of America.

In order to be competitive, we must cut our capital gains tax—and we must cut it significantly. That is why I am reintroducing legislation along with Senators MACK, SHELBY, and others to cut the capital gains tax to 15 percent and index it for inflation.

According to economist Allen Sinai, our bill—over a 5-year period—will increase real GNP by 2.8 percent, create 2.5 million new jobs, and generate somewhere between $30 and $40 billion in extra tax revenue.

This is not voodoo economics—it is based on fact. To anyone familiar with the economic history of the late 1970's and 1980's, Dr. Sinai's prediction about Federal revenue should not be at all surprising.

Look at the record. In 1978, the maximum capital gains tax rate was almost 50 percent—and revenues were $9.1 billion. After the 1978 and 1981 tax cuts that reduced the rate to 20 percent, revenues rose to $24.5 billion by 1985.

That is $9.1 to $24.5 billion—by cutting the tax.

The economic record is clear: Capital gains cuts promote economic growth and create new jobs. Those who—who for obvious reasons—are not really willing to contest this ground shift the argument to the political question of fairness. What they are really talking about is class warfare.

Should America be a country in which opportunity is denied to some people so that others can have more equal shares of a smaller pie? Or should we, rather, seek primarily to increase the size of the pie—so that everybody can get a taste?

Our President, George Bush, has put forth a plan to expand the size of the pie and create more wealth through capital gains tax cuts, enterprise zones, family savings accounts, and R&D tax incentives.

And Republicans in Congress are promoting additional progrowth, pro-family initiatives such as Senator COATS' bill to increase the personal exemption for families, Senator LOTT's bill to give our seniors more freedom to work, Senator ROTH's bill to expand IRA's and the Wallop-DeLay bill to boost job creation through tax cuts.

And we should not forget about educational choice. In our public schools—and I was really shocked to hear this—less than 42 cents of every education dollar ends up in the classroom.

For a country that aspires to world leadership, this is unconscionable. Let us quit empowering that greedy bureaucracy—and start empowering parents.

Let us give choice a chance.

By investing in children—the architects of America's future growth—educational reform is one of the most important progrowth measures of all.

Mr. President, it is said that another progrowth initiative—Senator DANIEL P. MOYNIHAN's payroll tax cut—is being poisoned by the fairness issue.

Once again, the proenvy crowd, wants to sock it to the rich by increasing the wage cap subject to the tax up to $125,000—or eliminating the cap altogether.

Not only would this move kill the progrowth stimulus of the tax cut, it would perpetuate the charade of using Social Security to mask the size of the Federal budget deficit. And by breaking the link between what people pay into Social Security and what they get out in benefits, it would turn Social Security into the world's largest welfare program.

Social Security is not an income redistribution program, it is a retirement program. Raising the wage base is, indeed, messing with Social Security.

I think the sentiment of the American people is on our side of this question. That is why I think that his pseudofairness issue will be ignored by the electorate.

We want to build this country into the best possible place it can be. The brave young men and women in the Persian Gulf have shown their dedication to America—and the American dream—by putting their lives on the line in defense of our national values and ideals.

Did they fight for an America of envy, of class warfare, of social and economic stagnation, of more and more people dividing a smaller and smaller economic pie? Of course not—they are cherishing the hope that when they return to America, they and their families will have more opportunity for advancement, rather than less.

America is not about taking what is already there—it is about giving of yourself and creating something new and valuable. It is about being rewarded for work, for effort and for achievement.

That is what we believe. And that is what our domestic agenda would do.

Remember last weekend? All Americans watched our troops start to come home. We praised them for a job well done. Now, they will need jobs. And that means all of us—together—have a job of our own to do.

I have no doubt that our President's best efforts in promoting a progrowth agenda will give America another terrific success to be proud of.

Mr. President, I yield what time he may require to the Senator from Idaho [Mr. SYMMS].

The PRESIDENT pro tempore. The Senator from Idaho [Mr. SYMMS] is recognized.

Mr. SYMMS. Mr. President, I thank the Senator from Wisconsin for yielding the time, and I thank the President pro tempore.

CAPITAL GAINS TAXATION

Mr. SYMMS. Mr. President, the subject of the morning, the capital gains taxation rate, I think is a most important subject, and one that I compliment my friend from Wisconsin for bringing to the floor this morning.

Some people seem to believe that there is a conflict between tax fairness and tax proposals to encourage economic growth. In my opinion, that is not correct. The conflict is between income redistribution and economic growth, not between fairness and economic growth.

I think people, for example, would agree with this, that taxing capital gains due to inflation is unfair; in other words, to tax someone because they purchased a fixed asset, a home, in most cases and because of inflation, the home appreciates in value. Then, when they sell the home, they are taxed on the increased value of the asset—not that it increased in value; I should say in the increased price due to price inflation.

Just to give you an insight into this, Mr. President, about 64 percent of Americans own their own homes; another 20 percent own some form of investment, whether through IRA's, individual retirement accounts, 401(k) plans, or what have you. The vast majority of our population is currently subject to a tax on inflationary gains. That is an enormous amount of unfairness.

This is not just a matter of a little unfairness spread widely. It is easy for a taxpayer who holds an asset for a few years to actually end up paying an effective tax rate of 100 percent. Mr. President, I believe even the hardest liners in the Iron Curtain countries, probably Joe Stalin himself, would have a hard time justifying that.

So my point is that if we do have to have capital gains taxes, which I personally philosophically think is a mistake—I think it slows down jobs; it slows down economic growth; and that we would have a better opportunity for more people at the low end of the economic ladder if we just got rid of the capital gains tax, but be that as it may, if we have to have one, which the body politics in this country is saying that we do, then I think we should at least all agree that we only have to pay the tax on real value gained, and the way to avoid taxes on inflationary capital gains is to index them for inflation. With this one step, we could dramatically improve the fairness of our tax system.

Indexing capital gains is also a powerful tool for encouraging economic growth. By excluding the part of a capital gain that is the result of changes in the price level, indexing reduces the effective capital gains tax so that no taxpayer will have to pay more than the statutory rate.

As anyone who has ever bought or sold an investment will tell you, and I think that probably covers everyone who ever served in this body, the prospect of a capital gain has a lot to do with why the asset is purchased. A high effective capital gains tax reduces the willingness to buy assets. In other words, it creates a tremendous disincentive on savings and investment, and savings and investment is what provides jobs, and that is the way you give people at the low end of the economic ladder that great chance that we talk about in America, so they can crawl up that ladder and have a share of the economic pie.

If the economic pie is to grow, if our economy is going to generate good jobs and growing real incomes, we have no choice—we have to save; we have to invest. And the only way to get there from here is to reduce the barriers to saving and investment. Just simply reduce the barriers. And we could do this if we did not do anything else to the capital gains tax except index the capital gains tax.

We would be making one giant step forward toward a more fair Tax Code for the working American people, who work and save and invest and buy a home. It would help all of those people. Those are all of our constituents. Those are the backbone of America.

There are a lot of other things that we can do to encourage saving and investment. We can bring back the IRA to where it was prior to the 1986 tax reform. We can improve the capital cost recovery system. We can make the R&D tax credit permanent. But I want to say again: One of the best ways to get the barriers down is to just simply index the capital gains tax.

There is another way of looking at the need for indexing capital gains. Everyone would agree that insurance is an important part of our society and our life. Most people buy life insurance and automobile insurance. Most employers provide medical insurance; most businesses are faced with having to buy liability insurance. In short, we buy a lot of insurance in this country.

Recognizing its social value, Congress has encouraged most forms of insurance with special tax treatment. There is one form of insurance, however, which is critical to our future and which for reasons that defy logic, the Congress has chosen to deny. This, of course, is insurance against being taxed on inflationary capital gains.

It is absolutely immoral to tax people on Government-caused inflation: As an asset increases in price but does not increase in value, and then the person sells the asset, they have to pay a tax to the Government. It is absolutely inexplicable to me how anybody can say that is a moral, fair system.

Congress has recognized the importance of inflation tax insurance in other areas. Prior to 1981, a worker could suffer a loss in take-home pay because, even though the worker's pretax wages would keep pace with inflation thanks to cost-of-living adjustments, the tax bite grew even faster because the tax bracket and key deductions were not indexed for inflation.

Thankfully, Congress overcame the tradition in 1981, and changed the law to that income tax brackets, personal exemptions, and the standard deduction would be indexed for inflation. This was a great step toward a more honest and fair tax system.

Now that the American people have had that experience with bracket indexing, I would not advise buying stock in the political career of anyone so foolish to tamper with bracket or exemption indexing.

It would simply be very, very unpopular with the voters who now un-

derstand that, if they get a pay raise, they do not get moved up necessarily into a higher bracket if the pay raise only meets the cost-of-living adjustment, because the pay raise is actually a cost-of-living adjustment not a pay raise based on their own performance.

But there still remains the tax on the phantom capital gains. Congress needs to fix this problem. Congress needs to ensure the taxpayers against paying tax on inflationary gains. We must in this Congress pass, at a minimum, Mr. President, capital gains tax indexing.

I thank the Senator from Wisconsin for the time and I yield the floor.

CAPITAL GAINS TAX RATE REDUCTION

Mr. HATCH. Mr. President, I rise today to express my support for the Economic Growth and Venture Capital Act of 1991.

Mr. President, this Nation is witnessing a tremendous debate over the issue of whether our Tax Code should differentiate between ordinary income and capital gains income. The capital gains debate seems to be focused on three key points of disagreement: Fairness, economic benefit, and revenue effect. I would like to address each of these points.

Mr. President, some of my colleagues on the other side of the aisle have strongly stated that a cut in the capital gains tax rate would unfairly benefit this Nation's wealthiest taxpayers at the expense of middle- and lower-income taxpayers. They point to studies that purportedly demonstrate that more than 90 percent of the benefits of a capital gains tax reduction will be claimed by taxpayers with income of more than $100,000 per year. Many of the statements I have heard that are based on such studies are downright misleading. The income figures used in these studies are comprised of the entire income of the taxpayer, including the capital gains.

Let me give you an example. An elderly couple living in Cache Valley, UT, has been farming on land they have owned for 40 years. The land was purchased for $50,000 in 1950. Because of health problems, they have decided to sell the farm and retire to St. George, a city in the State with a warmer climate. They sell the farm for $250,000. This couple has never reported more than $35,000 of gross income on their tax returns. But in the year of the sale, they report more than $200,000 of gross income. Are these people among the very wealthiest income earners of our Nation? Of course not. But opponents of the capital gains tax cut say that this family is extremely wealthy. This one-time capital gain represents the effects of inflation and the urbanization of our country. It is totally misleading to classify this couple as being in the upper income brackets simply because, for this one year only, they sold their major asset.

A far more accurate study of the distribution of capital gains benefits would include only recurring, ordinary, income. One study using such methodology shows that 74 percent of taxpayers with capital gains have ordinary income of under $50,000, and that 49 percent of taxpayers with capital gains have ordinary income of under $30,000. Does this sound as though only the wealthy are able to take advantage of a capital gains tax reduction? It is the average American taxpayer who is, to a large degree, paying taxes on capital gains. I will repeat, Mr. President: Studies that indicate that a reduction in the capital gains rate will only benefit high income taxpayers are misleading.

I ask my colleagues who believe that a capital gains tax rate reduction is not fair this question: Is it fair to tax the effects of inflation? The capital gains tax is an additional tax on the rewards of saving and investing. The investor of a capital asset has paid tax once on the income used to purchase the asset. The gains accruing to a capital asset represent the reward to the investor and the effects of inflation. It is not fair to treat these gains the same as income earned through salaries or wages.

A second point of contention on this issue, Mr. President, is that of economic benefit. Opponents of the capital gains rate reduction do not believe that such a reduction will result in an economic benefit to the Nation commensurate to the loss of revenue. In all candor, the facts show otherwise. Investing in capital assets is a form of saving. Capital gains are the rewards investors receive for the risks of their investment. Taxing those capital gains creates a bias against saving and toward consumption. This, of course, discourages saving and encourages consumption. Most economists agree that one of our Nation's greatest needs is to encourage a higher savings rate. One way to do this is to reduce the capital gains tax.

Increasing the Nation's saving rate reduces the cost of capital. This leads to a greater amount of capital available for the formation of new ventures. New ventures lead to new jobs, and new jobs generate new revenues.

Another way the reduction in the capital gains tax rate will benefit the economy is by reducing the lock-in effect created by the capital gains tax. Because investors must only pay the tax on capital gains when they sell their assets, the capital gains tax creates a disincentive to sell. Assets that would otherwise be exchanged more freely are locked in because the owner does not wish to pay the tax. This discourages investors from moving their investments into other ventures that may offer a higher return and contribute more to the Nation's gross national product. The higher the capital gains tax, the greater the disincentive.

Mr. President, it is no secret that our major trading partners tax capital gains more lightly than we do. These nations generally enjoy a significantly higher savings rate than does the United States. By reducing the disincentive to saving, these nations find that capital is more readily available. I ask my colleagues, are we not being shortsighted by encouraging consumption rather than saving?

The crux of the debate about capital gains, Mr. President, is the long-term revenue effect of lowering the rate. Opponents of lowering the rate contend that the proposal loses revenue over the long run. They cite studies that back up this contention. However, history indicates otherwise. After the capital gains rate cuts of both 1979 and 1982, the Treasury received large increases in revenue from capital gains transactions. The Joint Committee on Taxation estimated that President Bush's capital gains reduction proposal would produce a revenue loss in the 1989 to 1994 period. This estimate, however, does not take all relevant factors into consideration. The methodology employed in estimating the revenue effects of a lower capital gains tax only considers the unlocking effect produced when investors are induced to sell their assets because of a lower tax.

There are at least two other factors that would increase revenue to the Government, yet are not considered in the joint committee's study. One is referred to by economists as the valuation effect. Because all capital assets obtain their value from the income they generate, the valuation effect, increases the value of all capital assets when the tax rate is reduced. This is only common sense, Mr. President. By decreasing the tax rate, the cash flow to the investor is increased. Increasing the cash flow from an asset is going to increase that asset's value, which in turn, increases the sales price and the amount of capital gains that is realized.

The second effect which will increase revenue from a capital gains rate reduction is the base broadening that would occur as a result of the increase in economic activity that comes from more accessible and cheaper capital. This economic activity will lead to more jobs, and more jobs will lead to higher revenues. Mr. President, a reduction in the capital gains tax rate makes good economic sense for our Nation. It benefits all of us, not just the rich. It promotes fairness; it enhances our economic well-being; and it will increase revenue in both the short and long term.

Sustained economic growth is a key to our fiscal problems, Mr. President. I see the capital gains rate reduction as a solid step in the direction of sustaining our economic growth. At the same

time, this proposal promotes fairness to taxpayers. I strongly urge my colleagues to support this legislation.

CAPITAL GAINS

Mr. WALLOP. Mr. President, we are taking a few minutes this morning to discuss one of the two major domestic issues which must be debated and resolved by this Congress. The first issue is the development of a comprehensive Energy Security Program. Last month, I introduced the National Energy Security Act to stimulate debate on our national energy strategy. We have begun comprehensive hearings on energy policy in the Senate Energy and Natural Resources Committee. Drafting of a committee bill will begin later this spring.

Our second domestic project involves the promotion of economic growth. Over the past 10 years, the United States has enjoyed one of the longest periods of economic prosperity in our history. We lead the world in new job creation, we revitalized our manufacturing sector, and aggressively pursued our interests in a world economy. Late last year, our economy experienced a temporary pause. A major factor was the outlandish budget agreement which decided the best solution for America was a tax increase.

The result was predictable. We have experienced economic slowdown. The same week I introduced the National Energy Security Act, I also introduced a package of tax reforms, the Economic Growth Act, to spur a new burst of economic expansion. My proposal has four distinct pieces which together will expand capital formation and increase the real wealth of every working American. The Economic Growth Act provides a revised IRA to allow funding for home purchases and educational expenses. It provides an improved method for expensing the costs of business expansion. Third, my proposal would reduce the payroll tax. Last, the bill lowers the tax on capital gains.

Back in the early 1960's Jack Kennedy asked Congress to reduce capital gains taxes. This action was a major reason for our incredible economic growth during the sixties. In 1978, Cliff Hansen, a Senator from Wyoming, joined with Bill Steiger, a Congressman from Wisconsin, to propose another reduction in the capital gains tax. Their successful initiative stimulated new capital formation and investment after almost a decade of stagflation. It also lead to the Reagan tax cuts in 1981 which provided a sensible tax policy for economic growth in the 1980's.

But, our task is not finished. The world is becoming an international marketplace, with competition on a global basis. We will succeed in this market only if we have the capital and confidence of an entrepreneurial spirit. We cannot legislate success, but we can promote a Federal climate which provides some of the tools for success. Lowering the tax burden on capital should be one of our tools. Without capital formation, we will be left by the sidelines in the new global economy.

Today, my colleague from Wisconsin, Senator KASTEN, is introducing a bill which responds to the capital formation issue. I support his proposal to lower capital gains. It is part of the Economic Growth Act. I would hope that we could enact this entire package of tax relief, but a reduction in capital gains taxes would be a strong beginning. We know what is necessary for energy security and for economic growth. Now is the time for Congress to act.

DR. BOYD MARTIN

Mr. SYMMS. Mr. President, I rise today to bring to my colleagues' attention a great Idahoan who has taught me a lot about how important it is to strive for peace and freedom. Boyd Martin turned 80 years old on Sunday, March 3, 1991. In honor of his birthday, I would like to share with my colleagues today some of the achievements of Dr. Martin.

Boyd Martin gave 35 years of service to the University of Idaho as a professor of political science, the dean of the College of Letters and Science, and the William H. Borah Distinguished Professor of Political Science. He was selected to be placed in the University of Idaho's Alumni Hall of Fame in 1976. His accomplishments inside and outside of the classroom are remembered by thousands of UI alumni, including this student of horticulture turned U.S. Senator.

President Harry S. Truman appointed Dr. Martin to be an observer at the first U.N. Conference. It was this conference which drafted the U.N. Charter. Boyd has also been a friend and advisor to many Idaho political leaders, including Senator Frank Church and Senator Jim McClure.

Dr. Martin has dedicated his life to fostering world peace. He has laid the foundation for the practical study of peace at the University of Idaho and supported the development of public school curriculum related to peace study issues. His efforts for global peace, spanning 50 years, can be considered a lifetime achievement that many world leaders fail to pursue. For example, Saddam Hussein is one leader who chose to lead his people into conflict and war, instead of finding peaceful means to achieve his objectives.

Because world peace is such an elusive goal, Boyd knew from the beginning of his career that resources will be needed long after he and his students are gone. With this in mind, he set out to put a little money aside each year for his dream—an institute dedicated to the study of peace and the discovery of alternatives to conflict.

What started out as an $800 savings account has grown to become a multimillion-dollar endowment that is now called the Martin Institute for Peace Studies and Conflict Resolution. This is truly an impressive achievement and I salute him for it.

President Bush is hopeful that a new world peace will result from the war in the Persian Gulf. If he is right, the philosophy and knowledge of people like Dr. Boyd Martin will become vitally important in that new world. The Martin Institute for Peace Studies and Conflict Resolution will be exactly the kind of institution we will need to train young Americans to be the peacemakers of tomorrow without giving up on American ideals of freedom, liberty, and free enterprise.

Happy birthday, Mr. Martin. You have served and continue to serve the great State of Idaho and the United States of America and, for that matter the world, with enormous distinction.

CONGRATULATIONS TO JACK K. LEMLEY

Mr. SYMMS. Mr. President, I draw my colleagues' attention to the accomplishments of a great American, Mr. Jack K. Lemley. As a boy growing up in Idaho, Jack Lemley had dreams of someday building dams on the nearby Columbia River. Jack has not only fulfilled that dream, but has gone far beyond it. In 1989, Jack was chosen to head up construction of the underground tunnel connecting Britain and France. This tunnel, referred to as the Chunnel, is likely to go down in history as one of the world's greatest civil engineering accomplishments. Jack Lemley restored unanimity to the various construction crews, streamlined the building process and created a sense of pride among the workers. In recognition of Jack Lemley's leadership, Engineering News-Record chose him as its 1991 Man of the Year. I congratulate my longtime friend and fellow Idahoan, Jack Lemley, for his hand in creating what is bound to become one of the engineering wonders of the world and ask unanimous consent that Engineering News-Record's article on Mr. Lemley be printed in the RECORD.

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

[From Engineering News-Record, Feb. 25, 1991]

MAN OF THE YEAR: JACK K. LEMLEY

(By Peter Green, with Peter Reina)

When he was a student, Jack Lemley drove bulldozers during vacations, plowed the roads of Coeur d'Alene, Idaho, and aspired to the romance of building dams on the Columbia River. Within a few years he did build a dam on the Columbia and went on to construct a variety of large civil engineering projects. Now he is building the project that

engineers have dreamed of for over a century—the underground link between Britain and France.

Lemley's résumé reads as if he had consciously prepared to run construction on the Channel Tunnel. When he was appointed in May 1989 to the summit of heavy construction, he had 28 years of international project and executive management under his belt with Morrison-Knudson Co. Inc. and Guy F. Atkinson Co.

For outstanding leadership in successfully reorganizing the troubled Channel project, ENR's editors have named Jack K. Lemley Construction's Man of the Year for 1991.

UNIFIED LEAD

The 56-year-old Lemley is chief executive of Transmanche-Link (TML), the Anglo-French company holding a turnkey contract to build an operating rail link between the two countries. By the time he hands over the completed system in 1993, the owner, Eurotunnel, will be paying an estimated $100 million a month in interest. Lateness cannot easily be contemplated.

Lemley was TML's first CEO. Previously, it was led by two persons and, according to senior managers, the company lacked central direction (ENR 12/10/90 p. 30). TML Chairman Philippe Essig says Lemley's authority gave the organization the discipline it needed.

The contractor, a joint venture of a French and a British consortium each comprising five construction companies, is constructing a service tunnel and two rail tunnels extending 31 miles. The construction and procurement cost is currently estimated at $9 billion, the overall cost at $12 billion.

Even the most basic tasks are daunting on such a gargantuan job. Lemley's first move was to establish an organization that would unify a work force of 9,000 deployed on two sides of the Channel engaged in compartmentalized tasks: Designing and constructing tunnels and designing and building a railroad system. Simultaneously, he had to immerse himself in ongoing and often rancorous negotiations with the client.

He made a highly visible start by moving TML headquarters from suburban London to the site of the English terminal at Folkestone to improve relations between the transportation organization and the site team.

COST CONTROLS

Lemley also made a fast start on reining in runaway costs. Rising costs in the fixed price part of the contract were causing consternation in Eurotunnel and its lending institutions, so Lemley and TML executives negotiated with Eurotunnel to reshape the contract. However, their attempts failed to transfer some items from fixed-price to target-cost. Many months later the two parties fashioned an agreement to amend the balance of risk, which satisfied the financiers.

In turnkey contracts, design changes affect construction costs. "Control was successful in France because French contractors are experienced with turnkey, but it was harder to achieve in the U.K.," says Lemley.

He dramatically overhauled project accounting on every level. And he made the people doing the work personally responsible for keeping to their budgets. Lemley downplays the impact, claiming, "It wasn't an extraordinary achievement and there are still significant things to be done."

UNANIMITY

Nearly two years after he took command, the consensus is that he's made significant improvements to the management of the organization and hence the productivity of the project. When he joined the project, its financial underpinnings were strained, tunnelers on either side of the Channel were separated by 16 miles of chalk, and they wondered if they would ever meet. When they holed through last December, Lemley's leadership was affirmed.

In the process, Lemley bolstered staff morale, which was low because of a poor image in the press, says John King, former tunnel director.

TML executives agree that Lemley is the Great Motivator. Essig says "he can push people to do their best." Klaas van der Lee, TML managing director of construction, credits him with overcoming a myriad of problems and succeeding in firing up the team. David Brown, technical advisor to the board, says, "Lemley gave his people confidence to discuss problems with him. Gave them responsibility and said 'get on with it.'"

TML Administration Director John Noulton agrees that Lemley's strength is motivating people. But he sees a trace of the younger Lemley who "exercises a great deal of discipline maintaining a broad overview because he would really like to put on a hardhat and go out and do the work himself."

Although widely praised, Lemley is not surrounded by sycophants. "He leads by example, but has a tendency to not realize the limitations of some of the people working for him," says John Hester, a former MK engineer who is now TML's tunnel director.

Andrew Fisher, a New York City lawyer who has remained close to Lemley since participating in litigation in the 1970s, says: "If he's got a fault, it's that he gets surprised at times that not everyone is Jack Lemley—that not everyone cares as much, not everyone is as capable as focused or as disciplined as he is."

BOARDROOM FIGHTER

Lemley also has a reputation for being a tough negotiator, a skill now being fully extended during contractual discussions with Eurotunnel.

These discussions can be dramatic, according to participants, since Sir Alastair Morton, Eurotunnel's CEO, is widely known to be abrasive and Lemley can be quick-tempered.

As an adversary, Eurotunnel's project CEO, John Neerhout, regards Lemley's negotiating style as "intransigent." This attitude, Neerhout claims, "is why we have yet to resolve a claim."

A more pointed, although anonymous, observer says, "I think the noise content of the contractual stuff would be diminished to a pleasanter level if Jack wasn't there."

But even Lemley's critics respect his ability to run the project. Morton who says, "We quite often shouted at each other," also admits, "There is no doubt that Eurotunnel, including [Chairman] André Bénard and myself, have found Jack to be someone we can work with. He is a professional."

UNHEALED LOSS

Lemley learned how to play a bad hand when he managed a joint venture for Atkinson subsidiary Walsh Construction Co., which was constructing New York City's 13.5-mile Third Water Tunnel.

Between 1972 and 1975 he participated in some fierce negotiations with the city that to his disappointment eventually ended in protracted litigation. Andrew Fisher, a partner in Fisher & Fisher, one of the law firms representing the consortium in claims against the city, says Lemley worked hard to reach an early settlement. Unfortunately, he says, after Lemley left the project the negotiations continued with other people and, for numerous reasons, the settlement was eroded by a substantial amount.

Looking back on that dispute, Lemley reflects that the uncompleted project "tears away at our industry's credibility with the public." Also, he points out, only one of the six contractors in that consortium is still in heavy construction. "That means a large element of capacity of the industry has been lost. And the city lost too."

But Lemley didn't lose a pioneering resolution process that he spearheaded a few years later. The 1985 Tennessee-Tombigbee Waterway contract dispute over unexpected site conditions was settled through a "mini-trial" between a joint venture and the Corps of Engineers.

Lemley, who was a senior vice president at MK, says the mini-trial was instant and successful arbitration. After four days of mini-trial and discussion, "we only needed two hours to reach final agreement." The parties agreed to a $17-million settlement (ENR 11/21/85 p. 12).

MK's counsel, George D. Ruttinger of Crowell and Morning, Washington, D.C., attributes his client's success in the mini-trial to Lemley's perspicacity. "Structured settlements were new to the industry and he was creative enough to see the advantages of the procedure. In practice sessions he asked skeptical, critical questions that helped us refine our presentation. During the mini-trial he asked the Corps questions that helped everybody's understanding of the case, and in some instances revealed the Corps' weaknesses."

SHORT STAY

Two years after the Tenn-Tom mini-trial Lemley left MK. He had completed 10 years in senior positions and resigned because there wasn't room at the top. "MK is managed by two guys who are 50 years old," he said in 1987. Ironically, one year later MK's new chairman, William Agee, cleaned house and the two 50-year-olds resigned."

From Boise, Lemley moved through geographic and cultural zones to become president and CEO of Blount Construction Group in Montgomery, Ala. The ill-starred venture lasted eight months, because, says Lemley, "the company's chairman, Winton Blount, and I didn't have a meeting of the minds."

A source close to the events says Blount opposed Lemley's intent to set up a heavy civil engineering division. The company is primarily a builder.

HOME AGAIN

Jack Lemley left the Deep South and returned to Boise where his wife, Pamela Lemley, established a consulting business, Lemley & Associates, Inc. (LAI). Lemley and Robert S. Thorn, a long-time buddy whom he first met in Saudi Arabia, worked for LAI. Thorn had also worked for MK and is now a group control director at TML's tunnel site.

LAI provides services such as acquisition analyses for investors wanting to invest in small companies in construction and material supplies. And drawing on Lemley's experience it provides support for construction clients involved with litigation and arbitration.

The firm represents Caithness Resources Inc., New York City, in a 250-Mw geothermal power development in China Lake, Calif. "We look after the interests of our client's investors from engineering and construction through operations," says Lemley.

When Lemley joined TML, he retained one consulting assignment: He sits on an advisory panel for Universities Research Association Inc., Dallas, which has the contract from the Dept. of Energy to design and procure the $8.24-billion Superconducting Supercollider in Texas.

Before Lemley left Boise for Britain, Pamela Lemley appointed Bates C. Burnell as the first president of LAI. Burnell had retired as chairman of MK International, and when Lemley finally returns to the Idaho consulting firm, Burnell, the former deputy chief of the Corps of Engineers, laughingly says he looks forward to retiring for the third time.

Lemley, however, doesn't look forward to doing it even once. "I'm never going to retire" he says. He is by any standard a workaholic, admitting to working an average of 350 hours a month and 450 hours when he's really busy.

The last time he took a real vacation, he says, was his honeymoon six years ago. With such long hours, he has no time for activities such as tennis or golf but intermittently tries to keep to a jogging schedule.

Burnell says that when Lemley visited Boise for a Christmas break he spent half the days in the LAI office "picking up fax mail from around the world."

Call Lemley's home town and the city hall operator answers "Coeur d'Alene, all-American city." Lemley fits right in. He started off as an all-American boy playing football, basketball and track and showing early signs of a later career by managing two of the teams.

The high school yearbook predicted he would become mayor of the city. Ray Stone, current mayor and Lemley's American government studies teacher, says, "he would have been a good mayor if he had stayed around long enough. But he was a little too conservative for my mind."

Lemley was liberal in his higher education. He didn't follow the traditional construction route by starting his career with a civil engineering degree. He began that course at the University of Idaho but switched to architecture along with many courses in philosophy. Architecture, he says, "is useful for conceptualizing." It also helped him design and build two of his homes and design construction camps and maintenance shops.

His first job was with Atkinson, where he stayed a total of 17 years, including two years building the Mica Dam on the Columbia River in British Columbia. In 1977, he moved back to Idaho as a vice president at MK.

SAILAWAY PLAN

Lemley doesn't carry his flamboyance outside disputatious meetings with clients or legendary closed door blow-ups with staff. In day-to-day business he appears to be relaxed, almost laid-back. Eurotunnel's Morton accurately summarizes that "his general style is cool and calm and thoughtful."

He philosophizes about the construction industry, and for a non-academic he has published a lot of technical papers—26 of them when he stopped listing them in 1986. Lemley enjoys addressing professional societies and industry associations because he likes to share his personal experiences in construction management and negotiations.

Apart from the expected membership in the Moles and Beavers, he belongs to 10 other American and international heavy construction groups and is a former president of the International Tunnelling Association.

These job-related activities and business trips have taken him around the globe. When he fulfills a wish to visit the Soviet Union, Lemley will have visited 66 countries during the past 15 years.

There could be another kind of travel in the future because his assertion, "I don't ever want to retire," may have been made tongue in cheek. He admits to a dream to buy a large sailboat and "sail off for a month or two at a time." Just long enough, no doubt, to become restless and return to Boise to read the fax mail.

Mr. KASTEN. Mr. President, the time that was allotted to me, I think, has almost expired, is that correct?

The PRESIDENT pro tempore. The minority leader still has about 28 minutes, and the Senator from Wisconsin is presently the designee of the minority leader.

Mr. KASTEN. Mr. President, I see the distinguished Senator from South Carolina on the floor. I believe he wants to speak not on economic issues but about the crime bill. I yield to him what time he may wish.

The PRESIDENT pro tempore. Would the Senator begin placing a time limit on his yielding time?

Mr. KASTEN. I yield to the Senator the remaining time of the Republican leader.

The PRESIDENT pro tempore. The Senator from South Carolina is recognized for the remaining 28 minutes of the Republican leader's time.

Mr. THURMOND. I thank the Chair.

(The remarks of Mr. THURMOND, Mr. SEYMOUR, Mr. NICKLES, Mr. SPECTER, and Mr. SIMPSON, pertaining to the introduction of S. 635 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ORDER OF PROCEDURE

The PRESIDENT pro tempore. Under the order, the time until 11 o'clock is under the control of the majority leader.

Without objection, the Senator from West Virginia [Mr. ROCKEFELLER] will be recognized as the designee of the majority leader.

Mr. ROCKEFELLER. I thank the Chair, the former majority leader of the Senate.

Mr. President, I rise today in an effort to turn the Nation's spotlight on actions taken by major pharmaceutical drug companies that should disturb every Member of this body. Unless we call attention to these developments, and stop them dead in their tracks, these companies threaten to cost the Department of Veterans Affairs many millions of dollars—precious funding that the VA can ill afford to lose and that should be protected to meet the needs of America's veterans.

It has been reported recently that several major drug companies are attempting to renegotiate longstanding discount rates with the VA. In other words, the companies want to secure higher profits at the expense of taxpayers and the veterans who rely on prescription drugs through the VA. It seems that drug companies are doing this in reaction to last year's congressional action that required the industry to offer larger discounts to States for drug purchases under Medicaid, the health program for low-income and other needy citizens.

At the masterful initiative of Senator PRYOR, Congress incorporated a set of provisions requiring the Medicaid drug discounts in the omnibus budget reconciliation package enacted into law in November of last year. As a result, the law now requires drug companies to offer States a 12.5-percent discount or the best price for Medicaid drug purchases.

As a member of the Finance Committee, I was proud to support Senator PRYOR's effort and fight for its passage during the conference committee meetings on the reconciliation bill. I am totally committed to continuing to work with him and all of our colleagues in order to make sure we secure the savings in Medicaid—which means savings for States, the Federal Government, and taxpayers—that compelled us to put this initiative into law in the first place. This is one of the many ways we can and should curb spiraling health care costs that burden Government as well as the private sector.

The congressional intent of this legislation was to encourage expansion of the drug discount program to other programs where the Federal Government makes large purchases of these products. Our efforts were also designed to give States and the Federal Government needed relief from spiraling drug prices associated with our responsibility for Medicaid beneficiaries.

I am simply appalled to learn that major drug companies are reversing their longstanding discount contracts with the VA in response to the new requirements for Medicaid discounts. This strikes me as the beginning of a troubling and ill-advised trend on the part of the industry that I would call profit-shifting. In my view, companies are trying to compensate for the curb in their Medicaid-related profits by increasing prices for a different Federal Government purchaser, in this case, the VA.

It is sad to see companies—especially when we just sent our people to fight for world security and peace—place their priority on maintaining high profit margins at the expense of our veterans and soldiers.

It seems to me that drug companies are punishing the VA by withdrawing traditional discounts. As a member of the Senate Veterans' Affairs Committee, I can assure you that the VA budget for medical care is already stretched beyond its limit. Every additional dollar that must be used to cover higher costs for drugs will come out of other vital investments in health care services.

President Bush has proposed almost a $1 billion increase for VA health care. Such an increase is good news, but my colleagues should know that this proposed increase falls short of the Department's request for health care spending and its needs.

Funding shortfalls for the VA health care system is the source of serious and very real problems for our Nation's veterans, whose proud ranks will now grow with the return of the Operation Desert Storm troops. VA hospitals are being forced to make do with old medical equipment because there is no money for newer machines. Tragically, veterans often must wait, sometimes for months, for the treatment and care they need. I am sure that every one of my colleagues has been hearing from more and more veterans in their States about delays at the VA hospitals and facilities due to insufficient funds. I certainly do.

The VA needs to invest in the purchase of new medical equipment. The VA needs to invest in recruiting doctors and nurses to staff its hospitals. The VA needs to invest in medical research.

The VA should not have to pay higher prices for prescription drugs to compensate private drug manufacturers for lost profits from new Federal laws requiring Medicaid discounts. Frankly, it looks to me like drug companies are perfectly capable of absorbing these modest curbs on the very hefty profits they report year in and year out.

Drug companies will invest millions of dollars in advertising to generate good will and shape public opinion. That is part of business. But I believe it would also be good business to continue longstanding contracts to large, Federal customers that serve America's veterans, the poor, and elderly.

I urge our drug manufacturers to continue their discount program for the VA and DOD. I believe such action will provide more good will and public support than any television commercial or print ad.

I am deeply disappointed in the action taken by some drug manufacturers. I want to publicly urge every CEO and board chairman of every drug company that deals with the VA to carefully consider the grievous impact of reneging on discounts that the VA has received and depended upon. It is time to nip this one in the bud.

At a time when our country is saluting the brave men and women who served in Operation Desert Storm, it truly seems inappropriate and ill-advised for major drug manufacturers to reduce the discounts for the VA by one nickel.

Mr. President, I hope that drug manufacturers will reconsider their actions and will continue to provide discounts to all of their major customers—the VA, DOD, other Federal agencies, and Medicaid prescription drug purchasers.

I look forward to hearing from the drug industry on this vital subject in the very near future.

Mr. President, I yield the floor. I thank the Chair.

Mr. KERRY addressed the Chair.

The PRESIDENT pro tempore. How much time does the Senator from West Virginia as the designee of the majority leader yield to the Senator from Massachusetts [Mr. KERRY]?

Mr. ROCKEFELLER. How much time does he need?

Mr. KERRY. Mr. President, are we offering, under morning business, with the previous——

The PRESIDENT pro tempore. The Senate is in morning business. But the time from 11 o'clock, under the previous order, is under the control of the majority leader.

Mr. ROCKEFELLER is the current designee of the majority leader.

Mr. ROCKEFELLER. I understand the time runs out at 11 o'clock.

The PRESIDENT pro tempore. The Senator is correct.

Mr. ROCKEFELLER. I yield 20 minutes to the Senator from Massachusetts.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized for 20 minutes.

PERSIAN GULF POLITICS

Mr. KERRY. Mr. President, I thank the distinguished President pro tempore.

Mr. President, the January 12 vote on the Persian Gulf has been very much at issue in recent days. Some have come to the floor and spoken out publicly; others have spoken out through various media outlets, publicly attacking those who continue or who voted to continue the sanctions.

What answer there has been to these charges thus far has come almost exclusively from either independent columnists or from Democrats who voted with the President. I did not vote with the President, but I want to answer for myself those charges as one who voted to continue sanctions.

However, before addressing that issue, I want to reiterate how proud I am over the exceptional performance of our Armed Forces in this conflict.

Mr. President, I am proud of the vote I cast. I am proud of the fact that that was my judgment at that point in time. I do not believe I was wrong in the judgment I made.

There are those trying to say somehow that Democrats should be admitting they were wrong. I believed at the time it was the right choice. I still believe, given the circumstances of the time, it was the right choice for that time.

But the fact is, Mr. President, we will never know if it was wrong. I saw today in the Washington Post, which is one of the reasons I was prompted to come to the floor, an article in which a Member of the House of Representatives somehow is suggesting the Democrats who voted to continue sanctions should come out and readily admit they were wrong.

There is not a right and a wrong here. There was a correctness in the President's judgment about timing. But that does not mean there was an incorrectness in the judgment other people made about timing.

As many said at that point in time, the regret is that we will never know the answer as to whether or not there might have been some other alternative to war for achieving the outcome upon which we all agreed. We will never have that answer, Mr. President.

I am as proud as any person in this country of what our troops accomplished in the Persian Gulf. As a veteran of Vietnam, I am delighted people are able to stand up and say that syndrome has been responded to; effectively it has been put to rest.

Nothing gives me more pride or more emotion than to watch these homecomings of victorious troops, homecomings which members of my generation who fought in Vietnam were never afforded and never had the pleasure of experiencing.

So there is a satisfaction and pride in seeing that today. There is a pleasure in having seen our military operate with such efficiency and such capable leadership. That is what we ought to be sharing in America today—not a rancorous, divisive debate that somehow pits people against each other.

So, Mr. President, maybe the situation is a little bit like what TRB—who opened his column in the New Republic—said this week when he referred to a situation where someone's mother comes to him, who lives exclusively on Social Security, and she says to you, "I am going to invest my entire Social Security check in the lottery." You say, "No, I do not think that is a very good idea." Most people would say it is not a very good idea. But she does it and she wins the lottery.

It would be a gargantuan task to persuade her after the fact that it was not a good idea. That is precisely where we are today with respect to the judgments about the gulf.

The tragedy is that an ugly, divisive tactic has emerged in recent days that casts a shadow on the victory we all ought to be celebrating. Some individuals who represent a strategy that has seldom taken the high road in American politics in recent years have been busy sewing the seeds of a decidedly—or what I think at any rate is a decidedly—unpatriotic and inappropriately partisan approach to postwar politics.

Sadly, some threaten to do in the aftermath of the war what Democrats pointedly refrained from doing during the conduct of the war, or prior to the conduct of the war.

We have heard a lot of talk of, "Well, we are going to get them," or "They will pay for their votes," as though they were somehow against the final outcome; somehow opposed to the goal of liberating Kuwait.

Already fundraising letters, to which colleagues of mine who have come to the floor previously have referred, are being circulated by the Senate Campaign Committee trying to divide Americans over the issue of who should claim credit for the victory.

There is not always respect for truth in politics, and so I suppose we should not feign surprise that this latest approach shows little regard for the truth.

But the simple fact is this strategy ignores the simple truth that from the moment Saddam Hussein invaded Kuwait—from the moment the first shot was fired, and from the moment the bombs were dropped during the war itself—there was a remarkable unity in this country.

Mr. President, this is a debate in which I would much prefer we were not engaged, and it is not because I do not feel comfortable with the arguments; I do. It is because it is ugly. It is a debate which appeals to the most base of instincts and, in a sense, demeans the remarkable accomplishment of America—the accomplishment, I might add, of Democrat and Republican alike. This is not a time for partisanship. It is a time for unity and celebration. This is not a debate which is representative of where the energy of the Congress or of the country ought to be going.

But others began this debate, and too much has been written and said, without response. Thus far, it has been a debate really almost without engagement, at least by those who voted to continue sanctions. The result is that there is a certain historical revisionism that is going on. I think that kind of revisionism is dangerous, unfair, and I think it is very important that history not be rewritten in this situation.

Again and again and again in the debate, it was made clear that the vote of the U.S. Senate and the House on the authorization of immediate use of force on January 12 was not a vote as to whether or not force should be used. It was not a vote which represented a division in the Congress over any goal whatsoever in the gulf. In fact, there were very few differences in Congress over the goals.

It was not a vote about whether or not we should go to war at all. After all, Mr. President, as many people have pointed out, we were already at war, because we had imposed the most severe economic sanctions against any country in history, and we have voted to enforce those sanctions with the use of force, if necessary.

That vote on January 12 was about one thing only, one thing only. It was about when—when—you take the final option available to administer the coup de grace. I emphasize coup de grace, because no one in the U.S. Senate doubted the outcome. There was no policy division whatsoever in the United States about whether or not we would win. There was only one issue: Whether or not we have arrived at that special moment where the action requested by the President was absolutely the only option left for achieving our common goals.

There was a legitimate and conscience-driven difference of opinion as to whether or not tactics—not goals, but tactics—were being appropriately decided upon.

Mr. President, the revisionism should not ignore the fact that there were many on the other side of the aisle who were distinctly uncomfortable with the box in which they had been put, who truly questioned whether or not that moment had not arrived. As a result, they decided they could not support their President. It was not a vote where they said: We do not think any of these terrible things will happen; we do not think the war is going to be serious; we think it is going to end in 3 days. No; they based their decision on the belief that it was critical to back the President, because he had a policy, and this was the moment.

Part of the tactical difference—and I emphasize tactical—involved weighing risks. We have heard some Senators quoted for their predictions on the floor of some of the things that can happen in war, and they have been quoted derisively by colleagues, because these things did not happen, Mr. President.

Well, I think it was fair and intelligent to weigh those risks. I think the American voters sent us here to weigh those risks. A review of the statements of support for the President's position shows no one suggesting that those things might not happen, or predicting they would not happen, or basing their vote on the fact that they thought they would not happen. It simply shows that some were more willing, at that particular moment in time, to accept some of those risks than others.

It is interesting to note, regarding the risks, that General Schwarzkopf stated after the war, "It was miraculous that there weren't more casualties." Well, I think it is fair to differ over whether policy should depend on the expectancy of miracles for its success.

Mr. President, regrettably, some are trying to rewrite history when they suggest that somehow the vote on early use of force meant our country was not united about Iraqi aggression, and more particularly, that it meant somehow Democrats have a different view in this country about defense, or about the interests of our Nation.

The fact is that within 24 hours of the original aggression by Iraq against Kuwait, both Houses voted unanimously to condemn it. It is worth recalling the reality of that condemnation. On August 2, 1990, the U.S. Senate voted on Resolution 318, which was introduced by Senator PELL, Senator HELMS, and others—nine Democrats and six Republicans—that presented the President with united support for the concept that he take all necessary steps to stop Saddam Hussein and force Iraq out of Kuwait. I repeat, "force Iraq out of Kuwait." The Senate resolution passed unanimously, and it passed before the President of the United States had even spelled out his full policy on this issue.

Mr. President, that resolution, which I will not repeat in full right now, encompassed the freezing of Iraqi assets and the boldest set of sanctions that we have seen. But, most important, it also embraced charter article 42 of the Charter of the United Nations, and in section E stating:

> If such measures prove inadequate to secure Iraq's withdrawal from Kuwait, additional multilateral actions under article 42 of the United Nations charter involving air, sea, and land forces, as may be needed to maintain or restore international peace and security in the region.

That is what the Congress ought to authorize. I voted for that resolution, Mr. President. You voted for that resolution. Every Member of the U.S. Senate voted for that resolution. It passed unanimously, and it explicitly urged the President to take military action, if necessary.

We voted to support the President, as did Members of the House, because we all understood what was at stake. When we returned from a recess, Mr. President, we continued that support. And our fall session closed on October 2 with another bipartisan resolution on the gulf crisis introduced by Senator MITCHELL and Senator DOLE. And that resolution commended the President for all of his accomplishments to date, and specifically expressed our approval of the administration's efforts to achieve international solidarity under the umbrella of the United Nations.

I ask people to stop and think for a minute. If the Congress has unanimously embraced a policy that advocates the use of force, if it is the only option left, and the goal adopted by the Congress is the liberation of Kuwait, as it was, no one in their right mind is going to stop short of accomplishing that goal, because no one wants a repeat of Vietnam.

There was implicit in the position of the U.S. Congress an understanding that we might come to the point of using force. And there was equally explicit the adoption of a policy by the Congress that was not going to fail. That meant whether it was January 12, or whether at some point in the future,

that ultimate day of reckoning was on the table for every Member who had supported that original policy.

The critical fact is that we supported the U.N. resolutions on the use of force, and the fact is that we laid out and supported a policy that Kuwait would be liberated.

I understand the reality of how defensive to some it may seem to raise these issues in the aftermath of this remarkable success, and I accept that in coming to the floor. I do so because what is important, Mr. President, is that history not be rewritten and that the record be clear, no matter how hard it is to be heard; no matter how much the rush of victory somehow erases reality here.

I think it is important that we state it. From the moment Congress decided the issue—and this is perhaps the most important part of what I would like to say—from the moment the vote in the U.S. Congress took place on the issue of timing, there was almost unanimous agreement in this country expressed by the U.S. Congress. There was almost complete unanimity that we had to stay united, support the troops, and that the debate had ended. We witnessed a democratic process in voting our consciences before we went to war. Once that issue was settled we rallied around the President, around his policy. We did so, because we were determined that there should not be another Vietnam. Again and again during debate, Senators, voting to continue sanctions, warned Saddam Hussein that he should take no comfort from those who voted to delay or to have the sanctions continue. Again and again people said one way or another, Saddam Hussein will leave Kuwait. Iraq, we said, must understand that we will give the President the full support that he requires to wage war if it is authorized.

I am proud to say, Mr. President, that, after the vote, Democrats and Republicans, even those who voted to press on with the sanctions, immediately rallied around country and troops and gave full support to our military effort. No one was going to make the mistake of having sent troops to a distant part of the world and of having had hostilities commence, of now deserting those troops.

But more than that, more than that, when early suggestions were raised as to engaging in a lull in bombing only days after the war began, of a ceasefire, Democrats almost unanimously said no. We argued that would endanger the troops, and it will only give Saddam Hussein time. He knows how and where to surrender. When peaceful demonstrations across the country sought supportive statements for their efforts, the vast majority of Democrats stood with the troops and behind our policy and refused to give those statements. When the Soviet Union made its peace proposal, when Saddam Hussein pretended to accept their terms, and when the ground war began, the vast majority of Democrats agreed with each of the President's decisions and his reactions to each of those events and backed our policy to the fullest.

To the chagrin and even the damnation of some antiwar activists, Democrats maintained unity and steadfastly backed our effort. I even became the target of antiwar protesters in my Boston office, which was taken over by them because I was standing with the President. Picket lines were set up against Democrats and Republicans who were supporting the war. I believe, Mr. President, that it is appropriate to remind everyone that Democrats helped present the Nation a unified front at war.

The Republicans are fond of quoting General Schwarzkopf these days. He is a new and very well-warranted American hero. They would do well to remember what General Schwarzkopf said about when to use force in this situation. The general stated, after we had put the sanctions in place and before the vote to authorize force took place: "If the alternative to dying is sitting out in the desert Sun for another summer, then that is not a bad alternative." Or later when General Schwarzkopf said, "I really don't think there is ever going to come a time when time is on the side of Iraq, as long as the sanctions are in effect, so long as the U.N. coalition is in effect." Finally, his comment when pressed about pursuing the military option: "Right now we have enough people saying 'OK, enough of this business, let's get on with it.' Golly, sanctions have only been in effect a couple months * * * and we are now starting to see evidence that the sanctions are pinching. So why should we say 'OK, we gave them 2 months and they didn't work. Let's get on with it and kill a whole bunch of people.' That's crazy, that's crazy."

Those were the words of Gen. Norman Schwarzkopf, who, together with our allies, led us to this extraordinary victory.

George Bush and the Nation would be far better served and we would all be far better off in victory if the GOP hatchet men do not assume a partisanship which was markedly and happily absent during the conduct of the war itself. If we want to rewrite history and pretend that Democrats somehow did not support the goals or were not in favor of liberating Kuwait, then there is a lot of real history that could be revisited, like who lost Kuwait in the first place or how we got to be in the predicament we were in. That is precisely what Richard Cohen, in the article in the Washington Post, raised today.

Mr. President, I ask unanimous consent for an additional 5 minutes.

The PRESIDENT pro tempore. Without objection, the Senator is recognized for 5 additional minutes.

Mr. KERRY. Mr. President, I do not think we need all that finger-pointing. There is obviously a lot more of it that could be engaged in whether it is in the examination of the statements of a U.S. ambassador who helped to mislead Saddam Hussein, or visits of various Members of Congress that may have misled him or any other aspects of our policy in recent years, including the effort in the Senate impose sanctions, against Iraq—that effort, stemming from Saddam's use of gas against the Kurds, was opposed vigorously by the administration and some in this holy questions which can lead to legitimate. There are a host, it seems to me, of finger-pointing.

If the National Republican Senate Campaign Committee chooses to target Democrats as "appeasers," the Democratic Party could in turn note that Republican policies not only helped arm Iraq but also licensed dual-use technologies and promoting sales of American high-technology goods to Baghdad that never should have been sent to Saddam.

If the political strategists over on the other side want to try to use the gulf as a wedge issue to challenge the patriotism of those who wanted to give sanctions more time to degrade Iraq's economic and military strength before going to war, the consultants on our side of the aisle can start sending out messages to remind the American public that two Republican Presidents prevented the Congress from imposing economic sanctions against Iraq as a result of its use of chemical weapons against the Kurds.

If the House minority whip wants to try to force Democrats out of office by saying they were helping Saddam, the Democratic Congressional Campaign Committee can take out advertising in his district to remind voters that American soldiers died this year to force Saddam Hussein out of Kuwait as a result of mistakes.

Personally, I hope we will not be driven to having that kind of further ugly and rancorous debate here.

This is a moment not to ask "who lost Kuwait?" or "who freed Kuwait?" and to answer the question with some partisan creed. It is a moment when we would be better in saying, "we all helped free Kuwait, we stood united against Saddam Hussein, and as a nation we were victorious. We had disagreements over tactics, but never goals. From the beginning, we undertook policies that insured that Iraq would eventually be forced out of Kuwait."

The President decided to move quickly, and while war is usually a situation for which the phrase, "situation normal, all fudged up," was invented, in this war, our generals, our technology,

and our soldiers all performed amazingly, wonderfully, well.

The point is this country has a different agenda in victory. Almost every American understands that agenda. It is an agenda to try to win the peace, which in many ways will be far more difficult than winning the war. That is going to require bipartisanship. That is going to require cooperative efforts in the U.S. Senate and the House, in order to forge a consensus and pick our way through a minefield of policy issues far worse than the mine fields that were in the sands of Saudi Arabia and in Kuwait.

It seems to me, Mr. President, that we ought to recognize also the other critical elements of the American agenda. Our soldiers are going to return to a country with a rising rate of unemployment. They are going to return to cities—Chicago, Boston, New York, Washington, and others—where parts of those cities look like Kuwait, where parts of those cities see people living in tin shacks or sleeping on grates. There is enough of an agenda to rebuild an education system or transportation system, for a lot of other issues in this country that we do not need to engage in divisive tactics over the one thing that we were perhaps most united on in recent memory. It seems to me that we would do well to remember that none of those soldiers lost their life for a Republican or lost their life for a Democrat, or lost their life for any partisan purpose at all. They lost their life for common goals to which every single one of us are committed, and there is not a soldier who I think would be happy with the notion that their leaders are engaged in a partisan bickering that detracts from the glory of victory and the accomplishment which they have achieved on behalf of all of us.

So, Mr. President, having won the war, we now have to act to insure that we win the peace, both in the Middle East and at home. Can anyone doubt that our country faces deep problems that we are making far too little progress in solving? Do we know of nothing better to do here than make political attacks on one another, rather than to try to work together to find solutions to our very real problems?

I know this Nation needs more.

I know this Nation deserves better.

If we lose this peace, after such a victory, we will lose an opportunity as a nation to rebuild its economy and provide for the future that may not come again.

I yield.

The PRESIDENT pro tempore. The time until the hour of 11 o'clock a.m. is under the control of the majority leader.

Without objection, the Senator from Delaware is recognized as the designee of the majority leader.

How much time does he yield himself?

Mr. BIDEN. I would like to have 12 minutes, Mr. President.

The PRESIDENT pro tempore. The Senator from Delaware is recognized for 12 minutes.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that I may have 10 minutes following that.

The PRESIDENT pro tempore. Without objection, the Senator from South Carolina will be recognized following the statement of the Senator from Delaware for not to exceed 10 minutes.

WINDOW OF OPPORTUNITY FOR MIDDLE EAST ARMS CONTROL

Mr. BIDEN. Mr. President, today Secretary Baker nears the end of a historic trip to the Middle East where he sought to lay a foundation stone for a new world order in the region. Some may think that constructing a secure and lasting peace in the Middle East will be as swift and easy as General Schwarzkopf's flawless military campagin.

But even America's battlefield triumph will not empower us to impose our will on the Middle East. However, we can surely provide a great deal of leadership to encourage needed change. American leadership was fundamental in forming the coalition that saved the oil-rich states from the scourge of Saddam Hussein. That same leadership should now catalyze a new world order in this volatile region. In an earlier speech to this body I discussed an issue critical to this new order in the Middle East and that is addressing the disparity of wealth in the region. I called for the creation of an Arab development bank, similar to regional development institutions in Latin America, Asia, Africa, and Europe, that would be responsible for coordinating the investment of the region's vast oil wealth in the poorer nations of the Middle East.

Such a bank should be financed and operated by the Arab States. Unlike the other regional banks an American financial contribution is neither desirable nor necessary, but we should not shrink from encouraging the Gulf States whose wealth we have just protected to accept greater responsibility for promoting prosperity among their Arab brethren.

Secretary Baker endorsed this concept before the Foreign Relations Committee and he is apparently pursuing it in his discussions with Saudi and Egyptian leaders.

Today I would like to address another major issue that Secretary Baker discussed prior to his trip—arms control—where American leadership is not only important but, I might suggest, Mr. President, is absolutely indispensable, where American leadership has been lacking in the past but apparently is likely to be brought forward now.

Stopping the proliferation of weapons of mass destruction to the Middle East and controlling the spread of advanced conventional weapons, is an essential ingredient for any lasting and stable peace in the region. The vast accumulation of armaments by the nations of the region in recent decades has bought neither security nor stability.

Defining the goals of arms control is relatively easy. Actually achieving those goals is of course far more difficult, but like an addict attempting to kick the habit, the first step for arms control in the Middle East is recognizing the problem.

Two weeks ago, President Bush took that first step, when he expressed the hope that out of this war will come "less proliferation of all different types of weapons, not just unconventional weapons."

And Secretary Baker recently told the Foreign Relations Committee that:

> The time has come to try to change the destructive pattern of military competition and proliferation in this region and to reduce the arms flows into an area that is already overmilitarized.

But reports from Secretary Baker's trip suggest that we are already retreating from these bold declarations, for fear that such an effort may be unrealistic. These reports are disturbing and seem to represent a marked shift in the administration's priorities for the region.

Indeed, earlier this week a top National Security Council official said we should "not be overambitious" in seeking Middle East arms control and that "defense cooperation will provide far more security than arms control" in the Middle East; that is, more arms to the region will provide more security.

But we are now in a very unique position to affect the postwar order in the Middle East, and we must set our sights high.

Yet, our signals have become muddled. One day we promote the idea of Middle East arms control, the next day we step back. One day we promote a postwar order based on security with fewer weapons, and the next day the State Department notifies Congress of its intent to sell 46 F-16's to Egypt, with billions more in arms sales in the pipeline for other Middle East countries.

A persuasive case in favor of the sale to Egypt can no doubt be made. Egypt is a solid ally and a critical member of the gulf coalition. This sale is merely an ongoing modernization, and so on, and so on, and so on.

But an equally persuasive case can be made against this sale at this time. The message it will send—both to other supplier nations and to nations in the region—will be this: the Middle East arms bazaar is once again open and ready for business.

Instead, the Congress and the administration must now begin to work to-

gether to develop a coherent arms control agenda for the Middle East. Such an agenda must address both the supply side and the demand side of the arms control equation.

On the supply side, a comprehensive effort must be made by the nations who have long supplied arms to the Middle East to prevent the spread of weapons of mass destruction, and control the proliferation of advanced conventional weapons.

On the demand side, we must work to promote regional arms control arrangements that limit the size of conventional arsenals, the acquisition of weapons of mass destruction, and the operational deployments of conventional armies.

Mr. President, in the coming days and weeks I will be working with my colleagues on the Foreign Relations Committee to develop legislation that will provide a framework for American policy on arms control in the Middle East. I am hopeful that this effort will garner bipartisan support.

Today, I would like to spell out the critical elements that should be included in this ambitious agenda.

The first step is to organize those supplier nations, particularly the Soviet Union, Germany, France, Great Britain, China, and Brazil, into a suppliers cartel. The goal of this cartel would be to prevent Middle Eastern countries from obtaining the technologies needed to build or deploy offensive ballistic missiles, chemical weapons, biological weapons, and nuclear weapons, all of which, I might remind the public and our colleagues were sold to the region prior to this war.

Individually, each of these supplier nations should be encouraged to adopt as a matter of national policy the limitations and controls contained in the missile technology control regime and the new proliferation controls the administration and Congress are now working out.

This supplier's cartel must also control the proliferation of advanced conventional arms. A conference should be convened, in which these nations agree on a new system to share information about arms sales to the Middle East, to use the missile technology control regime as a model for certain conventional weapons, and to consider further steps to place strict controls on arms sales to the Middle East.

The list of German, French, and other European firms who sold Iraq its deadly arsenal is long. In his meeting this week with President Mitterand of France, President Bush must place high on his agenda the goal of securing commitments that French firms will never again be the merchants of death for weapons of mass destruction in the Middle East. Similar commitments must be secured from Germany as soon as possible.

I just want to remind my colleagues that there was speech after speech for the past 6 months here on the floor about what the Germans sold and what the French sold and how they put our men and our women in serious jeopardy and how it must not happen again. Now is the chance, Mr. President, to see that it does not happen again.

On Friday, when Secretary Baker meets with President Gorbachev, he must begin working with the Soviet leadership, whose cooperation will determine whether arms control in the Middle East has any chance of success.

Finally, President Bush must realize that even this effort will be of limited value unless the Chinese can be convinced to stop their sales of ballistic missiles and advanced conventional weapons to the Middle East.

Tragically, the leadership in Beijing has reportedly adopted a policy to pursue arms sales, including technology needed for weapons of mass destruction, in the Middle East and other regions. They claim their hard currency needs are too important economically to be scaled back.

Just yesterday a top administration official met with the Chinese to express our concern about their arms export policies. If the Chinese policy is not changed, we must be prepared to strike back economically ourselves, perhaps by withholding most-favored-nation trade status from Beijing.

Given our successful leadership in the war against Iraq, the United States has enormous political and moral leverage to use in this effort. Our goal should be to apply every political, military, and economic tool at our disposal to see that the supplier's arms cartel works as well at stopping proliferation in the Middle East in the 1990's as the OPEC oil cartel did in driving up the price of oil for the West in the 1970's.

An agreement among the Soviet Union, China, France, Great Britain, and the United States would, by itself, slow the hemorrhage of weapons to the region. The addition of other supplier countries would stem the flow to a slow trickle.

Meanwhile, we must work on the demand side with equal vigilance. We should start by convincing these countries that arms control can serve their security interests. This will also require cooperation among the major industrial powers. Together, we have enormous leverage in the region. Future arms sales, foreign assistance, even eligibility for loans from international financial institutions, could all be linked, directly or indirectly, to willingness of nations in the region to pursue regional arms control efforts.

Regarding weapons of mass destruction, Egypt, Israel, and many other Arab states have given support to proposals designed to ban nuclear, chemical, and biological weapons from the region. This effort should receive priority attention. Pending future agreement to outlaw such weapons in the region, countries should be encouraged to become party to existing international conventions, like the biological weapons convention and the nonproliferation treaty, or soon to be completed agreements, like the Chemical Weapons Convention.

The gulf war may also have helped demonstrate that chemical weapons are of limited value. Known as the poor man's atomic bomb, these weapons proved to be of little value to Saddam, and perhaps other nations will realize that the benefit they bring is small, while the moral outrage they engender is great.

Nor should we rule out the possibility of a formal agreement limiting conventional arms, along the lines of the CFE Treaty signed last year in Paris. The relevant agencies in the U.S. Government should be working to see what techniques we have applied in the CFE Treaty, and the INF Treaty, that can be usefully applied to the region.

Finally, we should encourage agreement on confidence building measures. For example, all countries could agree to provide advance notification through third parties of military exercises. Another possibility is to extend the open skies regime being negotiated among European countries to the Middle East.

The arms control agenda that I have briefly outlined here today is admittedly ambitious. As a long-time proponent of arms control between the United States and the Soviet Union, I am honest enough to recognize that progress will be slow and incremental. I anticipate strong resistance on many fronts, particularly among the nations of the region who believe that security lies in the continued acquisition of arms.

But if we are to construct a stable Middle East peace in the aftermath of the gulf war, we must recognize—as the Bush administration insisted throughout the gulf crisis—that the status quo ante cannot be restored. We cannot go back to business as usual.

This point of departure applies to the lack of democracy in the region. It applies to the inequitable distribution of wealth. And it applies to the proliferation of arms in the region.

The skeptics are already saying that arms control in the Middle East is just too difficult, that a coalition of supplier and recipient nations committed to this effort could never be forged. But just last fall, many thought the United States could never weld together the coalition against Iraq. So let's not underestimate ourselves now.

The window of opportunity for Middle East arms control is now open. Before it begins to shut, we must apply the same diplomatic skill and ingenuity to arms control that we brought to reversing Saddam's aggression against

Kuwait, lest some future dictator, armed with Western technology, again unleash the dogs of war in the cauldron we call the Middle East.

The PRESIDENT pro tempore. Under the previous order the Senator from South Carolina [Mr. HOLLINGS] is recognized for 10 minutes.

Mr. HOLLINGS. I thank the Chair.

(The remarks of Mr. HOLLINGS pertaining to the introduction of S. 636 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. HOLLINGS pertaining to the submission of Senate Resolution 78 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

EXTENSION OF MORNING BUSINESS

Mr. HOLLINGS. Mr. President, on behalf of the majority leader, I ask unanimous consent that the period for morning business be extended not beyond 11:30 a.m., with Senators permitted to speak therein.

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

The Senator from South Carolina is recognized.

Mr. THURMOND. I thank the Chair.

(The remarks of Mr. THURMOND pertaining to the submission of Senate Resolution 78 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of S. 641 and S. 645 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. KASSEBAUM. 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. COATS. 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 Indiana is recognized.

EXTENSION OF MORNING BUSINESS

Mr. COATS. Mr. President, I ask unanimous consent that I be allowed to proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The period for morning business is extended an additional 5 minutes.

The Senator from Indiana is recognized.

Mr. COATS. I thank the Chair.

(The remarks of Mr. COATS pertaining to the introduction of S. 642 and S. 643 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. COATS. Mr. President, I thank you for the time and I yield any that I might have remaining.

RETIREMENT OF ADM. HUNTINGTON HARDISTY, USN

Mr. NUNN. Mr. President, on March 1, 1991, Admiral Huntington Hardisty retired after a long, distinguished career of service to the U.S. Navy and this Nation. Admiral Hardisty's last assignment was as commander in chief of the U.S. Pacific Command, which is headquartered at Camp H.M. Smith in Hawaii. I would like to offer Admiral Hardisty my congratulations and thanks on the occasion of his retirement.

As the senior U.S. military commander in the Pacific and Indian Ocean areas, Admiral Hardisty was in charge of the largest unified command. The U.S. Pacific Command extends over 50 percent of the Earth's surface from the west coast of the United States to the east coast of Africa, from the Arctic to the Antarctic.

In both this important position and in his previous assignments, Admiral Hardisty was very helpful to me and the other members and staff of the Armed Services Committee. He was always forthright and insightful in presenting his views, whether in public hearings or in private meetings. I am deeply grateful for his assistance.

Mr. President, I ask unanimous consent that a service biography of Admiral Hardisty appear at the conclusion of my remarks. I wish Admiral Hardisty and his family the best of luck, sincere thanks from a grateful nation, and best wishes for every success in their future endeavors.

ADMIRAL HUNTINGTON HARDISTY, COMMANDER IN CHIEF, U.S. PACIFIC COMMAND

Admiral Huntington Hardisty, a native of Atlanta, Georgia, was commissioned an ensign on June 6, 1952, following his graduation from the U.S. Naval Academy, Annapolis, Maryland. Admiral Hardisty earned a master of science degree in international relations from Harvard University, Cambridge, Massachusetts, in 1964.

Designated a naval aviator in 1953, Admiral Hardisty's early Navy tours include duty as a Naval Aviator with Fighter Squadrons 12, 22, 101 and 102; Special Weapons Project Test Pilot, Naval Air Special Weapons Facility, Kirtland Air Force Base, Albuquerque, New Mexico; Aircraft Handling Officer, U.S.S. *America* (CVA 66); Commanding Officer, Fighter Squadron 32; Air Operations Officer, Carrier Strike Force, 7th Fleet; and Special Plans and Air Operations Officer for Southeast Asia in the Office of the Chief of Naval Operations (CNO), Plans, Policy and Operations, Washington, D.C. In August 1961, at White Sands Missile Range, New Mexico, while flying an F4B Phantom II, he set a world three kilometer low-level speed record which was unsurpassed for 16 years.

In 1971, Admiral Hardisty was assigned as the Commander, Attack Carrier Air Wing 11. Returning to Washington, D.C. in 1972, he served as the Executive Assistant to the Director, Navy Program Planning. Admiral Hardisty assumed command of the U.S.S. *Savannah* (AOR 4) in 1973, and command of U.S.S. *Oriskany* (CVA 34) in 1974.

Admiral Hardisty was Dean of Academics at the Naval War College, Newport, Rhode Island, when he was selected for flag rank in February 1977, and ordered to assume duties as acting President of the War College. He next assumed command of the U.S. Facility at Subic Bay, Republic of the Philippines, serving also as the Commander in Chief Pacific Representative. He attended the CNO Senior Officer Ship Material Readiness Course in Idaho Falls, Idaho, prior to assuming duties as Commander, Carrier Group 7, in 1980.

In July 1981, Admiral Hardisty became Commander, Carrier Group 5/Carrier Strike Force 7 Fleet, followed by assignment in July 1982, as the Deputy Chief of Staff for Plans and Operations, U.S. Pacific Fleet [CINCPACFLT]. He became Assistant Deputy Chief of Naval Operations, Plans, Policy and Operations, in 1983.

In 1984, Admiral Hardisty was assigned as the Director for Operations, Office of the Joint Chiefs of Staff. He became the Deputy and Chief of Staff, CINCPACFLT, in 1986, and the Vice Chief of Naval Operations, Washington, D.C., in 1987. He assumed his present position in September 1988.

Admiral Hardisty's awards and decorations include the Defense Distinguished Service Medal, Navy Distinguished Service Medal with gold star, Silver Star Medal, Legion of Merit with Combat "V" and four gold stars, Distinguished Flying Cross with one gold star, Meritorious Service Medal, Air Medal with two gold stars, Navy Commendation Medal with Combat "V" and two gold stars, Philippine Legion of Honor and various campaign medals.

Admiral Hardisty is married to the former Sally Mae Ives of St. Petersburg, Florida. They have two sons: John and Robert.

The PRESIDING OFFICER. All time has expired.

CONCLUSION OF MORNING BUSINESS

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

Mr. DOLE. Mr. President, has leader time been reserved?

The PRESIDING OFFICER. The Chair recognizes the Republican leader, Senator DOLE. The leader time has been reserved. The Republican leader is recognized at this time.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 635 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

COMMUNITY COLLEGES, S. 463

Mr. DOLE. Mr. President, I am a cosponsor of Senator HATFIELD'S legisla-

tion to create an Assistant Secretary position within the Department of Education for our Nation's community colleges. I am supporting this bill because community colleges are a vital component of higher education in Kansas and across the Nation.

There are 19 community colleges currently operating across my home State of Kansas, serving nearly 70,000 full-time and part-time students. Nearly 25 percent of all Kansas high school students go on to enroll in community colleges upon graduation, taking advantage of a wide range of educational opportunities, including vocational and technical training, job retraining, and credits for later application toward 4-year institutions.

As the workplace continues to adapt to new technology, we need more people than ever who are proficient in their technical and vocational skills. Kansas community colleges are responding to the challenge, offering over 80 different vocational and technical programs. These programs include degrees in traditional fields such as agriculture, health care, and marketing and business, as well as nontraditional areas like entrepreneurship, aviation technology, and robotics. Community colleges also offer important adult basic education and general education programs to ensure that all Kansans are equipped with the minimum skills necessary to succeed in society.

In addition to their educational missions, community colleges play a vital role in the economic development of Kansas communities, especially in the less-populated, rural areas of the State. In Kansas, community colleges are often actively involved in attracting new businesses to their communities. Additionally, community colleges work closely with area businesses, providing job retraining programs for employees and offering important informational resources for small business. All of these efforts will help Kansas face the inevitable changes which come with our ever-expanding economy.

I am supporting Senator HATFIELD'S legislation to help ensure that community colleges get the recognition they deserve, both as educational institutions and as community leaders. As we look ahead to the consideration of the Higher Education Act reauthorization, I hope all of my colleagues will remember the important contributions made by our Nation's community colleges.

"FIRST IN SAFETY" WINNERS

Mr. HELMS. Mr. President, in 1981, the American Textile Manufacturers Institute initiated an enormously constructive program called First in Safety. This was a part of an industry-wide effort to promote and recognize safety in the work place.

On March 6, Mr. Dan Scott of Mount Vernon Mills, Inc., and chairman of ATMI's Safety and Health Program Subcommittee, announced the award winners. In recognizing the winners, Mr. Scott said,

> Safety is a top priority in textile companies, thanks to the efforts of numerous people in our industry. These awards give us a chance to recognize some of the leading companies in this area for a job well done.

Mr. President, as I expected, North Carolina was well represented among the winners. Six companies, two in my State, won first-place awards for outstanding performance in employee safety and health:

American Thread Co., Charlotte, NC.

Artee Industries, Inc., Shelby, NC.

Cheraw Yarn Mills, Inc., Cheraw, SC.

Milliken & Company, Spartanburg, SC.

Southern Phenix Textiles, Union City, GA.

Thomaston Mills, Inc., Thomaston, GA.

Mr. President, six other companies won awards for the most improved performance in employee safety and health:

Hamrick Mills, Gaffney, SC.

Mount Vernon Mills, Inc., Greenville, SC.

Trio Manufacturing Co. Forsyth, GA.

Dixie Yarns, Inc., Chattanooga, TN.

Dyersburg Fabrics, Inc., Dyersburg, TN.

Brentex Mills, Inc., Brenham, TX.

Mr. President, there were six companies earning awards for zero lost-time accidents and illnesses:

Artee Industries, Inc., Shelby, NC.

Arkwright Mills, Spartanburg, SC.

Cheraw Yarn Mills, Inc., Cheraw, SC.

The Kent Manufacturing Co., Pickens, SC.

Musgrove Mills, Gaffney, SC.

Thomaston Mills, Inc., Thomaston, GA.

Mr. President, I am very proud of these companies and their employees. Their commitment to safety in the workplace and excellence in the marketplace is a tribute to all Americans. I know all Senators will join in congratulating these fine men and women.

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.

A GREAT ACHIEVEMENT OF CONGRESSMAN BILL NICHOLS

Mr. HEFLIN. Mr. President, I rise today to pay tribute to the late Congressman Bill Nichols from Sylacauga, AL, and one of his greatest legacies. Half-way through the huge arms build-up during the 1980's, Congressman Nichols championed a measure which was in large part responsible for the success which our allied forces achieved in Operation Desert Storm.

Congressman Bill Nichols and Senator Barry Goldwater sponsored the Goldwater-Nichols military reform bill which returned the power to our troop commanders in the field. In my judgment, it was this innovation which allowed our operations to proceed smoothly without the delay of extensive communications with Washington during the heat of battle.

Bill Nichols' greatest legacy will be the thousands of lives this reform bill saved in the Middle East. I ask unanimous consent that an article by Bob Ingram describing Bill's efforts be included in the RECORD.

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

[From the Abbeville (AL) Herald, Jan. 31, 1991]

THE ALABAMA SCENE AS SEEN BY BOB INGRAM

MONTGOMERY.—He didn't live to see it, but the good sense and the determination of the late Congressman Bill Nichols of Sylacauga is paying huge dividends . . . and saving lives . . in Operation Desert Storm.

In fact, the Wall Street Journal said in a recent issue that Nichols "can be counted as one of the early heroes of the war against Iraq."

What is it that Nichols did to earn him such high praise? In the mid-1980's, almost single-handedly, Nichols successfully pushed through Congress what is now known as the Goldwater-Nichols Military Reform bill. Senator Barry Goldwater of Arizona sponsored the measure in the upper chamber.

The legislation took the power of actually waging a war away from the Pentagon in Washington and gave it to a single, united commander in the field. In Operation Desert Storm, that commander is Army General Norman Schwarzkopf.

Something else it did was to put an end to the bitter rivalry between the services during the time of war. In Vietnam often times the ground forces knew nothing of the bombing plans of the Air Force. There was no coordination. Also in Vietnam, getting a shipment of equipment from the U.S. often meant commanders had to file three separate orders—the Army handled rail transport, the Air Force handled air transport and the Navy handled sea transport.

Under Goldwater-Nichols, some 500,000 men and their equipment was moved to the Persian Gulf in five months. That would have been an impossible task prior to the new law.

What motivated Nichols to take on the entire military establishment and pass this law? For one thing, he knew something about combat. He lost a leg and part of his lung as an Army officer fighting in Germany in World War II. For another, he had been incensed at the conduct of the invasion of tiny little Granada where rivalry between Army, Navy, Air Force and Marines was at its worst.

But what most incensed Nichols was the terrorist bombing of the barracks in Lebanon that resulted in the death of 239 marines. By coincidence, Nichols had visited that barracks only two weeks earlier and had expressed concern about security precautions. After the fact he learned that disaster could be attributed partly to the fact that there were overlapping and confusing

lines of command about who was responsible for the security of that facility.

From that day forward, Nichols was not to be denied. Many military leaders bitterly opposed the legislation. One high-ranking officer said Nichols was attempting to destroy the military of the United States, another called him "un-American."

Nichols refused to be deterred, but sadly he is not alive today to receive the plaudits he deserves. Operation Desert Storm has been a model of cooperation between the various services. Even General Schwarzkopf has said the military reform legislation has resulted in a "superb integrated performance" in the war.

TRIBUTE TO JUDGE JOHN HARRIS

Mr. HEFLIN. Mr. President, recently, Judge John Harris, of Montgomery, AL, passed away after a most distinguished career as an attorney and appellate judge. He served as a member of the Alabama Court of Criminal Appeals for many years, including some as the chief judge.

When I served as chief justice of the Alabama Supreme Court, the entire appellate courts made an all out effort to clear the docket of cases that had been backlogged for quite a while. There were some cases that had been on the docket for as long as 6 years. There was no one more diligent than Judge John Harris. He worked night and day, Saturdays and Sundays, and he was one of the first to have all of his cases written and decided. He was a great inspiration to all of the appellate judges in the judicial building which at that time housed the Supreme Court of Alabama, the Alabama Court of Civil Appeals, and the Alabama Court of Criminal Appeals.

While he had great energy, his most lasting contribution to the jurisprudence of Alabama will be his well-reseasoned, scholarly opinions.

There is in Montgomery, AL, a weekly newspaper known as the Montgomery Independent, which each week publishes a column by a marvelous writer by the name of Joe Azbell. Joe knows people as well as any journalist that I have ever known. He loves people and people love him. He loves to spin a good yarn. The readers of the Montgomery Independent look forward to reading his weekly columns which are generally about people and what they are doing. In his February 7, 1991 column, which was written a short time after Judge John Harris died, he included a review of Judge Harris' life. I quote from that column:

JOHN HARRIS, ADVOCATE

When the late John Harris was two, he contracted polio. His father knew George Washington Carver and went to him to ask for help in treatment of his polio-stricken son.

Tiny John Harris was accepted for experimental treatment by Dr. Carver at Tuskegee Institute. They bathed his legs in peanut oil and used other peanut treatment to massage the crippled legs.

When he was a grown man. Harris attributed much of the strength in his legs to "the miracles of George Washington Carver."

Yes, John was diagnosed as crippled. But he never allowed his legs to slow him down.

He played tennis, baseball, and accomplished many other athletic feats. Those who knew him forgot his limp. He kept up with the best.

One of the best was John Blue Hill, the greatest criminal lawyer in the recent history of Montgomery. But Harris was right up there with him.

They were together on every case. You didn't know where Hill left off and Harris picked up. They were tigers in the courtroom, fine attorneys in cross examination and even stronger in jury summations.

The firm Hill, Hill, Whiting, Harris and Rives, was called Hill, Hill, Lightning and Thunder. If Hill was the Lightning, Harris was the Thunder.

You could see Harris climbing those stairs to the dusty old offices on Washington Street every morning. He went up two steps at the time and shuffled down the same way. You could watch Hill and Harris as they went in the Courthouse with coattails flying. Hill walked fast and talked fast but Harris kept up.

George Wallace was a great admirer of both Hill and Harris. He named Harris as his legal advisor and later to a judgeship on the criminal appeals court. You always knew—and other lawyers did, too—that if Harris issued a decision on a matter, it was right. He knew the law.

To his credit, people forgot he was a polio victim. It was never mentioned. I had a thousand conversations with him and his only reference to his childhood illness was his praise of George Washington Carver.

Here was a man with a great heart and brain. He worked 14 to 18 hours a day every day except Sunday. Even on Sundays, he and the Hills, John Blue, Wiley Jr., Richard Rives and others would meet at the office and go over cases.

I can see him now at the old rolltop desk in his office, surrounded by dusty law books stacked high, deeply engrossed in preparation of a case. He always carried three or four law books with him to court. He would lug the books up the steep stairs of the rickety original Courthouse to the Circuit Court and there involve himself in one of the law books right up until court began.

The slapping sound of hands clapped together became a part of John Blue Hill's courtroom delivery. Harris snapped his fingers loudly or popped his hands together to make a point.

Circuit Judge Eugene Carter and Circuit Judge Walter B. Jones heard most of their cases. Carter tells many stories of Harris and Hill in his courtroom. Maury Smith, Montgomery attorney, became friends with both Hill and Harris in those days and later would associate Hill in his cases.

Few people were aware that Hill and Harris were both avid hunting and fishing buddies. They loved the outdoors and early in the morning they would go fishing as the sun was coming up. Friends wondered when they slept.

John Harris was married to his wife, Ethel, for 50-plus years. They had three sons, the late George Harris, John Harris and Thomas Harris, who organized Merchants Capitol Corp.

Lawyers often commented on the beautiful briefs written by Harris. Many famous lawyers came to him to ask his opinion on certain points of law.

He was aggressively Southern, an Alabamian to the core, and he stood up for his beliefs. But he wanted no man mistreated. He defended many poor devils and found a way to set them free. Some of the cases he handled were those that other lawyers turned down. He was always a plaintiff's lawyer in civil matters and a defense lawyer in criminal matters.

When his old friend, John Blue Hill died, John Harris said that it was like a part of him had died. They were like brothers, drinking coffee at 10 a.m. and at 3 p.m. every day at Chris'. For exercise, they would literally run from the Washington Street offices to Chris' on Dexter and then scoot back again.

Harris came from a great era of lawyers, people like Marion Rushton, T.B. Hill, Richard Rives, A.F. Whiting, both partners, Joe T. Pilcher Jr., a brief partner who became a Selma millionaire, Wiley Hill Jr., the Juvenile Court judge, another partner, Wiley Hill Jr., James Carter, Temple Siebels, Jack Crenshaw, Dave Crosland, Billy Thetford, Robert Steiner, Sam Rice Baker, John Kohn, and scores of others who made all-day courtrooms visits to watch cases and the men who argued them.

Those colorful lawyers and characters whom Harris knew are unmatched in today's courtrooms. How could you invent people like Lew Sanderson, John Tilley, Albert Pickett, the kind-hearted J. Render Thomas Jr., Joe Levin, Warren Reese Jr., Judge Alex Marks, D. Eugene Loe, the always dignified and gentle R.S. Hill, Vaughan Hill Robison, Joe Goodwyn, John Goodwyn, Richard Ball and so many others? They were in a special class, originals and life real.

The same could be said of the newspaper people of that day, people like Cash Stanley, Grover C. Hall Jr. and Sr., the R.F. Hudsons, Sr. and Jr., J. Fred Thornton, William J. Mahoney, Atticus Mullin, Hartwell Hatton, and the list goes on.

John Harris left his vivid mark and will be remembered as a brave, good, talented lawyer, family man and community leader who was faithful to his friends.

HONORING SEYMOUR GITENSTEIN

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Mr. Seymour Gitenstein of Florala, AL, who has long been one of Alabama's premier businessmen and philanthropists. Until 1988, Mr. Gitenstein directed the operations of the Franklin Ferguson Co. Since that time, he has remained active in the community through the commitment of both time and resources.

Mr. Gitenstein has supported numerous charitable causes in Alabama, Florida, and around the country. In the early 1960's, he and his wife established the Anna and Seymour Gitenstein Foundation to contribute to various charities and community projects in Florala. Through the years, they supported worthy causes from the construction of the Florala Memorial Hospital to scholarships for Florala High School graduates.

Many of Mr. Gitenstein's recent contributions have been directed toward research contributing to a cure for Alzheimer's disease. Mrs. Anna

Gitenstein's 11-year bout against Alzheimer's disease contributed to the foundation's steadfast support for Alzheimer's research. Mrs. Gitenstein died in February 1988 with no cure for Alzheimer's having yet been discovered.

Seymour Gitenstein has for over 8 years given vital support to these research efforts at the University of Alabama at Birmingham. In addition, he has supported efforts at such diverse institutions as the University of West Florida, Florida, Texas, Emory, Harvard, and Duke. The Gitenstein's contributions were recognized when the Anna Green Gitenstein Memorial Laboratory was dedicated at the Mailman Research Center. In addition, Harvard University has named a library in Mrs. Gitenstein's honor.

The Gitenstein's contributions have not been limited to medical research. Their activities cut across the spectrum of musical, artistic, civic, and educational activities in their area. Both of them were natives of New York City and were talented pianists. Their musical interest spurred their contributions to the arts on the local level as well as to institutions like the Andalusia Ballet, the Pensacola Symphony Orchestra and the University of West Florida Music Department.

Mr. President, few people have shown the type of civic-minded and public-spirited benevolence as has Seymour Gitenstein. His efforts and those of the Anna and Seymour Gitenstein Foundation have made vital research toward a cure for Alzheimer's disease possible. He is to be commended for his devotion to this cause and to his community. In my judgment, Seymour Gitenstein sets an excellent example for all of us to follow. He has always been ready to return to the community that which he received and much more. I commend Mr. Gitenstein and thank him for his contributions.

I ask unanimous consent that the attached articles be published in the CONGRESSIONAL RECORD following my remarks.

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

[From the Florala News, Jan. 3, 1991]

GITENSTEIN PLAQUE PRESENTED AT UAB

Since January, 1982, Seymour Gitenstein has generously supported Alzheimer's disease research at the University of Alabama at Birmingham. Mr. Gitenstein recently visited the UAB campus and and got a firsthand look at the work he has helped support through personal gifts and the Anna and Seymour Gitenstein Foundation.

During Gitenstein's visit, a plaque was unveiled at the Alzheimer's Disease Center, noting the gifts given in the memory of his wife, Anna Green Gitenstein.

Mrs. Gitenstein died in February, 1988, about 10 years after she was diagnosed with Alzheimer's disease.

Gitenstein's visit to the campus included lunch with Vice President Kenneth J. Roozen (University Affairs), Dean James A. Pittman (School of Medicine) and Chairman John N. Whitaker and Professor James H. Halsey (Neurology). Also, Research Associate Professor Georg Deutsch and Research Assistant I Robbie Brock (Neurology) gave a laboratory tour, and Halsey made a presentation about work done in the lab.

Gitenstein lives in Florala and long has had in interest in philanthropy. He and his wife formed their foundation in 1963 and provided funding for the betterment of the Florala community. They helped with the construction and support of Florala Memorial Hospital and also contributed to scholarships and a variety of musical projects.

With the onset of his wife's illness, Gitenstein became increasingly interested in contributing toward Alzheimer's disease research. He has given not only to UAB, but also to Harvard, Duke, Emory and the University of West Florida. Harvard named a library in honor of Mrs. Gitenstein.

Gitenstein was born in New York City in 1915, and his family moved to Florida in 1932. At 17, he began what was to be a 56-year career overseeing the manufacturing operations of Franklin Ferguson Co., a textile business begun by his Father.

[From the Florala News, Sept. 13, 1990]

THROUGH RESEARCH HER BATTLE CONTINUES

Anna Green Gitenstein was never a patient at McLean Hospital. But when she and her husband, Seymour Gitenstein, discovered in 1977 that she had Alzheimer's disease—an incurable, degenerative disease of the brain—they were determined to change the outlook for future generations of Alzheimer's sufferers.

Through the Anna and Seymour Gitenstein Foundation, they began to fund Alzheimer's disease research programs at the Universities of Florida, Alabama, and Texas. Their association with McLean began in 1982 in response to a request for support by hospital researchers. To date, the Gitenstein Foundation has contributed more than $75,000 for Alzheimer's research at McLean.

"When the Gitensteins began to support our work, funds for Alzheimer's research were almost nonexistent," says Ralph Nixon, M.D., Ph.D. "These private funds gave us the flexibility to hire students during the summers and to carry out many pilot experiments that formed the basis for our research today. They gave us the opportunity to establish credibility for these new, riskier areas of investigation, enabling this work to later receive funding by the National Institutes of Health."

Mrs. Gitenstein died on February 22, 1988, 11 years after her diagnosis. Throughout her illness, she remained at home in Florala, cared for by her husband and, eventually, an around-the-clock nurse.

"Despite the increased severity of his wife's illness, Mr. Gitenstein never seemed discouraged from seeking a new avenue that might halt or reverse the progress of the disease," says Dr. Nixon. "His efforts provided the inspiration and encouragement we needed to maintain the high degree of momentum in our research."

In recognition of their support, Dr. Nixon proposed naming one of the laboratories for molecular neuroscience and aging research in the Mailman Research Center in Mrs. Gitenstein's honor. The Anna Green Gitenstein Memorial Laboratory was dedicated on May 24.

"I'm very happy to see this memorial established for my wife," says Mr. Gitenstein. "I take great pride in the progress Dr. Nixon and his colleagues are making in advancing the understanding of this debilitating disease."

The Anna and Seymour Gitsenstein Foundation was established in 1960 to fund the development of the Florala Memorial Hospital. In addition to supporting Alzheimer's research, the foundation contributes to diabetes research, provides educational scholarships to high school to graduates in Florala, and supports schools, and institutes of higher learning, the Pensacola Symphony Orchestra, the University of West Florida Music Department, and the Andalusia Ballet Association.

SEYMOUR GITENSTEIN AND THE ANNA AND SEYMOUR GITENSTEIN FOUNDATION

Whereas, Mr. Seymour Gitenstein of Florala, Alabama, has for many years generously supported the research efforts of The University of Alabama at Birmingham; and

Whereas, Mr. Gitenstein was born in New York City in 1915, the son of Israel and Rose Bralower Gitenstein; and

Whereas, he moved in 1932 to Florala, where, at the age of 17, he began what was to become a 56-year career overseeing the manufacturing operations of Franklin Ferguson Company, a textile business begun by his father; and

Whereas, in 1943 he married Anna Green, the eldest daughter of Samuel and Pauline Green of New York; and

Whereas, well known for their commitment to improving the well-being of their fellow citizens, Mr. and Mrs. Gitenstein became active in the civic, educational, and cultural affairs of Florala, giving generously of their time and resources in supporting a number of worthwhile causes and projects; and

Whereas, to further their humanitarian efforts, Mr. and Mrs. Gitenstein in 1963 founded the Anna and Seymour Gitenstein Foundation, which provided funding for the construction of the Florala Memorial Hospital and continues to provide funding for projects related to medical research, music, and scholarships; and

Whereas, both gifted pianists, Mr. and Mrs. Gitenstein were particularly interested in promoting the arts and, through the foundation, they provided enrichment in education and the arts, a hallmark of their relentless drive for the betterment of the Florala community; and

Whereas, the Gitensteins also supported medical research at a number of institutions, including especially The University of Alabama at Birmingham; and

Whereas, in addition to preparing students for future contributions to society through education, UAB is actively involved in adding to the existing body of knowledge in a wide range of disciplines through research; and

Whereas, as a measure of the caliber of those research efforts, UAB ranks among the nation's top public universities in the amount of competitive federal research support it receives; and

Whereas, this excellent research capability is enlarged and enhanced through the generosity of individuals like the Gitensteins who have always shared a concern for the health and well-being of others; and

Whereas, Mr. Gitenstein, through both personal gifts and gifts from the Anna and Seymour Gitenstein Foundation, has generously and consistently supported Alzheimer's disease research at UAB for many years, as did Mrs. Gitenstein until her untimely death in February of 1988; and

Whereas, these gifts, totaling in excess of $90,000, have funded intensive research into the causes and treatment of Alzheimer's disease, furnishing valuable insight into this largely unknown area of medical science; and

Whereas, this Board, and the UAB administration, wish to appropriately express their deep gratitude and sincere appreciation to Mr. Gitenstein for his outstanding support, and to further state that it is the generosity of public-spirited citizens such as Mr. Gitenstein which has helped medical science develop new treatments to aid those suffering from sickness and disease: Now, therefore, be it

Resolved by The Board of Trustees of The University of Alabama, That it hereby accepts with gratitude the generous gifts of Mr. Seymour Gitenstein and the Anna and Seymour Gitenstein Foundation, and that it herewith expresses its deep appreciation for Mr. Gitenstein's continuing interest in, and support of, research programs at The University of Alabama at Birmingham: Be it further

Resolved, That this resolution be spread upon the permanent minutes of this Board, and that copies be sent to Mr. Gitenstein; to his children, Mr. Mark Gitenstein, Dr. R. Barbara Gitenstein, and Mrs. Susan Jean Gitenstein Assadi; to his grandchildren, Rebecca, Benjamin and Sarah Gitenstein, Pauline and Samuel Hart, and Hannah Assadi; to Dr. James H. Halsey, Jr., Professor of Neurology at UAB; to Dr. John N. Whitaker, Professor and Chairman of the UAB Department of Neurology; and to other appropriate officials of The University of Alabama at Birmingham.

(The foregoing was adopted unanimously by The Board of Trustees of The University of Alabama at its meeting, September 28, 1990.)

OUTSTANDING AND EXTENDED SERVICE OF JUDGE TRUMAN M. HOBBS

Mr. HEFLIN. Mr. President, I am delighted to rise today to pay tribute to a man who stands out because of his individual efforts on behalf of others and because of his outstanding and extended public service. Truman M. Hobbs is truly a unique individual.

For more than a decade he has served as a U.S. district judge with honor and distinction. Mr. President, upon the occasion of his retirement from the bench and ascension to senior status, I would like to take this opportunity to acknowledge Truman Hobbs' many contributions, and thank him for a job well done.

The son of Representative Sam Hobbs, a former Alabama Congressman who served the State of Alabama with great integrity and dignity for many years, Truman was born and reared in Selma, AL, in 1921. He graduated with honors from the University of North Carolina, where he was president of the student body and a member of Phi Beta Kappa. He served his country bravely in the Second World War, decorated with both the Navy-Marine Corps Medal and the Bronze Star. He graduated from Yale Law School, later serving as a law clerk for Justice Hugo Black on the U.S. Supreme Court. Married to the former Joyce Cummings, they have been blessed with outstanding children and wonderful grandchildren. The entire Hobbs family have a long and established tradition of selfless community service.

Truman received many awards as an attorney. Including being selected a fellow with both the American College of Trial Lawyers and the International Academy of Trial Lawyers. Truman has also been recognized by his peers as an outstanding member of the bar, in that he was elected president of the Alabama Trial Lawyers Association, the Montgomery Bar Association, and the Alabama Bar Association.

In 1980, Truman Hobbs was appointed by the President to the position of U.S. district judge for the Middle District of Alabama. Here, because of his intellect and demeanor, Judge Truman Hobbs has become one of the great jurist of our time.

In his second year on the bench, Judge Hobbs was faced with the fairly common dilemma of possibly barring a cause of action because of its failure to meet the statute of limitations. Heeding the advice of the late Justice Jackson, in that "wisdom should not be rejected because it comes late," Judge Hobbs found that, clearly "the statute of limitations has its place in law when one suffers an injury, and realizes how the injury was caused." *Overstreet* v. *United States*, 528 F. Supp. 838, 844 (1981). Yet, if a doctor misleads the patient and is less than forthcoming regarding mistakes made in surgery, as was the case in Overstreet, then the court has an obligation to interpret the statute of limitations accordingly, allowing the patient the opportunity of fair and equitable relief.

Obviously, in Judge Hobbs the Federal bench has been blessed with his intellectually realistic approach to the law, resulting in many thoughtful, well-rounded decisions.

Mr. President, another example of Judge Hobbs' extraordinary contributions can be found in a decison handed down just last summer. In *Scott* v. *Omaha Life Insurance Company*, 749 F. Supp. 1089 (1990), Judge Hobbs insists that insurance companies have a duty to treat their customers with fairness when they are facing a lapse in their policy. Although the issue in Scott looks rather simple, Judge Hobbs recognized the potential of possible abuse and the absolute necessity of a practice of good faith and fair dealing on the part of the large insurance companies.

As Truman Hobbs retires from the Federal bench and assumes senior status, I find myself filled with the mixed emotions of sorrow, gratitude, and pride. Sad in knowing that his wisdom will be greatly missed. Thankful for the tremendous job that he has done. And proud, in that my friend's many years of service have made both Alabama and the whole Nation a better place to live.

ESSAY BY MISS LORI CHANCE

Mr. HEFLIN. Mr. President, now that Saddam Hussein has agreed to the conditions and has withdrawn his troops from Kuwait, I would like to share with my colleagues, the thoughts of one of my constituents on the brink of our war with Iraq.

Miss Lori Leigh Chance is a sixth grader from Gadsden, AL, who was kind enough to share her essay, "The Great Saudi Arabian Fall Out," with me. Lori is extremely perceptive for an 11-year-old and her thoughts bear repeating here.

Mr. President, I ask unanimous consent that an essay by Miss Lori Chance be included in the RECORD.

Thank you, Mr. President.

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

"THE GREAT SAUDI ARABIAN FALL OUT"

On August 2, 1990, my eleventh birthday, a great event took place that will change the world and many people's lives. President of Iraq, Saddam Hussein, sent his troops into the country of Kuwait and took over the government. Nobody thought much of it at first until he threatened to invade Saudi Arabia. Then we all started getting serious about the matter, even me!

President Bush began to send troops to Saudi Arabia. Other countries began to do the same. That is when it began to get serious and the "fall out" started. Dads and moms had to "fall out" of their homes and a lot of boys and girls didn't know if they would ever see their parents again or not. At Thanksgiving, President Bush visited our soldiers to encourage them and to tell them to be prepared to "fall out" for Desert Shield. During this time moms and dads missed their children's first Christmas, dads missed their children being born, moms had to leave several month old babies, parents missed first ballgames, dance recitals and sixteenth birthdays. Families fallen apart, all because Saddam Hussein will not back down.

Soon the possible "fall out" of Saudi Arabia could happen, war! If that happens, our world will never be the same. It's hard to understand all that is happening, but I hope that all humans will be shielded from the "fall out" of death in the desert of Saudi Arabia.

TRIBUTE TO SENATOR JOHN SHERMAN COOPER

Mr. THURMOND. Mr. President, I would like to take this opportunity to pay tribute to the Honorable John Sherman Cooper of Kentucky, who passed away last month. An outstanding individual and devoted public servant, Senator Cooper will be sorely missed by his many friends and admirers—especially this Senator from South Carolina.

Senator Cooper has often been referred to as one of the most respected Republican leaders of his time. His

every endeavor was marked by the highest degree of excellence and integrity, and he was held in the highest esteem by his colleagues and all those who came in contact with him.

Senator Cooper was a trusted adviser and confidant of every President since World War II, and played a major role in the reshaping of the world order after that conflict. A Kentucky judge, World War II veteran, delegate to the United Nations, Ambassador to India and East Germany, appointee to the Commission that investigated President Kennedy's assassination, U.S. Senator and Washington lawyer, he was widely admired on both sides of the aisle. I was proud to call him my friend and colleague.

My wife Nancy joins me in extending our deepest sympathy to the entire Cooper family.

Mr. President, I ask unanimous consent that the following articles regarding Senator Cooper be included in the RECORD at the close of these remarks.

[From the Washington Post, Feb. 23, 1991]

INFLUENTIAL SENATOR, DIPLOMAT JOHN SHERMAN COOPER DIES

(By Richard Harwood)

John Sherman Cooper, one of the most respected Republican political leaders of his time and a man who served both his state, Kentucky, and his country as a diplomat and U.S. senator, died of cardiac arrest Feb. 21 at his home in Washington. He was 89.

His life, an editorial writer once observed, was marked by an "integrity and decency" that won the trust and admiration of every president since World War II. President Harry S Truman made him a delegate to the United Nations. He was a roving ambassador for Secretary of State Dean Acheson, an ambassador to India under Dwight D. Eisenhower, and a friend and confidante of John F. Kennedy. Lyndon B. Johnson appointed him to the Warren Commission for the investigation of Kennedy's assassination. Gerald Ford appointed him ambassador to East Germany.

Kentucky, preponderantly a Democratic state, sent him to the U.S. Senate five times. He established himself there as a credible and influential leader of the liberal minority in his party. A Kentucky journalist wrote of him that he "talks like a Democrat, votes like an independent and runs on the Republican ticket."

In truth, he was as nonpartisan as it is possible to be in the American political system. He looked after local interests—the tobacco farmers, for example—but his principal interest was foreign affairs. He took progressive positions on civil rights, was one of the first to repudiate the tactics of Sen. Joseph R. McCarthy (R-Wis.) in the 1950s, and by 1960 had compiled such a record that he was selected by Washington journalists as the outstanding Republican in the Senate.

During the late 1960s and until his retirement from the Senate in 1972, he spent much of his time speaking against the deepening American involvement in Vietnam and in devising legislation to curb the warmaking powers of the president and to secure the withdrawal of American forces from Indochina.

His father was a wealthy land owner and entrepreneur. He graduated from Yale University and attended Harvard University law school. At Yale, he was a varsity athlete and a member of the aristocratic Skull and Bones Society.

In the early 1920s, his father died, by then virtually bankrupt and deeply in debt. The future senator dropped out of Harvard, returned home and worked, and borrowed money to pay his father's debts and to send his six brothers and sisters to college. It took him 25 years to get out of debt. "It didn't look like there was any end to it," he later recalled.

Like his father, Sen. Cooper was active in local politics and served for several years as a Pulaski County judge. One of his favorite stories involved a return visit to the Pulaski County courthouse in the late 1950s. He was then in the Senate and famous in the county and in Kentucky. An old man in a wheelchair spotted him and asked his daughter in a quavering voice, "Who is that, Sally?" "Why, Daddy," she replied, "you know him. That's Judge Cooper." The old man looked again and said, "Failin', ain't he?"

Sen. Cooper was admitted to the Kentucky Bar in 1928, and served in the state House of Representatives from 1928 to 1930. He was a judge in Pulaski County for the next eight years. He ran unsuccessfully for governor in 1941.

The following year, with the United States engaged in World War II, he enlisted in the Army as a private at the age of 41. He won a commission and went to Europe with the 3rd Army of Gen. George S. Patton Jr. After the war he was a military governor officer and was instrumental in revising the judicial system of Bavaria. His decorations included the Bronze Star.

While in Euope, Sen. Cooper met and married an Army nurse and he brought her home to Somerset, Ky. The marriage didn't last. He was divorced in 1949.

In 1955, he married Lorraine Rowan Shevlin, a prominent Georgetown hostess. Political opponents in Kentucky tried to make an issue of the marriage to a woman with "airs." But she took part in all of Sen. Cooper's campaigns, dressed in fine frocks and carried a parasol, and proved to be a political asset. She died in 1985.

Sen. Cooper first won election to the Senate in November 1946 to fill the vacancy caused by the resignation of Albert B. "Happy" Chandler, who resigned to become commissioner of baseball. Sen. Cooper was defeated for election for a full term in 1948.

For the next four years Sen. Cooper was a delegate to the United Nations. In November 1952, he again won election to the Senate, this time to fill the two years remaining in the term of Sen. Virgil M. Chapman, who had died in office. In 1954, he was again defeated for reelection.

From March 1955 to August 1956, Sen. Cooper was ambassador to India, the world's largest democracy and a leader in the Third World. One measure of the importance and complexity of that position is the distinction not only of Sen. Cooper but of some who have succeeded him, including John Kenneth Galbraith, Chester Bowles, former senator Kenneth Keating (R-N.Y), and Daniel Patrick Moynihan (D), the current senior senator from New York.

After India, Sen. Cooper returned to Kentucky and in 1956 he won election to the Senate a third time. This was to fill the four years remaining in the term of Sen. Alben W. Barkley, Truman's vice president, who died in office.

Sen. Cooper was reelected in 1960 and 1966, growing in stature both in Kentucky and the nation. He served on the Foreign Relations Committee, among others.

In March 1973, he became counsel to the Washington law firm of Covington & Burling. He left the firm in September 1974 to take up another difficult public post, that of ambassador to East Germany.

In December 1976, he returned to Covington & Burling, where he specialized in problems dealing with regulatory and international law.

As his Senate retirement neared in 1972, Sen. Cooper was honored in his home state with many speeches, resolutions and letters of commendation. A Republican legislator struck the common theme:

"John Sherman Cooper is the only man I have known who has traveled the spectrum of social and political life and left only dignity, honor and respect wherever he walked."

Sen. Cooper responded with words of Abraham Lincoln:

"Thanks to all. To the great Republic; for the principles it lives by and keeps alive; for man's vast future. Thanks to all!"

Survivors include a brother, Richard, of Somerset, Ky.

[From the Washington Post, Feb. 23, 1991]

JOHN SHERMAN COOPER

John Sherman Cooper of Kentucky belonged to the generation of politicians who after World War II built an international order based on American leadership. He was one of the people who turned this country toward the decision—one of the most consequential in its history—to share responsibility for what happened in the world beyond its borders. That wasn't done easily or painlessly.

On leaving military service he was elected from Kentucky to the Senate in 1946 for the last two years of an unexpired term. Prewar isolationism was deeply rooted in the Republican Party, and most of its elders were appalled at the idea of stationing troops abroad permanently, or using taxpayers' money for foreign aid or committing the United States to defending European countries. Sen. Cooper was in the minority, and he was defeated when he ran for a full term. He spent a couple of years in the American delegation to the new United Nations, and in 1952, the year of President Eisenhower's great victory, he was elected to the Senate for, again, two years of an unexpired term.

The party's nomination of Dwight D. Eisenhower rather than Robert A. Taft had been a severe setback for the isolationist cause, but by no means a final defeat. As Sen. Cooper returned to Washington, it was pressing a constitutional amendment—the Bricker amendment, after the Ohio Republican who sponsored it—designed to eviscerate the president's power to make binding treaties. It was fueled by widespread fears that the treaties embodying the country's new commitments were going to supersede large areas of American domestic law and subject the country to all manner of supranational authority. If enacted, it would have made an active foreign policy impossible. It was finally beaten in the Senate by a margin of one vote. More than two-thirds of the Republican senators voted for it and against Eisenhower. Although he was running for reelection, Sen. Cooper held fast with the president and voted against. He was defeated again that fall.

He went to India as ambassador, then returned to Kentucky in 1956, to run yet again for the Senate, where he remained for 16 years. This became the period in which the national consensus for internationalism, which he had done much to build, fractured

on the issue of Vietnam. Sen. Cooper himself took a leading part in the legislative effort to curb the president's power—in this case, the war-making power—and to compel the retirement of American forces from Indochina.

He lived a long life—long enough to see a Republican president, with the support of his party and Congress, send a massive military force halfway around the world to defend a friendly country and challenge a dictator who had invaded and annexed a small neighbor. On Thursday, at the age of 89, Sen. Cooper, a wise and moderate man, died at his home here.

AIRLINE BANKRUPTCY PASSENGER PROTECTION ACT

Mr. DOLE. Mr. President, I am joining my distinguished Kansas colleague NANCY KASSEBAUM as an original cosponsor of the Airline Bankruptcy Passenger Protection Act. This much needed legislation is designed to be a safety net for air travelers who are in the unfortunate position of holding airline tickets at the time an airline declares bankruptcy. I was proud to cosponsor this legislation in the 101st Congress and believe that the remedy this bill provides is long overdue. Many of my Kansas constituents were left holding the bag when Braniff Airlines went bankrupt. The same thing has happened when other air carriers have declared bankruptcy and suspended flights. Airline passengers are the last in line with little or no recourse in this situation.

This bill, which I hope will be swiftly enacted by my colleagues, directs the Secretary of Transportation to issue an order authorizing airlines to develop a contingency plan to provide alternative air transportation for airline ticket holders in the event the airline declares bankruptcy. Should the plan be unacceptable to the Secretary, the Department may issue regulations establishing a suitable plan.

Mr. President, this legislation is a commonsense approach to the problems that have been encountered by thousands of airline travelers who have found themselves stuck and out of luck because a carrier is unable to continue operation. As creditors, airline ticket holders deserve some protection and this legislation will provide it.

THE EVER-GROWING STRATEGIC OFFENSIVE THREAT REQUIRES THE DEVELOPMENT OF U.S. STRATEGIC DEFENSES

Mr. HELMS. Mr. President, according to official, unclassified Defense Department sources, the Soviet Union is deploying four new types of intercontinental ballistic missiles, two of which are mobile. The Soviet are also deploying two new type submarine-launched ballistic missiles, and three new type intercontinental bombers.

These 9 new Soviet strategic offensive weapons systems are augmenting an already dangerous Soviet strategic offensive capability about which the American people know little or nothing.

Mr. President, we need to revisit the wise counsel of CIA Director Webster, who testified to the Senate on February 27, 1991: "The Soviets are in the midst of an important program to modernize their strategic weapons which will substantially improve their strategic capabilities."

The situation is all the more perilous when one considers that the Soviets are also developing up to five even newer types of strategic ballistic missiles, many of which will be deployed during the next decade.

All of which raises an obvious and inescapable question: What has the United States been doing in strategic defense or offense? Not only do we have absolutely no defenses against Soviet ballistic missiles; we are unilaterally disarming our own strategic offensive deterrent force. According to the new fiscal year 1992 Annual Defense Report to the President and the Congress, Defense Secretary Cheney plans the following U.S. unilateral disarmament:

Closing down the MX intercontinental ballistic missile [ICBM] production line, America's only ICBM production line;

Dismantling 75 operational Minuteman II ICBM silos and missiles;

Accelerating the dismantling of 176 operational Poseidon C-3 submarine-launched ballistic missiles [SLBM's] and the 11 Poseidon submarines which carry them; and

Reducing and stretching out the already long-delayed funding for developing the American rail-mobile MX and road-mobile Midgetman ICBM systems.

Mr. President, these are simply acts of U.S. unilateral disarmament, and I am obliged to oppose them.

The Soviets already have about 6,500 ICBM warheads on line, capable of attacking the 1,500 U.S. hardened strategic targets. This is almost a 5-to- 1 ratio against America's security, and in favor of the Soviets. The Soviets are also continuously increasing their number of ICBM warheads, as they continue the deployment of their four new type ICBM's, three of which carry highly fractionated multiple warheads. In this situation, Mr. President, the United States needs to be able to develop and test strategic defenses against Soviet ballistic missiles. This is exactly what Senator WARNER'S initiative will do.

That is why I strongly support, and am a cosponsor of, Senator WARNER'S initiative.

A TRIBUTE TO EIGHT INDIANA SERVICEMEN

Mr. COATS. Mr. President, it is with deep sadness that I rise today to pay final tribute to the eight brave men from Indiana who lost their lives while serving their country in the Persian Gulf: Army CWO Michael F. Anderson, formerly of Antioch; Marine Lance Cpl. Brian L. Lane of Bedford; Army Spec. James R. Miller of Fort Wayne; Army Pfc. Mark A. Miller of Cannelton; Army Pfc. Jeffrey D. Reel of Vincennes; Navy Mess Mgmt. Spec. Jeffrey A. Settimi of Hamilton; Army Cpl. Brian K. Simpson of Lawrence, and Army Pfc. David Wieczorek of Merrillville.

There is no greater sacrifice a person can make for their country than to give their life in defense of those values that their country embodies. The courageous men listed above, understood and faithfully believed in our American ideals of freedom from tyranny and liberty for all people. When asked to help bring these precious gifts to a people overrun by the war machine of a brutal dictator, like true patriots they honored their commitment to country, and America is forever grateful for their heroic service.

Although they are now gone, these men will never be forgotten by their families, friends, communities, and country. They will always be remembered by us all, and forever held in the highest regard for their sacrifices. My deepest sympathies go out to all of the loved ones that they have left behind, and I pray for those families and friends who bear the greatest, most tragic loss of all.

At this time, Mr. President, I ask unanimous consent that the following article be printed in the RECORD to serve as a lasting reminder to us all of the great sacrifices and lasting contributions that these men have made to their country.

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

PERSIAN GULF CRISIS COST THE LIVES OF 8 WITH LINKS TO INDIANA

Seven other military men with ties to Indiana joined Lance Cpl. Brian Lane in making the ultimate sacrifice for their country in the Persian Gulf.

Here are their stories:

Michael Frederick Anderson, 36, formerly of Antioch, had told his family he would be proud to die for his country.

On Feb. 21, he did.

Anderson, a chief warrant officer in the Army's 160th Special Operations Aviation Regiment, was killed in a helicopter crash during a medical evacuation mission in Saudi Arabia.

He had been living in Clarksville, Tenn., with his wife, Anne Slye Anderson, and three children: Eric, 12; Megan, 8; and Kyle, 9 months.

"When it came time to go to the Middle East, he went gladly." Anne Anderson said.

James R. Miller, 20, an Army corporal from Fort Wayne, never met his youngest son.

The baby—Matthew James Miller—was born on Feb. 21, a week before his father hopped out of a supply truck and stepped on a land mine in Kuwait. He died about six hours after the cease-fire was declared.

Miller was a supply specialist and died taking supplies to front-line troops in the 7th Army Corps. He is survived by his wife, Susan Shoaf Miller; his oldest son, Marcus Paul Miller, 2; and young Matthew.

Said lifelong friend Chad Voglewede. "He was afraid for his life and afraid he might not see his family. But I know he wasn't afraid to go over there and serve his country."

Jeffrey David Reel, 21, of Vincennes, a private first-class in the 35th Armored Division, was due to leave the Army in March.

On Feb. 20, he was killed on maneuvers in Saudi Arabia when a truck in which he was riding overturned.

He had called his parents, David and Diana Reel, about 16 hours before the accident to tell them he was fine. "I was lucky I got to talk to him before it happened," his father said.

Friends and neighbors filled every pew of the Indiana Presbyterian Church in Vincennes for Reel's funeral last week.

"Jeff would not want you to sit here grieving." the Rev. James T. Wheller told the mourners. "He wanted to be where he was."

Mark A. Miller got a hero's farewell from his small southern Indiana hometown of Cannelton during funeral services Thursday.

The 20-year-old private was killed in Saudi Arabia on Feb. 25 when his vehicle apparently hit a mine.

"There is no greater honor than to be able to lay down your life for a fellow human being," Army Chaplain Lorance Schoenberg told the crowd of mourners.

After the burial, family friend Jack Gaynor mused about what it meant: "For someone from Cannelton to die right at the tail end of this thing, it makes you wonder. . . . Why did it have to happen?"

Jeffrey Settimi, 25, of Hamilton died before Operation Desert Shield became a storm.

He was one of 21 sailors with the USS Saratoga who died off the coast of Israel when a ferry carrying them back from shore leave capsized.

"He was a very special, very significant young man. Your presence here shows that," pastor J. Mark Klinepeter told mourners at Settimi's funeral in First Missonary Church at Fort Wayne on Dec. 30.

"It mattered that he lived. He touched our lives," Klinepeter said.

Settimi left behind his parents, Anthony and Sheila Settimi of Hamilton.

Brian K. Simpson, 22, Lawrence, died Feb. 25 when the remnants of an Iraqi Scud missile hit his barracks near the allied air base in Dhahran Saudi Arabia.

The Army specialist had dreamed of becoming a musician and finding fame. His mother Christine Davenport Jensen, said he found it instead, in his untimely death. "He is famous. I mean, just about everybody knows him now."

Simpson was newly married and working as a forklift operator when he was called to active duty from reserve status and was sent overseas.

"He really didn't want to go, but of course he couldn't turn down his obligation," said stepfather James Jensen.

David Wieczorek, 21, an Army private first class and a native of Merrillville, died in southern Iraq on March 1 after he stepped on an allied cluster bomb while running to his Bradley Fighting Vehicle.

Friends in Gentry, Ark—where he and his family moved after several years in Merrillville—recalled Wieczorek as a fun loving young man who was a pleasure to be with.

"He just kind of worked his way into our lives," said Jim Twiggs, who hired Wieczorek as a teen-ager to work at his grocery store. "He was the kind of kid you just wanted to put your arm around and say, 'Glad to know you.'"

TRIBUTE TO COL. DAVID EBERLY

Mr. COATS. Mr. President, I rise today to pay special tribute to Col. David Eberly, an Indiana resident and one of our brave American prisoners of war [POW's] released last week from captivity in Iraq.

It was during the first week of allied sorties into hostile territory that Colonel Eberly was reported missing when the F-15E he was flying failed to return from a night mission over Iraq. A few days later, the world watched with grave concern as Colonel Eberly and other allied POW's were shown on television, some badly beaten and clearly coerced into delivering false statements by their Iraqi captors. We listened with horror as Iraq threatened to use these POW's as human shields to protect various installations, and we were outraged by such gross violations of the Geneva Conventions.

Colonel Eberly was held captive for 44 painful days, and the suffering he bore during that time was equally agonizing for his family and friends left behind. For those loved ones, the weeks without knowledge of his whereabouts were filled with constant anxiety and fear for his safety. They, along with millions of other Americans, placed hope in God and prayed often for the health and quick return of the American POW's.

Last week, those prayers were answered when the news so anxiously awaited was finally announced—the American POW's, including Colonel Eberly, had been released and would soon be on their way home again. I can only imagine the sense of relief and joy that Colonel Eberly, his family, and close friends must have felt when he was released from captivity and returned to an emotional homecoming yesterday at Andrews Air Force Base.

Mr. President, Colonel Eberly is a true American hero. He gave America his distinguished service during a most difficult time, and he sacrificed his freedom in defense of our Nation's goals and ideals. It is clear to everyone that, as Colonel Eberly himself told the cheering crowd yesterday at Andrews, the sense of duty and country of the American POW's has been beyond reproach.

On behalf of his home State of Indiana, I express to Colonel Eberly the utmost pride and respect for his unfailing courage and bravery, and I join with his family and friends in welcoming him back home to America.

TRIBUTE TO LOUIS O. KELSO

Mr. COATS. Mr. President, I rise today in honor of the late Louis O. Kelso. Mr. Kelso was a man of strong beliefs and convictions who spent much of his life as an advocate of employee stock ownership. I am fortunate to have had the distinct honor of working with Mr. Kelso on legislative initiatives advancing the concept of an employee stock ownership plan [ESOP]. It was truly a pleasure to experience from the insight and expertise of one so committed to promoting company ownership for the workers of our Nation.

Mr. Kelso proposed and refined his theory of worker-capitalists in several publications, including "The Capitalist Manifesto," "The New Capitalists: A Proposal to Free Economic Growth from the Slavery of Savings," and "Democracy and Economic Power: Extending the ESOP Revolution Through Binary Economics," which was the product of collaboration with his wife Patricia Hetter. As the founder of Kelso & Co. and the Kelso Institute for Economic Research, Louis Kelso actively advanced his concept of democratizing access to capital credit.

Perhaps the greatest legacy Mr. Kelso has left behind is the implementation of ESOP's in hundreds of companies across the United States, including Avis, Exxon, and Atlantic Richfield. His bold initiative has even been utilized within the Soviet Union and the changing nations of Eastern Europe. Although workers all over the world have lost an enthusiastic and inventive proponent, it is my hope that his convictions are carried on through the thousands of individuals who have benefited from employee stock ownership.

Mr. President, I believe the accomplishments of Louis O. Kelso are a testament to the values upon which our country was founded—fairness, opportunity, and enterprise. We all mourn the loss of his leadership and friendship.

TRIBUTE TO THE LATE JOHN A. McCONE

Mr. NUNN. Mr. President, I would like to pay tribute to a distinguished American, John A. McCone, who died recently at this home in Pebble Beach, CA, at the age of 89.

John McCone was one of a remarkable group of wise, dedicated individuals who guided our Nation during the difficult years immediately following World War II. He is perhaps best known for his leadership of the Central Intelligence Agency, from 1961 to 1965. Current CIA Director William Webster put it well when he said that John McCone made "an enormous contribution" to U.S. security during a long career in Government marked by "excellence, integrity and selfless devotion to duty."

I would like to pay particular tribute to John McCone's less well known but no less significant contribution to shaping America's postwar national defense posture. In 1947, John McCone was appointed by President Truman to the Air Policy Commission, which recommended strengthening the Nation's Air Force in 1950. He was named Special Deputy to the Secretary of Defense in 1948 and became Under Secretary of the Air Force in 1950. And from 1958 to 1961, he served as Chairman of the Atomic Energy Commission under President Eisenhower.

John McCone was born in San Francisco in 1902. He graduated from the University of California at Berkeley in 1922 with a bachelor's degree in engineering, magna cum laude. He began his career as a riveter in southern California. By age 26 he was construction manager. He then rose through inceasingly responsible positions to become an executive vice president and director.

In 1937, John McCone and a partner formed their own engineering firm, the Bechtel-McCone Corp. In 1939, he helped form the Seattle-Tacoma Shipbuilding Corp., which constructed merchant ships. During World War II, John McCone headed the California Shipbuilding Corp., which operated the second largest emergency shipyard in the country. And through the Bechtel-McCone Corp., he also oversaw a plant in Alabama that fitted B-24 and B-29 bombers for combat.

After he retired from service in the Federal Government in 1965, John McCone agreed later that same year to head a State of California commission formed to investigate the riots that devastated the Watts section of Los Angeles. The commission produced a widely acclaimed report analyzing the causes of the riots and calling for a dramatically new approach to the problems of the city's black community.

Mr. President, I had the privilege of getting to know John McCone in his later years. His body was frail, but his mind was keen. Even though he spent most of his time on the west coast, he followed events in Washington and in the world with keen interest. He had great insight into current national security, intelligence, and foreign policy issues and offered perceptive and sound advise.

I have spent hours with him discussing current challenges and hearing him recount past challenges in which he was intimately involved, including his direct experience in the early days of building a defense for Western Europe.

Mr. President, John McCone will be missed by our Nation and by his many friends. He was a giant of American foreign policy and American vision.

Throughout his brilliant career, John McCone represented the best in the American tradition of private citizen service to the Nation. His example provides a milestone in that tradition and will serve to inspire generations to come.

COORDINATING SERVICES FOR THE DISADVANTAGED FAMILIES AND YOUTH OF OUR NATION

Mr. KENNEDY. Mr. President, yesterday, Senator BRADLEY and I introduced the Link-Up for Learning Demonstration Grant Act. The bill will provide coordinated educational and social support services for at-risk youth at their schools. We have developed many programs over the years, but we have not enhanced their accessibility. One-stop shopping for necessary supportive, comprehensive services is vital. Some successful models already exist on a small scale. One such project, described in a recent New York times article, provides housing, educational and child care services to homeless women and children at one site. I urge my colleagues to educate themselves on this issue of coordinating services for the disadvantaged families and youth of our Nation.

I ask unanimous consent that the article be printed in the RECORD.

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

A KIND PLACE

(By Anna Quindlen)

When I was in Moscow I was mesmerized by shopping. One store for bread, another for vegetables, a third for meat. And three lines: the line to order, the line to pay, the line to pick up purchases. It was a system so inefficient that I could not believe the women around me were not enraged. Instead everyone shrugged, the Russian shrug that means: "Always has been. Always will be."

In our country, this is how we handle the delivery of social services to the poor. Wake up in the shelter. Take a train to the welfare office. Wait an hour. Learn that they have lost your paperwork. Take a bus to the hospital for a clinic visit. Wait another hour. Pick up your kids at school. Take the bus to apply for space in a housing project. Take the kids on the train back to the shelter.

Always has been. Always will be.

Nope. Lightning has struck in this city, just across a shiny gunmetal stretch of harbor from the Statue of Liberty, and it is called the York Street Project. A building that houses homeless women and their children for up to 18 months. A high school for female dropouts. And a child care center that started out with 18 kids and is now up to 52. All together, in one place, with counseling and lots of help. So simple, so obvious, that it makes you wonder why it's not done everywhere.

"Condos for Christ," the older kids call the whole complex, because the nuns run it in one of those upwardly mobile areas where every factory building is now full of lofts, and because it is beautifully renovated and cleaner than most of our homes. The good sisters have not bought into the notion that poor people deserve the crummiest of accommodations. And it shows. Ask the women here what they've learned and they all say the same: self-respect.

Twenty-one families live in the part of the project called St. Joseph's Home. Some were burnt out of their apartments. Some left because of abusive men. Some got evicted. Many of the children arrive with no language. Now they talk. "He was sort of closed up," one mother says of her son. "Now he's telling me things I didn't know." This is what happens. One little boy came home from a day trip and told his mother he'd been on a hayride. "What's a hayride?" she asked.

In one of the school corridors there is a plaque. "We pardon in the degree that we love'—Martin Luther King Jr." We do not love these people. "Those people," they become in conversation. We blame them for their poverty, and so we find no fault with the systems that serve them, systems we pay for, systems that have contempt for their own consumers and so inevitably fail.

It seems so simple when you see it done correctly. A woman who has a safe place to leave her kids can finish high school. A woman who has a safe place to live knows there is something better than the streets. There's a verse from Ephesians on a plaque by the front desk—"Be Ye Kind." This is a kind place.

It's not always easy. The first year the nuns started out with 25 women in the school, and ended up with five. Housing and child care problems were two reasons why, and that realization led to the transitional housing and the child care center. The high school has had 21 graduates, and will have 13 more in June. Eighty percent are going on to more education.

It costs $1.8 million a year to run this place, which is no money at all, unless you don't have it. There was a grant from H.U.D. and seed money from the Sisters of St. Joseph of Peace, who own the buildings. Both run out soon. Fortunately, nuns work cheap. If they were getting what their degrees and years of experience warrant, it would be much more expensive. But they're doing the work they signed on to do, saving souls.

"The dignity of the person," Sister Ann Taylor, the director, says of her management philosophy.

This all reminds me of public housing three decades ago, the grim monoliths that made tenants feel as if they were living in an ant farm and that looked; not coincidentally, like prisons. We learned our lesson, and now we build public housing on a human scale that does not imply that its tenants are inconsequential Lilliputians.

But the systems that serve the poor, the welfare offices, the hospitals, the shelters, are still great gray systems, big and reductive. It is time again to learn our lesson. In this small corner of the world, they've started the revolution without us. In a landscape of public policy failure, success. I'll be going back again, just to reassure myself that it can be done.

PRIME MINISTER THATCHER ON TARGET—AS USUAL

Mr. HELMS. Mr. President, last Friday, I had the privilege of attending a luncheon in honor of the former Prime Minister of Great Britain, Mrs. Margaret Thatcher. The luncheon was sponsored by five prominent institutions on the landscape of American conservatism—the Heritage Foundation, the American Enterprise Institute, the Hoover Institution, the Manhattan Institute, and National Review.

Having just received the Medal of Freedom from the hands of the President of the United States, Mrs. Thatcher proceeded to demonstrate why she became one of the greatest leaders of the free world in our time. She spoke at great length and in great detail about the conditions of leadership, and the role of Great Britain and the United States in fulfilling the obligations of leadership.

In her remarks, she distilled the essence of her experience in the highest political office of her country. It contains a great deal of wisdom for the ages.

Mr. President, I therefore ask unanimous consent that the official text of Mrs. Thatcher's remarks 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:

FREEDOM AND THE FUTURE

(By the Rt. Hon. Margaret Thatcher OM, FRS, MP)

Mr. Chairman, Ladies and Gentlemen, it's a very great pleasure to be here today, to be invited to address this distinguished audience, and in particular to be the guest of the five prominent conservative organisations which, though normally fierce rivals in the struggle for influence, philosophy and funds, have come together to be our joint host. An astounding event, Mr. Chairman, it is, perhaps, what inspired President Bush's vision of a "new world order."

We have before us today the opportunities created by two great victories: President Reagan's victory over communism in the Cold War, and President Bush's victory over aggression in the Gulf.

Both those victories were hard won. They required courage, the vision to see what was possible when others could not, and the persistence to fight through to a full and final conclusion.

Very few leaders possess that combination of qualities. But in the Gulf War, President Bush showed leadership of the very highest order.

He built a grand coalition of twenty-eight allies; he assembled overwhelming force from around the world; he gave full backing to a brilliant military concept which produced one of the greatest feats of arms with the fewest casualties in history; and he helped lay the foundations of future stability in the region. He can truly say, as Pitt said in 1804: "amid the wreck and misery of nations, it is our just exaltation that we have continued superior to all that ambition or that despotism could effect; and our still higher exaltation ought to be that we provide not only for our own safety but hold out a prospect for nations now bending under the iron yoke of tyranny of what the exertions of a free people can effect."

But that victory was not won solely in the last six months. It was the culmination of a decade's achievement—

The military build up of the 1980s,

The recovery of America's and the West's self confidence,

The technological advance that created the Patriot missile and the Apache attack helicopter, and

The revival of our economies that made these miracles possible.

Someone once said that "the past is another country—they do things differently there". It is difficult today to conjure up the despairing and defeatist atmosphere of the post-Vietnam '70s. But in those days the West was on the decline and on the defensive.

Our defences were neglected. The Soviet Union steadily reinforced its military superiority.

Our allies felt abandoned. They felt they could no longer rely on a hedonistic West. We coined the cynical joke: "lose a country, gain a restaurant".

In the battle of ideas, we had all but ceased to aim at furthering freedom and had settled for containing communism.

This political weakness only mirrored deeper weaknesses in our societies. Every such crisis is ultimately a crisis of the spirit. We knew we had lost time, lost nerve and lost ground.

THE '80S—A NEW DIRECTION

So, as the '80s began, we in the United States and Britain, set out in a new direction.

We wrestled with the challenge of reviving our economies.

We rebuilt our shattered defences.

We faced up to the threat of a Soviet Empire at the peak of its military might, made still more dangerous by knowledge of its own economic weakness and social fragility.

We made it clear that arms control would proceed on the basis of genuine equality of weaponry between East and West—or not at all. The Soviet Union built up its SS-20s. We deployed Cruise and Pershing missiles. The result—the first ever agreement to reduce nuclear weapons.

When the Soviet Union said that Germany could only be united if it left NATO, President Bush and I stayed firm. The result—a reunified Germany fully within NATO.

At home we liberated enterprise and cut taxes, producing higher living standards, more jobs and the spread of ownership.

Capitalism made our peoples prosperous at home and enabled us to feed the hungry abroad. Socialism, by contrast, proved the road to poverty and serfdom.

THE TRUTH REVEALED

As Eastern Europe emerges from the darkness, the truth is now fully known, and told even by communists:

Behind statistics boasting of bumper crops, food rotted;

As economic growth rates soared on paper, people queued for hours to buy goods that a Western supermarket couldn't even give away;

As five year plan followed five year plan, command economies turned out products that no one wanted to buy, and created an environment in which no one wanted to live.

But the world was strangely reluctant to observe these facts.

A World Bank report praised the Romanian economy for achieving high rates of growth from the early '50s on. A perceptive economist whose name is not unknown to you, Alan Walters, calculated backwards from the current Romanian living standards to show that if these figures had been accurate, the Romanian people would have all been dead in 1950.

Since then, Mr. Chairman, the life has drained out of communism entirely. And with it the heart went out of socialism.

Make no mistake. These communist regimes were not some unfortunate aberration, some historical deviation from a socialist ideal. They were the ultimate expression, unconstrained by democratic and electoral pressures, of what socialism is all about:

State ownership at the expense of private property;

Government control at the expense of individual enterprise;

The pursuit of equality at the expense of opportunity for all. In short, the state was everything and the individual nothing.

Mr. Chairman, I freely acknowledge that socialists and statists often begin by finding injustices and wanting to remove them. But they go on to the notion that only state ownership and state regulation can solve such problems. You can only believe that by ignoring the lessons of history, the lessons of politics and the lessons of economics. After the experience of this century and the testimony of Eastern Europe, intellectual irresponsibility on this scale is also moral irresponsibility.

We knew that communism was spiritually bankrupt—and we said so. We knew that the Stalinist system would always produce misery and tyranny, but could never produce prosperity—and we said so.

We knew that the "captive nations" under communism wanted and deserved to be free—and we said so. We even dared use the phrase "captive nations".

And the more we told the truth, the more we restored our own peoples' self confidence and the hopes of those still living under tyranny.

In the decade of the '80s, Western values were placed in the crucible and they emerged with greater purity and strength.

Mr. Chairman, so much of the credit goes to President Reagan. Of him it can be said, as Canning said of Pitt, that he was the "pilot that weathered the storm".

The world owes him an enormous debt and it saddens me that there are some who refuse to acknowledge his achievements.

For the whole world changed;

The Cold War was won without a shot being fired; Eastern Europe regained its freedom; its peoples elected democratic governments and they announced their intention to leave the Warsaw Pact;

The Berlin Wall came down and Germany was reunified within NATO; she and Japan, the vanquished nations in the Second World War, prospered mightly and ironically became the the creditors in the new world of peace.

A weakened Soviet Union was compelled by the West's economic and military competition to reform itself; a new more realistic and clear sighted leadership came to the top;

Glasnost was launched, *Perestroika* was started and we saw the beginnings of democratic politics;

As the Soviet Union abandoned its revolutionary role in the world, the United Nations became a more effective forum for active diplomacy;

And the United States once again became the preeminent power in the world.

Mr. Chairman, these are great and for the most part beneficial changes. They have been confirmed by the progress of the Gulf War in which America has led, Britain and France have helped militarily, together with many Arab nations, Germany and Japan have contributed financially, the United Nations has given its blessing, and the Soviet Union while pursuing her own diplomatic course at times, never quite departed from the U.N. resolutions she had originally supported.

Mr. Chairman, a new world means new problems and the need for new approaches.

How do we deal with the crisis in the Soviet Union? How do we reshape NATO in the post-Cold War world? How do we preserve and strengthen the economic foundations of the Western Alliance? How do we defend Western interests elsewhere and extend stability beyond the West in the aftermath of the Gulf War? In my view, we shall tackle all of these problems more effectively, as we won the Gulf War, by the tested policy of Western unity based on the firm U.S. leadership of sovereign nations in alliance.

NATIONHOOD AND EAST-WEST

But not every change in recent months has been for the better.

In the Soviet Union there is accumulating evidence that progress towards reform has been slowed, possibly halted. Dark forces of reaction are on the rise. At such a time, it is vital that all those committed to reform should not falter. No doubt some reformers never expected reform to extend to multiparty democracy and a free economy. "But no man can fix the boundaries of the march of a nation". And divisions among reformers now would only hand victory to the hard liners, whom I at least refuse to call conservatives. The Soviet people have not gone so far to have the prize of freedom and genuine democracy wrested from their grasp.

But the task of reforming and liberalising the Soviet Union is a far more difficult one than any of us had supposed a few years ago.

How do you persuade people brainwashed by egalitarian propaganda that inequalities are the side-effect of rising prosperity for all? How do you tell them that higher living standards can only be attained at the short term price of higher unemployment? And how do you do any of this while the demoted bureaucrats, the discredited politicians and all those who flourished under totalitarian mediocrity are out to undermine everything you do?

I am often asked: can we still do business with Mr. Gorbachev?

Mr. Chairman, we should not underestimate the future reforming zeal of a man who allowed Eastern Europe to grasp its freedom; who has begun the withdrawal of Soviet troops; accepted arms reduction for the first time; and cut support for communist insurgencies across the world. We have to go on doing business with him. In the same way, he has to do business with the democratic reformers if he is to succeed.

The pessimists among you will perhaps reply that the Soviet leader embarked on reform so as not to be left behind by the military build up and economic progress of the West in the '80s. I am the last person—or maybe the second to last person—to deny that these played a major role in Mr. Gorbachev's calculations. We had an economy driven by information technology: he had an economy fuelled by vodka!

And the very realism that prompted these reforms will persuade him to step up liberalisation, if he can, when the present slowing of *perestroika* pushes the Soviet economy further into crisis, as it must.

Perhaps, it does not really matter whether the optimists or the pessimists are right. Because optimism and pessimism dictate the same policy. If Mr. Gorbachev remains a reformer at heart, as I believe, he will privately welcome Western pressure for reform and employ it against the hard liners. If he himself has succumbed to the hard liners, as others believe, the West's pressure will push him too in the direction of reform.

So what kind of reform should we be seeking for these people who have rejected a false ideology but have not yet learnt the ways of freedom?

It is fashionable in some circles to argue for credits for the Soviet Union. But to give large credits to fill shops will not help to build the necessary structures of liberty; they would be dissipated quickly leaving an increasing burden of debt.

Any assistance to the Soviet Union must, therefore, be granted only in response to practical economic reforms. Helping the present structures will only keep reform at bay.

We must instead encourage the dispersal of power from Moscow to the republics. Five Soviet republics are now negotiating for such a dispersal of power—let us hope those negotiations succeed.

Second, we have to stress to the Soviets just how essential private property is to freedom. History teaches that human rights will not long survive without property rights; nor will prosperity be achieved without them.

Nor is freedom secure without independent courts and a rule of law. Here we have experience and knowledge totally denied to people who have grown up in a totalitarian system. Perhaps we should consider extending the Know-How funds for the Soviet Union so that lawyers can go towards developing an independent judiciary—a precondition of freedom.

We must also draw the Soviet Union closer to the institutions of the international trading and payments system. Associating the Soviet Economy more closely with these will, over time, help to transform that economy internally. Their rules will help promote sound money, competition and genuine trade. No economy will prosper if it is strangled by regulations and bureaucrats.

So let us say to Mr. Gorbachev that he can count on our help when he makes reforms. But the reverse of this is that any evidence of a return to repression must prompt from the West a swift and effective response. The constant raising of human rights cases in the Soviet Union over many years, especially since the Helsinki accords, did undoubtedly have an effect—we must remember that lesson and act upon it.

In particular, we cannot overlook or condone the disgraceful abuses of those rights which we have seen in the Baltic States. These States were seized by the Soviet Union not by law but by fraud and violence. That seizure has never been regarded as legal by the West. We fully support the right of the Baltic States to determine their own future. We must make it clear to the Soviet Union that it is not a question of whether they will be free—but only of when they will be free. And they *will* be free.

HOW DO WE RESHAPE NATO?

There are signs that the Soviet Union is failing to fulfil either the letter or the spirit of the terms of the treaty for reduction of conventional forces in Europe, signed in Paris. And there are signs of pressure by the Soviet military to reassert its position.

Moreover, the reemergence of tension and uncertainty on Europe's eastern border ought to remind NATO's continental European members both that international dangers can rarely be predicted and that sustained commitment is necessary to deal with them.

We must never forget that it is NATO--because it is strong defence—which underpins that peace with freedom and justice which we in the West enjoy and now have the opportunity to extend to others.

NATO has been uniquely successful in maintaining liberty. It is not just a military alliance, but an alliance in defence of a way of life. NATO must not be discarded.

It is in the interests of Europe that the United States should continue to play that dominant role in NATO to which we have become accustomed. Indeed, as was demonstrated in the Gulf, for all the assistance which Britain and other powers gave, only one nation really has the power to defend freedom and security in the world today. That is and will for the foreseeable future remain the United States.

The pursuit of a new defence role for the countries of Europe is much discussed. It is certainly true that, within NATO, the European countries should make a greater contribution.

The European countries must also be prepared to take a more active military role in response to events outside NATO's present area. Germany's interpretation of its constitution has so far prevented it making such a military contribution. But a full commitment to the defence of international freedom and stability requires risking life as well as treasure.

NATO has been a great success. We should be wary of creating new institutions to replace or complement its unique and indispensable role. Perhaps the most extraordinary suggestion yet to come out of Brussels is that the disunity and half-heartedness of most European nations during he Gulf crisis demonstrate the need for a united European foreign and defence policy. A new structure, even if it were necessary, can never be a substitute for will. Any arrangements which denied Britain and France sovereign control of their foreign and military commitments, especially determining these vital questions by a majority vote, would almost certainly have excluded Anglo-French forces from the Gulf—or at least long delayed their arrival and limited their number. In those grim early days after Iraq's invasion, America would have been left to stand alone. And it is far from certain that, even if after prolonged deliberations, the European Community would have contributed military assistance. The methods of compromise which underpin such decisions would almost certainly have left Europe on the side lines.

For many years, successive American Governments believed that progress towards a United States of Europe would relieve America of the burden of defending freedom. That hope, alas, turned out to be greatly exaggerated. Moreover, this kind of geo-political grand strategy should be regarded with the greatest skepticism. If a European superstate were to be forged, it would almost certainly develop interests and attitudes at variance with those of America. We would thereby move from a stable international order with the United States in the lead to a more dangerous world of new competing power blocs. This would be in no one's interest, least of all America's—and certainly not of Europe.

So NATO must remain the principal defence organization of the West: instead of seeking to supplant it, we should aim to adapt and extend it to meet the challenges of the post-Cold War World.

ENLARGING NATO'S ROLE

Our first step should be to enlarge its political role. This great trans-Atlantic partnership should not confine itself to matters of defence but should extend its discussions into other political and economic areas. This would be of benefit on both sides of the Atlantic.

Second, those Eastern European countries which have left the Warsaw Pact should be

given a new, special status in NATO—something short of full membership but well beyond mere observer status. Perhaps France has pointed the way in this respect. Such a new status could be an added source of stability in a traditionally unstable area and reassure these countries in troubled times. Even in periods of warmer relations, you can have a chilly spell.

Third, I believe that NATO's role should be extended to threats which are out-of-area. When I addressed the NATO Council at Turnberry, Scotland, last June, I warned that, "there is no guarantee that threats to our security will stop at some imaginary line. . . . With the spread of sophisticated weapons and of military technology to areas like the Middle East, potential threats to NATO territory may originate more from outside Euorope".

Within two months Saddam Hussein had invaded Kuwait. Fortunately, although there was no coordinated NATO response, several NATO nations acted vigorously to ensure that aggression did not pay.

Saddam Hussein has been defeated.

But Iraq is not alone in acquiring the technology and power to turn regional conflict into global crisis. Defence Secretary Richard Cheney has reminded us that: "by the year 2000, more than two dozen developing nations will have ballistic missiles, fifteen of those countries will have the scientific skills to make their own, and half of them either have or are near to getting nuclear capability as well. Thirty countries will have chemical weapons and ten will be able to deploy biological weapons".

This means that the NATO countries under America's leadership must be in a position to deter aggression by these countries and, if it occurs, to make a swift and devastating response.

Strong defence will continue to be necessary—and costly. For technology does not stand still. It was the Coalition's technological superiority which, with the courage of our fighting men, enabled us to defeat the world's fourth largest army after just four days of ground war. For myself, I believe, we must keep up the rate of technological advance which gave us the Patriot missile and which is giving us SDI.

All too often after wars, democracies rush to cut back defence and increase domestic public spending. The end of the Cold War led to a similar reaction. It is time to consider whether the plans to reduce spending on defence should be revised. Resolve is not enough, you must have the military capability too.

Perhaps, the single most important point to be made today is that the only real peace dividend is, quite simply, peace. Our generation has enjoyed it because of the investment of billions of dollars and pounds of defence.

FREE TRADE

So the first way to ensure that freedom prevails is to defend it—principally through NATO.

But no less important is the second means—the maintenance of world prosperity, founded upon an open system of free trade. And if there are risks to our security, the risks today to the open trading system are just as great.

Let us remember that the West's post-War prosperity could never have been achieved without the orderly framework of free trade provided by the GATT. Our response to the Stock Market Crash of 1929 was rising protectionism which transformed it into a catastrophic economic depression, slashing world trade in manufactured goods by some 40 percent—and all but undermining the credibility of capitalism itself. By contrast, our response to the world recession of the early 1980s was to resist protectionist pressures. Free enterprise and open trade duly swept us into years of unparalleled prosperity.

Yet the temptation to erect or retain tariff and other barriers is understandable. Managing trade through a network of bilateral agreements and tariff barriers has superficial political attractions. But in the long term, it would make home industries less efficient; consumers pay more for less choice; and condemn the Third World to lower living standards by denying them markets.

It would serve no purpose for me now to attribute blame for the failure, so far, of the Uruguay Round of the GATT. We might both be embarrassed by the degree of our agreement. Anyway, I have had a thing or two to say about this at European Councils.

Of course, people are impatient after four years of negotiations in the GATT. However, if there is evidence of a real and urgent commitment to reach a settlement and more time is needed, it should be given. Some of the best agreements have been reached after the clock has stopped.

It would be a tragedy if the GATT talks were to fail because the U.S., the Cairns Group and the European Community could not reach an agreement on cutting farm subsidies. We cannot expect the Third World to agree to what the West wants—protecting intellectual property rights and liberalising services—when we deprive them of their main export market, agricultural commodities, and hence of the funds to improve and diversify their economies.

The stakes are high. If GATT should fail, we would gradually drift into a world of three powerful, protectionist trade blocs—based on America, Europe and Japan—engaged in mutually destructive trade wars. That would not only threaten world prosperity but it could also damage the common sympathy vital to defence ties across the Atlantic. We should be moving in precisely the opposite direction. Europe and North America, staying within GATT rules, should move steadily to cut tariffs and other trade barriers between them. In the short term, special provision would have to be made for the more difficult problems like agriculture; and over the decades, we would create a free trade area in embryo across the Atlantic. It would be the greatest concentration of wealth and skills in history, encompassing 58 percent of the world's GNP, and it would be a force for free trade rather than a restraint upon it. The very size and prosperity of the group would give it enormous influence in setting liberal rules for open world trade. The inclusion of America would reassure the fears, however unjustified, of some European countries about German economic dominance. And, above all, it would provide the economic underpinning for NATO and its out-of-area role. It is a visionary prospect but we need a distant star to steer by.

EUROPE

The European Community's response to the challenges and opportunities of free trade will be crucial.

Europe is now at the crossroads. Amid the apparently technical arguments on monetary union, institutional change and social dimension, a struggle is underway for Europe's future.

Ony recently, perhaps, has America begun to recognise that it too has a stake in the outcome. A democratic Europe of nation states could be a force for liberty, enterprise and open trade. But, if creating a United States of Europe overrides these goals, the new Europe will be one of subsidy and protection.

The European Community does indeed have a political mission. It is to anchor new and vulnerable democracies more securely to freedom to the West. This is what happened after the end of authoritarian rule in Spain, Portugal and Greece. So the offer of full Community membership must be open to the countries of Eastern and Central Europe just as soon as democracy and the free market have taken root. In the meantime, we must strengthen links of trade, investment and culture.

The false political mission which some would set for the European Community is to turn it into an inward looking and protectionist United States of Europe. A Europe in which individual nations each with its own living democracy would be subordinated within an artificial federal structure which is inevitably bureaucratic. A community lacking a common language can have no public opinion to which the bureaucrats are accountable.

Americans and Europeans alike sometimes forget how unique the United States of America is. No other nation has been created so swiftly and successfully. No other nation has been built upon an idea—the idea of liberty. No other nation has so successfully combined people of different races and nations within a single culture. Both the founding fathers of the United States and successive waves of immigrants to your country were determined to create a new identity. Whether in flight from persecution or from poverty, the huddled masses have, with few exceptions, welcomed American values, the American way of life and American opportunities. And America herself has bound them to her with powerful bonds of patriotism and pride.

The European nations are not and can never be like this. They are the product of history and not of philosophy. You can construct a nation on an idea; but you cannot reconstruct a nation on the basis of one.

It is in this light that we should consider the attempt which is being made to create a European Superstate. That aspiration has many origins—some noble, some cynical, some just naive. But, in any case, utopian aspirations never made for a stable polity. Political institutions cannot be imposed if they are to endure. They have to evolve and they have to command the affection, loyalty and respect of populations living under them.

The kind of Europe which all of us—on both sides of the Atlantic, and not least, in the countries of Central and Eastern Europe so recently emerged from the thrall of communism—must see is no less visionary and far more practical than the alternative. Our kind of Europe, of sovereign states proud of their national identity, enjoying the prosperity which free enterprise brings, a force for open trade, democracy and liberty, would look outward to the world where freedom must be defended and extended. And when we look westward, we see not threatening rivals but staunch friends with common purposes. That's my vision of a European future.

THE MIDDLE EAST AND THE UNITED NATIONS

Whether it is in Europe or the wider world, we have to know clearly what we should expect from international institutions. The Gulf War posed a sudden, dramatic challenge to the international community. Indeed, "the Gulf" was hardly on our agenda until the sudden invasion of Kuwait on 2nd August

last year. Yet, since then, the Gulf has dominated all else.

The war is now over and we are working to build a secure and lasting peace. It is precisely the right time both to look again at the issues which have so long divided the peoples of the Middle East and to take stock of the future role of the United Nations.

It is not for others to come up with precise formulas for solving the problems of the Middle East—an area fought over more than any other part of the world. Agreement will only come from painstaking and persistent negotiation between the peoples involved. An international conference could play a part in this—not to arbitrate but its members could provide advice on the preparation of an agenda, the development of proposals, the framing of security arrangements and the course of diplomacy.

I believe that six items among others should be on our agenda for peace in the Middle East:

First, the Gulf must be protected as an international seaway. Our navies will have to stay there and those from the European countries must take a bigger and more prominent share of the duty.

Second, military equipment and supplies may need to be prepositioned in the area, both to deter further aggression and to enable the rapid deployment of Western troops should that deterrent fail.

Third, arrangements must be made to safeguard the security of Kuwait. For who will be prepared to invest the enormous sums required to rebuild Kuwait, unless security is properly guaranteed? I believe a United Nations force would be right for this purpose. It must be firm and strong due to past history and recent events.

Fourth, there is the question of biological, chemical and nuclear weapons. We must be satisfied by observation that Iraq's have been destroyed. We should have sanctions against supplying them with equipment that could be used for that purpose. And Iraq's territory must be open to rigorous inspection to ensure that production has not begun again.

Fifth, countries which engage in aggressive war cannot expect to be allowed freely and quickly to build up for their military strength. We must take steps to ensure that the advanced weapons of war are withheld from Iraq, which has, twice in ten years, invaded the territory of neighbouring Islamic states.

Finally, there is the Palestinian question, so long encased in suspicion and hostility. It can only be tackled by direct negotiation with the representatives of the Palestinian people and Israel. But those leaders who supported Saddam Hussein do not come to seek equity with clean hands. One favourable development is that the Soviet Union is now playing a very different role than in the past. So some of the fears that a Palestinian state—even though part of a Confederation with Jordan—would be prey to communist subversion, have receded. But we can well understand Israel's concern for secure borders and indeed the concern of all states in the area for a system of regional security.

The United Nations was tested by the crisis in the Gulf. And it came through it with an enhanced reputation. The permanent members of the U.N. Security Council worked together for the first time since 1945 to defeat aggression—and not for one resolution but for twelve.

But the U.N. resolutions had to be enforced by the actions and commitment of individual countries—both America and her NATO allies and the other Arab countries of the region which saw their interests threatened by Saddam Hussein's aggression. This combination of international authority by the United Nations and enforcement by the United States and other sovereign countries may well prove to be the best model for future contingencies.

FREEDOM AND THE FUTURE

Mr. Chairman, there can be no better time or place to consider the future of our nations than here—at the heart of the free world. The role of practical statesmen in any age is to create or adapt political structures for prosperity and peace. Today, I have suggested how this may now be done—in NATO, in the GATT, in the Soviet Union, in Europe and in the United Nations.

But true statesmanship in a free country must be measured by more than that. It requires an unswerving commitment to make the sovereignty of justice prevail. It requires an ability to inspire others with the rightness of a cause. It requires strong arms and great hearts.

We look to America for these things. And we do not look in vain.

After victory in the Cold War and in the Gulf, we face a still nobler, still more challenging task—to advance the reign of freedom and free enterprise throughout the world. It is now, more than ever, America's destiny, supported by her faithful friends—and no friends are truer than her friends in Britain—to press ahead with that endeavour.

In the words of President Abraham Lincoln: "Let us strive on to finish the work we are in."

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,188th day that Terry Anderson has been held captive in Lebanon.

HONORING JACK LIETHEN

Mr. KASTEN. Mr. President, at a time when all of us are bursting with pride at the accomplishments of our brave soldiers in the Persian Gulf, we ought to take a moment to thank some of those who served by staying at home.

I have in mind in particular the terrific job that has been done in Wisconsin by the seven National Guard family assistance centers. The men and women at these seven facilities are on hand to help soldiers' families with some of the most trying problems of daily life—legal difficulties, late paychecks, trying to get health benefits.

Most important of all—when a loved one is far away and in danger—these men and women are there to listen. They have fielded nearly 10,000 calls since the war effort began.

I rise today to pay my respect to one person who I am told has been a real star in this whole effort—Col. Jack Liethen. He has made a huge difference in the lives of some of these families—so to him and all his colleagues at the family assistance centers of Wisconsin, I ask my colleagues to join me in sending our heartfelt thanks.

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

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

Mr. SIMON. I ask unanimous consent to speak as if in morning business for 5 minutes.

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

The Senator from Illinois is recognized.

Mr. SIMON. I thank the Chair.

(The remarks of Mr. SIMON pertaining to the introduction of S. 644 are located in today's RECORD under "Statements to Introduced Bills and Joint Resolutions.")

Mr. SIMON. Mr. President, I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—S. 578

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate proceeds to the consideration of S. 578, the Persian Gulf benefits supplemental authorization bill, it be for debate only until the majority leader, after consultation with the Republican leader, vitiates this restriction.

Mr. President, before the Chair acts on this request, I am authorized by the minority staff to state that this has been cleared by the Republican leader and the Republican side, and it has been cleared on our side as well.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, pursuant to authority granted to me in a prior unanimous-consent agreement, I will momentarily ask the Senate to proceed to the consideration of S. 578.

For the information of Senators, the situation at that time will be as follows: I have had several meetings with Senator DOLE over the past few days and the bipartisan leadership and the White House have now reached agreement on a comprehensive package of benefits for the Persian Gulf troops and their families. The package would provide $500 million in benefits to those who served and veterans.

It was my hope to proceed to the consideration of this agreed-upon package immediately and to get it enacted into law. Unfortunately, there is one amendment which one Senator wishes

to offer that is unrelated to the benefits package that could lead to a lengthy debate on that subject, as well as trigger a host of other amendments on both sides, both related to and unrelated to the benefits package. Therefore, consideration of that amendment could endanger the prompt passage of this authorization bill, the benefits package, and the two supplemental appropriations bills that are likely to follow.

It remains my hope and intention that we can complete action on the authorization bill and the two supplemental appropriations bills which will follow and have those signed into law prior to the Easter recess. The Easter recess will begin at the close of business next week, so we are talking about a little more than 1 working week to accomplish this. That will be very difficult to do.

If this amendment is offered, that means it probably will not be possible to meet that time schedule, as the authorization bill, both for the Operation Desert Storm and the Persian Gulf benefits bill, will undoubtedly then take several days with many amendments. Since the Senate will not be in session on this Friday, with a large delegation of Senators traveling to the Persian Gulf, that means that we simply would not be able to meet the timetable that I have outlined as our intention and hope.

We are trying to work this matter out. Senator DOLE and I have made a great deal of progress until now in getting agreement on the benefits package and in trying to establish a framework within which we can get all three of these measures approved and enacted into law prior to the Easter recess; but we have not quite gotten there yet.

DEPARTMENT OF DEFENSE DESERT STORM SUPPLEMENTAL AUTHORIZATION AND MILITARY PERSONNEL BENEFITS ACT

Mr. MITCHELL. Mr. President, so as to permit the debate to begin on the legislation, it being my understanding that several Senators wish to address this subject while we continue to attempt to reach agreement on this other unrelated amendment, I now ask unanimous consent that the Senate proceed to the consideration of S. 578, the Persian Gulf benefits supplemental authorization bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 578) to authorize supplemental appropriations for fiscal year 1991 for the Department of Defense for Operation Desert Storm, to provide military personnel benefits for persons serving during Operation Desert Storm, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

There being no objection, the Senate proceeded to consider the bill.

Mr. MITCHELL. Mr. President, I just want to repeat and emphasize that I hope we can work this out. If we cannot and the amendment is offered, it means that many other amendments will be offered. It is likely then that the benefits to our troops will not be available immediately but could be delayed for a substantial period of time, that the funds needed to cover the military for military costs of Operation Desert Storm will be delayed, and the funds needed for the administration of unemployment benefits and other domestic emergency needs would not be immediately forthcoming. So I hope we can get this done.

We have made very good progress so far. We have had a series of good and constructive meetings with Senator DOLE and other interested Senators. Many Senators, I might say, have been forthcoming. Senators have compromised and have been willing to back off from including their provisions in the bill, have been willing to agree not to offer amendments. We have made good progress with a great deal of cooperation all the way around. I hope that will continue and that we will be able to meet the ambitious timetable which I have just described.

Mr. President, I understand that the distinguished chairman of the Armed Services Committee, the manager of the bill, is present, and that the ranking member will be here shortly.

I now yield the floor, and the Senate will proceed for the purposes of debate only on the pending measure.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. NUNN. Mr. President, I am pleased that the Senate now has before it S. 578, the Department of Defense Desert Storm Supplemental Authorization and Military Personnel Benefits Act for fiscal year 1991.

This bill provides the authorization required by law for additional funds during fiscal year 1991 to pay for the costs of the Persian Gulf war; gives the Defense Department increased flexibility to manage military personnel levels in the aftermath of the war; authorizes certain benefits for the military men and women involved in the war; and establishes certain reporting requirements for the Department of Defense to keep Congress informed of the cost of the war and to provide Congress with an after-action report on the conduct of the war.

Our entire Nation is very proud of the magnificent performance of all the military services and all of our men and women in uniform throughout Operation Desert Shield and Operation Desert Storm.

We are proud of President Bush's skillful leadership, particularly his leadership in the different job of holding together a very fragile alliance. President Bush, Secretary Baker, Secretary Cheney, and Brent Scowcroft, and I am sure others, deserve a great deal of credit in holding that fragile alliance together at critical times.

We are also proud of our senior military commanders, including General Powell, General Schwarzkopf, and our other top military commanders.

We are all proud of our defense industry and their engineers and workers who designed and built the weapons we used so effectively in the Persian Gulf war.

I said many times over the past months that Congress will provide the necessary resources our dedicated men and women in uniform need to conduct the Persian Gulf war successfully and to return home to the heroes' welcome they certainly deserve.

This bill does exactly that. I want to emphasize this bill deals only with the incremental costs of Operation Desert Shield and Desert Storm. The committee was strict in ensuring this is a clean bill in this regard, without a lot of other extraneous matters. I hope other Senators will respect that approach and not offer amendments that deal with issues outside the scope of paying for this war and also the benefits for the men and women.

I would like to take just a few moments to highlight for my colleagues the major provisions of the committee bill. The Persian Gulf conflict has involved the largest deployment of United States military forces since the Vietnam war. President Bush exercised his authority under section 673 and 673b of title 10 of the United States Code to order over 225,000 members of the National Guard and Reserve to active duty to support this deployment.

Our Guard and Reserve personnel deserve a great deal of credit for a tremendous job. Over 541,000 U.S. Active and Reserve personnel were deployed in the Persian Gulf region as a part of Operation Desert Storm.

The final costs of the conflict, including the costs of redeploying forces, remains to be determined. In recognition of the unusual and unanticipated nature of expenditures associated with Operation Desert Storm, the budget summit agreement last year provided that the incremental costs associated with Operation Desert Shield and Desert Storm are considered emergency expenditures outside the deficit reduction enforcement procedures in the budget agreement arrived at last fall.

The administration has requested authority to use funds from the defense cooperation account that have been contributed by foreign countries to begin paying the costs of the war. In addition, the Department has requested establishment of a Desert Shield working capital account to be used in the event foreign contributions are not available when expenditures must be made.

The committee has approved each of these requests with appropriate controls on expenditures to ensure the funds are derived from foreign contributions to the maximum extent possible and that such funds are used only for the incremental costs of the Operation Desert Shield/Desert Storm.

In 1990 Congress established the defense cooperation account to provide a mechanism for receiving and spending contributions for national defense purposes, including contributions from foreign countries. The law requires both an authorization and appropriation prior to obligation of funds from the defense cooperation account. All foreign contributions for the Persian Gulf conflict are placed in this account.

According to the administration, commitments from our allies now total $53.5 billion in cash and in-kind contributions. And the Defense Department Comptroller indicates that we have received $17.8 billion in payments as of March 8, 1991.

The bill recommended by the committee would establish a mechanism to ensure foreign contributions rather than U.S. tax dollars are used to pay for the costs of the war to the maximum extent possible. This bill authorizes appropriations of funds contained in the defense cooperation account to pay for the incremental costs of Operation Desert Shield and Operation Desert Storm.

The bill also authorizes $15 billion in U.S. taxpayers' money to establish a Desert Storm working capital account. The administration testified such an account is necessary to ensure funds will be available to meet urgent needs in the event there are insufficient funds in the defense cooperation account during the period between the making of the pledges and the actual receipt of payments by our foreign allies.

The committee bill provides funds from the defense cooperation account may be transferred by the Secretary of Defense to fiscal year 1991 authorizations otherwise available to the Department. If there are insufficient funds in the defense cooperation account, funds from the working capital account may be transferred to such authorizations.

The bill makes it clear that the $15 billion in the working capital account may be used only to the extent foreign contributions in the defense cooperation account are not available to pay for the incremental costs of Operation Desert Shield/Desert Storm.

If funds are used from the $15 billion working capital account—which is U.S. taxpayers' money—that account must be promptly replenished from contributions to the defense cooperation account, which represents the allied contribution.

After all the incremental costs of Operation Desert Shield and Desert Storm are paid, any balances remaining in the working capital account, the taxpayer account, would be returned to the U.S. Treasury.

The committee bill also authorizes transfers between fiscal year 1991 operation and maintenance and military personnel accounts to pay for the incremental costs of Operation Desert Shield and Desert Storm.

The Defense Department has identified several hundred million in costs for the National Guard and Reserve personnel who have been activated for this operation, which should be transferred from Reserve military personnel accounts to active miltiary personnel and O&M accounts.

The committee bill also includes important safeguards to maintain appropriate congressional oversight of the use of the funds in the defense cooperation account and the Desert Storm working capital account to pay for the costs of the Persian Gulf conflict. The transfer authority in the bill can be used only after the Secretary of Defense provides the Congress with a notification and after that notification a period of 7 days elapses.

The notification from the Department must include, first, a certification that the amounts proposed to be transferred will be used only to fund the incremental costs of Operation Desert Shield/Desert Storm; second, a list of the amounts to be transferred and the accounts to which the transfer will be made; third, a description of the programs, projects, and activities to which the funds are proposed to be transferred.

If the transfer is from the working capital account, the notification must also explain why foreign contributions have not provided sufficient funds to permit transfers from the defense cooperation account.

On a monthly basis, the Comptroller of the Department of Defense will provide an accounting of transfers in a report to the Congress and to the General Accounting Office, who will be giving oversight also.

These notification, certification, and reporting requirements ensure that Congress will continue to oversee the expenditure of funds to pay for the costs of the Persian Gulf war in the months ahead.

The committee bill also includes authority requested by the Defense Department to waive certain military personnel end strength and grade ceilings for fiscal year 1991 because of the unusual requirements resulting from Operation Desert Shield and Operation Desert Storm. These waivers are necessary to minimize personnel turbulence and involuntary separations as the military services drawdown their strength as projected in their budget in the aftermath of the Persian Gulf war.

Since the start of this operation, the military services have had to retain certain military members on active duty and also increase the number of new recruits. As a result, the military services will not be able to meet the end strengths prescribed for fiscal year 1991, agreed to in the National Defense Authorization Act for fiscal year 1991.

The military services also must have temporary relief from certain statutory grade ceilings for officers as well as enlisted grades to allow the military services to prudently manage the personnel inventory during the drawdown in the Persian Gulf.

The fiscal year 1991 Defense Authorization Act and the fiscal year 1992–93 defense budget call for a gradual decrease in the active duty personnel strengths of the military services over the next 5 years from the 1990 level of 2.1 to 1.6 million by 1995. That is the law on the books now.

The committee stressed, in last year's report, a gradual approach so the services could phase down with a minimum of turbulence and an absolute minimum of involuntary releases. The committee will be reviewing this 5-year strength plan in the coming months as we consider the fiscal year 1992–93 Defense authorization bill.

I want to emphasize to my colleagues at this time, however, that the waivers in this supplemental bill will result in increased personnel costs in fiscal year 1991 and in fiscal year 1992. A higher personnel level in fiscal year 1991, for example, means the military services will begin the next fiscal year, 1992 fiscal year, at a higher strength than assumed in the budget request that the President made for 1992.

This is only one area where the incremental costs of the Persian Gulf war will spill over into fiscal 1992 and require defense spending in excess of the level assumed in the budget summit agreement.

The committee has included a provision in this section that will make it clear that increases in end strengths resulting from Operation Desert Storm waivers represent incremental costs associated with Operation Desert Storm for funding purposes. This provision would authorize the use of funds from the defense cooperation account to pay for these incremental costs.

Turning to the military personnel benefits, which are so important and so meaningful to our young men and women who are in the Persian Gulf and those who have already returned home,

the committee bill incorporates several measures that have been reported to the Senate.

These include: S. 237, a bill which I introduced with Senator WARNER and others, which would increase the monthly rate of hostile fire or imminent danger pay for military personnel from $110 a month to $150 a month. That would be retroactive to August 1, 1990. This hostile fire pay was last increased in 1985, and the increase in this provision would match inflation over the last 6 years.

This is a very important benefit to a lot of people. They have given up some of their benefits when they moved from their active duty posts over to the Persian Gulf. In spite of going to a danger zone, they have lost money because their families lose a portion of the subsistence allowance.

It is awfully hard to explain to a military family why a military member should go off to war while his or her family takes a pay cut. We hope this form of increase will help compensate those who have, in effect, lost family income because of going to war for our Nation.

The next provision which is incorporated in this bill is S. 204, introduced by Senator GLENN, which would authorize the Secretaries of the military departments to recall military personnel to active duty, in connection with Operation Desert Storm, in the highest grade held satisfactorily while on previous active duty.

The next provision is S. 331, a measure previously reported by the committee, which would ensure that survivors of military members are entitled to the payment for unused accrued leave if the member dies on active duty. I think everyone would agree with the equity of that provision.

S. 221, another measure previously reported by the committee, would exempt military members who are in a missing status from the $10,000 annual cap on the amount that individuals may save under the savings plan implemented by the Department of Defense for military personnel deployed in the Persian Gulf in Operation Desert Storm.

Mr. President, in addition to these measures previously reported by the committee, the committee bill incorporates other measures, in some cases, with amendments:

S. 334, introduced by Senator KENNEDY and others, which would authorize $20 million for the Secretary of Defense to provide child care assistance to military personnel serving on active duty and would authorize 60 days of transitional medical benefits from the Defense Department upon separation for reservists called to active duty for Operation Desert Shield/Desert Storm, and for certain active duty personnel involuntarily retained on active duty;

S. 281, introduced by Senator KENNEDY and others, which would authorize $30 million for the Secretary of Defense to provide for education and family support services to families of military personnel serving on active duty;

S. 384, introduced by Senator MCCAIN and others, which would delay the effective date of the reduction in CHAMPUS mental health benefits required by section 703 of the National Defense Authorization Act for fiscal year 1991 from February 15, 1991 to February 15, 1992;

A provision which would authorize Reserve component medical personnel activated for Operation Desert Storm to receive the same special and incentive pays as their active-duty counterparts;

Finally, a provision which would increase the death gratuity from $3,000 to $6,000 for survivors of military members who died as a result of service during the period of Operation Desert Shield/Desert Storm.

Mr. President, the committee believes that the benefits provided in this bill are fully justified in recognition of the unique circumstances that confronted our men and women in uniform and their families in Operation Desert Shield/Desert Storm. The fiscal year 1991 cost of these benefits is approximately $267 million. These costs are clearly incremental costs of the Persian Gulf war. We tried to confine our benefits to the incremental benefits relating to the war.

There will be a leadership amendment, as has already been mentioned by the Senator from Maine [Mr. MITCHELL], which will bring in the package negotiated by Senator GLENN and others, from other committees that we have no jurisdiction over. It is my understanding that this package will be presented as an agreed-upon amendment by the leadership to this bill. We will have all of it folded into this bill, if that amendment is accepted.

Mr. President, we also have two important reporting requirements relating to the Persian Gulf war. The first reporting requirement includes for ensuring that there will be a complete accounting of all expenditures and sources of funding related to Operation Desert Shield/Desert Storm. This provision requires the Office of Management and Budget to submit monthly reports on the costs of U.S. military operations connected with the Persian Gulf war, and on allied contributions to offset the costs of U.S. military operations. This provision also requires reports on related burdensharing not directly involving the United States. The Secretary of State and the Secretary of Treasury will be required to report on participation in the military coalition, as well as on economic aid to front-line states, refugee assistance, and financial support for military efforts of other allied nations.

This provision was passed as a separate bill by the House of Representatives, which is designated H.R. 586, and it was referred to our Armed Services Committee. We have amended the House reporting requirements slightly and reported it as part of this supplemental authorization bill, and also as a separate bill.

The second reporting requirement calls for a comprehensive assessment of the conduct of the war by the Defense Department. Operation Desert Storm is the most significant military activity involving the Armed Forces of the United States since the war in Vietnam. The lessons learned from the strategy, the tactics, the logistics miracle—in my view—which was performed, the personnel policies, and other aspects of the conflict will have a major impact on the decisions in this and future years about our national defense posture.

The committee bill includes a provision that requires the Department of Defense to make an assessment, after the cessation of hostilities, on the conduct and "lessons learned" in Operation Desert Shield and Desert Storm. "The Future Year Defense Plan" presented by the administration reflects a 5-year build-down that will significantly reduce the defense establishment.

It is absolutely essential that we carefully assess the lessons learned in Operation Desert Storm so we structure that in a manner that enables the United States, when a build-down is completed, to have the capability to defend our interests all over the world. This will be, indeed, an important lesson. We will all learn from it.

We are not expecting the Department of Defense to report the total lessons learned immediately. We hope to work with them over a period of a number of months in getting this information, and we hope to have an interim report. The time required for the interim report is a 90-day period.

Mr. President, this is what we call a clean supplemental authorization bill at this moment as we speak. And I hope it will remain so during the course of the next day or so that it takes to consider it. If it becomes a bill that has other amendments on it and is no longer a clean bill, then we are going to have any number of amendments. There are a lot of these amendments that I will support.

I know the Senator from Virginia has worked on an amendment that he may be presenting. Under some circumstances, I think I could work with him and maybe work out something I could support on that amendment.

But on this bill, if one amendment comes in, everybody we have talked to about keeping their amendments off is going to come over to the floor. They are going to present their amendments, and here we go; we are going to be on

this a long time. I hope that our colleagues will understand, no matter how worthy their amendment is and no matter how clean and pure in their mind their amendment is, if they put it on this bill, this bill will no longer be a Desert Shield/Desert Storm bill; it will become a major defense bill and the doors will be open. When the doors are open on the Senate floor, the company and the amendments stream in. So I hope our colleagues will be disciplined and understand that this is an urgent bill, that this is to pay for costs that have already been incurred. It is a bill that will greatly assist our military men and women who have served this Nation so well, and their families back home who have served this Nation so well.

I want to close, Mr. President, by again emphasizing something I have said for a number of days since I returned from the Persian Gulf with my good friend from Virginia, Senator WARNER, Senator STEVENS, and Senator INOUYE. There is no way to express to the American people how important their support was in sustaining the morale of our military forces and in letting them know that the Nation was united behind them, letting them know that the debate was over in this country and that everybody was on one side, and that we were all supporting them and doing everything we could back here to make sure they had the resources.

The Nation has participated in this war. I think the Senator from Virginia would agree with me; every tent we went into, no matter how fragile, in the middle of that sand out there had little pictures and letters on the walls, a lot of them from third and fourth graders who had written the troops out there and signed their names and sent their love. When you would see these battle-hardened men and women out there is the field looking up at that third and fourth grade picture or portrait or message expressing support, it was really a clear message to me, and I think to the others who were on that trip, that the support back home makes a huge difference in the performance of the men and women in the field. So all of our country should be proud of that very visible and very tangible and very meaningful support that was so evident when we were in the field and, of course, evident back home.

I yield to the Senator from Virginia for whatever comments he would like to make on this bill. I thank the Senator from Virginia for his splendid cooperation and for his work on this legislation, which has been a truly bipartisan effort.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, I certainly want to pick up on the distinguished chairman's last observation about how, when we were in the gulf region, we were struck, particularly those of us who saw service in World War II and Korea, by how the pinup of the Persian Gulf was in sharp contract to the pinup of earlier conflicts. It was the letters, the posters devised by the young people of this country in an outpouring of their understanding of this conflict and the purposes for which their older brothers and sisters were engaged in taking risks to preserve freedom.

I appreciate the chairman's sentiment on that because there were four main parts to this conflict: The leadership, which I will address momentarily; The men and women who saluted and followed the orders; the logistic chain; the allies; and then I think maybe as a fifth there was the home front, hometown, the village green, U.S.A. that turned out in a manner unlike any in my lifetime since the closing days of World War II.

Mr. President, in addressing the pending legislation, I wish to compliment the chairman, the staff, majority and minority, of the Senate Armed Services Committee. This is a Senate Armed Services Committee bill. Let us not lose sight of the fact we had the prime responsibility. There came a time when we recognized, and the leadership of the Senate recognized, the importance of embracing other pieces of legislation which, although not directly, indirectly impacted on the benefits, as we now term it, for the men and women who served in the gulf and, indeed, those back here at home in many instances.

I commend the majority leader, the Republican leader, Senators GLENN and MCCAIN, for working together against odds which at times appeared to me to be insurmountable, given the volume of the legislation and the uniqueness, I will use that word, of some of the ideas that came forward. But we have seen miracles performed around here and, indeed, this was a miracle, too, to put this in one package in our bill, the Committee on the Armed Services, and make it a part of the other important technical legislative components which the chairman has adequately addressed.

I see no benefit to the Senate for me to review the very fair and objective analysis of those other technical parts of the bill over which our committee had the principal jurisdiction. I do not foresee in the course of such debate as we may have on this piece of legislation any differences with regard to those elements and components as addressed by the chairman.

I would like to return, however, and parallel my remarks with those of the chairman in regard to this conflict. It was extraordinary in the annals of military history, all military history, not just United States but worldwide military history. We had in place at this time leadership which I have termed almost providential: A President who had experienced combat, who understood how to lead men and women in times of combat; we had general officers, we had flag officers of the U.S. Navy and the Marine Corps and of the Air Force who had extraordinary professional capability and training, and they had under their immediate supervision the most extraordinary grouping of men and women in the history of our Nation, everyone being a volunteer. It was the All Volunteer Force. It was their first major test.

Yesterday afternoon, I received a call from an individual for whom I have unlimited admiration. It was my privilege to serve with him from 1969 through 1972 in the Department of Defense, Melvin Laird, then Secretary of Defense. We reminisced about the origins of the All Volunteer Force and how at that time President Richard Nixon, together with Secretary of Defense Laird, and the two Chairmen of the Joint Chiefs of Staff, really worked on this. They took the risk, in the face of unprecedented turmoil here on the home front toward a military action, of shifting to the All Volunteer Force. Indeed, it was a risk; there was no precedent in the history of our country for having an All Volunteer Force. The war was continuing to be waged. The transition was made. The concept worked. The concept worked because this country has as its greatest asset the men and women of the Armed Forces, the young men and women who are willing to come forward and volunteer and the officers and noncoms who were to work with this ever evolving and changing group of young people. And on the home front, I hope many of our colleagues have experienced as I was privileged—I underline privileged—to experience the first homecoming from the gulf of Virginians who had gone forth. In this instance it was at Langley, a historic air base in our country in Virginia, the First Tactical Air Wing, which Senator NUNN and I and Senator STEVENS and Senator INOUYE had visited only weeks before in the gulf. As the planes were taking off during our meeting with the airmen, around the clock performing missions, little did we know at that time, although it was predicted, forewarned that we would begin the ground element—it is often called the ground war; that is a misnomer—of the major conflict, the air element having performed brilliantly for some weeks, we would be back home greeting the very people we met in the gulf.

We learned a great deal from those people, men and women of all ranks visited. But I experienced at Langley an outpouring of love and affection, of respect, of admiration, of confidence of the American people for those individuals. I just hope our President and this Congress, working in partnership, can capture the momentum, the can-do spirit generated by the troops largely

in the gulf, and, indeed, the home front supporting them, capture that spirit and translate it into solutions that we need here at home for some of our major problems.

The joint session of Congress to which our President was invited and delivered a brilliant address to the Nation I think laid the foundation.

I went through the halls of this Senate in the past few days I felt a vibration and a feeling in this Senate that we can achieve those objectives.

I met this morning with the chairman of a committee on which I serve relating to transportation, and he wants to meet the President's deadline of 100 days within which to enact legislation as it relates to transportation. He is sitting down individually with each of the members of his committee now charting out our respective responsibilities and ascertaining the parameters in which we desire to work on that legislation.

The distinguished Presiding Officer is a member of that committee. I am sure he will be consulted, as I was this morning, by the chairman.

Mr. President, my distinguished chairman and good friend has made reference to the desire to have a clean bill. That is the hope of all managers. It is seldom realized here.

The leadership, preceding the remarks of the Chairman, indicated that there was a amendment which could in turn evoke considerable debate, possibly other amendments and without naming the Senator. I am happy to say that I am that Senator who has the amendment.

I will address briefly the purpose of the amendment, the content of the amendment, and then at a later time—I see other Senators anxious to address the bill—I perhaps will have further opportunity. I have always worked in cooperation with the leadership of this body. Indeed it is through compromise that we achieve our major goals. I recognize, as does the chairman and others, the urgency of this legislation. But I also recognize, Mr. President, the importance of the amendment that I will submit to this body in due course. I recognize that importance.

Mr. President, we talk about lessons learned in the gulf. One of the most dramatic recollections I have of this historic period is the degree to which the American people here at home studied in detail not only through observing on television but by carefully reading the newspapers and other journals which in turn very accurately and in a responsible way provided them an education with respect to our military, and the weapons being used.

We sat in astonishment and saw the videotape from certain of our weapons systems transmitted by satellite down to the village greens of our country, and there on our television sets we witnessed the excellence of our weapons, starting with the ability of the men and women of the Armed Forces who had been trained properly as an all-volunteer force, who had been given—that is, provided—these weapons by a determined succession of Presidents and a determined Congress; the best equipment that could be afforded the men and women of the Armed Forces of any nation in the world. They operated them. They knew how to do it. They astonished not only America but the whole world.

The chairman has acknowledged our gratitude, and acknowledged the fact that this conflict may well have dragged on interminably, may well have resulted in the loss of many, many additional lives, had it not been for the genius of the minds in this country, in the industrial base, in the management base, in the production base; finally to the operators of the weapons to produce this technology.

We, this Nation, gravely and deeply mourn the loss of 120-plus Americans. As I said, I was there on a Thursday when they came home, and on the following Friday I sat in the pews of the religious shrines—of this country, in my State, or in the open green in front of a high school—to quietly join with family and friends as we mourned the loss of two brave Virginians, volunteers each, who proudly went forth. And they will not be returning.

My mind went back on the night the chairman and I, and our two colleagues, visited in Israel. It was about 9 o'clock at night. We had flown from the gulf to Israel to meet with the Defense Minister to show our support and our respect for the courage of the people of Israel in the face of a terrorist weapon. The Scud missile was not a military weapon. It was simply a terrorist weapon inflicted upon an innocent, virtually helpless people—the Scud attacks indiscriminately.

While we were seated there with the Defense Minister, the air raid sirens went off. There was calm in the room. The Minister and his principal military staff knew exactly what to do.

Coincidentally, the television was turned on which then, as best it can, through the government, informed the people, in this instance, Tel Aviv, of the details of the pending attack, with instructions as to how to use a gas mask. Each of us were issued a gas mask. The Defense Minister showed us how to a fix the various parts. It was all very calm. It was all very collected.

He then looked at his watch, and he said it would be a matter, I think, of 6 to 7 minutes in which we would determine whether or not a defense system would interdict this missile or whether it would impact some helpless area.

We heard very clearly a loud, thunderous type of clap, and then there was a period of time in which to ascertain whether it was a missile or a successful interdiction? It turned out to be a successful interdiction.

Our meeting resumed. We finished our business, and spent the night in a largely deserted community, Tel Aviv; largely deserted in terms of any tourists or visitors—citizens, yes, but not too many visitors with hotels virtually empty.

The next morning our delegation went out and visited the Patriot site commanded by Americans and Israelis which had successfully interdicted that missile. We learned that the trajectory was such that it would likely have fallen in the proximity of the Defense Ministry.

We then visited another site in Tel Aviv where some week or so before a Scud had landed and caused great devastation, not only in terms of human suffering but of housing and other structures. We were met by the mayor and some of the neighbors. You should have seen their faces. They indeed understood the seriousness of this problem. They said they were rebuilding. The signs of rebuilding had already commenced. But they had courage and determination that really inspired all of us.

That brings me to the point of this amendment. Through the leadership that the United States has shown working in conjunction with primarily 27 other military partners in the coalition in the gulf, we will not see in the foreseeable future another requirement to send the men and women of the United States abroad. But I, as one Senator, want to assure them and their families that, if a subsequent deployment comes, the genius of the United States of America, the same genius that configured the Patriot, the same military genius that looked at the tactics by which through air interdiction to suppress and destroy the launch sites of the Scud missiles, the combination of those two defenses, I want to make sure that we have provided in every way, technologically, to protect the safety of our forward deployed troops, to protect the safety of civilian populations which may be associated with any future battle area.

Mr. President, it is the testimony of the Director of the Central Intelligence Agency, and many others, that by the year 2000, there will be some 20 or more nations either with the capability to manufacture or the capability to acquire missile technology in the open market. Mr. President, I want to be able to give the assurance to any future generations of Americans that have to go in harm's way that at least we have unleashed the genius here at home to do the best we can to just do two things: To fully perform the research and development and tests of our technology to determine whether or not we can devise a better system in preparedness of operation to interdict the incoming missile, such as the

crude, terrorist, basically World War II technology Scud, and other such systems that are springing up all over the world as part of the arsenals.

I just want that assurance, so that if I ever have to again go to an assembly of a family grieving for a loss, I can say to them that we are doing everything to prevent that type of loss in this country.

Consequently, I think it is timely that we, as a Congress, both the Senate and the House, express to our President, who is endeavoring now to negotiate some type of solution to the ABM Treaty, and to express to Americans, and to express to our allies that we, the Congress, are supportive, and we urge the President in the next 2 years to sit down with the Soviet Union and determine if there are not reasonable adjustments to the ABM Treaty that can be achieved to unleash this genius that created the smart weapons that could, from 14,000 feet, go down through a stove pipe of no greater diameter than 18 inches; if that same genius cannot begin to devise protective systems, utilizing whatever elements necessary, including those in space, to protect our troops, to protect our allies, to protect innocent civilians.

Hopefully, the day will not come, but perhaps even to protect some areas of the homeland of the United States which could, conceivably, with future generations of ballistic missiles, be subject to threat and attack. That seems to me to be a not unreasonable request and a timely one.

While it is fresh in the minds of the Congress, while it is fresh in the minds of Americans, let us get on with determining whether or not we can. That is all I ask, Mr. President. I am not suggesting that we begin to mass produce them. I am not suggesting that we begin to deploy them. My suggestion is very clear. Just unleash American technology to determine can we do it, how successful would it be, and then a President, then a Congress—undoubtedly a future Congress—can decide the question of deployment.

But now is the time, Mr. President, and I call on Americans across this country to communicate with their Members of Congress, and I think they will share with me their views that it is timely to do this.

This is a 1972 treaty. Coincidentally, I think I am the only Member of the Congress of the United States who was present in Moscow at the time. I was Secretary of the Navy, and I was there in connection with the incidents at sea agreement, which I was privileged to execute on behalf of my country the day before. But that was an entirely different threat to the environment in 1972. It was an entirely different technological base in expertise in our country and other nations. I am not so sure that the men who sat down, the negotiations at that time, could envision a scenario such as the world has witnessed here in the past few months.

I hope that America would respond to the need for this type of encouragement and offer the support for our President that it gave to the men and women of the Armed Forces throughout this conflict. I hope that America would spend the same amount of time studying how we might solve this problem at some future date, and studying the need for allowing our people to go forward and seek—that is all this is—the facts to show that we can solve the problem. And a President and a future Congress will then make the decision, presumably after working it out with the Soviet Union, that we will protect our men and women of the Armed Forces when they go forth.

Mr. President, I gave adequate notice of my intention to bring forth this amendment at the conclusion of our hearings with Secretary Cheney. I expressed dissatisfaction, and I was going to address it at the first opportunity. that was an open session hearing.

I raised an adaptation of the amendment that I will later submit today during the course of the deliberation of this very bill in the Senate Armed Services Committee. So it has been fully explained to my colleagues on the committee. I have now had the opportunity to explain it to the Senate as a whole.

I have worked with the President and his senior staff for a considerable period of time, and I now have a letter signed by the President's National Security Adviser, dated today, which reads as follows:

DEAR SENATOR WARNER: As the Gulf War has made clear, the proliferation of ballistic missile technology and weapons of mass destruction already can threaten our allies and our forces deployed overseas. In the coming years, the United States itself will face the growing threat of ballistic missile attack. Building on the progress already achieved by the SDI program, we must do everything possible to ensure that, in the first instance, we can defend ourselves against such unauthorized or accidental launches of ballistic missiles.

Accordingly, the administration strongly supports your sense of the Congress resolution on missile defenses. I believe it will send an unmistakable signal of our determination to proceed with ballistic missile defenses that enhance our national security.

Sincerely,

BRENT SCOWCROFT.

Mr. President, I ask unanimous consent to print in the RECORD a copy of the sense of the Congress on ballistic missile defense amendment, which I intend to offer at an appropriate time subsequently.

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

WARNER SENSE OF CONGRESS ON BALLISTIC MISSILE DEFENSES

(a) FINDINGS.—Congress makes the following findings:

The growing proliferation of ballistic missile technology and weapons of mass destruction clearly represent an increasing threat to our forces overseas, as witnessed in the Persian Gulf war.

According to the Director of Central Intelligence, William Webster, by the end of the century 15 to 20 developing countries will be capable of producing ballistic missile capabilities; at least six developing countries will have ballistic missiles with ranges over 2,000 miles, of which, at least three of them may develop missiles with ranges of over 3,400 miles that, in some cases, could threaten the United States.

The devastation and loss of life from ballistic missile attacks was evident in the SCUD attacks against Saudia Arabia and Israel.

The concern of widespread ballistic missile proliferation is compounded by growing ethnic unrest and political instabilities in the Soviet Union which could increase the possibilities of unauthorized or accidental use of ballistic missiles.

The SDI program has made remarkable progress in the research of technologies aimed at defending against ballistic missiles.

While the demise of the Warsaw Pact represents a major favorable change in the U.S.-Soviet relationship, the Soviet Union nonetheless remains, at the present time, the only country that has the nuclear and ballistic missile capability to threaten the United States.

Despite its enormous economic difficulties, the Soviet Union is continuing its relentless strategic offensive and defensive modernization program within the currently defined numerical START limits.

The ABM of 1972 was negotiated under a significantly different world situation and state of technology than the United States faces today.

Article 5 of the ABM Treaty of 1972 prohibits the development, testing, and deployment of those ABM systems or components described in Article 2, which are sea-based, air-based, space-based, or mobile land-based.

Continuing restrictions on the development and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology and unnecessarily complicates ABM experiments, which results in added risk to the program schedule and increased cost to taxpayers.

(b) SENSE OF CONGRESS—It is the sense of the Congress that—

(1) The United States, its forces, its friends and allies face a growing threat from ballistic missile strikes.

(2) It is in the national interest of the United States to protect the United States, its friends and allies and U.S. forces overseas from ballistic missile strikes.

(3) It is in the national interest of the United States to be permitted to develop and test ballistic missile defense systems and components, without restriction as to mode or environment, and therefore the Administration should negotiate and sign with the Soviet Union, within two years or less, an agreement which would clearly remove any limitations on the United States having effective defenses against ballistic missiles.

(4) During the period described in clause (3), in expectation that such an agreement will be signed, the Secretary of Defense should undertake preparations for the development and testing of systems and components designed to defend the United States and its armed forces, wherever deployed, from ballistic missiles even though some of the actual development and testing may not be permitted by the ABM Treaty of 1972.

(5) If such an agreement is not reached within the period described in clause (3), the President should make immediately a determination as to whether continuing U.S. adherence to the terms of the ABM Treaty of 1972 is in the U.S. national interest, and should immediately thereafter advise Congress of such a determination.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, before I get to the business at hand, I want to recognize once again the magnificent performance of our Armed Forces, and those of the allied coalition, in Operation Desert Storm. Their professionalism and fighting spirit has been inspirational. Although the loss of a single life is tragic, we can be thankful that we had so few casualties and our forces are coming home in glory.

The victory in the Persian Gulf was due in part to great leadership, in part to the outstanding men and women of our Volunteer Forces, and in part to the superior equipment and technology that this Nation's citizens have funded over the past 10 years.

The victory over Saddam Hussein was not, however, without cost. The Desert Storm Supplemental Authorization Act we are considering today is to authorize the funding for this victory. There may be some differences with the administration, but there is no doubt that Congress should provide the funds necessary to maintain our military effectiveness.

I strongly support the personnel provisions in this legislation. After a flawless performance on the battlefield, it would be tragic to force out thousands of service men and women immediately after their return from the battlefield. We should all remember that our fighting forces are composed of volunteers who view the military as a career. They are not the draftees of World War II who were eager to resume their civilian lives.

Congress has the responsibility to provide the funding for the ammunition, supplies, and equipment expended in the battle. I also believe we have the responsibility to provide the necessary oversight to ensure these funds are spent in an appropriate manner. The legislation crafted by the Armed Services Committee gives the Defense Department the flexibility to provide for our forces; it also provides the appropriate congressional oversight through the notification and wait procedure.

The victory in the Persian Gulf was won through the blood and sweat of the men and women from the allied nations who fought the battles. There are, however, many nations who will benefit from the victory and I urge these nations to contribute to the cause.

To date, approximately $54 billion has been pledged toward the war effort. However, only about $16 billion has been received. Although I am confident that the remaining pledges will eventually be met, I hope those nations who have not met their pledge will not test the patience of our citizens or that of the Congress.

Mr. President, the battle in the Persian Gulf lasted only 100 hours; I hope that the debate over the supplemental request will not last much longer. I urge my colleagues to act expeditiously on this request and give our men and women in uniform the same support in peace that we provided throughout the crisis.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Chair recognizes the Senator from Hawaii [Mr. AKAKA].

Mr. AKAKA. Mr. President, before I begin, I want to echo the words of the distinguished chairman of the Armed Services Committee, Senator NUNN, in praising the efforts of Senators WARNER, STEVENS, and INOUYE in supporting the war effort. But we should also recognize Senator NUNN's leadership in the war effort as well. No one has supported America's military to a greater extent than he.

Mr. President, with the indulgence of my colleagues, I would like to make a few, general comments in support of the pending Desert Storm package.

Having destroyed a numerically superior force and the furtive dreams of a dictator, our Armed Forces are finally returning to long-awaited homecomings and the arms of a grateful nation. Now it is time for Congress to address the direct financial costs of this war as well as the less measurable, but more painful, costs inflicted on our military men and women and their families.

S. 578 authorizes supplemental appropriations for fiscal year 1991 to cover part of the estimated $60 to $68 billion costs of Operations Desert Shield and Desert Storm. According to OMB, over $54 billion has been pledged by allied countries, of which less than $18 billion has been received. S. 578 establishes a $15 billion Desert Shield working capital account to pay for the costs of the war not covered by these foreign contributions.

I am pleased that measures to address the domestic impact of the war on military personnel and their families have also been included in S. 578. Provisions for education and family support services for families of active-duty personnel and transitional medical and mental health benefits for military personnel are just a few of the assistance measures that are included in the omnibus bill.

Mr. President, I would also like to point out that S. 386 legislation recently considered and approved by the Committee on Veterans' Affairs and specifically affecting veterans of the gulf war, is included as a separate title in this Persian Gulf package. As a member of the committee, I was pleased to work closely with Chairman CRANSTON and other panel members in developing this title.

In essence, the veterans provisions would extend to gulf veterans eligibility for a variety of VA programs and entitlements, including pensions, medical care for certain mental health conditions, drugs and medicines for disabled or needly veterans, readjustment counseling, funeral and burial payments, home loan guaranties, and reemployment rights. Our legislation would also establish a toll-free hotline for information concerning readjustment and mental health services available to veterans and their families.

I am especially pleased by the provision to extend readjustment counseling service [RCS] benefits to veterans of Beirut, Grenada, Libya, Panama, and now the Persian Gulf. In spite of VA's meager fiscal 1992 budget request for RCS and related programs, I hope that this initiative will encourage VA to accept fully the vital role that vet centers play in bringing our veterans all the way home, especially those hundreds of thousands who suffer from PTSD but remain untreated. My only disappointment is that we were unable to obtain agreement to extend these same benefits to World War I, World War II, and Korean-era veterans as well.

I am also very enthusiastic about the provisions requiring employers to make efforts to requalify or retrain returning servicemembers for jobs they were forced to vacate because of the gulf conflict, and also to make reasonable accommodations for returning disabled veterans. If our Nation embarks on a course of military action that uproots thousands of men and women from their ordinary working lives and places them in harm's way, the least we can do is to ensure that their jobs are waiting for them when they return, particularly those who have sacrificed health and limb in our behalf.

In closing, Mr. President, I urge my colleagues to support this important measure. Our Government has no higher duty than to care for those who served our country in wartime. The men and women of our Armed Forces are to be commended for their heroic efforts in bringing the gulf confiict to a quick and decisive end. Their brave efforts and unselfish sacrifices will be honored as long as the world values the ideals of liberty and common justice.

SUPPORT OF THE DEPARTMENT OF DEFENSE SUPPLEMENTAL AUTHORIZATION FOR OPERATION DESERT STORM

Mr. AKAKA. Mr. President, I rise today in support of S. 578, the Department of Defense supplemental authorization for Operation Desert Storm.

The men and women of the Armed Forces have done a tremendous job, and are finally returning to long-awaited homecomings across this Nation. Now it is time for Congress to address

the cost of this conflict, not only the direct financial support America must provide, but the cost this conflict has inflicted on the service members and their families.

The bill before us today addresses both responsibilities. S. 578 authorizes supplemental appropriations for fiscal year 1991 to cover the costs of Operation Desert Shield and Desert Storm. The bill allows the Department of Defense to spend foreign contributions from the defense cooperation account. According to the Office of Management and Budget, over $54 billion have been committed by allied countries, of which less than $18 billion in cash and in kind contributions has been received. The Congressional Research Service estimates that the total cost of the war could run from $60 to $68 billion.

As such, a $15 billion Desert Shield working capital account would be established to pay for the costs of the war, provided that foreign contributions are not available through the defense cooperation account. Before any of these funds can be used, the Defense Department must notify Congress of the amount to be transferred, the accounts and programs to which the transfer will be made, and a certification that these funds will only be used for the incremental costs of Operation Desert Shield and Desert Storm. Any transfer from the working capital account must also provide an additional explanation as to why foreign contributions are not sufficient to permit transfer from the defense cooperation account.

S. 578 also waives the statutory ceilings on active duty and reserve end strengths and on officer and enlisted grades for fiscal year 1991. This waiver will help to minimize the traumatic impact and involuntary separations expected as result of the extensive reductions being proposed for the active and reserve personnel.

Mr. President, we have all read newspaper articles across this country that focused on the effects the war had back here in the States—military families left without adequate financial support, military dependents being left behind with friends or even alone because their single parent or both parents were serving in the gulf, and reservists being called to duty leaving families to face the often difficult and painful transition.

S. 578 is an attempt to rectify some of the problems that have surfaced in light of the Persian Gulf conflict. It is not a perfect solution, but it is a start toward addressing the changing needs of today's military force.

As a cosponsor of many support bills, I am pleased to see that a number of these measures have been incorporated into S. 578. Several bills previously adopted by the Committee on Armed Services, including the increase of hostile fire or imminent danger pay for military personnel, retroactive to August 1, 1990, and the recall of military personnel to active duty in the highest grade satisfactorily held while on previous active duty, were integrated into the present legislation.

The makeup of our active duty and reserve forces have changed tremendously since 1969. The majority of our services are no longer comprised primarily of young males—more than half of the active-duty male personnel are over 25 years old, and a significant percentage of these are single parents or have spouses also serving in the Armed Forces.

I am, therefore, heartened to see that additional measures addressing the problems here at home have also been included in S. 578. Provisions to provide child care assistance to military personnel serving on active duty—$30 million to provide education and family support services to families of military personnel serving on active duty; 60 days of transitional medical benefits for reservists and certain active duty personnel; and delay in the reduction of CHAMPUS mental health benefits—are just a few of the additional assistance bills being consolidated into S. 578.

I voted against the use of force, I voted my conscience, but my vote against the use of force was not in any way a slight against the distinguished men and women serving in our Armed Forces. Some may use my vote against me, but I want our military members to know that my deepest respect and gratitude go out to these fine people.

The men and women of our Armed Forces are to be commended for their heroic efforts in ensuring the success of this conflict. I join the people of this Nation and many around the world who are grateful for the dedication and commitment they exhibited in this time of need. Their brave efforts and unselfish sacrifice to ensure freedom in the world will forever be honored through time.

Mr. President, I yield the floor.

SUPPORT OF VETERANS PROVISIONS IN THE PERSIAN GULF LEGISLATION

Mr. AKAKA. Mr. President, I rise in strong support of the veterans provisions included in S. 578, the Department of Defense Desert Storm Supplemental Authorization Act, which was developed by the Committee on Veterans' Affairs under the leadership of Chairman CRANSTON.

Mr. President, the veterans title, with a few modifications, is identical to S. 386, the Persian Gulf War Veterans Assistance Act of 1991, which was reported out by the committee on February 7. The veterans portion of the pending measure includes all of the provisions contained in S. 386 extending certain VA benefits to Persian Gulf servicemembers, including eligibility for VA pensions; medical care for certain mental health conditions; drugs and medicines for disabled or needy veterans; readjustment counseling; funeral and burial payments; home loan guaranties; and, reemployment rights.

In addition, the measure authorizes funds to establish a toll-free information and referal system to provide information concerning the availability of mental health treatment and counseling for posttraumatic stress disorder [PTSD] and other war-related stress problems.

Mr. President, Senator CRANSTON sets forth the details of the veterans title's many sections in his explanatory floor statement; further details may be found in the committee's report accompanying S. 386. However, I would like to touch on two issues that are of particular interest to me.

First, I am especially pleased by the initiative to expand eligibility for readjustment counseling service [RCS] benefits to veterans of all armed conflicts that occurred after 1975, including Beirut, Grenada, Libya, Panama, and now the Persian Gulf. I have long supported extending readjustment counseling benefits to veterans of all eras, given the universal nature of war and the demands it places on the human psyche; I previously joined a number of my colleagues on the committee in sponsoring legislation to extend them to World War I, World War II, and Korean war veterans—legislation which, I might add, has been passed by the Senate on several occasions. Although I am disappointed that our continued support for extending RCS benefits to pre-Vietnam conflicts is not reflected in this bill, I am pleased that the administration is at least behind us on the matter of post-Vietnam conflicts. In spite of VA's meager fiscal 1992 budget request for RCS and related programs, I hope that this represents a change of heart on VA's part to accept fully the vital role that vet centers play in bringing our veterans all the way home, especially those hundrds of thousands who are afflicted with PTSD but remain untreated.

Second, I am also very enthusiastic about the provisions in this bill relating to veterans' reemployment rights. One section of the veterans title requires employers to make efforts to requalify or retrain a returning Persian Gulf servicemember who, because of his or her absence due to active-duty service, can no longer perform the duties of his or her previous position. Another section mandates that employers make "reasonable accommodations" for disabled servicemembers returning to their jobs, through retraining, physical reconfiguration of workplaces, restructuring of jobs, or other action.

If our Nation embarks on a course of military action that uproots thousands of men and women from their jobs, families, and homes, and places them

in harm's way, the least we can do is ensure that their jobs are waiting for them when they return. It is incumbent on us to do everything possible to return them to a semblance of their former lives, especially those who have sacrificed health and limb in our behalf.

Mr. President, I urge my colleagues to support this important package of Persian Gulf war veterans benefits. Our Government has no higher duty than to care for those who served our county honorably in foreign wars.

I yield my time.

The PRESIDING OFFICER (Mr. ADAMS). Who seeks recognition?

The Senator from New Hampshire.

Mr. SMITH. Mr. President, today, as we deliberate emergency supplemental appropriations for Operations Desert Shield and Desert Storm, Kuwait is once again a free nation. Saddam Hussein's brutal aggression has been repelled, the legitimate government of Kuwait restored, and the rule of law upheld. Through America's leadership, the international community has entered a new era of unprecedented vigilance and cooperation.

It is often said that "victory has a hundred fathers, and defeat is an orphan." There can be no doubt that Saddam Hussein is now an orphan. His arrogant, self-destructive imperialism has isolated the Iraqi Government, and wrought untold devastation on the innocent people of Iraq and Kuwait. Saddam's defeat is clear, complete, and unequivocal. Now, in the wake of Desert Storm, we see the Iraqi people mobilizing against Saddam's tyranny, seeking reform and freedom from a decade of war and repression. Our hopes are with them.

Through President Bush's courage and vision, the United States has affirmed the rule of law, and set the parameters for a new world order. Supported by a cast of some 540,000 American heroes, the Commander in Chief presided over a diplomatic and military campaign of monumental proportion and success. It is a victory for the United Nations, the allied coalition, and most of all, the cause of freedom.

Mr. President, there is much we can learn from the Persian Gulf crisis. Indeed, analysts and historians will likely scrutinize the evolution for years to come. Nonetheless, amidst the plethora of issues, one simple fact emerges: Desert Storm succeeded because the military was permitted to prosecute the war quickly and decisively. By allowing the Defense Department to effectively employ its myriad of assets, President Bush ensured swift victory with minimal casualties. Indeed, at a time when success is measured first and foremost in terms of human life, the contribution of Ronald Reagan, George Bush, and certain Members of this body, in fighting for the F-117 Stealth fighter, the Patriot system, the Tomahawk cruise missile, and other critical defense systems, is simply incalculable.

In Operation Desert Storm, the Defense Department safeguarded our trust with honor and distinction. In reviewing the supplemental budget request, I find that the Department has put forward a similar good faith effort to address incremental Persian Gulf costs. The request does not purport to estimate definitively the overall costs of war and the redeployment of U.S. forces. Rather, the plan itemizes immediate and known operational requirements, and establishes a mechanism for spending foreign contributions, in order to offset U.S. costs most effectively.

The bill reported by the Senate Armed Services Committee provides the necessary funding and transfer authorizations requested by the administration. Importantly, the committee bill requires the Secretary of Defense to provide formal certification and transfer notification of all expenditures to ensure appropriate congressional oversight. Further, the bill directs that foreign contributions from the defense cooperation account be obligated before any taxpayer funds may be utilized.

Mr. President, I urge my colleagues against micromanaging the bill before us. To date, Operations Desert Shield and Desert Storm have served as a model of efficiency and cooperation. By loosening the burdensome reins of Government, the President and Congress allowed the Defense Department to prosecute the war rapidly and effectively. We should not meddle with the proven formula for success. By all accounts, the administration has undertaken a serious and comprehensive effort to identify and itemize incremental Persian Gulf costs. There is no evidence to suggest otherwise. Let us show equal restraint by acting responsibly and expeditiously on this important legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator has yielded the floor.

Who seeks recognition?

PRIVILEGE OF THE FLOOR

Mr. DIXON. Mr. President, I ask unanimous consent that a congressional fellow on my staff, Mr. Jim Rohacik, be granted floor privileges during the Senate's consideration of S. 578, a bill to authorize supplemental appropriations to the Department of Defense for Operation Desert Storm and military personnel benefits.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. DIXON. Mr. President, we now begin consideration of the authorization for supplemental appropriations for Operation Desert Storm. First, however, I want to offer my congratulations to the President and to all the men and women in the military who served in support of Operation Desert Shield/Desert Storm. Their unwavering sense of duty and honor fosters the great pride we take in our Nation's Armed Forces.

In support of our military, the Department of Defense is seeking $15 billion to create a Desert Shield working capital account. Last year the Armed Services Committee recommended, and the Congress approved, the defense cooperation account—specifically to handle foreign contributions to Operation Desert Shield/Desert Storm.

And I congratulate the distinguished chairman of our committee, Senator SAM NUNN of Georgia, who did such a fine job both in connection with that legislation and this legislation.

Together these two accounts will be used by the Department of Defense to finance the costs of this war.

Understandably, the Department of Defense does not know what the total costs of the war will be. But DOD has identified approximately $40 billion in costs thus far. These cost-breakdowns are as follows: $21.4 billion is for the cost of maintaining U.S. troops in the gulf from October 1 through March 1, without combat; $2.9 billion for the cost of certain procurement programs to support the war; $7 billion for the "orderly postcombat phasedown"; and $5.2 billion for the return of personnel and equipment. But these costs do not include as yet any provisions for the conduct of combat operations. I was pleased, Mr. President, to see that the supplemental includes over a billion dollars for level-of-effort, dumb munitions—a category of special interest to me and several of my colleagues.

Mr. President, if I may say at that point, as the Chair knows, and our distinguished chairman of the committee who is here on the floor, I chair the Subcommittee on Readiness, Sustainability and Support, which is jurisdictional on the question of these munitions.

I point out to my colleagues that this particular account has been steadily declining at a more rapid rate than defense authorizations and appropriations generally. That account, for instance, 10 years ago was more than twice what that account is in this Department of Defense authorization bill this year.

I think that is a critical item. I said so many times in my subcommittee and in the Committee on Armed Services committee meetings and, with the support of the chairman of the Armed Services Committee, at meetings of the subcommittees of the Armed Services Committee, that I think we ought to be more concerned about these ammunition accounts.

And for future experiences like Desert Storm, I suggest, to my colleagues and to the country, that while it is not a very sophisticated, esoteric,

or exciting subject matter, ammunition is terribly important, and we ought to make sure we have the very best available—which is another subject matter entirely—and an adequate amount of all times, to meet our readiness and our sustainability requirements.

I am concerned that certain parties of our allies have not paid their fair share into the defense cooperation account. I would encourage the administration to pressure these countries to pay their complete pledges before too much time elapses. Pledge cards are not worth much until the checks arrive and are safety deposited in the account.

I think the American people will not look kindly on those nations who do not pay their fair share, and I know this Senator will definitely not look kindly on those nations who do not meet their obligations to the United States of America.

Mr. President, I think our colleagues and the chairman of our committee who is here, who has worked over the years so diligently, so devotedly, to this cause.

I yield the floor.

Mr. NUNN. Mr. President, I thank my colleague from Illinois for his leadership on our committee. He is one our most valuable Members. He does a tremendous job and is always particularly concerned about military personnel, who are such an important part of the bill. I thank him for his kind comments.

Mr. DIXON. I thank the chairman.

THE 48TH BRIGADE OF THE GEORGIA NATIONAL GUARD

Mr. NUNN. Mr. President, last Friday I had the great honor and privilege and, indeed, emotional experience to be in Georgia to welcome home members of the 24th Infantry Division, which is stationed at Fort Stewart, GA. All Georgians and all Americans are justifiably proud of the 24th. They were among the first Army soldiers sent to Saudi Arabia in August and September of last year. They were among the most active when allied ground forces swept like a desert wind across Kuwait and Iraq to defeat the Iraqi army.

The entire Nation is proud of the magnificent performance of all of our military services and all of our men and women in uniform who served in the Persian Gulf during Operation Desert Shield and Desert Storm. We should give each and every one of them a hero's welcome home in the coming weeks and months, and I am sure that our Nation will.

We must also remember the dedicated service of those military members who worked so hard in other regions of the world and here in the United States to make Operation Desert Storm such a success.

And we also should not neglect those members of the military services who are doing their part in defending our Nation in other parts of the world. The thousands of United States military forces in Europe continue to provide an important deterrent force that has been a mainstay of Western security for 40 years. These forces have played a tremendous role in protecting Western Europe while we waited for the long anticipated and much welcomed changes to take place in the Soviet Union and Eastern Europe.

Mr. President, I want to pay special tribute to another Georgia unit that fits into the category of those who have served extremely well. This unit was not deployed to Saudi Arabia, but their dedicated efforts over the past 5 months certainly deserve our recognition and our praise. I am referring to the 48th Brigade of the Georgia National Guard.

The 48th Brigade is affiliated with the 24th Division. It is what the Army calls a roundout brigade. The 24th Division has two active brigades and relies on the 48th Brigade to provide the third brigade to bring the 24th up to full strength. This was a concept the Army developed in the mid-1970's to create three new active divisions within their existing manpower levels. The concept called for the roundout brigade to have the same manning and equipment and to train with their active-duty counterparts as much as possible.

The 48th Brigade was not called up at the same time the Army deployed the 24th Division. Instead, the Army sent the 24th Division to Saudi Arabia last August, and assigned the 197th active duty Brigade from Fort Benning, GA, to the 24th to ensure that the 24th Division had three maneuver brigades. This was due to the fact that the 48th Brigade's deployment time always envisioned additional training after mobilization but prior to deployment.

In November, the Secretary of Defense did decide to mobilize the 48th Brigade for full-time training to become ready to be deployed to Saudi Arabia if that became necessary. The 48th Brigade was sent to the Army's National Training Center in the desert of California for 2 months of the toughest, most demanding training the Army can dish out. The conditions at the National Training Center at Fort Irwin, CA, are every bit as difficult and demanding as the conditions in Saudi Arabia. While there, the members of the 48th underwent round-the-clock training at all levels.

During the last 2 weeks of February, the 48th undertook the biggest challenge of all. It undertook a training rotation at the National Training Center. This is a sophisticated, simulated combat against the best "opposing forces" in the world. The National Training Center has a dedicated group of Army soldiers that train and operate as a Soviet brigade. The Army is proud to say this so-called opposition force is one of the best, if not the best, brigade in the world.

They train and work together in actual field exercises over 200 days a year. No unit in the Army gets that kind of training and experience, and the 48th Brigrade had to fight this opposition force in what constitutes the ultimate final exam for an Army brigade.

The 48th passed that final exam with flying colors. Gen. Edwin Burba, the commander of U.S. Forces Command—the commander responsible for providing trained U.S. forces to General Schwarzkopf—testified before the Armed Services Committee last week that the 48th Brigade was ready to go to war if needed. He said he would have no hesitation in recommending the 48th Brigade join the other active brigades in Saudi Arabia for combat, if needed.

I do not know if my colleagues fully appreciate the magnitude of that achievement. I certainly did not myself until I spent several days at the National Training Center visiting the 48th Brigade and observing their training. In a brief period of 2 months, the 48th Brigade built on the considerable skills and capabilities they already possessed. They became a first-line fighting unit, fully capable of joining their active-duty counterparts in the complex challenges of modern land warfare.

I am convinced, Mr. President, that the ability to mobilize Reserve units and given them that level of proficiency contributes a great deal to the deterrent capability of our military forces. It says to friends and foes alike that the United States is prepared to respond to a very broad range of contingencies.

There has been a good deal of controversy concerning the 48th and other roundout brigades in the National Guard. There have been a good many articles written in the news media. Some argued that these brigades were not up to the rigors of modern combat, and the Army could not count on them.

I believe that is totally wrong. There is no question the 48th needed additional training when it was mobilized. But that was always part of their mobilization plan. This was not a new revelation to the Army, nor was it to me.

I spent 2 days with the 48th Brigade in January at the National Training Center. I met with over 70 individuals of the 48th Brigade, and had many private discussions. Not one of those individuals told me the brigade was ready for combat when it was called up. They did not disagree with the decision to train further before they actually were sent to combat. They expressed confidence that would be ready when their training was completed, and they were ready. As General Burba told us the other day, they passed their test at the

National Training Center with flying colors.

I believe this is one the key lessons to be learned from Desert Storm. We can count on our roundout brigades to be able to meet the challenge. We must be realistic, however, and we must not assign roundout units those missions which require deployment with almost no notice, such as the 82d Airborne Division, the Marine Alert Brigade, or an Air Force alert squadron.

But we also must need to ensure the roundout brigades are called early enough so they can undergo the training necessary to reach required proficiency levels. If they had been called up at the beginning of this conflict in August, they would have been ready to go in time to actually participate in the ground phase of the warfare.

I now hear some argue that it was a mistake to call up the 48th Brigade at all. The 48th Brigade, in my opinion, was called up because the Nation needed them, and when they were called up, no one could predict how long the war would last. They were ready when they were called to go to training, and when they finished their training, they were ready if required to go to war. We are all grateful that the war ended so quickly with so few casualties, considering the magnitude of the effort.

But that does not diminish the important contribution of the 48th and the other roundout brigades to operation Desert Storm and to the security of out Nation.

When they completed their training at the National Training Center, the 48th was ready to go to the Persian Gulf region if they were called and needed. Members of the brigade endured the separation from families and friends, and they underwent the rigors of training in one of the most hostile environments that one can imagine, very similar to the conditions that existed in Saudi Arabia. Their contribution was an important factor in our Persian Gulf victory. They will continue to contribute to deterrence and to our national security.

So, Mr. President, as Americans cheer the return of soldier from Saudi Arabia, the members of the 48th Brigade and the other roundout brigades deserve our cheers as well. They, too, served their country. The welcoming home celebrations across America are part of a larger celebration to thank all of our men and women who shoulder the burden of military service.

The 48th faced a tough challenge. They proved they were up to the task, and they deserve our sincere thanks.

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

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

Mr. WARNER. Mr. President, at this time, I would like to take a few minutes to read to the Senate the proposed amendment I have with regard to the ABM issues.

Mr. President, it is entitled, "Warner Sense of Congress on Ballistic Missile Defenses." The first part is the findings.

WARNER SENSE OF CONGRESS ON BALLISTIC MISSILE DEFENSES

(a) FINDINGS.—Congress makes the following findings:

The growing proliferation of ballistic missile technology and weapons of mass destruction clearly represent an increasing threat to our forces overseas, as witnessed in the Persian Gulf War.

According to the Director of Central Intelligence, William Webster, by the end of the century 15 to 20 developing countries will be capable of producing ballistic missile capabilities; at least six developing countries will have ballistic missiles with ranges over 2,000 miles, of which, at least three of them may develop missiles with ranges of over 3,400 miles that, in some cases, could threaten the United States.

The devastation and loss of life from ballistic missile attacks was evident in the SCUD attacks against Saudi Arabia and Israel.

The concern of widespread ballistic missile proliferation is compounded by growing ethnic unrest and political instabilities in the Soviet Union which could increase the possibilities of unauthorized or accidental use of ballistic missiles.

The SDI program has made remarkable progress in the research of technologies aimed at defending against ballistic missiles.

While the demise of the Warsaw Pact represents a major favorable change in the U.S.-Soviet relationship, the Soviet Union nonetheless remains, at the present time, the only country that has the nuclear and ballistic missile capability to threaten the United States.

Despite its enormous economic difficulties, the Soviet Union is continuing its relentless strategic offensive and defensive modernization program within the currently defined numerical START limits.

The ABM Treaty of 1972 was negotiated under a significantly different world situation and state of technology than the United States faces today.

Article 5 of the ABM Treaty of 1972 prohibits the development, testing, and deployment of those ABM systems or components described in Article 2, which are sea-based, air-based, space-based, or mobile land-based.

Continuing restrictions on the development and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology and unnecessarily complicates ABM experiments, which results in added risk to the program schedule and increased cost to taxpayers.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) The United States, its forces, its friends and allies face a growing threat from ballistic missile strikes.

(2) It is in the national interest of the United States to protect the United States, its friends and allies and U.S. forces overseas from ballistic missile strikes.

(3) It is in the national interest of the United States to be permitted to develop and test ballistic missile defense systems and components, without restriction as to mode or environment, and therefore the Administration should negotiate and sign with the Soviet Union, within two years or less, an agreement which would clearly remove any limitations on the United States having effective defenses against ballistic missiles.

(4) During the period described in clause (3), in expectation that such an agreement will be signed, the Secretary of Defense should undertake preparations for the development and testing of systems and components designed to defend the United States and its armed forces, wherever deployed, from ballistic missiles even though some of the actual development and testing may not be permitted by the ABM Treaty of 1972.

(5) If such an agreement is not reached within the period described in clause (3), the President should make immediately a determination as to whether continuing U.S. adherence to the terms of the ABM Treaty of 1972 is in the U.S. national interest, and should immediately thereafter advise Congress of such a determination.

Mr. WARNER. Mr. President, again, it was my trip to the gulf region and my experience—I am not suggesting in any dramatic way that we felt we were under threat of injury—but my experience, having witnessed firsthand others who had been subjected for a very long period to the threat of Scud attacks, it was that night that my mind was cemented that this U.S. Senator would stand up and face his colleagues and face this Nation and ask that we address this issue which has been debated in this Chamber time and time again. Now is the time, while it is fresh in the minds of Americans, to involve them in this decision process.

All too often we hold unto ourselves, as we say within the beltway, certain issues saying, well, the general public, it is too complicated for them to understand that. After all, this is a treaty and with the Senate advise and consent clause in the Constitution, we have special prerogative there. The President executes it on behalf of the United States. We say to the general public, trust us.

Well, I am saying at this time you have trusted us now nearly 20 years with this treaty, a treaty devised at a time when we could not have envisioned this problem we are witnessing today. We could not have envisioned the proliferation of these weapons systems. This war may have had quite a different turn had it been the judgment of the Israeli Government with the support of the Israeli people that they could no longer withstand the continuing threat of those Scud attacks and thereby deployed their forces actively in this conflict in the gulf.

How that would have affected our Arab members in that coalition, we can only speculate. How that might have affected the enemy, Saddam Hussein, in his judgment to use or not use chemical weapons, biological weapons, we cannot predict. It is almost as if the

hand of providence reached down and guided world leaders and instilled in the people of Israel a strength and determination not unlike they showed in the historic battle of Masada where their will to survive was indelibly imprinted on the history of mankind.

Those are great chapters in the history of our country. We witnessed a great chapter in the history of the State of Israel, the Government of Israel and, indeed, the people of Israel during this conflict.

I wish to acknowledge that other Members of this Chamber laid the foundation for this action on which at some point today or tomorrow I will address the Senate formally with this amendment. I cannot name them. They are many. But one is no longer with us; the people of this country elected him Vice President of the United States.

Senator QUAYLE was always in the forefront of this issue. Were he here today, I dare say he would be the principal sponsor of this amendment. I have had the opportunity to consult with him on a regular basis through the course of the development of this amendment and received very valuable guidance from him. Indeed, Senator QUAYLE, the records of the Armed Services Committee reflect, when he was a member, was very active in seeing that adequate funds were provided for the modifications to the Patriot system, the very modifications which enabled that system, together with our air componets, those of the allies and the U.S. Department of Air Force, to participate in the suppression of this Scud threat.

So, Mr. President, I humbly acknowledge many Members of this body and, indeed, many close and valued advisers on the outside have provided the foundation for the action which I hope the Senate will take favorably on this amendment very soon.

I thank the Chair and I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have conferred with the managers who advise a few minutes of morning business would not be out of order at this point. So I ask unanimous consent that I be permitted to speak for 5 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection and the Senator is recognized for 5 minutes to speak as though in morning business. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 648 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

INTERNATIONAL CRIMINAL COURT

Mr. SPECTER. Mr. President, later today I expect a vote to occur on the pending sense-of-the-Senate resolution to establish an international criminal court to try war criminals. This had been the subject of extended discussion last week, but a vote was deferred until a point in this week following the first-ordered vote.

At this juncture I would like to call my colleagues' attention to continuing news reports which substantiate the need for this international criminal court. I refer to an article in today's New York Times captioned "American War Prisoners Abused by Iraqi Captors, Pentagon Says," and I will read only a portion.

A senior Pentagon official said today that Iraq had physically abused American prisoners of war, subjected some of them to psychological torment and threatened the lives of the others during interrogation sessions.

One Iraqi interrogator put a gun to an American prisoner's head and pulled the trigger to terrorize his captive, the official said. The gun was empty, but only the interrogator knew that. Other prisoners were beaten with rubber hoses and others received two-handed head slaps that were extremely painful and could break eardrums, the official said.

The article continues, Mr. President, to detail other factual matters showing an evidentiary base for war crimes, and I would suggest that such continuing evidence, in conjunction with an already mounting list of evidence about war crimes against Kuwaitis, war crimes against prisoners of war, against civilians taken into custody, against civilian populations in Tel Aviv, for example, where 39 Scud missile attacks were directed, where there was absolutely no military purpose, form a very conclusive basis for proceeding with a very strong Senate vote on a resolution to establish an international criminal court to try war criminals.

Mr. President, I further refer to an article in today's Washington Post captioned "Beatings and Torture by Kuwaiti Interrogators Alleged." And I will read only a very small portion.

Their accounts were the first confirmation of reported Kuwaiti reprisals against some Palestinians and other non-Kuwaitis thought to have supported the Iraqis and suggested that a climate of revenge has settled over Kuwait in the wake of the nearly seven-month Iraqi occupation.

Mr. President, this is obviously a form of self-help and a vigilantism in the absence of any government in Kuwait to prosecute the guilty. Here again there is a strong showing of the need for an international criminal court which will take jurisdiction over war crimes against the citizens of Kuwait so that it is not necessary for the Kuwaitis to take the law into their own hands and to have these acts of violence and these acts of vigilantism.

Mr. President, I ask unanimous consent that the full text of the New York Times article captioned "American War Prisoners Abused by Iraqi Captors, Pentagon Says," and the full text of the article in today's Washington Post captioned "Beating and Torture by Kuwaiti Interrogators Alleged," be made a part of the RECORD.

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

[From the Washington Post, Mar. 13, 1991]

BEATINGS AND TORTURE BY KUWAITI INTERROGATORS ALLEGED

(By Nora Boustany)

SAFWAN, IRAQ, March 12.—An ashenfaced Aziz Mulai lay shivering and wheezing, unconscious on a stretcher with a head injury as American paramedics fussed over him at this smog-shrouded border post strewn with the detritus of war.

His face and nose were crusted with bluish blood. Bruised arms rested limply on his abdomen. Deep red rings showed on his wrists.

The 28-year-old Moroccan truck driver was among hundreds of detainees left by Kuwaiti soldiers at this border post just inside southern Iraq, according to U.S. military police here. Other freed detainees here said the man was beaten and tortured by Kuwaiti soldiers at a makeshift prison in Kuwait City during interrogations of persons suspected of collaborating with Iraqi occupation forces.

Three men who said they were among the most recent arrivals of hundreds of such prisoners expelled by Kuwaiti troops spoke today of torture and beatings at a Kuwaiti detention center in a school at Farwaniyah, a district north of Kuwait International Airport outside Kuwait City.

Their accounts were the first confirmation of reported Kuwaiti reprisals against some Palestinians and other non-Kuwaitis thought to have supported the Iraqis and suggested that a climate of revenge has settled over Kuwait in the wake of the nearly seven-month Iraqi occupation.

The three—Abdel Qader Bu Khadem, 31, of Algeria; Ismail Adam Othman, 28, of Sudan, and Palestinian Ahmed Mahmoud, 20—said the Kuwaiti soldiers urged them to confess that they had looted, informed Iraqi soldiers of the whereabouts of Kuwaiti soldiers, or collaborated with Iraqi troops who vandalized Kuwait and rounded up thousands of suspected Kuwaiti resistance fighters. The Palestinian said he was interrogated "with questions like, 'What did you steal from Kuwait, with whom did you collaborate, whom did you tell on from the Kuwaiti army?'" All three denied that they had collaborated.

An American military policeman, who declined to be identified, said busloads of 20 to 30 men have been brought to the Iraqi border three or four times a day for the last four or five days, suggesting that hundreds of such prisoners have been deported from Kuwait and dropped inside Iraq's southern borders.

The MP said they were brought by "Kuwaiti vigilantes, the army." Pressed to specify whether they were escorted by regular Kuwaiti troops, he shrugged and said: "They have weapons, they have the uniform, and they have the patches."

Asked if the prisoners had been beaten, he replied, "They were in prison, yeah, they show it." He spoke of one prisoner with "marks on his hands. The ropes were too tight on his wrist." He added that another soldier in his unit had seen the Kuwaitis "hit the men with a pole as they left the bus."

Each of the three men interviewed gave detailed accounts of how they were captured, struck with canes and thick cables and given electric shocks in what they called a torture chamber on the second floor of the school.

Their feet were bare and blackened with dirt, their faces gaunt and haggard, and their soiled clothes loose-fitting. Appearing dazed from their ordeal, the young men still wore blindfolds as bandanas around their foreheads.

The Palestinian, Mahmoud, gave this account of his experience:

"I was beaten every morning for breakfast. Both shoulders, my feet and my face. One soldier would lift my head up by my hair, the other would slap me with his boot across the face. My face had become a football for them.

"In the afternoon, they would come with cables and keep hitting me until they broke. My hands were always behind my back. They gave me bread to eat every two or three days. I would put it between my knees and bend my head to eat.

"The [Kuwaiti] soldiers would give me some water and pour the rest on my feet. We said nothing, we kept our mouths shut. When the investigation and interrogation were over, there was no charge against us. We had not stolen, we never told on anyone."

Bu Khadem, the Algerian, who said he worked as a driver in Kuwait for a year, said there were 109 men in the hall where he was kept. He said he survived on a glass of water a day, and a meal of rice every two or three days, leftovers from the Kuwaiti soldiers. The prisoners slept on the floor and had no blankets, he said, mostly with their hands tied behind their backs, occasionally unfastened so they could eat.

He described a room where prisoners were beaten and tortured as "full of hair and blood" and singled out a Kuwaiti by the name of "Massoud." He said the prisoners had nicknamed another Kuwaiti "Wahsh," Arabic for savage, because he was a "torture specialist."

Bu Khadem said he was detained Feb. 26, a day after allied troops liberated Kuwait. He said other prisoners were Palestinians, Sudanese, some Algerians, stateless Bedouins, Iraqis, Jordanians, a few Yemenis and a Somali.

All three men claimed that women were held in another room, and that three of them, a Sudanese, a Palestinian and an Iraqi woman, accused of complicity with the Iraqi occupation, were being tortured. The three men expressed concern for a Jordanian passport holder, Salah Ali Daoudi, who they said was being tortured Monday when they were put on a bus and driven here. "When they find out he is Palestinian, they will feast on him," Bu Khadem said. "When soldiers walk into the room, they ask, 'Any Palestinians here?' If someone dares say yes, they immediately start beating him."

Mahmoud, Othman and Bu Khadem said Kuwaiti soldiers hit them with assault rifles and pistols, using both ends of the weapons, wooden rods and cables, on their shoulder blades, arms and faces. Bu Khadem said that when they took him away Monday, he believed they were going to kill him.

The detention center was run by a captain, a lieutenant and lower-ranking soldiers, he added. The only non-Kuwaiti visitor was "an American doctor in military uniform, who came to check up on critical cases. We knew him as Abu Willy," Bu Khadem said, as Othman, the Sudanese, concurred. "When he came, those with serious wounds were hidden under a large conference table. He would come at night every two or three days," the Algerian said, adjusting a yellow blindfold away from his eyebrows.

Othman said he went into shock from his beatings and claimed that his hands were strung sideways to receive electric shock, which was "turned on and off." The Sudanese, who worked in Kuwait as driver, shepherd and handyman at a farm owned by a Kuwaiti, said that when he had nothing to confess, the soldier interrogating him "placed a hot wire on his penis" until he blacked out.

Othman also showed a purple scar on the palm of his right hand, saying a soldier had put out his cigarette in his hand.

Othman said he had complained to the American doctor about the beatings. "When he left, the director of the prison came. They threatened us and the beating increased. Even those who had received injections to relieve their pain were beaten again," he added. Othman claimed he saw a Sudanese friend, whom he identified as Mustafa, die from being beaten. Mustafa, he said, had lived in Kuwait for 15 years and was accused of working for Iraqi intelligence. Othman said another Sudanese and a Palestinian also died in the detention center.

The wrists of the Palestinian, a car mechanic, were red and swollen. He said they had been tied behind his back throughout his one week in detention. Mahmoud said he had been born in Kuwait and that he had been arrested by Iraqi soldiers and taken to prison in Basra, because he would not turn in his Kuwaiti papers for a general "Arab status document" offered by the Iraqis. He said he spent five months in the Basra prison until anti-government rebels burst into it earlier this month and freed all the inmates. "I started back to Kuwait to find my parents," the young man said, when Kuwaiti soldiers detained him about 10 miles from here and took him to the school.

Algeria, Sudan and the Palestine Liberation Organization refused to condemn Iraqi President Saddam Hussein's invasion of Kuwait and refrained from joining a U.S.-led international coalition arrayed against Iraq.

On Thursday, Crown Prince and Prime Minister Saad Abdullah Sabbah denied reports of mistreatment of Palestinians in Kuwait. "It is being alleged that Palestinians have been subjected and are being subjected to torture by the Kuwaitis," he told reporters. "I would like to make clear and put on the record, I deny all such rumors and I urge you not to believe what is being rumored in this direction."

[From the New York Times, Mar. 13, 1991]

AMERICAN WAR PRISONERS ABUSED BY IRAQI CAPTORS, PENTAGON SAYS

(By Patrick E. Tyler)

WASHINGTON, March 12.—A senior Pentagon official said today that Iraq had physically abused American prisoners of war, subjected some of them to psychological torment, and threatened the lives of others during interrogation sessions.

One Iraqi interrogator put a gun to an American prisoner's head and pulled the trigger to terrorize his captive, the official said. The gun was empty, but only the interrogator knew that. Other prisoners were beaten with rubber hoses and others received two-handed head slaps that were extremely painful and could break eardrums, the official said.

This information emerged from the first debriefings of prisoners who arrived in Washington over the weekend for medical and psychological evaluations at Washington area military hospitals.

EVIDENCE OF WAR CRIMES

At a Pentagon briefing today, the Pentagon spokesman, Pete Williams, said, "The U.S. prisoners of war were certainly mistreated in the process of their interrogations." He added, "We are obviously taking full account" of such abuse.

A Pentagon official later said the evidence of prisoner abuse would be added to information the Pentagon had been gathering on accusations of war crimes by Iraq since it invaded Kuwait on Aug. 2. That information will be turned over to the State Department, the official said, for determination on how to act on it.

Mr. Williams indicated that the Government had not decided how to proceed on prosecuting any war crimes. "What action will be taken is a decision that will be made by other Government agencies," he said, "but we continue, as a D.O.D. matter, to gather evidence of potential abuses and violations of law that would merit possible war crime action."

The Pentagon official said the debriefing of Lieut. Jeffrey Norton Zaun, 28 years old, of Cherry Hill, N.J., had indicated that he had been under duress when he had appeared on Iraqi television on Jan. 28 and criticized the allied assault on Iraqi forces. Lieutenant Zaun himself inflicted some of the wounds visible on his face in an effort to deter the Iraqis from putting him on television for a propaganda display in which he read a statement written by his captors, the official said, confirming a report broadcast on Monday night by CBS News.

21 AMERICANS STILL MISSING

Some of the returned prisoners of war may speak publicly about their ordeal at a news conference later this week. Mr. Williams discouraged reporters from speaking to 21 former prisoners who had been greeted on Sunday at Andrews Air Force base by Defense Secretary Dick Cheney and Gen. Colin L. Powell, the Chairman of the Joint Chiefs of Staff.

Iraq has released 25 Americans who had been listed as prisoners of war or missing in action. The Pentagon today said 21 Americans remained unaccounted for. Of the 21 still missing in action, 14 went down on an Air Force AC-130 gunship on Jan. 31, before the ground war started. United States Navy divers are trying to recover their remains off the coast of Kuwait, where the wreckage of the plane has been discovered, military officials said.

Today, the number of Americans killed in action during the offensive campaign rose to 123 when the Red Cross notified United States officials that the Iraqis had turned over the remains of a Navy flier. He was identified as Lieut. William T. Costen, 27, of St. Louis, whose A-6 strike aircraft was shot down on Jan. 18 over Iraq. In addition to the 123 who died on the battlefield, 2 other military personnel died from wounds received in combat. Another 83 died in noncombat deaths during the offensive.

The total American death toll for the six-months operations in the Persian Gulf was 316, with 108 accidental deaths occurring before the offensive began on Jan. 17.

A senior Pentagon official said the remaining 7 of the 21 missing-in-action cases involved aircraft losses in which search efforts were still under way. "We know what the incidents are—why they are all missing," the official said. "It's just a matter of finding all of the crash sites. We haven't found all of

them, but we're flying and searching every day." An Air Force spokesman said the Air Force was trying to locate the crash site on an F-15E and an A-10.

The senior Pentagon official said the United States Central Command, whose forces are coordinating the searches, was getting "pretty good" cooperation from the Iraqi military, which also has been absorbed, with widespread rebellion in its country.

The Red Cross informed United States officials that Iraq was prepared to turn over the remains of 14 allied servicemen, but only 1 of them, Lieutenant Costen, has been identified as an American. Lieutenant Costen's A-6 squadron was aboard the aircraft carrier Ranger in the Persian Gulf.

A plane chartered by the Red Cross flew to Baghdad on Tuesday to pick up the remains but returned empty, according to an Associated Press dispatch quoting military officials in Riyadh. The plane was scheduled to return to Baghdad on Wednesday.

The Pentagon also announced today that Capt. David M. Spellacy, 28, of Columbus, Ohio, had been killed in action when his OV-10 observation plane had been shot down over Iraq by antiaircraft fire on Feb. 25.

Another airman, Lieut. Comdr. Michael S. Speicher of the Navy, remains listed as missing in action even though Pentagon officials publicly said he had been killed when his plane had been shot down on the first day of the air war. This reflects the Pentagon's practice of listing military personnel as missing until their remains are recovered.

Mr. SPECTER. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I rise to support this bill and to say that I am particularly pleased that title IV of this bill is based on legislation that Senator GRASSLEY and I sponsored, S. 270, that would require monthly reports on the pledges and contributions made by other countries to Operation Desert Shield.

This is an important provision and deserves to be highlighted.

This is a great time for Americans. We all feel enormous pride about our victory in Operation Desert Storm, and we all share the deepest admiration and respect and thanks for the men and women of our Armed Forces. They are a special people who made an exceptional sacrifice. We can never say thank you quite enough.

This is an American victory. Yet, while it was American soldiers who did most of the fighting, their victory is also a victory for the entire allied coalition and the whole world.

Mercifully, the war was short, but the costs nevertheless were significant. Fortunately in human terms though relatively few casualties resulted, we have lost the lives of some of our loved ones. In economic terms we spent billions of our taxpayers' dollars. These were necessary sacrifices. Americans accept that.

But Americans also want coalition members to pay their share. It is time for our allies as they say to ante up to make good on their pledges, to put the cash on the barrel head.

Mr. President, many other countries had a stake in this war far exceeding that of the United States. The very survival of the oil rich Arab States was on the line, and the economies of Japan and many other oil-dependent countries were also at stake.

Mr. President, we in the Congress have responsibility to ensure that American taxpayers are not exploited unfairly by other nations that will benefit enormously from Saddam's defeat. That is why before the world focuses its attention elsewhere the United States should collect on all outstanding pledges.

I am not encouraged thus far by the level of cooperation we have seen from our allies. Too many of them are still dragging their feet—long on talk, short on cash. According to a recent administration report, pledges totaled $54.5 billion. Yet only 31 percent of those pledges, $16.9 billion have in fact been received.

I think it is an outrage. As a former businessman, Mr. President, I can tell you that few businesses would accept that kind of a collection rate for very long. In fact, few businesses could even survive a 31-percent collection rate for a long time.

Mr. President, our allies should make good on their obligation. We ought to hold their feet to the fire and do so unceasingly until all these bills are paid.

I am concerned that, as Operation Desert Storm is overtaken on the front pages by other events, our attention to these obligations may also be overtaken. The provision that Senator GRASSLEY and I sponsored, and which is now included in this package, would help prevent that.

Our proposal would require monthly reports on our allies Desert Storm contributions—both the amounts pledged and the amounts actually received. The legislation also calls for monthly reports on the costs of Operation Desert Storm.

This should not be controversial, Mr. President. Not long ago, a similar bill was passed by the House of Representatives by an overwhelming vote of 393 to 1.

The American taxpayer should not have to pick up the bill for Japan, Germany, Saudia Arabia, and other coalition members. The American people deserve—demand—to be treated fairly. This provision will keep the Congress and the American people informed, and keep the heat on our coalition partners who have not yet paid their debts.

Thank you, and I yield the floor.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KASTEN. Mr. President, we are celebrating today a truly historic military victory by the U.S. Armed Forces. It is important for our national future that we understand the sources of our success.

In the 1980's, many people severely criticized the Reagan-Weinberger restructuring of our national defense. They looked at the costs—and assuredly, the costs were high—but they turned a blind eye to the benefits. Some even suggested we should call the Pentagon the Department of Procurement instead of the Department of Defense.

How wrong they were, and how thankful our returning soldiers can be today that these views did not prevail. Because of the preparations we made throughout the last decade, America was ready for this war.

And because our soldiers were ready, they turned "the mother of all battles" into the "mother of all U.S. victories."

So I am especially glad that we should be spending some time today on a discussion of the causes of our victory.

President Bush has been modest. He said this victory belonged to the troops. That's true, but it's not the whole story.

We ought to remember the role of George Bush throughout the 1980's in defending those Reagan policies. In the 1980's, he was in the background, working to enact the military reforms that were necessary to make America strong again. He did this not because he believed in something called defense, but because he believed in what we were defending.

That is how his strong beliefs helped lay the groundwork for the stunning military success of the Persian Gulf war.

So when we talk about defense spending, let's remember what exactly we are defending. Against tyranny, we're defending liberty. Against naked aggression, we are defending the peace. And against the brutal bullying of petty dictators, we are defending the little guy.

In short, what we are defending is our national character. We are defending our right to be known—worldwide—as the good guys.

I'm not saying we are the world's policeman. No country has ever been strong enough to right all wrongs, and defend all innocent victims.

But the bottom line is this: If we can make a difference for the better, we ought to. That's the American spirit.

And thanks to our wise choices in the 1980's, that American spirit of courage and self-sacrifice is today being celebrated with tears of joy in Kuwait City.

Mr. President, I ask unanimous consent to proceed as if in morning business for the purpose of introducing a bill.

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

Mr. KASTEN. I thank the Chair.

(The remarks of Mr. KASTEN pertaining to the introduction of S. 640 are located in today's RECORD under "State-

ments on Introduced Bills and Joint Resolutions.")

Mr. CHAFEE. Mr. President, I see the distinguished Senator from Louisiana on the floor, and he is going to present a piece of legislation of which he and I are the principal sponsors. Since he has the bill, I would be glad to defer to the Senator from Louisiana. Then I would seek recognition when he has concluded.

Mr. BREAUX. Mr. President, I ask unanimous consent that I may be allowed to proceed as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. ADAMS. Reserving the right to object, and I shall not.

Approximately how long does the Senator expect to speak?

Mr. BREAUX. Mr. President, I suggest we can do it probably in 10 minutes, maximum.

Mr. CHAFEE. Mr. President, I would like to follow immediately, if I might. I might be as much as 6 to 8 minutes, maximum.

The PRESIDING OFFICER. Is the Chair correctly informed that the Senator seeks unanimous consent to speak as in morning business and that, thereafter, the Senator from Rhode Island be recognized next for a period of 6 minutes?

Mr. BREAUX. That would be my request.

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Louisiana is recognized.

Mr. BREAUX. I thank the Chair.

(The remarks of Mr. BREAUX and Mr. CHAFEE pertaining to the introduction of S. 649 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. BRYAN). The Chair recognizes the Senator from Iowa [Mr. GRASSLEY].

Mr. GRASSLEY. Mr. President, I would like at this point to indicate my support for a specific section of the bill that is now before the Senate, which section deals with a payment for the cost of the Persian Gulf war. Title IV would require regular reports to this body and the other body of expenditures made to carry out Operation Desert Shield and Desert Storm. It would also require reports on contributions made by foreign governments to the United States and to other allied nations significantly affected by the Persian Gulf conflict.

I commend the Armed Services Committee, and particularly its chairman, for its thoroughness and diligence in crafting this title of the supplemental bill, particularly those additions that relate to reporting on cost to foreign governments.

On January 24, I introduced, along with several of my colleagues, S. 270, a bill to require such reports to Congress by the Office of Management and Budget.

In particular, I commend the efforts of my friend and colleague from New Jersey, Senator LAUTENBERG; he was an original cosponsor of this bill.

The companion legislation in the other body, passed there nearly unanimously on February 21, and was referred to the Senate Armed Services Committee. Title IV of this bill before us contains all of the provisions.

Mr. NUNN. Mr. President, will Senator yield?.

Mr. GRASSLEY. Yes

Mr. NUNN. I thank the Senator for his reporting requirement bill that he put in. I can assure him his bill was a part of what we considered in our committee. Out of that and the House bill is where we formulated our proposal in this bill. We thank the Senator for his proposal and his initiative.

Mr. GRASSLEY. Mr. President, I, too, in turn then, thank the Senator from Georgia for that recognition. But once again I emphasize there was a very important addition made to this by that committee, and I thank the chairman for that addition.

Mr. NUNN. The same remarks would apply to Senator LAUTENBERG who aslo was part of the bill.

Mr. GRASSLEY. Yes, very much so.

Title IV of the bill before us contains all the provisions originally in S. 270 as well as many more. Title IV not only addressed U.S. costs and contributions made to the United States, but it also addresses costs to other coalition members and contributions made to all foreign countries and organizations associated with this conflict.

Again, I commend, as I have before, the committee on the title of this bill, and I thank my colleagues and in particular Senator LAUTENBERG for their support and hard work.

Mr. President, what made the provisions of this title a good idea in January, when I first introduced S. 270, still makes a good idea today in March. In January, I remarked that it was "a cost accounting bill, a burdensharing bill, and a good government bill." In each of these regards, the language contained in the bill before us strengthens the language and the intent of S. 270.

Notwithstanding the cessation of hostilities, Congress still needs current information on what the war cost us and will continue to cost us. We still need information on how forthcoming our allies have been and will be in fulfilling pledges to cover United States and allied expenses. We need it to assist in our evaluation of other supplemental appropriations requests. This bill will do that. And we need it to help evaluate future military and foreign assistance requests.

Mr. President, this is where the rubber meets the road and the taxpayers of this country want to know who will ante up and who will not.

During January and February of this year, I communicated with the White House and OMB on this issue. I am satisfied with the job the administration has done so far in soliciting contributions. While the contributions have been slow to come in, I am cautiously optimistic that the money will come in. Both the Congress and the public will ensure that it comes in. And the administration will as well. The administration fully supports the provisions of this title, and I know we can expect their full cooperation in complying with the reporting requirements.

Finally, Mr. President, it has been somewhat disquieting to me and many others in this body in recent days to follow the debate in the Japanese Diet concerning approval of Japan's $9 billion pledge to the war effort. Some there in that country, in that Parliamentary body have said that, since the war ended much sooner than expected, perhaps the full amount of the pledge is no longer needed. Others, in that body have said that a substantial portion of the pledge should be used for the rebuilding of the affected countries, and should not be used to pay for the costs of the war. I expect that when all is said and done, Mr. President, that the United States will have received the entire pledged amount from Japan. An angry American consumer can be a formidable foe, and Congress will not pass up an opportunity to provide our constituents with a full accounting—on the public record, of the costs of the war, and of whose assistance we received to pay them.

Thank you, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I rise today in support of Chairman NUNN'S bill and the amendment that is, I understand, going to be offered by the leadership at a later time. With this legislation, the Congress and the entire Nation will do more than just praise our troops, which they certainly deserve, for their actions in the Persian Gulf. But we will ensure that they return not only to a hero's welcome, but that they will receive the assistance necessary so that upon returning from the gulf they can return to their lives and their families.

Last Thursday, we, as Members of Congress, along with the entire Nation, joined in commending the 500,000 American troops and their Commander in Chief for their determination and valor in the war against Iraq. Today, we are backing our rhetorical support for the courage and the valor of our troops with real action by approving a

package of assistance for our men and women who served in the Persian Gulf, and also for their families.

I am particularly proud to have served on the task force of Senators responsible for making recommendations on certain personnel benefits for our men and women in the armed services who served in the gulf.

I want to thank the majority leader, Senator MITCHELL, for appointing me to this very special and important task force, and I want to recognize Senator GLENN, the chairman of this group, and Senator NUNN, the chairman of the Armed Services Committee, for their hard work and leadership in preparing this package and helping to bring it to the floor today.

Nearly 3 weeks ago, the Senate Persian Gulf Military Personnel and Family Benefits Task Force forwarded more than 30 proposals to the White House and to the Office of Management and Budget for cost estimates. These proposals of the task force after being approved by the relevant committees and reviewed by the White House, are before us today, and deserve our immediate attention and our full support. And our troops, many of whom were sent overseas on short notice and with very little time to prepare themselves or their families for their ordeal, deserve every one of these benefits.

Just as our troops should be recognized and supported, so too should their families, whom I believe are the unsung heroes of this war. After all, it was the families—the wives, the children, and in many cases the husbands—who waited at home, making do with limited resources, while praying each day for the safe return of their loved ones from the gulf.

For these reasons, Mr. President, it is our duty and our responsibility to uphold our end of the bargain and provide the essential and necessary benefits for our troops and their families. I am proud to be a cosponsor of S. 578, the Department of Defense supplemental authorization for Operation Desert Storm, which provides benefits for military personnel.

I also join the majority leader as a cosponsor of the leadership amendment authorizing veterans' benefits and providing other assistance for reservists and military personnel who served in the Persian Gulf.

I just want to take a brief moment to commend the more than 6,000 men and women from my home State of Washington who served so bravely in the Persian Gulf. My message to them, and to the hundreds of thousands of other Americans who served with them, is that the war may be over, but they have not been forgotten. They have answered our prayers with their swift and safe return. Now is the time for us to respond to their needs and their requests for assistance to help them in their return to their families, their communities, and their lives.

The first proposal I intend to discuss concerns that section of the benefits package which provides counseling, child care, and other assistance for children whose parents were deployed in the gulf.

I promoted the move for additional funding for this program after talking with school administrators in my State, who currently lack the resources to combat the increased stress and anxiety felt by children whose mothers and fathers were deployed during Operation Desert Storm.

My recommendations were incorporated into that part of the benefits package advanced by Senator KENNEDY and the Labor and Human Resources Committee. This section provides $30 million in funding for school-based and other family support services for active duty families. This provision also extends continued coverage under group health plans for families of personnel serving on active duty. Family support and continuing education opportunities will help ease the burden on children and families of those deployed in the gulf.

Also part of the Labor Committee recommendations is $20 million for the Secretary of Defense to provide child care assistance to military personnel deployed in Operation Desert Storm. I am pleased that this provision has been incorporated into the benefits package considered today. Adequate child care is a concern to most American families, and personnel serving overseas should not have to worry about whether their children are receiving adequate care. Transitional medical benefits will also be provided by the Defense Department for reservists called to active duty—this is important because many of them had their benefits lapse while they were on active duty—and for certain active-duty personnel involuntarily retained on active duty, upon separation from Operation Desert Shield/Desert Storm.

The Armed Services Committee approved a provision to delay reductions in military mental health benefits approved last year. Now, as the troops begin to return from battle, and as they and their families begin the struggle to reenter society and come to terms with their disrupted lives, is not the time to delay these benefits.

This package also exempts military personnel who are missing in action from the $10,000 annual ceiling on the amount that may be saved under the Defense Department's plan for military personnel deployed in the gulf. It authorizes the Pentagon to recall military personnel to active duty for Operation Desert Storm in the highest grades they held while on previous active duty. And, it temporarily increases the ceiling on the amount of death gratuity pay from $3,000 to $6,000 during Operation Desert Storm and requires that this amount be paid to all survivors of military personnel, regardless of their grade.

To ensure adequate compensation for their life-threatening service, Senator NUNN and others introduced a provision to increase the monthly rate of hostile fire or imminent danger pay for military personnel from $110 to $150 per month, retroactive to August 1, 1990. Our troops, whose valor under fire was clearly documented, deserve this increase.

Mr. President, nearly a generation ago, a great deal should have been done for our veterans who had served in Vietnam that was not done. We are not going to allow that to happen again.

There are two other bills which were recommended by our task force in support of service personnel and their families. They will appear before the Senate as part of the leadership amendment. The first would defer student loan requirements for personnel serving in the gulf and recommends that colleges and universities refund or credit tuition payments to personnel whose education was interrupted by their service. The second would update the Veterans Reemployment Right Act, which protects reservists returning to civilian life at the end of their active duty service. The act would be expanded to cover permanent employees, requiring employers to provide reasonable retraining and make reasonable accommodations for those disabled by their service.

The benefits advanced in this legislation are timely, reasonable, and well-deserved. The service of our military personnel of the field to battle and the support of their families at home was exemplary. I, and other members of the task force who have worked for the expedited consideration of these measures, applaud each and every one of these brave people. Passage of this package will enable the troops, and their families, to receive the financial and emotional support they all deserve so they will know they are not only receiving the cheers and the plaudits of the people of the United States as they return, but the practical benefits of being able to return to a full and wholesome life in this Nation they have so bravely defended.

The PRESIDING OFFICER. The Senator from Maryland [Ms. MIKULSKI].

Ms. MIKULSKI. Mr. President, I rise in support of the legislation and ask unanimous consent that my name be added as a cosponsor.

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

Ms. MIKULSKI. Mr. President, I, too, serve as a member of the military family task force that designed a good part of the package that is before the Senate today to express our appreciation to the U.S. military for the dazzling job they did in Desert Storm. I know,

like all Americans, we saw what they did on the battlefield on which they functioned with heroism and competence. At the same time, we heard from their families who backed them up in the fullest way that they could, so our troops could be unencumbered from fear about family responsibilities, and yet, at the same time, we heard what the families are facing.

I know, like all Americans, we have felt a new sense of pride in what we can do in this country when we are focused on a clear objective. And I know all Americans are relieved that our troops are coming home, not only victorious, but with our casualties contained. It is, indeed, an extraordinary time.

I chair the Senate subcommittee in appropriations that funds the veterans benefit package, and I can assure all my colleagues that the Veterans' Subcommittee will do all it can to meet the responsibilities that are being set forth not only in the urgent supplemental but what we will be doing in the veterans legislation later on. This is, indeed, a very excellent package. My colleagues have spoken to what it means to both the military who served in the gulf and to their families.

I would like to bring legislation to the attention of the Senate that I hoped would be included in the urgent supplemental. This legislation would have provided full Federal pay for Federal employees who are either military reservists or National Guard who served in the gulf. However, I do know this legislation is meant to be urgent and it is meant to be supplemental, therefore I will constrain myself until such time as this bill can be considered independently. But I really encourage the U.S. Senate to think about this inclusion, either as an independent bill or later on when we do a more comprehensive veterans appreciation legislative framework.

I believe the need for this legislation is clear. The U.S. Government should be a model employer. Throughout this country there were many State and local governments and private sector employers who stepped up and supplemented the military reservist and guard pay as if their military personnel were earning their full pay back home. This was absolutely what I call a good-guy bonus.

I believe the need for this legislation is clear because Federal employees serving on weekends in the military Reserve and in the National Guard did make financial commitments related to mortgage and tuition on the expectation that they would have a certain salary level. The war interrupted those plans. Now they are back home seeing not only the warmth of yellow ribbons but the cold chill of unpaid bills.

Recognizing the hardship that many military reservists and guards may face, as I said, many State and local governments and private employers are making up the difference between the Reserve pay and the Regular salary. I believe the Federal Government should do no less.

I am aware that this package currently before the U.S. Senate has a section permitting Federal employees to donate annual leave to a leave pool to be available to Federal employees who did serve in the gulf. This is an idea by the Senator from Tennessee [Mr. SASSER]. This is a terrific idea. I absolutely support it. But I am concerned it may not work as well for Federal employees as simply letting them have the money already in the budget for their salaries. I am concerned there will not be enough available for every Federal employee who served in the gulf.

Some might say, well, Senator MIKULSKI, how much will this cost? I received an estimate from CBO, the Congressional Budget Office, which states that my bill will result in no additional cost to the Federal Government because the money has already been appropriated for these salaries.

I do not intend to offer this amendment on the floor today, but I have asked the Governmental Affairs Committee to hold a hearing on this legislation. I understand the House may be acting on similar legislation in the future. I will continue to work for enactment of my idea, but I think the ideas pending before the Senate in this urgent supplemental are really quite good. The Marines have a saying, "semper fi," always faithful. And may the American people be as faithful to their military as the military has been faithful to the American people.

Mr. President, I ask unanimous consent that a cost estimate of my bill, S. 605, from the Congressional Budget Office be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 1991.

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR: In response to your request, the Congressional Budget Office has reviewed S. 605, authorizing a special pay to a federal employee serving on active duty as a member of the reserves during the Persian Gulf conflict, as introduced and referred to the House Committee on Governmental Affairs on March 7, 1991.

This amendment would require Executive agenices to pay the differential between military and civilian pay for federal employees who were activated in connection with Operations Dessert Shield and Desert Storm when civilian pay exceeds military pay. This amendment would result in no additional costs. The differential would be paid by each agency out of previously appropriated funds that would have normally beeen used to pay the individual.

Section 202 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. Because this bill would not affect direct spending or receipts, it is not subject to those procedures.

If you would like further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Siegel, who can be reached at (202) 226-2840.

Sincerely,

ROBERT D. REISCHAUER,
Director.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. KENNEDY. Mr. President, I rise to support the Desert Shield authorization.

One of the most important parts of this bill is the package of benefits for Desert Storm veterans and their families.

I commend those involved in assembling this package. Senator GLENN chaired a task force of Democratic Senators to make recommendations on needed benefits for Desert Shield personnel. On the other side of the aisle, Senator MCCAIN chaired a similar task force. Both task forces and their respective chairmen deserve credit for their work in assessing the various proposals.

Under the leadership of Senators MITCHELL and DOLE, the proposals of the two task forces were melded into a package of benefits that I believe are fair and compassionate to our troops, while being fiscally responsible.

I want to draw particular attention to the parts of the benefit package that affect military families.

After the parades are over and the yellow ribbons have come down, military families affected by the gulf conflict will try to return to their normal lives. The benefits contained in this legislation will ease that transition in four concrete ways.

First, the package would bolster the counseling and mental health services available to military families.

It contains $30 million for enhanced family support services, including additional school-based counseling for military children. It also provides funds for family counseling and crisis intervention, as well as assistance with employment, housing, transportation and other needed services.

The package also delays cuts made last year in the mental health benefits offered in the military health care system. This is no time to cut these benefits. Military families should have access to appropriate mental health care during the critical readjustment period following the war.

We saw the ravages of war on families during Vietnam. We know that separation and reintegration is difficult for everyone. And, we must do all we can to help these families cope.

A study by the Veterans' Administration vividly demonstrates the need even years later. One in three Vietnam veterans has suffered from drug or alcohol dependency; 40 percent have been

divorced; and nearly half have committed at least one violent act during the past year.

All of these problems relate to posttraumatic stress disorder. Many of the shattered families could have been saved by a modest investment in counseling and other mental services.

If we believe in keeping families together, we must reach out and provide the necessary support now. Otherwise, we will pay the price for years to come. We can and should seek to prevent senseless tragedies.

Second, the package provides important protections to returning reservists and their families.

As a result of Desert Shield, the country called up over 200,000 reservists from civilian careers to answer their country's call to arms. Since its origins, this Nation has relied on citizen soldiers to defend its freedom and respond to aggression abroad. We expect a great deal from these men and women and we were not disappointed.

We owe them a debt of gratitude, and we also have an obligation to ensure that they and their families are protected from further disruption of their lives to the greatest extent possible.

Toward this end, the legislation reforms the Veterans' Reemployment Rights Act, which guarantees returning veterans reinstatement at their old job. This act needs to be brought into the 1990's. The bill before the Senate does this by extending its protections to disabled workers and by requiring reasonable retraining.

Another vital protection for Reserve families is adequate health coverage during the transition back to civilian life. For that reason, the legislation would provide 30 days coverage in the military health care system to deactivated reservists who have no private health insurance.

Reservists who have defended their country abroad should have their security protected at home. At the very least, this means making sure that the jobs they left behind will be waiting for them when they return. And, where there is no job for them, they should have some health coverage in their first days back.

Third, the bill would provide $20 million to supplement military child care services. Current facilities, which were already overburdened, cannot meet the increased demand caused by the deployment of over 500,000 troops to the gulf and the callup of over 200,000 Reserves.

Prior to the Iraqi invasion of Kuwait, there were over 44,000 children on waiting lists at military child care centers. The funding in this bill would seek to ensure that this child care crunch is not worsened as a result of Desert Shield.

Obviously, where there are two members of a family—a father and mother—at home, they can often provide adequate supervision for a child. But when one of the parents is sent over to the gulf with a Reserve unit, then there is going to be an additional burden in terms of providing for that child. This is a very modest program to help provide some coverage for those particular families.

Fourth, the bill would protect service men and women who interrupted their educations to fight in the gulf. It states the sense of Congress that military personnel who left school in midterm should receive either a tuition refund or academic credit.

In many instances, these young reservists were called up with 3 or 4 days notice. Many of them were taken out of schools and colleges in the middle of a term. We want to make sure that either they are going to be eligible for the credit they have already paid for or that they are going to have their tuition refunded so that they can continue their education in an appropriate way.

Many wartime hardships are unavoidable. But we must make every effort to reduce the burdens on military families.

The provisions in this bill address the many practical concerns facing our troops and their families as they return from the gulf.

Our forces performed superbly throughout the entire Persian Gulf conflict.

Now as they return to their homes and communities across the country, we have an obligation to ensure that they and their families have adequate support services, essential health benefits and clear reemployment rights.

To do any less would be to break faith with our troops, our heritage and our country.

Mr. President, I urge my colleagues to adopt this legislation.

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 that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as if in morning business.

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

FLORIDA GOV. LEROY COLLINS

Mr. GRAHAM. Mr. President, I join my colleagues in mourning the loss of Florida Gov. LeRoy Collins, an American whose courage, wisdom and leadership inspired our Nation.

After long illness, Governor Collins died of cancer at the age of 82 yesterday at his home in Tallahassee.

We offer our sympathy to his family members, who showed great strength during his illness.

LeRoy Collins served the public during times of critical change in this century.

He was tested by extraordinary events, and indeed became an extraordinary leader.

Mr. President, the legacies of Governor Collins are many. He was a fighter for justice.

He enhanced education, including the establishment of our community college system in Florida, writing our State's basic school-finance law, as a member of the State legislature, and expanding the quality and size of our State university system.

He was an attorney, with a keen legal mind.

He was an outstanding father, husband, and grandparent.

But of all his legacies, perhaps the legacy that inspires us most was LeRoy Collins' special gift of appealing to the best in people.

Since the beginning of time, when people organized themselves into societies on this Earth, political leaders have faced choices about how to lead.

Some have sought to appeal to the lesser qualities of mankind: fear, ignorance and bigotry.

LeRoy Collins rejected the politics of hate, and appealed to our sense of fairness, civic pride, and compassion.

LeRoy Collins served with distinction in the Florida Legislature and later as Governor of Florida during the middle of this century when our Nation was deciding whether black and white Americans would live together, or continue to be segregated.

We were deciding whether to cling to the past, or embrace a better future.

LeRoy Collins was Governor of Florida from 1955 to 1961. In 1964, President Johnson named LeRoy Collins to lead the Community Relations Service, an agency that helped enforce the landmark Civil Rights Act of that year.

During his governorship, Governor Collins held fast to a simple principle: that the people of this country could live in peace together and that the walls that separated us in the past must come down.

His words, spoken in 1960, will live on:

> Great leadership never comes in the quiet and sweetness of early morning when all things seem good and clean with newness and promise.
>
> Rather, it comes as the shadows lengthen on dark and stormy days—days ruled by wrong.
>
> For without wrong, there is no urge to do right. Without sickness, there is no will to search for cures. Without oppression, there is no longing for liberation. Great leadership does not come to the people; it comes from the people.

Governor Collins' leadership was neither expedient nor necessarily popular.

He neither shouted his own position, nor shunned his opponents.

His strength was a quiet voice of reason and justice.

He was a profile in courage who paid a political price.

Had he taken another course, he might have served in this Chamber. He lost his bid for the Senate in 1968, but never lost his convictions.

Some four decades later, as we mark his passing, there will be many tributes to this great leader.

One of the most fitting tributes occurred yesterday in the Florida Legislature.

Mr. President, to provide a bit of historical context.

When my father served in the Florida Legislature with his friend LeRoy Collins, there were no black legisators.

Today, the legislature reflects the rich diversity of our State. The president of the Senate is a woman. Black and Hispanic legislators hold key positions.

Yesterday, when Floridians learned that Governor Collins had died, members of the legislature—black and white—offered tributes to this man who had served as a bridge from Florida's past to its future.

Among the many accolades was the praise of a black lawmaker from Miami, the Honorable Darryl Reaves:

> This man (LeRoy Collins) said, "I'm going to do the right thing." He took the heat, but stood in the face of all of it. We as a state and a nation are better off for that.

Mr. President, we are approaching the end of a great century in our history as a nation.

As we enter the 21st century, historians will chronicle the vast changes of the era we are about to complete.

We landed a man on the Moon, and returned him safely. We've conquered many diseases, and live longer.

We have confronted and defeated tyranny.

We have transformed from an agrarian society to a complex urban, high technology society.

But of all the changes we have undergone in the 20th century, perhaps none is as vast as elimination of racial segregation.

In a figurative sense, it was our Berlin Wall that divided our people.

Many people chiseled and chipped at that wall until it came down.

Those who did include prophets and paupers, orators and the ordinary.

Among them was a leader from Florida, a humble man of unusual strength: Gov. LeRoy Collins.

Like all great teachers, LeRoy Collins taught by example.

As he called on others to live in dignity, he personified dignity.

As he called on others to respect justice, he personified a sense of fairness.

As he called on others to change, he showed that he, too, could change.

The Apostle Paul, in his letter to the Roman church said: "Do not be conformed to this world, but be transformed by the renewal of your mind." (Romans 12:2.)

LeRoy Collins was not conformed by this world, but rather transformed our world.

For that, we offer our humble thanks, our prayers to the Collins family and our commitment to live up to his high ideals.

We as a State and a nation are better off for that.

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

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

DEPARTMENT OF DEFENSE DESERT STORM SUPPLEMENTAL AUTHORIZATION AND MILITARY PERSONNEL BENEFITS ACT

The Senate continued with the consideration of the bill.

MILITARY PERSONNEL AND VETERANS BENEFITS LEGISLATION

Mr. CRANSTON. Mr. President, I rise today to express my support for title III of this legislation, authorizing benefits for members of the Armed Forces who served during Operation Desert Storm, and for the military personnel and veterans benefits amendment before us.

These provisions are an appropriate tribute to the fine men and women who served our Nation so proudly in the Persian Gulf. Many of those called for duty came from our Ready Reserves and National Guard. These individuals dropped what they were doing and left behind loved ones to defend our interests abroad. It is only appropriate that our military men and women not be penalized for their service and that they be provided benefits that are commensurate with benefits provided members of our armed services who have served in previous conflicts.

This comprehensive and timely package contained in S. 578 and in the leadership amendment before us reflects the work of the Persian Gulf Benefits Task Force of which I am a member. The task force worked hard to respond to the personnel issues which have arisen since August 2, 1990. I believe the provisions we are considering today are necessary and fair.

Many of these provisions update existing benefits, some of which have not been examined or updated since Vietnam. In others, we are extending benefits to the activated Reserves and National Guard members who may not be eligible for many of the benefits they so richly deserve.

The all-volunteer military has created a fighting force unlike those of previous eras. For the first time we have seen many women in combat support positions serving in combat zones. And, the men and women of our Armed Forces are not the young inductees of Vietnam. The Armed Forces of the 1990's are older and more mature, often with greater family obligations. These are soldiers and sailors who have made a conscious commitment to public service, often attracted to the military's education benefits and career opportunities, but always ready to serve.

Above all, the call to service is a call for sacrifice, and the sacrifice of the military member is not made alone. As we have seen so vividly in the television images of the first military personnel returning to the welcoming arms of their families, this is a sacrifice shared by the entire military family. Thus, I am pleased that we are delaying the effective date of the reduction in CHAMPUS mental health benefits until February 15, 1992, in recognition of the stress experienced by the military family left behind. And, of particular importance, we are providing funding for vital family assistance programs, including school-based programs and child care.

The programs related to public education are of great importance to my State of California. In this bill, we provide much-needed support for school-based programs that meet the needs of children and families impacted by Operation Desert Storm. These school districts have been unstinting in their efforts to provide special services, including counseling, to students and their parents suffering the psychological stress of the war. These are key humanitarian services and these districts need all the assistance they can provide.

Above all, we have worked to ensure that the veterans of this conflict who will be relieved from active duty have appropriate benefits and protections as they make the transition into civilian life.

VETERANS PROGRAMS

Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to give their unanimous approval to provisions of the pending measure that are derived from S. 386, the proposed Persian Gulf War Veterans' Assistance Act of 1991 as reported by the committee on February 26 and as incorporated in the leadership amendment, together with certain additional provisions that I urged be included.

Mr. President, the provisions of S. 386 before the Senate today include provisions derived from S. 336 as introduced by the Senator from Massachusetts

[Mr. KENNEDY] on January 31, 1991, and S. 386 as introduced for me by the Senator from Arizona [Mr. DECONCINI], who is the ranking Democratic member of the committee, on February 6, 1991. These bills are described in detail in the committee's report accompanying this measure (S. Rept. 102-16).

RESPONSIBILITIES TO VETERANS

Mr. President, this measure reflects the Senate's deep concern that the Nation full honor its obligations to the brave men and women in uniform who so brilliantly and effectively fought in and supported Operation Desert Storm. We are mindful of the tragedy that has struck the families and loved ones of the more than 150 servicemembers who died in the Persian Gulf area since August 8, 1990, and share the great anxiety for the 9 who are still missing in action. However, we are also extremely grateful that the American casualties were so many fewer than had been expected.

At the same time, we must remember that the success of this effort was the result of the dedication and personal sacrifices made by many hundreds of thousands of military personnel in the gulf area and elsewhere. It was also the result of the willingness of our service men and women in the Middle East to put their lives on the line for their country.

It is now our responsibility to ensure that we express in meaningful, tangible, and appropriate ways to those who served our Nation so well our gratitude and commitment to carrying out our responsibilities to them.

As chairman of the Veterans' Affairs Committee, I believe those responsibilities include ensuring that the system of laws, benefits, and services for veterans and their families is able to provide quality, timely, and responsive services. Helping to ensure this entails a wide range of efforts.

First, it meant putting in place the fiscal year 1992 COLA in VA service-connected disability compensation. After the effort to enact that legislation in S. 2100 last year was stalled as a result of the agent orange controversy, Congress acted swiftly this year to enact the COLA in Public Law 102-3, which was signed into law on February 6, 1991.

Second, this meant the legislation updating of the Soldiers' and Sailors' Civil Relief Act of 1940 and veterans reemployment rights law that, in H.R. 555/S. 330, the Senate and House passed in final form on February 21, and February 27, respectively, and is currently awaiting the President's signature.

Third, it means efforts to provide adequate funding for VA health-care services and benefits administration and Department of Labor-funded employment services. The support and appreciation being shown by the American people to those who served our Nation so brilliantly in the execution of Operation Desert Shield and Operation Desert Storm reflect the importance and priority that should be attached to programs for all of our Nation's veterans. Two truths must be recognized in the budget and appropriations process: First, the American people demand that the benefits and services for Persian Gulf War veterans must be responsive and timely and of high quality; second, major additions to the administration's budget for veterans' programs are absolutely essential in order for VA and the Department of Labor to be able to respond in this fashion.

I would also stress that it would be neither practical nor equitable to establish a higher quality of services for Persian Gulf veterans. Other veterans have served with great valor and made great sacrifices; they all deserve the necessary improvements that our efforts must make possible in veterans' programs.

For fiscal year 1991, I strongly support the $58 million supplemental included in H.R. 1218 (H. Rep. 102-9) by the House of Representatives for VA health care and benefits administration. In my view this is a first installment on providing more realistic, adequate funding levels for VA programs in fiscal year 1992.

I also urge the Senate Appropriations Committee to provide $4 million for DOL's Veterans Employment and Training Service in order to enable it to fulfill its responsibility to separating military personnel under the Transition Assistance Program, as mandated by the National Defense Authorization Act of 1991.

Fourth, meeting our obligation to Persian Gulf and other veterans means continuing major legislative efforts necessary for the provision of quality services. In this regard, Congress has cleared for the President's signature H.R. 180, a bill to make improvements in veterans' education and employment programs. One of the most significant provisions of that bill for Persian Gulf-period veterans would provide them with eligibility for veterans readjustment appointments in Federal service. In addition, the House and Senate Veterans' Affairs Committees have reached agreement on VA health-care personnel legislation that will update VA's program of physicians' and dentists' special pay in order to help VA deal with its current serious difficulties in recruiting and retaining doctors. That measure will also make significant improvements in VA labor-management relations with respect to its health-care workers. I will soon be introducing the final House-Senate compromise on this legislation and am hopeful of swift action in both bodies to enact this badly needed measure.

Fifth, we need to enact a COLA in Montgomery GI bill benefits. This program was enacted in 1984. As there has been no COLA enacted since that time, the value of these benefits has now been eroded by over 6 years of inflation. This is the GI bill program that will be used by most Persian Gulf veterans. I am today introducing a bill to increase those benefits by about 40 percent, to counter the effects of inflation.

Finally, Mr. President, we must quickly act on the measure before the Senate today.

In all these endeavors, we must act promptly so that the benefit of our action is available as these individuals return to civilian life.

VETERANS' PROVISIONS DERIVED FROM S. 386 AS REPORTED

Mr. President, this measure contains provisions which would extend to veterans of service during the Persian Gulf conflict the same eligibility for benefits and services as are available to the veterans of other periods of war; improve laws related to the reemployment rights of reservists called to active duty; and enable VA to employ retired Federal health-care specialists on a temporary basis as needed due to staff losses to the Reserves.

Specifically, Mr. President, the leadership amendment includes provisions of S. 386 as reported that would:

First, add to defined periods of war for title 38 purposes the Persian Gulf war, which would be defined as the period beginning August 2, 1990, the date that Iraq invaded the country of Kuwait. The period would end on a date to be determined by Presidential proclamation or by law.

Second, provide that service during the Persian Gulf period satisfies the service requirements for eligibility for the VA pension program—a needs-based benefit for wartime veterans who have non-service-connected disabilities rated totally disabling and the needy survivors of wartime veterans.

Third, make applicable to Persian Gulf period veterans the presumption for VA medical care purposes, that an active psychosis occurring within 2 years after a veteran's discharge or release from active military service that included service during a period of war is service connected.

Fourth, provide Persian Gulf period veterans with the same eligibility for medicines from VA that veterans of other periods of war have when they are receiving additional VA service-connected disability compensation, or increased VA non-service-connected disability pension, by reason of being permanently housebound or in need of regular aid and attendance.

Fifth, extend entitlement to VA readjustment counseling through VA vet centers to post-Vietnam-era veterans who served on active duty in areas in which, as determined by the Secretary of Veterans Affairs in consultation with the Secretary of Defense, members of the Armed Forces are subjected to danger from armed conflicts comparable to the dangers of combat with

enemy armed forces during a period of war.

Sixth, provide that, notwithstanding the requirement that claims for reimbursement for burial payments from VA be filed within 2 years after the burial of the veteran, a claim for reimbursement for burial payments in the case of a veteran of the Persian Gulf period who died before the date of the enactment of the committee bill may be filed within 2 years after that date.

Seventh, provide for VA's Veterans' Advisory Committee on Education to include a representative of Persian Gulf period veterans.

Eighth, provide eligibility for VA housing loan benefits to veterans who served on active duty at any time during the Persian Gulf conflict and whose total service was for 90 days or more—which is the same period required for veterans of other war periods—provided that those veterans meet the minimum active-duty service requirements in section 3103A of title 38.

Ninth, require employers to take affirmative steps to provide necessary retraining for persons being reinstated to employment under the Veterans Reemployment Rights [VRR] law, codified in chapter 43 of title 38.

Tenth, require employers to make reasonable accommodations for disabled persons being reinstated under VRR laws.

Eleventh, authorize the Secretary of Veterans Affairs to employ retired Federal health-care specialists without their retirement annuities being reduced. In the legislation before us today, the Secretary's authority for waiving reductions in annuities would be for the period of the Persian Gulf conflict and not more than 1 year after the date of the termination of that period. The authority would be available for the purpose of enabling VA to replace temporarily reservists who were employed in VA health-care positions when called to active duty. For the purposes of this provision, the term "health-care specialist" would mean a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, medical technician, or other medical support personnel.

ADDITION OF PERSIAN GULF WAR TO DEFINITION OF PERIOD OF WAR

Mr. President, under current law, section 101(11) of title 38, the term "period of war" is defined as the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or a concurrent resolution of the Congress. The definition of period of war does not constitute a declaration of war on the part of the Congress. It is used to determine eligibility for certain VA programs which I will describe below.

The leadership amendment would add the Persian Gulf war to the defined periods of war for title 38 purposes. The Persian Gulf war would be defined as the period beginning on August 2, 1990—the date that Iraq invaded the country of Kuwait—and ending on a date to be determined by Presidential proclamation or law.

ELIGIBILITY FOR VA PENSION

Mr. President, chapter 15 of title 38 provides for a monthly VA pension for veterans with limited income who served at least 90 days on active duty—or were discharged from service earlier because of a service-connected disability—part of which occurred during a period of war who are permanently and totally disabled from non-service-connected causes. Surviving spouses and dependent children of deceased veterans with wartime service are eligible for pension based on need if they meet the applicable income standards.

The leadership amendment would extend to veterans with service during the Persian Gulf period, and the surviving spouses and children of such veterans, the same eligibility for benefits under the VA pension program as is provided with respect to other wartime veterans.

PRESUMPTION RELATING TO PSYCHOSIS

Under section 602 of title 38, an active psychosis developed by any veteran of World War II, the Korean conflict, or the Vietnam era within 2 years after discharge is deemed to be a service-connected condition for the purposes of entitlement to VA health care. The leadership ammendment would make this presumption applicable to veterans of the Persian Gulf period.

ELIGIBILITY FOR MEDICINES

Mr. President, under section 612(h) of title 38, veterans who are receiving additional VA service-connected disability compensation, or increased VA non-service-connected disability pension, by reason of being permanently housebound or in need of regular aid and attendance, are entitled to receive from VA drugs and medicines that are prescribed by a licensed physician for the treatment of the veteran. Under this provision, VA also is required to continue furnishing drugs and medicines to such a veteran whose pension payments have been discontinued solely because the veteran's annual income exceeds the applicable income standard so long as the veteran's annual income does not exceed that maximum by more than $1,000.

The leadership amendment would add veterans of the Persian Gulf period to the list of veterans of periods of war who are covered by this provision.

EXPANSION OF READJUSTMENT COUNSELING ELIGIBILITY

Under current law, section 612A(a) of title 38, entitlement for readjustment counseling services—which are furnished in VA vet centers—is limited to Vietnam-era veterans. There are vet centers, 197 community-based centers, located in all 50 States, Puerto Rico, and the Virgin Islands.

Mr. President, a provision of the leadership amendment that is identical to section 4(c) of S. 386 as introduced, which in turn was derived from section 202 of S. 127 as introduced on January 14, would expand entitlement to readjustment counseling to include veterans who served on active duty after May 7, 1975, in areas in which U.S. personnel were subjected to danger from armed conflict comparable to that occurring in battle with an enemy during a period of war. This provision is similar to legislation reported by the Veterans' Affairs Committee in the last two Congresses—section 605 of S. 2011 as reported on August 1, 1988, section 202 of S. 13 as reported on September 13, 1989, and section 202 of S. 2100 as reported on July 19, 1990. The administration also transmitted draft legislation for the same purpose in a January 29, 1991, letter from Secretary Derwinski. That measure was introduced on February 19, 1991, as S. 424.

As I noted a moment ago, over the past 3 years, the committee has favorably reported proposals that I authored to expand readjustment counseling services to veterans who have served since the end of the Vietnam era in combat situations and to veterans of earlier wars. This legislation would also have provided eligibility to combat theater veterans of World War I, World War II, or the Korean conflict and veterans of service in any other area during a period in which hostilities occurred which subjected Armed Forces personnel to danger comparable to that which Armed Forces personnel have been subjected during combat with an enemy during a period of war.

Mr. President, I am pleased that the administration, through its support for expanded entitlement, has recognized both the need among combat veterans for readjustment counseling and the value of the services provided at vet centers.

Situations in which our Armed Forces are exposed to combat situations short of declared war—such as existed in Beirut, Grenada, in connection with our actions against Libya, or in connection with the Persian Gulf conflict—can produce the need among those involved in them for readjustment counseling to help deal with the psychological aftermath of their combat-related experiences. It is particularly important in light of the current understanding—as noted in VA's testimony at the committee's July 14, 1988, oversight hearing on issues related to post-traumatic stress disorder [PTSD]—that early intervention be available to ameliorate the severity

and persistence of PTSD symptoms. This expansion of entitlement to vet center services for Persian Gulf veterans is one way to provide for early intervention.

BURIAL AND FUNERAL EXPENSES

Section 902 of title 38 authorizes VA to pay up to $300 for the funeral and burial expenses of (a) veterans who were receiving compensation or pension when they died, and (b) wartime veterans who had wartime service or were discharged for injuries incurred in the line of duty if there is no next of kin claiming the body and there are insufficient resources to cover the burial and funeral expenses. Pursuant to section 904 of title 38, a claim for such expenses must be filed with a 2-year period following the death of a veteran.

Because of VA's authority to pay burial and funeral expenses depends, in some situations, on the deceased veteran's status as a "veteran of any war" and, until the date of enactment of this legislation, the Persian Gulf conflict will not be designated a period of war, the leadership amendment would provide that applications for burial and funeral expenses for veterans of the Persian Gulf period who died prior to the date of enactment of this measure could be filed within the 2-year period following the date of enactment.

MEMBERSHIP OF EDUCATIONAL BENEFITS ADVISORY COMMITTEE

Section 1792 of title 38 provides for a Veterans' Advisory Committee on Education to advise the Secretary with regard to the administration of the educational assistance programs in chapters 30, 32, and 35 of that title. The committee is composed of persons who are eminent in the fields of education, labor, and management; representatives of institutions and establishments furnishing education to eligible veterans or persons enrolled in the above-mentioned educational assistance programs; and veterans representative of World War II, the Korean conflict era, the post-Korean conflict era, the Vietnam era, and the post-Vietnam era. The leadership amendment would extend membership on the Veterans' Advisory Committee on Education to veterans representative of the Persian Gulf period.

LOAN-GUARANTY ENTITLEMENT

Section 1803(a)(2) of title 38 establishes eligibility criteria for entitlement to VA home-loan guaranty benefits. Eligible persons include (a) veterans who served on active duty at any time during World War II, the Korean conflict, or the Vietnam era and whose total service was for 90 days or more; (b) veterans discharged or released for a service-connected disability; (c) any other veteran who either served after July 25, 1947, for more than 180 days; and (d) active-duty personnel who have served on active duty for more than 180 days and continues on active duty without a break in service.

Section 3103A of title 38 imposes additional eligibility requirements for all VA benefits, including home-loan guaranty entitlement. Generally, veterans who enlist in the Armed Forces after September 7, 1980, or otherwise enter on active duty after October 16, 1981, must complete at least 24 months of continuous active duty or their full tour of active duty, whichever is less.

The leadership amendment would expand eligibility for home-loan guaranty entitlement to veterans who served at least 90 days of active duty during the Persian Gulf period, provided the veteran also meets the qualifications under section 3103A of title 38. The effect of this provision would be to reduce from 180 days of active duty to 90 days the minimum-service requirements for Persian Gulf period veterans who are reservists and serve full active-duty tours of less than 180 days.

Section 3103A of title 38 provides that an eligible person being discharged serve the shorter of 24 months of continuous active duty or "the full period for which such person was called or ordered to active duty." It is our intent and understanding, based on discussions with VA, that a reservist whose unit is returned to inactive status early under appropriate orders be considered to have served "the full period for which such person was called" even though he or she did not actually remain on active duty for the number of days stated in his or her activation orders.

Mr. President, the brave men and women who served during the Persian Gulf period deserve all of the benefits and services that this grateful Nation has extended to the veterans of other wars. Our committee believes that defining the Persian Gulf war period for the purposes of the above-mentioned title 38 purposes is an essential part of recognizing the sacrifices made by these veterans.

VETERANS' REEMPLOYMENT RIGHTS AMENDMENTS

Mr. President, under the veterans' reemployment rights law, as codified in chapter 43 of title 38, persons who leave civilian jobs in order to enter active-duty service in the Armed Forces, voluntarily or involuntarily, generally are entitled to return to the same civilian jobs after being discharged from active duty under honorable conditions if those jobs are "other than temporary" and application for reemployment is made with the preservice employer within 90 days after separation from active duty. The VRR law applies to persons who are inducted into the Armed Forces, to persons who volunteer directly for active duty, and to reservists who are called to active duty.

Current law requires an employer to restore an eligible person who is still qualified to perform the duties of the position to his or her previous position or to a position of like status and pay and with the amount of time spent in the service credited for purposes of seniority. If the returning servicemember is not qualified to perform the duties of his or her previous position due to a disability sustained during active-duty service, but is qualified to perform any other position, the employer is required to offer that person a position which most closely approximates the previous seniority, status, and pay, consistent with the circumstances of the individual's case.

A provision of the leadership amendment derived from section 2 of S. 336 would require an employer to make reasonable efforts to requalify a returning servicemember who is no longer able to perform the duties of his or her previous position. This provision would ensure that servicemembers who, by reason of absence while serving on active duty, missed opportunities to acquire new skills necessary to meet the changing requirements of their previous jobs would be given a reasonable amount of time and assistance by their employers in order to become requalified. This provision would take effect with respect to individuals who entered active duty after July 31, 1990.

The leadership amendment also contains a provision, derived from section 3 of S. 336, which would amend chapter 43 of title 38 to add a new section 2027, entitled "Qualification for employment position." This new section would make the law relating to reemployment of disabled veterans consistent with the Americans With Disabilities Act of 1990, Public Law 101-336, by requiring employers to make reasonable accommodations for them when necessary. Section 101(9) of the ADA defines "reasonable accommodation" to include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules, reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations.

Under this new section, a returning servicemember would be considered qualified for an employment position if he or she can perform the essential functions of that position with reasonable accommodation. The term "reasonable accommodation" would be defined by reference to section 101(9) of the ADA. This provision also would take effect with respect to individuals who entered active duty after August 1, 1990.

REEMPLOYMENT OF RETIREES

Mr. President, in a leadership amendment provision derived from section 10 of S. 386 as reported, VA would be authorized to employ on a temporary basis retired Federal health care spe-

cialists without a reduction in their Federal retirement annuities. Thus, this provision would give the Secretary of Veterans Affairs limited authority to waive sections 8344 and 8468 of title 5, which require reductions in annuity payments to reemployed retirees. Waivers would be authorized only to the extent that the Secretary of Veterans Affairs determines that they are necessary for VA to recruit health care personnel who are needed due to staff lost to the Reserves. As a result of earlier committee and congressional action, VA already has such authority—in section 4107(i) of title 38—with respect to hiring physicians and nurses who have retired from military service.

The provision in the leadership amendment would extend to VA an authority granted to the Office of Personnel Management in the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509). Section 108 of that act amended sections 8344 and 8468 of title 5 so as to permit the Director of OPM, at the request of the head of an executive branch agency, to waive the provisions pertaining to the reduction of retirement annuities for reemployed retirees on a case-by-case basis in emergency situations involving a direct threat to life or property or other unusual circumstances.

The leadership amendment would allow the Secretary to waive section 8344 or 8468 of title 5 without first obtaining the approval of the Director of OPM, but limit such authority to a time period relating to the Persian Gulf conflict. The authority provided by this provision would enable VA to rehire retirees in a timely fashion and thus more readily fill positions vacated by activated reservists and supplement staff in medical centers which may experience an increase in the number of patients admitted. The ability to replace health care staff on an expedited basis is essential for VA to fulfill its responsibility to provide quality health care to veterans of previous wars.

Any such waiver would take effect upon receipt by the Director of OPM of a written notice from the Secretary of Veterans Affairs and may extend during the Persian Gulf conflict and for not more than 1 year after the termination of that period.

In recent months, VA's persistent difficulties in the recruitment and retention of health care specialists have been exacerbated by two unrelated situations—activation of reservists and changes in the Federal civilian employees' retirement system. As of February 7, 1991, 2,174 reservists employed by VA had been called to active duty, including 222 physicians and 893 nurses. The callup of reservists has caused many VA medical centers to lose highly skilled health care specialists whom they may have difficulty replacing, such as anesthesiologists and critical care nurses.

In addition, suspension of the alternative form of annuity program pursuant to the Omnibus Budget Reconciliation Act of 1990 forced employees to retire by November 30, 1990, if they wished to receive their contribution to the Federal Employees' Retirement System in the form of a lump-sum payment. As a result of the suspension of the lump-sum option, 1,182 VA employees retired in November 1990, a dramatic increase from the monthly average of 500 during the previous decade. These VA retirees, already well-versed in VA procedures, could provide an excellent pool of personnel from which VA could pull support during this crisis.

Mr. President, the cost of reemploying retirees without their suffering a reduction in their pensions would result in no direct cost to VA. In fact, our committee expects that VA would use this authority only in those situations in which it would provide a cost-effective means for filling vacant positions.

ADDITIONAL PROVISIONS

Additional veterans' provisions contained in the leadership amendment, which I had planned to develop and propose in a committee modification to S. 386 as reported, include provisions which would:

First, increase MGIB education entitlement for reservists from $140 per month to $290 per month for each month an activated reservist served on active duty in connection with the Persian Gulf war.

Second, extend the delimiting date for reservists' education entitlement by the length of their periods of active duty, and provide that reservists are not to be considered to have been separated from the Selected Reserve for education benefit purposes by reason of their active duty service.

Third, restore educational assistance entitlement for participants in programs under chapters 30 (active duty MGIB), 32 (VEAP), and 35 (dependents and survivors educational benefits) of title 38 and chapter 106 of title 10 (reservists MGIB), who had received payment of a monthly allowance in connection with their pursuit of a course but who were called to active duty—or, in the case of an active-duty servicemember—were assigned duties during the Persian Gulf war that caused a failure to complete the course.

The leadership amendment would also: First, provide for an 8.3-percent cost-of-living increase in Montgomery GI bill educational assistance benefits for active-duty servicemembers and for reservists who were activated in connection with the Persian Gulf conflict; and second, increase the monthly payroll deduction from $100 to $110 during the first 12 months of their service for active-duty servicemembers who participate in the MGIB Program.

INCREASED MONTGOMERY GI BILL BENEFITS FOR ACTIVATED RESERVISTS

Mr. President, the provision to increase the MGIB benefit for certain reservists is one that I developed in cooperation with the distinguished Senator from Illinois [Mr. SIMON], who introduced S. 337.

Reservists currently are entitled to $140 monthly in education benefits under the MGIB program established in chapter 106 of title 10. These reservists, who left their civilian lives and careers to support and serve alongside active duty servicemembers in the Persian Gulf, will have an education benefit that is less than half of the benefit provided to their fellow soldiers who participate in the MGIB educational assistance program for active duty servicemembers.

This measure would provide educational equity for reservists who served on active duty during the Persian Gulf war by increasing their education benefit under the chapter 106 program to $290 for each month that they served on active duty during this period. I believe that reservists who are asked to make the same sacrifices as other servicemembers during a period of war deserve a comparable educational benefit. The difference between the amount to be paid to reservists and the active duty entitlement under chapter 30 recognizes that these reservists, unlike chapter 30 participants, were not required to make a payroll contribution to the educational assistance program.

DELIMITING DATE FOR RESERVISTS' EDUCATION ENTITLEMENT

Mr. President, the provision to extend the delimiting date for reservists' educational entitlement under chapter 106 of title 10 by the length of their period of active duty is derived from S. 490 as introduced by the Senator from Oklahoma [Mr. BOREN]. Current statutory requirements allow reservists to use their education benefits during the 10-year period following their attaining eligibility or until they are separated from the Selected Reserve, whichever occurs first. This provision would ensure that, as a practical matter, reservists do not have any less time in which to use their benefits by reason of their active duty service in connection with the Persian Gulf war. It also would provide that they are not considered to have been separated from the Selected Reserve for education benefit purposes.

RESTORATION OF EDUCATIONAL ASSISTANCE ENTITLEMENT

Mr. President, many active duty servicemembers and reservists had to leave school in order to serve in the Persian Gulf or in support of military operations there. A second provision derived from S. 490 would restore educational assistance to participants in programs for active-duty servicemembers, dependents and survivors, and reservists who had received pay-

ment of educational benefits, but were unable to complete their courses as a result of a change in their duties, or their activation, in connection with the Persian Gulf war. Servicemembers who were called from the classroom to serve on active duty would have their entitlement restored so that upon returning they could resume their educational pursuit with the full entitlement that they had before their activation.

INCREASE IN MONTGOMERY GI BILL BENEFITS

Mr. President, most active-duty servicemembers and reservists who participated in Operation Desert Storm are entitled to educational benefits under the Montgomery GI bill. 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 roughly 36.5 percent.

Yesterday I introduced legislation, S. 633, to provide a benefit increase of approximately 40 percent.

Those who have kept our Nation strong and who served in the Persian Gulf certainly deserve to have a GI bill rate increase of this magnitude so that their benefits are not so seriously eroded by inflation. To help address the diminished purchasing power of MGIB benefits, the leadership amendment would, effective August 1, 1991, increase the MGIB benefit for active duty from $300 to $325 a month for full-time pursuit for those serving on active duty for three years or more and from $250 to $271 for full-time pursuit for those who serve 2 years on active duty and four years in the reserves. Although these rates do not bring the 1984 educational assistance benefit to the level in current dollars that was originally intended by Congress, it is a start, and it is in some way serves as recognition of this Nation's gratitude for sacrifices made during the Persian Gulf war.

In keeping with increases in military pay rates for the lower enlisted grades since 1984, this measure would also increase the monthly payroll deduction for chapter 30 participants—made during the first 12 months of their service—from $100 to $110, effective October 1, 1991. This 10-percent increase is less than half the rate at which basic pay has increased since 1984.

A comparable benefit increase would be provided in the rate for GI bill benefits under chapter 106 of title 10 for reservists who were called to active duty during the Persian Gulf war. This legislation would increase the monthly rate from $140 to $152 for full-time study under chapter 106. This COLA for those reservists who served on active duty at this special time of need is another way of saying to them that we value what they did and hope that this increase in their educational assistance can make this a more meaningful benefit for them.

CONCLUSION

Mr. President, it is important to our dedicated men and women in uniform, many of whom were civilians before recently being activated as reservists, that we show our support and that we provide them with benefits equal to those provided service personnel in other periods of war and appropriate to the circumstances of the Persian Gulf conflict. Thus, I urge the Senate to give its unanimous approval to this legislation.

Mr. President, I wish to thank, for their leadership and cooperation in developing the veterans provisions in this measure, the majority leader, Mr. MITCHELL, the Republican leader, Mr. DOLE, the ranking minority member of the Committee on Veterans' Affairs, Mr. SPECTER, and Senators BOREN, DECONCINI, KENNEDY, and SIMON, as well as all other members of the Veterans' Affairs Committee, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. AKAKA, Mr. SIMPSON, Mr. MURKOWSKI, Mr. THURMOND, and Mr. JEFFORDS.

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.

Mr. DOLE. Mr. President, I ask may I proceed out of order.

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

CIVIL RIGHTS—SEARCHING FOR A NEW ADVERTISING PITCH

Mr. DOLE. Mr. President, the beltway civil rights lobby is looking for a new advertising pitch. The so-called civil rights bill—with its racial quotas and lawyer's provisions—is just not selling with the American people.

Fearing a nosedive in public credibility, the civil rights marketing gurus have hastily devised a new consumer outreach strategy.

The strategy is to change the focus of the quota debate by giving the quota bill a fancy new name.

It is no longer the Civil Rights Act of 1991. It is now the Civil Rights and Women's Equity in Employment Act of 1991.

It is no longer a racial spoils and quota bill. It is a bill for persons with disabilities, for working people, and yes, for our Nation's women.

Or so they say.

Mr. President, the American people will not be fooled by this Madison Avenue gimmick. It is the same product, same design, same bill, same quotas.

A quick change in the label changes nothing but the ad copy.

And it does nothing to address the very real problems facing black America today—joblessness, crime, and access to quality schools.

Mr. President, the fact that the civil rights lobby has made H.R. 1 its top priority suggests that they are running out of good ideas, that they have slipped from the moral high ground to which they once had an indisputable claim.

Hiring quotas and lawyer's fees may make some people happy.

But they are a pariah to the overwhelming majority of Americans.

And they are no substitute for good education, safe streets, and equal opportunity.

An article appearing in today's Washington Post—written by the liberal columnist William Raspberry—makes these very points.

I urge all my colleagues to read this article, which reaffirms that President Bush's civil rights bill offers the fair and responsible approach to solving the very real problems of racial discrimination and sexual harassment.

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

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

WHY CIVIL RIGHTS ISN'T SELLING: TOO MANY PEOPLE JUST DON'T BELIEVE IN THIS BILL

(By William Raspberry)

The American civil rights leadership reminds me of the American automobile industry: hoping for a return to the days when its products had worldwide appeal, playing with nameplates and psychological gambits, willing to do almost anything to restore consumer interest. Anything, that is, except the one thing that might work: a better line of products.

The Civil Rights Act of 1991, whose passage the civil rights establishment has declared as its No. 1 goal for the year, illustrates the point.

It is a slightly reworked (not to say improved) version of last year's model, vetoed by President Bush, who insisted it was a "quota bill." This year's effort to enact it—over another veto if necessary—has begun with a change of the nameplate. It is no longer a bill for blacks, designed to restore civil rights law to what it was before a series of Supreme Court decisions made it harder to sue for discrimination. It is now a bill for the disabled, for working people and, oh yes, of course, for women.

It is all those things, in fact. But the point is that instead of trying to show that the legislation is important to interests Americans care about, or working to make it more acceptable to business leaders who really do fear it could lead to racial quotas, the civil rights establishment is trying to sell the bill by changing the ad copy.

The tactic would be questionable enough if the bill were perfect. It isn't. And if the Leadership Conference on Civil Rights will forgive me, in the context of the problems confronting black America, it may not be all that important.

Yes, that 1989 series of court decisions made it harder for minorities to win class-action discrimination suits and called set-aside contracting programs into question. And yes, it would be helpful to go back to where we were before those decisions—not to quotas but to fairer access to opportunity. The Civil Rights Act of 1991 ought to be enacted.

But are the rules governing "disparate impact" suits and minority set-asides of such overriding importance that they should constitute the No. 1 priority of our leaders? I don't think so. The problems most critically affecting black America are the joblessness and despair of our young people, the academic indifference of our children, the dissolution of our families, the destruction (by crime and drug trafficking) of our neighborhoods, the economic marginality of our people. And the Civil Rights Act of '91 won't do a blessed thing about these problems.

Worse, it threatens to divide America along racial lines, when—in my view, at least—white America stands ready to support racial programs and policies it believes to be fair.

An unpublicized survey commissioned by the Leadership Conference on Civil Rights, a coalition of civil rights, labor, women's and disabled organizations, makes the point. White Americans, that survey revealed, see the black leadership as no longer concerned with fairness but only with group advantage. These whites—including such key swing-vote groups as blue-collar workers, lower-income youthful voters and the economically insecure—do not see themselves as racists, or as opponents of equal opportunity and fundamental fairness. What they oppose are efforts to provide preferential benefits for minorities, which they see as the main commodity of the civil rights leadership.

They aren't buying. How could we expect them to buy a product we have spent 400 years trying to have recalled: race-based advantage enshrined in the law?

The black consensus is that white resistance to the agenda of the civil rights leadership is nothing more than latter-day racism, a new mean-spiritedness that is 180 degrees away from the attitudes that helped to produce earlier civil rights legislation. My own view is not that white people have changed but that black people's goals have been transformed. We still say we want to be judged by the "content of our character," but our agenda is based on the color of our skin.

Well, suppose we came up with another product line based on the ideals we hold in common: equal opportunity, equitably enforced; programs designed to heal the crippling effects of past discrimination; hiring and promotion and college placement based on individual achievement and potential, sensitively evaluated; policies to enhance the academic and career prospects of young people who have had too little opportunity.

Suppose we ended production of the old model, which, designed to appeal to white guilt, no longer is selling and replaced it with a new model whose chief marketing points would be its orientation toward solutions (as opposed to blame-assignment) and its unambiguous fairness.

I, for one, think it would sell. I think it would do more for those most in need of society's help. And I think that America would be a better place because of it.

Mr. DOLE. I reserve the remainder of any leader time and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I ask unanimous consent to be added as a cosponsor to the bill introduced by Senator BREAUX to repeal the luxury tax on boats.

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

Mr. WELLSTONE. 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. SIMPSON. Mr. President, I ask unanious consent that the order for the quorum call be rescinded.

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

Mr. SIMPSON. Mr. President, I ask unanimous consent that I may proceed as if in morning business.

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

THE TOUGH CHOICES

Mr. SIMPSON. Mr. President, there is no one better than the Republican leader in expressing a view accurately and with superb precision. His article in today's Wall Street Journal is a vivid example of the clarity he inevitably brings to any issue here.

In this remarkable arena, we earn our pay and our jobs by making the tough choices. We are wholly accountable for every single vote that we cast. Those of us who supported the President in the resolution authorizing use of force were certainly often reminded of that political fact of life several times during the course of that very thoughtful and energetic debate. It was one of the finest, on both sides of the aisle, that I have participated in in my time in the U.S. Senate.

But to assert that some shield of political immunity be now provided to legislators when they make bad choices is entirely ludicrous. I can assure you, without any question or mental reservation or evasion whatsoever, that the 52 Members of us in this body, Democrat and Republican alike, who supported the President would not have been granted some general political amnesty had the war gone wrong or gone sour and not have been concluded in such a highly successful manner.

So throughout the course of our legislative careers—and I have legislated in the State legislature and many of my colleagues have done that also—we expect to be and we are fully accountable to the electorate for every single one of our votes. There is no such thing as a free ride around here, nor should there ever be. We vote and take our lumps or the plaudits. That is the way it works. It is a unique system. It is called accountability, and it is the tap root of democracy.

Mr. President, I ask unanimous consent that the splendid article by Senator DOLE in today's Wall Street Journal be printed in the RECORD.

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

BY BOB DOLE

As a proud America welcomes home its Desert Storm heroes, it is sobering to remember that a shift of only three votes in the Senate nine weeks ago could have turned this smashing victory into a catastrophe.

Despite all the new talk these days about "unity," we should not forget that the Senate, after being AWOL for more than two crucial months, backed the president by a timid 52-to-47 vote. Put three of those winning votes with the 45 Democrats (and two Republicans) who voted against Operation Desert Storm, and suddenly you have the Senate forcing the president to blink as he goes face-to-face with Saddam Hussein.

As Saddam found out, President Bush didn't blink. Neither did the American people nor Colin Powell, Dick Cheney, Norm Schwarzkopf, and the world's finest fighting men and women. Faced with the toughest decisions of his life—and our time—President Bush made the right calls. And thank God he did.

We now know—categorically—that sanctions were a losing game, despite the passionate claims of the opposition. We now know that sanctions would have been a gift-wrapped timeout for Saddam Hussein; a morale-busting stand-down for a half million American troops sweating it out in the desert; and a free pass for Saddam Hussein to resupply his war machine, dig his troops in deeper, and take full advantage of increasingly leaky international sanctions.

ONLY THREE VOTES

We now know that sanctions would have meant another six months, a year, two years for Baghdad to develop chemical, biological and nuclear weapons; another holiday for Saddam's henchmen, behind closed doors in Kuwait, to intensify their grisly reign of terror; another reprieve to shelter hundreds of Scud missiles aimed at Israeli and Arab civilians.

Let's face it. Desert Storm's defeat in the U.S. Senate would have been one of history's most serious blows against a president in a crisis—remember, only three Senate votes stood between the stunning success of Operation Desert Storm and allied disaster.

Hard to believe now, but two months ago, on the Senate floor, here's what some of my distinguished colleagues on the other side of the aisle said about the President's tough stance against the invasion of Kuwait:

"President Bush appears to be on the verge of making a terrible mistake that will have tragic consequences for the whole world."

"The administration is making a great mistake."

"War would be a tragic mistake."

"We are on a disastrous course."

"The rush to combat now . . . is . . . tragically shortsighted."

"The President . . . has moved in the wrong direction."

"We are going to make such a tremendous blunder."

"The President is marching this country toward a senseless and unnecessary war."

"The President is wrong to have threatened Iraq with war."

"The President should retreat "back to the defensive positions of the period up to Nov. 8th."

"I suggest that it is a special arrogance that assumes that we can somehow bring peace" to the Persian Gulf region.

American forces could well be "bogged down by sandstorms and a determined enemy."

"I believe it would be better policy for the United States to cease from threatening war if Saddam Hussein does not withdraw from Kuwait."

One Democratic senator went so far as to say that "we should stay the course . . ., not lurch to war under the illusion that it will be cheap, short, heroic or conclusive." Another declared "about the only certainty is that we are not going to be hailed as heroes or liberators in many corners of the Arab world."

Never before have so many been so wrong about so much.

And never before have so many been so defensive about one vote, which is all the more reason that a re-reading of the debate is in order:

"The essence of democracy is accountability."

"Not a single one of us can escape the judgment of history which will be rendered upon the actions we take today. . . . We cannot escape history."

"Future generations will sit in judgment of our success or our failure."

Those aren't my words—those are the words of prominent Democrats on the floor of the Senate, some of the same senators who are now doing all they can to duck accountability for their votes against Operation Desert Storm.

When it came to what many described as the most important vote of their careers, 45 Senate Democrats voted against the President, against launching Operation Desert Storm. I respect each and every one who voted that way. It was a tough call. I don't question the patriotism of a single member.

But you can't have it both ways. When the chips are down, you have to take a stand—your constituents expect no less. Those of us who supported the president certainly understood the possible consequences of our votes.

Believe me, I have had a few of my votes called into question in re-election campaigns, but I have never had the luxury of singling out votes as "off-limits," as many Democrats are now demanding.

It's sad how some politicians, even as the first war heroes are coming home, are trying desperately to push our national celebration off the front pages, raining on the parade before it even starts.

A TOUGH CHALLENGE

No one should ever talk about the vote authorizing force, we are told. Instead, we must talk about their liberal "domestic agenda," complete with doom and gloom forecasts, laundry lists of big-ticket federal programs and new taxes.

In his dramatic address to Congress last week, President Bush tossed the domestic issue right back at Congress with a tough challenge of his own: If we can win the land war in 100 hours, surely Congress can stop talking and enact meaningful legislation in 100 days.

Many pundits are predicting that 1992 will be the next test of accountability, that "essence of democracy." Our votes on the domestic agenda will no doubt be part of that test. Like it or not, so will our votes for, or against, Desert Storm.

Looking back at the Senate debate, I see at least one Democrat agrees: "If we are wrong and the American people want to go to war, then in the election of 1992 I assume those people who feel my vote was wrong will vote against me."

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF DEFENSE DESERT STORM SUPPLEMENTAL AUTHORIZATION AND MILITARY PERSONNEL BENEFITS ACT

The Senate continued with the consideration of the bill.

Mr. WELLSTONE. Mr. President, I fully support—and indeed have worked to help put together—the legislation for military personnel benefits. This benefits package justly recognizes the contributions of the men and women who served so honorably in the Persian Gulf and recognizes the hardships of the families—the wives, the husbands and the children—of our service personnel.

I was proud to work as a member of the task force which helped shape this bill. I thank Senator GLENN for his leadership on the task force and the leadership of both parties which forged the leadership agreement.

This bill provides for a wide range of benefits for the troops, including increased hostile fire or imminent danger pay, transitional medical coverage and clarification of employment rights. The bill also provides for a range of benefits for the families of the troops, including child care assistance and education and family support services.

I am pleased that these essential veterans and personnel benefits will be funded out of Department of Defense accounts to pay for incremental costs of Operation Desert Shield.

I hope we can welcome the troops home in another way, too, by focusing our energies and our commitment to moving forward on the home front to address urgent domestic issues—to health care, to education, to energy policy, to the economy. There would be no better reward for the troops coming home than to show them and their fellow citizens that we are committed to a better, fairer America.

VITIATING RESTRICTION ON OFFERING OF AMENDMENTS

Mr. MITCHELL. Mr. President, the Republican leader and I have discussed this bill, and pursuant to the agreement entered earlier, I vitiate the restriction on the offering of amendments.

The PRESIDING OFFICER. The majority leader has that right.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Senators, we have just completed a series of meetings involving the Republican leader, myself, the distinguished managers of the bill, the chairman and ranking member of the Armed Services Committee, and several other Senators who have an interest in this bill. I believe and I hope that we are now in a position to move promptly on this bill.

There will be no rollcall votes this evening.

The Senator from Virginia will shortly seek recognition for the purpose of offering an amendment thereafter the Senator from Georgia will seek recognition to offer a substitute amendment. Those amendments will be debated thoroughly this evening. That will be the business of the Senate this evening. It is an important issue, one which warrants full and careful discussion, as I know will occur with these two Senators involved.

Then that will be the pending business tomorrow morning. We will then return and I hope then, following further discussion with the managers and with the Republican leader, to be in a position to announce further action on the bill at that time tomorrow morning.

Mr. DOLE. If the Senator will yield, the majority leader is correct. I would encourage my colleagues on this side, tomorrow morning, unless they just feel compelled to offer an amendment, they not offer the amendment.

There have been a number of Members on both sides working on the benefit package for weeks, probably a couple of months. It has been bipartisan, totally open, with plenty of opportunities, and we have tried to put together a responsible package. I think we have that now. I hope we can complete action on it fairly quickly. I will be cooperating with the majority leader in that effort.

Mr. MITCHELL. Mr. President, I thank the distinguished Republican leader and the managers, Senator NUNN and Senator WARNER.

This has been one of those situations in which there have been extended private discussions which I think, indeed I am confident, will result in more prompt disposition of the legislation than would otherwise have been the case. That at least is my hope.

I am very grateful to all Senators who participate in this.

I repeat for the information of Senators there will be no rollcall votes this evening. However, we do expect rollcall votes tomorrow, and we hope to dispose of this bill in the near future.

Again, I thank my colleagues and I yield the floor.

Mr. WARNER addressed the Chair.

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

Mr. WARNER. I thank the distinguished majority leader and Republican leader. Indeed, they have counseled with the chairman of the Armed Services Committee, myself, and others. I think by the proposed action which I will initiate shortly we can keep this bill and the momentum going through the early evening hours.

I would propose now to forward my amendment to the desk for immediate consideration and then yield the floor for the distinguished chairman of the Armed Services Committee to send up his amendment in the second degree in the nature of a substitute. If then I can regain the recognition of the Chair, I would propose for a brief period to outline the purposes of my amendment. Since I have had a considerable period today to do that, I would then engage in a colloquy with my chairman.

AMENDMENT NO. 30

(Purpose: To express the sense of Congress regarding the development and testing of ballistic missile defense systems)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 30.

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

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

The amendment is as follows:

At an appropriate place in the bill, insert the following new section:

(a) FINDINGS.—Congress makes the following findings:

The growing proliferation of ballistic missile technology and weapons of mass destruction clearly represent an increasing threat to our forces overseas, as witnessed in the Persian Gulf war.

According to the Director of Central Intelligence, William Webster, by the end of the century 15 to 20 developing countries will be capable of producing ballistic missile capabilities; at least six developing countries will have ballistic missiles with ranges over 2,000 miles, of which, at least three of them may develop missiles with ranges of over 3,400 miles that, in some cases, could threaten the United States.

The devastation and loss of life from ballistic missile attacks was evident in the Scud attacks against Saudi Arabia and Israel.

The concern of widespread ballistic missile proliferation is compounded by growing ethnic unrest and political instabilities in the Soviet Union which could increase the possibilities of unauthorized or accidental use of ballistic missiles.

The SDI program has made remarkable progress in the research of technologies aimed at defending against ballistic missiles.

While the demise of the Warsaw Pact represents a major favorable change in the United States-Soviet relationship, the Soviet Union nonetheless remains, at the present time, the only country that has the nuclear and ballistic missile capability to threaten the United States.

Despite its enormous economic difficulties, the Soviet Union is continuing its relentless strategic offensive and defensive modernization program within the currently defined numerical START limits.

The ABM Treaty of 1972 was negotiated under a significantly different world situation and state of technology than the United States faces today.

Article 5 of the ABM Treaty of 1972 prohibits the development, testing, and deployment of those ABM systems or components described in Article 2, which are sea-based, air-based, space-based, or mobile land-based.

Continuing restrictions on the development and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology and unnecessarily complicates ABM experiments, which results in added risk to the program schedule and increased cost to taxpayers.

(b) SENSE OF CONGRESS—It is the sense of the Congress that—

(1) The United States, its forces, its friends and allies face a growing threat from ballistic missile strikes.

(2) It is in the national interest of the United States to protect the United States, its friends and allies and United States forces overseas from ballistic missile strikes.

(3) It is in the national interest of the United States to be permitted to develop and test ballistic missile defense systems and components, without restriction as to mode or environment, and therefore the Administration should negotiate and sign with the Soviet Union, within two years or less, an agreement which would clearly remove any limitations on the United States having effective defenses against ballistic missiles.

(4) During the period described in clause (3), in expectation that such an agreement will be signed, the Secretary of Defense should undertake preparations for the development and testing of systems and components designed to defend the United States and its armed forces, wherever deployed, from ballistic missiles even though some of the actual development and testing may not be permitted by the ABM Treaty of 1972.

(5) If such an agreement is not reached within the period described in clause (3), the President should make immediately a determination as to whether continuing United States adherence to the terms of the ABM Treaty of 1972 is in the United States national interest, and should immediately thereafter advise Congress of such a determination.

AMENDMENT NO. 31 TO AMENDMENT NO. 30

(Purpose: To provide for enhanced research, development, test, and evaluation relating to ballistic missile defense)

Mr. NUNN. Mr. President, I send an amendment to the desk in the nature of a substitute and ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. NUNN. Mr. President, this amendment is on behalf of myself, Senator HEFLIN, Senator SHELBY, Senator DIXON, and Senator BINGAMAN.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for himself, Mr. HEFLIN, Mr. SHELBY, Mr. DIXON, and Mr. BINGAMAN, proposes an amendment numbered 31 to amendment No. 30.

Mr. WARNER. Mr. President, I ask unanimous consent on behalf of the chairman and myself to dispense with reading of the amendment.

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

The amendment is as follows:

In the pending amendment, strike out all after "(a)" and insert in lieu thereof the following:

PROCUREMENT OF NEW PATRIOT MISSILES.—Of the amounts authorized to be appropriated to the Army for procurement of missiles for fiscal year 1991, $224,000,000 shall be available for the procurement of Patriot missiles and Patriot fire units. Such amount is in addition to amounts otherwise made available for the procurement of such items for fiscal year 1991 by this Act or any other Act.

(b) ACCELERATION OF RESEARCH AND DEVELOPMENT FOR NEAR-TERM ANTI-BALLISTIC MISSILE DEFENSES.—Of the amounts authorized to be appropriated to the Department of Defense for the Strategic Defense Initiative for fiscal year 1991, $487,000,000 shall be available for ground-based sensors and interceptors designed for early deployment to protect the United States against attack by strategic ballistic missiles, as follows:

(1) For E2I (project 2203), $95,000,000.

(2) For exoatmospheric interceptor GBI-X (project 2202), $142,000,000.

(3) For ground-based radar (project 2104), $150,000,000.

(4) For ground surveillance and tracking systems (project 2103), $100,000,000.

(c) ADMINISTRATIVE ADJUSTMENT OF INITIAL FY91 SDI ALLOCATIONS.—(1) The Secretary of Defense shall adjust—

(A) the initial FY91 SDI allocation for each Strategic Defense Initiative program, project, or activity referred to in subsection (b) in accordance with such subsection; and

(B) subject to paragraph (3), the initial FY91 SDI allocation for the other Strategic Defense Initiative programs, projects, and activities as necessary to ensure that the total amount allocated among the Strategic Defense Initiative programs, projects, and activities for fiscal year 1991 after such adjustments are made does not exceed the total amount of the initial FY91 SDI allocations for all Strategic Defense Initiative programs, projects, and activities.

(2) In making adjustments under paragraph (1)(B), the Secretary shall ensure that each adjustment to a program, project, or activity is proportional to that program, project, or activity's share of the total amount to be adjusted.

(3) In making adjustments under this subsection, the Secretary shall not adjust—

(A) any initial FY91 SDI allocation of $20,000,000 or less; or

(B) the initial FY91 SDI allocation for any program, project, or activity listed under the heading "Theater and ATBM Defenses" in the FY91 SDI allocation report. (4) In this subsection:

(A) The term "initial FY91 SDI allocation", with respect to a program, project, or

activity of the Strategic Defense Initiative, means the amount of the funds appropriated for the Strategic Defense Initiative for fiscal year 1991 that has been allocated to such program, project, or activity, as contained in the FY91 SDI allocation report.

(B) The term "FY91 SDI allocation report" means the report, dated February 4, 1991, that was submitted by the Under Secretary of Defense to the congressional defense committees pursuant to section 221(c)(4) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1513).

Mr. WARNER. Mr. President, once again I address the Senate with respect to the amendment now pending, an amendment which I discussed this morning, an amendment which in my judgment is timely for the reason that we have now, as some of us have learned, publicly learned from the Director of the Central Intelligence Agency, that by the year 2000 there will be some 20 nations that will possess ballistic missiles with ranges of several hundred miles to perhaps as much as 3,500 miles; that the warheads in these missiles could be quite diverse; that they could contain, indeed, not only high explosives but chemical and biological warheads, all of which leads me to believe, in the light of experiences in the gulf, that America should now reexamine its position under the ABM Treaty of 1972, a treaty for which I was privileged to be in Moscow with the President of the United States at that time in my capacity as Secretary of the Navy, having completed the Incidents at Sea Agreement, an executive agreement, which I executed on behalf of the United States the day before the ABM Treaty was executed. We should reexamine our position under that treaty, and we should do it by the constitutional process of having the President of the United States continue—I underline "continue" because there have been negotiations in progress for some several years now—to negotiate revisions of the ABM Treaty to allow the United States to unleash its full industrial and technical capability to determine—and I underline the word "determine"—through a full range of testing, a full range of development, whether or not we as a Nation, perhaps in conjunction with comparable work by our allies, can construct a cost effective system to interdict the potential, as I have described before, proliferation of ballistic missiles.

Mr. President, the ABM Treaty has many very valuable sections. There is a section which enables the President to do just as I have described. There is a section with respect to deployment. I am not suggesting we try to renegotiate in this first timeframe of 2 years an ironclad decision with respect to deployment. My amendment is a very narrow one. It puts the Congress of the United States in the format of a sense-of-the-Congress on record as endorsing basically what the President is now undertaking. But the Soviet Union will know there is a joinder of minds, a joinder of action comparable to what we saw in the Persian Gulf where the Congress did give the President the authority he desired to take such steps as to fulfill the objectives of the 12 U.N. resolutions.

We should join with our President now and support his constitutional right to try to renegotiate certain provisions of this treaty.

The amendment is explicit in terms of what we set out by way of findings. Essentially I have stated findings in my opening remarks. But the first one I think establishes the tenor of the amendment: The growing proliferation of ballistic missile technology and weapons of mass destruction clearly represent an increasing threat to our forces overseas as witnessed in the Persian Gulf.

All of us had the full opportunity, through extraordinary real-time reporting by our media—indeed, media from all over the world—to see the consequences of the Scud attacks and the threats associated therewith, of how the fragile coalition of nations comprising 28 countries, with military forces, military forces which had combined to solve problems of joint command and the like, combined to succeed in enforcing the 12 U.N. resolutions.

The State of Israel showed great courage and determination to remain in a posture of not having to send its military forces, a right they had as a sovereign nation, to engage Iraq, a nation which rained upon them the Scud weapon, a weapon we do not categorize as a weapon of military value, but it is a terrorist weapon. It was used indiscriminately against innocent, helpless civilians, the people of Israel. They suffered death; they suffered injury; they suffered destruction; but they maintained throughout a steadfast courage and determination that shall be ever remembered. They did not intercede militarily.

We saw the Scud attacks on our own and allied forces in Saudi Arabia. We witnessed a tragic loss of American lives as a direct consequence of our inability to effectively interdict a Scud missile.

So I say to my colleagues, the time has come. The time has come when we should unleash our industrial strength, unleash America's scientists, to determine only if we can, in the coming years, devise an effective defense. Then a subsequent President, perhaps—I do not know whether the research could be concluded within the stipulated term of the next President of the United States and a subsequent Congress—could make the determination as to whether or not this system, which has a proven and cost-effective value, should be deployed.

I mentioned personal experiences I had over the past few days, sharing the joy of returning veterans, and equally sharing the burden of sorrow, associated with the tragic loss of over 120 Americans who will not come home, at two services.

Do we want to send future generations, or indeed this same generation of Americans, once again beyond our borders? And who among us wants to look into the faces of those young men and women as they embark? Who wants to look into the faces of their parents and loved ones here at home? Who wants to look into the faces of our fellow citizens and say we, the United States of America, are restraining our own intellectual, scientific, and industrial capability, restraining them by virtue of treaties some nearly 20 years old, restraining them from devoting the full resources of our Nation to protecting them from attacks that we witnessed in the Persian Gulf?

This Senator does not want to be a party to that, and it is for that reason that I want now to have our President receive the endorsement of the Congress of the United States to go forward and continue, but continue now with our joining him, albeit a sense-of-the-Senate resolution, joining him in saying to the Soviet Union: The time has come to go back and reexamine the wisdom of the negotiators, who negotiated, and subsequently the treaty being executed by the President—revisit that.

We could not have envisioned then this proliferation of the ballistic missile. We could not have envisioned then the capability. I am confident that America has the capability to devise a system that can adequately protect Americans. But I do not want to restrain it, restrain it in a way that is going to cost the American taxpayer more money.

Oh, there will be arguments to the effect, well, we can do it all within the ABM Treaty. Let me say, those arguments are predicated on much more time being expended, so much time that we may not be able to protect, should we have the misfortune, the next embarking troops; so much more time that it will cost the American taxpayers many added dollars.

So I say, Mr. President, only let us go and negotiate and see what we can do. What is the harm, Mr. President, in allowing our President of the United States to pursue his constitutional responsibility and seek a renegotiation as provided within the framework of the 1972 treaty?

I yield the floor.

Mr. NUNN addressed the Chair.

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

Mr. NUNN. Mr. President, I agree with much of what the Senator from Virginia has said and what he is shoot-

ing for. I would submit in brief context that his amendment is shooting at the wrong target, however, because the real problem in any kind of near-term defense is not the ABM Treaty or the impact of the ABM Treaty on testing or development.

None other than the President's own National Security Adviser, General Scowcroft, made that very plain in the report he offered with the Aspen strategy group in 1987. I will quote from that in a moment.

The problem is the way the SDI organization [SDIO] in the Bush administration is allocating the money that we are giving them every year to spend. They are putting the money on long-term Brilliant Pebbles research, and they are cutting back drastically on near-term systems that are much more available for the next 5 to 10 years.

So if we are serious about wanting what the President said in his State of the Union we want, and he did say very clearly that he is shifting the directions of this program—we do not know all the details yet, but the President said, quoting him in his State of the Union:

> Looking forward, I have directed that the SDI program be refocused on providing protection from limited ballistic missile strikes, wherever their source.

Now, that is what the President said. But his SDIO is cutting the very programs that are designed to do what he wants. So there is a disconnect between what the President is saying and what his own administration is doing.

Maybe the people in the SDI office have not caught up yet with what the President of the United States wants, but I think the President has made a move in the right direction. It is a direction I have been recommending for some time.

We talk about the Scud missiles in the Middle East. The Senator from Virginia and I were together when an attack came, as he related earlier in the day. We were in the Defense Ministry when the Scud missile was launched, and we had about a 5-minute warning in the middle of a conversation with the Israeli Defense Minister. We heard the Patriot go up. We heard the intercept.

We found out the next day that the Defense Ministry was indeed the target. So we ourselves had some pretty interesting experiences there. We understand very well what the citizens of Israel have gone through.

We have great feeling for that, and also what the citizens in some of the Saudi Arabian cities have gone through.

The problem is SDI is not putting the money in these systems. People are getting the wrong idea. That Patriot missile, which we watched perform, is not perfect. It had some problems. We have a lot of improvements that can be made in the Patriot. I think the experience is going to make that a much better system.

But there is a mistaken impression around that it is part of SDI. Patriot has nothing to do with SDI. The reason we have the Patriot now is because it was not in the SDI; the Army did it. This was purely U.S. Army. It was not part of SDI.

There is no clearer record anywhere than that; there is no dispute on that. If the Patriot missile had been part of SDI, I am sure by now that money would have gone to the Brilliant Pebbles Program, which is going to come, if it comes at all, way down the line. I am not against Brilliant Pebbles. It has a worthy research purpose. But it is long distance away. It is way off.

If we had been waiting on SDI to come up with a system, we would have no defenses in the Middle East. We have been putting money in ballistic missile defense for many years—before President Reagan ever made his speech. But if we had waited on SDI, we would have had no defense in the gulf.

Thank goodness, the U.S. Army was not wrapped up philosophically in some kind of esoteric mission and decided they were going to get the job done, and therefore we had the Patriot missile.

A lot of people in Congress had a lot to do with it. Our appropriators pushed the new PAC-2 attachment to the Patriot missile which gave it the anti-missile capability. The Patriot was originally designed by the Army to shoot down aircraft, not missiles.

The Appropriations Committee pushed this, and we joined them in that effort. The Senator from New Hampshire [Mr. RUDMAN] was one of the real leaders there. He took the lead in pushing that technology which enabled us to have that capability.

Mr. President, the Senator from Virginia and I may, before this 3- or 4-month period is over, after we have gone through our deliberations and have held hearings and heard from the SDIO—the Office of Strategic Defense Initiative Organization—we may be able to join together, I hope, in building some bridges over the gap between what is now being said about the goals of SDI and what is actually happening with the SDI money.

I join him in many of his comments about the necessity for moving forward, particularly against third-country threats; particularly against the possibility of an accidental launch; particularly against the possibility of an unauthorized launch.

But that is not what SDI has been all about up until now. SDI had been charged with the responsibility of being able to knock down 50 percent of a Soviet SS-18 attack, which would be a massive attack—not a limited attack. If we had stayed with that kind of program—and the President has now indicated we will not—we would have been talking about putting literally billions and billions and billions of dollars in; waiting years and years and years and years.

The SDI office now says that the earliest we can have the new limited protection program ready is by 1999 or the year 2000. That assumes all sorts of money pouring in, which is probably beyond even the administration's budget that they will be submitting, let alone what is likely to pass here in Congress.

The SDI office is not talking about the same thing the President is talking about, and I think one of the things that can be most meaningful is if the President will explain to the SDI office that he really wants something that works, and he wants it during the next 5 to 10 years. If he does that, we may well get a shift in direction, and maybe the goals and aspirations of the President of the United States, and I think those of a number of us in the Congress, will be carried out in the SDI Program. But that is not what is being done now.

Mr. President, I think, frankly, with hearings and some time to work on it, that we can make some bridges with the amendment of the Senator from Virginia. I could not speak for anybody else, because there are a lot of strong feelings on this subject on both sides of the aisle, and both sides have people on different sides of this issue; but, as far as we are concerned, I think we can work out a lot of this langugage. I do not think we are going to be able to do it in the context of this emergency bill, which is designed for Operation Desert Storm and Desert Shield. It is my hope that when the Senator gets on the plane tomorrow afternoon and leads the delegation to Kuwait, he will be able to get off the plane, speak on behalf of all of us on the committee and say to the troops over there that we have passed your Desert Storm/Desert Shield emergency bill, and it has a number of benefits.

What I would like to do is take action in the next 24 hours that would allow the Senator from Virginia and the Senator from Kentucky, Senator FORD, to walk off that plane and make some announcements to the troops. I think it will give them a big morale boost. If we have to deal with this amendment, as the Senator from Virginia knows well, we are talking about a long debate and not just because of this amendment taking time. I think there are probably 20 or 30 people on our side who would like to talk about this amendment and at least 5 or 10 on the Republican side of the aisle. So you are talking about speeches all day tomorrow and probably all day Friday and Saturday, too. Beyond that, even if we were to dispose of this amendment very promptly, even, say if we could dispose of it and vote up or down one

way or the other, or on the substitute, sometime tomorrow, what this amendment does is unwind the agreement that we have been seeking. It is not an agreement that has been made, but one we have been seeking, to keep this a clean bill. If we open it up, we are going to have at least 20 or 30 other amendments. A lot of Senators have refrained from bringing up their amendments at the urging of the majority leader, because they want to see this bill go through. But, also, a lot are sitting around in their offices, and their staffs are just waiting for one amendment to come in that has nothing to do with the emergency situation and the funding and the benefits, and have that one amendment come in, and when that comes in, they are going to pounce on it, and we will have amendments that will occupy us for the next couple of weeks, probably.

This is a serious amendment. It deserves serious review. I know the Senator from Virginia has already told us he was going to bring this up. He brought up a much more far-reaching amendment in the committee, and he has worked, I am sure, with the White House in scaling this one back. He has made some rather considerable improvements in it, because the original amendment was deliberated in committee and would have, in effect, directed by law the President to disregard the treaty that we entered into. It would have been a directive from the Congress to the President of the United States to basically abrogate a treaty. This amendment does not do that. This amendment is not that far reaching.

There are a lot of questions relating to this amendment. The amendment declares: "It is in the national interest of the United States to be permitted to develop and test ballistic missile defense systems and components, without restriction as to mode or environment." That is what the amendment says. That is perhaps correct, if you look at it unilaterally. The problem is, whatever you do in this treaty is a two-way street. So that raises the question as to whether it is in the national interest of the United States for the Soviet Union to be permitted to develop and test ballistic missile defense systems and components without restrictions as to mode or environment. I do not know the answer to that question. I think it will take a lot of hearings to answer that question. It is a two-way street, not a one-way street.

The amendment urges the President to negotiate an agreement with the Soviet Union within 2 years, which would "Clearly remove any limitations on the United States having effective defenses against ballistic missiles."

If that really means what it says, that means you have to get rid of the deployment restrictions in the ABM Treaty, too. The Senator says he is not intending to do that. If you do not eliminate the restrictions on deployment, you are not going to have any missile defense against large-scale attacks. So I do not know what the amendment means. The question arises, what does it mean? Does it imply we are to get rid of any restriction on deployment also? That is a serious question that deserves a lot of consideration.

The amendment declares, "Continuing restrictions on the development and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology." This amendment basically declares that the ABM Treaty unduly restricts effective demonstration of ballistic missile defense technology.

I will stipulate with the Senator that, at some point, it will do that. At some point, the ABM Treaty will do that, depending which system we try to go for. It is certainly likely they will want to do it, unless something changes. But if that is the case in the near term—and all of the Senator's remarks indicate he is worried about the near term—then why did General Scowcroft, who is President Bush's National Security Adviser, agree in 1988 that: "Adhering to the ABM Treaty in its traditional form"—we are not in this broad versus narrow; he is talking about the narrow definition—"would not seriously hamper a sensible research and development program for another decade." He goes on to say: "We would forfeit very little in technical terms by remaining in compliance with the treaty and thereby continuing to reap its contributions to our security."

The President's National Security Adviser, in 1988, is saying that in the next 10 years it will not have any impact. I am not sure I would go quite as far as 10 years. It may have an impact before then. All of our testimony is that this treaty is not impacting the planned program at this juncture and will not for at least 2 or 3 more years. General Scowcroft, in 1988, said 10 years. It may not be that long, but at least not for the foreseeable future.

Mr. WARNER. If I could ask a question for clarification. Was General Scowcroft National Security Adviser in 1988?

Mr. NUNN. No. He is now.

Mr. WARNER. I feel that the Senator was projecting that.

Mr. NUNN. The general was a retired general in 1988, a private citizen.

Mr. WARNER. He was associated then with Dr. Kissinger in international consultation. So it may be a situation where what we do today we can undo tomorrow.

Mr. NUNN. He may have indeed changed his mind. I do not know. That study was cochaired by Bill Perry, who most of us would stipulate knows more about R&D and complicated technology than anybody I have seen come through the Department of Defense. There are a lot of people who feel this way and a lot of people on the other side. Certainly, the Senator is correct, and he makes his point well. General Scowcroft was not then the National Security Adviser. Those were the days when he could let his mind flow unimpeded by any philosophical hang-ups.

At that stage he was able to make completely objective observations. Now he does have more restrictions, and I agree with the Senator on that.

Mr. WARNER. Mr. President, before the Senator proceeds, I have the current General Scowcroft statement with respect to this, dated March 1991. I will momentarily provide it.

Mr. NUNN. Has that cleared the Office of Management and Budget and the other procedures it has to go through?

Mr. WARNER. Unfortunately it is a private letter addressed to the Senator from Virginia. I shall read it momentarily.

Mr. NUNN. I thank the Senator.

Mr. President, the amendment cites the Soviets' relentless modernization of its strategic offensive capabilities and that is certainly a trend that concerns us all. It is a puzzle to me how a country with as many serious economic problems as they have can conduct what is indeed an amazing strategic nuclear program. While their military on the ground is having all sorts of problems and being cut back, their strategic nuclear programs are not being cut back.

I hope that will change, but so far the Senator is right it has not. It worried all of us. However notwithstanding this trend, President Bush announced in the State of the Union message last month that he was refocusing SDI away from defending against a large-scale Soviet strategic attack in favor of protecting against "limited ballistic missile strikes whatever their source."

Will this new limited protection system require a wholesale abrogation of all ABM Treaty restrictions on development and testing, as recommended by the amendment? Or might we not be able to develop, test and even deploy an effective limited protection system within the current limits of the treaty or, if required, with some far more modest amendments than recommended here?

These questions have not been answered because the President has not made it clear for the benefit of the American public. They are saying how does all this effect me? The phase 1 system we were planning before, if it worked out just like everybody was saying, and if we did have a ballistic missile attack against the United States, the good news is it would knock down, if it works and everything goes according to plan, some 50 percent of the Soviet's SS-18's.

That means the good news is that about half of the 3,080 warheads would be knocked down. The bad news is about 1,500 of those would hit this country. So we were talking about something that was not going to be like the television advertisement where you had an umbrella over your house. One thousand five hundred nuclear warheads hitting on the United States would devastate this country beyond recognition.

Now, of course, I would add the hope it would add to deterrence, and by adding to deterrence we never would have the attack in the first place. But there are a lot of things that add to deterrence. We are not talking about a shield over America. We are talking about something that adds to the deterrent capability of our country to prevent an attack ever taking place in the first place, because even if the current plans, the current system before the President's State of the Union speech, even if it worked perfectly under an attack we were still going to have a country that would not be recognizable because we would have had a devastated country in that respect.

So, that is the scope of what we are talking about. What we are really trying to decide here, and I hope we can come to some conclusions on this that are logical in next 6 or 8 months, we are trying to decide whether it is better to devote our resources to near-term technology that can protect us against limited attack that are much more likely to occur from third countries or from some accidental or unauthorized launch, or whether on the other hand we are going to go for this very exotic system that will take a long, long time, a lot of money to develop and when we get through developing it, at least in first stages, we are still not going to have anything like a comprehensive defense. We are going to have airplanes and every other kind of missiles that will be able to get through unless we go forward with air defenses. That is a whole other subject that we have not started to explore seriously.

Mr. President, I think I have said enough about the Warner amendment, except to say I would like to work with him in trying to answer these questions because there undoubtly are some answers here. As we work through the committee hearings this year, I hope that we can build some bridges between those of us who want to do something on a more limited nature as the President has indicated he is moving toward, and those who are favoring the continuation of a program which is going to take a long, long time at best.

Mr. President, I would like to briefly explain my substitute amendment which I hope our colleagues will support. The first thing I would observe is that the substitute amendment, the Nunn amendment cosponsored by Senator SHELBY, Senator HEFLIN, Senator BINGAMAN, and Senator DIXON, authorizes $224 million in 1991 funds appropriated for army missile procurement to be available for the procurement of additional Patriot missiles and Patriot fire units. This $224 million is in addition to whatever sums are already available in the committee-reported bill from Patriot procurement. During our hearing on the Desert Storm supplemental, the Defense Department indicated that it planned to spend $100 million of the sums made available in the bill to buy 158 Patriot missiles. The $224 million in additional funding in my amendment would procure additional Patriot missiles and additional fire units.

The lessons from Desert Storm are clear. First, military crisis requiring substantial combat forces can come up with very little warning;

No. 2, regional powers already possess short-range ballistic missile which can pose immediate threats to our forces that are deploying in response to future crises;

No. 3, the reinforcement strategy that worked so well in the gulf involved a mix of fast airlift and fast sealift and propositioning of military forces;

No. 4, the airlift operation was disrupted in the early days of Desert Shield as we attempted to rush Patriot missiles to Saudi Arabia in an emergency situation.

It is clear, therefore, that in future crises we will want to establish a Patriot security shield over our early deployment forces. The most efficient way to do that is to deploy Patriot battalion aboard prepositioned ships. Those ships are out there, they are near the scene of any kind of contingency, but in all likelihood the Patriot missiles would be stationed back here.

We currently have three squadrons of maritime prepositioned ships. Those are known as MPS ships. My concept would entail putting three Patriot batteries, which is half a batallion, on each ship. This is sufficient to provide a protective screen for the offload operation and two area airfields to support the airlift operation.

There should be no difficulty in storing Patriot batteries and missiles afloat. The MPS ships currently store six short-range air defense Hawk launchers per squadron, and Patriot units were engineered to endure a broader range of difficult environmental conditions than were the Hawk units.

This concept would call for a total of nine batteries.

One Patriot battery costs $105 million each. Thus, my substitute amendment will allow the procurement of the first two Patriot batteries to apply against this kind of concept.

Second, the Nunn amendment accelerates the development of antiballistic missile programs that could be available in the near term as a deployment option to protect the United States against accidental, unauthorized, or third nation launches of ballistic missiles. The substitute amendment restores the funding authorized in the current fiscal year for four such programs to the fiscal year 1991 level originally requested by the SDIO.

The so-called E-squared-I; the ground-based interceptor program that is called GBI; the ground-based radar program, or GBR; and the ground-based surveillance and tracking system, known as GSTS. These four programs are increased by a total of $218 million in fiscal year 1991.

To offset the increase that this amendment calls for, the director of the SDI would be directed to make a proportionate across-the-board cut in other fiscal year 1991 SDI programs, projects and activities. That would amount to a 9-percent reduction in all other SDI accounts except the four ground-based programs I just mentioned, plus those that come under the heading of theater and ATBM defenses and those that the SDIO has indicated wil' be funded at less than $20 million in fiscal year 1991.

Mr. President, no one has worked harder on the ATBM issue—antiballistic missile defenses—than the Senator from Virginia. I hope he will join me in this effort, because it would protect the very kind of systems that he has been pushing so hard.

This amendment does not change or increase the total amount of funds spent by SDI in fiscal year 1991. It will, however, reallocate the $218 million in previously approved fiscal year 1991 SDI funding to permit acceleration of those programs that offer the best and most immediate near-term prospect of affording this Nation limited protection against the very ballistic missile threat from third countries that the Senator from Virginia has described, and that he led the way on last year even before Operation Desert Storm.

Mr. President, in closing let me say that I recognize, indeed all of us recognize, that the ABM Treaty limits our ABM options both in terms of development and testing and in terms of deployment. After all, that was the principal idea behind the treaty. We wanted to avoid the Soviet Union getting defenses, the United States getting defenses and having a spiral of offensive weapons in response to that. The more defenses you have in certain environments, the more offensive the other side has, and you get on this upward spiral of offense, defense, offense, defense. That was the spiral we tried to stay off. The ABM Treaty has kept us off of that spiral.

Now we are in a different environment. We have a different kind of Soviet Government. We hope that they will continue to be different, although

that remains a serious question. The ABM Treaty does not mandate total ban on such key defenses. With this in mind I have said on many occasions that I strongly support a rigorous exploration of deployment options for a limited missile defense against accidental, unauthorized or third-nation launches.

I have also said on those occasions I am fully prepared to support, and indeed would encourage, modest amendments. I think that is all that would be required to the ABM Treaty, modest amendments to maximize the effectiveness of such a defense.

Such amendments could, in my view, include relaxing numerical limits in the treaty on the number of permitted ABM interceptors or the number of permitted ABM interceptor sites, and also most importantly, could allow the utilization of much more capable sensors in space.

So I am not one of those who are dedicated to absolutely no changes in the ABM Treaty. There may have to be updated amendments and I certainly hope that we will be able to negotiate something with the Soviet Union that would permit that.

This is the negotiating strategy, I believe our defense and space delegation should be pursuing in the Geneva talks. That is how I believe we ought to go about revising the ABM Treaty to permit us, if necessary, to provide a credible and effective limited protective system for the United States, as the President has called for.

I believe the Soviet Union may well share our interest in defending against a regional missile threat. If however that negotiation effort is rebuffed by the Soviet Union and our supreme national interests so require, the United States can always formally withdraw from the treaty, as provided in the treaty itself, after observing the required 6-month notification period.

Mr. President, I urge that the substitute amendment be supported by our colleagues. I assume that we will not have a vote tonight on this amendment, but when the appropriate time comes I will urge its support.

At this point, Mr. President, I yield the floor.

Mr. PELL. Mr. President, I strongly support the substitute amendment offered by my colleague, the Senator from Georgia [Mr. NUNN]. The amendment gives proper support to tactical defenses without doing violence to the centerpiece of modern arms control, the 1972 Antiballistic Missile Treaty.

We are all thankful that the Patriot missile system worked so well in Saudi Arabia and Israel in defending against the Scud B missile. It is important that we give the necessary support to the Patriot system and its further development as well as tactical defenses in general. The Nunn amendment does that. Equally importantly, the Nunn amendment avoids two very serious mistakes the most fervid supporters of the strategic defense initiative would have us make. First, some would have us mistake the success of Patriot for a triumph for SDI. They are not the same. Patriot is the result not of war in the strategic defenses, but rather result of clever hard work in refining and improving air defenses. If we understand this, we will understand the foolishness of the second and potentially quite serious mistake, damaging or destroying the AMB Treaty in the misbegotten belief that a solution for strategic defenses is at hand.

Mr. President, I have supported a strong SDI research program. Unfortunately, too many are prepared to leap too fast toward testing and deployment. This constitutes endangerment of the ABM Treaty. Some of the latest notions, such as Brilliant Pebbles or Brilliant Eyes may well in the end prove not so much brilliant as clever or perhaps too clever—so that what they offer may be nothing more than chimera. We should not rush to adopt such concepts until we have done the most rational and careful study. And we should be quite careful to avoid trashing the ABM Treaty in support of some dash into the unknown.

Within the bounds, it is possible to test a great deal so long as the system and components are not ABM capable and not in the ABM mode. If we pursue that approach, we can learn a great deal without jeopardy to the treaty.

Mr. President, we must ask ourselves, what would be the response of the Soviets to an American SDI Program which violated the terms of the ABM Treaty? Because the Soviets would not be able to compete in high technologies, it would likely respond with what it knows best—more offensive weapons. The very large SS-18 missiles can accommodate many more than the 10 reentry vehicles that they would be allowed under START. An easy response for the Soviets would be to do just that, proliferate warheads on large missiles, thus increasing their offensive forces, and increasing the jeopardy to us.

I ask my colleagues to look into the technical differences between strategic and tactical missiles, as well as the technical difference between point defenses and area defenses. Mr. President the Patriot did its job in the gulf. But, in all truth, if the Iraqi Scud missile had had nuclear weapons on them, the Patriot would have failed. Patriot stopped most but not all Scud warheads. If they had been nuclear or chemical warheads, the damage done would have been infinitely graver.

Accordingly, we should be proud of American technology, but aware of the importance of steadily improved defenses. The Nunn amendment puts the emphasis where it is needed—on enhancing tactical systems to defend ourselves and our friends and allies.

Mr. WARNER. Mr. President, I would like to have a brief period to rebut my distinguished friend and colleague. I observe the presence of our fellow committee member from Michigan, and I will be happy to not prolong my comments to allow him a timely participation.

First, I ask unanimous consent that a letter addressed to the Senator from Virginia from the National Security Adviser, Mr. Scowcroft, dated March 11, 1991, be printed in the RECORD at this point, together with testimony from the February 21 appearance of Gen. Colin Powell before the Senate Armed Services Committee.

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

THE WHITE HOUSE,
Washington, March 11, 1991.

Hon. JOHN WARNER,
Ranking Republican, Armed Services Committee, U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: The President very much appreciates your support for SDI. As you know, he highlighted the importance of SDI in his State of the Union Address. He did so because ballistic missile defenses can be vital to our security and deserve strong bipartisan support.

With the budget the President has submitted to Congress, the SDI program has been reoriented to address the changed military and political world we now face and will face into the 21st century.

Recent events plainly highlight the growing threat posed by ballistic missile proliferation. Today it threatens directly U.S. forces abroad and U.S. allies. Moreover, we cannot be complacent about the threat to the United States. The decisions we take today will affect American security well into the next decade.

Based on these developments, as well as the dangers posed by accidential or unauthorized ballistic missile launches, the President directed that SDI pursue on a priority basis a Global Defense Against Limited Strikes (GPALS). Such a defense would protect the United States, our allies, and forces abroad from limited ballistic missile strikes anywhere in the world. This system would be smaller and cheaper than our original plans for SDI. It should also address some of the concerns expressed during last year's Senate debate on SDI.

Our superbly trained and magnificently equipped troops in the Persian Gulf are proving every day the value of American technological know-how. No one in Israel or Saudi Arabia doubts the value of ballistic missile defenses. But as well as Patriot has performed, it represents only a fraction of our capability. Moreover, we may well face more sophisticated threats than the SCUD. As the President said, in the 1990's strategic defenses make more sense than ever before.

President Bush values your support for SDI and is glad to know he can continue to count on it as Congress debates the SDI budget.

Sincerely,

BRENT SCOWCROFT.

The CHAIRMAN. Thank you, Senator Glenn. I have one final question, General Powell. The President announced in his State of Union speech that he had directed "the SDI

program be refocused on providing protection from limited ballistic missile strikes, whenever their source." I welcome that. I think that is the right focus, and Senator Warner has mentioned that already.

Have the joint chiefs defined what constitutes a limited attack at this stage?

General POWELL. We are still examining that. We, of course as you know, Senator, had a phase 1 requirement on the books. And within that phase 1 requirement, which was a more comprehensive regime to protect the United States—within that phase 1 requirement, we recognize that it might be possible to get limited protection and protection against regional theater ballistic missile threats on the way to the phase 1 requirement.

But we have not yet abandoned that original phase 1 requirement, and at the moment, we do not see anything inconsistent in terms of laying out a requirements document between the phase 1 requirement and what the refocused SDI program will look like. But it is something we have under review.

The CHAIRMAN. But there will be priorities within that, though?

General POWELL. Yes.

The CHAIRMAN. You are clearly putting this limit up front.

General POWELL. This becomes the President's priority and our priority. We have also asked the various CINC's to come in with their requirements for protection against regional ballistic missile threats, so we will be working a new requirements document associated with that.

I am still one of the old SDI folks around from the old days, and I still believe that there is some merit in trying to refocus the whole argument from an offensive based system of deterrence to a more defensively based system of deterrence. But we have discussed this many times over the years, Senator.

The CHAIRMAN. That is clearly moved back a notch in terms of priority, though, now?

General POWELL. Yes, sir.

The CHAIRMAN. Senator Warner, do you have any other questions?

Senator WARNER. No. Thank you very much. Thank you, General. We are very proud of you.

The CHAIRMAN. Thank you, General Powell.

[Whereupon, at 12:30 p.m., the committee meeting was adjourned.]

Mr. WARNER. Mr. President, both of these documents in my judgment clearly support the actions recommended by the Senator from Virginia in his amendment, namely that both of these senior military advisers to the President feel that the time has come that we have to move forward. It is right there in unequivocal language.

But I am perplexed at the nature of the amendment that is the substitute for the one of the Senator from Virginia. I am heartened however that my dear friend has left open the door, because we have in our 12 years together resolved many problems. This may be one that we may resolve and tomorrow morning we will take a fresh look, because the Senator from Virginia in consultation with the Senate leadership, the majority leader and the Republican leader, has not indicated that he is at this time withdrawing his intention to go forward full bore on this amendment commencing early tomorrow morning when now by UC it is the pending business.

But the amendment to add additional money for the Patriot program, the Senator from Virginia happened to have raised that in the committee hearings that we held on this very bill. We decided that time we had to keep a clean bill. Of course, that amendment would fall into the same category.

But nothing in the proposed amendment addresses the heart and substance of what I am endeavoring to achieve and that is to simply put the Congress of the United States on record that, Mr. President, for 5 years we have been negotiating with the Soviet Union. Five years without any significant breakthroughs. Is it not time that the Congress join, as we did in the gulf operation? That is all I am saying.

I am not saying exactly how the negotiations should come out. It would be my hope and expectation as recited in the amendment that such negotiations would take the shackles off of us right now and unleash American technology. But it simply says, "Mr. President, you have a constitutional right to negotiate. You are negotiating. You have been doing it for 5 years and now another branch of our Government joins with you to get this job done." Why? Because we cannot in good conscience stand and watch our people be helplessly killed and slaughtered as they were in the gulf while sleeping, while sleeping. That is all.

That seems to me to be a not unreasonable thing to ask this body to go on record. Our troops may have, we pray, God forbid, to go forward tomorrow in connection with another military operation.

While we were having our debate this afternoon, we had three of the CINC's, Commanders in Chief, including the Commander in Chief of the Pacific region, in before our committee. I had the opportunity to go over and talk with them. We discussed places like North Korea. We discussed the whole threat situation in the Pacific Rim.

Where next? Where next could our troops confront the same sort of threat they faced in the gulf region? North Korea today is one of the biggest commercial salespersons, if a nation is a person, of the Scud missile. "Buy here" the sign says in North Korea. "We will sell. Buy here. We will send you what you need." These missiles are proliferating on the markets all over the world.

Then I say to my good friend, why not let America do what other nations are now doing in their exploratory research? France has no treaty that is binding on them. The United Kingdom has no treaty. The Federal Republic of Germany has no treaty. And I could recite other nations. Indeed, Israel has no treaty comparable to the ABM. Are they quietly doing nothing? I am not at liberty to give all those answers but I ask my colleagues on their own initiatives to search out those answers.

When our troops go forward and are deployed and serve with perhaps again British forces and French forces, perhaps there will come a time when the Federal Republic of Germany will permit some of their forces to go into regions and provide security. Are they to have the protection of some systems that they may have developed? And we are going to deprive our service persons of that protection because of an agreement with the Soviet Union? Are we absolutely certain that the Soviet Union, as we speak, a nation not with an unblemished record of treaty violations—I go back to the Krasnoyarsk radar system—how do we know they are not conducting some research?

Well, we put a lot of emphasis on the ABM Treaty. Yes, it allows us to have a ground-based system to protect the capital of the United States, protect the executive branch and the Congress. I want to protect all of America, if that in fact is necessary.

Perhaps we can have a system that has certain mobility that we can move around. We need not have one everywhere. But the mobility, the mobility is prevented under the ABM Treaty. Logic is what I am asking this body to focus on. Logic. Other nations can do it. We have seen the devastation of these weapons. I think it is time we went up into space and at least did the testing to determine if we can devise something up there to aid the ground systems.

You know, in these Scud attacks, the Patriot system was able to function primarily because we got early warning. Where did we get it? We got it from space. We had the equipment up there that could give the Patriot crews, give others, the time needed to prepare for that attack. And we thank the Dear Lord, and we thank certain people here in the United States who had the foresight to revise that system so it would perform to prevent even greater loss of life and damage.

Yes, but space was an active component, so to speak, curiously enough, within the framework of the ABM Treaty because it was not giving the trajectory of the missile. It was just giving the timing basically. And that curiously falls within the permissible sections. But without that space, without that early warning, it is questionable of what value the Patriot system or one more modified may have had.

So all I am asking is to put this body on record to support our President in an effort he has had under way for 5 years. That is it in very simple form. It does not involve shifting a lot of money, scattering around the SDI Program, adjusting it, trashing the SDI program; criticizing. No, no, no. Let us get to the point. Are we with the President or are we not with the President? It is a very simple question.

Mr. President, I ask unanimous consent to have the ABM Treaty printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WARNER. Mr. President, I hope we can create a record today that can be of value to the American public when they sit down and study this issue on their own, and they are going to do that. This Senator is going to be unrelenting in trying to encourage the American public to study this question on their own. No longer is this Senator going to permit this issue to be held closely, right here, as we say, inside the Beltway. I will not permit these fundamental decisions that affect our young men and women as they deploy in military forces just to be decided by a handful of individuals. I invite all America to undertake a study of this program, decide for themselves, and hopefully communicate with their elected representatives.

EXHIBIT 1

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILES SYSTEMS

Signed at Moscow May 26, 1972, ratification advised by U.S. Senate August 3, 1972, ratified by U.S. President September 30, 1972, proclaimed by U.S. President October 3, 1972, instruments of ratification exchanged October 3, 1972, entered into force October 3, 1972.

The United States of America and the Union of Soviet Socialist Republics, hereinafter referred to as the Parties,

Proceeding from the premise that nuclear war would have devastating consequences for all mankind,

Considering that effective measures to limit anti-ballistic missile systems would be a substantial factor in curbing the race in strategic offensive arms and would lead to a decrease in the risk of outbreak of war involving nuclear weapons,

Proceeding from the premise that the limitation of anti-ballistic missile systems, as well as certain agreed measures with respect to the limitation of strategic offensive arms, would contribute to the creation of more favorable conditions for further negotiations on limiting strategic arms,

Mindful of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to take effective measures toward reductions in strategic arms, nuclear disarmanent, and general and complete disarmament,

Desiring to contribute to the relaxation of international tension and the strengthening of trust between States,

Have agreed as follows:

ARTICLE I

1. Each party undertakes to limit anti-ballistic missile (ABM) systems and to adopt other mesaures in accordance with the provisions of this Treaty.

2. Each Party undertakes not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of this Treaty.

ARTICLE II

1. For the purpose of this Treaty an ABM system is a system to counter strategic ballistic missiles or their elements in flight trajectory, currently consisting of:

(a) ABM interceptor missiles, which are interceptor missiles constructed and deployed for an ABM role, or of a type tested in an ABM mode:

(b) ABM launchers, which are launchers constructed and deployed for launching ABM interceptor missiles; and

(c) ABM radars, which are radars constructed and deployed for an ABM role, or of a type tested in an ABM mode.

2. The ABM system components listed in paragraph 1 of this Article include those which are:

(a) Operational;

(b) Under construction;

(c) Undergoing testing;

(d) Undergoing overhaul, repair or conversion; or

(e) Mothballed.

ARTICLE III

Each Party undertakes not to deploy ABM systems or their components except that:

(a) within one ABM system deployment area having a radius of one hundred and fifty kilometers and centered on the Party's national capital, a Party may deploy: (1) no more than one hundred ABM launchers and no more than one hundrd ABM interceptor missiles at launch sites, and (2) ABM radars within no more than six ABM radar complexes, the area of each complex being circular and having a diameter of no more than three kilometers; and

(b) within one ABM system deployment area having a radius of one hundred and fifty kilometers and containing ICBM silo launchers, a Party may deploy: (1) no more than one hundred ABM launchers and no more than one hundred ABM interceptor missiles at launch sites, (2) two large phased-array ABM radars comparable in potential to corresponding ABM radars operational or under construction on the date of signature of the Treaty in an ABM system deployment area containing ICBM silo launchers, and (3) no more than eighteen ABM radars each having a potential less than the potential of the smaller of the above-mentioned two large phased-array ABM radars.

ARTICLE IV

The limitations provided for in Article III shall not apply to ABM systems or their components used for development or testing, and located within current or additionally agreed test ranges. Each party may have no more than a total of fifteen ABM launchers at test ranges.

ARTICLE V

1. Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based.

2. Each Party undertakes not to develop, test, or deploy ABM launchers for launching more than one ABM interceptor missile at a time from each launcher, not to modify deployed launchers to provide them with such a capability, not to develop, test, or deploy automatic or semi-automatic or other similar systems for rapid reload of ABM launchers.

ARTICLE VI

To enhance assurance of the effectiveness of the limitations on ABM systems and their components provided by the Treaty, each Party undertakes:

(a) not to give missiles, launchers, or radars, other than ABM interceptor missiles, ABM launchers, or ABM radars, capabilities to counter strategic ballistic missiles or their elements in flight trajectory and not to test them in an ABM mode; and

(b) not to deploy in the future radars for early warning of strategic ballistic missile attack except at locations along the periphery of its national territory and oriented outward.

ARTICLE VII

Subject to the provisions of this Treaty, modernization and replacement of ABM systems or their components may be carried out.

ARTICLE VIII

ABM systems or their components in excess of the numbers or outside the areas specified in this Treaty, as well as ABM systems or their components prohibited by this Treaty, shall be destroyed or dismantled under agreed procedures within the shortest possible agreed period of time.

ARTICLE IX

To assure the viability and effectiveness of this Treaty, each Party undertakes not to transfer to other States, and not to deploy outside its national territory, ABM systems or their components limited by this Treaty.

ARTICLE X

Each Party undertakes not to assume any international obligations which would conflict with this Treaty.

ARTICLE XI

The Parties undertake to continue active negotiations for limitations on strategic offensive arms.

ARTICLE XII

1. For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.

2. Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.

3. Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.

ARTICLE XIII

1. To promote the objectives and implementation of the provisions of this Treaty, the Parties shall establish promptly a Standing Consultative Commission, within the framework of which they will:

(a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;

(b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;

(c) consider questions involving unintended interference with national technical means of verification;

(d) consider possible changes in the strategic situation which have a bearing on the provisions of this Treaty;

(e) agree upon procedures and dates for destruction or dismantling of ABM systems or their components in cases provided for by the provisions of this Treaty;

(f) consider, as appropriate, possible proposals for further increasing the viability of this Treaty; including proposals for amendments in accordance with the provisions of this Treaty;

(g) consider, as appropriate, proposals for further measures aimed at limiting strategic arms.

2. The Parties through consultation shall establish, and may amend as appropriate, Regulations for the Standing Consultative Commission governing procedures, composition and other relevant matters.

ARTICLE XIV

1. Each Party may propose amendments to this Treaty. Agreed amendments shall enter into force in accordance with the procedures governing the entry into force of this Treaty.

2. Five years after entry into force of this Treaty, and at five-year intervals thereafter, the Parties shall together conduct a review of this Treaty.

ARTICLE XV

1. This Treaty shall be of unlimited duration.

2. Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from the Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests.

ARTICLE XVI

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of each Party. The Treaty shall enter into force on the day of the exchange of instruments of ratification.

2. This Treaty shall be registered pursuant to Article 102 of the Charter of the United Nations.

Done at Moscow on May 26, 1972, in two copies, each in the English and Russian languages, both texts being equally authentic.

For the United States of America,

RICHARD NIXON,

President of the United States of America.

For the Union of Soviet Socialist Republics,

L. I. BREZHNEV,

General Secretary of the Central Committee of the CPSU.

AGREED STATEMENTS, COMMON UNDERSTANDINGS, AND UNILATERAL STATEMENTS REGARDING THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILES

1. AGREED STATEMENTS

The document set forth below was agreed upon and initialed by the Heads of the Delegations on May 26, 1972 (letter designations added);

Agreed statements regarding the treaty between the United States of America and the Union of Soviet Socialist Republics on the limitation of anti-ballistic missile systems

[A]

The Parties understand that, in addition to the ABM radars which may be deployed in accordance with subparagraph (a) of Article III of the Treaty, those non-phased-array ABM radars operational on the date of signature of the Treaty within the ABM system deployment area for defense of the national capital may be retained.

[B]

The Parties understand that the potential (the product of mean emitted power in watts and antenna area in square meters) of the smaller of the two large phased-array ABM radars referred to in subparagraph (b) of Article III of the Treaty is considered for purposes of the Treaty to be three million.

[C]

The Parties understand that the center of the ABM system deployment area centered on the national capital and the center of the ABM system deployment area containing ICBM silo launchers for each Party shall be separated by no less than thirteen hundred kilometers.

[D]

In order to ensure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty, the Parties agree that in the event ABM systems based on other physical principles and including components capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars are created in the future, specific limitations on such systems and their components would be subject to discussion in accordance with Article III and agreement in accordance with Article XIV of the Treaty.

[E]

The Parties understand that Article V of the Treaty includes obligations not to develop, test or deploy ABM interceptor missiles for the delivery by each ABM interceptor missile of more than one independently guided warhead.

[F]

The Parties agree not to deploy phased-array radars having a potential (the product of mean emitted power in watts and antenna area in square meters) exceeding three million, except as provided for in Article III, IV and VI of the Treaty, or except for the purposes of tracking objects in outer space or for use as national technical means of verification.

[G]

The Parties understand that Article IX of the Treaty includes the obligation of the US and the USSR not to provide to other States technical descriptions or blue prints specially worked out for the construction of ABM systems and their components limited by the Treaty.

2. COMMON UNDERSTANDINGS

Common understanding of the Parties on the following matters was reached during the negotiations:

A. Location of ICBM Defenses

The U.S. Delegation made the following statement on May 26, 1972:

"Article III of the ABM Treaty provides for each side one ABM system deployment area centered on its national capital and one ABM system deployment area containing ICBM silo launchers: (The two sides have registered agreement on the following statement: 'The Parties understand that the center of the ABM system deployment area centered on the national capital and the center of the ABM system deployment area containing ICBM silo launchers for each Party shall be separated by no less than thirteen hundred kilometers.' In this connection, the U.S. side notes that its ABM system deployment area for defense of ICBM silo launchers, located west of the Mississippi River, will be centered in the Grand Forks ICBM silo launcher deployment area. (See Agreed Statement [C].)"

B. ABM Test Ranges

The U.S. Delegation made the following statement on April 26, 1972:

"Article IV of the ABM Treaty provides that 'the limitations provided for in Article III shall not apply to ABM systems or their components used for development or testing, and located within current or additionally agreed test ranges.' We believe it would be useful to assure that there is no misunderstanding as to current ABM test ranges. It is our understanding that ABM test ranges encompass the area within which ABM components are located for test purposes. The current U.S. ABM test ranges are at White Sands, New Mexico, and at Kwajalein Atoll, and the current Soviet ABM test range is near Sary Shagan in Kazakhstan. We consider that non-phased array radars of types used for range safety or instrumentation purposes may be located outside of ABM test ranges. We interpret the reference in Article IV to additionally agreed test ranges to mean that ABM components will not be located at any other test ranges withour prior agreement between our Governments that there will be such additional ABM test ranges."

On May 5, 1972, the Soviet Delegation stated that there was a common understanding on what ABM test ranges were, that the use of the types of non-ABM radars for range safety or instrumentation was not limited under the Treaty, that the reference in Article IV to "additionally agreed" test ranges was sufficiently clear, and that national means permitted identifying current test ranges.

C. Mobile ABM Systems

On January 29, 1972, the U.S. Delegation made the following statement:

"Article V(1) of the Joint Draft Text of the ABM Treaty includes an undertaking not to develop, test, or deploy mobile land-based ABM systems and their components. On May 5, 1971, the U.S. side indicated that, in its view, a prohibition on deployment of mobile ABM systems and components would rule out the deployment of ABM launchers and radars which were not permanent fixed types. At that time, we asked for the Soviet view of this interpretation. Does the Soviet side agree with the U.S. side's interpretation put forward on May 5, 1971?"

On April 13, 1972, the Soviet Delegation said there is a general common understanding on this matter.

D. Standing Consultative Commission

Ambassador Smith made the following statement on May 22, 1972:

"The United States proposes that the sides agree that, with regard to initial implementation of the ABM Treaty's Article XIII on the Standing Consultative Commission (SCC) and of the consultation Articles to the Interim Agreement on offensive arms and the Accidents Agreement,[1] agreement establishing the SCC will be worked out early in the follow-on SALT negotiations; until that is completed, the following arrangements will prevail: when SALT is in session, any consultation desired by either side under these Articles can be carried out by the two SALT Delegations; when SALT is not in session, ad hoc arrangements for any desired consultations under these Articles may be made through diplomatic channels."

Minister Semenov replied that, on an ad referendum basis, he could agree that the

[1] See Article 7 of Agreement to Reduce the Risk of Outbreak of Nuclear War Between the United States of America and the Union of the Soviet Socialist Republics, signed Sept. 30, 1971.

U.S. statement corresponded to the Soviet understanding.

E. Standstill

On May 6, 1972, Minister Semenov made the following statement:

"In an effort to accommodate the wishes of the U.S. side, the Soviet Delegation is prepared to proceed on the basis that the two sides will in fact observe the obligations of both the Interim Agreement and the ABM Treaty beginning from the date of signature of these two documents."

In reply, the U.S. Delegation made the following statement on May 20, 1972:

"The U.S. agrees in principle with the Soviet statement made on May 6 concerning observance of obligations beginning from date of signature but we would like to make clear our understanding that this means that, pending ratification and acceptance, neither side would take any action prohibited by the agreements after they had entered into force. This understanding would continue to apply in the absence of notification by either signatory of its intention not to proceed with ratification or approval."

The Soviet Delegation indicated agreement with the U.S. statement.

3. UNILATERAL STATEMENTS

The following noteworthy unilateral statements were made during the negotiations by the United States Delegation:

A. Withdrawal from the ABM Treaty

On May 9, 1972, Ambassador Smith made the following statement:

"The U.S. Delegation has stressed the importance the U.S. Government attaches to achieving agreement on more complete limitations on strategic offensive arms, following agreement on an ABM Treaty and on an Interim Agreement on certain measures with respect to the limitation of strategic offensive arms. The U.S. Delegation believes that an objective of the follow-on negotiations should be to constrain and reduce on a long-term basis threats to the survivability of our respective strategic retaliatory forces. The USSR Delegation has also indicated that the objectives of SALT would remain unfulfilled without the achievement of an agreement providing for more complete limitations on strategic offensive arms. Both sides recognize that the initial agreements would be steps toward the achievement of more complete limitations on strategic arms. If an agreement providing for more complete strategic offensive arms limitations were not achieved within five years, U.S. supreme interests could be jeopardized. Should that occur, it would constitute a basis for withdrawal from the ABM Treaty. The U.S. does not wish to see such a situation occur, nor do we believe that the USSR does. It is because we wish to prevent such a situation that we emphasize the importance the U.S. Government attaches to achievement of more complete limitations on strategic offensive arms. The U.S. Executive will inform the Congress, in connection with Congressional consideration of the ABM Treaty and the Interim Agreement, of this statement of the U.S. position."

B. Tested in ABM Mode

On April 7, 1972, the U.S. Delegation made the following statement:

"Article II of the Joint Text Draft uses the term tested in an ABM mode, in defining ABM components, and Article VI includes certain obligations concerning such testing. We believe that the sides should have a common understanding of this phrase. First, we would note that the testing provisions of the ABM Treaty are intended to apply to testing which occurs after the date of signature of the Treaty, and not to any testing which may have occurred in the past. Next, we would amplify the remarks we have made on this subject during the previous Helsinki phase by setting forth the objectives which govern the U.S. view on the subject, namely, while prohibiting testing of non-ABM components for ABM purposes: not to prevent testing of ABM components, and not to prevent testing of non-ABM components for non-ABM purposes. * * *"

Mr. DOLE. Mr. President, I rise in support of the amendment being offered by the ranking Republican on the Senate Armed Services Committee. It is a forward-looking amendment which takes into account our experiences in the recent war in the gulf.

During the Persian Gulf war we could see on the nightly news what it means to be vulernable to ballistic missile attacks—and, what it means to be protected from ballistic missile attacks, 42 Scud missiles were launched by the Iraqis and 41 were intercepted. Who knows how many more lives would have been lost, how many more casualties there would have been or how much more damage would have occurred if the United States had not deployed the Patriot in defense of our troops and our allies.

Without a doubt, one of the key lessons to be learned from the Persian Gulf war is that there is a need to protect the United States, our military forces and our allies from the very real and growing threat of ballistic missiles. What we have also learned is that U.S. technology is up to the task of meeting that threat.

In a letter I received recently from National Security Adviser Brent Scowcroft, he made the following point regarding the threat of ballistic missiles proliferation:

> We cannot be complacent about the threat to the United States. The decisions we take today will affect American security well into the next decade.

The Scowcroft letter continues:

> No one in Israel or Saudi Arabia doubts the value of ballistic missile defenses. But as well as the Patriot has performed, it represents only a fraction of our capability. Moreover, we may well face more sophisticated threats than the Scud. As the President said, in the 1990's strategic defenses make more sense than ever before.

Indeed, in testimony before the Congress, CIA Director William Webster informed us that by the end of the century, between 15 and 20 developing countries will possess a ballistic missile capability, and that at least six developing countries will have ballistic missiles with a range sufficient to threaten the United States.

Mr. President, this amendment puts the Senate on record in support of defending America, its military forces and its allies. It recognizes that the world has changed—that the threat of proliferation in the developing world is growing. It also takes note of the great progress that has been made in the SDI Program—in the research of technologies aimed at defending against ballistic missiles.

Mr. President, this amendment supports the ongoing negotiations with the Soviets in Geneva and states that the administration should conclude an agreement which would remove any limitations on the United States having effective defenses against ballistic missiles. If such an agreement is not reached, within 2 years, the President should make a determination on whether or not U.S. adherence to the ABM Treaty is in the national interest—and should inform the Congress of his decision.

Mr. President, this amendment is a first step in responding to the changing world around us. Over the last 30 years the threats to our national security have evolved and our technological capabilities to meet those threats have also evolved.

Mr. President, now is the time to commit to the pursuit of ballistic missile defenses. As the National Security Adviser said, now is not the time to be complacent. If America and its military forces are to be protected tomorrow, we need to commit today. This amendment puts the Senate on record in support of such a commitment and I urge that it be adopted.

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

Mr. LEVIN. Mr. President, first, let me ask unanimous consent that I be added as a cosponsor to the Nunn substitute.

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

Mr. LEVIN. Mr. President, I rise in opposition to the Warner amendment.

We must be clear about what Senator WARNER is proposing in his amendment. He is not advocating a broad interpretation of the ABM Treaty over a narrow one.

His amendment would put the Senate on record as saying that ABM Treaty compliance by us is no longer in our national interest.

To come to this conclusion, you need only review the restrictions of the ABM Treaty and compare them to the language of the Warner amendment.

Article 5 of the ABM Treaty states that "Each party undertakes not to develop, test, or deploy ABM systems or components that are sea based, air based, space based, or mobile land based." Article 6 of the treaty states that the parties agree not to give non-ABM interceptor missiles, launchers, or radars "capabilities to counter strategic ballistic missiles or their elements in flight trajectory, and not to test them in an ABM mode."

The Warner amendment specifically reverses these restrictions. It states, it is the finding of the Congress that "Continuing restrictions on the devel-

opment and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology and unnecessarily compliances ABM experiments."

It further states that it is the sense of the Congress that "the Secretary of Defense should undertake preparations for the development and testing of systems and components designed to defend the United States and its Armed Forces, wherever deployed, from ballistic missiles even though some of the actual development and testing may not be permitted by the ABM Treaty of 1972.

At this time we are engaged in negotiations with the Soviets on a deep reduction in offensive strategic nuclear systems. Such a treaty could enhance our national interests and is supported by the Joint Chiefs of Staff. The President and his Cabinet believe this treaty is in our national interest and that is why they are pursuing it. These negotiations are being pursued with the belief that the ABM Treaty will still be in force at least as long as the last summit agreement assured adherence.

Even President Reagan, a strong believer in SDI, has gone on record noting the importance of the ABM Treaty in the START process. At the end of the December 1987 United States-Soviet summit in Washington, a joint United States-Soviet statement was issued that started:

> Taking into account the preparation of the Treaty on Strategic Offensive Arms, the leaders of the two countries * * * instructed their delegations in Geneva to work out an agreement that would commit the sides to observe the ABM Treaty, as signed in 1972 * * * and not to withdraw from the ABM Treaty, for a specified period of time.

Another testament to the vital importance of the ABM Treaty is found in the 1984 report of the President's Commission on Strategic Forces. The Commission, headed by Gen. Brent Scowcroft, stated:

> One of the most successful arms control agreements is the Anti-Ballistic Missile Treaty of 1972 * * * the strategic implications of ballistic missile defense and the criticality of the ABM Treaty to further arms control agreements dictates extreme caution in proceeding to engineering development in this sensitive area.

It seems inconsistent that General Scowcroft would not support the Warner amendment given his past statements.

During hearings before the Senate and House in 1985, former State Department Legal Adviser, Abraham Sofaer, the father of the broad ABM Treaty interpretation, stated, "The ABM Treaty is an important part of our strategic arms control structure." So, even those that sought to broaden the interpretation recognized the value of the treaty.

If this amendment is approved by the Senate, I doubt that the current START negotiations could continue. Surely the Soviets might reconsider their participation, and the United States almost certainly might also.

This amendment also could cause upheaval in the Soviet Union.

Many administration officials believe that it is in our interests for the Soviets to reform their economy and become more democratic. I know that many of my colleagues in the Senate believe the same thing. But, do we really believe that Gorbachev, who already has had to make concessions to military hardliners, could survive if the cornerstone of strategic arms control—the ABM Treaty—was unilaterally abrogated by the United States, as the Warner amendment puts Senate on report. Do we believe that if Gorbachev was forced to step down as the Soviet leader under these circumstances, that this would bolster democracy and the forces for reform in the Soviet Union? Could economic reform in the Soviet Union survive the stress of another round of the offensive and defensive arms race?

We should also be clear about what we are abandoning this treaty for. It is not being abandoned for a defense that would protect the population of the United States from a massive Soviet ballistic missile attack—the purpose originally stated by President Reagan when he introduced the strategic defense initiative. That mission no longer is feasible—or even claimed.

Instead, the treaty would be scrapped in order for us to implement the new strategic defense rationale of global protection against limited strikes [GPALS].

To quote from a recent Strategic Defense Initiative Organization [SDIO] document,

> With GPALS, we are talking about protection against limited strikes, rather than deterrence of a massive attack. This mission is in contrast to the prior mission, which was to destroy a percentage, on the order of half, of a mass raid involving several thousand RVs launched out of the Soviet Union toward the United States.

GPALS would accomplish its mission through a combination of land-based and spaced-based weapons.

The simple fact is that the administration and SDIO are attempting to seize upon the success of the Patriot missile system in intercepting and destroying Iraqi Scud missiles in the Persian Gulf. They have come up with a plan—GPALS—that limits the goals of the system to intercepting 100 to 200 warheads instead of thousands and that focuses on protecting against accidental or unauthorized launches, launches of a small number of ballistic missiles from hostile Third World nations, and defending our forward deployed forces and allies.

The Patriot missile system worked very well in the Middle East. This system was very successful in intercepting the conventionally armed Scuds that Iraq fired at Saudi Arabia and Israel. The Patriot intercepts helped to neutralize Saddam Hussein's terror missiles and also thwarted his attempts to draw Israel into the battle. Both of these circumstances helped to accelerate our victory against the Iraqi Army.

The Patriot system is ABM Treaty compliant.

However, a spaced-based ABM system using Brilliant Pebbles would not have been successful in intercepting the Scud missiles launched by Iraq and this system would not be effective in defending United States forward deployed forces against those short-range missiles that primarily threatened them. Former SDIO Director, Gen. George Monahan, has testified that Brilliant Pebbles would orbit at roughly 450 kilometers. The short range missiles typically reach altitudes of only 160–120 kilometers.

Also, these short-range missiles usually have a boost phase of less than 100 seconds. Brilliant Pebbles take 50–100 seconds to detect and assess a launch, and fire a space-based rocket to intercept the missile. Also, the Pebble would be looking down at the missile where it would be silhouetted against the warm Earth not the cold of space. This could make discrimination very difficult. The current Director of SDIO, Henry Cooper, stated recently that "midcourse discrimination * * * has been the problem for many years."

Finally, the limited number of Brilliant Pebbles proposed as part of GPALS system makes it unlikely that this system could handle multiple short range missile launches, even if it could detect the target and arrive in time to intercept it.

Mr. President, we should remember that the United States has moved toward the goal of a thin ABM system in the past, when we pursued the Safeguard system. In March 1969, President Nixon cited the need to protect the American people against a small nuclear attack—the threat posed by China—and the possibility of an accidental attack. We built one Safeguard site at Grand Forks, ND, in 1975, and it was compliant with the ABM Treaty restrictions. We should also remember that this system was activated for only a very short period of time.

However, if the President and the majority of Congress believe that defenses are necessary in the future we could also ensure that they are also compliant with the ABM Treaty.

Senator WARNER's amendment suggests that we unleash American technology on the ballistic missile threat. We should recognize that we have already committed over $20 billion in the last 8 years precisely for this purpose. The question is not technology it is security. The ABM Treaty is in our national security interests.

Mr. President, let me commend my friend from Virginia for not pursuing

his original version. The amendment which had originally been contemplated by my friend from Virginia would have not just put the Senate on record as opposing further adherence to the further ABM Treaty, as the current sense-of-the-Congress resolution does, but it also would have forced the termination of the ABM Treaty, in the language itself.

This sense-of-the-Congress resolution no longer does that, at least. It still does violence to the treaty by putting us on record as opposing continuing adherence to it, but it does not do the same direct violence to the treaty which the former amendment of the Senator from Virginia would have accomplished.

I want to at least recognize that and commend him for moving at least part way back from that very disastrous brink. I wish he had pulled back a couple of more steps from where he is because I think part of this resolution, at least, makes a useful contribution to where we should be headed. Part of it, I must say, I very strongly oppose because it goes way beyond what the Senator from Virginia has said it does, which is simply support the President.

Under the terms of this sense-of-the-Congress resolution, after the 2-year period is over, the President then would make a determination as to whether or not continuing U.S. adherence to the ABM Treaty is in the national interest. It gives the President that option. It does not force the President now to determine whether our adherence to the ABM Treaty is in our interest. The President nowhere says, in the Scowcroft letter or otherwise, that adherence to the ABM Treaty is not in the national interest.

The President is trying to negotiate some changes in that treaty, mutual changes with the Soviet Union, consistent with the START negotiations that he is also undertaking on a separate track. But the President does not commit himself anywhere that I know of to withdrawing from the ABM Treaty in the event the ongoing negotiations are not successful.

The President has not decided that adherence to the ABM Treaty is not in our national interest in the event we cannot negotiate amendments to it. The President has left himself that determination for a later date.

The former President, President Reagan, left himself that determination for a later date in the summit statement which was jointly issued with President Gorbachev in 1987. That discretion is left for the President, as it should be.

But we do not have that discretion under the Senator's sense-of-the-Congress resolution. This puts us on record as saying that adherence to the ABM Treaty is not in our national interest. It does so by its own language. It says that:

> The President should remove any limitations on the United States having effective defenses against ballistic missiles.

That is what the direction is. And, by the wording of the Senator from Virginia, I think it is very clear that the purpose of this is that adherence to this treaty is no longer in our interest, and this resolution effectively says that.

Why should we be going on record as saying that adherence to the ABM Treaty is not in the national interest when the President, by the terms of this resolution, is allowed the flexibility, after the 2 years is over, to determine whether adherence to the ABM Treaty is in our interest or not?

Let us just read about the flexibility again, in section 5, that it gives to the President.

> If such agreement is not reached within the period described in clause 3—

Which is a 2-year period or less—

> the President should make immediately a determination as to whether continuing U.S. adherence to the terms of the ABM Treaty of 1972 is in the U.S. national interest.

That gives the President the flexibility which the President wants and that is why General Scowcroft is happy to support this sense-of-the-Congress resolution. It leaves them all the flexibility they now have, but puts us on record as saying adherence to this treaty is not in the national interest before the period of negotiations has expired.

So, when my good friend from Virginia says, "Let us join the President, let us join the President, that is all that is involved here; are we with the President or are we not with the President?" I am afraid that what is really involved here is whether or not we want to go on record as saying that adherence to the ABM Treaty is not in the national interest and to say that now but leaving the President the flexibility to make that determination whether or not continuing compliance with the ABM Treaty is in the national interest 2 years from now.

So the issue is not whether or not we are with the President, whether or not the President should negotiate changes in the ABM Treaty. The issue is whether we make a declaration prior to those negotiations that continuing adherence to the ABM Treaty is not in the national interest when there is no such restriction on the President, nor has the President so expressed himself—wisely—anywhere that I know of. That is the issue here.

We are not just simply saying to the President: Go out and negotiate. We are saying continuing adherence to this treaty is not in our interest if this amendment is adopted. And, for heaven's sake, we cannot and should not as a body that ratified that treaty make that kind of a decision, prematurely, in advance of negotiations to modify that treaty and at a time when the President himself has not reached that conclusion.

Back in 1987 there was a summit. It was a summit between our President and President Gorbachev. There was a joint statement which was issued following that summit. That joint statement read as follows:

> Taking into account the preparation of the treaty on strategic offensive arms—

That is the START treaty—

> the leaders of the two countries also instructed their delegations in Geneva to work out an agreement that would commit the sides to observe the ABM Treaty as signed in 1972 while conducting their research, development and testing as required, which are permitted by the ABM Treaty, and not to withdraw from that ABM Treaty for a specified period of time.

That is the first sentence. This is a very high level document. This is the President of the United States and the President of the Soviet Union saying to their negotiator, "Negotiate an agreement not to withdraw from the ABM Treaty for a specified period of time."

The next sentence reads:

> Intensive discussions of strategic stability shall begin not later than 3 years before the end of the specified period, after which, in the event the sides have not agreed otherwise, each side will be free to decide its course of action.

In other words, we adhere to the ABM Treaty and at least 3 years prior to the specified period of adherence, to the end of the specified period of adherence, we will begin these talks on strategic stability. In other words, again, we are committed to adhere to the ABM Treaty for a period of at least 3 years because the talks on strategic stability have to begin at least 3 years prior to the end of the specified period. So the specified period, by definition, must be at least 3 years long. Of course, it was contemplated it would be significantly longer than that. Nonetheless, for the purposes of this debate, at a minimum, this period is a 3-year period.

Later on in this agreed-upon mutual statement it said that:

> Such an agreement must have the same legal status as the START treaty, the ABM Treaty, and other similarly legally binding agreements. This agreement will be recorded in a mutually satisfactory manner; therefore, they direct their delegations to address these issues on a priority basis. The side shall discuss ways to ensure predictability in the development of the U.S.-Soviet strategic relation under conditions of strategic stability to reduce the risk of nuclear war.

That is the entire statement between the two Presidents, the two nations.

"Ensure predictability in the development of U.S.-Soviet strategic relations." How can we possibly have predictability in the development of United States strategic relations with the Soviet Union if President Reagan agrees with President Gorbachev that when our negotiators work out an agreement we will adhere to the ABM

Treaty for a minimum of 3 years? That is the agreement between the two of them. And then the U.S. Senate comes along and says it is the sense of the Congress that 2 years is enough and then we are no longer going to adhere to it.

How do you have stability in a relationship when there is that kind of a high-level agreement following a summit of adherence to a treaty for a minimum of 3 years and then comes the sense-of-the-Congress resolution that says within 2 years or less we want an agreement to clearly remove any limitations on the United States having effective defenses against ballistic missiles and that it is in the national interest that be achieved?

The ABM Treaty and the START Treaty are related. Maybe we do not like it that way. Maybe we would like them to be unrelated and delinked, but they are linked. They are linked in this summit statement.

The first words in this summit statement are "Taking into account the preparation of the START Treaty." Those are the first words. Then it goes on to say that the leaders commit themselves to observe the ABM Treaty for a specified period of time which clearly is a minimum of 3 years.

They are linked in this document and they are linked by the Soviets. But the Soviets have told us over and over again, and all the documents support this, that if they are going to face significant numbers of ballistic defenses, they are not going to commit themselves to reduce their offensive numbers because they may, indeed, want to increase the number of offensive weapons.

It is that relationship between offense and defense, as Senator NUNN has pointed out, and the fact that if a country is going to face defenses, that it may want to increase its offenses rather than cut them, particularly if it itself does not have a defense.

It is that relationship between offense and defense that spirals that arms race in defensive weaponry, which Senator NUNN made reference to, and the fact if you face defenses you may want to increase your offenses. It is that connection which caused President Nixon to say, "The ABM Treaty stopped what inevitably would have become a defensive arms race with untold billions of dollars being spent on each side for more and more ABM coverage."

It is that relationship, that linkage, which caused our former Director of the Central Intelligence Agency, under President Nixon and Ford, Bill Colby, to say:

> The only way to defend our country against nuclear war is to prevent it from happening. The ABM Treaty has played a major role in the success of that policy of prevention by dampening the arms race and providing the conditions necessary for progress on limiting offensive forces. It is a watershed document. It has done more to reduce the threat of nuclear war than any other single agreement.

Mr. President, I yield the floor.

Mr. SHELBY. Mr. President, I rise in support of the substitute amendment offered by the chairman of the Armed Services Committee. I have joined my colleague as a cosponsor because I believe that the passage of this amendment will lead to the development of defenses that can offer limited protection against limited strikes from theater or ballistic missiles.

The amendment is divided into two parts. The first is an authorization of an additional $224 million to procure Patriot missiles and fire units in fiscal year 1991. The second part restores funding for certain ground-based systems to requested fiscal year 1991 levels.

Mr. President, I do not believe that anyone associated with this substitute amendment wants this fight. This action was forced upon us through the amendment offered by the Senator from Virginia. The underlying amendment goes far beyond any previous debate of the Antiballistic Missile Treaty that has occurred in this body since the Senate gave consent in 1972.

We, in Congress, have been debating the virtues and vices of the ABM Treaty well before the inception of the strategic defense initiative. However, it was the speech given by President Reagan 8 years ago that heated-up this debate. We have talked about a narrow versus broad interpretation of the treaty. We have discussed the virtue of modifications to the treaty. We have denounced Soviet violations of the ABM Treaty. We have discussed testing under the constraints of the treaty.

We have talked about deployment decisions and how these decisions effect the treaty. Year after year we have asked those testifying on behalf of the SDI request if they intend to conduct any tests. The answer has always been no.

I must say at this point that I agree with the premise that it is necessary to seek modifications to the ABM Treaty. I felt this way before the Scud missile attacks on United States forces in Saudi Arabia and Israel. I am also concerned about ballistic missile proliferation. However, I do not believe that the continuing restrictions on the development and testing of ABM systems unduly restricts the SDI Program as it is presently defined.

During his February 12 press conference, Ambassador Henry Cooper, Director of the Strategic Defense Organization stated:

> Realistically speaking, if we stick to the schedules that I have talked about here, where we want to reach a deployment phase by the end of this decade, then by the middle of the decade, we will be talking about full-scale development decisions and by that point we'll be up against congressional constraints regarding the treaty in a pretty direct way.

Ambassador Cooper believes that it will be 1995 or 1996 before any SDI experiments are conducted that will violate the ABM Treaty. Therefore, I do not see the need to negotiate and sign an agreement with the Soviet Union, within 2 years, that removes all limitations on defenses against ballistic missiles.

On the other hand, the substitute amendment offers the Senate the chance to move more quickly toward the deployment of defenses against ballistic missiles. The Patriot is our only defense, of any kind, against ballistic missiles. We must continue to support this program. The amendment offered by the chairman of the Armed Services Committee would add $224 million to this program.

At the same time, we have to recognize that the Patriot provides only a limited defense against ballistic missiles. Therefore, we have included in this amendment the redirection of fiscal year 1991 SDI dollars to four ground-based programs: GBI, E2I, GBR, and GSTS, thus funding these programs at fiscal year 1991 requested level of $487 million. The source of these funds will be an across-the-board decrement of all other SDI programs of more than $20 million, with the exception of theater missile defenses, which remain fully funded.

SDIO currently estimates a deployment decision for E2I and GBI at roughly equal to that of brilliant pebbles and brilliant eyes. Additional funding will allow for deployment of these more mature, ground-based systems earlier in this decade. Full funding of theater missile defense will keep systems such as the patriot upgrade, Erint, Arrow and Thaad on course.

Mr. President, I believe the Nunn substitute to be the best method by which we can support defenses against ballistic missiles. It is a means by which we can improve what is currently deployed and provide additional funding for ground-based systems so that they can proceed with their deployment and thus enhance our national security.

I urge the adoption of the Nunn amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. SMITH. I thank the Chair.

Mr. President, I rise in strong support of the amendment offered by the Senator from Virginia [Mr. WARNER]. This is a long overdue debate. I commend the distinguished ranking member of the Armed Services Committee for this timely and frankly, well conceived amendment.

Mr. President, we are all familiar with the 1972 Antiballistic Missile Treaty and its 1974 protocol, which prohibit nationwide defenses against stra-

tegic ballistic missiles in the Soviet Union and the United States. Under the agreed framework, ABM deployment is limited to one system around the National Capital or, alternatively, at a single ICBM site. The term ABM system is defined to include any system to counter strategic ballistic missiles or their elements in flight trajectory.

Unfortunately, however, we are all too familiar with a continuing pattern of Soviet noncompliance with key provisions of the ABM Treaty. For instance, the Krasnoyarsk large phased-array radar, which the Soviet's claim is intended for space tracking and national technical means, clearly is designed for ballistic missile detection and ABM battle management. Furthermore, the radar is not directed outward as specified by the ABM Treaty but, rather, looks toward the Soviet Union's northeast border some 4,600 kilometers away. Although the Soviet's have finally acknowledged that the radar violates the ABM Treaty, they are delinquent in their commitment to dismantle it.

Moreover, there is compelling evidence that the Soviet Union has engaged in additional violations, such as the development and testing of components required for a mobile ABM system; the concurrent operation of air defense components and ABM components; and the development of modern air defense systems that have ABM capabilities.

My purpose in raising these issues is not to justify United States abrogation of the ABM Treaty but, rather, to illustrate an alarming and continuous pattern of Soviet noncompliance with virtually every arms control agreement it has signed. Indeed, the recent discovery of INF-banned SS-23 missiles and launchers in Bulgaria, Czechoslovakia, and Germany, along with Soviet refusal to permit United States imaging of Soviet missile canisters on three occasions, provide a sobering illustration of how the Soviet's view their legal obligations and political commitments.

Mr. President, I have no doubt that President Nixon's arms control negotiators believed an ABM Treaty would enhance superpower stability and prevent an expensive and dangerous missile/anti-missile arms race. However, it is equally clear that many of the assumptions upon which the ABM Treaty was based are no longer valid. For instance, the treaty was premised on a fundamental linkage between offensive and defensive forces, whereby ABM limitations would lead to subsequent reductions in strategic offensive weapons. However, the truth is that deep reductions in strategic offensive forces did not occur in the wake of the ABM Treaty.

Furthermore, treaty supporters assumed that ABM limitations would reduce threats to the survivability of retaliatory forces. To the contrary, the Soviet Union continued to aggressively modernize and deploy large numbers of "heavy" ICBM's, such as the SS-18, which combine enhanced accuracy and yield to increase the vulnerability of U.S. retaliatory forces.

Finally, in 1972, it was assumed that missile defense technologies were neither survivable nor cost-effective and, thus, insufficient to deter aggression. However, recent technological advances within the SDI Program clearly demonstrate that the United States has within its grasp the capability to deploy a capable, cost-effective missile defense system.

The success of the Patriot system in Operation Desert Storm forcefully legitimizes the case for strategic missile defenses as well. Indeed, the world watched transfixed as Iraqi Scud missiles hurled toward Israel and Saudi Arabia, only to be successfully engaged by U.S. Patriot missile batteries, except on one very tragic occasion. The outstanding maiden combat performance of the Patriot PAC-2 missile vividly demonstrates that anti-ballistic missile technology offers a highly effective, desirable defense for military and civilian assets.

In his State of the Union Address, President Bush directed that the SDI program be refocused toward protection against limited ballistic missile strikes, whatever their source. This new framework, called global protection against limited strikes, would provide a more affordable, yet highly capable, layered missile defense. Importantly, the limited defense concept reserves our option to expand ABM capabilities should future developments warrant.

Mr. President, the time has come for the United States to reconsider its participation in the ABM Treaty. Despite dramatic changes in the international security environment, the Soviet Union continues to aggressively modernize and enhance its strategic offensive forces, while selectively disregarding key provisions of the existing ABM Treaty. The nearly complete START treaty may limit the number of warheads and launchers, but not the quality or effectiveness of Soviet Nuclear Forces. We may not know what Soviet intentions are, but we certainly know their capabilities.

Furthermore, the simultaneous global proliferation of ballistic missile technology and weapons of mass destruction poses a clear and present danger to U.S. security interests. Currently, it is estimated that some 18 to 20 nations possess ballistic missile capability. Moreover, countries are increasingly developing an indigenous production capability which is virtually immune from export controls. By the year 2000, the number of countries with deployable ballistic missile systems could reach as many as 24.

The United States has within its reach the technology to provide global protection—not only to protect the continental United States, but protection of the entire United States as well as our forces overseas, our friends and allies—against limited strikes. The Warner amendment would simply discourage further technological hamstringing, and express the sense of Congress that the Secretary of Defense should undertake preparations for the development and testing of promising ABM systems and components, in anticipation of a United States-Soviet agreement to nullify the ABM Treaty. These nonnuclear defensive technologies would afford similar, yet substantially enhanced, protection to that which our Patriots provided in Israel and Saudi Arabia.

As elected Representatives of the American people, we have a moral as well as a military obligation to ensure the defense and security of our Nation and our forces whereever they are. How can we, in good conscience, deny our citizens the same protection which we so readily provided to our friends and allies in the Middle East. The answer is: we cannot.

Mr. President, irrespective of the Warsaw bloc dissolution, the Soviet Union remains internally unstable, and the sole nation capable of destroying the United States. Do we really know who will control the vast Soviet nuclear arsenal in the future? Will it be Mikhail Gorbachev, Boris Yeltsin, or perhaps a reversion to hardline communism and the KGB?

If this uncertainty is not compelling enough, Saddam Hussein personally delivered a wakeup call through his ballistic missile terrorism against Israel, Saudi Arabia and American troops. The continuing proliferation of sensitive missile technologies and weapons of mass destruction presents an immediate and formidable challenge to our security interests. Today, we must ask ourselves: Is a deterrent posture based on mutual assured destruction suitable to the evolving Third World missile threat, and the tyrannical fanaticism of Saddam Hussein and Muammar Qadhafi?

Mr. President, the ABM Treaty has outlived its usefulness. Changes in the strategic and regional security environments have fundamentally altered the defense calculus upon which the treaty was based. Now is the time for the United States to move forward and establish a more stable deterrent posture which integrates both strategic offensive and defensive forces. The Warner amendment initiates this long overdue transition.

I commend the distinguished Senator from Virginia for his amendment, and I urge my colleagues to adopt it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ADDITIONAL COSPONSOR

Mr. NUNN. Mr. President, I ask unanimous consent Senator KENNEDY be listed as cosponsor of my substitute amendment.

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

MORNING BUSINESS

Mr. NUNN. Mr. President, I ask unanimous consent there be a period for morning business with Senators permitted to speak therein.

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

HAVA NAGILA

Mr. MOYNIHAN. Mr. President, Cantor Sheldon Feinberg of Malverne has brought to my attention that this year marks the 80th anniversary of the beloved popular Hebrew song, "Hava Nagila."

Millions of people of all faiths around the world have enjoyed this beautiful and lively tune without realizing that it was first composed in Jerusalem in 1911 by a talented 12-year-old boy, Moshe Nathanson.

Moshe Nathanson moved to New York City as a teenager where he graduated with honors from the Juilliard School of Music in New York and spent 60 productive and devoted years as a teacher, cantor, composer, and concert artist.

"Hava Nagila" has brought such joy to so many people in this country and around the world that we would do well to acknowledge this significant anniversary. Harry Belafonte probably said it best when he declared,

> It is possible during the lifetime of a musical artist to find many songs that will touch the hearts of people in many different places in the world. It is most unique to find one song that will do that to all people.

"Hava Nagila," Mr. President, is just such a song.

Mr. President, I wish that my remarks commemorate the special anniversary of this most joyous tune.

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

At 4:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 45. Concurrent resolution permitting the use of the rotunda of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the holocaust.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 45. Concurrent resolution permitting the use of the rotunda of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the holocaust; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services, without amendment:

S. 647. An original bill to require the Director of the Office of Management and Budget to submit to Congress reports on the costs incurred by the United States in connection with the Persian Gulf conflict and the foreign contributions made to offset such costs, and to require the Secretary of State and the Secretary of the Treasury to submit to Congress reports on the contributions of foreign countries in response to the Persian Gulf crisis.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Andrew Lamar Alexander, Jr., of Tennessee, to be Secretary of Education;

Marye Anne Fox, of Texas, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 1996; and

The following named persons to be Members of the National Advisory Council on Educational Research and Improvement for the terms indicated:

Eugene L. Madeira, of Pennsylvania, for the remainder of the term expiring September 30, 1991, vice Donald M. Clark.

A. Pierre Guillermin, of Virginia, for a term expiring September 30, 1993, vice Robert Lee McElrath, term expired.

June Scobee Rodgers, of Arizona, for a term expiring September 30, 1993, vice Carol Pendas Whitten, term expired.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nomines' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SYMMS (for himself, Mr. SMITH, and Mr. CRAIG):

S. 634. A bill to amend chapter 44, title 18, United States Code, to provide clarification of limitations on controls of firearms, and to prohibit the use of Federal funds to political subdivisions which implement certain gun control ordinances; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. DOLE, Mr. SIMPSON, Mr. HATCH, Mr. SPECTER, Mr. D'AMATO, Mr. STEVENS, Mr. LUGAR, Mr. HELMS, Mr. DOMENICI, Mr. COCHRAN, Mr. COATS, Mr. GARN, Mr. KASTEN, Mr. WARNER, Mr. SYMMS, Mr. NICKLES, Mr. MACK, Mr. LOTT, Mr. WALLOP, Mr. MCCAIN, Mr. MCCONNELL, Mr. GORTON, Mr. SMITH, Mr. BROWN, Mr. CRAIG, and Mr. SEYMOUR):

S. 635. A bill to restore an enforceable Federal death penalty, to curb the abuse of habeas corpus, to reform the exclusionary rule, to combat criminal violence involving firearms, to protect witnesses and other participants in the criminal justice system from violence and intimidation, to address the problem of gangs and serious juvenile offenders, to combat terrorism, to combat sexual violence and child abuse, to provide for drug testing of offenders in the criminal justice process, to secure the right of victims and defendants to equal justice without regard to race or color, to enhance the rights of crime victims, and for other purposes; to the Committee on the Judiciary.

By Mr. HOLLINGS:

S. 636. A bill to authorize the President to resume negotiations in the Uruguay Round and to negotiate an agreement with the Governments of Canada and Mexico; to the Committee on Finance.

By Mr. LIEBERMAN:

S. 637. A bill to establish the Industrial Development for Eastern Europe Foundation; to the Committee on Foreign Relations.

By Mr. FOWLER:

S. 638. A bill to authorize the Secretary of the Interior to accept a donation of land for addition to the Ocmulgee National Monument in the State of Georgia; to the Committee on Energy and Natural Resources.

S. 639. A bill to direct the Secretary of the Interior to prepare a national historic landmark theme study on African-American history; to the Committee on Energy and Natural Resources.

By Mr. KASTEN (for himself, Mr. ROCKEFELLER, Mr. DANFORTH, Mr. LIEBERMAN, Mr. GORTON, Mr. RIEGLE, Mr. PRESSLER, Mr. PELL, Mr. MCCAIN, Mr. GLENN, Mr. LOTT, Mr. SANFORD, Mr. BURNS, Mrs. KASSEBAUM, Mr. DOLE, Mr. HELMS, Mr. LUGAR, Mr.

COATS, Mr. CHAFEE, Mr. NICKLES, Mr. HATCH, Mr. BOND, Mr. SYMMS, Mr. WALLOP, Mr. MACK, Mr. GRASSLEY, Mr. HEINZ, Mr. GARN, Mr. CRAIG, Mr. MCCONNELL, and Mr. BOREN):

S. 640. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. KASSEBAUM:

S. 641. A bill entitled the "Improved Rural and Short-Line Railroad Service Act."; to the Committee on Commerce, Science, and Transportation.

By Mr. COATS (for himself, and Mr. HELMS):

S. 642. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependents of a taxpayer; to the Committee on Finance.

S. 643. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependent children of a taxpayer who are 6 years old or younger; to the Committee on Finance.

By Mr. SIMON (for himself, Mr. BRADLEY, and Mr. HARKIN):

S. 644. A bill to amend the Budget Enforcement Act of 1990 to allow offsetting transfers among discretionary spending categories; to the Committee on the Budget and the Committee on Government Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that is one committee reports, the other committee have 30 days to report or be discharged.

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. BURNS, Mr. CHAFEE, Mr. COATS, Mr. CRAIG, Mr. DANFORTH, Mr. DOLE, Mr. EXON, Mr. GARN, Mr. GORTON, Mr. GRASSLEY, Mr. HEINZ, Mr. KASTEN, Mr. KERRY, Mr. MCCAIN, Mr. MURKOWSKI, Mr. NICKLES, Mr. PELL, Mr. RUDMAN, Mr. SIMPSON, Mr. SMITH, Mr. SYMMS, Mr. WALLOP, and Mr. HATCH):

S. 645. A bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents; to the Committee on Commerce, Science, and Transportation.

By Mr. DECONCINI (for himself, Mr. THURMOND, Mr. HOLLINGS, Mr. WIRTH, Mr. SPECTER, Mr. GRAHAM, Mr. MACK, Mr. ROBB, Mr. WARNER, Mr. MCCAIN, Mr. SARBANES, Mr. GORE, Mr. SASSER, Ms. MIKULSKI, and Mr. BROWN):

S. 646. A bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges; to the Committee on the Judiciary.

By Mr. NUNN, from the Committee on Armed Services:

S. 647. An original bill to require the Director of the Office of Management and Budget to submit to Congress reports on the costs incurred by the United States in connection with the Persian Gulf conflict and the foreign contributions made to offset such costs, and to require the Secretary of State and the Secretary of the Treasury to submit to Congress reports on the contributions of foreign countries in response to the Persian Gulf crisis; placed on the calendar.

By Mr. SPECTER:

S. 648. A bill to assist States in crime control, law enforcement efforts and prisoner education projects, and for other purposes; to the Committee on the Judiciary.

By Mr. BREAUX (for himself, Mr. CHAFEE, and Mr. PELL):

S. 649. A bill to amend the Internal Revenue Code of 1986 to repeal the luxury tax on boats; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. BOREN, Mr. BREAUX, Mr. BUMPERS, Mr. BURDICK, Mr. BURNS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DIXON, Mr. GRASSLEY, Mr. HELMS, Mr. JOHNSTON, Mr. LOTT, Mr. PRYOR, Mr. STEVENS, and Mr. SYMMS):

S. 650. A bill to amend the Trade Act of 1974 to strengthen the United States' ability to respond to foreign trade practices that threaten United States commerce; to the Committee on Finance.

By Mr. GARN:

S. 651. A bill to improve the administration of the Federal Deposit Insurance Corporation, and to make technical amendments to the Federal Deposit Insurance Act, the Federal Home Loan Bank Act, and the National Bank Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KOHL:

S. 652. A bill to protect the privacy of telephone users by amending section 3121 of title 18, United States Code; to the Committee on Commerce, Science, and Transportation.

By Mr. HEFLIN (for himself, Mr. HATCH, Mr. THURMOND, Mr. DECONCINI, Mr. SIMPSON, Mr. GRASSLEY, Mr. D'AMATO, Mr. SHELBY, Mr. COCHRAN, Mr. EXON, Mr. GORTON, and Mr. REID):

S. 653. A bill to prohibit injunctive relief, or an award of costs, including attorney's fees, against a judicial officer for action taken in a judicial capacity; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself, Mr. HATCH, Mr. KOHL, Mr. LAUTENBERG, Mr. SPECTER, and Mr. GRASSLEY):

S. 654. A bill to amend title 35, United States Code, with respect to patents on certain processes; to the Committee on the Judiciary.

By Mr. WALLOP:

S. 655. A bill to establish the National Park System Visitor Facilities Trust Fund; to the Committee on Energy and Natural Resources.

By Mr. KASTEN (for himself, Mr. MACK, Mr. SHELBY, Mr. SYMMS, Mr. HELMS, Mr. LOTT, Mr. COATS, Mr. GORTON, Mr. WALLOP, Mr. MCCAIN, Mr. BROWN, Mr. HATCH, Mr. BURNS, Mr. GARN, Mr. GRAMM, Mr. D'AMATO, and Mr. THURMOND):

S. 656. A bill to amend the Internal Revenue Code of 1986 to provide for a maximum long-term capital gains rate of 15 percent and indexing of certain capital gains, and for other purposes; to the Committee on Finance.

By Mr. LEAHY (for himself and Mr. METZENBAUM):

S. 657. A bill to amend the Child Nutrition Act of 1966 to provide for more competitive pricing of infant formula for the special supplemental food program for women, infants, and children [WIC], and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRAHAM:

S. 658. A bill to provide law enforcement scholarships and recruitment incentives; to the Committee on the Judiciary.

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

S. 659. A bill to suspend temporarily certain bars to the furnishing of veterans benefits to certain former spouses of veterans and to suspend temporarily a bar to the recognition of certain married children of veterans for veterans benefits purposes; to the Committee on Veterans Affairs.

By Mr. SIMON (for himself and Mr. DIXON):

S. 660. A bill to amend title 28, United States Code, to authorize the appointment of an additional bankruptcy judge for the Southern District of Illinois; to the Committee on the Judiciary.

By Mr. HEFLIN:

S.J. Res. 93. Joint resolution to designate the period of September 13, 1991, through September 19, 1991, as "National Ballroom Dance Week"; to the Committee on the Judiciary.

By Mr. BROWN (for himself, Mr. COCHRAN, Mr. AKAKA, and Mr. SASSER):

S.J. Res. 94. Joint resolution relative to Iraq; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HOLLINGS (for himself, Mr. BYRD, Mr. FORD, Mr. CONRAD, Mr. HELMS, Mr. THURMOND, Mr. INOUYE, Mr. HEFLIN, Mr. SANFORD, Mr. AKAKA, Mr. WELLSTONE, Mr. SHELBY, Mr. SASSER, Mr. JOHNSTON, and Mr. BURDICK):

S. Res. 78. Resolution to disapprove the request of the President for extension of the fast-track procedures under the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974; to the Committee on Finance.

By Mr. PRYOR (for himself and Mr. HEINZ):

S. Res. 79. Resolution authorizing printing additional copies of Senate report titled "Developments in Aging: 1990"; to the Committee on Rules and Administration.

By Mr. NUNN (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 80. Resolution to authorize testimony by a Senate employee in the case of Tennessee v. Hutchinson, No. 9100652MMACI (General Sessions Court of Knox County) and related cases; considered and agreed to.

By Mr. BRADLEY (for himself, Mr. BIDEN, Mr. HATCH, Mr. RIEGLE, and Mr. LEVIN):

S. Res. 81. Resolution commending the Baltic States for their efforts to regain independence and urging measures to support such efforts; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS (for himself, Mr. SMITH, and Mr. CRAIG):

S. 634. A bill to amend chapter 44, title 18, United States Code, to provide clarification of limitations on controls of firearms, and to prohibit the use of Federal funds to political subdivisions which implement certain gun control ordinances; to the Committee on the Judiciary.

GUN CONTROL

Mr. SYMMS. Mr. President, we have heard a lot of talk over the past few years about the importance of preserving and expanding constitutional rights.

Various Federal courts have found constitutional rights ranging from the right to an abortion to the right to

burn the American flag, even though neither abortion nor combustion are remotely suggested by anything in the Constitution. Proponents of these expansions have talked sanctimoniously about the overwhelming necessity of preserving these rights, even at great social cost, because of the necessity of preserving the Constitution.

Ironically, many of these same individuals are prepared to readily discard explicit constitutional guarantees which are not consistent with their particular point of view.

No constitutional guarantee has been more whittled away by this hypocrisy than the second amendment.

The language of the second amendment is simple: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

This language is more sweeping on its face than the first amendment, which explicitly deals only with what Congress may or may not do. Furthermore, although the second amendment contains a purpose, it has no explicit conditions.

Yet, the same judges and constitutional scholars who have pulled panoplies of constitutional rights out of their ears seem perfectly willing to ignore those embarrassing provisions of the Constitution—including this one—which fail to conform to their world view.

One of the most serious blows to the second amendment—although certainly not the only one—occurred in June 1981, when the city of Morton Grove, IL, enacted an outright ban on the civilian ownership of handguns.

Morton Grove implemented its gun ban with much pomp and circumstance, but, not surprisingly, it resulted in no decrease in the local crime rate. To the contrary, Morton Grove continued to experience an increase in violent crime, while Kinnesaw, GA, which, at the same time, moved to mandate gun ownership, saw its violent crime rate decline.

This could hardly have been a surprise to anyone, even the naive city councilmen of Morton Grove.

Those locations in the United States which most heavily regulate guns—Washington, New York, Boston, and so on—are also, not coincidentally, the murder and crime capitals of the country.

Under ordinary circumstances, a State or locality should have the right to implement the policies of its choice, even if those policies lead to the gratuitous suffering of its citizens.

However, as some of our liberal colleagues have regularly pointed out on the floor of this body, it is the responsibility of the Federal Government to be a guarantor of the people's rights under the Constitution—and particularly under the provisions of the Bill of Rights.

Accordingly, today I am introducing a bill which would prevent any municipality that has enacted a gun ban comparable to the Morton Grove law from receiving Federal law enforcement assistance. The intention is to send a strong message to municipalities contemplating tampering with the Bill of Rights and to deter them from enacting such statist and unconstitutional ordinances.

Mr. President, if the intent of the Morton Grove law is to keep dangerous weapons out of the hands of lawbreakers, it is important to keep one thing in mind: The reason lawbreakers are called "lawbreakers" is because they break the law. There is a substantial probability, therefore, that passing another law is going to have little effect on them.

As a matter of fact, some studies show that over 80 percent of criminals who use firearms in the commission of crimes of violence acquired those firearms unlawfully. If this is the case, the only effect of a statute such as Morton Grove's will be to leave a disarmed innocent citizenry at the mercy of armed lawbreakers.

Gun control attacks a serious problem from the wrong angle. Today 60 million Americans own 200 million firearms, including approximately 60 million handguns. Yet, less than fourtenths of 1 percent of those handguns will be used to commit crimes. Over 99.6 percent of all handguns in America are used legally.

Rather than punish those who use firearms in the commission of a crime, Morton Grove would punish law-abiding citizens. Whatever the intent behind an ordinance of this ilk, it is simply counterproductive. We must punish the criminals, not the innocent.

Mr. President, the second amendment—all 27 words of it—is clear.

I am offering this bill—as I have in the past—because we in Congress need to take a stand in support of the right of gun owners, and all people who cherish freedom. It is the job of the federal government to use its legal and financial resources to serve as a guarantor of the provisions of the Constitution—and particularly the Bill of Rights. To do otherwise would be to lend our complicity to actions which threaten individual liberty and undermine the Constitution we are sworn to defend.

Mr. President, this legislation has the support of the National Rifle Association, Gun Owners of America, and the Citizens Committee for the Right to Keep and Bear Arms. I ask unanimous consent that a letter from the National Rifle Association in support of this legislation, and the text of the legislation be inserted in the RECORD.

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

S. 634

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 927 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "No provision"; and

(2) inserting at the end thereof the following:

"(b) Notwithstanding any other provision of law, any political subdivision of a state which enacts a law, regulation, or ordinance which prohibits the ownership or possession of firearms or ammunition or any specific type of firearm or ammunition, unless such law, regulation, or ordinance is specifically enacted by Federal law or the law of the State in which the political subdivision is located, shall be ineligible to—

"(1) use Federal detention facilities;

"(2) receive training from or enter into contracts with the Federal Bureau of Investigation;

"(3) receive assistance from or participate in programs of the Office of Justice Programs; or

"(4) have access to the Department of Treasury records or training programs."

NATIONAL RIFLE ASSOCIATION OF AMERICA, INSTITUTE FOR LEGISLATIVE ACTION,

Washington, DC, February 15, 1989.

Hon. STEVE SYMMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR SYMMS: On behalf of the National Rifle Association of America, representing millions of law-abiding firearm owners, collectors, sportsmen, competitors and those who take pride in our Constitutional right to keep and bear arms, it is my distinct honor to take this opportunity to announce the NRA's strong support for your legislation, S. 45.

S. 45 would not only provide clarification of limitations on controls of firearms, but also would prohibit the use of Federal funds to political subdivisions which implement certain gun control ordinances.

As you so well know, any political subdivision which enacts firearms ordinances, regulations and laws which prohibit the ownership or possession of firearms or ammunition, contrary to Federal or State laws, deprives their citizens of liberty without due process, while at the same time, negates their rights under the Second, Ninth and Fourteenth Amendments to our Constitution.

It is refreshing to have legislators, such as yourself, who focus their Congressional initiatives on the reality of our current laws and crime in this nation, versus those who are misinformed, misguided and seek to ban firearms and/or ammunition and do not care to address our nation's severe crime problems.

Should, I or the NRA be of assistance to you, on this or any other matter, please do not hesitate to contact me (828-6359) or Mary Jolly of my staff (828-6357).

Sincerely,

JAMES JAY BAKER,
Director, Federal Affairs Division.

By Mr. THURMOND (for himself, Mr. DOLE, Mr. SIMPSON, Mr. HATCH, Mr. SPECTER, Mr. D'AMATO, Mr. STEVENS, Mr. LUGAR, Mr. HELMS, Mr. DOMENICI, Mr. COCHRAN, Mr. COATS, Mr. GARN, Mr. KASTEN, Mr.

WARNER, Mr. SYMMS, Mr. NICKLES, Mr. MACK, Mr. LOTT, Mr. WALLOP, Mr. MCCAIN, Mr. MCCONNELL, Mr. GORTON, Mr. SMITH, Mr. BROWN, Mr. CRAIG, and Mr. SEYMOUR):

S. 635. A bill to restore an enforceable Federal death penalty, to curb the abuse of habeas corpus, to reform the exclusionary rule, to combat criminal violence involving firearms, to protect witnesses and other participants in the criminal justice system from violence and intimidation, to address the problem of gangs and serious juvenile offenders, to combat terrorism, to combat sexual violence and child abuse, to provide for drug testing of offenders in the criminal justice process, to secure the right of victims and defendants to equal justice without regard to race or color, to enhance the rights of crime victims, and for other purposes; to the Committee on the Judiciary.

COMPREHENSIVE VIOLENT CRIME CONTROL ACT OF 1991

Mr. THURMOND. Mr. President, today, I rise to introduce, along with Senator DOLE and 25 additional cosponsors, President Bush's sweeping antiviolent crime bill. This major criminal law reform measure represents the product of the administration's unprecedented 1991 crime summit under the direction of Attorney General Thornburgh. The Comprehensive Violent Crime Control Act of 1991 is vitally important legislation designed to combat the growing problem of violent crime.

On Monday, President Bush was joined by our Nation's State attorneys general, representatives from law enforcement, and Members of Congress in unveiling this urgently needed legislation. The President called upon Congress to pass this measure within the next 100 days. I believe this is a reasonable request. Without question, if the U.S. Armed Forces can win a ground war against Iraq in less than 100 hours, Congress can within 100 days provide the President and the States with the weapons needed to mount an all-out assault on crime.

Earlier this month, I was pleased to attend as Attorney General Thornburgh hosted an unprecedented national summit on law enforcement responses to violent crime. He brought together representatives from law enforcement, victims groups, community action organizations, State and local prosecutors, judges, and Members of Congress. The summit focused upon what Attorney General Thornburgh called the first civil right of every American—the right to be free from fear in our homes, on our streets, and in our communities. This legislation is the product of this conference and represents what Americans truly demand of Congress in order to address violent crime.

Without question, we are in the midst of a violent crime epidemic in our country. With world peace once again within our grasp, it is ironic that Americans do not feel safe within their own communities. Just open the city section of any urban newspaper and read about the brutality. Americans are increasingly falling victim to the depraved acts of vicious murderers, rapists, and others. I find this totally unacceptable.

Every 24 minutes, a person is murdered in the United States. Every 6 minutes, a woman is raped. Someone is robbed every 55 seconds and someone is assaulted every 33 seconds. It is no wonder that our wives and daughters are afraid to walk the streets at night out of fear that they will be the next statistic.

Mr. President, the types of violent crimes committed are mind boggling. According to the Department of Justice, of the almost 19,000 murders reported in 1989, almost 3,500 were stabbing deaths, 366 were strangulations, over 100 were asphyxiated, and over 240 victims were burned to death. Almost 12,000 were the result of shootings. Drownings, poison, blunt objects, and other weapons accounted for the rest. During the same year, there were an estimated 94,504 forcible rapes committed in the United States. Clearly, there are inherently vicious criminals in our cities and towns who must be stopped. Congress must do its part to help the administration and our State and local governments capture and appropriately punish these violent offenders.

Mr. President, title 1 of this legislation is similar to S. 147, the Federal Death Penalty Act of 1991, which I introduced on the first day of this Congress. This title restores an enforceable Federal death penalty by establishing constitutional procedures for the implementation of a death sentence. It authorizes the death penalty for, among other things, murder, espionage, treason, murder for hire, and certain attempts to assassinate the President.

Included as title 2 of this legislation is new language to reform current habeas corpus procedures which will minimize Federal judicial interference with State criminal convictions and deal with common abuses typical of habeas prisoner petitions. In 1990, State prisoners filed almost 11,000 petitions for Federal habeas corpus review. This bill responds to the problem by combining the basic Powell Committee recommendations for death penalty litigation with the most important features of a habeas corpus reform proposal which I introduced as S. 148. Finality of litigation and the elimination of the habeas abuse which currently surrounds State death penalty convictions is critical.

Mr. President, the urgent need for habeas corpus was summed up very well by Jack Collins, regional director of Citizens for Law and Order, on the final day of the Attorney General's crime summit. Collins, whose 19-year-old daughter was brutally murdered almost 6 years ago and whose murderer still sits on death row, said that:

> No single legislative initiative is more vital than habeas corpus reform. Nothing will afford the criminal justice system more force, more credibility, and more integrity, than putting an end to the interminable succession of appeals.

A particular case which exemplifies the need for habeas reform is the case of Rusty Woomer. Woomer brutally murdered four people in my home State of South Carolina in 1979. He robbed and killed a 67-year-old friend of mine—John Turner. He murdered a mentally retarded woman and her brother-in-law. He kidnaped and raped two young women, murdering one and permanently disfiguring the other after shooting her in the face. He was convicted of murder and was recently executed. However, it took over 11 years of litigation and numerous Federal habeas appeals before this vicious killer would pay his due. In fact, his case went to the Supreme Court of the United States four different times despite the fact that he did not dispute his guilt. This is outrageous. It is imperative that we consider real habeas reform which respects the findings of State courts when there has been a full and fair review of the issues.

Additionally, this package includes as title 3 a codification of the good faith exception to the exclusionary rule that has been recognized by the Supreme Court. All too often in violent crime and drug cases, evidence is excluded at trial simply because the law enforcement officer innocently violated search and seizure rules. This provision codifies and expands upon a Supreme Court decision by simply providing that when a law enforcement officer acts in good faith compliance with the fourth amendment, any evidence obtained therefrom will be admissible as evidence in a criminal trial. This is appropriate because criminals should not go free on technicalities. The provision also includes an exception to the exclusionary rule for firearms seized by Federal law enforcement officers in prosecutions for serious crimes.

Mr. President, the bill also proposes increased penalties for serious gun offenses. It is imperative that we make substantial prison time a certainty for the drug traffickers and other criminals who prey upon the innocent in our society and use firearms to commit their brutal crimes.

This omnibus measure also includes titles which expand victims' rights and respond to sexual violence and child abuse. It also creates a nationwide program of drug testing for Federal offenders on postconviction release. Fi-

nally, this bill responds to the threat of terrorism by including measures which ensure the effective removal of terrorist aliens and strengthen our efforts against maritime and airline terrorism.

In summary, the fight to win the war on vicious crimes will not be easy. Yet, one just has to witness the pain, cruelty, and suffering which violent crime offenders have caused this Nation to know that we must enact a comprehensive death penalty, enhance the penalties for those who use firearms to commit crimes, and reform the criminal procedures which cause so much delay and injustice within our criminal justice system. The American people demand action and they demand it now. We should act swiftly to pass this important legislation, not a watered down version which expands the rights of criminals at the expense of the law abiding. We must have real reform.

In closing, the countdown has begun. President Bush has asked Congress to act upon this measure within 100 days, starting yesterday. Today is day No. 3. The innocent, law-abiding citizens of this Nation deserve tough, effective anticrime legislation to ensure that those who commit violent crime face forceful punishment. It should be noted that a partisan effort to push through the Senate a liberal bill which expands criminals' rights will not suffice.

For this reason, I urge my colleagues to take swift action upon this legislation. There is no doubt that this bill encompasses the real reform America wants and so greatly deserves.

Mr. President, I ask unanimous consent that the full text of this bill, along with a section-by-section analysis, be printed in the RECORD.

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

S. 635

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Violent Crime Control Act of 1991".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—DEATH PENALTY

Sec. 101. Short title.
Sec. 102. Death Penalty Procedures.
Sec. 103. Conforming Amendment Relating to Destruction of Aircraft or Aircraft Facilities.
Sec. 104. Conforming Amendment Relating to Espionage.
Sec. 105. Conforming Amendment Relating to Transporting Explosives.
Sec. 106. Conforming Amendment Relating to Malicious Destruction of Federal Property by Explosives.
Sec. 107. Conforming Amendment Relating to Malicious Destruction of Interstate Property by Explosives.
Sec. 108. Conforming Amendment Relating to Murder.
Sec. 109. Conforming Amendment Relating to Killing Official Guests or Internationally Protected Persons.
Sec. 110. Murder by Federal Prisoner.
Sec. 111. Conforming Amendment Relating to Kidnapping.
Sec. 112. Conforming Amendment Relating to Hostage Taking.
Sec. 113. Conforming Amendment Relating to Mailability of Injurious Articles.
Sec. 114. Conforming Amendment Relating to Presidential Assassination.
Sec. 115. Conforming Amendment Relating to Murder for Hire.
Sec. 116. Conforming Amendment Relating to Violent Crimes in Aid of Racketeering.
Sec. 117. Conforming Amendment Relating to Wrecking Trains.
Sec. 118. Conforming Amendment Relating to Bank Robbery.
Sec. 119. Conforming Amendment Relating to Terrorist Acts.
Sec. 120. Conforming Amendment Relating to Aircraft Hijacking.
Sec. 121. Conforming Amendment to Controlled Substances Act.
Sec. 122. Conforming Amendment Relating to Genocide.
Sec. 123. Inapplicability to Uniform Code of Military Justice.

TITLE II—HABEAS CORPUS

SUBTITLE A—GENERAL HABEAS CORPUS REFORM

Sec. 201. Short Title for Subtitle A.
Sec. 202. Period of Limitation.
Sec. 203. Appeal.
Sec. 204. Amendment to Rules of Appellate Procedure.
Sec. 205. Section 2254 Amendments.
Sec. 206. Section 2255 Amendments.

SUBTITLE B—DEATH PENALTY LITIGATION PROCEDURES

Sec. 210. Short Title for Subtitle B.
Sec. 211. Death Penalty Litigation Procedures.

TITLE III—EXCLUSIONARY RULE

Sec. 301. Admissibility of Certain Evidence.

TITLE IV—FIREARMS

Subtitle A—Firearms and Related Amendments

Sec. 401. Enhanced Penalty for Use of Semiautomatic Firearm During a Crime of Violence or Drug Trafficking Offense.
Sec. 402. Possession of a Firearm or an Explosive During the Commission of a Felony.
Sec. 403. Conforming Amendment Providing Increased Penalty for Second Offense of Using an Explosive to Commit a Felony.
Sec. 404. Clarification of Definition of Conviction.
Sec. 405. Permitting Consideration of Pretrial Detention for Certain Firearms and Explosives Offenses.
Sec. 406. Smuggling Firearms in Aid of Drug Trafficking.
Sec. 407. Theft of Firearms and Explosives.
Sec. 408. Conforming Amendment Providing Mandatory Revocation of Supervised Release for Possession of a Firearm.
Sec. 409. Increased Penalty for Knowingly False, Material Statement in Connection with the Acquisition of a Firearm from a Licensed Dealer.
Sec. 410. Statute of Limitations for Certain Gangster Weapon Offenses.
Sec. 411. Possession of Explosives by Felons and Others.
Sec. 412. Summary Destruction of Explosives Subject to Forfeiture.
Sec. 413. Summary Forfeiture of Unregistered National Firearms Act Weapons.
Sec. 414. Disposition of Forfeited Firearms.
Sec. 415. Elimination of Outmoded Language Relating to Parole.
Sec. 416. Possession of Stolen Firearms.
Sec. 417. Using a Firearm in the Commission of Counterfeiting or Forgery.
Sec. 418. Mandatory Penalty for Firearms Possession by Violent Felons and Serious Drug Offenders.
Sec. 419. Reporting of Multiple Firearms Sales.
Sec. 420. Possession of Stolen Firearms and Explosives.
Sec. 421. Receipt of Firearms by nonresidents.
Sec. 422. Firearms and Explosives Conspiracy.
Sec. 423. Theft of Firearms or Explosives from Licensee.
Sec. 424. Disposing of Explosives to Prohibited Persons.

SUBTITLE B—PROHIBITED GUN CLIPS AND MAGAZINES

Sec. 431. Findings.
Sec. 432. Certain Ammunition Clips and Magazines Defined as Firearms.
Sec. 433. Definition of Ammunition Feeding Device.
Sec. 434. Prohibitions Applicable to Ammunition Feeding Devices.
Sec. 435. Identification Markings for Ammunition Feeding Devices.
Sec. 436. Criminal Penalties.
Sec. 437. Noninterruption of Business for Persons in the Business of Importing or Manufacturing Ammunition Feeding Devices.

TITLE V—OBSTRUCTION OF JUSTICE

Sec. 501. Protection of Court Officers and Jurors.
Sec. 502. Prohibition of Retaliatory Killings of Witnesses, Victims, and Informants.
Sec. 503. Protection of State or Local Law Enforcement Officers Providing Assistance to Federal Law Enforcement Officers.

TITLE VI—GANGS AND JUVENILE OFFENDERS

Sec. 601. Amendments Concerning Records of Crimes Committed by Juveniles.
Sec. 602. Adult Prosecution of Serious Juvenile Offenders.
Sec. 603. Serious Drug Offenses by Juveniles as Armed Career Criminal Act Predicates.
Sec. 604. Increased Penalty for Travel Act Crimes Involving Violence.
Sec. 605. Increased Penalty for Conspiracy to Commit Murder for Hire.

TITLE VII—TERRORISM

SUBTITLE A—AVIATION TERRORISM

Sec. 701. Implementation of the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.
Sec. 702. Amendment to Federal Aviation Act.

SUBTITLE B—MARITIME TERRORISM

Sec. 711. Short Title for Subtitle B.
Sec. 712. Findings.

Sec. 713. Statement of Purpose.
Sec. 714. Offenses of Violence Against Maritime Navigation or Fixed Platforms.
Sec. 715. Clerical Amendments.
Sec. 716. Effective Dates.
Sec. 717. Territorial Sea Extending to Twelve Miles Included in Special Maritime and Territorial Jurisdiction.
Sec. 718. Assimilated Crimes in Extended Territorial Sea.
Sec. 719. Jurisdiction Over Crimes Against United States Nationals on Certain Foreign Ships.

SUBTITLE C—TERRORIST ALIEN REMOVAL

Sec. 721. Short Title for Subtitle C.
Sec. 722. Findings.
Sec. 723. Terrorist Activities Defined.
Sec. 724. Procedures for Removal of Alien Terrorists.
Sec. 725. Conforming Amendments.
Sec. 726. Effective Date.

SUBTITLE D—TERRORISM OFFENSES AND SANCTIONS

Sec. 731. Torture.
Sec. 732. Use of Weapons of Mass Destruction.
Sec. 733. Homicides and Attempted Homicides Involving Firearms in Federal Facilities.
Sec. 734. Providing Material Support to Terrorists.
Sec. 735. Addition of Terrorist Offenses to the RICO Statute.
Sec. 736. Forfeiture for Terrorist and Other Violent Acts.
Sec. 737. Enhanced Penalties for Certain Offenses.
Sec. 738. Sentencing Guidelines Increase for Terrorist Crimes.

SUBTITLE E—ANTITERRORISM ENFORCEMENT PROVISIONS.

Sec. 741. Aliens Cooperating in Terrorist or Other Investigations.
Sec. 742. Amendment to the Alien Enemy Act.
Sec. 743. Counterintelligence Access to Telephone Records.
Sec. 744. Counterintelligence Access to Credit Records.
Sec. 745. Authorization for Interceptions of Communications.
Sec. 746. Participation of Foreign and State Government Personnel in Interceptions of Communications.
Sec. 747. Disclosure of Intercepted Communications to Foreign Law Enforcement Agencies.
Sec. 748. Extension of the Statute of Limitations for Certain Terrorism Offenses.

TITLE VIII—SEXUAL VIOLENCE AND CHILD ABUSE

Sec. 801. Admissibility of Evidence of Similar Crimes in Sexual Assault and Child Molestation Cases.
Sec. 802. Drug Distribution to Pregnant Women.
Sec. 803. Definition of Sexual Act for Victims Below 16.
Sec. 804. Increased Penalties for Recidivist Sex Offenders.
Sec. 805. Restitution for Victims of Sex Offenses.
Sec. 806. HIV Testing and Penalty Enhancement in Sexual Abuse Cases.
Sec. 807. Payment of Cost of HIV Testing for Victim.

TITLE IX—DRUG TESTING

Sec. 901. Drug Testing of Federal Offenders on Post-Conviction Release.
Sec. 902. Drug Testing in State Criminal Justice Systems as a Condition of Receipt of Justice Drug Grants.

TITLE X—EQUAL JUSTICE ACT

Sec. 1001. Short Title.
Sec. 1002. Prohibition of Racially Discriminatory Policies Concerning Capital Punishment or Other Penalties.
Sec. 1003. General Safeguards Against Racial Prejudice or Bias in the Tribunal.
Sec. 1004. Federal Capital Cases.
Sec. 1005. Funding Objective.
Sec. 1006. Extension of Protection of Civil Rights Statutes.

TITLE XI—VICTIMS' RIGHTS

Sec. 1101. Restitution Amendments.
Sec. 1102. Victim's Right of Allocution in Sentencing.

TITLE I—DEATH PENALTY

SEC. 101. SHORT TITLE.

This title may be cited as the "Capital Punishment Procedures Act of 1991."

SEC. 102. DEATH PENALTY PROCEDURES.

Title 18 of the United States Code is amended—

(a) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"Sec.
"3591. Sentence of death.
"3592. 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. Appointment of counsel.
"3599. Collateral Attack on Judgment Imposing Sentence of Death.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder 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;

"(c) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section;

"(d) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person;

"(e) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, acting with a state of mind described in subsection (f), engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(f) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury;

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: Provided, That no person may be sentenced to death who was less than eighteen years of age at the time of the offense.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, 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) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), 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) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—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 (b) or (f), 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) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gather 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 by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of Title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), 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) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use or attempted or threatened use of a firearm, as defined in section 921 of this title, against another person.

"(3) 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 death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—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.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, or anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—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 was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person 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 that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal 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 of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge. The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591(c)–(e), 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) 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 death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)) of the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. 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.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the government, 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, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis

for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. 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.—When the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of 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. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearings 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 the section is necessary; or

"(3) before the court alone, upon 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.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an 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 evidence.

"(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 that 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

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591(b) or (f), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591(c)-(e), an aggravating factor required to be considered under section 3592(d) is found to exist; the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(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 be influenced by prejudice or bias relating to the race, color, religion, 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, religion, 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 prejudice or bias relating to the race, color, religion, 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, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. 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 the possibility of release.

"§ 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 of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence 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) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(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 so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Pris-

ons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"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.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the government shall promptly notify the district court that imposed the sentence. Within 10 days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (1) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral Attack on Judgment Imposing Sentence of Death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which a sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within 90 days of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. A motion described in this section shall have priority over all non-capital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed."; and

"(b) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death penalty procedures ..... 3591".

SEC. 103. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 104. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18 of the United States Code is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

SEC. 105. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 106. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 107. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 108. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the 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 of life;"

SEC. 109. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18 of the United States Code is amended by striking the words "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

SEC. 110. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code is amended—

(a) by adding at the end thereof the following:

§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possiblity of release.

"(b) For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) '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

(b) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 111. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 112. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 113. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 114. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to murder 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 murder 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.".

SEC. 115. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Subsection (a) of section 1958 of title 18 of the United States Code is amended by deleting the words "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 in lieu thereof "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 116. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Paragraph (1) of subsection (a) of section 1959 of title 18 of the United States Code is amended to read as follows: "for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both";

SEC. 117. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 118. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 119. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18 of the United States Code is amended to read as follows:

"(1)(A) if the killing is 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 for life, or both;".

SEC. 120. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473), is amended by striking subsection (c).

SEC. 121. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act is amended by striking subsections (g)–(r).

SEC. 122. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18 of the United States Code is amended by striking "a fine of not more than $1,000,000 and imprisonment for life;" and inserting in lieu thereof "by death or imprisonment for life, or a fine of not more than $1,000,000, or both;".

SEC. 123. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18 of the 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 et seq.).

TITLE II—HABEAS CORPUS REFORM

Subtitle A—General Habeas Corpus Reform

SEC. 201. SHORT TITLE FOR SUBTITLE A.

This subtitle may be cited as the "Habeas Corpus Reform Act of 1991".

SEC. 202. PERIOD OF LIMITATION.

Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 203. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause.".

SEC. 204. AMENDMENT TO RULES OF APPELLATE PROCEDURE.

Federal Rule of Appellate Procedure 22 is amended to read as follows:

"RULE 22.

"Habeas Corpus and § 2255 Proceedings

"(a) Application for an Original Writ of Habeas Corpus. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) Necessity of Certificate of Probable Cause for Appeal. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the government or its representative, a certificate of probable cause is not required.".

SEC. 205. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended by redesignating subsections

"(e)" and "(f)" as subsections "(f)" and "(g)", respectively, and is further amended—

(1) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.";

(2) be redesignating subsection "(d)" as subsection "(e)", and amending it to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence.";

(3) by adding a new subsection (d) reading as follows:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings."; and

(4) by adding a new subsection (h) reading as follows:

"(h) In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a petitioner who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by the provisions of section 3006A of title 18, United States Code.".

SEC. 206. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended by deleting the second paragraph and the penultimate paragraph thereof, and by adding at the end thereof the following new paragraphs:

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

"In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by the provisions of section 3006A of title 18, United States Code."

Subtitle B—Death Penalty Litigation Procedures

SEC. 210. SHORT TITLE FOR SUBTITLE B.

This subtitle may be cited as the "Death Penalty Litigation Procedures Act of 1991."

SEC. 211. DEATH PENALTY LITIGATION PROCEDURES.

Title 28, United States Code, is amended by inserting the following new chapter immediately following chapter 153:

"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. Application to state unitary review procedures.

"2262. Limitation periods for determining petitions.

"2263. Rule of construction.

"SEC. 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 brought by prisoners in state custody who are subject to a capital sentence. It shall apply only if the provisions of 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 litigation expenses of competent counsel in state post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for state law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all state prisoners under capital sentence and must provide for the entry of an order by a court of record: (1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) 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.

"(e) The ineffectiveness or incompetence of counsel during state or federal collateral post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254 or this chapter. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of state or federal post-conviction proceedings on the basis of the ineffectiveness or imcompetence of counsel in such proceedings.

"SEC. 2257. MANDATORY STAYS OF EXECUTION; DURATION; LIMITS ON STAYS OF EXECUTION; SUCCESSIVE PETITIONS.

"(a) Upon the entry in the appropriate state court of record of an order under section 2256(c), 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 under section 2254. 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 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court; or

"(2) upon completion of district court and court of appeals review under section 2254 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.

"(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 in the state or federal courts;

"(2) the failure to raise the claim is (A) the result of state action in violation of the Constitution or laws or 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

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"SEC. 2258. FILING OF HABEAS CORPUS PETITION: TIME REQUIREMENTS: TOLLING RULES

"Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within 180 days from the filing in the appropriate state court of record

of an order under section 2256(c). 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 files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the state or other final state court decision on direct review;

"(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 highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

"(3) during an additional period not to exceed 60 days, if (A) a motion for an extension of time is filed in the federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

"SEC. 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 record for habeas corpus review based on the claims actually presented and litigated in the state courts except when the prisoner can show that the failure to raise or develop a claim in the state courts 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 post-conviction review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it, but the court shall not grant relief from a judgment of conviction or sentence on the basis of any claim that was fully and fairly adjudicated in state proceedings.

"SEC. 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 the provisions of this chapter except when a second or successive petition is filed.

"SEC. 2261. APPLICATION TO STATE UNITARY REVIEW PROCEDURES.

"(a) For purposes of this section, a unitary review" procedure means a state procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a state unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) The provisions of sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to state "post-conviction review" and "direct review" in those sections shall be understood as referring to unitary review under the state procedure. The references in sections 2257(a) and 2258 to "an order under section 2256(c)" shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings in unavailable at the time of the filing of such an order in the appropriate state court, then the start of the 180 day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or his counsel.

"SEC. 2262. LIMITATION PERIODS FOR DETERMINING PETITIONS.

"(a) The adjudication of any petition under section 2254 of title 28, United States Code, that is subject to this chapter, and the adjudication of any motion under section 2255 of title 28, United States Code, by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all non-capital matters. The adjudication of such a petition or motion shall be subject to the following time limitations:

"(1) The district court shall determine such a petition or motion within 180 days of the filing of the petition or motion.

"(2) The court of appeals shall determine an appeal relating to such a petition or motion within 180 days of the filing of the record in the court of appeals. If the court of appeals grants en banc consideration, the en banc court shall determine the appeal within 180 days of the decision to grant such consideration.

"(b) The time limitations under subsection (a) shall apply to an inital petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the re-determination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

"(c) The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

"(d) The failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The state or government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

"SEC. 2263. RULE OF CONSTRUCTION.

"The provisions of this chapter shall be construed to promote the expeditious conduct and conclusion of state and federal court review in capital cases.".

TITLE III—EXCLUSIONARY RULE

SEC. 301. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) FEDERAL PROCEEDINGS.—Evidence which is obtained as a result of a 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 circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(2) STATE PROCEEDINGS.—The law of the United States does not require the exclusion of evidence in a proceeding in any court under circumstances in which the evidence would be admissible in a proceeding in a court of the United States pursuant to paragraph (1) of this subsection.

"(b) FIREARMS SEIZED AS EVIDENCE BY FEDERAL LAW ENFORCEMENT OFFICERS.—

"(1) ADMISSIBILITY OF EVIDENCE.—In addition to the limitations on the exclusion of evidence set forth in subsections (a) and (c) of this section, a firearm obtained as a result of a search or seizure shall not be excluded as evidence 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 by a Federal law enforcement officer, and the firearm will be used as evidence against a defendant who—

"(A) is being prosecuted for a crime of violence or a serious drug offense; or

"(B) is ineligible to possess such firearm pursuant to section 922(g) of this title.

"(2) RULES FOR CONDUCT AND SANCTIONS.—The Attorney General shall promulgate rules and regulations relating to compliance by law enforcement officers of the Department of Justice with the fourth amendment to the Constitution. Such rules and regulations shall include specifications concerning—

"(A) the training of such officers in the law of search and seizure;

"(B) procedures and standards of conduct to be observed in carrying out searches and seizures;

"(C) procedures for reporting and investigating incidents involving possible violations of legal or administrative requirements relating to searches and seizures;

"(D) sanctions to be imposed when such violations are determined to have occurred; and

"(E) standards and procedures for settling claims for damages by victims of unlawful searches or seizures that are presented under section 2675 of title 28, United States Code.

"(3) RULES FOR CONDUCT AND SANCTIONS BY OTHER DEPARTMENTS AND AGENCIES.—The head of any other department or agency, following consultation with the Attorney General, may promulgate rules and regulations relating to compliance with the fourth amendment by law enforcement officers of such department or agency. Such rules and regulations shall meet the specifications set forth in paragraph (2) of this subsection.

"(4) REVIEW BOARDS.—The Attorney General, and any other head of a department or agency that promulgates rules and regulations pursuant to paragraph (3) of this subsection, shall establish a review board to consider all allegations of violations of the fourth amendment by law enforcement officers of the department or agency, and to recommend or impose appropriate sanctions in cases where violations are determined to have occurred. A review board so constituted may also be charged with recommending the settlement of claims for damages by victims of unlawful searches and seizures that are presented under section 2675 of title 28, United States Code.

"(5) REPORTS TO CONGRESS.—The Attorney General, and any other head of a department or agency that promulgates rules and regulations pursuant to paragraph (3) of this subsection, shall report annually to Congress concerning—

"(A) allegations received by the review board established under paragraph (4) of this subsection, and claims presented under section 2675 of title 28, United States Code, that relate to search or seizure violations by law enforcement officers of the department or agency;

"(B) the actions taken on such allegations and claims; and

"(C) the bases for such actions.

"(6) DEFINITIONS.—As used in this subsection, the term—

"(A) 'firearm' has the meaning given such term in section 921(a)(3) of this title and also includes ammunition for such firearm;

"(B) 'law enforcement officer' has the meaning given such term in section 408(e)(2) of the Controlled Substances Act (21 U.S.C. 848(e)(2));

"(C) 'crime of violence' has the meaning given such term in section 924(c)(3) of this title; and

"(D) 'serious drug offense' has the meaning given such term in section 924(e)(2)(A) of this title.

"(7) EFFECTIVE DATE.—Paragraph (1) of this subsection shall take effect with respect to searches and seizures conducted by law enforcement officers of a department or agency following the promulgation of the regulations required under paragraph (2) or (3) of this subsection and the establishment of a review board pursuant to paragraph (4) of this subsection.

"(c) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(d) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

"(b) CLERICAL AMENDMENT.—The table to sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"3509. Admissibility of evidence obtained by search or seizure."

TITLE IV—FIREARMS

Subtitle A—Firearms and Related Amendments

SEC. 401. ENHANCED PENALTY FOR USE OF SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR DRUG TRAFFICKING OFFENSE.

(a) Section 924(c) of title 18, United States Code, is amended by inserting ", or semiautomatic firearm," after "short barreled shotgun".

(b) Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(26) the term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 402. POSSESSION OF A FIREARM OR AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) Section 924(c) of title 18, United States Code, is amended by striking "uses or carriers a firearm" and inserting in lieu thereof "uses, carries, or otherwise possesses a firearm", and by striking "used or carried" and inserting in lieu thereof "used, carried, or possessed".

(b) Section 844(h) of title 18, United States Code, is amended by striking "carries an explosive during" and inserting in lieu thereof "uses, carries, or otherwise possesses an explosive during", and by striking "used or carried" and inserting in lieu thereof "used, carried or possessed".

SEC. 403. CONFORMING AMENDMENT PROVIDING INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY.

Section 844(h) of title 18, United States Code, is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

SEC. 404. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights."

SEC. 405. 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" before subparagraph (D);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting a new subparagraph (D) as follows:

"(D) an offense under 18 U.S.C. 844(a) that is a violation of 18 U.S.C. 842 (d), (h), or (i), or an offense under 18 U.S.C. 924(a) that is a violation of 18 U.S.C. 922 (d), (g), (h), (i), (j) or (o), or an offense under section 844(d), or 924 (b), (g), (h), or (i) (as added by this Act) of this title; or".

SEC. 406. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(i) Whoever, with the intent to engage in or to promote conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3);

smuggles or knowingly brings into the United States a firearm, or attempts to so, shall be imprisoned for not more than ten years, fined under this title, or both.".

SEC. 407. THEFT OF FIREARMS AND EXPLOSIVES.

(a) Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

(b) Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

SEC. 408. CONFORMING AMENDMENT PROVIDING MANDATORY REVOCATION OF SUPERVISED RELEASE FOR POSSESSION OF A FIREARM.

Section 3583 of title 18, United States Code is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 409. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 410. STATUTE OF LIMITATIONS FOR CERTAIN GANGSTER WEAPON OFFENSES.

Section 6531 of the Internal Revenue Code of 1986 (26 U.S.C. 6531, relating to periods of limitation of criminal prosecutions) is amended by striking "except that the period of limitation shall be 6 years" and inserting in lieu thereof "except that the period of limitation shall be 5 years for offenses described in section 5861 (relating to firearms)

and the period of limitation shall be 6 years".

SEC. 411. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 412. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by adding paragraphs (2) and (3) as follows:

"(2) Notwithstanding the provisions of paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer is authorized to destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 413. SUMMARY FORFEITURE OF UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.

Section 5872 of title 26, United States Code, is amended by redesignating subsection (a) as subsection (a)(1) and by adding paragraphs (2) and (3) to read as follows:

"(2) UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.—Notwithstanding the provisions of paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

"(3) RIGHTS OF INNOCENT OWNERS.—Within one year after the summary forfeiture made pursuant to paragraph (2) the owner of, including any person having an interest in, the property seized may make application to the Secretary for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary that—

(A) such property has not been involved or used in a violation of law; or

(B) any unlawful involvement or use of such property had been without the claimant's consent, knowledge, or willful blindness,

the Secretary shall make an allowance to such claimant not exceeding the value of the property so forfeited.".

SEC. 414. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of title 26, United States Code, is amended to read as follows:

"(d) 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 firearms, 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 paragraph (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. 415. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

(a) Section 924(e)(1) of title 18, United States Code, is amended by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

(b) Section 924(c)(1) of title 18, United States Code, is amended by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.".

SEC. 416. POSSESSION OF STOLEN FIREARMS.

Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "receive,".

SEC. 417. USING A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended by inserting "or during and in relation to any felony punishable under chapter 25 (relating to counterfeiting and forgery) of this title" after "for which he may be prosecuted in a court of the United States,".

SEC. 418. MANDATORY PENALTY FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

Section 924(a)(2) of title 18, United States Code, is amended by inserting a comma before "or both" and by inserting before the period at the end thereof the following: ", and if the violation is a violation of subsection (g)(1) of section 922 by a person who has a previous conviction for a violent felony or a serious drug offense as defined in subsection (e)(2) of this section, a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years.".

SEC. 419. REPORTING OF MULTIPLE FIREARMS SALES.

Subsection 923(g)(D)(3) of title 18, United States Code, is amended—

(1) by deleting the phrase "five consecutive business days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by adding a new sentence at the end thereof as follows: "Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the day that the multiple sale or disposition occurs.".

SEC. 420. POSSESSION OF STOLEN FIREARMS AND EXPLOSIVES.

(a) FIREARMS.—Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "conceal";

(b) EXPLOSIVES.—Section 842(h) of title 18, United States Code, is amended by inserting "possess," before "conceal";

SEC. 421. RECEIPT OF FIREARMS BY NONRESIDENTS.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7) by striking "and" at the end thereof;

(2) in paragraph (8) by striking the period at the end thereof and inserting "; and"; and

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

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearm.".

SEC. 422. FIREARMS AND EXPLOSIVES CONSPIRACY.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(j) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(1) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

SEC. 423. THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(k) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer or licensed collector shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) Whoever steals any explosive from a licensed importer, licensed manufacturer, licensed dealer or from any permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 424. DISPOSING OF EXPLOSIVES TO PROHIBITED PERSONS.

Section 842(d) of title 18, United States Code, is amended by striking "licensee" and inserting in lieu thereof "person".

Subtitle B—Prohibited Gun Clips and Magazines

SEC. 431. FINDINGS.

The Congress finds that—

(1) Offenses involving firearms equipped with magazines, belts, drums, feed strips, and other similar devices that enable such firearms to fire more than fifteen rounds without reloading, and particularly drug offenses, with their attendant loss of life and

the generation of illegal profits, affect interstate and foreign commerce; and

(2) Such devices are themselves sold in interstate and foreign commerce, and are moved in commerce for the purpose of use in violent crimes.

SEC. 432. CERTAIN AMMUNITION CLIPS AND MAGAZINES DEFINED AS FIREARMS.

Section 921(a)(3) of title 18, United States Code, is amended by striking out "or" before "(D)", and by striking out the period after the word "device" and inserting in lieu thereof "; or (E) any ammunition feeding device.".

SEC. 433. DEFINITION OF AMMUNITION FEEDING DEVICE.

Section 921(a) of title 18, United States Code, is amended by adding a new paragraph at the end thereof as follows:

"(27) The term "ammunition feeding device" means a detachable magazine, belt, drum, feed strip, or similar device which as a capacity of, or which can be readily restored or converted to accept, more than 15 rounds of ammunition. The term also includes any combination of parts from which such a device can be assembled. Notwithstanding the foregoing, such term shall not include any attached tubular device designed to accept and capable of operating with only .22 rim-fire caliber ammunition."

SEC. 434. PROHIBITIONS APPLICABLE TO AMMUNITION FEEDING DEVICES.

Section 922 of title 18, United States Code, is amended by adding new subsection (t), (u), and (v), as follows:

"(t) It shall be unlawful for any person to import, manufacture, transport, ship, transfer, receive, or possess an ammunition feeding device, except that this subsection shall not apply to—

"(1) any importation or manufacture of such a device for sale or distribution by a licensed importer or licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof;

"(2) any possession, shipment, transportation of or transfer (in accordance with the provisions of subsections (u) and (v)) of such a device that was lawfully possessed before this subsection takes effect; or

"(3) any manufacture of such a device for the purpose of exportation.

"(u) The Secretary shall maintain a central registry of all ammunition feeding devices transferred after the effective date of this subsection which, after such transfer, are not in the possession or under the control of the United States, or any department or agency thereof or any department, agency, or political subdivision thereof. This registry shall be known as the National Ammunition Feeding Device Registry. The registry shall include—

"(1) identification of the device;

"(2) date of registration;

"(3) identification and address of the person entitled to possess the device; and

"(4) such other information as may be required by regulations promulgated by the Secretary.

"(v) Each transferor of an ammunition feeding device that was lawfully possessed before the effective date of subsection (t) shall (except in the case of a transfer to the United States, or any department or agency thereof or any State or any department, agency, or political subdivision thereof) register the device to the transferee in accordance with regulations promulgated by the Secretary. Any information or evidence required to be provided in the course of such registration by a natural person shall be subject to the use-restriction provisions of section 5848 of title 26, United States Code. The transferor shall, contemporaneously with the registration of the device, pay a fee of $25 to the Secretary. A transferee of an ammunition feeding device required to be registered as required by this subsection shall retain proof of such registration which shall be made available to the Secretary upon request.".

SEC. 435. IDENTIFICATION MARKINGS FOR AMMUNITION FEEDING DEVICES.

Section 923(i) of title 18, United States Code, is amended by adding at the end thereof a new sentence as follows: "An ammunition feeding device shall be identified by a serial number and such other identification as the Secretary may by regulations prescribe.".

SEC. 436. CRIMINAL PENALTIES.

Subsection 924(a)(2) of title 18, United States Code, is amended by striking out "or (o)" and inserting in lieu thereof "(o), or (t)".

SEC. 437. NONINTERRUPTION OF BUSINESS FOR PERSONS IN THE BUSINESS OF IMPORTING OR MANUFACTURING AMMUNITION FEEDING DEVICES.

Any person engaging in the business of manufacturing or importing ammunition feeding devices requiring a license under the provisions of chapter 44 of title 18, United States Code, who was engaged in such business on the date of enactment of this Act, and who files an application for a license under the provisions of section 923 of title 18, United States Code, within 30 days after the date of enactment, may continue such business pending final action on the application. All provisions of chapter 44 of title 18, United States Code, shall apply to such applicant in the same manner and to the same extent as if the applicant were a holder of a license under chapter 44.

TITLE V—OBSTRUCTION OF JUSTICE

SEC. 501. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by designating the current text as subsection (a);

(2) by striking the words "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b).";

(3) by adding at the end thereof a new subsection (b) as follows:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years."; and

"(4) in subsection (a), as designated by this section, by striking "commissioner" each place it appears and inserting in lieu thereof "magistrate judge".

SEC. 502. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer;

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years."

SEC. 503. PROTECTION OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS PROVIDING ASSISTANCE TO FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by inserting ", or any state or local law enforcement officer while assisting, or on account of his or her assistance of, any federal officer or employee covered by this section in the performance of duties," before "shall be punished".

TITLE VI—GANGS AND JUVENILE OFFENDERS

SEC. 601. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and adding at the end thereof new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure or availability of records or information, if the law of the state in which a federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure or availability is permitted under this section whenever the same circumstances exist.".

(b) Section 3607 of Title 18, United States Code, is repealed, and the corresponding reference in the section analysis for chapter 229 of Title 18 is deleted.

(c) Section 401(b)(4) of the Controlled Substances Act (21 U.S.C. 841(b)(4)) is amended

by striking the words "and section 3607 of Title 18".

SEC. 602. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)),'' and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting in lieu thereof "924 (b), (g), or (h)";

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844 or 846), section 1002(a), 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b) (1), (2), or (3), or 963), or section 924 (b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3))" and inserting in lieu thereof "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1) (A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1), (A), (B), or (C), (d), or (e), 844 or 846) or section 1002(a), 1003, 1009, 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), or (3), or 963)"; and

(3) in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.".

SEC. 603. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

SEC. 604. INCREASED PENALTY FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting in lieu thereof "and thereafter performs or attempts to perform (A) any of the acts specified in subparagraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (B) any of the acts specified in subparagraph (2) shall be fined under this title or imprisoned for not more than twenty years, or both, and if death results shall be imprisoned for any term of years or for life.".

SEC. 605. INCREASED PENALTY FOR CONSPIRACY TO COMMIT MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

TITLE VII—TERRORISM

Subtitle A—Aviation Terrorism

SEC. 701. IMPLEMENTATION OF THE 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Violence at international airports

"(a) Whoever unlawfully and intentionally, using any device, substance or weapon—

"(1) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport;

if such an act endangers or is likely to endanger safety at that airport, or attempts to do such an act, shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and the offender is later found in the United States.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Violence at international airports.".

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of the enactment of this subtitle; or

(2) the date the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.

SEC. 702. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended by—

(1) striking out paragraph (3); and

(2) renumbering paragraph (4) as paragraph (3).

Subtitle B—Maritime Terrorism

SEC. 711. SHORT TITLE FOR SUBTITLE B.

This subtitle may be cited as the "Act for the Prevention and Punishment of Violence Against Maritime Navigation and Fixed Platforms".

SEC. 712. FINDINGS.

The Congress finds that—

(1) the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of maritime navigation;

(2) the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, which accompanies the aforementioned Convention, requires that each contracting State to the Protocol establish its jurisdiction over certain offenses affecting the safety of fixed platforms;

(3) such offenses place innocent lives and property in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations;

(4) on December 27, 1988, the President of the United States issued Proclamation 5928 proclaiming that the territorial sea of the United States henceforth extended to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

(5) on November 5, 1989, the Senate gave its advice and consent to ratification of the Convention and its Protocol.

SEC. 713. STATEMENT OF PURPOSE.

The purpose of this Act is to—

(1) implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf;

(2) clarify federal criminal jurisdiction over the territorial sea of the United States; and

(3) establish federal criminal jurisdiction over certain acts committed by or against a national of the United States while upon a foreign vessel during a voyage having a scheduled departure from or arrival in the United States.

SEC. 714. OFFENSES OF VIOLENCE AGAINST MARITIME NAVIGATION OR FIXED PLATFORMS.

Chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 2280. Violence against maritime navigation

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

"(3) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

"(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship,

or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

"(5) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

"(7) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (6); or

"(8) attempts to do any act prohibited under paragraphs (1)–(7);

shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do any act prohibited under paragraphs (2), (3) or (5) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b)—

"(1) in the case of a covered ship, if—

"(A) such activity is committed—

"(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

"(ii) in the United States; or

"(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

"(B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or

"(C) the offender is later found in the United States after such activity is committed;

"(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

"(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

"(d) the master of a covered ship flying the flag of the United States who has reasonable grounds to believe that he has on board his ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action he should take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of his intention to deliver such person and the reasons therefor. If the master delivers such person, he shall furnish the authorities of such country with the evidence in the master's possession that pertains to the alleged offense.

"(e) as used in this section, the term—

"(1) 'ship' means a vessel of any type whatsover not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft; *Provided*, the term does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up;

"(2) 'covered ship' means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.

"§ 2281. Violence against maritime fixed platforms

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

"(3) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

"(4) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;

"(5) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (4); or

"(6) attempts to do anything prohibited under paragraphs (1)–(5);

shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do anything prohibited under paragraphs (2) or (3) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b) if—

"(1) such activity is committed against or on board a fixed platform—

"(A) that is located on the continental shelf of the United States;

"(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

"(C) in an attempt to compel the United States to do or abstain from doing any act;

"(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

"(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

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

"(1) 'continental shelf' means the sea-bed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea;

"(2) 'fixed platform' means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.".

SEC. 715. CLERICAL AMENDMENTS.

The analysis for chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following:

"2280. Violence against maritime navigation.
"2281. Violence against maritime fixed platforms."

SEC. 716. EFFECTIVE DATES.

Section 714 of this Act shall take effect on the later of—

(1) the date of the enactment of this Act; or

(2)(A) in the case of section 2280 of title 18, United States Code, the date the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

(B) in the case of section 2281 of title 18, United States Code, the date the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.

SEC. 717. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

SEC. 718. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code (relating to the adoption of State laws for areas within Federal jurisdiction), is amended by inserting after "title" in subsection (a) the phrase "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State,

Territory, Possession, or District", and by inserting the following new subsection (c) at the end thereof:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Territory, Possession, or District, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Territory, Possession, or District it would lie within if the boundaries of such State, Territory, Possession, or District were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 719. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) Any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

Subtitle C—Terrorist Alien Removal

SECTION 721. SHORT TITLE FOR SUBTITLE C.

This subtitle may be cited as the "Terrorist Alien Removal Act of 1991".

SEC. 722. FINDINGS.

The Congress finds the following:

(1) Terrorist groups have been able to create significant infrastructures and cells in the United States among persons who are in the United States either temporarily, as students or in other capacities, or as permanent resident aliens.

(2) International terrorist groups that sponsor these infrastructures were responsible for—

(A) conspiring to bomb the Turkish Honorary Consulate in Philadelphia, Pennsylvania in 1982;

(B) bombing of a Pan Am airline flight enroute to Honolulu in 1982;

(C) hijacking of a Royal Jordanian airliner in Beirut, Lebanon with two U.S. nationals on board in 1985;

(D) hijacking TWA Flight 847 during which a United States Navy diver was murdered in 1985;

(E) hijacking Egypt Air Flight 648 during which three Americans were killed in 1985;

(F) murder of four members of the U.S. Marine Corps in El Salvador in 1985;

(G) murdering an American citizen aboard the Achille Lauro cruise liner in 1985;

(H) hijacking Pan Am Flight 73 in Karachi, Pakistan, in which 44 Americans were held hostage and two were killed in 1986;

(I) conspiring to bomb an Air India aircraft in New York City in 1986;

(J) attempting to bomb the Air Canada cargo facility at the Los Angeles International Airport in 1986;

(K) murder of the U.S. Naval attache in Athens, Greece, in 1988;

(L) terrorist attack on the Greek cruise ship "City of Poros" in 1988;

(M) bombing of Pan Am flight 103 resulting in 279 deaths in 1988;

(N) murder of U.S. Marine Corps officers assigned to the U.N. Truce Supervisory Organization in Lebanon, in 1989;

(O) murder of U.S. Army officer in Manila in 1984; and

(P) numerous bombings and murders in Northern Ireland over the past decade.

(3) Certain governments and organizations have directed their assets in the United States to take measures in preparation for the commission of terrorist acts in this country.

(4) Present immigration laws have not been used to any significant degree by law enforcement officials to deport alien terrorists because compliance with these laws with respect to such aliens would compromise classified intelligence sources and information. Moreover, appellate procedures routinely afforded aliens following a deportation hearing frequently extend over several years resulting in an inability to effect the expeditious removal of aliens engaging in terrorist activity.

(5) Present immigration laws are inadequate to protect the national security of the United States from terrorist attacks by certain aliens. Therefore, new procedures are needed to remove alien terrorists from the United States and thus reduce the threat that such aliens pose to the national security and other vital interests of the United States.

SEC. 723. TERRORIST ACTIVITIES DEFINED.

For purposes of this Act, the terms "terrorist activity" and "engage in terrorist activity" shall be defined as provided in Section 601(a) of Public Law 101-649.

SEC. 724. PROCEDURES FOR REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act is amended—

(1) by adding at the end of the table of contents the following:

"TITLE V—REMOVAL OF ALIEN TERRORISTS

"Sec. 501. Applicability.
"Sec. 502. Special removal hearing.
"Sec. 503. Designation of judges.
"Sec. 504. Miscellaneous provisions"; and

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

"TITLE V—REMOVAL OF ALIEN TERRORISTS

"APPLICABILITY

"SEC. 501. (a) The provisions of this title may be followed in the discretion of the Department of Justice whenever the Department of Justice has information that an alien described in paragraph 4(B) of section 241(a), as amended, is subject to deportation because of such section.

"(b) Whenever an official of the Department of Justice files, under section 502, an application with the court established under section 503 for authorization to seek removal pursuant to the provisions of this title, the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title. Except as they are specifically referenced, on other provisions of the Immigration and Nationality Act shall be applicable. An alien subject to removal under these provisions shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act or otherwise for national security purposes, nor shall such alien have the right to seek suppression of evidence derived in this manner. Further, the government is authorized to use, in the removal proceedings, the fruits of electronic surveillance authorized under the Foreign Intelligence Surveillance Act without regard to subsection 106(c), (e), (f), (g), and (h) of that Act.

"(c) This title is enacted in response to findings of Congress that aliens described in paragraph 4(B) of section 241(a), as amended, represent a unique threat to the security of the United States. It is the intention of Congress that such aliens be promptly removed from the United States following—

"(1) a judicial determination of probable cause to believe that such person is such an alien; and

"(2) a judicial determination pursuant to the provisions of this title that an alien is removable on the grounds that he is an alien described in paragraph 4(B) of section 241(a), as amended;

and that such aliens not be given a deportation hearing and are ineligible for any discretionary relief from deportation and for relief under section 243(h).

"SPECIAL REMOVAL HEARING

"SEC. 502. (a) Whenever removal of an alien is sought pursuant to the provisions of this title, a written application upon oath or affirmation shall be submitted in camera and ex parte to the court established under section 503 for an order authorizing such a procedure. Each application shall require the approval of the Attorney General or the Deputy Attorney General based upon his finding that it satisfies the criteria and requirement of such application as set forth in this title. Each application shall include—

"(1) the identity of the Department of Justice attorney making the application;

"(2) the approval of the Attorney General or the Deputy Attorney General for the making of the application;

"(3) the identity of the alien for whom authorization for the special removal procedure is sought; and

"(4) a statement of the facts and circumstances relied on by the Department of Justice to establish that—

"(A) an alien as described in paragraph 4(B) of section 241(a), as amended, is physically present in the United States; and

"(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information.

"(b) The application shall be filed under seal with the court established under section 503. The Attorney General may take into custody any alien with respect to whom such an application has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

"(c) In accordance with the rules of the court established under section 503, the judge shall consider the application and may consider other information presented under oath or affirmation at an in camera and ex parte hearing on the application. A verbatim record shall be maintained of such a hearing. The application and any other evidence shall be considered by a single judge of that court who shall enter an ex parte order as requested if he finds, on the basis of the facts submitted in the application and any other information provided by the Department of Justice at the in camera and ex parte hearing, there is probable cause to believe that—

"(1) the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(fB) of section 241(a), as amended; and

"(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information.

"(d)(1) In any case in which the application for the order is denied, the judge shall prepare a written statement of his reasons for the denial and the Department of Justice may seek a review of the denial by the court of appeals for the Federal Circuit by notice of appeal which must be filed within 20 days. In such a case the entire record of the proceeding shall be transmitted to the court of appeals under seal and the Court of Appeals shall hear the matter ex parte.

"(2) If the Department of Justice does not seek review, the alien shall be released from custody, unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens.

"(3) If the application for the order is denied because the judge has not found probable cause to believe that the alien who is the subject of the application has been correctly identified or is an alien as described in paragraph 4(B) of section 241(a), as amended, and the Department of Justice seeks review, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens simultaneously with the application of this title.

"(4) If the application for the order is denied because, although the judge found probable cause to believe that the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended, the judge has found that there is not probable cause to believe that adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142 (b) and (c)(1)(B) (i) through (xiv) of title 18, United States Code, that will reasonably assure the appearance of the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the community; but if the judge finds no such condition or combination of conditions the alien shall remain in custody until the completion of any appeal authorized by this title. The provisions of section 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom the previous sentence applies and—

"(A) for purposes of section 3145 of such title an appeal shall be taken to the Court of Appeals for the Federal Circuit; and

"(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

"(e)(1) In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider separately each item of evidence the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing. The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that the introduction other than in camera and ex parte would pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information. With respect to any evidence which the judge authorizes to be introduced in camera and ex parte, the judge shall cause to be prepared and shall sign, and the Department of Justice shall cause to be delivered to the alien, either—

"(A) a written summary which shall be sufficient to inform the alien of the general nature of the evidence that he is an alien as described in paragraph 4(B) of section 241(a), as amended, and to permit the alien to marshal the facts and prepare a defense, but which shall not pose a risk to national security, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information; or

"(B) if necessary to prevent serious harm to the national security or death or serious bodily injury to any person, a statement informing the alien that no such summary is possible.

"(2) The Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the Federal Circuit of any determination by the judge pursuant to paragraph (1)—

"(A) concerning whether an item of evidence may be introduced in camera and ex parte;

"(B) concerning the contents of any summary of evidence to be introduced in camera and ex parte prepared pursuant to paragraph (1)(A); or

"(C) concerning whether a summary of evidence to be introduced in camera and ex parte is possible pursuant to paragraph (1)(B).

In any interlocutory appeal taken pursuant to this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the court of appeals under seal and the matter shall be heard ex parte. The court of appeals shall consider the appeal as expeditiously as possible.

"(f) In any case in which the application for the order is approved, the special removal hearing authorized by this section shall be conducted for the purpose of determining if the alien to whom the order pertains should be removed from the United States on the grounds that he is an alien as described in paragraph 4(B) of section 241(a), as amended. In accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

"(g) The special removal hearing shall be held before the same judge who granted the order pursuant to subsection (e) unless that judge is deemed unavailable due to illness or disability by the chief judge of the court established pursuant to section 503, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

"(h) The special removal hearing shall be open to the public. The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent him. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged. The alien may be called as a witness by the Department of Justice. The alien shall have a right to introduce evidence on his own behalf. Except as provided in subsection (j), the alien shall have a reasonable opportunity to examine the evidence against him and to cross-examine any witness. A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept. The decision of the judge shall be based only on the evidence introduced at the hearing, including evidence introduced under subsection (j).

"(i) At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (j), and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena. If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid for from funds appropriated for the enforcement of title II. A subpoena under this subsection may be served anywhere in the United States. A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States. Nothing in this subsection is intended to allow an alien to have access to classified information.

"(j) Evidence which has either been summarized pursuant to subsection (e)(1)(A) or for which no summary has been deemed possible pursuant to subsection (e)(1)(B) shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to subsection (e)(1)(A) or to the explanation that no summary could be provided pursuant to subsection (e)(1)(B). Notwithstanding the previous sentence, the Department of Justice may, in its discretion, elect to introduce such evidence in open session.

"(k) Evidence introduced at the special removal hearing, either in open session or in

camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under subsection (a) through (c) used to obtain the order for the hearing under this section.

"(1) Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

"(m) The Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because he is an alien as described in paragraph 4(B) of subsection 241(a) of this Act (8 U.S.C. 1251(a)(4)(B)), as amended. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed.

"(n)(1) At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (j) shall not be made available to the alien or the public.

"(2) The decision of the judge may be appealed by either the alien or the Department of Justice to the Court of Appeals for the Federal Circuit by notice of appeal which must be filed within 20 days, during which time such order shall not be executed. In any case appealed pursuant to this subsection, the entire record shall be transmitted to the Court of Appeals and information received pursuant to subsection (j), and any portion of the judge's order that would reveal the substance or source of such information shall be transmitted under seal. The Court of Appeals shall consider the case as expeditiously as possible.

"(3) In an appeal to the Court of Appeals pursuant to either subsections (d) or (e) of this section, the Court of Appeals shall review questions of law de novo, but a prior finding on any question of fact shall not be set aside unless such findings was clearly erroneous.

"(o) If the judge decides pursuant to subsection (n) that the alien should not be removed, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II of this Act as an alien subject to deportation, in which case, for purposes of detention, such alien may be treated in accordance with the provisions of this Act concerning the deportation of aliens.

"(p) Following a decision by the Court of Appeals pursuant to either subsection (d) or (n), either the alien or the Department of Justice may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari except as provided by the Court of Appeals or a Justice of the Supreme Court.

"DESIGNATION OF JUDGES

"SEC. 503. (a) The Chief Justice of the United States shall publicly designate five district court judges from five of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all matters and proceedings authorized by section 502. The Chief Justice shall publicly designate one of the judges so appointed as the chief judge. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

"(b) Proceedings under section 502 shall be conducted as expeditiously as possible. The Chief Justice, in consultation with the Attorney General and other appropriate federal officials, shall, consistent with the objectives of this title, provide for the maintenance of appropriate security measures for applications for ex parte orders to conduct the special removal hearings authorized by section 502, the orders themselves, and evidence received in camera and ex parte, and for such other actions as are necessary to protect information concerning matters before the court from harming the national security of the United States, adversely affecting foreign relations, revealing investigative techniques, or disclosing confidential sources of information.

"(c) Each judge designated under this section shall serve for a term of five years and shall be eligible for redesignation, except that the four associate judges first designated under subsection (a) shall be designated for terms of from one to four years so that the term of one judge shall expire each year.

"MISCELLANEOUS PROVISIONS

"SEC. 504. (a)(1) Following a determination pursuant to this title that an alien shall be removed, and after the conclusion of any judicial review thereof, the Attorney General may retain the alien in custody or, if the alien was released pursuant to subsection 502(o), may return the alien to custody, and shall cause the alien to be transported to any country which the alien shall designate provided the Attorney General determines based on consultation with the Secretary of State that transportation to such country would not impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

"(2) If the alien refuses to choose a country to which he wishes to be transported, or if the Attorney General determines pursuant to paragraph (1) that removal of the alien to the country so selected would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be transported to any country willing to receive such alien.

"(3) Before an alien is transported out of the United States pursuant to paragraph (1) or (2) or pursuant to an order of exclusion because such a lien is excludable under paragraph 212(a)(3)(B) of this Act (8 U.S.C. 1182(a)(3)(B)), as amended, he shall be photographed and fingerprinted, and shall be advised of the provisions of subsection 276(b) of this Act (8 U.S.C. 1326(b)).

"(4) If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General shall make periodic efforts to reach agreement with other countries to accept such alien and at least every six months shall provide to the alien a written report on his efforts. Any alien in custody prusuant to this subsection shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate. The determinations and actions of the Attorney General pursuant to this subsection shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates his rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the Court of Appeals for the Federal Circuit.

"(b)(1) Notwithstanding the provisions of subsection (a), the Attorney General may hold in abeyance the removal of an alien who has been ordered removed pursuant to this title to allow the trial of such alien on any federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

"(2) Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

"(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (a) concerning removal of the alien.

"(c) For purposes of section 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of felony.

"(d)(1) An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of his family, and to contact, retain, and communicate with an attorney.

"(2) An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefor. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.

SEC. 725. CONFORMING AMENDMENTS.

The Immigration and Nationality Act is amended as follows—

(1) Subsection 106(b) (8 U.S.C. 1105a(b)) is amended by adding at the end thereof the following sentence: "Jurisdiction to review an order entered pursuant to the provisions of section 235(c) of this Act concerning an alien excludable under paragraph 3(B) of subsection 212(a) (8 U.S.C. 1182(a)), as amended, shall rest exclusively in the United States Court of Appeals for the Federal Circuit.".

(2) Section 276(b) (8 U.S.C. 1326(b)) is amended by deleting the word "or" at the end of subparagraph (b)(1), by replacing the period at the end of subparagraph (b)(2) with a semicolon followed by the word "or", and by adding at the end of paragraph (b) the fol-

lowing subparagraph: "(3) who has been excluded from the United States pursuant to subsection 235(c) of this Act (8 U.S.C. 1225(c)) because such alien was excludable under paragraph 3(B) of subsection 212(a) thereof (8 U.S.C. 1182(a)(3)(B)), as amended, or who has been removed from the United States pursuant to the provisions of title V of the Immigration and Nationality Act, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of ten years which sentence shall not run concurrently with any other sentence."

(3) Section 106(a) (8 U.S.C. 1105a(a)) is amended by striking from the end of subparagraph 8 the semicolon and the word "and" and inserting a period in lieu thereof, and by striking subparagraph 9.

SEC. 726. EFFECTIVE DATE.

The provisions of this Act shall be effective upon enactment, and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

Subtitle D—Terrorism Offenses and Sanctions

SEC. 731. TORTURE.

(a) IN GENERAL.—Part I of Title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

"CHAPTER 113B—TORTURE

"Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

"§ 2340. Definitions

"As used in this chapter—

"(1) 'torture' means an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

"(2) 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

"(3) 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if: (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

"§ 2340B. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(B) CLERICAL AMENDMENT.—

The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113B the following new item:

"113B. Torture ..... 2340".

SEC. 732. WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—The Congress finds that the use and threatened use of weapons of mass destruction, as defined in the statute enacted by subsection (b) of this section, gravely harm the national security and foreign relations interests of the United States, seriously affect interstate and foreign commerce, and disturb the domestic tranquility of the United States.

(b) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2339. Use of Weapons of Mass Destruction

"(a) Whoever uses, or attempts or conspires to use, a weapon of mass destruction—

"(1) against a national of the United States while such national is outside of the United States;

"(2) against any person within the United States; or

"(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) For purposes of this section—

"(1) 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) 'weapon of mass destruction' means—

"(a) any destructive device as defined in section 921 of this title;

"(b) poison gas;

"(c) any weapon involving a disease organism; or

"(d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life."

"(c) CLERICAL AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding the following:

"2339. Use of Weapons of Mass Destruction.".

SEC. 733. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended by—

(a) redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g) respectively;

(b) in subsection (a), deleting "(c)" and inserting in lieu thereof "(d)"; and

(c) inserting after subsection (b) the following:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113 of this title.".

SEC. 734. PROVIDING MATERIAL SUPPORT TO TERRORISTS.

(a) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2339A. Providing material support to terrorists

"Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used to facilitate a violation of section 32, 36, 351, 844(f) or (1), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2339 of this title, or section 902(i) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i)), or to facilitate the concealment or an escape from the commission of any of the foregoing, shall be fined under this title, imprisoned not more than ten years, or both. For purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding the following:

"§ 2339A. Providing material support to terrorists".

SEC. 735. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

(a) Section 1961(1)(B) of title 18 of the United States Code is amended by:

(1) inserting after "Section" the following: "32 (relating to the destruction of aircraft), section 36 (relating to violence at international airports), section";

(2) inserting after "section 224 (relating to sports bribery);" the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 664 (relating to embezzlement from pension and welfare funds)," the following: "section 844 (f) or (i) (relating to destruction by explosives of government property or property affecting interstate or foreign commerce),;

(4) inserting after "section 1084 (relating to the transmission of gambling information)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),";

(5) inserting after "section 1344 (relating to financial institution fraud)," the following: "section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(6) inserting after "section 1513 (relating to retaliating against a witness, victim, or an informant)," the following: "section 1751 (relating to Presidential assassination),";

(7) inserting after "section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(8) inserting after "2320 (relating to trafficking in certain motor vehicles or motor vehicle parts)," the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2339 (relating to use of weapons of mass destruction),".

(b) Section 1961(1) of title 18 of the United States Code is amended by striking "or" before "(E)", and inserting at the end thereof the following: "or (F) section 902(i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i) or (n));".

(c) Section 1961(5) of title 18 of the United States Code is amended by adding at the end thereof the following sentence: "The term shall not be construed to require the presence of any pecuniary purpose when the acts of racketeering involve only crimes of violence."

SEC. 736. FORFEITURE FOR TERRORIST AND OTHER VIOLENT ACTS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding after section 982 the following new sections:

"§ 983. Civil forfeiture of property used to commit violent acts.

"(a) The following property shall be subject to civil forfeiture by the United States;

"(1) Any property used or intended for use to commit or facilitate the commission of a violent act; and

"(2) Any property constituting or derived from the gross profits or other proceeds obtained from a violent act.

No interest of an owner in property shall be forfeited under paragraphs (1) or (2) by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent or willful blindness of that owner.

"(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"(c) As used in this section the term "violent act" means—

"(1) any felony offense under the following chapters of this title: chapter 2 (relating to aircraft and motor vehicles); chapter 5 (relating to arson); chapter 7 (relating to assault); chapter 12 (relating to civil disorders); chapter 18 (relating to congressional, cabinet, and supreme court assassination, kidnaping, and assault); chapter 35 (relating to escape and rescue); chapter 40 (relating to importation, manufacture, distribution and storage of explosive materials; chapter 41 (relating to extortion and threats); chapter 44 (relating to firearms); chapter 51 (relating to homicide); chapter 55 (relating to kidnaping); chapter 65 (relating to malicious mischief); chapter 81 (relating to piracy and privateering); chapter 84 (relating to Presidential and Presidential staff assassination, kidnaping, and assault); chapter 95 (relating to racketeering); chapter 97 (relating to railroads); chapter 102 (relating to riots); chapter 103 (relating to robbery and burglary); chapter 105 (relating to sabotage); chapter 111 (relating to shipping); chapter 113A (relating to terrorism); or chapter 113B (relating to torture);

"(2) any felony offense under the following sections of this title: section 831 (relating to prohibited transactions involving nuclear materials); section 956 (relating to conspiracy to injure property of foreign government); or section 1153 (relating to offenses committed within Indian country);

"(3) any felony offense under: section 2284 of title 42 of the United States Code (relating to the sabotage of nuclear facilities); sections 901 (i), (j), (k), (l), (m), or (n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i), (j), (k), (l), (m) or (n)); section 11(c)(2) of the Natural Gas Pipeline Safety Act (49 U.S.C. App. 1679a(c)(2)); or section 208(c)(2) of the Hazardous Liquid Pipeline Safety Act (49 U.S.C. App. 2007(c)(2));

"(4) any other United States offense punishable by imprisonment for more than one year involving murder, robbery, kidnaping, extortion, or malicious destruction of property; or

"(5) a conspiracy or attempt to commit any of the foregoing offenses.

"(d) The filing of an indictment of information alleging a violation of an offense constituting a violent act which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"§ 984. Criminal forfeiture of property used to commit violent acts

"(a) Any person convicted of a violent act as defined in section 983(c) of this title shall forfeit to the United States, irrespective of any provision of State law, such person's interest in—

"(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violent act; and

"(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violent act.

"(b) The provisions of subsections (b), (c), and (e)-(p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)-(p)) shall apply to—

"(1) property subject to forfeiture under subsection (a);

"(2) any seizure or disposition of such property; and

"(3) any judicial proceeding in relation to such property.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by adding at the end thereof, as amended, the following:

"983. Civil forfeiture of property used to commit violent acts.

"984. Criminal forfeiture of property used to commit violent acts.".

SEC. 737. ENHANCED PENALTIES FOR CERTAIN OFFENSES

(a) Section 1705(b) of Title 50, United States Code, is amended by replacing "$50,000" with "$1,000,000";

(b) Section 1705(a) of Title 50, United States Code, is amended by replacing "$10,000" with "$1,000,000".

(c) Section 1541 of Title 18, United States Code, is amended by replacing "$500" with "$250,000" and by replacing "one year" with "five years".

(d) Sections 1542, 1543, 1544 and 1546 of Title 18, United States Code, are each amended by replacing "$2,000" with "$250,000" and by replacing "five years" with "ten years".

(e) Section 1545 of Title 18, United States Code, is amended by replacing "$2,000" with "$250,000" and by replacing "three years" with "ten years".

SEC. 738. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

Subtitle E—Antiterrorism Enforcement Provisions

SEC. 741. ALIENS COOPERATING IN TERRORIST OR OTHER INVESTIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, whenever the Attorney General, or his designee, determines that the entry of a particular alien into the United States for permanent residence or other status, or where an alien is already present in the United States, the award of permanent residence or other status, is in the interest of national security, essential to the furtherance of the national intelligence mission, important to the United States public safety, or necessary to protect the life of an individual who has provided cooperation to federal law enforcement, such alien and his immediate family shall be given entry into the United States and/or awarded permanent residence or other status. Where the decision to grant such entry or award of permanent residence or other status is based on furtherance of the national intelligence mission, the Attorney General shall consult with the Director of the Central Intelligence Agency concerning the decision.

(b) 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 two hundred persons in any one fiscal year. The decision to grant or deny permanent resident or other status under this section is at the discretion of the Attorney General and shall not be subject to judicial review.

SEC. 742. AMENDMENT TO THE ALIEN ENEMY ACT.

Section 21 of title 50, United States Code, is amended by inserting "(a)" before "Whenever," and by adding the following new subsection:

"(b) Whenever the President invokes the authority contained in subsection (a) as to aliens of a hostile nation or government and further determines that the United States may also be subject to actual, attempted, or threatened predatory incursions by aliens of other nations, whether or not acting in concert with the hostile nation, the President is authorized, by his proclamation thereof, to include within the terms of subsection (a) and sections 22, 23, and 24, any and all other aliens within the United States, or any subcategories or subclasses of such aliens, by nationality or otherwise, as the President may so designate.".

SEC. 743. COUNTERINTELLIGENCE ACCESS TO TELEPHONE RECORDS.

Section 2709 of title 18 of the United States Code is amended by—

(1) striking out subsections (b) and (c); and

(2) inserting the following new subsections (b) and (c):

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may:

"(1) request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity about whom information is sought is a foreign power or an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request subscriber information regarding a person or entity if the Director (or the Director's designee) certifies in writing to the wire or electronic communications service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) that information available to the FBI indicates there is reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with a foreign power or an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PENALTY FOR DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information under this section. A knowing violation of this section is punishable as a class A misdemeanor.".

SEC. 744. COUNTERINTELLIGENCE ACCESS TO CREDIT RECORDS.

Section 1681(f) of Title 15, United States Code, is amended by inserting "(1)" before the existing paragraph thereof, and by adding the following provisions:

"(2) Notwithstanding the provisions of section 1681(b) of this title, a consumer reporting agency shall furnish a consumer report to the Federal Bureau of Investigation (FBI) when presented with a request for a consumer report made pursuant to this subsection by the FBI provided that the Director of the FBI, or his designee, certifies in writing to the consumer reporting agency that such records are sought for counterintelligence purposes and that there exists specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(3) Notwithstanding the provisions of section 1681(b) of this title, a consumer reporting agency shall furnish identifying information respecting any consumer limited to name, address, former addresses, places of employment or former places of employment, to a representative of the FBI when presented with a written request signed by the Director of the FBI, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

"(4) No consumer reporting agency, officer, employee, or agent of such institution, shall disclose to any person that the FBI has sought or obtained a consumer report, or identifying information respecting any consumer. A knowing violation of this section is punishable as a class A misdemeanor.".

SEC. 745. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS.

(a) Section 2516(1)(k) of title 18, United States Code, is amended by adding before the ";" the following: ", or of 50 U.S.C. section 1701 et seq. (relating to the International Emergency Economic Power Act); 50 U.S.C. App. 2410 (relating to the Export Administration Act); or 50 U.S.C. App. 5 (relating to the Trading with the Enermy Act)".

(b) Section 2516(1) of title 18, United States Code, is further amended by redesignating subparagraph (o) as subparagraph (p) and adding a new subparagraph (o) as follows:

"(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);".

(c) Section 2516(1)(c) of title 18, United States Code, is amended by inserting before "or section 1992 (relating to wrecking trains)" the following: "Section 2332 (relating to terrorist acts abroad), section 2339 (relating to weapons of mass destruction), section 36 (relating to violence at airports),".

SEC. 746. PARTICIPATION OF FOREIGN AND STATE GOVERNMENT PERSONNEL IN INTERCEPTIONS OF COMMUNICATIONS.

Section 2518(5) of title 18, United States Code, is amended by inserting "(including personnel of a foreign government or of a State or subdivision of a State)" after "Government personnel".

SEC. 747. DISCLOSURE OF INTERCEPTED COMMUNICATIONS TO FOREIGN LAW ENFORCEMENT AGENCIES

Section 2510(7) of title 18, United States Code, is amended by inserting before the semicolon "and additionally, for purposes of section 2517(1)–(2), any person authorized to perform investigative, law enforcement, or prosecutorial functions by a foreign government".

SEC. 748. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) Chapter 213 of title 18, United States Code, is amended by inserting a new section 3286 as follows:

"§ 3286. Extension of statute of limitations for certain terrorism offenses.

Notwithstanding the provisions of section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902(i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.".

(b) The table of sections for chapter 213 is amended by inserting below the item for "§ 3285. Criminal contempt." the following: "3286. Extension of statute of limitations for certain terrorism offenses.".

Title VIII—Sexual Violence and Child Abuse

SEC. 801. ADMISSIBILITY OF EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT AND CHILD MOLESTATION CASES.

The Federal Rules of Evidence are amended by adding after Rule 412 the following new rules:

"Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

"(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the government intends to offer evidence under this Rule, the attorney for the government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This Rule shall not be construed to limit the admission or consideration of evidence under any other Rule.

"(d) For purposes of this Rule and Rule 415, "offense of sexual assault" means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of Title 18, United States Code;

"(2) contact, without consent, between any part of the defendant's body or any object and the genitals or anus of another person;

"(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

"(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(4).

"Rule 414. Evidence of Similar Crimes in Child Molestation Cases

"(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the government intends to offer evidence under this Rule, the attorney for the government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other Rule.

"(d) For purposes of this Rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was commited in relation to a child;

"(2) any conduct proscribed by chapter 110 of title 18, United States Code;

"(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(4) contact between the genitals or anus of the defendant and any part of the body of a child;

"(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

"Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

"(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these Rules.

"(b) A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This Rule shall not be construed to limit the admission or consideration of evidence under any other Rule.".

SEC. 802. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

SEC. 803. DEFINITION OF SEXUAL ACT FOR VICTIMS BELOW 16.

Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(1) in subparagraph (B) by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting in lieu thereof "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

SEC. 804. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244: "§2245. Penalties for subsequent offenses.

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 805. RESTITUTION FOR VICTIMS OF SEX OFFENSES.

Section 3663(b)(2) of title 18, United States Code, is amended by inserting "or an offense under chapter 109A or chapter 110 of this title" after "an offense resulting in bodily injury to a victim".

SEC. 806. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) Chapter 109A of Title 18, United States Code, is amended by inserting at the end thereof the following new section:

§2247. Testing for Human Immunodeficiency Virus; Disclosure of Test Results to Victim; Effect on Penalty

"(a) TESTING AT TIME OF PRE-TRIAL RELEASE DETERMINATION.—In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that follow-up tests for the virus be performed six months and twelve months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) TESTING AT LATER TIME.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed six months and twelve months following the date of the intial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the government, and the person tested.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim."

(b) CLERICAL AMENDMENT.—The section a analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"2247. Testing for Human Immunodeficiency Virus; Disclosure of Test Results to Victim; Effect on Penalty".

SEC. 807. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: ", and the cost of up to two tests of the victim for the human immunodeficiency virus during the twelve months following the assault".

Title IX—Drug Testing

SEC. 901. DRUG TESTING OF FEDERAL OFFENDERS ON POST-CONVICTION RELEASE

(a) DRUG TESTING PROGRAM.—(1) Chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§3608. Drug testing of defendants on post-conviction release.

"The Director of the Administrative Office of the United States Courts shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of criminal defendants on post-conviction release. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(2) The section analysis for chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following: "3608. Drug testing of defendants on post-conviction release."

(b) DRUG TESTING CONDITION.—

(1) Section 3563(a) of title 18, United States Code, is amended—

(A) in paragraph (2), by striking out "and";

(B) in paragraph (3), by striking out the period and inserting in lieu thereof "; and"; and

(C) by adding a new paragraph (4), as follows: "(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. No action may be taken against a defendant on the basis of a drug test administered pursuant to this paragraph or sections 3583(d) or 4209(a) of this title, unless the drug test confirmation is a urine drug test confirmed using gas chromatography/mass spectrometry 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, except that a defendant who tests positive may be detained pending confirmation of the test result as provided in this paragraph.".

(2) Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(3) Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convictd of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any

unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title."

(c) REVOCATION OF RELEASE.—(1) Section 3565(a) of title 18, United States Code, is amended by inserting in the final sentence after "3563(a)(3)," the following: "or unlawfully uses a controlled substance or refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4),".

(2) Section 3583(g) of title 18, United States Code, is amended by inserting after "substance" the following: "or unlawfully uses a controleld substance or refuses to cooperate in drug testing imposed as a condition of supervised release,".

(3) Section 4214(f) of title 18, United States Code, is amended by inserting after "substance" the following: ", or who unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of parole,".

SEC. 902. DRUG TESTING IN STATE CRIMINAL JUSTICE SYSTEMS AS A CONDITION OF RECEIPT OF JUSTICE DRUG GRANTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end of part E (42 U.S.C. 3750–3766b) the following:

"Drug Testing Programs

"SEC. 523. (a) PROGRAM REQUIRED.—It is a condition of eligibility for funding under this part that a State formulate and implement a drug testing program for targeted classes of persons subject to charges, confinement, or supervision in the criminal justice systems of the State. Such a program must meet criteria specified in regulations promulgated by the Attorney General under subsection (b) of this section. Notwithstanding the above, no state shall be required to expend an amount for drug testing pursuant to this section in excess of 10% of the minimum amount which that state is eligible to receive under this part.

"(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement this section, which shall incorporate scientific and technical standards determined by the Secretary of Health and Human Services to ensure reliability and accuracy of drug test results. The regulations shall include such other guidelines for drug testing programs in State criminal justice systems as the Attorney General determines are appropriate, and shall include provisions by which a State may apply to the Attorney General for a waiver of the requirements imposed by this section, on grounds that compliance would impose excessive financial or other burdens on such State or would otherwise be impractical or contrary to State policy.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to any State at a time specified by the Attorney General, but no earlier than the promulgation of the regulations required under subsection (b).".

Title X—Equal Justice Act

SEC. 1001. SHORT TITLE.—

This title may be cited as the "Equal Justice Act."

SEC. 1002. PROHIBITION OF RACIALLY DISCRIMINATORY POLICIES CONCERNING CAPITAL PUNISHMENT OR OTHER PENALTIES.

(a) The penalty of death and all other penalties shall be administered by the United States and by every State without regard to the race or color of the defendant or victim. Neither the United States nor any State shall prescribe any racial quota or statistical test for the imposition or execution of the death penalty or any other penalty.

(b) For purposes of this title—

(1) the action of the United States or of a State includes the action of any legislative, judicial, executive, administrative, or other agency or instrumentality of the United States or a State, or of any political subdivision of the United States or a State;

(2) "State" has the meaning given in section 541 of title 18, United States Code; and

(3) "racial quota or statistical test" includes any law, rule, presumption, goal, standard for establishing a prima facie case, or mandatory or permissive inference that—

(A) requires or authorizes the imposition or execution of the death penalty or another penalty so as to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims; or

(B) requires or authorizes the invalidation of, or bars the execution of, sentences of death or other penalties based on the failure of a jurisdiction to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims in the imposition or execution of such sentences or penalties.

SEC. 1003. GENERAL SAFEGUARDS AGAINST RACIAL PREJUDICE OR BIAS IN THE TRIBUNAL.

In a criminal trial in a court of the United States, or of any State—

(1) on motion of the defense attorney or prosecutor, the risk of racial prejudice or bias shall be examined on voir dire if there is a substantial likelihood in the circumstances of the case that such prejudice or bias will affect the jury either against or in favor of the defendant;

(2) on motion of the defense attorney or prosecutor, a change of venue shall be granted if an impartial jury cannot be obtained in the original venue because of racial prejudice or bias; and

(3) neither the prosecutor nor the defense attorney shall make any appeal to racial prejudice or bias in statements before the jury.

SEC. 1004. FEDERAL CAPITAL CASES.

(a) JURY INSTRUCTIONS AND CERTIFICATION.—In a prosecution for an offense against the United States in which a sentence of death is sought, and in which the capital sentencing determination is to be made by a jury, the judge shall instruct the jury that it is not to be influenced by prejudice or bias relating to the race or color of the defendant or victim in considering whether a sentence of death is justified, and that the jury is not to recommend the imposition of a sentence of death unless it has concluded that it would recommend the same sentence for such a crime regardless of the race or color of the defendant or victim. Upon the return of a recommendation of a sentence of death, the jury shall also return a certificate, signed by each juror, that the juror's individual decision was not affected by prejudice or bias relating to the race or color of the defendant or victim, and that the individual juror would have made the same recommendation regardless of the race or color of the defendant or victim.

(b) RACIALLY MOTIVATED KILLINGS.—In a prosecution for an offense against the United States for which a sentence of death is authorized, the fact that the killing of the victim was motivated by racial prejudice or bias shall be deemed an aggravating factor whose existence permits consideration of the death penalty, in addition to any other aggravating factors that may be specified by law as permitting consideration of the death penalty.

(c) KILLINGS IN VIOLATION OF CIVIL RIGHTS STATUTES.—Sections 241, 242, and 245(b) of title 18, United States Code, are each amended by deleting "shall be subject to imprisonment for any term of years or for life" and inserting in lieu thereof "shall be punished by death or imprisonment for any term of years or for life."

SEC. 1005. FUNDING OBJECTIVE.

Section 501 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended by striking "and" following the semicolon in paragraph (20), striking the period at the end of paragraph (21) and inserting in lieu thereof "; and", and adding at the end thereof the following new paragraph:

"(22) providing, in all appropriate cases, particularly collateral and other post-conviction proceedings, adequate resources and expertise to ensure that the death penalty is expeditiously carried out.".

SEC. 1006. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) Section 241 of title 18, United States Code, is amended by deleting "inhabitant of" and inserting in lieu thereof "person in".

(b) Section 242 of title 18, United States Code, is amended by deleting "inhabitant of" and inserting in lieu thereof "person in", and by deleting "such inhabitant" and inserting in lieu thereof "such person".

Title XI—Victims' Rights

SEC. 1101. RESTITUTION AMENDMENTS.

(a) EXPANSION OF RESTITUTION.—Section 3663(b) of title 18, United States Code, is amended by striking "and" following the semicolon in paragraph (3), redesignating paragraph (4) as paragraph (5), and adding after paragraph (3) the following:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

(b) SUSPENSION OF FEDERAL BENEFITS.—Subsections (g) and (h) of section 3663 of title 18, United States Code, are redesignated as subsections (h) and (i), respectively, and a new subsection (g) is inserted as follows:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) For purposes of this subsection—

"(A) the term 'Federal benefits'—

"(1) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(B) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a vet-

eran in the Armed Forces of the United States.".

SEC. 1102. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by—

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting in lieu thereof "; and";

(3) inserting after subdivision (a)(1)(C) the following: "(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting in lieu thereof "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before ", or the attorney for the Government."; and

(6) adding at the end the following:

"(f) Definitions. For purposes of this Rule—

(1) "victim" means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

"(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

"(2) 'crime of violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.".

COMPREHENSIVE VIOLENT CRIME CONTROL ACT OF 1991 SECTION-BY-SECTION ANALYSIS

Analysis of Titles:

I. Death Penalty.
II. Habeas Corpus.
III. Exclusionary Rule.
IV. Firearms.
V. Obstruction of Justice.
VI. Gangs and Juvenile Offenders.
VII. Terrorism.
VIII. Sexual Violence and Child Abuse.
IX. Drug Testing.
X. Equal Justice Act.
XI. Victims' Rights.

INTRODUCTION

This bill, the "Comprehensive Violent Crime Control Act of 1991," incorporates President Bush's legislative proposal for the 102d Congress to combat violent crime.

Several of the titles in the bill address the same subjects as the violent crime proposal transmitted to Congress by the President in the 101st Congress. The topics that were addressed in the earlier proposal, as well as this one, include the federal death penalty, general habeas corpus reform, exclusionary rule reform, firearms violence, and drug testing of offenders.

The proposal has, however, been substantially modified and expanded. Some of the changes involve incorporation of important provisions and concepts drawn from the crime bills passed by the Senate (S. 1970) and the House of Representatives (H.R. 5269) in the 101st Congress, or from the Administration's National Drug Control Strategy Implementation Act proposals. Others involve entirely new ideas or proposals. The areas of most extensive addition or modification include special habeas corpus procedures for death penalty litigation, alternatives to the exclusionary rule, obstruction of justice, gangs and juvenile offenders, terrorism, sexual violence and child abuse, equal justice, and victims' rights.

The remainder of this analysis summarizes and explains the various provisions of the proposal.

I. DEATH PENALTY

This title would restore an enforceable death penalty for the most heinous federal offenses. It is identical in most respects to the federal death penalty proposal passed by the House of Representatives in the 101st Congress as title II of H.R. 5269. It is also similar in coverage of offenses and procedures to the death penalty proposals passed by the Senate in the 101st Congress (titles I and XIV of S. 1970).

Various provisions of the United States Code now authorize the death penalty for crimes of homicide, treason, and espionage. Most of these provisions, however, are or may be unenforceable because they do not incorporate legislated standards and procedures that reflect the Supreme Court's current capital punishment decisions. This title, like the death penalty proposals of earlier Congresses, is designed to remedy this deficit in relation to existing capital crimes, and to create additional death penalty authorizations for a number of highly aggravated federal crimes.

Sec. 102. Death penalty procedures

This section adds a new chapter 228 to title 18 of the United States Code, consisting of sections 3591 through 3599, and makes necessary technical and conforming amendments. These sections identify the types of crimes for which the death penalty may be imposed and set forth the standards and procedures for imposing and carrying out the death penalty.

Section 3591 (Sentence of Death)

This section sets out the offenses for which the death penalty may be imposed if, after consideration of the mitigating and aggravating factors applicable to the case in a post-verdict hearing (described in subsequent sections), it is determined that the imposition of death is justified. The offenses are treason, espionage, certain types of homicides, certain highly aggravated drug crimes, and attempts to kill the President that result in bodily injury to the President or come dangerously close to causing the President's death.

The subsections relating to the proposed drug offender death penalty (3591 (c)–(e)) and general homicidal offenses (3591(f)) merit more detailed discussion. In the 101st Congress, the drug offender death penalty authorization in 3591 (c)–(e) was passed by the Senate (in title XIV of S. 1970) and, with some modification, by the House of Representatives (in title II of H.R. 5269). The general definition of capital murder in 3591(f) is essentially a simplified version of the corresponding provisions in the 101st Congress bills.

Section 3591(c). The first category of drug offenders who would be potentially eligible for capital punishment—described in proposed 18 U.S.C. 3591(c)—are offenders who are currently subject to a mandatory term of life imprisonment under 21 U.S.C. 848(b). This is the highest category of major traffickers recognized under federal law.

In essence, the offenders potentially subject to capital punishment under proposed section 3591(c) consist of principal organizers, administrators, and leaders of drug enterprises including at least five subordinates where transactions involving enormous quantities of drugs are involved (e.g., 30 kilograms of heroin, 150 kilograms of cocaine) or the enterprise has annual revenues of at least $10 million.

The inclusion of the very largest traffickers in the class of persons potentially eligible for the death penalty, as proposed in section 3591(c), is a response to the human and social devastation that is threatened and actually caused by their activities. In the past, Congress has prescribed the death penalty for treason, *see* 18 U.S.C. 2381, nuclear and other forms of espionage, *see* 10 U.S.C. 906a, and aircraft piracy, *see* Act of September 5, 1961, 75 Stat. 466 (1961). The proposal reflects a recognition that the current scourge of drug abuse and of drug-related crime and violence represents a comparable threat to the security and well-being of the public, and that the use of the ultimate sanction should be available in this context.

Section 3591(d). The second category of offenders who would be potentially eligible for capital punishment—described in proposed 18 U.S.C. 3591(d)—consists of a somewhat more broadly defined class of drug kingpins who attempt to obstruct the investigation or prosecution of their activities by attemping to kill persons involved in the criminal justice process, or knowingly directing, advising, authorizing, or assisting another to attempt to kill such a person. To fall within the death-eligible class, the defendant would have to be a principal organizer, administrator, or leader of a continuing criminal enterprise (CCE) as defined in 21 U.S.C. 848, but would not necessarily have to satisfy the specific criteria for mandatory life imprisonment under section 848(b).

Including a more broadly defined class of major traffickers—but limited to those who engage in actual attempted murders to obstruct justice—is justified by the flagrant and growing problem of extreme violence against witnesses in drug cases, as well as the increasing threat and reality of violence directed against criminal justice professionals. A CCE violator under 21 U.S.C. 848 will face, in any event, a very long term of imprisonment (20 years to life) if he is convicted, and he may feel that there is relatively little to lose by attempting to silence a witness or kill other participants in the process. The extension of the death penalty to attempted murders, in this limited context, even where death does not actually result, would send a strong message concerning the system's resolve to deal forcefully and effectively with this problem.

The applicability of proposed section 3591(d), as noted above, would be conditioned on an attempted murder by a drug kingpin to obstruct justice, committed against any public officer—such as a police officer, judge, or prosector—juror, or witness, or a member of the family or household of such a person. Family members (i.e., parents, spouses, children and siblings) and members of the households of such persons are included because of their exposure to victimization as targets of efforts at intimidation or reprisal by drug offenders.

Section 3591(e). The third category of potentially death-eligible drug offenders—described in proposed 18 U.S.C. 3591(e)—fills a

gap in existing law. The Anti-Drug Abuse Act of 1988 enacted provisions authorizing capital punishment for certain intentional drug-related killings, *see* 21 U.S.C. 848(e), but did not cover unintentional killings resulting from aggravated recklessness, such as killings of innocent bystanders during a shoot-out among traffickers, or the death of users resulting from the knowing distribution of bad drugs.

Proposed section 3591(e) would fill this gap by authorizing the death penalty where the defendant, acting with the state of mind required for capital murder under proposed section 3591(f), engages in a federal drug felony (not necessarily a continuing criminal enterprise offense), and a person dies in the course of the offense or from the use of drugs involved in the offense.

Section 3591(f). Subsection (f) defines the general category of homicidal offenses for which the death penalty may be imposed ("capital murders"). The definition is similar in substantive coverage to the corresponding definitions in the death penalty proposals passed by the Senate and the House of Representatives in the 101st Congress (title I of S. 1970 and title II of H.R. 5269), but it provides a simpler and clearer formulation.

Under the definition, a homicide would constitute capital murder if the death penalty was statutorily authorized for the offense, and death was caused intentionally, knowingly, or through recklessness manifesting extreme indifference to human life. The Supreme Court, in *Tison* v. *Arizona*, 481 U.S. 137 (1987), held that the death penalty may constitutionally be imposed for killings resulting from highly reckless conduct, as well as intentional killings. The specific formulation used in proposed section 3591(f) is similar to formulations found in the murder provisions of the Model Penal Code (MPC §210.2) and various state codes. *See e.g.*, Ala. Code §13A-6-2(a)(1)-(2); N.D. Cent. Code §12.1-16-01(1)(a)-(b).

The definition in subsection (f) also covers cases in which death results from the intentional infliction of serious injury. This is substantially the same as a clause in the definition of capital murder in the general death penalty proposal passed by the Senate in the 101st Congress (proposed 18 U.S.C. 3591(c)(2) in title I of S. 1970). There is also support in state law for inclusion of this category of homicides in capital murders. *See* Ill. Ann. Stat., ch. 38, §9-1; N.J. Stat. Ann §2C:11-3.

Section 3592 (Factors to be Considered in Determining Whether a Sentence of Death is Justified)

This section sets forth the statutory mitigating and aggravating factors to be considered by the jury or judge in determining whether a sentence of death is justified upon conviction of a crime for which the sentence is authorized. The section also allows, consistent with Supreme Court decisions, for the consideration of other aggravating or mitigating factors, not listed in the section, which might affect such a determination. *See Skipper* v. *South Carolina*, 476 U.S. 1 (1986); *Lockett* v. *Ohio*, 438 U.S. 586 (1978); *Barclay* v. *Florida*, 463 U.S. 939 (1983); *Zant* v. *Stephens*, 462 U.S. 862 (1983).

Subsection (a) sets forth three mitigating factors which must be considered. They are (1) that the defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, although not so impaired as to constitute a defense to the charge; (2) that the defendant was under unusual and substantial duress although not such as to constitute a defense; and (3) that the defendant was an accomplice whose participation in the offense was relatively minor. Subsection (a) further states that the jury or judge shall also consider any other aspect of the defendant's background, character, record, or the circumstances of the offense that the defendant may offer in mitigation. While the Supreme Court has held that no limitation may be placed on the defendant's introducing evidence of mitigating factors, some linkage must be established between the evidence offered in mitigation and the defendant's persona or the offense. For example, the catch all provision in subsection (a) is not intended to allow such evidence as that on the night of the murder in New York City, unusually heavy rain had fallen in Los Angeles.

Subsection (b) sets forth the aggravating factors for treason and espionage. They are that the defendant had previously been convicted of an offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute, that the defendant knowingly created a grave risk to the national security, and that the defendant knowingly created a grave risk of death to another person.

Subsection (c) sets forth the aggravating factors for the homicide offenses and for the attempted murder of the President.

(1) that the conduct resulting in death occurred during the commission, attempted commission, or the immediate flight from the commission, of one of several exceptionally dangerous crimes;

(2) that the defendant used or carried a firearm during and in relation to the offense—an aggravating factor that would typically be established by the defendant using the gun to shoot the victim but which would also be established if the defendant armed himself with a firearm for possible use during the offense but killed the victim in some manner other than shooting—or had previously been convicted of a felony involving the use, attempted use, or threatened use of a firearm against another person;

(3) that the defendant had previously been convicted of another federal or State offense resulting in death for which life imprisonment or death was authorized;

(4) that the defendant had previously been convicted of two or more federal or State offenses, committed on different occasions, each involving the infliction or attempted infliction of serious bodily injury or the distribution of a controlled substance and each punishable by imprisonment for more than one year;

(5) that the defendant in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to the victim;

(6) that the defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse of the victim;

(7) that the defendant procured the commission of the offense by paying or promising to pay anything of pecuniary value;

(8) that the defendant committed the offense as consideration for receiving or in the expectation of receiving something of pecuniary value;

(9) that the defendant committed the offense after substantial planning and premeditation;

(10) that the victim was particularly vulnerable due to old age, youth, or infirmity; and

(11) that the defendant committed the offense against certain specified public officials.

The aggravating factors in subsection (c) are the same as the corresponding provisions in title II of H.R. 5269 as passed by the House of Representatives, subject to two changes that are designed to make the capital sentencing option more consistently available in cases involving terrorist murders: Factor (1), which permits consideration of the death penalty where the lethal conduct occurs in the course of specified offenses, has been augmented to include a more comprehensive list of crimes that threaten massive loss of life or are otherwise likely to be committed by terrorists. Factor (11), which permits consideration of the death penalty for murders of certain federal public servants, has been augmented to include killings in which the victim is outside of the country, for the protection of diplomatic and military personnel and other federal public servants whose duties take them abroad.

It should be noted that subsections (b) and (c) do not define the offenses for which the death penalty is authorized. That authorization is in the penalty provision for each individual capital offense. Rather, subsections (b) and (c) specify the aggravated instances in which the commission of a capital offense will permit a jury to consider whether the death penalty should be imposed, and would often be applied in capital sentencing determinations for offenses whose defining statutes already contain general capital punishment authorizations.

In particular, subsection (b) would be applied in relation to the existing capital crimes of espionage (18 U.S.C. 794) and treason (18 U.S.C. 2381). Subsection (c) would be applicable in relation to various existing statutes that authorize capital punishment in cases where death results, including 18 U.S.C. 32, 34 (destruction of aircraft and aircraft facilities), 33, 34 (destruction of motor vehicles and motor vehicle facilities), 115 (retaliation against families of federal officials), 351 (violence against Members of Congress and Cabinet officers), 844 (d), (f), (i) (explosives offenses), 1111 (murder in special maritime and territorial jurisdiction), 1114 (murder of federal judges and officers), 1512 (witness tampering), 1716 (mailing dangerous articles), 1751 (violence against the President and Presidential staff), 1992 (wrecking trains), 2113 (bank robbery), 21 U.S.C. 848(e) (certain drug-related killings), and 49 U.S.C. App. 1473 (aircraft piracy).

However, eight (non-drug) offenses in current law, which are not now subject to the death penalty, are changed to capital offenses by the conforming amendments in this title. They are:

(1) the murders of certain foreign officials under 18 U.S.C. 1116;

(2) kidnaping where a death results under 18 U.S.C. 1201;

(3) murder for hire under 18 U.S.C. 1958;

(4) murder in aid of racketeering under 18 U.S.C. 1959;

(5) murder during a hostage taking in violation of 18 U.S.C. 1203;

(6) terrorist murders of American nationals abroad in violation of 18 U.S.C. 2332;

(7) attempted assassination of the President in violation of 18 U.S.C. 1751; and

(8) murder in furtherance of genocide in violation of 18 U.S.C. 1091(a)(1).

In addition, the title creates a new federal capital offense of murder committed by a federal prison inmate serving a life sentence (proposed 18 U.S.C. 1118). Subsection (c) would be applied in capital sentencing deter-

minations under these new authorizations, as well as to the existing capital punishment authorizations for homicidal offenses listed above.

Other titles of this bill also provide new death penalty authorizations to which the aggravating factors of subsection (c) would apply. Title V, relating to obstruction of justice, adds death penalty authorizations for murders in violation of 18 U.S.C. 1503 (injuring jurors or court officers) and 1513 (retaliation against witnesses). Title VII, relating to terrorism, creates several new offenses for which capital punishment will be authorized in cases where death results—proposed 18 U.S.C. 36 (violence at international airports), 930(c) (killings in firearms attacks on federal facilities), 2280 (violence against maritime navigation), 2281 (violence against maritime fixed platforms), 2339 (uses of weapons of mass destruction), and 2340A (torture). Title X, relating to equal justice, adds death penalty authorizations to the principal criminal provisions of the federal civil rights statutes, 18 U.S.C. 241, 242, and 245, for violations with fatal consequences.

Subsection (d) of proposed section 3592 would be applied in relation to the proposed "drug offender" death penalty under the bill. It is a special list of aggravating factors to be considered by the jury in deciding whether the death penalty should be imposed on offenders in the three "drug offender" categories in proposed 18 U.S.C. 3591 (c)-(e). These factors are tailored to the conditions of drug trafficking and identify features of a defendant's conduct or background that provide particularly strong evidence of dangerousness, incorrigibility, or indifference to human life. The jury would have to find at least one of these additional factors to impose a death sentence:

Paragraphs (1)-(2) of subsection (d) set our general criminal record aggravating factors. These are prior conviction of a homicide punishable by life imprisonment, and prior conviction of at least two violent or drug felonies.

The factor in paragraph (3) of subsection (d) is prior conviction of a drug offense punishable by five or more years of imprisonment. This is nearly the same as one of the aggravating factors in the Anti-Drug Abuse Act death penalty provisions (21 U.S.C. 848(n)(10)).

The factor in paragraph (4) of subsection (d) is using or knowingly directing, advising, authorizing, or assisting another to use a firearm to threaten, intimidate, assault, or injure a person in committing the drug offense, or in furtherance of a continuing criminal enterprise (as defined in 21 U.S.C. 848) of which the offense was a part. Mere possession of a firearm in connection with drug activities would not be covered; the defendant would actually have to engage in or sanction the hostile use of a firearm against a person.

The factors in paragraphs (5)-(7) of subsection (d) involve a violation in committing the drug offense, or in furtherance of a continuing criminal enterprise, of the provisions that define aggravated offenses where trafficking is carried out in a manner that exploits or jeopardizes young people. This includes distribution to persons under twenty-one, distribution near schools, and using minors in trafficking. The 1988 Anti-Drug Abuse Act death penalty provisions similarly have an aggravating factor (21 U.S.C. 848(n)(11)) for distribution to persons under twenty-one in violation of 21 U.S.C. 845. The factor would apply where the defendant directly committed such an offense, or would be liable as an accomplice in such an offense under the normal standards of 18 U.S.C. 2 (by aiding, abetting, counseling, commanding, inducing, procuring, or willfully causing the commission of the offense).

Factor (8) of subsection (d) covers cases where the offense involves importing, manufacturing, or distributing drugs that are mixed with a potentially lethal adulterant, and the defendant is aware of the presence of the adulterant. This is designed to reach situations in which the manufacturer or distributor cuts drugs with another toxic substance, such as household detergent.

Section 3593 (Special Hearing to Determine Whether a Sentence of Death is Justified)

This section sets out the procedure for a special hearing to determine whether a sentence of death is justified. At the conclusion of the hearing the jury (except in those unusual cases where the sentencing hearing is before the judge alone) will return a binding recommendation as to whether the sentence of death is justified. If the jury returns a recommendation of the death penalty as opposed to some lesser punishment, the court must impose a sentence of death.

Section 3593(a) provides that if the attorney for the government believes that the circumstances of one of the offenses for which the death penalty is authorized (the offenses set out in section 3591) justify the imposition of the death penalty, he or she must file with the court and serve on the defendant a notice of the conclusion and set forth the aggravating factors (including any not statutorily enumerated) the government proposes to show at the hearing. The notice must be filed and served on the defendant a reasonable time before trial or the accepting of a guilty plea or at such time thereafter as the court may permit upon a showing of good cause. The provision is intended to give adequate notice to the defendant so he can prepare for the post-conviction sentencing hearing and to ensure an appropriate *voir dire* that comports with applicable Supreme Court cases.

The subsection specifies that aggravating factors for which notice is provided may include factors concerning the effect of the offense on the victim and the victim's family. The effect on the victim may include the suffering of the victim in the course of the killing or during a period of time between the infliction of injury and resulting death, and the victim's loss of the opportunity to continue his characteristic activities and enjoyments and to realize his plans and aspirations because of the extinction of his life by the defendant. The effect on the victim's family may include emotional anguish and distress, and economic hardship. Since the defense is generally free to bring out sympathetic features of the defendant and his background, permitting the government to show the harm caused by the offense in relation to the victim and his family is necessary to provide the jury with a balanced picture of the relevant facts for purposes of the capital sentencing determination.

This point was recognized in the general death penalty proposal passed by the Senate in the 101st Congress, which provided for the introduction of a "victim impact statement" in capital sentencing hearings (proposed 18 U.S.C. 3593(g) in title I of S. 1970). However, the Senate provision was not fully integrated into the general system for proving and finding aggravating factors under the proposal. Proposed subsection (a) in this proposal avoids this problem by providing that notice of factors concerning the effect of the offense on the victim and his family may be given in the same manner as notice of other aggravating factors. If such notice was given, information supporting a "victim impact" factor could be introduced at the sentencing hearing as with other factors.

Section 3593(b) provides that if the attorney for the government has filed the notice required by subsection (a) and if the defendant is found guilty, a sentencing hearing shall be conducted by the judge who presided at trial or accepted the guilty plea or by another judge if the first one is unavailable. No presentence report is to be prepared in such a case inasmuch as the issue at the hearing is the existence of aggravating or mitigating factors and the justifiability of imposing a death sentence, and the issue is to be determined on the basis of the information presented at the hearing. The hearing is to be conducted before the jury that determined the defendant's guilt, except that a jury may be impaneled for the purpose of the sentencing hearing in a case in which the defendant was convicted on a trial to the court or on a plea guilty, in a case in which the original jury was discharged for good cause, or in a case where reconsideration of the sentence is necessary. This subsection also provides that the defendant may move that the sentencing hearing be conducted before the court alone but that the attorney for the government must concur. In the absence of this concurence by the government, the sentencing hearing is before a jury.

Section 3593(c) deals with proof of the aggravating and mitigating factors. Any information relevant to the sentence may be presented. Information concerning any mitigating factors or factors, both those listed in section 3592 and those not so listed, may be introduced. Evidence of at least one aggravating factor listed in section 3592 must be introduced. As explained, the government must give the defendant notice of which aggravating factors it will seek to establish. If evidence of a statutory aggravating factor is introduced, the government may also introduce evidence of any other aggravating factor, again providing the government has given notice as to the nature of such a nonstatutory factor.

The information may include trial transcripts and exhibits or relevant parts thereof. Other evidence relevant to any mitigating or previously identified aggravating factors may be presented regardless of its admissibility under the rules of evidence, except that the court may exclude information if its probative value is outweighed by the danger of its creating unfair prejudice, confusing the issues, or misleading the jury. The burden of establishing an aggravating factor is on the government and the standard of proof for such a factor is beyond a reasonable doubt. The defendant has the burden of establishing any mitigating factor but this burden is satisfied if the defendant proves such a factor by a preponderance of the evidence.

Section 3593(d) deals with the return of special findings required in the sentencing hearing. It provides that the jury, or if there is no jury, the court, must consider all the information received at the sentencing hearing. The jury, or if there is no jury, the court, must return a special finding identifying each aggravating factor (both statutory and nonstatutory) which it has found. Once again, it can only find the existence of an aggravating factor for which notice was provided. The finding with respect to an aggravating factor must be unanimous. If no aggravating factor is found, the death penalty cannot be imposed and the court must impose some other sentence authorized by statute.

With respect to mitigating factors, subsection (d) reflects the holding of the Supreme Court in *Mills* v. *Maryland*, 486 U.S. 367 (1988), that individual jurors may not be precluded from considering mitigating evidence regardless of the number of jurors who agree on a particular factor. Consequently, subsection (d) provides that a finding with respect to a mitigating factor may be made by one or more members of the jury.

As used throughout section 3593, the term "mitigating factor" is meant to include all mitigating evidence which the sentencer must consider before returning a sentence of death to comport with such cases as *Eddings* v. *Oklahoma*, 455 U.S. 104 (1982). Nevertheless, the jury may only consider evidence presented at trial or at the sentencing hearing. It may not speculate on the existence of some factor completely unsupported by any evidence. *See California* v. *Brown*, 479 U.S. 538 (1987). Any member of the jury who is persuaded by a preponderance of the evidence—the standard set out in subsection (c)—that a particular mitigating factor exists may consider such a factor established. That juror (even if he or she is the only one who believes the evidence and has concluded that such a factor has been established) may then weigh that evidence against any aggravating factors which have been found unanimously beyond a reasonable doubt—again, the requirement of subsection (c)—in deciding, under subsection (e), whether to return a binding recommendation for a sentence of death.

Section 3593(e) provides that if one or more of the statutorily required aggravating factors is found to exist (a constitutional requirement under *Zant* v. *Stephens* and *Barclay* v. *Florida*, *supra*) the jury, or the court if there is no jury, must then consider whether the aggravating factor or factors which it has found outweigh the mitigating factor or factors. It is the intent of this subsection that the jurors be instructed that they are to weigh and balance the aggravating factor or factors found against any mitigating evidence. As discussed above, findings of aggravating factors would require a formal determination of the whole jury, but the individual members of the jury would make their own determinations concerning the existence of mitigating factors.

If each juror found no mitigating factors or found that any mitigating factors were outweighed by the aggravating factor or factors, then the jury would be required to make a binding recommendation to impose the death penalty. This reflects the judgment that the death penalty is presumptively the appropriate penalty for the crimes described in section 3591 under the aggravated circumstances described in section 3592, and that the death penalty should be imposed in such cases unless the aggravating factors are balanced or outweighed by mitigating circumstances. The Supreme Court upheld rules requiring that the death penalty be imposed under these conditions in *Blystone* v. *Pennsylvania*, 110 S.Ct. 1078 (1990), and *Boyde* v. *California*, 110 S.Ct. 1190 (1990). This approach promotes equal justice and avoids the potential for arbitrariness that would exist under an approach that gave the jury or court less guidance in imposing the death penalty.

Subsection (e) also requires an instruction to the jury that it is not to be influenced in its decision whether to recommend the death penalty by sympathy, sentiment, passion, prejudice, or any other arbitrary factor, and should make such a recommendation as the information warrants. This is substantially the same as the instruction upheld by the Supreme Court in *Saffle* v. *Parks*, 110 S.Ct. 1257 (1990). *See also California* v. *Brown*, 479 U.S. 538 (1987) (approving similar instruction). The requirement of such an instruction serves to promote equal justice by emphasizing that capital sentencing decisions are not to be influenced by legally inadmissible considerations or personal whim or caprice. Rather, what is called for is a reasoned factual and moral assessment by the jury based on the evidence presented at the trial and sentencing hearing and its conclusions concerning the existence and relative weight of pertinent aggravating and mitigating factors.

Section 3593(f) is designed as a special precaution against discrimination by the jury on the basis of the defendant's or the victim's race, color, national origin, religion or gender. It provides that in a sentencing hearing in which the death penalty is sought, the jury shall be specifically instructed that it must not be influenced by prejudice or bias relating to these factors and that the jury is not to make its binding recommendation for a sentence of death unless it would recommend such a sentence no matter what the race, color, national origin, religion or sex of the defendant or any victim. Moreover, the jury must return to the court a certificate signed by each juror stating that such prejudice or bias was not involved in his or her individual decision, and that he or she would have made the same binding recommendation as to the sentence no matter what these particular characteristics of the defendant or victim might be.

Section 3594 (Imposition of a Sentence of Death)

This section provides that if the jury recommends a sentence of death, the court must sentence the defendant to death. If the court, rather than the jury, is the fact finder at the sentencing hearing, section 3594 requires the court to follow its own recommendation and impose the death penalty. If, however, the jury, or if there is no jury, the court, does not recommend the sentence of death, the court shall impose any sentence other than death authorized by law.

This section also provides that notwithstanding any other provision of law, life imprisonment without possibility of release is an authorized sentence for a conviction of an offense punishable by death if the maximum term of imprisonment for such an offense is life.

Section 3595 (Review of a Sentence of Death)

This section sets out the rules applicable to appeals from the imposition of the death sentence. *Subsection (a)* provides that a sentence of death shall be subject to review by the court of appeals upon an appeal of the sentence by the defendant. Notice of appeal of the sentence must be filed within the time specified for filing an appeal of the judgment of conviction and the court may consolidate the appeal of the sentence and the appeal of the conviction. The review of a case in which the death sentence has been imposed must be given priority over all other cases.

Section 3595(b) provides that the court of appeals must consider the entire record including the evidence submitted at trial, the information submitted during the sentencing hearing, the procedures employed at the sentencing hearing, and the special findings returned at the sentencing hearing as to the existence of the aggravating factors.

Section 3595(c) requires the court of appeals to uphold the sentence of death if it was not imposed under the influence of passion, prejudice, or any other arbitrary factor, the evidence and information support the special findings of aggravating factors, and the proceedings did not otherwise involve prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal. The death sentence could be upheld even if an aggravating factor were invalidated on appeal, provided at least one valid statutory aggravating factor remained. *See Zant* v. *Stephens*, *supra*. Proportionality review with other death cases would not be a part of the review process. *Pulley* v. *Harris*, 465 U.S. 37 (1984). If the sentence was not upheld, the court of appeals would remand the case for reconsideration under section 3593 or for imposition of another authorized sentence, as appropriate. The court of appeals must state in writing the reasons for its disposition of an appeal of a sentence of death.

Section 3596 (Implementation of a Sentence of Death)

This section is concerned with the implementation of a sentence of death. *Section 3596(a)* provides that a person sentenced to death shall be committed to the custody of the Attorney General pending completion of the appeal and review process. When the sentence is to be implemented, custody of the person would be given to a United States Marshal who would then supervise the implementation of the penalty in accordance with the law of the State in which the sentence is imposed. If that State has no death penalty, the court would designate another State which does have such a penalty and the execution would be carried out in the manner prescribed in that State. This subsection generally reinstates a portion of the provisions of former section 3566 of title 18 which was repealed as of November 1, 1987, by P.L. 98-473.

Section 3596(b) states that a sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed, or upon a woman who is pregnant. The latter limitation is to spare the unborn. Following the conclusion of the pregnancy, the sentence of death would be implemented. The former limitation is intended to implement the bar on execution of a person who is mentally incompetent but who was sane at the time of the offense and who was competent to stand trial. See *Ford* v. *Wainwright*, 477 U.S. 399 (1986). This limitation, too, would normally only postpone the implementation of the sentence of death. See *Ford* v. *Wainwright*, concurring opinion of Justice Powell, 477 U.S. at 425 and footnote 5: "The only question raised is not *whether* but *when* his execution may take place. [Emphasis in original.] [I]f petitioner is cured of his disease, the State is free to execute him."

Section 3597 (Use of State Facilities)

This section reinstates other parts of former section 3566 not contained in subsection 3596(a) by authorizing the United States Marshal charged with implementing the sentence of death to use State facilities and to pay the costs thereof.

Sections 3598 and 3599 (Appointment of Counsel and Collateral Attack)

Sections 3598 and 3599 would adopt improved procedures for federal death penalty litigation based on the recommendations of the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases (the "Powell Committee"), as set out in that Committee's report of August 23, 1989. Both the Senate and the House of Representatives passed these provisions in the

101st Congress (proposed 18 U.S.C. 3598–99 in title XIV of S. 1970 and title II of H.R. 5269).

Following the Powell Committee's recommendations, a balanced approach would be adopted under which the defendant's right to appointment of counsel would be extended, but improved safeguards against dilatory tactics and repetitive litigation would also be enacted. The defendant would be afforded counsel meeting specified standards of competence from the commencement of trial proceedings until the conclusion of the litigation of an initial motion for collateral relief under 28 U.S.C. 2255. The defendant would, however, normally be limited to a single section 2255 motion, and the motion would have to be filed within a specified time period. Following the final rejection of such a motion by the courts, further litigation would be limited to extraordinary cases in which the defendant raises a claim that undermines confidence concerning his factual guilt of the offense for which the death penalty was imposed. The specific provisions are as follows:

Section 3598

Subsection (a) of proposed section 3598 would create a right to appointed counsel for indigent federal capital defendants, running from the commencement of trial proceedings until the conclusion of the litigation of an initial motion for collateral relief under 28 U.S.C. 2255, or the failure of the defendant to file or pursue such a motion in a timely manner.

Subsection (b) provides for appointment of counsel at trial in conformity with 18 U.S.C. 3005, an existing statute that entitles a federal capital defendant, on request, to two lawyers at trial. At least one lawyer so appointed would continue to represent the defendant in direct review proceedings, unless replaced by the court with other qualified counsel.

Subsection (c) governs appointment of counsel for collateral proceedings. After the judgment has become final through the conclusion of direct review or a failure of the defendant to seek direct review in a timely manner, the government would so notify the sentencing court. The court would then proceed within 10 days to determine whether the defendant is eligible for appointment of counsel, and on the basis of that determination would issue an order appointing counsel, or denying appointment of counsel because the defendant was not indigent or refused appointment of counsel. Following the approach of the Powell Committee recommendations, counsel appointed for collateral proceedings would be different from the counsel who represented the defendant at earlier stages, absent a contrary request by the defendant and counsel. This would serve to provide a lawyer capable of taking a fresh and dispassionate look at the issues in the case, including possible errors by counsel in prior proceedings. *See* Powell Committee Report at 10, 12–13.

Subsection (d) sets standards of competence for appointment of counsel under the section. The basic requirement would be five years' admission to the bar and three years of felony litigation experience in the federal courts. This standard is based on the appointment of counsel standard of the death penalty provisions of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 848(q)(5)–(6)). Also following the Anti-Drug Abuse Act provisions (21 U.S.C. 848(q)(7)), the court, for good cause, could appoint other counsel under the section whose background, knowledge, or experience qualified him to handle such cases, although he did not meet the specific experience requirements set out in the statute. Utilization of this authority in appropriate cases would help ensure that the class of qualified counsel available to defendants would not be unduly limited, and that delay would not occur in litigation because of the unavailability of qualified counsel to represent capital defendants. For example, it might be found that extensive criminal litigation experience in state cases, or completion of a training or certification program for capital litigation, would be an adequate substitute or partial substitute for these specific experience requirements.

Subsection (e) provides that the provisions of the Criminal Justice Act (18 U.S.C. 3006A) would apply to appointments under this section except as otherwise provided in the section. Section 3006A sets general standards and procedures for appointment and reimbursement of counsel, including due allowance for waiving normal compensation limits in cases of unusual difficulty or complexity. The proviso in this paragraph to the applicability of the Criminal Justice Act—"[e]xcept as otherwise provided in this section"—recognizes that the standards of the section are in some important respects more favorable to defendants than the general section 3006A standards. For example, appointment of counsel for indigents in collateral proceedings is discretionary under section 3006A, but would be mandatory in an initial section 2255 motion under this section.

Subsection (f) provides that the entitlement to counsel for collateral proceedings under this section would not create any novel right to attack capital sentences on grounds of alleged ineffectiveness of counsel at that stage. This is parallel to proposed 28 U.S.C. 2256(e) in the Powell Committee proposal. *See* Powell Committee Report at 10, 13.

Section 3599

Proposed 18 U.S.C. 3599 would be a new section governing collateral litigation—i.e., litigation of motions by federal defendants pursuant to 28 U.S.C. 2255—in capital cases.

Subsection (a) of proposed section 3599 would require that an initial section 2255 motion be filed within 90 days of the issuance of the order under proposed section 3598 relating to appointment of counsel for collateral proceedings. The court, for good cause, could extend the time for filing for up to 60 days. A motion under the section would be given priority over all non-capital matters in the district court and the court of appeals.

Superficially, the time provided for filing a motion under subsection (a) is shorter than the general two-year time limit for section 2255 motions proposed in subtitle A of title II of this bill, and the general 180 day time limit on a state prisoner's application for federal habeas corpus review under the Powell Committee recommendations for state cases. However, the reforms proposed in subtitle A of title II are designed for the general class of federal prisoners who may seek collateral relief, including prisoners who do not have counsel, and need to find their own way in filing section 2255 motions. They accordingly provide a very long time period for that purpose. In contrast, under the instant proposal, federal defendants under sentence of death will always have legal representation for purposes of collateral (section 2255) litigation, and the time allowed is properly limited to the time required for an experienced attorney to prepare and file a section 2255 motion. The 90 day time period proposed under subsection (a), subject to a possible 60 day extension if needed, is ample for that purpose.

Similarly, the time rule under subsection (a) cannot be compared directly to the 180 day time limit for federal habeas applications by state prisoners under the Powell Committee procedures, because the 180 day Powell Committee limit encompasses *two* periods: both the time required for counsel to file an initial application for collateral relief in the state courts, and the time later required for filing a federal habeas corpus application following the conclusion of state collateral litigation. *See* Powell Committee Report at 6, 18–21. When this difference is taken into account, the time allowed for filing by federal prisoners under subsection (a) is comparable in practical terms to the time allowed for state prisoner filing under the Powell Committee procedures.

Subsection (b) of proposed section 3599 provides essentially that execution is automatically stayed until the conclusion of litigation of an initial section 2255 motion, if such a motion is filed and pursued in conformity with the applicable time rules. This is parallel to the mandatory stay of execution provisions of the Powell Committee procedures for state cases. *See* Powell Committee Report at 13–14, 15–17.

Subsection (c) of proposed section 3599 governs further litigation following the conclusion of litigation of an initial section 2255 motion, or failure to pursue such a motion in a timely manner. Beyond this point, no court would have the authority to stay the execution or grant relief, except in an extraordinary case involving a claim based on facts which would undermine confidence in the defendant's guilt of the offense for which the death penalty was imposed, where the claim was not raised in earlier proceedings and the failure to raise the claim was the result of (a) governmental action in violation of federal law, (b) Supreme Court recognition of a new right that is retroactively applicable, or (c) based on a factual predicate that could not have been discovered in time for earlier proceedings through reasonable diligence. This is parallel to proposed 28 U.S.C. 2257(c) in the Powell Committee recommendations. *See* Powell Committee Report at 14–15, 17–18.

Sec. 103. Conforming amendment relating to destruction of aircraft or aircraft facilities

Section 103 of the bill applies the procedures of the new chapter 228 concerning the death penalty to violations of chapter 2 of title 18 dealing with the destruction of or damage to aircraft and motor vehicles where death results. The death penalty is authorized for such violations under current law but the penalty is unavailable due to the lack of necessary procedural provisions.

Sec. 104. Conforming amendment relating to espionage

Section 104 prescribes the scope of the availability of the death penalty for espionage. In accordance with the view reflected in prior bills that the death penalty is both constitutional and appropriate for this offense, the penalty is retained as a possible punishment for peacetime espionage where it concerns certain major military matters, such as nuclear weapons or satellites which directly affect national defense. The death penalty, of course, remains applicable under 18 U.S.C. 794(b) to any instance of wartime espionage.

Secs. 105–107. Conforming amendments dealing with explosives

Sections 105, 106, and 107 apply the sentencing procedures of the new chapter 228 to three serious explosives offenses where death results. These sections, all of which deal

with deliberate property destruction by explosives or the transportation of explosives in interstate commerce for the purpose of injuring persons or property, currently provide for the death penalty, but the penalty is unenforceable due to the lack of necessary procedures.

Sec. 108. Conforming amendment relating to murder

Section 108 applies the new death penalty procedures to the offense of first degree murder committed in the special maritime and territorial jurisdiction, a crime for which the death penalty is authorized (but unavailable as a practical matter because of the lack of procedures) under current law.

Sec. 109. Conforming amendment relating to killing official guests or internationally protected persons

Section 109 amends 18 U.S.C. 1116(a) to provide for the death penalty for murders of foreign officials, official guests of the United States, and internationally protected persons.

Sec. 110. Murder by Federal prisoner

Section 110 adds a new section 1118 to title 18 to provide that a person serving a life sentence in a federal prison who murders another person will be punished by death or by life imprisonment without the possibility of release.

Sec. 111. Death penalty relating to kidnapping

Section 111 amends the federal kidnaping statute, 18 U.S.C. 1201, to provide for the imposition of the death penalty, under the sentencing procedures of chapter 228, if death results from the kidnaping.

Sec. 112. Death penalty relating to hostage taking

Section 112 provides for the death penalty under 18 U.S.C. 1203 (enacted in 1984) if death occurs in the course of a hostage-taking, either within the United States or, if the victim is a United States national, outside the United States, such as occurred in the incident a few years ago involving the cruise ship Achille Lauro.

Sec. 113. Conforming amendment relating to mailability of injurious articles

Section 113 applies the new sentencing provisions to section 1716, dealing with the mailing of injurious articles where death results. This effectuates the presently unenforceable death penalty provision for this section.

Sec. 114. Conforming amendment relating to presidential assassination

Section 114 of the bill would provide for the death penalty for an attempt to kill the President if the attempt results in bodily injury to the President or otherwise comes dangerously close to killing the President. The procedures of the new chapter 228 would be applicable to such an offense.

Secs. 115–116. Conforming amendmens relating to murder for hire and to violent crimes in aid of racketeering

Sections 115 and 116 provide for the death penalty under two related offenses enacted in 1984 and renumbered in 1988 proscribing murders for hire and killings in aid of racketeering activity (18 U.S.C. 1958 and 1959).

Sec. 117. Conforming amendment relating to wrecking trains

Section 117 applies the new sentencing provisions of chapter 228 to violations of 18 U.S.C. 1992 involving the wrecking of trains where death results. This effectuates the presently unenforceable death penalty provision for this offense.

Sec. 118. Conforming amendment relating to bank robbery

Section 118 restricts the application of the death penalty in cases of bank robbery and incidental crimes in violation of section 2113 of title 18 to cases where death results, and provides for life imprisonment as an alternative penalty in such cases.

Sec. 119. Conforming amendment relating to terrorist acts

Section 119 amends 18 U.S.C. 2332 to provide for the death penalty for terrorist murders of United States nationals outside of the United States.

Sec. 120. Conforming amendment relating to aircraft hijacking

Section 120 applies the procedurs of chapter 228 to aircraft piracy where death results from the commission or attempted commission of the offense by repealing the capital punishment procedures in the Federal Aviation Act of 1958 (49 U.S.C. App. 1473(c)) while retaining the death penalty for such piracy where death results.

Sec. 121. Conforming Amendment to Controlled Substances Act

Section 121 similarly applies the procedures of chapter 228 to drug-related killings for which the death penalty is authorized under the Controlled Substances Act (21 U.S.C. 848 (e)).

Sec. 122. Conforming amendment relating to genocide

Section 122 amends 18 U.S.C. 1091(b)(1) to authorize the death penalty for killing a person in furtherance of the commission of genocide.

Sec. 123. Inapplicability to uniform code of military justice

Under 10 U.S.C. 836, pretrial, trial and posttrial procedures for cases arising under the Uniform Code of Military Justice are promulgated by the President. Section 123 is included in this title to make it clear that the capital punishment procedures of the new chapter 228 do not apply to prosecutions under the Uniform Code of Military Justice, since the President has prescribed separate death penalty procedures for use in trials by courts-martial.

II. HABEAS CORPUS

Title II contains provisions to curb the abuse of habeas corpus by state and federal prisoners. Subtitle A proposes general habeas corpus reforms, which are largely identical to the reform proposal passed by the Senate in the 98th Congress by a vote of 67 to 9 (S. 1763), and to title VI of the President's violent crime bill of the 101st Congress.

Subtitle B proposes reforms addressed to the particularly acute problems of delay and abuse in capital cases. It combines the basic "Powell Committee" proposal for death penalty litigation, as passed by the House of Representatives in the 101st Congress (title XIII of H.R. 5269), with the most important features of the habeas reform proposals passed by the Senate in the 101st Congress (title II of S. 1970) and the 98th Congress (S. 1763). Specifically, it adds to the Powell Committee proposal definite time rules for concluding the litigation of habeas petitions in capital cases, and a rule of deference to the results of "full and fair" state court adjudications of a petitioner's claims.

A. General Habeas Corpus Reform

Section 202

Section 202 of the bill would add a new subsection to section 2244 of title 28, United States Code. Proposed section 2244(d) would establish a one year time limit on applications for federal habeas corpus, normally commencing at the time State remedies are exhausted. The notion of exhaustion of state remedies, which provides the normal starting point for the limitation period, is explained in S. Rep. No. 226, 98th Cong., 1st Sess. 17 (1983) (Committee Report on Senate-passed habeas reform bill). This rule would provide State defendants with ample time to seek federal review following the conclusion of State proceedings, but would avoid the acute difficulties of proof that currently arise when federal habeas corpus is sought by a prisoner years or decades after the State trial.

The proposed limitation rule may be compared to various existing time limits on seeking review or re-opening of criminal judgments in the federal courts, such as the normal ten day limit on appeals by federal defendants under Fed. R. App. P. 4(b); the normal ninety day limit on a State defendant's application for direct review in the Supreme Court under Sup. Ct. R. 13; and the two year limit on motions for new trials based on newly discovered evidence under Fed. R. Crim. P. 33. Proposed section 2244(d) further provides for deferral of the start of the limitation period in appropriate cases, such as assertion of newly recognized rights or newly discovered claims.

Unlike general habeas reform proposals in earlier Congresses, this section does not attempt to codify the rules governing the raising of claims in federal habeas corpus proceedings that were not properly raised before the state courts ("excuse of procedural defaults"). Provisions addressing this issue were included in the earliest versions of this proposal in the 97th and 98th Congresses because of the many uncertainties that existed at the time concerning the standards for excusing procedural defaults. However, most of the outstanding questions in this area have been resolved by subsequent Supreme Court decisions. *See generally Murray v. Carrier*, 477 U.S. 478 (1986).

Sec. 203. Appeal

Section 203 of the bill would amend section 2253 of title 28, United States Code, so as to vest in the judges of the courts of appeals exclusive authority to issue certificates of probable cause for appeal in habeas corpus proceedings. It would also create an identical certificate requirement for appeals by federal prisoners in collateral relief proceedings pursuant to section 2255 of title 28, United States Code. This would implement recommendations of Judge Henry Friendly. See Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 144 n.9 (1970). The reform would correct inefficiencies of the current system under which an appellate court is obliged to hear an appeal on a district court's certification, though it may believe that the certificate was improvidently granted, and under which a prisoner is afforded duplicative opportunities to persuade first a district judge and then an appellate judge that an appeal is warranted.

Sec. 204. Amendment to Rules of Appellate Procedure

Section 204 of the bill would amend Fed. R. App. P. 22 to conform it to the amendments of section 203.

Sec. 205. Section 2254 Amendments

Section 205 of the bill would make various changes in section 2254 of title 28, United States Code. *Section 205(1)* would amend current section 2254(b) to clarify that a habeas corpus petition can be denied on the merits

notwithstanding the petitioner's failure to exhaust state remedies. This would implement a recommendation of Professor David Shapiro. *See* Shapiro, *Federal Habeas Corpus: A Study in Massachusetts*, 87 Harv. L. Rev. 321, 358–59 (1973). It would avoid the waste of State and federal resources that presently results when a prisoner presenting a hopeless petition is sent back to the State courts to exhaust State remedies.

Section 205(3) of the bill would add a new subsection (d) to section 2254. Proposed subsection (d) would accord deference to the result of full and fair State adjudications. This may be compared to the standard of review stated by the Supreme Court in the case of *Ex Parte Hawk*, 321 U.S. 114, 118 (1944), prior to the unexplained substitution of the current rules of mandatory readjudication by the decision in *Brown* v. *Allen*, 344 U.S. 443 (1953). The background and rationale for establishing a more limited standard of review are discussed in the Committee Report accompanying the Senate-passed habeas reform bill of the 98th Congress (S. 1763), *see* S. Rep. No. 226, 98th Cong., 1st Sess. (1983), and in *Federal Habeas Corpus Review of State Judgments*, 22 U. Mich. J.L. Ref. 901 (1989).

Section 205(2) of the bill would simplify current section 2254(d), which is verbose, confusing, and obscure; redesignate it as section 2254(e); and bring its formulation into conformity with that of proposed new section 2254(d). This provision would be of minor practical significance, coming into play only when the general standard governing deference to State determinations in proposed new section 2254(d) was found by the habeas court to be unsatisfied.

Section 205(4) of the bill would codify the traditional principles governing the appointment of counsel for indigents in federal habeas corpus proceedings. Appointment of counsel in proceedings under section 2254 of title 28, United States Code, and in any subsequent proceedings on review, would be in the discretion of the court, except as provided by rules promulgated by the Supreme Court. The general rule that appointment of counsel is discretionary would apply regardless of the nature of the offense for which the petitioner was convicted or the sentence imposed. The proviso relating to the Supreme Court's rule-making authority recognizes that the Court may create exceptions to the general principle of discretionary appointment for collateral proceedings and require appointment of counsel in some situations. *See, e.g.*, Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.

Sec. 206. Section 2255 Amendments

Section 206 of the bill would amend section 2255 of title 28, United States Code. It would carry out reforms in the collateral remedy for federal prisoners comparable to the rules proposed in section 202 of the bill governing time limitation in habeas corpus proceedings, and would codify the traditional principles governing appointment of counsel in section 2255 proceedings in a manner parallel to the provision for habeas corpus proceedings in section 205(4) of the bill.

B. Death Penalty Litigation Procedures

Subtitle B would implement the recommendations of the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases (the "Powell Committee") for improved litigation procedures for state capital cases. The proposal was initially set out in that Committee's report of August 23, 1989.

The formulation of the Powell Committee proposal in this subtitle is largely identical to that passed by the House of Representatives as title XIII of H.R. 5269 in the 101st Congress. However, it also incorporates the essential idea of the Senate-passed habeas reform proposal of that Congress (title II of S. 1970) by adding a set of time rules for concluding the litigation of federal habeas petitions before district courts and courts of appeals in capital cases in qualifying states. Moreover, it explicitly incorporates the most important reform of the general habeas reform bills—such as S. 1763 passed by the Senate in the 98th Congress—by providing for deference on federal habeas review to "full and fair" state adjudications in capital cases in such states.

In essence, the "Powell Committee" provisions in this subtitle—a proposed new chapter in the Judicial Code (title 28) comprising sections 2256–63—would afford states the option of establishing effective systems for providing indigent defendants under sentence of death with competent representation in state collateral proceedings. If a state chose to establish such a system, stronger rules of finality would apply in subsequent federal review. The defendant would normally be limited to a single federal habeas corpus petition, which would have to be filed within a specified time period. Following the affirmation on appeal of the district court's denial of such a petition, and affirmation of the judgment or denial of certiorari by the Supreme Court, further federal review would be barred except on grounds that undermine confidence concerning the defendant's factual guilt of the capital offense for which the sentence had been imposed.

Section 2256

Proposed 28 U.S.C. 2256 sets out the basic scope of the chapter and the rules relating to appointment of counsel. It is substantially the same as the Powell Committee's formulation of proposed section 2256. *See* Powell Committee Report at 9–13.

Subsection (a) provides that the chapter governs federal habeas corpus review in capital cases from states that meet the section's appointment-of-counsel standards.

Subsection (b) provides that the procedures of the chapter apply where a state, by rule or statute, requires appointment and compensation of counsel to represent defendants under sentence of death in state collateral proceedings, and articulates standards of competence for such counsel. Appointment of competent counsel for indigents is, of course, constitutionally required at the primary stages of litigation—the trial and initial appeal. The section 2256 standards would go beyond the constitutional standard, *see Murray v. Giarratano*, 109 S. Ct. 2765 (1989), in requiring the state to make arangements for provision of competent counsel to represent indigent capital defendants in state collateral proceedings as well.

Consistent with the principles of federalism, no state would be forced to adopt these non-constitutional standards. Further, each state would be able to make its own decision whether any costs involved in adhering to the section 2256 standards are offset by the benefits of increased finality in the later stages of capital punishment litigation. The latitude afforded to the states in defining specific standards of counsel competence is also desirable in a new procedure of this type, and would enable all states to learn from experience concerning the most effective means of ensuring competent representation through the exploration of different approaches. At a minimum, the immediate benefits to defendants would include the requirement that states electing these procedures actually appoint counsel for collateral proceedings, and these states focus on an articulate standards of competence for such appointments.

Subsection (c) provides that the appointment mechanism must include entry of an order appointing counsel on a finding that the defendant is indigent, or denying counsel because the defendant is not indigent or refuses counsel.

Subsection (d) provides that the counsel appointed for collateral proceedings must be different from the counsel representing the defendant at trial and on direct appeal, unless the defendant and counsel request continued representation. The Powell Committee explained that this approach would be responsive to problems of attorney "burn out" in capital cases, and would provide a lawyer capable of taking a fresh and dispassionate look at the case, including possible inadequacies in representation at earlier stages. *See* Powell Committee Report at 12–13.

Subsection (e) provides that ineffectiveness or incompetence of counsel in collateral proceedings would not be grounds for relief in a federal habeas corpus proceeding. This ensures that the expanded entitlement to appointed counsel would not be construed to create a novel ground for challenging capital sentences. However, this limitation would not restrict a court's authority to replace counsel who is not performing adequately. *See* Powell Committee Report at 13.

Section 2257

Proposed 28 U.S.C. 2257 governs stays of execution and successive habeas corpus petitions. It is substantially the same as the corresponding provision in the Powell Committee's formulation. *See* Powell Committee Report at 13–18.

Subsections (a)–(b) provide for a stay of execution while judicial remedies are being pursued in a timely manner. The stay would expire after the defendant's federal habeas corpus petition had been denied by the lower federal courts and the Supreme Court had affirmed the denial of relief or denied certiorari. The automatic stay provision would avoid the need for repetitive, wasteful, and hurried litigation over successive applications for stays as a case moves through the various stages of state and federal review. The pressure of impending execution dates would no longer be needed to spur action by the defense in light of the strengthened time limitation and finality rules included in the proposal. *See* Powell Committee Report at 2–3, 5, 15–16.

Subsection (c) is a critical feature of the proposal as a response to the current problems of delay and repetitive litigation in capital cases. Once an initial federal habeas corpus petition had been denied, and the Supreme Court had affirmed the denial of relief or denied review, additional federal review would generally be foreclosed. Exceptions to this restriction would be limited to extraordinary cases in which specified grounds of justification are established for the failure to raise a claim at an earlier point and the facts underlying the claim, if proven, would undermine the court's confidence in the accuracy of the determination of the defendant's factual guilt of the offense for which the death penalty was imposed. The admissible grounds of justification for an earlier failure to raise such a claim—state action in violation of federal law, Supreme Court recognition of a new retroactive right, and a factual predicate not discoverable at an earlier point through reasonable diligence—reflect current caselaw standards governing

the excuse of "procedural defaults" in federal habeas corpus proceedings. *See Murray v. Carrier*, 477 U.S. 478, 488 (1986).

The limitation of proposed subsection (c) is of basic importance in curbing the nearly endless litigation and relitigation that now occurs in successive habeas corpus petitions concerning alleged defects in capital sentences imposed on defendants whose status as murderers is not in doubt. Even with the section 2257(c) limitation, the standards of the Powell Committee's proposal remain highly generous in affording abundant opportunities for raising claims and multiple layers of review. Beyond trial and direct review, the defendant would typically be accorded a second run through the state trial court and appellate hierarchy in state collateral proceedings—with the assistance of counsel—followed by review by the federal courts at the trial and appellate levels in federal habeas corpus proceedings, with a final opportunity to seek Supreme Court review at the end of the process. If still more review proceedings are to be made available following this process, they should be confined to the compelling case of a defendant who raises grounds that cast serious doubt on his factual guilt. *See* Powell Committee Report at 17–18.

Section 2258

Proposed 28 U.S.C. 2258 provides that a federal habeas corpus petition generally must be filed within 180 days of appointment of counsel for state collateral proceedings. As the Powell Committee noted, the basic 180 day period "ensures adequate time for the development and presentation of claims," and is far longer than other time rules for seeking review of judgments in the state and federal systems. *See* Powell Committee Report at 6.

Under subsections (a) and (b), the time would run in the period between the appointment of counsel and the filing of the initial application for state collateral relief, and in the period following the final denial of collateral relief at the state level. It would generally be tolled while applications for review were pending and state filing rules were being met in a timely manner. However, it would not be tolled during the pendency of an application for review to the Supreme Court at the conclusion of state collateral proceedings. As the Powell Committee pointed out, the defendant would in any event have opportunities to seek Supreme Court review at the conclusion of state direct review, and following federal habeas corpus proceedings in the lower federal courts. Suspending the time rule to provide still another opportunity for seeking such review immediately after state collateral proceedings would only occasion pointless delay and repetitive applications. *See* Powell Committee Report at 20.

Under subsection (c), the time for seeking federal habeas corpus could be extended for up to 60 days for good cause.

Superficially, the basic 180 day limitation period is more restrictive than the one-year time limit for habeas corpus applications in the general habeas corpus reform proposal of subtitle A of this title. However, the general one-year period is designed for the whole class of potential habeas corpus petitioners, including petitioners who may not have had the assistance of counsel at the later stages of state proceedings. In contrast, the limitation period of proposed section 2258 would only apply to defendants who have had the assistance of counsel in developing and presenting their claims at every significant stage of the state process. Moreover, the incentives for delay—and the public interest in guarding against unjustified delay—are greatest in capital punishment litigation, because the continuation of litigation normally does not interrupt a term of imprisonment, but it does prevent the carrying out of a sentence of death imposed on a defendant. In this context, there is no legitimate basis for permitting lengthy delay in seeking review, and the basic 180 day period proposed by the Powell Committee is clearly not unduly restrictive.

Section 2259

Proposed 28 U.S.C. 2259 concerns the range of claims that can be raised in habeas corpus proceedings under the proposed procedures, and the taking of additional evidence in such proceedings. It is largely identical to the corresponding provision in the Powell Committee's original formulation. *See* Powell Committee Report at 21–23.

Under this section, review would be limited to claims that had actually been presented and litigated in the state courts—a requirement comparable to the normal requirement of exhaustion of state remedies for habeas corpus review, *see* 28 U.S.C. section 2254(b)—and to claims that had not been raised at the state level where specified grounds of justification for the failure to raise them can be established. The grounds specified for excusing a failure to raise claims in the state courts—state action in violation of federal law, Supreme Court recognition of a new retroactive right, and claims whose factual predicate was not earlier discoverable through reasonable diligence—are essentially the same as the grounds specified in proposed section 2257(c)(2), and reflect existing caselaw standards. *See Murray* v. *Carrier*, 477 U.S. 478, 488 (1986). The district court would conduct any hearing needed to complete the record for review, and rule on the claims that were properly before it.

The court would not be authorized, however, to overturn a capital conviction or sentence on the basis of a claim that the state courts had rejected following a full and fair adjudication. In practical terms, this means that review of a previously adjudicated claim would normally be limited to verifying that the state adjudication of the claim was full and fair. This avoids the pointless relitigation in federal habeas proceedings of claims that have already been fairly considered and decided by the state courts.

As noted above, the same principle of deference to full and fair state adjudications appears in the general habeas reform proposal in subtitle A of this title. Enactment of this principle as part of the general habeas reform proposal would make it uniformly applicable in both capital and non-capital cases. Reiteration of this principle in the special procedures for death penalty litigation ensures that this important reform will not be omitted for capital cases in qualifying states if the proposal of this subtitle is separately enacted.

Section 2260

This section, which would waive the normal requirement that a habeas-corpus petitioner obtain a certificate of probable cause to appeal a district court's denial of relief, is identical to the corresponding Powell Committee provision. *See* Powell Committee Report at 23.

Section 2261

Proposed 28 U.S.C. 2261 was passed by the House of Representatives as part of title XIII of H.R. 5269 in the 101st Congress, but did not appear in the Powell Committee's original formulation. It would extend the potential application of the proposed procedures to states having "unitary review" systems for capital cases.

In general, the purpose of collateral remedies is not to give defendants a second round on claims that were raised, or could have been raised, at trial or on direct review. Rather, they provide a means for raising claims that could not have been raised at earlier stages. Given the normal limitation of the scope of appellate review to claims of error appearing in the trial record, some other means is needed for raising claims of off-the-record error or misconduct.

A separate system of collateral remedies is not, however, the only means by which a state may choose to deal with this problem in capital cases. It can combine the normal functions of direct review and collateral attack in a "unitary review" procedure. Under this type of procedure, the defense is authorized to raise "off the record" claims—as well as the normal claims cognizable on appeal—at the initial stage of review beyond the trial, where the failure to raise such a claim at trial is adequately justified. California, for example, has adopted a unitary review procedure for capital cases by rule of its supreme court. Under the California procedure, collateral claims can be raised in the course of direct review by concurrently filing a petition for habeas corpus in the state supreme court during its consideration of the direct appeal in the case. Counsel is appointed and compensated for litigating such collateral claims during the direct review process, as well as the normal claims cognizable on appeal.

The omission of coverage of unitary review procedures in the Powell Committee proposal is a defect in that proposal. It would discourage state adoption of the unitary review approach, despite potential advantages in efficiency and expeditiousness, and despite the fact that this approach serves as well as collateral review to provide the defendant with a fair and comprehensive adjudication of his claims at the state level. It would also arbitrarily deny states that have opted for the unitary review approach the benefits of the proposal's strengthened finality rules.

Proposed section 2261 would correct this omission by extending the application of the chapter to states with adequate unitary review procedures in capital cases.

Subsection (a) defines a "unitary review" procedure as a procedure that authorizes raising, in the course of direct review, such claims as could be raised in collateral proceedings under the law of the state. The chapter would apply to such a procedure if it included appointment of counsel meeting articulated standards of competence for representation on unitary review, including representation in connection with the litigation of collateral claims in that context.

Under subsection (b), a qualifying unitary review procedure would have to include appointment of counsel for indigents following trial for purposes of unitary review. Parallel to the rule of proposed section 2256(d) that would normally require appointment of new counsel for collateral proceedings, new counsel would have to be appointed at the start of the unitary review process, absent a request for continuation of the trial representation by defendant and counsel.

Under subsection (c), the strengthened time limitation and finality rules of the chapter would apply to capital cases from states that have unitary review procedures meeting these standards. The starting point of the 180 day time limit for applying for fed-

eral habeas corpus would be deferred until a trial transcript was available to counsel or the defendant, to ensure that the time would not be running during a period when counsel was unable to pursue unitary review because of the unavailability of a transcript.

Section 2262

Proposed 28 U.S.C. 2262 is a new provision that incorporates the main feature of the habeas corpus title of the Senate-passed crime bill of the 101st Congress (title II of S. 1970)—definite time rules for determining federal habeas petitions. The general Powell Committee procedures of this subtitle provide effective safeguards against the delay and obstruction of capital punishment through repetitive habeas corpus filing by limiting second and successive petitions. The time limitation approach of the Senate bill provides complementary safeguards against delay at all stages of the process, including the adjudication of an initial habeas petition. In conjunction, these elements provide a comprehensive response to the problem of unjustified delay in death penalty litigation.

Proposed section 2262 would apply to federal habeas review of capital cases from states that had opted-in to the Powell Committee procedures by broadening the right of indigent capital defendants to appointment of competent counsel in state proceedings. The section would also apply to collateral litigation (section 2255 motion litigation) in federal capital cases. Both the Senate and House crime bills of the 101st Congress included procedures modeled on the Powell Committee recommendations for federal capital cases (proposed 18 U.S.C. 3598–99 in S. 1970 title XIV and H.R. 5269 title II). The same provisions are included in title I of this bill. Supplementing these procedures with more definite time rules for concluding collateral litigation has the same value in federal capital cases as in state capital cases.

The first sentence of subsection (a) of proposed 28 U.S.C. 2262 provides that the adjudication of habeas petitions in capital cases by the district courts and courts of appeals is to have priority over all non-capital matters. Capital cases present a uniquely compelling need for prompt adjudication and determination, because the sentence actually cannot be carried out while litigation continues.

Both the Senate and the House of Representatives recognized the force of this point in their respective crime bills in the 101st Congress. Both bills provided that appeals in federal capital cases "shall have priority over all other cases" in the federal courts of appeals. (Proposed 18 U.S.C. 3595(a) in S. 1970 title I and title XIV, and in H.R. 5269 title II.) Both bills provided that collateral motions by federal capital defendants "shall have priority over all non-capital matters in the district court, and in the court of appeals on review of the district court's decision." (Proposed 18 U.S.C. 3599(a) in S. 1970 title XIV and H.R. 5269 title II.) The first sentence of subsection (a) states a comparable general principle for collateral review of capital cases (both state and federal) in the federal courts.

The remainder of subsection (a) sets definite time limits for determining habeas petitions and related appeals—180 days for the district court and 180 days for the court of appeals (with an additional 180 days if the court of appeals grants rehearing en banc). These periods are longer than those proposed in S. 1970 title II (110 days for the district court and 90 days for the court of appeals—proposed 28 U.S.C. 2268 in S. 1970). This change reflects the advice of state death penalty litigators that the proposed 180 day periods more realistically reflect the time that is reasonably required for the litigation and determination of federal habeas petitions in capital cases. The proposed periods will ensure that both the state and defendants will have adequate time to develop and present their cases, while also providing effective protection against the lengthy unjustified delay that now often occurs.

The general time period for the court of appeals under subsection (a) would run from the filing of the record—rather than from the filing of the notice of appeal, as proposed in S. 1970—since some unavoidable delay may be entailed in preparing the record and transmitting it to the court of appeals, and the normal briefing schedule in a court of appeals runs from the filing of the record. Proposed section 2262 does not carry forward a provision of S. 1970 requiring the Supreme Court to act on a petition for certiorari within 90 days, because experience does not show that significant unjustified delay occurs in capital cases at the level of the Supreme Court.

Subsection (b) of proposed 28 U.S.C. 2262 clarifies that the time limitation rules apply to both initial and successive petitions. The same point appeared in proposed 28 U.S.C. 2264(c)(3) in S. 1970 title II. Subsection (b) also clarifies that the same time rules apply to the re-determination of a petition or related appeal following a remand by a higher court for further proceedings.

Subsection (c) clarifies that the time rules of the section do not broaden the grounds for granting stays of execution. Under the general procedures of this subtitle, an automatic stay of execution would be in effect through the litigation of an initial federal habeas petition, but the automatic stay would expire at the conclusion of that litigation. (Proposed 28 U.S.C. 2257). The time rules under this section, which would apply to both initial and successive petitions, are solely intended to control delay in the litigation and decision of petitions, and set outer limits on the determination of petitions and related appeals for that prupose. They are not intended to create any right or presumption in favor of granting a stay for the consideration of a petition which would not otherwise be available to the petitioner.

The first sentence of subsection (d) responds to a concern expressed by Senator Graham in the course of the floor debate on S. 1970 that the proposed time limit rules might be construed as authorizing or requiring a court to grant the relief requested by the petitioner—overturning the conviction or sentence—if a petition is not determined within these limits. Cong. Rec. S 6815–16 (May 23, 1990); Cong. Rec S9513 (July 11, 1990). Subsection (d) clarifies that overturning the conviction or sentence is not a permitted sanction for non-compliance with the time rules of the section.

The second sentence of subsection (d) responds to the broader concern reflected in Senator Graham's remarks that S. 1970 title II did not explicity identify a sanction or mechanism for enforcing its time requirements. Subsection (d) clarifies that these requirements could be enforced by applying to a higher court for a writ of mandamus—that is, a compulsory order directing compliance with the section. The procedures for seeking mandamus are set out in Fed. R. App. 21 and Sup. Ct. R. 20.

Section 2263

The final section of proposed chapter 154 provides that the chapter is to be construed to bring about the expeditious conduct and conclusion of state and federal review in capital cases.

III. EXCLUSIONARY RULE

This title would (1) generally bar the exclusion in federal proceedings of evidence obtained in circumstances justifying an objectively reasonable belief that a search or seizure was in conformity with the Fourth Amendment, (2) clarify that federal law does not require the exclusion of evidence obtained in such circumstances in state proceedings, (3) make the exclusionary rule inapplicable to seizures by federal officers of firearms which are to be used as evidence against dangerous offenders where alternative safeguards against Fourth Amendment violations are provided involving administrative and legislative oversight and compensation of victims of unlawful searches and seizures, and (4) clarify that evidence cannot be excluded in federal proceedings on the basis of non-constitutional violations unless such exclusion is expressly authorized by law.

One of the principal reforms proposed in the title—an objective reasonableness standard for the admission of evidence—was also passed by the House of Representatives as section 2204 of H.R. 5269 of the 101st Congress. Similar exclusionary rule reform legislation was passed by the Senate as S. 1764 in the 98th Congress and by the House of Representatives as section 673 of H.R. 5484 in the 99th Congress. In common parlance, this title, like the earlier exclusionary rule reform proposals passed by the House and the Senate, establishes a general "good faith" exception to the exclusionary rule.

However, the title goes beyond earlier proposals in proposing alternatives to the exclusionary rule—involving administrative and legislative oversight of search and seizure activities of federal officers and compensation of victims of improper searches and seizures—and in making the exclusionary rule wholly inapplicable to certain types of seizures once such alternative safeguards against Fourth Amendment violations are in place. The specific provisions of the title are as follows:

The title would add a new section 3509 to the federal criminal code. *Subsection (a)(1)* of proposed section 3509 provides that evidence shall not be excluded in any federal proceeding on the ground that a search or seizure was in violation of the Fourth Amendment if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the Fourth Amendment. This would apply the underlying principle of *United States v. Leon*, 468 U.S. 897 (1984), so as to bar the exclusion of evidence obtained in such circumstances in cases involving warrantless searches, as well as in cases involving searches pursuant to a warrant. The *Leon* decision specifically barred the suppression of evidence obtained in conformity with a warrant in circumstances justifying an objectively reasonable belief in the warrant's validity, noting that excluding evidence where an officer's conduct is objectively reasonable "will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." *Leon*, 468 U.S. at 920.

This principle has already been applied for several years by the federal courts in the Fifth and Eleventh Circuits in deciding on the admissibility of evidence obtained

through searches and seizures in both warrant and non-warrant cases. *See United States* v. *Williams*, 622 F.2D 830 (5th Cir. 1980). The standard of objective reasonableness is also uniformly applied in determining an officer's exposure to civil liability based on an allegedly unlawful search or seizure. *See Anderson* v. *Creighton*, 483 U.S. 635 (1987).

Subsection (a)(1) of proposed section 3509 perpetuates as a special case the specific holding of *United States v. Leon, supra*, that evidence is not subject to suppression if obtained in objectively reasonable reliance on a warrant. It also provides specifically that the fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of circumstances justifying an objectively reasonable belief that a search or seizure was in conformity with the Fourth Amendment. This reflects the fact that "[i]n the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient." *Leon*, 468 U.S. at 921. Thus, the fact that evidence was obtained in conformity with a warrant would be adequate to establish objective reasonableness in the absence of rebuttal by the defendant. *See generally Leon*, 468 U.S. at 922–23.

Subsection (a)(2) of proposed section 3509 provides that the law of the United States does not require the exclusion of evidence in any court under circumstances in which it would be admissible in a federal court under subsection (a)(1). This makes it clear that federal law does not require the state courts to exclude evidence obtained in circumstances justifying an objectively reasonable belief that the officer's conduct was consistent with the constitutional strictures on searches and seizures. Each state is free to make its own determination concerning the admissibility of evidence in such circumstances.

Subsection (b)(1) of proposed section 3509 would bar the suppression of firearms seized by federal officers where the firearms are to be used in a federal prosecution for a crime of violence or serious drug offense, or a federal prosecution of an offender who is disqualified from firearms possession because of a prior felony conviction or other grounds enumerated in 18 U.S.C. 922(g).

Under current law, the Supreme Court has recognized a number of exceptions to the exclusionary rule which are not limited to the objective reasonableness ("good faith") situation, including holding that the exclusionary rule is wholly inapplicable in grand jury and deportation proceedings and generally inapplicable in habeas corpus proceedings, *see United States v. Calandra*, 414 U.S. 338 (1974); *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984); *Stone v. Powell*, 428 U.S. 465 (1976), and that evidence inadmissible at trial in the government's case in chief under the exclusionary rule may nevertheless be used for impeachment, *see Walder v. United States*, 347 U.S. 62 (1954). Subsection (b)(1) would establish a new exception of this type for searches and seizures in the indicated category. This exception is justified by the exceptional danger posed to the public by violent offenders, serious drug offenders, and legally disqualified persons who use or possess firearms, the compelling public interest in bringing such offenders to justice, and the frequently critical need for use of a seized firearm and related evidence to obtain a conviction.

The applicability of the exception created by subsection (b)(1), however, would be contingent on the establishment of alternatives to the exclusionary rule as provided in the remainder of subsection (b). This approach to exclusionary rule reform is constitutionally permissible and fully consistent with that suggested by the decisions of the Supreme Court. The Court has frequently emphasized that the exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *See, e.g., United States v. Leon*, 468 U.S. 897, 906 (1984). The Court has further suggested that the need for the exclusionary rule is dependent on "the absence of a more efficacious sanction." *See, e.g., Franks v. Delaware*, 438 U.S. 154, 171 (1978).

These principles were reflected in the holding of the Court in *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), in which the Court held that the exclusionary rule is wholly inapplicable in deportation proceedings. In reaching this result, the Court attached particular weight to the fact that the Immigration and Naturalization Service has a system of administrative oversight for preventing search and seizure violations by its officers. *See id.* at 1044–1045. The Court in *INS v. Lopez-Mendoza* also observed that "[t]here comes a point at which courts, consistent with their duty to administer the law, cannot continue to create barriers to law enforcement in the pursuit of a supervisory role that is properly the duty of the Executive and Legislative Branches." (*Id.* at 1050.) The alternative safeguards set out in proposed section 3509(b) provide a "more efficacious sanction" the involves the direct exercise of this proper "supervisory role" by the Executive and Legislative Branches, thereby obviating the need for the exclusionary rule.

Subsection (b)(2) directs the Attorney General to promulgate rules and regulation to ensure compliance with the Fourth Amendment by officers of the Department of Justice. Under subparagraphs (A)–(D), the rules would have to specify standards for training of officers in the law of search and seizure, standards and procedures for carrying out searches and seizures, procedures for reporting and investigating violations, and the sanctions to be imposed for violations.

Under subparagraph (E), standards and procedures would also be required for settling claims under the Federal Tort Claims Act (FTCA) based on searches and seizures. In 1974, Congress amended the FTCA so as to provide a comprehensive tort remedy against the United States for unlawful searches and seizures. The Committee Report to that amendment explained (1974 U.S. Code Cong. & Admin. News 2791):

> The Committee amendment . . . would add a proviso at the end of the intentional torts exception to the Federal Tort Claims Act (28 U.S.C. 2680(h)). The effect of this provision is to deprive the Federal Government of the defense of sovereign immunity in cases in which Federal law enforcement agents, acting within the scope of their employment, or under color of Federal law, commit any of the following torts: assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. . . .

The Committee realizes that under the Federal Tort Claims Act, Government tort liability for intentional conduct is unclear. For example certain intentional torts such as trespass and invasion of privacy are not always excluded from Federal Tort Claims Act coverage. Obviously, it is the intent of the Committee that these borderline cases under the present law, such as trespass and invasion of privacy, would be viewed as clearly within the scope of the Federal Tort Claims Act, if the amendment is adopted.

The whole matter was brought to the attention of the Committee in the context of the Collinsville raids, where the law enforcement abuses involved Fourth Amendment constitutional torts. Therefore, the Committee amendment would submit the Government to liability whenever its agents act under color of law so as to injure the public through search and seizures that are conducted without warrants or with warrants issued without probable cause.

Under 28 U.S.C. 2675, FTCA claims must first be presented to the responsible department or agency for settlement, prior to the institution of litigation. Under the standards and procedures required by proposed subsection (b) (2) (E), it is contemplated that persons subjected to unlawful searches and seizures will normally be given the compensation to which they are legally entitled as part of the administrative process, thereby sparing them the expense, delay, and other burdens of going to court. The proposed system accordingly offers basic advantages over the exclusionary rule in affording redress to persons wronged by Fourth Amendment violations, as well as more effective means of preventing and punishing such violations.

Subsection (b)(3) affords other federal departments and agencies the same option of establishing alternative administrative systems for preventing and redressing fourth amendment violations. As with the Department of Justice, the inapplicability of the exclusionary rule in relation to the specified class of firearms seizures by another agency's officers would be contingent on the agency's establishment of such an alternative system.

Subsection (b)(4) requires the Department of Justice, and other agencies that adopt alternatives to the exclusionary rule, to establish a review board to consider all claimed violations of the Fourth Amendment by the department or agency's officers, and to impose or recommend appropriate disciplinary action when a violation is determined to have occurred. The review board could also be charged with responsibility for considering FTCA claims for damages based on searches and seizures. This ensures a locus of responsibility and accountability in each qualifying agency for securing compliance with the law of search and seizure by the agency's officers, and an impartial forum for determining violations that is free of potentially conflicting operational responsibilities.

Subsection (b)(5) requires annual reports to Congress by the Attorney General or other responsible agency head concerning all allegations of search and seizure violations, the action taken on such allegations, and the basis for the action. This requirement provides an important element of external oversight, and ensures that the alternative oversight mechanisms will not be only a "self-policing" system for federal agencies. In light of this requirement, the alternative systems will operate "in the open," subject to Congressional and public scrutiny.

Subsection (b)(6) sets out definitions for terms used in subsection (b).

Subsection (b)(7) provides that the inapplicability of the exclusionary rule to certain firearms seizures by an agency's officers, as provided in paragraph (1), will take effect when the alternative oversight system required by subsection (b) has been established.

Subsection (c) of proposed section 3509 would bar the exclusion of evidence in fed-

eral proceedings on the basis of nonconstitutional violations, except as expressly authorized by statute or by a rule promulgated by the Supreme Court pursuant to statutory authority. Given the high price of the exclusionary rule to the truth-finding process, and the fact that the rule is not even applied in relation to all constitutional violations in light of the *Leon* decision and other Supreme Court decisions, it is desirable to codify explicitly the principle that evidence may not be excluded on the basis of non-constitutional violations in the absence of statutory for doing so. This restriction on the exclusion of evidence is already implicit in the broader rule of Federal Rule of Evidence 402, which provides that "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Subsection (c) would clarify the import of the principle of Rule 402 in relation to evidence obtained in violation of non-constitutional provisions.

The value of such clarification is illustrated by the case of *United States v. Caceres*, 440 U.S. 741 (1979), in which a defendant accused of bringing an IRS agent attempted to secure the exclusion of evidence of his guilt on the ground that procedures specified in IRS regulations had not been complied with in obtaining the evidence. Under the plain terms of Rule 402, this argument should have been rejected summarily as an effort to secure the exclusion of relevent evidence in circumstances in which exclusion was not provided for by "the Constitution . . . by Act of Congress, by [the] rules [of evidence], or by other rules prescribed by the Supreme Court pursuant to statutory authority." The Supreme Court did reject the defendant's effort to create an exclusionary rule for violations of IRS regulations, but declined to address the government's argument that this result was required by Rule 402. *See* 440 U.S. at 755 & n. 22.

While the Supreme Court reached a result consistent with Rule 402 for independent reasons in the *Caceres* decision, it failed to produce any directive to the inferior courts to comply with the terms of that rule. Efforts by defendants to secure the exclusion of relevant and probative evidence of their guilt on the basis of alleged violations of non-constitutional provisions have accordingly continued to be a source of litigation in the lower courts. Subsection (c) would foreclose such litigation in the absence of a decision by Congress or by the Supreme Court pursuant to its statutory rulemaking authority to authorize the use of the exclusionary sanction and would ensure consistent compliance with the principle of Rule 402 in this context in future judicial decisions.

Subsection (d) of proposed section 3509 states that the section shall not be construed to require or authorize the exclusion of evidence in any proceeding. This makes it clear that the section is not to be construed as reflecting legislative approval of the exclusion of evidence as a sanction for official misconduct in any circumstances, and that the section's rules which explicitly bar the exclusion of evidence in certain circumstances should not be understood as implying that the exclusion of evidence is appropriate or permissible in other circumstances.

As noted above, the Supreme Court has recognized a number of important exceptions to the application of the exclusionary rule which are not confined to the "objective reasonableness" situation, including holding that the exclusionary rule is wholly inapplicable in grand jury and deportation proceedings and generally inapplicable in habeas corpus proceedings, and that evidence inadmissible at trial in the government's case in chief under the exclusionary rule may nevertheless be used for impeachment. In light of subsection (d), there would be no basis for arguing that these broader limitations of the exclusionary rule should be restricted or reconsidered in light of proposed section 3509, or that it would be inappropriate for the courts to create other broader limitations on the exclusionary rule in the future. Indeed, in light of the alternative safeguards against Fourth Amendment violations proposed in subsection (b), it would be both appropriate and desirable for the courts to consider whether the continued application of the exclusionary rule is necessary in other contexts.

IV. FIREARMS

Title IV contains provisions relating to control of the criminal use of firearms. Subtitle A contains a variety of amendments and new provisions in furtherance of this objective. Subtitle B proposes a general ban on gun clips and magazines that enable a firearm to fire more than 15 rounds without reloading.

A. Firearms and Related Amendments

Section 401

This section would double the current mandatory penalty in 18 U.S.C. 924(c) for persons convicted of using a semiautomatic firearm during and in relation to a felony crime of violence or drug trafficking offense from five to ten years in prison. (The mandatory penalty is thirty years in the case of a destructive device, machinegun or silenced weapon). The proposal builds upon the similar amendment made in §1101 of the Crime Control Act of 1990 (S. 3266) for short-barreled shotguns and rifles. The vastly increased danger to innocent victims occasioned by the use of semiautomatic firearms in the course of violent or drug crimes, as illustrated by several recent incidents, warrants this enhanced penalty. The amendment also provides a definition of the term "semiautomatic firearm" for insertion in 18 U.S.C. 921.

Section 402

This section is designed to broaden the prohibitions in 18 U.S.C. 924(c) and 844(h) to reach persons who have a firearm or explosive available during the commission of certain crimes, even if the firearm is not carried or used. Currently, section 924(c) punishes by a mandatory five-year prison sentence the carrying or use of a firearm during and in relation to the commission of a drug or violent felony. The court in *United States* v. *Feliz-Cordero*, 859 F.2d 250 (2d Cir. 1988), held that this statute does not cover a situation in which a loaded firearm was found in the dresser drawer of an apartment which the defendant utilized in connection with his drug dealings. Compare *United States* v. *Torres*, 901 F.2d 205, 217–18 (2d Cir. 1990). The court noted that "carries" has been interpreted to encompass a case in which the defendant has a firearm "within reach", while "uses" has been construed to extend to a situation in which the defendant planned to use the firearm if a suitable contingency arose or to make his escape; but the court concluded that neither verb was broad enough to proscribe the constructive possession by a defendant of a firearm which is kept available generally in aid of or in relation to the commission of a drug trafficking or violent crime.

The proposed amendment, adding the phrase "or otherwise possesses" to the statute, is designed to reverse the result in *Feliz-Cordero*, and to cover any circumstance in which, for example, a drug trafficker has available a firearm during and in relation to his illegal drug activities. As under the existing provision, the government will still be required to establish a relationship or connection between the drug or violent offense and the defendant's possession of the firearm (e.g., it would not include a gun kept exclusively in a club locker and used only for sporting purposes at the club), but the relationship or connection may be more attenuated than under current law and may apply to a firearm that is possessed by the defendant for potential employment in his illegal activities, even though it is not physically on his person or within reach and even though it is not proved to have been used or planned to be used during the offense.

The possession of firearms by persons who commit serious drug or violent crimes creates a sufficient danger of increased violence and harm so as to justify this extension. This section would make a conforming amendment to the parallel statute, 18 U.S.C. 844(h), which punishes the carrying of an explosive during the commission of any federal felony.

Section 403

Section 6460 of the Anti-Drug Abuse Act of 1988 increased the penalty under 18 U.S.C. 924(c) for a second offense of using a firearm to commit a federal violent or drug felony to twenty years' imprisonment, but failed to make a corresponding change to 18 U.S.C. 844(h), which prohibits the use of an explosive to commit a federal felony. This proposed amendment would effect a conforming increase to twenty years in the penalty for a second offense under section 844(h).

Section 404

Under current law, any conviction for a crime punishable by imprisonment for a term exceeding one year which has been expunged, set aside, or pardoned or with respect to which the convicted person has had civil rights restored is not considered disabling for purposes of firearms possession unless such expunction, setting aside, pardon, or restoration expressly provides otherwise.

However, the procedures for pardons, expunctions, set-asides and restorations among the various States are far from uniform. Such proceedings do not erase the legal existence of prior convictions nor remove all State disabilities imposed on felons. Neither do they uniformly involve a considered judgment whether the individual deserves the pardon, expunction, set aside or restoration of civil rights. In fact, in some States civil rights are restored automatically, merely as a result of a person's completion of his sentence, thereby permitting dangerous felons immediately to purchase a firearm upon their release.

In order to strike a better balance that takes into account the federal interest in preserving public safety, the proposed amendment would provide a uniform standard to determine whether a person is under federal firearms disabilities for certain categories of offenses, i.e., violent felonies involving the threatened or actual use of a firearm or explosive, and serious drug offenses. This approach has a statutory precedent which was contained in 18 U.S.C. App. 1203 prior to its repeal.

The amendment would provide that, with respect to the above-referenced categories of

serious offenses, the person would be considered convicted under the federal firearms chapter irrespective of any pardon, expunction or restoration of civil rights. Offenders in these categories would have to apply to federal authorities to have their firearms rights restored. In such instances, as appropriate, a background investigation would be conducted and relief from federal firearms disabilities would be granted if it was determined that the applicant would not be likely to act in a manner dangerous to public safety and that the granting relief would not be contrary to the public interest. This scheme would better protect the public from convicted felons whose receipt and possession of firearms pose a special danger.

Section 405

This section amends subsection 3142(f)(1) of title 18 to create eligibility for pretrial detention in certain cases involving firearms and explosives. Currently, subsection 3142(f)(1) allows the government to seek a pretrial detention hearing on the ground of the defendant's dangerousness in cases involving crimes of violence, offenses punishable by death or life imprisonment, serious drug felonies, and any other felony case in which the defendant is a person who has already been convicted of two or more crimes in the preceding three categories. The constitutionality of preventive detention was upheld by the Supreme Court in *United States* v. *Salerno*, 481 U.S. 739 (1987).

This section would allow the government to seek a pretrial detention hearing in cases in which the defendant is charged with a violation of 18 U.S.C. 842(d) (distribution of explosives by felons and other prohibited persons); 842(h) (knowingly trafficking in stolen explosives); 842(i) (shipping or receiving of explosives by felons and other prohibited persons); 844(d) (transporting explosives with knowledge they will be used to kill or injure a person or damage property); 922(d) (sale of firearms to felons and other prohibited persons); 922(g) (possession or receipt of firearms by felons and other prohibited persons); 922(i) (transporting or shipping stolen firearms); 922(j) (trafficking in stolen firearms); 922(o) (unauthorized possession of a machine gun); 924(b) (transportation of a firearm knowing it will be used to commit a felony); 924(g) (traveling interstate to acquire a firearm with intent to commit a drug offense or crime of violence); 924(h) (transferring a firearm knowing it will be used to commit a drug or violent felony); or 924(i) (as added by this Act) (smuggling a firearm with intent to promote a drug offense or crime of violence). All of these crimes are of a type likely to be committed by dangerous individuals such as terrorists or career criminals even though the offenses may not themselves meet the definition of a crime of violence. Consequently, the government should be allowed to seek pretrial detention in these cases.

It should be emphasized, however, that the revision of subsection 3142(f)(1) does not require pretrial detention for anyone charged with a violation of one of the listed offenses. It merely means that the government is given an opportunity to show that no conditions of release will reasonably assure the appearance of the person for trial and the safety of the community or of a specific person.

Section 406

This section (which passed the Senate last year in § 302 of S. 1970) would create a new offense carrying severe penalties for smuggling firearms into the United States for the purpose of promoting drug trafficking or violence. At present, 18 U.S.C. 922(l) makes it a five-year offense to import certain firearms into the United States; and 18 U.S.C. 924(h) makes it a ten-year felony to travel interstate or from a foreign country to purchase a firearm with intent to engage in conduct constituting a federal or State drug offense or a crime of violence. The instant proposal is patterned after section 924(h) and would create an offense, similarly punishable by up to ten years' imprisonment, for smuggling or bringing into the United States (or attempting to do so) any firearm with intent to violate or promote conduct in violation of federal or state drug laws or to commit a crime of violence. Clearly, there is no reason to treat traveling to acquire a firearm for illegal drug trafficking purposes any differently from importing or smuggling a firearm into the United States for the same purpose. The proposed offense would thus rectify an anomaly in current firearms statutes.

Section 407

This section (which passed the Senate last year in § 302 of S. 1970) would create new offenses, punishable by a mandatory minimum two-year prison term, for stealing a firearm or explosive materials. Currently, 18 U.S.C. 844(h) and 922(i) and (j) punish the transportation, receipt, or disposition of firearms known to have been stolen; and 18 U.S.C. 659 similarly punishes the theft of any goods, including firearms or explosive materials, from an interstate or foreign shipment. There is, however, at present no offense specifically directed at the theft of firearms or explosives.

The proposed offense would close that gap by creating crimes of stealing a firearm or explosive materials that are moving as, are part of, or which have moved in, interstate or foreign commerce. It is intended that the term "steals" be interpreted, as elsewhere in the federal criminal code, to include any type of criminal taking accompanied by an intent to deprive the owner of the rights and benefits of ownership. E.g., *United States* v. *Turley*, 352 U.S. 407 (1957). A firearm which had at any time moved in interstate or foreign commerce would be subject to the prohibition in this section. See *Barrett* v. *United States*, 423 U.S. 212 (1976).

Section 408

This section (which passed the Senate as § 303 of S. 1970 last year) makes a conforming amendment to the supervised release statute, 18 U.S.C. 3583. Section 6214 of the Anti-Drug Abuse Act of 1988 provided for the mandatory revocation of probation for a defendant found, after a hearing pursuant to the Federal Rules of Criminal Procedure, to be in actual possession of a firearm at any time prior to the expiration or termination of the probation term. Under section 6214, the court was authorized to impose any other sentence that was available under "subchapter A" (that is, primarily a fine or imprisonment; see 18 U.S.C. 3551) at the time of the initial sentence. Section 6214, however, neglected to make a comparable amendment to section 3583 of title 18, dealing with supervised release. (Compare section 7303 of the Anti-Drug Abuse Act of 1988, which provided similarly for mandatory revocation for possession of controlled substances, and which applied to probation and supervised release, as well as parole.) This amendment effects the conforming change. In contrast to probation, however, Congress has enacted, in 18 U.S.C. 3583(e)(3), a limitation on the number of years of imprisonment that a person violating a condition of supervised release, and who was convicted of a Class B, C, or D felony, may be required to serve. This amendment incorporates those limitations.

In contrast to section 7303 of the Anti-Drug Abuse Act, it is not deemed necessary to extend the provisions here to persons on parole, since the number of persons who would be beginning a term of parole after the date of enactment and for whom a no-firearms possession condition would be appropriate—given that parole is only available for defendants whose offenses were completed before November 1, 1987—will be very small.

It should be noted that this amendment, like that in section 6214 of the Anti-Drug Abuse Act, does not require that the court impose as a condition of supervised release that the defendant not possess a firearm; it thus is applicable only where the court has chosen to impose that condition and the condition is violated. Section 7303 of the Anti-Drug Abuse Act, by contrast properly made it a mandatory condition of release that a defendant not possess controlled substances. Since with respect to firearms there may be instances, for example in misdemeanor cases, or in felony cases where the defendant is seeking to have his firearms disability removed, where the court may wish not to restrict the defendant from possessing firearms as a condition of supervised release, the condition is left discretionary.

Section 409

This section would raise the maximum penalty for making a knowingly false, material statement to a licensee in connection with the acquisition of a firearm. Presently, such false statements are made unlawful by 18 U.S.C. 922(a)(6) and are punishable under 18 U.S.C. 924(a)(1)(B) by up to five years' imprisonment. Under the proposed amendment, offenses under section 922(a)(6) would be grouped with more serious offenses punishable under 18 U.S.C. 924(a)(2) by up to ten years in prison. The importance of keeping firearms out of the hands of persons disentitled to possess them makes it appropriate to increase the penalty for violations by which licensed dealers, importers, and collectors are knowingly deceived into selling a firearm to an improper purchaser.

Section 410

This section (which passed the Senate as § 3734 of S. 1970 last year) would extend the statute of limitations for offenses involving firearms such as machineguns, sawed off shotguns, and various explosive devices from three to five years. Title II of the Gun Control Act of 1968 requires that such weapons be registered with the Secretary of the Treasury. When they are transferred, Title II requires the payment of a transfer tax prior to the transfer and registration of the weapon to its new owner. 18 U.S.C. 922(o) sets out a further limitation with respect to machineguns by prohibiting the transfer of these weapons except those lawfully possessed and registered when that subsection took effect on May 19, 1986. Since Title II of the 1968 Act is part of the Internal Revenue Code, the usual IRC statute of limitations period of three years applies.

This amendment recognizes that offenses involving Title II weapons such as possession of an unregistered weapon or obliterating a serial number are criminal offenses involving considerable danger to public safety as contrasted with the regulatory type of violations that predominate under the IRC. It should be noted that the IRC already provides for a six-year statute of limitations for several tax fraud offenses. This amendment applies a five-year statute of limitations, the same time period as applies to noncapital of-

fenses under title 18 pursuant to 18 U.S.C. 3282.

While many Title II cases involve violations of 26 U.S.C. 586(d), possession of an unregistered weapon, and are established without the need for an extensive investigation that would require a statute of limitations longer than three years, this is not always the case. For example, the Bureau of Alcohol, Tobacco and Firearms has investigated cases of making false entries in records required to be kept by the Title, a violation of 26 U.S.C. 5861(1), where it appeard a person licensed to manufacture and sell machineguns had altered business records to show machineguns manufactured before May 19, 1986 (and hence eligible for sale) when actually the weapons listed in such records were manufactured after that critical date.

Section 411

This section (which passed the Senate last year as §3735 of S. 1970) plugs a loophole in current law by proscribing the possession of explosives by convicted felons and other persons. 18 U.S.C. 842(i) makes it an offense for persons under certain disabilities such as convicted felons and persons who have been committed to mental institutions to ship or transport explosives in interstate or foreign commerce or to receive an explosive which has been transported or shipped in interstate or foreign commerce. Unlike its counterpart in the Gun Control Act (18 U.S.C. 922(g)), however, subsection 842(i) does not proscribe the possession of explosives by a convicted felon or person under another statutory disability. There are occasions when it is harder to prove a receipt offense than a simple possession offense. For example, to prove a receipt offense, it is necessary for purposes of establishing venue to show that the defendant received the explosives in the district in which he is charged with the offense. This may not be possible in certain situations, such as where a search of the defendant's home reveals commercially manufactured explosives made in another State or district. The lack of a possession offense comparable to that for firearms may allow certain dangerous persons who have no business having access to explosives to escape punishment in situations where it is likely they intend to use the material for criminal purposes.

Section 412

This section (which passed the Senate last year as §3736 of S. 1970) would amend chapter 40 of title 18 of the United States Code to allow for the summary destruction of explosives used in violation of that chapter. Chapter 40 sets out a series of prohibitions concerning explosives that in many respects are parallel to the firearms provisions in chapter 44. For example, dealers in explosives must obtain a license and may not distribute explosives to persons under certain disabilities, such as convicted felons. The malicious damage or destruction of several categories of property by explosives is also made a federal crime by this chapter. Under 18 U.S.C. 844(c), any explosive materials used or intended for use in violation of chapter 40 or of any other federal criminal law are subject to seizure and forfeiture. That subsection provides that provisions of the Internal Revenue Code that apply to the forfeiture of Title II firearms—such as machineguns—shall extend to forfeitures under chapter 40. The firearms forfeiture provision, 26 U.S.C. 5872(a), states that the forfeiture provisions of the Internal Revenue Code are applicable. That reference makes applicable the provisions of 26 U.S.C. 7323 and 7325 which provide for judicial and administrative forfeiture, respectively.

Section 7325 provides for administrative forfeiture of property valued at $100,000 or less. While virtually all seized explosives would fall into this category, the section requires an appraisal by three different appraisers, and the giving of notice of the proposed forfeiture by newspaper before the forfeiture can be concluded. The section would even appear to require the sale or at least the offering for sale of the explosives. In any event, the statute requires that the explosives be stored from the time of seizure until the forfeiture proceedings are completed. This is often unsafe and very frequently impractical. In actual practice, the Bureau of Alcohol, Tobacco and Firearms is often able to obtain a court order authorizing the immediate destruction of seized explosives especially if they have been homemade or have deteriorated to such a state as to be unsafe or of no commercial value. That may often be the case, for example, where a person planning to make letter or pipe bombs has a quantity of explosives stored in his home—in itself a violation of 18 U.S.C. 842(j), even if the intended use were lawful—and they have become unstable. There is, however, no statutory authority to support the granting of such an order and BATF may, at some point, encounter a judge who refuses to authorize the explosives' destruction.

This section would eliminate that problem by providing for the immediate destruction of explosive materials which have been seized for forfeiture because they were used in or involved in a violation of law and it is impracticable or unsafe to remove or store the articles. Provision is made, in proposed 18 U.S.C. 844(c)(3), for the owner or interested party (such as a lien holder) to submit a claim for the value of the explosives destroyed and to receive reimbursement if the person can provide proof that they were not used or intended for use in violation of law, or that any unlawful involvement or use was without the knowledge of the person. A similar provision is contained in section 5609 of the Internal Revenue Code for the immediate destruction of illegal alcohol distilling equipment when it is impracticable to remove such equipment for storage.

Section 413

This section would eliminate the need for what are useless but costly forfeiture proceedings for unregistered weapons that are popular with drug dealers and other criminals and have been seized by law enforcement authorities. 26 U.S.C. 5841 requires that gangster weapons such as machineguns, sawed-off shotguns, silencers and homemade destructive devices like mail bombs be registered in the National Firearms Registration and Transfer Record. Firearms of this type which have not been registered are subject to seizure and forfeiture but, pursuant to 26 U.S.C. 5872(a), the forfeiture provisions of the Internal Revenue Code are made applicable. Specifically, 26 U.S.C. 7323 and 7325 provide for judicial and administrative forfeiture, respectively. Section 7325 provides for administrative forfeiture of property valued at $100,000 or less. While virtually any seized weapons would fall into this category, the section requires an appraisal by three different appraisers, the giving of notice of the seizure and proposed forfeiture by newspaper advertisement, and a three week delay before the forfeiture can be concluded.

These are expensive and unnecessary provisions inasmuch as the Supreme Court held in *United States* v. *Freed*, 401 U.S. 601 (1971), that unregistered firearms cannot be possessed or legally registered by the person from whom seized. Moreover, 26 U.S.C. 5872(b) already provides that in the case of a forfeiture of a firearm for a violation of the National Firearms Act the weapon is not to be sold to the public. Rather, the weapon must be destroyed, sold to State law enforcement authorities, or retained by federal authorities. Accordingly, the money spent on appraisal fees and advertising, and the delay, serve no useful purpose where unregistered firearms are concerned since the person from whom an unregistered weapon was seized cannot lawfully regain possession of it and other private persons are also precluded from obtaining it.

To remedy this situation, the section would provide that the forfeiture provisions in sections 7323 and 7325 of title 26, United States Code, shall not apply to unregistered firearms and that such firearms shall be summarily forfeited to the United States. A similar procedure for the summary forfeiture of controlled substances which cannot be legally possessed by anyone is contained in 21 U.S.C. 881(f). Summarily forfeited firearms which might have some value for law enforcement agencies could be transferred to an appropriate State or Federal agency pursuant to 26 U.S.C. 5872(b), which would not be altered by this section.

In the rare event that a firearm was seized and summarily forfeited and it was subsequently determined that the weapon was not within the purview of the National Firearms Act, the provisions of proposed §5872(a)(3) would allow the owner or person interested in the seized firearm—a lien holder, for example—to submit a claim for the value of the firearm. Such a person would have to establish that the firearm was not involved or used in a violation of law, or that any unlawful involvement or use had been without the owner's knowledge or consent.

Section 414

This proposal is designed to insure that certain forfeited firearms, if useful or valuable, are not needlessly destroyed. Rather, under the proposal, the forfeited firearm would be offered, first, to a federal agency without cost; and, finally, if the firearm were novel, rare, or historically significant, as determined by the Secretary of the Treasury, offered for sale to a licensed firearms dealer. Only if neither of these alternatives caused the firearm to be accepted or sold would it be destroyed.

Section 415

This proposed amendment is purely technical and deletes outmoded language in 18 U.S.C. 924(e) and 924(c)(1) that states that the minimum mandatory sentences there provided for armed career criminals and other firearms offenders shall be served without eligibility for parole. This admonition is no longer necessary, since parole was abolished for all federal offenses committed after November 1, 1987, by the Sentencing Reform Act of 1984. A similar amendment was effected to 18 U.S.C. 924(a) by section 2203 of the Crime Control Act of 1990.

Section 416

This proposal would amend 18 U.S.C. 922(j) to make a conforming change to add possession offenses. Presently, section 922(j) makes it a felony to receive, conceal, or dispose of a stolen firearm that has moved in interstate commerce, knowing it to have been stolen. But the section does not cover possession. Since receipt involves the act of transferring a firearm to the offender, the government is faced with the difficult and sometimes impossible task of proving when an individual found in possession of a stolen firearm that

has moved in interstate commerce actually recieved it.

In the Crime Control Act of 1990 (S 2202), the companion offense in 18 U.S.C. 922(k), which proscribes offenses involving firearms which have moved in interstate commerce and whose serial numbers have been obliterated, was amended to reach not only crimes of receipt but also crimes of possession. This proposal would make the same salutary change to section 922(j).

Sec. 417

This section amends 18 U.S.C. 924(c) to make it an offense to use or carry a firearm during and in relation to the felony counterfeiting and related offenses set out in chapter 25 of title 18. (If section 402 of this bill is enacted, section 417 would cover possessing a firearm during and in relation to the felonies in chapter 25 as well as using or carrying such a weapon.) Prior to 1984, it was an offense under section 924(c) to use or carry a firearm unlawfully during the commission of any federal felony.

As a result of amendments in 1984 and 1986, section 924(c) now is limited to using or carrying a firearm during and in relation to a federal drug trafficking felony or any federal felony crime of violence.

Some serious felonies, however, do not meet the definition of "crime of violence"—because they do not have as an element the use, attempted use, or threatened use of physical force against the person or property of another, and cannot be described as necessarily involving a substantial risk that physical force against the person or property of another may be used in their commission—yet are frequently committed by persons with firearms. The counterfeiting and other offenses in chapter 25 of title 18 are in this category. Counterfeiting of currency and other things such as securities typically requires a sophisticated printing operation which often is protected by armed guards. Moreover, the passing of large quantities of counterfeit money—for example, the exchange of $1,000,000 in fake bills by one criminal group for $100,000 in genuine currency from another gang—is frequently carried out by persons carrying firearms. Counterfeiting investigations often require the use of undercover operatives and the presence of firearms makes this work more dangerous.

Moreover, other felonies in chapter 25, such as altering or removing motor vehicle identification numbers, are typical of "chop shop" operations in which armed persons are frequently involved. Finally, although some of the felonies in chapter 25 involve forgery of various types of government documents which may or may not be typically committed by armed persons, the new offense under 924(c), like current law, is limited to situations where the firearm was used or carried "during and in relation to" the offense. In a situation where a person forged a single government document and happened to be carrying a pistol at the time, the weapon would not be carried "in relation to" the offense. On the other hand, an illicit printing plant producing thousands of counterfeit government documents such as bonds issued by various banking agencies (a violation of 18 U.S.C. 493) or military passes allowing access to top secret military bases (a violation of 18 U.S.C. 499) may be guarded by armed persons and the new offense would appropriately apply in such cases. As with the current provisions in subsection 924(c), the new offense is limited to using or carrying a firearm during and in relation to only felonies, not misdemeanors.

Sec. 418

This section provides a mandatory five-year prison term for possession of firearms by felons who are disqualified from firearms possession in light of 18 U.S.C. 922(g)(1) and who have a previous conviction of a violent felony or serious drug offense. This is comparable to the mandatory five-year term now provided under 18 U.S.C. 924(c) for using or carrying a firearm in relation to a violent crime or drug trafficking crime.

Under the Armed Career Criminal provisions, 18 U.S.C. 924(e), firearms possession by a person with at least three violent felony or serious drug offense convictions is punishable by a mandatory term of imprisonment of fifteen years. However, there is no mandatory term requirement for such possession by dangerous offenders who do not meet the three-conviction standard of section 924(e). The amendment of this section would provide a more adequate system of mandatory penalties by requiring a five-year term for firearms possession by an offender whose record includes at least one violent felony or serious drug offense conviction.

Sec. 419

Under current law, 18 U.S.C. 923 (g)(1)(D)(3), licensed firearms dealers, collectors, manufacturers, and importers are required to report multiple sales or dispositions of handguns to unlicensed persons to the Bureau of Alcohol, Tobacco and Firearm (BATF). Specifically, the provision requires licensees to notify BATF every time the same person buys two or more pistols or revolvers (or one pistol and one revolver) within five consecutive business days. The report is to be submitted not later than the close of business on the day the multiple disposition occurs. There is no requirement that the firearms licensee provide this information to the chief law enforcement officer of the place of residence of the purchaser, although under the first paragraph of 18 U.S.C. 923(g)(1)(D), BATF may make available information contained in records required to be kept pursuant to chapter 44 of title 18—such as the records of multiple sales—to Federal, State, or local law enforcement officers when such officers so request.

This section makes the reporting of multiple sales more helpful to local law enforcement officers. Initially, it changes the multiple sale reporting requirement so that it would apply in cases in which a person bought two or more handguns in a thirty day period. The present five day period is easily circumvented. For example, a person could buy a handgun every 6th business day beginning on March 1, 1991 and ending on April 1, 1991 and end up with seven weapons in that 32 day period without implicating the reporting requirements. Such a pattern of sales might attract the attention of BATF when it conducted its next regular annual inspection of the dealer's books as authorized by 18 U.S.C. 923(g)(1)(B)(ii)—particularly if the weapons were not typically used for sporting purposes—and the information would likely be shared with law enforcement authorities of the purchaser's place of residence if they suspected the multiple sale and requested it. But local authorities might not have reason to suspect a highly suspicious multiple sale and by the time they became aware it would often be too late to prevent the weapons from being resold to criminals or used in crimes. Extending the multiple sales period to thirty days makes it more difficult for "straw" purchasers of handguns for illegal resale to operate undetected.

Second, the section adds a requirement that the firearms licensee send a copy of the report of multiple sales to the chief law enforcement officer of the place of residence of the purchaser. The copy must be sent by the close of business on the day the multiple sale is completed, the same time period in which the report must be submitted to BATF under current law. This will ensure that local authorities are aware of the multiple sale and can take action as soon as possible in cases where it appears that the multiple sale is likely to lead to improper redistribution of the weapons or their use in criminal activity. The amendment imposes only a very slight burden on firearms licensees. In essence, they are merely required to send a copy of the report of the multiple sale to a local police department at the same time they mail the original report to BATF. The appropriate local police department is easily determined since the purchaser's address msut be indicated on the form required to be completed by all firearms purchasers.

Sec. 420

Current law prohibits such acts as receiving, concealing, storing, selling, or disposing of stolen firearms or explosives, knowing or having reasonable cause to believe that they are stolen. The amendments in this section extend the list of prohibited activities in relation to stolen firearms and explosives to include possession.

Sec. 421

This amendment addresses the law enforcement problem posed by persons such as aliens who are legally in the United States, but who do not reside in any State, and who acquire firearms from Federal firearms licensees by utilizing an intermediary. Having acquired firearms in this country, such aliens often smuggle the weapons out of the country. It is generally unlawful for any person to transfer a firearm to any other person who does not reside in the State in which the transferor resides. However, the alien's receipt of a firearm from a licensee or through an intermediary does not violate any specific provision of current law.

The amendment would not prohibit an alien lawfully conducting a firearms business in the United States from receiving firearms in the conduct of such business. Moreover, the amendment does not affect those aliens who legally import or bring firearms into the United States for legitimate purposes and would not preclude the lawful acquisition of firearms by aliens who have established residency in a State.

Sec. 422

The amendments in this section would provide that the penalty for conspiring to violate Federal firearms or explosives laws would be the same as the substantive offense. They are similar to 21 U.S.C. 846 relating to conspiracies to violate the Federal drug laws.

Sec. 423

The amendments in this section, would make it a federal offense, punishable by up to ten years of imprisonment, to steal a firearm or explosive materials from a Federal firearms licensee or a Federal explosive licensee or permittee.

Sec. 424

The amendments in this section would make it unlawful for any person, not only licensees, to sell or otherwise dispose of explosive materials to felons or other prohibited persons. This amendment would conform 18 U.S.C. 842(d) to a similar provision on firearms, 18 U.S.C. 422(d).

B. Prohibited Gun Clips and Magazines

Subtitle B of title IV is designed to place severe restrictions on certain ammunition clips and other ammunition feeding devices that are frequently used with "assault weapons" to enable them to fire a large number of rounds without reloading. A detailed discussion of the policy considerations supporting this proposal appears in Statement of Assistant Attorney General Edward S.G. Dennis, Jr., Concerning the Firearms and Drug-Testing Provisions in H.R. 2709 before the House Judiciary Subcommittee on Crime (March 6, 1990).

Sec. 431. Findings

Section 431 contains congressional findings that the trafficking in and use of magazines, ammunition belts, and other feeding devices that enable a firearm to fire more than fifteen rounds without reloading affect interstate and foreign commerce. Moreover, there is a finding that these devices are sold in interstate and foreign commerce, and are moved in commerce for the purpose of use in violent crimes. Such findings establish a federal jurisdictional nexus under the Interstate Commerce Clause which in turn justifies proscribing certain acts concerning such feeding devices without a showing that the device involved in a case was, or had been, a part of interstate commerce. See *Perez* v. *United States*, 402 U.S. 146 (1971).

Secs. 432–33. Certain ammunition clips and magazines defined as firearms and definition of ammunition feeding device

Section 433 defines the term "ammunition feeding device" and inserts that definition in subsection 921(a) of title 18, the part of chapter 44 that sets out definitions pertaining to firearms and firearms offenses in that chapter. Such a device is defined as a detachable magazine, belt, drum, feed strip, or similar device which has a capacity of, or which can be readily converted or restored to hold more than 15 rounds of ammunition, other than any attached tubular device designed to accept and capable of operating with only .22 rim-fire caliber ammunition. It would also include any combination of parts from which such a device can be assembled.

Section 432, in turn, defines "ammunition feeding device" as a firearm. The term "firearm" already includes such things as mufflers and silencers which, like large-capacity ammunition feeding devices, are not necessary for the actual operation of a firearm. Defining ammunition feeding devices as firearms is necessary to enforce the provisions of this title. It will require manufacturers and importers to keep records, allow government inspection of these records to ensure that these devices are not being illegally imported or sold, and generally make applicable the present inspection and enforcement mechanisms that exist for firearms.

Sec. 434. Prohibitions applicable to ammunition feeding devices

Section 434 sets out criminal prohibitions that apply to ammunition feeding devices and also important exceptions to those prohibitions. The section sets out a new subsection 922(t) in title 18 which makes it an offense to import, manufacture, transport, ship, transfer, receive, or possess such an ammunition feeding device. Pursuant to section 436 of the bill, the punishment for such an offense is up to ten years' imprisonment and a felony level fine. Section 434, however, provides for three exceptions. First, it is not an offense for a licensed importer or manufacturer to make or import an ammunition feeding device for sale or distribution to an entity of the federal government or of a State or local government. Second, it is not an offense for a licensee to manufacture such devices for the purpose of exportation.

Third, it is not an offense to possess, transport, or ship an ammunition feeding device which was possessed on the effective date of the new subsection, or to transfer such a device which was possessed on that date provided the conditions of new subsections 922 (u) and (v) are met.

Subsections 922 (u) and (v), which are also set out in section 434 of this bill, establish a registration scheme for these devices which is akin to that already in place for such firearms as machineguns—frequently called "Title II firearms" in reference to Title II of the Gun Control Act of 1968. See 26 U.S.C. 5801, et seq., especially section 5841 which establishes the registration system. The registration for ammunition feeding devices is much more limited than that for Title II firearms, however, in that only firearms transferred need be registered. A person lawfully in possession of such a device on the effective date of the bill would not have to register it and may retain it in his possession, or even transport or ship the device in interstate commerce, for example in the course of moving to another state.

If, on the other hand, the person in possession of the device on the effective date of the act wishes to transfer it to another person or entity—other than a governmental entity—he must register it to the transferee in acordance with regulations to be promulgated by the Secretary of the Treasury. It is expected that the Secretary will issue regulations, like those applicable to machineguns, requiring proof that the transferee is not under a firearms disability before the device can be registered. It should be noted that an ammunition feeding device once registered to the transferee could be sequentially transferred provided it was registered to each new transferee. This too is like the current law with respect to machineguns.

In addition to the requirement that only ammunition feeding devices transferred must be registered, the registration scheme for these devices differs from that for Title II weapons in other respects. The first is the cost. Registration of ammunition feeding devices will require a payment of a $25.00 fee as compared to a $200.00 tax on machinegun registrations. Second, the more limited registration scheme eliminates the need for a provision like that in 26 U.S.C. 5848 stating that no information contained in the registry of ammunition feeding devices or derived from the registration process may be used as evidence against a person in a criminal proceeding "with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration."

Such a provision is necessary with respect to the machinegun provision where possession of an unregistered machinegun is itself an offense, only registered weapons may be transferred, and to comply with the registration provision for the purpose of transfer a person would in effect admit that he had not previously registered it. See *United States* v. *Freed*, 401 U.S. 601, 605–607 (1971). With respect to an ammunition feeding device, there is no requirement that persons in possession of such a device register it.

Sec. 435. Identification markings for ammunition feeding devices

This section provides that all ammunition feeding devices must be identified with a serial number and such other identification as the Secretary may prescribe by regulation. Such other information would typically include the manufacturer's name and address. Although ammunition feeding devices are included within the definition of the term "firearm" and although a firearm has to be identified by a serial number, the serial number requirement under current law is that it be placed on the frame or receiver. 18 U.S.C. 923(i). Since this specific placing requirement is meaningless with respect to ammunition feeding devices, this section imposes the requirement on ammunition feeding devices directly for clarity.

Sec. 436. Criminal penalties

This section sets out the criminal penalty for a violation of new subsection 922(t) and has been discussed in connection with section 434 of this subtitle.

Sec. 437. Noninterruption of business for persons in the business of importing or manufacturing ammunition feeding devices

Section 437 permits persons already in the business of manufacturing or importing ammunition feeding devices to continue to do so while their applications for licenses are pending. Since such devices are included in the definition of a firearm, manufacturers and importers will be required to obtain licenses to continue to engage in these activities. Section 437 provides that they may continue to engage in these businesses pending their licensing application provided they make application for a license within 30 days of the enactment of this bill.

V. OBSTRUCTION OF JUSTICE

Sec. 501

This section (which passed the House of Representatives in similar form in the 101st Congress as §1201 of H.R. 5269) would establish appropriately higher penalties for obstruction of justice offenses against court officers and jurors by amending 18 U.S.C. 1503. Currently, 18 U.S.C. 1503 prohibits a range of conduct that tends to interfere with the administration of justice, including corrupting, threatening, injuring, or retaliating against "any grand or petit juror" and any "officer in or of any court of the United States." The maximum penalty for the offense defined by 18 U.S.C. 1503 is five years of imprisonment, regardless of the seriousness of the crime and the extent of resulting harm. Thus, for example, a criminal who engaged in a retaliatory murder of a juror who had voted to convict him would be exposed to no more than five years of imprisonment pursuant to this statute.

More adequate penalties appear in the statutes that define the comparable offenses of tampering with or retaliating against witnesses, victims, and informants, 18 U.S.C. 1512 (tampering) and 18 U.S.C. 1513 (retaliation). Under both of these statutes, conduct like that prohibited by 18 U.S.C. 1503 is punishable by up to ten years of imprisonment when directed against a witness. 18 U.S.C. 1512 further authorizes imprisonment for up to twenty years in the case of an attempted killing, and incorporates by reference the penalties for murder and manslaughter under 18 U.S.C. 1111 and 18 U.S.C. 1112 for cases where death results.

The proposed amendment would conform the penalties available under 18 U.S.C. 1503 to those available for obstruction of justice offenses against witnesses, thereby providing an adequate system of sanctions for comparable offenses against jurors, judges, and other judicial officers and officers serving in courts. The basic offense would be punishable by up to ten years of imprisonment, with up to twenty years of imprisonment in the case of an attempting killing, and punishment as provided in the murder and man-

slaughter statutes in cases where death results.

The amendment would also provide a twenty-year maximum penalty for cases in which the offense was committed against a petit juror in connection with a charged Class A or B felony, i.e., a felony that carries a maximum punishment of twenty-five years' imprisonment or more, or the death penalty. 18 U.S.C. 3559. The purpose of this proposal is to reduce the attractiveness of jury tampering, by establishing an increased penalty when the underlying charge sought to be affected by the offense is itself a more serious crime. Currently, since 18 U.S.C. 1503 provides only a maximum of five years' imprisonment, there is little deterrent for a defendant facing a potential sentence of life imprisonment or twenty-five or more years not to try to influence a petit juror in the case. A similarly graduated penalty scheme is currently found in 18 U.S.C. 3146, which punishes the willful failure to appear for trial.

The final proposed amendment in this section is technical. It replaces the old term "United States commissioner" in 18 U.S.C. 1503 with the correct title "United States magistrate judge".

Sec. 502.

This section (which passed the House of Representatives last year as §1202 of H.R. 5269) would amend 18 U.S.C. 1513 to provide appropriately higher penalties for retaliatory killings and attempted killings of witnesses, victims, and informants. Currently, the companion statute, 18 U.S.C. 1512, prohibits efforts to obstruct justice by tampering or interfering with witnesses, victims, and informants, including killing, attempting to kill, and using physical force against such persons. Under section 1512, a killing is punishable by the penalties prescribed for murder and manslaughter in 18 U.S.C. 1111 and 1112—including death or life imprisonment in cases of first degree murder—while an attempted killing is punishable by up to twenty years in prison. The offense of using physical force, short of attempted murder, is punishable by a maximum of ten years' imprisonment.

18 U.S.C. 1513 makes it a ten-year felony to engage in violent retaliatory acts against the same classes of protected persons as section 1512. For no discernible reason, however, section 1513, unlike its counterpart section 1512, contains no specific prohibition or enhanced penalties for the aggravated offenses of killing or attempting to kill a witness, victim, or informant with the same retaliatory intent. The proposed amendments would close this gap by adding to section 1513 an offense of retaliatory killing or attempted killing of witnesses, victims, and informants, carrying the same penalties as the corresponding provision in 18 U.S.C. 1512(a).

Sec. 503.

This proposal extends to State and local law enforcement officers who are assisting federal officers or employees in the performance of official duties the protection of 18 U.S.C. 1114 and related statutes which make it a crime to murder, kidnap, or assault federal officials enumerated in section 1114. *See* 18 U.S.C. 111 (assault) and 1201 (kidnapping). In doing so, the proposal codifies a consistent body of appellate case law, which has held existing section 1114 applicable to State and local officers assisting federal employees in a variety of law enforcement contexts. *See* e.g., *United States* v. *Torres*, 862 F.2d 1025 (3d Cir. 1988); *United States* v. *Williamson*, 482 F.2d 508 (5th Cir. 1973); *United States* v. *Reed*, 413 F.2d 338 (10th Cir. 1969), cert. denied, 397 U.S. 954 (1970); *United States* v. *Heliczer*, 373 F.2d 241 (2d Cir.), cert. denied, 388 U.S. 917 (1967); *United States* v. *Chunn*, 347 F.2d 717 (7th Cir. 1965). Although no contrary authority apparently exists, affording express statutory coverage to assisting State and local law enforcement officials is useful in avoiding the need for future litigation. It also would overcome any argument to the contrary (as to persons assisting the Drug Enforcement Administration) based on the somewhat ambiguous provisions of 21 U.S.C. 878(b).

Many federal law enforcement efforts depend for their success upon the assistance of State and local law enforcement personnel, whose safety is often jeopardized as a result of the assistance they render to federal officers. Accordingly, it is appropriate that the protection of section 1114 be extended to State and local law enforcement officials who assist in the performance of federal functions.

VI. GANGS AND JUVENILE OFFENDERS

Sec. 601

The amendments in this section are part of the implementation of an element of the President's violent crime program, which calls on the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers, into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported." White House Fact Sheet of May 15, 1989, at 6. The same point was endorsed by the Attorney General's Task Force on Violent Crime in 1981, Final Report at 82–83, which stated that states should be encouraged to make available criminal history information for juveniles be entered into the FBI criminal records system.

Empirical data confirms that the unavailability of juvenile criminal records is in fact a serious concern in connection with violent and firearms offenses. For example, the Bureau of Justice Statistics has estimated that 54 percent of armed robbers in state prisons in 1986 had previously been sentenced to probation or incarceration as a juvenile, and that 15 percent had a prior juvenile, but no adult, sentence. This problem would be alleviated by generally providing for the inclusion of juvenile records for serious crimes in the FBI records system, and by making corresponding changes in the rules for reporting offenses by juveniles who are federally prosecuted.

To implement this reform, the Department of Justice is proposing an amendment to 28 CFR §20.32, which generally defines the offenses that will be accepted in the FBI records system. Paragraph (a) of the rule states that information is to be included concerning "serious and/or significant offenses." Subsection (b) states that nonserious offenses are excluded, such as drunkenness, vagrancy, disturbing the peace, curfew violations, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic infractions. However, the second sentence of paragraph (b) states a blanket exclusion of offenses committed by juveniles, unless the juvenile was tried as an adult. The proposed amendment would delete this sentence, and would make a conforming change in paragraph (a), to make it clear that both "adult and juvenile" offenses, if serious, are to be included in the system. This would permit the FBI to receive and retain records relating to serious offenses of state juvenile offenders.

The statutory amendments in this section propose complementary changes in the provisions regarding the records of federally prosecuted juveniles. The first amendment—in subsection (a)—would change 18 U.S.C. §5038, which generally governs the permissible uses of juvenile records and the circumstances in which they are to be retained. The basic change from current law is that records would routinely be retained and made available where a juvenile is convicted of a serious violent crime or drug crime described in clause (3) of the first paragraph of 18 U.S.C. §5032. In contrast, the current statute limits the retention and availability of such records through the FBI records system to cases involving a second conviction of the juvenile. The amendment accordingly rejects the view of the current law that a juvenile offender is entitled to "one free bite," even if the initial "bite" is a serious violent crime or drug crime, before information is preserved concerning his offenses for later law enforcement and judicial use. The retention of records would be authorized in any case of conviciton for an offense described in clause (3) of the first paragraph of section 5032, regardless of whether the actual exercise of federal jurisdiction in the case was premised on that clause or on another provision of section 5032.

The amendment also adds a subsection to 18 U.S.C. §5038 authorizing reporting, retention, disclosure and availability of juvenile records pursuant to the law of the state in which a federal juvenile proceeding takes place, if the state law is more permissive as to such matters than the general standards of §5038. This would generally ensure that federal law will not accord less weight than the law of the state in which the offense occurred to the public's interest in security against crime, and would also eliminate the possibility that a federal prosecutor might be inhibited from exercising federal jurisdiction in a case appropriate for federal prosection because state law provides more effectively for retention and availability of records concerning the offender.

The second amendment—in subsection (b)—repeals a statue, 18 U.S.C. 3607, that authorizes pre-judgment probation for certain drug offenders, and requires expungement of records for such an offender if he was under the age of 21 at the time of the offense. This amendment is also in furtherance of the section's general objective of ensuring retention of accurate and complete criminal records, regardless of the age of the offender.

In its specific provisions, 18 U.S.C. 3607 now authorizes pre-judgment probation for an offense under 21 U.S.C. 844 for offenders without prior drug crime convictions; 21 U.S.C. 844 generally defines the offense of unlawful possession of contolled substances, punishable by up to a year of imprisonment. If a defendant is accorded the special probationary treatment authorized by the statute, only a nonpublic record is retained of the disposition, and that record can only be used for the purpose of determining in a later proceeding whether the defendant is a first time offender for purposes of §3607. The effect of the mandatory expungement for offenders under 21 is that all references relating to the arrest, proceedings, and disposition are removed from normal official records. Section 3607 further provides that the expungement order has the effect of restoring the defendant in contemplation of law to the status he occupied before his arrest or prosecution, and that the defendant is not subject to liability for subsequently failing to recite or acknowledge the occurrence of the arrest or prosecution in any context.

This provision implicitly presupposes that drug possession offenses under 21 U.S.C. 844

may properly have less serious consequences for the offender than other offenses carrying comparable penalties, or that knowledge of such offenses is somehow of less importance for the criminal justice system than knowledge of other prior crimes. However, the statute's implicit policy of leniency toward drug offenders through concealment of records is contrary to the concept of user accountability for such offenders, and gives short shrift to the enormous human and social costs of drug abuse. Moreover, in light of the uniquely potent role of drug abuse as a contributing factor in other criminality, knowledge of a defendant's complete record of drug offenses is at least as important as knowledge of other types of crime for law enforcement, judicial, and correctional purposes.

Section 3607's expungement requirement for offenders under 21 compounds its costs without any offsetting justification. If the offender is a juvenile, he would enjoy in any event the benefits of the special protections of 18 U.S.C. 5038 relating to juvenile records, on the same basis as other juvenile offenders. Conversely, if the offender is an adult, he should be treated in the same way as adults who commit other types of crimes. Neither considerations relating to the offender's interests nor considerations relating to society's interests provide a valid basis for according a specially favored status to defendants who commit offenses covered by §3607, or justify a special policy of concealment for the records of such offenses. The statute, as proposed in the second amendment, should simply be repealed.

The final subsection of this section, (c), is a conforming amendment that deletes a cross-reference to 18 U.S.C. 3607 in the Controlled Substance Act.

Sec. 602

This section combines several amendments that were passed by the Senate last year in S. 1970. The amendments broaden the option of adult prosecution for serious juvenile offenders and gang leaders.

One feature of the amendments (which passed the Senate last year as §3724 of S. 1970) would add certain "crack" cocaine and drug conspiracy and attempt offenses committed by juveniles to the list of crimes set forth in 18 U.S.C. 5032 authorizing prosecution as an adult if the Attorney General certifies that there is a "substantial federal interest in the case" that justifies adult prosecution. Currently, substantive drug offenses in 21 U.S.C. 841 (and other statutes) are predicates for such action, but attempts and conspiracies to commit such offenses are not. As some United States Attorneys have noted, this is an anomaly that should be corrected. Unfortunately, many juveniles today are members of gangs of conspirators involved in drug trafficking, and their roles may range from relatively fringe activities to leadership of the conspiracy itself. When the offense is sufficiently serious, prosecutors should have the option of proceeding against a juvenile drug conspirator as an adult, just as they now have that option with respect to a substantive drug crime; and the same holds true for attempts.

Likewise, in view of the seriousness of such offenses, it is appropriate to add to the list of predicate offenses authorizing adult prosecution those involving possession of a mixture or substance containing in excess of five grams of cocaine or "crack". (See 21 U.S.C. 844.)

A second feature of the amendments in this section, which is taken from §2201 (b) and (c) of S. 1970 as passed by the Senate last year, is designed primarily to add three serious firearms offenses to the list of enumerated drug and violent felonies in 18 U.S.C. 5032 for which a prosecutor or a court may determine that a juvenile alleged to have committed such an offense should be prosecuted as an adult. The three firearms offenses that would be added to section 5032 each carries a maximum prison term of ten years and essentially involve acts of receiving or transferring a firearm, or traveling interstate to acquire a firearm, knowing or intending that it will be used to commit a felony.

The deletion of the reference to 18 U.S.C. 922(p) by this section corrects a technical error in section 6457 of the Anti-Drug Abuse of 1988, which had intended the reference to be to a guns-in-the-schoolyard offense. That offense, however, was not enacted in 1988, and by virtue of another bill section 922(p) now refers to the manufacture or possession of an undetectable firearm, for which inclusion in section 5032 was never intended.

A third feature of the amendments in this section, which passed the Senate as part of §2201(d) of S. 1970 last year, is designed to clarify that a juvenile's leadership role in an offense is a highly pertinent factor in a court's decision whether or not to transfer the juvenile for trial as an adult. Currently, the applicable paragraph of 18 U.S.C. 5032, which sets forth the relevant factors for consideration, only directs the court to weigh the "nature of the offense". While this may implicitly include the issue of the extent of the juvenile's role, the proposed amendment clarifies this point while also indicating as a matter of policy that an affirmative finding that a juvenile has played a major role in a controlled substance or firearms offense shall count heavily in favor of a determination to try the juvenile as an adult.

Sec. 603

The Anti-Drug Abuse Act of 1988 (section 6451) added, as a new predicater offense category to the Armed Career Criminal statute, acts of juvenile delinquency that, if committed by an adult, would constitute a crime of violence. In view of the increasing involvement of youthful offenders with serious drug offenses, and the known association of drug crimes with violence, it is appropriate also to enlarge the scope of the Armed Career Criminal Act to include acts of juvenile delinquency that, if committed by an adult, would meet the Act's definition of a "serious drug offense," i.e., those drug felonies that carry a maximum prison term of ten years or more. An amendment including certain serious drug crimes by juveniles as Armed Career Criminal Act predicate offenses was passed by the Senate last year as §2202 of S. 1970.

Sec. 604

The Travel Act was passed in 1961 as part of a series of statutes intended to deal more effectively with organized crime. It punishes any person who travels interstate with intent to (1) distribute the proceeds of any unlawful activity, (2) commit any crime of violence to further any unlawful activity, or (3) otherwise promote or facilitate the promotion of any unlawful activity, and who thereafter performs or attempts to perform any of the intended acts specified above. The statute defines "unlawful activity" to include those generic categories of offenses that are frequently associated with organized crime, namely gambling, controlled substances, prostitution, extortion, arson, bribery, and money laundering.

The Act carries a maximum penalty of five years' incarceration. While this is adequate with respect to violations involving acts of distributing the proceeds of or otherwise promoting unlawful activity, it is not sufficient with respect to acts involving the commission or attempted commission of a crime of violence in furtherance of unlawful activity. The United States Sentencing Commission recently examined about a hundred cases under the Travel Act and came to the same conclusion. The Commission found that close to 30% of all defendants received maximum five-year sentences under the applicable Travel Act guideline, and that more than 70% of that group would, under the guidelines, have received a sentence greater than five years, if this had been allowed by the statute.

In these circumstances, the Commission determined that "the sentencing outcomes required by the guidelines have been frustrated by the low statutory maximum penalty." The Commission in a report to Congress thus recommended, consistent with the instant proposal, that the maximum penalty for Travel Act violations be raised to twenty years when the conduct involves a crime of violence, and up to life imprisonment if death results.

This maximum penalty increases will enable the achievement, through the operation of the sentencing guidelines, of an appropriate and fair sentencing result when, for example, an individual is charged with a violation of the Travel Act involving the commission or attempted commission or murder, kidnapping, or serious assault for which the guidelines prescribe a sentence of greater than five years. In short, there is no reason why a defendant who commits a serious crime of violence under the Travel Act should be punished substantially less severely than one who engaged in the same conduct under another federal statute with a different jurisdictional base. The proposed amendment insures that henceforth Travel Act offenses involving crimes of violence may be properly punished.

Sec. 605

This amendment, included in S. 1970 as passed by the Senate in the 101st Congress (§3709), would increase the penalty under 18 U.S.C. 1958 for conspiring to commit murder for hire. This offense frequently involves "contracts" put out by participants in organized crime activities.

Presently, section 1958 contains no penalty for a conspiracy. The section provides a ten-year maximum penalty for traveling in interstate or foreign commerce with intent to commit murder for hire, and includes increases in the maximum penalty if personal injury or death results from the offense. A conspiracy to violate section 1958 is, however, punishable only under 18 U.S.C. 371, the general conspiracy statute, which carries a maximum of five years' imprisonment.

This penalty level is insufficient to vindicate the seriousness of this offense. Recently, for example, a male-female couple were convicted in Indiana of a scheme to hire a "hit" man to murder the wife of one and the husband of the other; fortunately, the scheme was reported to the FBI which was able to arrest the conspirators after they had paid an undercover agent, posing as a "hit" man, $2,000 to perform the killings.

Under the statement, section 1958 would itself include a penalty for conspiracies to violate the section. The maximum penalty would be set at the ten-year level, the same as for the offense of traveling interstate with intent to commit murder for hire.

VII. TERRORISM

A. Aviation Terrorism

Sec. 701

Subsection (a) of this section adds a new section 36 to chapter 2 (relating to Aircraft and Motor Vehicles) of title 18, United States Code, which deals with violence at international airports.

Subsection (a) of proposed 18 U.S.C. 36 establishes the offense required by paragraph 1 of Article II of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. The provision makes it an offense for a person unlawfully and intentionally, using any device, substance or weapon, (1) to perform an act of violence against another person at an international airport serving civil aviation or (2) to destroy or seriously damage the facilities of an international airport serving civil aviation or aircraft not in service located thereon, or to disrupt service at such an airport. Consistent with the requirement of the Protocol, the prohibited act must endanger or be likely to endanger safety at an airport serving international civil aviation. Upon conviction, a person would be subject to a fine under 18 U.S.C. 3571 and/or imprisonment of not more than twenty years. If death results from the prohibited conduct, the offender could be punished by death or imprisoned for any term of years or for life.

Proposed 18 U.S.C. 36(b) provides for federal jurisdiction over the prohibited activity (1) when it takes place within the United States or (2) when the prohibited activity takes place outside of the United States and the offender is later found in the United States. The latter jurisdictional basis is required by Article III of the Protocol in order to comply with the mandate of the Protocol that Party States prosecute or extradite for prosecution offenders found in their jurisdiction. The former jurisdictional basis ensures clear federal jurisdiction over any terrorist attack at an international airport serving civil aviation within the United States.

State and local governments would retain their existing jurisdiction over violence at airports. This provision supplements and does not supplant state and local authority. In regard to terrorist attacks at foreign airports in which American nationals are killed or seriously injured, the provisions of 18 U.S.C. 2332 remain applicable. "Finding" the perpetrators within the United States is not a prerequisite for jurisdiction under 18 U.S.C. 2332.

Subsections (b) and (c) of section 701 concern a technical conforming amendment and the effective date of the section.

Sec. 702

This section repeals section 902(n)(3) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)(3)) and renumbers section 902(n)(4) as section 902(n)(3). The paragraph to be repealed currently reads: "This subsection shall only be applicable if the place of take-off or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft."

Section 902(n), which criminalizes aircraft piracy committed outside the special aircraft jurisdiction of the United States, was enacted as part of the Antihijacking Act of 1974 (section 103(b) of Public Law 93-366), to implement to Hague Convention for the Suppression of Unlawful Seizure of Aircraft. Section 902(n)(3) was intended to reflect paragraph 3 of Article 3 of the Convention, which states that the Convention normally applies "only if the place of take-off or the place of actual landing of the aircraft on which the offense is committed is situated outside the territory of the State of registration of that aircraft." However, the authors of the legislation overlooked the obligation of paragraph 5 of Article 3 of the Convention when the alleged aircraft hijacker is found in the territory of a State Party other than the State of registration of the hijacked aircraft.

For example, under the Hague Convention the hijacking of an Air India flight that never left India is not initially covered by the Convention. (Article 3, paragraph 3.) However, the subsequent flight of the alleged offender from India to another State Party triggers treaty obligations, under the "notwithstanding paragraph 3" language of paragraph 5 of Article 3. Paragraph 5 makes the obligation of Article 7, to either prosecute or extradite an alleged offender found in a party's territory, applicable to a hijacker of a purely domestic air flight who flees to another State: "Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft."

While the meaning of paragraph 5 of Article 3 may not have been perfectly understood at the time the Hague Convention was adopted, subsequent international conventions have made the concept crystal clear. It is now appropriate to correct our prior minor misunderstanding of our international obligation under the Hague Convention.

B. MARITIME TERRORISM

Secs. 711-13

These sections contain the short title, findings, and statement of purpose for the Act proposed in this subtitle.

The Act will implement the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

The Senate gave its advice and consent to ratification of the Convention and Protocol on November 5, 1989. The Administration has stated its intention to deposit the instrument of ratification after this domestic legislation is enacted. When the Administration deposits the instrument of ratification, it will declare, pursuant to Article 16(2) of the Convention, that the United States does not consider itself bound to submit to the compulsory jurisdiction of the International Court of Justice in respect of disputes arising under the convention, consistent with the understanding of the Senate Foreign Relations Committee contained in the report accompanying Treaty Doc. 101-1. *See* S. Exec. Rept. 18, 101st Cong. 1st Sess. at p. 3 (November 19, 1989).

Sec. 714

This section would add two new sections to chapter 111 (relating to shipping) of title 18, United States Code. The new sections supplement existing provisions of federal law and do not supplant them. The first, proposed section 2280, covers violence against maritime navigation. The second, proposed section 2281, deals with violence against maritime fixed platforms.

Section 2280(a) sets forth the various offenses required by the first paragraph of Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Section 2280(a)(8) (the attempt provision) effectuates the requirement of paragraph 2(a) of Article 3 of the Convention. (Paragraph 2(b) of Article 3 of the Convention is implemented by existing 18 U.S.C. (complicity) and 371 (conspiracy)). Each of the prohibited acts basically tracks the Convention's language and is self-explanatory. Section 2280(a)(6) (relating to communication of false information) uses the "knowledge" formulation adopted by Congress in 18 U.S.C. 32(a)(6) and fully complies with the Convention's requirements. The penalty level complies with Article 5 of the Convention and is comparable to that contained in 18 U.S.C. 32 (destruction of aircraft or aircraft facilities).

Section 2280(b) (relating to threats) implements paragraph 2(c) of Article 3 of the Convention. Section 2280(b) follows the penalty level and the formulation utilized by Congress in recently enacted 18 U.S.C. 32(c) and 49 U.S.C. App. 1472(m)(2) (i.e., "with an apparent determination and will to carry the threat into execution"). The words "threatened act" are used to clearly show that it is the act which, if it were performed, must endanger the safe navigation of the ship. The threat by itself does not have to endanger the safe navigation of the ship.

Section 2280(c) specifies the circumstances when federal jurisdiction exists over the prohibited acts of section 2280(a). Paragraph (1) of subsection (c) relates to circumstances involving a "covered" ship. Paragraph (2) of subsection (c) relates to circumstances involving a "noncovered" ship, which is required by paragraph 2 of Article 4 of the Convention (i.e., the offender has fled the territory of the country where the prohibited act occurred upon or against a ship not initially protected by the Convention and the offender is now present in the United States).

The term "covered ship," which is based upon paragraph 1 of Article 4 of the Convention, basically means a ship that is operating or scheduled to operate outside the territorial "waters" (i.e., the territorial sea and/or internal waters) of any particular country. Hence, it covers all ships that go, have come, or are scheduled to go upon the the high seas as well as ships that leave, are scheduled to leave, or have arrived from outside the territorial waters of any particular country. The term applies primarily to ships engaged in international shipping, although, if a ship is engaged only in commerce between points in the same country, the term also encompasses that ship if the ships travels at some time during its voyage upon the high seas. A ship is not covered under the Convention if it has remained or is scheduled to stay within the territorial waters of a single country and if, in fact, it so stays. However, if it departs the territorial waters of a single country or is scheduled to so depart, it is covered under the Convention.

The clauses of paragraph (1) of subsection (c) establish jurisdiction in the situations *mandated* by paragraph 1 of Article 6 of the Convention, i.e., clauses (c)(1)(A) (i), (ii) and (iii) (relating to nationals of the United States)) and two optional situations *permitted* by paragraph 2 of Article 6 of the Convention (i.e., clauses (c)(1)(A)(iii)) (as to a stateless person whose habitual residence is in the United States), and (c)(1)(B)). In addition, subparagraph (C) of paragraph (1) of subsection (c) implements the *mandatory* requirement in paragraph 4 of Article 6 of the Convention to cover the situation where the offender is subsequently present in the United States after having committed a prohibited act on or against a covered ship over which conduct the United States was provided no direct mandatory or optional juris-

dictional basis pursuant to paragraphs 1 or 2 of Article 6 of the Convention at the time of the offense. This provision is necessary to comply with the basic "prosecute or extradite" requirement of the Convention.

Paragraph (2) of subsection (c) establishes the jurisdiction required by paragraph 2 of Article 4 of the Convention to cover the situation when a prohibited act is committed against a ship *not* covered by the Convention (i.e., a ship engaged in commerce within a single country) but the perpetrator has fled and is now present in the United States.

Paragraph (3) of subsection (c) has been drafted to cover all prohibited activity against or upon any vessel committed in an attempt to compel the United States to do or abstain from doing an act. The Convention, in paragraph 2 of Article 6, permits coverage when the extortionate demand against a State involves a "covered ship." The limitation to covered ships is not desirable when the United States itself is the target of the extortion. Expanding coverage to any vessel is clearly justified under the protective principle of extraterritoriality under customary international law. Hence, extortionate demands directed against the United States involving a vessel are covered whether they occur within the United States (including its territorial sea), on the high seas, or within the territorial seas or international waters of a foreign nation. Moreover, section 2280(c)(3) uses the term "vessel" to cover all vessels and not just ships as defined in section 2280(e)(1). Thus, governmental ships are covered by section 2280(c)(3).

Section 2280(d) carries out the requirement of Article 8 of the Convention that the United States impose certain obligations upon the masters of covered ships flying the flag of the United States when delivering an offender and evidence to another State Party. Subsection (d) also directs the master to notify the Attorney General before delivering a person believed to have committed an offense under the Convention. The notification, which is not mandated by the Convention, is necessary to allow the United States the opportunity to obtain custody of the alleged offender, if practicable, before delivery to another country. It should be noted that the obligations of Article 8 of the Convention cover offenses committed not only on the master's ship but upon any ship protected by the Convention. Hence, it also covers fugitives who have committed prior offenses prohibited by the Convention and who are presently on the master's ship.

Section 2280(e) contains the definitions of "ship," "covered ship," "territorial sea of the United States," "national of the United States," and "United States." The latter two are standard definitions. *See, e.g.*, 18 U.S.C. 1203(c) and 3077(4). Under Article 1 of the Convention, a ship is defined as "a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft." However, paragraph 1 of Article 2 of the Convention makes the Convention inapplicable to (1) a warship, (2) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes, or (3) a ship which has been withdrawn from navigation or laid up. Thus, like the international convention pertaining to aircraft, the Convention concerns ships of a "civilian" nature, and does not apply to United States naval vessels, United States customs vessels, or any other law enforcement vessel operated by United States authorities. Likewise, a vessel which is not currently in an operational mode is not covered by the definition.

The term "covered ship" describes a ship engaged or scheduled to engage in travel that will take it out (or has taken it) onto the high seas or into the territorial waters of a "different country." The focus is on international voyages, cargo as well as passenger. No commercial nexus, however, is required, and, oceangoing pleasure craft are protected.

The definition of territorial sea of the United States follows the terminology of Presidential Proclamation 5928 of December 27, 1988, which expanded the territorial sea of the United States, for international purposes, to twelve nautical miles from the baselines of the United States determined in accordance with international law.

Section 2281, dealing with violence against maritime fixed platforms, fully implements the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. The Protocol is primarily directed at off-shore fixed platforms located outside the territorial waters of any country. Section 2281 utilizes all the mandatory and optional jurisdictional bases required or permitted by the Protocol. In addition, section 2281 covers any situation involving a fixed platform anywhere when the prohibited activity is performed in an attempt to compel the United States to do or abstain from doing any act.

Section 2281(a) sets forth the various offenses required by paragraph 1 of Article 2 of the Protocol. Section 2281(a)(6) (the attempt provision) effectuates the requirement of paragraph 2(a) of Artilce 2 of the Protocol. (Paragraph 2(b) of Article 2 of the Protocol is implemented by existing 18 U.S.C. 2 (complicity) and 371 (conspiracy)). The penalties are consistent with Article 5 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation which is made applicable to the Protocol by paragraph 1 of Article 1 of the Protocol. The prohibited acts basically track the Protocol language and are self-explanatory.

Section 2281(b) (relating to threats) implements paragraph 2(c) of Article 2 of the Protocol. Section 2281(b), which is comparable to the threat provision contained in section 2280(b), follows the penalty level and the formulation utilized by Congress in recently enacted 18 U.S.C. 32(c) and 49 U.S.C. App. 1472(m)(2) (i.e., "with an apparent determination and will to carry the threat into execution"). The words "threatened act" are used to clearly show that it is the act which, if it were performed, must endanger the safety of the fixed platform. The threat by itself does not have to endanger the safety of the fixed platform.

Section 2281(c) specifies the circumstances when federal jurisdiction exists over the prohibited acts of section 2281(a). Paragraph (1) of section 2281(c) establishes jurisdiction in those situations *mandated* by paragraph 1 of Article 3 of the Protocol (i.e., subparagraphs (A) and (B) (relating to nationals of the United States)) and the optional bases *permitted* by paragraph 2(a) (relating to stateless persons whose habitual residence is in the United States) and paragraph (2)(c) of Article 3 of the Protocol. Subparagraph (C) of paragraph (1) of subsection (c), moreover, goes beyond the optional measure in the Protocol as it encompasses any prohibited activity committed in an attempt to compel the United States to do or abstain from doing any act involving a fixed platform anywhere in the world, and not just a platform located upon a continental shelf. This expanded coverage, clearly justifiable under the protective principle of extraterritoriality under customary international law, is desirable whenever the United States is itself the target of the extortion.

Paragraph (2) of subsection (c) establishes the optional jurisdiction bases *permitted* by paragraph 2(b) of Article 3 of the Protocol. Paragraph (3) of subsection (c) implements the *mandatory* requirement in paragraph 4 of Article 3 of the Protocol. This covers the situation where the offender is subsequently present in the United States after having committed a prohibited act on or against a fixed platform located on the continental shelf of another country over which conduct the United States had *no* direct mandatory or optional jurisdictional basis under paragraphs 1 or 2 Article 3 of the Protocol. Paragraph (3) of subsection (c) also implements the *mandatory* requirement contained in paragraph 2 of Article 1 of the Protocol. This covers the situation where the offender is present in the United States after having committed a prohibited act on or against a fixed platform located *within* the internal waters or territorial sea of another country. Such "internal" platforms are not subject to the Protocol unless the offender flees the jurisdiction of the country in which the platform is located.

Section 2281(d) contains the definitions of "continental shelf," "fixed platform," "national of the United States," "territorial sea of the United States," and "United States." The latter three definitions are the same as those used in section 280(e), *supra*. "Fixed platform'" is defined exactly as it is found in paragraph 3 of Article 1 of the Protocol. The platform must be permanently attached and must be for economic purposes. The definition of "continental shelf" incorporates by reference the definition of that term under Article 76 of the 1982 Convention on the Law of the Sea. While the United States is not a signatory to the Law of the Sea Convention, Article 76, nevertheless, reflects the customary international law definition of continental shelf.

Secs. 715–16

These sections contain provisions related to section 714 concerning clerical matters and effective dates.

Section 715 amends the analysis for chapter 111 of title 18, United States Code.

Section 716 establishes the effective date for the legislation depending upon certain contingencies.

Sec. 717

This section affirms the action taken by the President on December 27, 1988 in expanding the territorial sea of the United States from three to twelve nautical miles. Moreover, it clearly places the territorial sea, for federal criminal jurisdiction purposes, within the special maritime and territorial jurisdiction of the United States as that term is used in title 18, United States Code. This affirmance is necessary to ensure criminal coverage over foreign ships located within the expanded portion of the territorial sea.

While existing legislation covered foreign ships within the old territorial sea, the Supreme Court has held that the legislation was not intended to reach crimes committed by an alien upon an alien on a foreign vessel under the *de jure* or *de facto* control of the foreign nation on the high seas outside the territorial sea of the United States. *See United States v. Holmes*, 18 U.S. (5 Wheat.) 411 (1820); *United States v. Palmer*, 16 U.S. (3 Wheat.) 281, 288 (1818). The provision in the Presidential Proclamation stating that "Nothing in this Proclamation (a) extends or otherwise alters existing Federal Law or any

jurisdiction, rights, legal interests, or obligations derived therefrom" raises a question concerning federal criminal jurisdiction over foreign ships in the expanded portion of the territorial sea.

Section 717 removes any ambiguity and establishes clear jurisdiction commensurate without assertion of sovereignty. Moreover, this provision ensures that all fixed platforms located within the expanded portion of the territorial sea are also within the special maritime and territorial jurisdiction of the United States. Clear criminal coverage over such platforms is essential because new section 2281 of title 18, United States Code, would only cover off-shore platforms located outside the territorial sea of the United States. Section 717 is intended to apply to federal criminal jurisdiction generally, but is not intended to affect any other laws pertaining to the expanded portion of the territorial sea.

Sec. 718

This section incorporates the appropriate state law for purposes of the federal assimilated crimes statute, 18 U.S.C. 13, in regard to the expanded portion of the territorial sea. Because state boundaries generally only extend three statutory (or geographical) miles into the ocean, portions of the expanded territorial sea of the United States are not within any state. Hence, large areas of the expanded territorial sea of the United States are not within any particular state or territory. Accordingly, criminal acts such as prostitution, gambling, drunkeness, etc., would not be prohibited under federal law unless some state law was adopted. The method used here, assimilating the law of the nearest state, is very similar to what Congress did in regard to artificial islands and fixed structures under the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(2)(A)). The provision clearly covers crimes committed on, below, and above that portion of the territorial sea of the United States that is not located within the territory of any state, territory, possession or district.

Sec. 719

This section establishes a new jurisdictional basis in section 7 of title 18, United States Code, relating to the definition of the special maritime and territorial jurisdiction of the United States. 18 U.S.C. 7 allows for federal jurisdiction over certain important common crimes, e.g., murder, theft, sexual abuse. Section 719 extends federal criminal jurisdiction to any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

The Department of Justice has experienced a continuing legal problem concerning federal jurisdiction over certain crimes committed by or against United States nationals on foreign cruise ships operating from the United States. The country whose flag the foreign ship is flying often shows little interest in prosecuting. If the foreign ship is not within United States waters at the time of the offense, it is not always clear whether federal criminal jurisdiction exists. While cogent legal arguments can be made, and have on occasions been made successfully, it is desirable to have a clear statutory basis of jurisdiction. The provision provides jurisdiction even when the scheduled cruise enters the waters of a foreign nation. Of course, the jurisdiction only reaches conduct committed by or against a national of the United States. International law recognizes the right of a nation to apply its laws extraterritorially in such cases.

C. Terrorist Alien Removal

This subtitle, the "Terrorist Alien Removal Act of 1991," provides effective means for removing from the United States aliens involved in terrorist activities.

In recent years, the Department of Justice has obtained considerable evidence of involvement in terrorism by aliens in the United States. Both legal aliens, such as lawful permanent residents and aliens here on student visas, and illegal aliens are known to have aided and to have received instructions regarding terrorist acts from various international terrorist groups. While many of these aliens would be subject to deportation proceedings under the Immigration and Nationality Act (INA), these proceedings are unsatisfactory in cases involving sensitive information. Specifically, these procedures do not prevent disclosure of sensitive information where such disclosure would harm national security, adversely affect foreign relations, or reveal investigative techniques or confidential sources. Consequently, the proposed Terrorist Alien Removal Act sets out a new title in the INA devoted exclusively to the removal of aliens involved in terrorist activities.

The new title would create a special court, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.). When the Department of Justice believes that it has identified an alien in the United States who has engaged in terrorist activity, and that to afford such an alien a deportation hearing would reveal information that would harm national security or foreign relations or compromise important investigative techniques or confidential sources, it could seek an *ex parte* order from the court. The order would authorize a formal hearing, called a special removal hearing, before the same court, at which the Department of Justice would seek to prove by clear and convincing evidence that the alien had in fact engaged in terrorist activity. At the hearing, certain evidence could be presented *in camera* and not revealed to the alien or the public, although its general nature would be summarized and revealed if that could be accomplished without seriously harming national security or jeopardizing human life.

Enactment of this Act would provide a valuable new tool with which to combat aliens who would use the United States as a base from which to launch terrorist attacks either on U.S. citizens or on persons in other countries. It is a carefully measured response to the menace posed by alien terrorists and fully comports with all constitutional requirements applicable to aliens.

Sec. 722

This section sets our findings that aliens are committing terrorist acts in the United States and against United States citizens and interests and that the existing provisions of the Immigration and Nationality Act (INA) providing for the deportation of criminal aliens are inadequate to deal with this threat. The findings explain that these inadequacies arise primarily because the INA, particularly in the requirements pertaining to deportation hearings, requires disclosure of confidential information and investigative techniques that aid the terrorists themselves, terrorist organizations, and the foreign governments which support them.

The findings are important in explaining congressional intent and purpose. As noted above, the proposed Act creates an entirely new type of hearing to determine whether aliens believed to be terrorists should be removed from the United States. At such a "special removal hearing", the government would be permitted to introduce *in camera* and *ex parte* evidence that the alien has engaged in terrorist activity. Such hearings would be held before Article III judges, and the *in camera* evidence would be information that, if provided to the alien or otherwise made public, would pose a risk to national security, adversely affect foreign relations, reveal investigative techniques important to efficient law enforcement, or disclose confidential sources of information. Such an extraordinary type of hearing would be invoked only in a very small percentage of deportation cases, and would be applicable only in those cases in which an Article III judge has found probable cause to believe that the aliens in question are involved in terrorist acts. In appropriate cases, special removal, hearings would be held in lieu of an administrative deportation hearing before an official of the Executive Office for Immigration Review. Although the bill provides the alien many rights equal to—and in some respects greater than—those enjoyed by aliens in ordinary deportation proceedings, the rights specified for aliens subject to a special removal hearing are deemed exclusive of any rights otherwise afforded under the INA.

It is within the power of Congress to provide for a special adjudicatory proceeding and to specify the procedural rights of aliens involved in terrorist acts. The Supreme Court has noted that "control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature. . . . The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982). Moreover, Congress can specify what type of process is due different classes of aliens. "[A] host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens itself is a heterogeneous multitude of persons with a wide-ranging variety of ties to this country." *Mathews* v. *Diaz*, 426 U.S. 67, 78–79 (1976). Because the Due Process Clause does not require "that all aliens must be placed in a single homogeneous legal classification" (*id.*), Congress can provide separate processes and procedures for determining whether to remove alien terrorists.

Sec. 723

This section incorporates as the definition of the terms "terrorist activity" and "engage in terrorist activity" the corresponding definitions provided by section 601(a) of the recently enacted Immigration Act of 1990, Public Law 101-649.

Sec. 724

This section adds a new title V of the Immigration and Nationality Act to provide a special process for removing alien terrorists when compliance with normal deportation procedures might adversely affect important interests of the United States. However, the new title V is not the only way of expelling alien terrorists from the United States. In addition to proceedings under the new special removal provisions, aliens falling within 8 U.S.C. 1251(a)(4)(B) alternatively could be deported following a regular deportation hearing. Moreover, like all other aliens,

alien terrorists remain subject to possible expulsion of any of the remaining deportation grounds specified in section 241 of the Act (8 U.S.C. 1251). For example, alien terrorists who violate the criminal laws of the United States remain subject to "ordinary" deportation proceedings on charges under INA section 241(a)(2). The special removal provisions augment, without in any way narrowing, the prosecutorial options in cases of alien terrorists.

The new title V consists of four new sections of the INA, sections 501-504 (8 U.S.C. 1601-1604). Briefly, the title provides for creation of a special court comprised of Article III judges, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*). When the Department of Justice believes it has identified an alien terrorist, that is, an alien who falls within 8 U.S.C. 1251(a)(4)(B), and determines that to disclose the evidence of that fact to the alien or the public would compromise national security, foreign policy, investigatory techniques, or confidential sources of information, the Department may seek an order from the special court. The order would authorize the Department to present its evidence, or some part of its evidence, that the alien is a terrorist *in camera* and *ex parte* at a special removal hearing. The judge could then direct the alien and his counsel and all spectators to leave the courtroom during the presentation of the evidence covered by the order, or alternatively could elect to receive the evidence in chambers with only the reporter, the counsel for the government, and the witness present. Only the general nature of such evidence, without identifying particulars, would be revealed to the alien, his counsel, and the public.

If, at the conclusion of the hearing, the judge finds that the government has established by clear and convincing evidence that the alien has engaged in terrorist activity, the judge would order the alien removed from the United States. The alien could appeal the decision to the Court of Appeals for the Federal Circuit, and ultimately could petition for a write of certiorari to the Supreme Court.

Use of information that is not made available to the alien for reasons of national security is a well-established concept in the existing provisions of the INA and immigration regulations. For example, section 235(c) provides for an expedited exclusion process for aliens excludable under 8 U.S.C. 1182(a)(3) (providing for the exclusion, *inter alia*, of alien spies, saboteurs, and terrorists), and states in relevant part: "If the Attorney General is satisfied that the alien is excludable under [paragraph 212(a) (3)] on the basis of information of a confidential nature, the disclosure of which the Attorney General, in his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by [an immigration judge]."

Thus, where it is necessary to protect sensitive information, existing law authorizes the Attorney General to conduct exclusion proceedings outside the ordinary immigration court procedures and to rely on confidential information in ordering the exclusion of alien terrorists.

In the deportation context, 8 C.F.R. 242.17 (1990) provides that in determining whether to grant descretionary relief to an otherwise deportable alien, the immigration judge "may consider and base his decision on information not contained in the record and not made available for inspection by the [alien], provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security."

The constitutionality of this provision has been upheld. *Suciu v. INS*, 755 F.2d 127 (8th Cir. 1985). The alien in that case had been in the United States for sixteen years and had become deportable for overstaying his student visa, a deportation ground ordinarily susceptable to discretionary relief. Nevertheless, the court held that it was proper to deny the alien discretionary relief without disclosing to him the reasons for the denial. *Suciu* following the Supreme Court's holding sustaining the constitutionality of a similar predecessor regulation in *Jay v. Boyd*, 351 U.S. 345 (1956).

Sec. 501 (Applicability)

Section 501 sets forth the applicability of the new title. *Section 501(a)* states that the title may, but need not, be employed by the department of Justice whenever it has information that an alien is subject to deportation because he is an alien described in 8 U.S.C. 1251(a)(4)(B), that is, that he has engaged in terrorist activity.

Section 501(b) provides that whenever an official of the Department of Justice determines to seek the explusion of an alien terrorist under the special removal provisions only the provisions of the new title need be followed. This ensures that such an alien will not be deemed to have any additional rights under the other provisions of the Immigration and Nationality Act. Except when specifically referenced in the special removal provisions, the remainder of the INA would be inapplicable. For example, under the special removal provisions an alien who has entered the United States (and thus is not susceptible to exclusion proceedings) need not be given a deportation hearing under section 242 of the Act, 8 U.S.C. 12252, and will not have available the rights generally afforded aliens in deportation preceedings (*e.g.*, the opportunity for an alien out of status to correct his status).

Section 501(c) states that Congress has enacted the title upon finding that alien terrorists represent a unique threat to the security and interests of the United States. Consequently, the subsection states Congress' specific intent that the Attorney General be authorized to remove such aliens without resort to a traditional deportation hearing, following an *ex parte* judicial determination of probable cause to believe they have engaged in terrorist activity and a further judicial determination, following a modified adversarial hearing, that the Department of Justice has established by clear and convincing evidence that the aliens in fact have engaged in terrorist activity.

Section 501(c) is designed to make clear that singling out alien terrorists for a special type of hearing rather than according them ordinary deportation hearings is a careful and deliberate policy choice by a political branch of government. This policy choice is grounded upon the legislative determination that alien terrorists seriously threaten the security and interests of the United States and that the existing process for adjudicating and effecting alien removal is inadequate to meet this threat. In accordance with settled Supreme Court precedent, such a choice is well within the authority of the political branches of government to control our relationship with and response to aliens.

For example, in *Mathews v. Diaz, supra*, the Court held that Congress could constitutionally provide that only some aliens were entitled to Medicare benefits. The Court held that it was "unquestionably reasonable for Congress to make an alien's eligibility depend on both the character and duration of his residence," and noted that the Court was "especially reluctant to question the exercise of congressional judgment" in matters of alien regulation. 426 U.S. at 83, 84; *see Fiallo v. Bell*, 430 U.S. 787, 793 (1977) (describing the regulation of aliens as a political matter "largely immune from judicial control"). The specific findings and reference to the intent in adopting the new provisions of title V make clear the policy judgment that alien terrorists should be treated as a separate class of aliens and that this choice should not be disturbed by the courts.

Sec. 502 (Special Removal Hearing)

Section 502 sets out the procedure for the special removal hearing. *Section 502(a)* provides that whenever the Department of Justice determines to use the special removal process it must submit a written application to the special court (established pursuant to section 503) for an order authorizing such procedure. Each application must indicate that the Attorney General or Deputy Attorney General has apoproved its submission and must include the identity of the department attorney making the application, the identity of the alien against whom removal proceedings are sought, and a statement of the facts and circumstances relied upon by the Department of Justice as justifying the belief that the subject is an alien terrorist and that following normal deportation procedures would "pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information."

Section 502(b) provides that applications for special removal proceedings shall be filed under seal with the special court established pursuant to section 503. At or after the time the application is filed, the Attorney General may take the subject alien into custody. The Attorney General's authority to retain the alien in custody is governed by the provisions of new title V which, as explained below, provide in certain circumstances for the release of the alien.

Although title V does not require the Attorney General to take the alien subjects of special removal applications into custody, it is expected that most such aliens will be apprehended and confined. The Attorney General's decision whether to take such aliens into custody will not be subject to judicial review. Subsequent provisions (section 504(a)) authorize the Attorney General to retain custody of alien terrorists who have been ordered removed until such aliens can be physically delivered outside our borders.

Section 502(c) provides that special removal applications shall be considered by a single Article III judge in accordance with section 503. In each case, the judge shall hold an *ex parte* hearing to receive and consider the written information provided with the application and such other evidence, whether documentary or testimonial in form, as the Department of Justice may proffer. The judge shall grant an *ex parte* order authorizing the special removal hearing as provided under title V if the judge finds that, on the basis of the information and evidence presented, there is probable cause to believe that the

subject of the application is an alien who falls within the definition of alien terrorist and that adherence to the ordinary deportation procedures would impair national security, adversely affect foreign relations, reveal an important investigatory technique, or disclose a confidential source of information.

Section 502(d)(1) provides that in any case in which a special removal application is denied, the Department of Justice within twenty days may appeal the denial to the Court of Appeals for the Federal Circuit. In the event of a timely appeal, a confined alien may be retained in custody. When the Department of Justice appeals from the denial of a special removal application, the record of proceedings will be transmitted to the Court of Appeals under seal and the court will hear the appeal *ex parte*. Subsequent provisions (section 502(p)) authorize the Department of Justice to petition the Supreme Court for a writ of certiorari from an adverse appellate judgment.

Section 502(d)(2) provides that if the Department of Justice does not seek appellate review of the denial of a special removal application, the subject alien must be released from custody unless, as a deportable alien, the alien may be arrested and taken into custody pursuant to title II of the Immigration and Nationality Act. Thus, for example, when the judge finds that the special procedures of title V are unwarranted but the alien is subject to deportation as an overstay or for violation of status, the alien might be retained in custody but such detention would be pursuant to and governed by the provisions of title II.

Subsection 502(d)(3) provides that if a special removal application is denied because the judge finds no probable cause that the alien has engaged in terrorist activities, the alien must be released from custody during the pendency of an appeal by the government. However, section 502(d)(3) is similar to section 502(d)(2) in that it provides for the possibility of continued detention in the case of aliens who otherwise are subject to deportation under title II of the Act.

Section 502(d)(4) applies to cases in which the judge finds probable cause that the subject of a special removal application has been correctly identified as an alien terrorist, but fails to find probable cause that use of the special procedures are necessary for reasons of national security, foreign relations, or the protection of law enforcement techniques or confidential sources of information, and the Department of Justice determines to appeal. A finding that the alien has engaged in terrorist activity—a ground for deportation that would support confinement under title II of the Act—justifies retaining the alien in custody. Nevertheless, section 502(d)(4) provides that the judge must determine the question of custody based upon an assessment of the risk of flight and the danger to the community or individuals should the alien be released. The judge shall release the alien subject to the least restrictive condition(s) that will reasonably assure the alien's appearance at future proceedings, should the government prevail on its appeal, and will not endanger the community or individual members thereof. The possible release conditions are those authorized under the Bail Reform Act of 1984, 18 U.S.C. 3142 (b) and (c), and range from release on personal recognizance to release on execution of a bail bond or release limited to certain places or periods of time. As with the referenced provisions of the Bail Reform Act, the judge may deny release altogether upon determining that no condition(s) of release would assure the alien's future appearance and community safety.

Section 502(e)(1) provides that in cases in which the special removal application is approved, the judge must then consider separately each piece of evidence that the Department of Justice proposes to introduce *in camera* at the special removal hearing. The judge shall authorize the *in camera* introduction of any item of evidence which, if introduced in open court or in ordinary deportation proceedings, "would pose a risk to the national security of the United States, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source of information." The same standard applies both to justify the convening of a special removal hearing and to support the *in camera* introduction of specific items of evidence because a central purpose of the special procedures is to allow the secure use of sensitive, confidential information.

Section 502(e)(1) also provides that with respect to any evidence authorized to be introduced *in camera*, the judge must consider how the alien subject to the proceedings is to be advised regarding such evidence. *Section 502(e)(1)(A)* provides that the judge shall sign and the Department of Justice shall provide to the alien a summary of the *in camera* evidence that the government plans to introduce at the special removal hearing. The summary is to be sufficient to inform the alien of the general nature of the evidence that he has engaged in terrorist activity, "and to permit the alien to marshal the facts and prepare a defense," but the summary "shall not pose a risk to the national security, adversely affect foreign relations, reveal an investigative technique important to efficient law enforcement, or disclose a confidential source." In considering the summary to be provided to the alien of the government's proffered evidence, it is intended that the judge balance the alien's interest in having an opportunity to hear and respond to the case against him against the government's extraordinarily strong interest in protecting the national security, foreign relations, important investigative techniques, and confidential sources of information.

Section 502(e)(1)(B) deals with the extraordinary situation in which the alien cannot safely be provided with any summary of the government's *in camera* evidence. It provides that "if necessary to prevent serious harm to the national security or death or serious bodily injury to any person," the notice to the alien may consist of a statement that, pursuant to such provisions, no summary of the evidence will be provided.

Subparagraphs (A) and (B) of section 502(e)(1) must be considered in conjunction with each other. For example, if the Department of Justice has evidence from a confidential source that the alien has been involved in a plot to sabotage Dulles Airport, the summary under (e)(1)(A) might characterize the evidence without identifying the source. If even alluding to the sabotage plot would threaten disclosure of the source, the provisions of (e)(1)(B) might apply. Similarly, if even a cursory description of the government's *in camera* evidence would threaten serious harm to national security or threaten death or serious bodily injury, (e)(1)(B) would apply and the alien would be told that no summary of the government's proffer regarding his involvement in terrorism was possible.

It is anticipated that section 502(e)(1)(B) will only rarely be used and that usually it will be possible to provide the alien with notice of at least the general nature of the circumstances giving rise to the removal proceedings. However, it is not intended that (e)(1)(B) be avoided because it might be possible by other means to reduce the risk threatened by providing the alien with a summary of the *in camera* evidence. For example, if any summary of the evidence threatens the death of an informant, the judge should direct that no summary need be provided. The judge in such a case should not order a summary on the grounds that the informant might be provided with guards or other protection against the threatened harm.

Section 502(e)(2) provides that, in certain situations, the Department of Justice may take an interlocutory appeal to the Court of Appeals for the Federal Circuit from the judge's rulings regarding the *in camera* admission and summarization of particular items of evidence. Interlocutory appeal is authorized if the judge rules that a piece of evidence may not be introduced *in camera;* if the Department disagrees with the judge regarding the wording of an evidence summary (that is, if the Department believes that the summary will compromise national security, foreign relations, investigatory techniques, or a confidential source); or if the judge rules that a summary must be provided and the Department contends that any summary would threaten national security or result in death or serious bodily injury. Because the alien is to remain in custody during such an appeal, the Court of Appeals must hear the matter as expeditiously as possible. When the Department appeals, the entire record must be transmitted to the Court of Appeals under seal and the court shall hear the matter *ex parte*.

Section 502(f) provides that in any case in which the Department's application is approved, the court shall order a special removal hearing for the purpose of determining whether the alien in question has engaged in terrorist activity. Subsection (f) provides that "[i]n accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him." This cross-reference is intended to make clear that subsection (f) is not to be construed as requiring that information be given to the alien about the nature of the charges if such information would reveal the matters that are to be introduced *in camera*. The special removal hearing must be held as expeditiously as possible.

Section 502(g) provides that the special removal hearing shall be held before the same judge who approved the Department of Justice's application therefor unless the judge becomes unavailable due to illness or disability.

Section 502(h) sets out the rights to be afforded to the alien at the special removal hearing. The hearing shall be open to the public, the alien shall have the right to be represented by counsel (at government expense if he cannot afford representation), and to introduce evidence in his own behalf. Except as provided in section 502(j) regarding presentation of evidence *in camera*, the alien also shall have a reasonable opportunity to examine the evidence against him and to cross-examine adverse witnesses. As in the case of administrative proceedings under the INA and civil proceedings generally, the alien may be called as a witness by the Department of Justice. A verbatim record of the proceedings and of all evidence and testimony shall be kept.

Section 502(i) provides that either the alien or the government may request the issuance

of a subpoena for witnesses and documents. A subpoena request may be made *ex parte*, except that the judge must inform the Department of Justice where the subpoena sought by the alien threatens disclosure of evidence or the source of evidence which the Department of Justice has introduced or proffered for introduction *in camera*. In such cases, the Department of Justice shall be given a reasonable opportunity to oppose the issuance of a subpoena and, if necessary to protect the confidentiality of the evidence or its source, the judge may, in his discretion, hear such opposition *in camera*. A subpoena under section 502(i) may be served anywhere in the United States. Where the alien shows an inability to pay for the appearance of a necessary witness, the court may order the costs of the subpoena and witness fee to be paid by the government from funds appropriated for the enforcement of title II of the INA. Section 502(i) states that it is not intended to allow the alien access to classified information.

Section 502(j) provides that any evidence which has been summarized pursuant to section 502(e)(1)(A) or for which no summary is possible as provided in section 502(e)(1)(B) may be introduced into the record, in documentary or testimonial form, *in camera*. While the alien and members of the public would be aware that evidence was being submitted *in camera*, neither the alien nor the public would be informed of the nature of the evidence except as set out in section 502(e). For example, if the Department of Justice sought to present *in camera* evidence through live testimony, the courtroom could be cleared of the alien, his counsel, and the public while the testimony is presented. Alternatively, the court might hear the testimony in chambers attended by only the reporter, the government's counsel, and the witness. In the case of documentary evidence, sealed documents could be presented to the court without examination by the alien or his counsel (or access by the public).

While the Department of Justice does not have to present evidence *in camera*, even if it previously has received authorization to do so, it is contemplated that ordinarily much of the government's evidence (or at least the crucial portions thereof) will be presented in this fashion rather than in open court. The right to present evidence *in camera* was determined in the *ex parte* proceedings before the court pursuant to subsections (a) through (c) of section 502.

Section 502(k) provides that evidence introduced in open session or *in camera* may include all or part of the information that was presented at the earlier *ex parte* proceedings. If the evidence is to be introduced *in camera*, the attorney for the Department of Justice could refer the judge to such evidence in the transcript of the *ex parte* hearing and ask that it be considered as evidence at the removal hearing itself. The Department might present evidence in open court rather than *in camera* as a result of changed circumstances, for example, where the informant whose life was at risk had died before the hearing or if the Department believes that a public presentation of the evidence might have a deterrent effect on other terrorists. In any event, once the Department of Justice has received authorization to present evidence *in camera*, its decision whether to do so is purely discretionary and is not subject to review at the time of the special removal hearing.

Section 502(l) provides that following the introduction of evidence, the attorney for the Department of Justice and the attorney for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the alien's removal. At the judge's discretion, *in camera* argument by the Department of Justice attorney may be heard regarding evidence received *in camera*.

Section 502(m) provides that the Department of Justice has the burden of showing that the evidence is sufficient. This burden is not satisfied unless the Department establishes by clear and convincing evidence—the standard of proof applicable in a deportation hearing—that the alien has engaged in terrorist activity. If the judge finds that the Department has met that burden, the judge must order the alien removed. In cases in which the alien has been shown to have engaged in terrorist activity, the judge has no authority to decide that removal would be unfair or is otherwise unwarranted.

Section 502(n)(1) provides that the judge must render his decision as to the alien's removal in the form of a written order. The order must state the facts found and the conclusions of law reached, but shall not reveal the substance of any evidence received *in camera*.

Section 502(n)(2) provides that either the alien or the Department of Justice may appeal the judge's decision to the Court of Appeals for the Federal Circuit. Any such appeal must be filed within twenty days, and during this period the order shall not be executed. Information received *in camera* at the special removal hearing shall be transmitted to the Court of Appeals under seal. The Court of Appeals must hear the appeal as expeditiously as possible.

Section 502(n)(3) sets out the standard of review for proceedings in the Court of Appeals. Questions of law are to be reviewed *de novo*, but findings of fact may not be overturned unless clearly erroneous. This is the usual standard in civil cases.

Section 502(o) provides that in cases in which the judge decides that the alien should not be removed, the alien must be released from custody. There is an exception for aliens who may be arrested and taken into custody pursuant to title II of the INA as aliens subject to deportation. For such aliens, the issues of release and/or circumstances of contained detention would be governed by the pertinent provisions of the INA.

Section 502(p) provides that following a decision by the Court of Appeals, either the alien or the government may seek a writ of certiorari in the Supreme Court. In such cases, information submitted to the Court of Appeals under seal shall, if transmitted to the Supreme Court, remain under seal.

Sec. 503 (Designation of Judges)

Section 503 establishes the special court to consider terrorist removal cases under section 502, patterned on the special court created under the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 *et seq*. *Section 503(a)* provides that the court will consist of five federal district court judges chosen by the Chief Justice of the United States from five different judicial circuits. One of these judges shall be designated as the chief or presiding judge. The presiding judge shall promulgate rules for the functioning of the special court. The presiding judge also shall be responsible for assigning cases to the various judges. *Section 503(c)* provides that judges shall be appointed to the special court for terms of five years, except for the initial appointments the terms of which shall vary from one to five years so that one new judge will be appointed each year. Judges may be reappointed to the special court.

Section 503(b) provides that all proceedings under section 502 are to be held as expeditiously as possible. Section 503(b) also provides that the Chief Justice, in consultation with the Attorney General and other appropriate officials, shall provide for the maintenance of appropriate security measures to protect the *ex parte* special removal applications, the orders entered in response to such applications, and the evidence received *in camera* sufficient to prevent disclosures which could compromise national security, foreign relations, investigative techniques, or confidential sources.

Sec. 504 (Miscellaneous Provisions)

Section 504 contains the title's miscellaneous provisions. *Section 504(a)* provides that following a final determination that the alien terrorist should be removed (that is, after the special removal hearing and completion of any appellate review), the Attorney General may retain the alien in custody (or if the alien was released, apprehend and place the alien in custody) until he can be removed from the United States. The alien is provided the right to choose the country to which he will be removed, subject to the Attorney General's authority to designate another country if the alien's choice would impair a United States treaty obligation (such as an obligation under an extradition treaty) or would adversely affect the foreign policy of the United States. If the alien does not choose a country or if he chooses a country deemed unacceptable, the Attorney General must make efforts to find a country that will take the alien. The alien may, at the Attorney General's discretion, be kept in custody until an appropriate country can be found, and the Attorney General shall provide the alien with a written report regarding such efforts at least once every six months. The Attorney General's determinations and actions regarding execution of the removal order are not subject to direct or collateral judicial review, except for a claim that continued detention violates the alien's constitutional rights. The alien terrorist shall be photographed and fingerprinted and advised of the special penalty provisions for unlawful return before he is removed from the United States.

Section 504(b) provides that, notwithstanding section 504(a), the Attorney General may defer the actual removal of the alien terrorist to allow the alien to face trial on any State or federal criminal charges (whether or not related to his terrorist activity) and, if convicted, to serve a sentence of confinement. Section 504(b)(2) provides that pending the service of a State or federal sentence of confinement, the alien terrorist is to remain in the Attorney General's custody unless the Attorney General determines that the alien can be released to the custody of State authorities for pretrial confinement in a State facility without endangering national security or public safety. It is intended that where the alien terrorist could possibly secure pretrial release, the Attorney General shall not release the alien to a State for pretrial confinement. Section 503(b)(3) provides that if an alien terrorist released to State authorities is subsequently to be released from state custody because of an acquittal in the collateral trial, completion of the alien's sentence of confinement, or otherwise, the alien shall immediately be returned to the custody of the Attorney General who shall then proceed to effect the alien's removal from the United States.

Section 504(c) provides that for purposes of sections 751 and 752 of title 18 (punishing escape from confinement and aiding such an

escape), an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be treated as if in custody by virtue of a felony arrest. Accordingly, escape by or aiding the escape of an alien terrorist will be punishable by imprisonment for up to five years.

Section 504(d) Provides that an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be given reasonable opportunity to receive visits from relatives and friends and to consult with his attorney. Determination of what is "reasonable" usually will follow the ordinary rules of the facility in which the alien is confined.

Section 504(d) also provides that when an alien is confined pursuant to this new title he shall have the right to contact appropriate diplomatic or consular officers of his country of citizenship or nationality. Moreover, even if the alien makes no such request, subsection (d) directs the Attorney General to notify the appropriate embassy of the alien's detention.

Sec. 725

This section of the bill sets out conforming amendments. First, section 106 of the INA, 8 U.S.C. 1105a, is amended to provide that appeals from orders entered pursuant to section 235(c) of the Act (pertaining to summary exclusion proceedings for alien spies, saboteurs, and terrorists) shall be to the Court of Appeals for the Federal Circuit. Thus, in cases involving alien terrorists the same court of appeals shall hear both exclusion and deportation appeals and will develop unique expertise concerning such cases.

Second, section 276 of the INA, 8 U.S.C. 1326, is amendment to add increased penalties for an alien entering or attempting to enter the United States without permission after removal under the new title or exclusion under section 235(c) for terrorist activity. For aliens unlawfully re-entering or attempting to re-enter the United States, the section presently provides for a fine pursuant to title 18 and/or imprisonment for up to two years (five years when the alien has been convicted of a felony in the United States, or 15 years when convicted of an "aggravated felony"); the bill increases to a mandatory ten years the term of imprisonment for re-entering alien terrorists.

Finally, section 106 of the INA, 8 U.S.C. 1105a, is amended to strike subsection (a)(9) regarding habeas corpus review of deportation orders. Originally enacted in 1961 to make clear that the exclusive provision for review of final deportation orders through petition to the courts of appeals was not intended to extinguish traditional writs of habeas corpus in cases of wrongful detention, the subsection has been the source of confusion and duplicative litigation in the courts. Congress never intended that habeas corpus proceedings be an alternative to the process of petitioning the courts of appeals for review of deportation orders. Elimination of subsection (a)(9) will make clear that any review of the merits of a deportation order or the denial of relief from deportation is available only through petition for review in the courts of appeals, while leaving unchanged the traditional writ of habeas corpus to examine challenges to detention arising from asserted errors of constitutional proportions.

Sec. 726

This section provides that the new provisions are effective upon enactment and "apply to all aliens without regard to the date of entry or attempted entry into the United States." Aliens may not avoid the special removal process on the grounds that either their involvement in terrorist activity or their entry into the United States occurred before enactment of the new title. Upon enactment, the new title will be available to the Attorney General for removal of any and all alien terrorists.

D. Terrorism Offenses and Sanctions

Sec. 731. Torture

This section contains the necessary legislation to implement the United Nations Convention Against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment. The Senate gave its advice and consent to the Convention on October 27, 1990, after making several reservations, understandings and declarations. The United States will not become a party to the Convention until the necessary implementing legislation is enacted. The legislation creates a new chapter 113B (Torture) in title 18, United States Code. The new chapter is composed of three sections. Section 2340 contains the definitions for "torture," "severe mental pain or suffering," and "United States." The definition of torture emanates directly from article 1 of the Convention. The definition for "severe mental pain or suffering" incorporates the understanding made by the Senate concerning this term. The term "United States" is defined to encompass the requirements of paragraph (1)(a) of article 5 of the Convention.

Section 2340A creates the federal offense of torture committed outside the United States and establishes appropriate penalties taking into account the grave nature of the offense. The penalty provision contains a death penalty when death results from the prohibited conduct. The section applies only to acts of torture committed outside the United States. Since "United States" is defined to include any registered United States aircraft or ship, the provision is not applicable to these particular conveyances when they are outside of the geographical territory of the United States. These places would, as would acts of torture committed within the United States, be covered by existing applicable federal and state statutes. Under section 2340A(b)(1) there is federal jurisdiction when a national of the United States commits an act of torture overseas (*i.e.*, outside the territorial jurisdiction of the United States as defined in section 2340(3)). This jurisdiction is mandated by paragraph 1(b) of article 5 of the Convention. There is also federal jurisdiction under section 2340A(b) when an offender who committed an act of torture outside the United States is subsequently found in the United States. Federal jurisdiction is necessary in this instance in order to comply with paragraph 2 of article 5 of the Convention should the United States decide not to extradite the perpetrator under paragraph 1 of article 7 of the Convention.

Section 2340B makes it clear that the new federal provision on torture is intended to supplement existing state law and not to supplant it. Consistent with the Senate's understanding pertaining to article 14 of the Convention, the legislation does not create any private right of action for acts of torture committed outside the territory of the United States.

Sec. 732. Use of Weapons of Mass Destruction

This section creates a new offense for the use or attempted use of weapons of mass destruction within the United States, or against a national of the United States or property of the United States anywhere. The death penalty is authorized if death results.

Weapons of mass destruction are defined to include destructive devices, poison gas, weapons involving disease organisms, and weapons releasing radiation or radioactivity at a level dangerous to human life. "Destructive devices" has the meaning given in 18 U.S.C. 921(a)(4), and generally includes bombs, grenades, rockets and missiles, mines, and artillery.

Sec. 733. Homicides and Attempted Homicides Involving Firearms in Federal Facilities

This section adds a provision to 18 U.S.C. 930 to proscribe and punish killings and attempted killings occurring in the course of attacks within or against federal facilities that involve firearms or other dangerous weapons. The death penalty is authorized if death results.

Sec. 734. Providing Material Support for Terrorists

This section creates a new offense of providing material support or resources, or concealing the nature, location, source or ownership of material support or resources, for various terrorist-related offenses.

As a result of international pressures against states which provide support to international terrorists, some terrorist groups have been seeking other means of financing and support, such as raising funds from sympathizers or establishing front companies. The offense created by this section is intended to prevent such activities and other activities in support of the specified offenses, and also to encourage other nations to take similar steps to curb the flow of financial assets to terrorists.

Sec. 735. Addition of Terrorist Offenses to the RICO Statute

Section 735 adds to the Racketeer Influenced and Corrupt Organizations (RICO) statute certain federal violent crimes relating to murder and destruction of property. These are the offenses most often committed by terrorists. While most murders committed within the United States are encompassed as predicate acts for the RICO statute by section 1961(1)(A) of title 18, United States Code, in that they may be a murder under state law, RICO does not presently reach most terrorist acts directed against United States interests overseas. Hence, this section adds to RICO the most likely extraterritorial violations of federal law whose commission by terrorists can be anticipated.

While prosecution of terrorists is always a difficult task, the availability of RICO as a prosecutive tool may be appropriate in a few rare situations where the enterprise used to commit the terrorist activity has sufficient assets which can be forfeited under the RICO statute. Subsection (c) amends the definition of "pattern of racketeering activity" so that it does not require a pecuniary purpose when all of the predicate offenses are crimes of violence. This construction is necessary because often terrorist groups commit their crimes for political reasons not always involving financial gain for themselves or their members. A few federal cases, *e.g. U.S.* v. *Ivic*, 700 F.2d 51 (2d Cir. 1983) and *U.S.* v. *Bagaric*, 706 F.2d 42 (2d Cir. 1983), have suggested the necessity of some mercenary motive for a RICO enterprise. This provision eliminates any such requirement for those enterprises engaging in a pattern of purely violent crimes. The term "crime of violence" is defined in 18 U.S.C. §16.

Sec. 736. Forfeiture for Terrorist and Other Violent Acts

This section makes changes to chapter 46 of title 18, United States Code. It creates the

following two new sections: (1) section 983 which deals with civil forfeiture of property used to commit violent acts; and (2) section 984 which deals with criminal forfeiture of property used to commit violent acts.

Section 983 is especially broad as it covers property "used or intended for use to commit *or facilitate the commission of* a violent act." It excludes property of an innocent owner and adopts the custom laws relating to forfeiture. Section 984 creates a criminal forfeiture for those convicted of violent acts. It adopts the criminal forfeiture procedures of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Criminal forfeiture is provided to facilitate economy of judicial resources as both the conviction and forfeiture can be conducted in one proceeding.

Sec. 737. Enhanced Penalties for Certain Offense

This section provides enhanced penalties for a number of offenses to help combat terrorism. The offenses for which penalties are increased include violations of the International Emergency Economic Powers Act, and the misuse of passport and travel documents provisions.

Sec. 738. Sentencing Guidelines Increase for Terrorist Crimes

This section directs the Sentencing Commission to increase the penalties for offenses that involve or are intended to promote international terrorism.

E. Antiterrorism Enforcement Provisions

Sec. 741. Aliens Cooperating in Terrorist or Other Investigations

This section authorizes the Attorney General to grant permanent resident status for aliens in the interest of national security or for alien witnesses who cooperate in the prosecution of international terrorism and other cases. This amendment is needed to address the serious problem that the Department of Justice has been experiencing in inducing foreign witnesses to testify at federal trials against international terrorists and drug traffickers. Without the ability to remain in the United States, alien witnesses frequently refuse to cooperate with U.S. prosecutors because upon return to their homelands they are exposed to retaliation for such cooperation. Section 741 authorizes the Attorney General to grant permanent resident status for cooperating alien witnesses and their immediate families, with the number of aliens granted such status limited to 200 in any one year.

Sec. 742. Amendment to the Alien Enemy Act

Section 21 of the Alien Enemy Act, 50 U.S.C. 21, gives the President broad authority over the detention and removal from the United States of aliens from a country at war with the United States or from a country that has threatened an incursion into United States territory. The current Persian Gulf crisis demonstrates that the United States can also be subjected to serious threats of terrorist attacks from citizens of other countries. The Alien Enemy Act, however, does not now clearly extend to aliens from these other countries. This amendment makes clear that the provisions of the Alien Enemy Act may be invoked against citizens of other nations who threaten predatory incursions against the United States as well as against citizens of the hostile nation.

Sec. 743. Counterintelligence Access to Telephone Records

This section would permit the FBI to obtain subscriber information from a communications service provider upon certification of the Director, FBI (or his designee) to the service provider that the facility was utilized to contact a foreign power or an agent of a foreign power as defined by section 101 of the Foreign Intelligence Surveillance Act of 1978.

Sec. 744. Counterintelligence Access to Credit Records

This section would provide the FBI with new authority to request consumer reports and identifying information from consumer reporting agencies on persons who are subjects of foreign counterintelligence investigations, without having such reports being made known to the subject. It is similar to the authority contained in section 314 of the Right to Financial Privacy Act of 1979, giving the FBI authority to access financial records covered by that statute for foreign counterintelligence purposes. The Director, FBI would have to certify that the report relates to an agent of a foreign power or is otherwise necessary in connection with an authorized foreign counterintelligence investigation.

The existing statute authorizes consumer reporting agencies to provide consumer reports only with the written consent of the consumer, or to persons who intend to use the information for a variety of specified purposes (e.g., for employment, in connection with a credit transaction). In other words, while use in a foreign counterintelligence investigation is not a specified use, the uses that are specified are quite broad, suggesting a rather marginal guarantee of privacy. The proposed amendment would prohibit disclosure to the consumer (which otherwise is required) of the fact that the request was made or information obtained.

Sec. 745. Authorization for Interceptions of Communications

This section adds additional crimes to the list of Title III predicate offenses for interception of wire, oral and electronic communications. The offenses added include violations of the International Emergency Economic Powers Act, the Export Administration Act, the Trading with the Enemy Act, the Neutrality Act, and a number of other anti-terrorism provisions.

Sec. 746. Participation of Foreign and State Government Personnel in Interceptions of Communications

This section would amend 18 U.S.C. 2815(5) to make clear that foreign and state government personnel, if acting under federal supervision, may help in conducting court-authorized interception. The current language in the statute permits such assistance by "Government personnel," but it is doubtful whether this covers foreign and state government personnel as opposed to federal employees.

There is often great utility in permitting foreign and state government personnel to assist in monitoring a wiretap, such as in joint investigations involving terrorist or other offenses in which the particular, language skills of such personnel are necessary. Currently, federal agencies such as the FBI may employ such personnel through the cumbersome device of cross-designating them as federal agents. See *United States.* v. *Bynum*, 763 F.2d 477 (1st Cir. 1985). The paperwork involved in such methods is burdensome and costly, with no corresponding benefit to privacy or other interests served by the statutes. It would be far more efficient, and consistent with the purpose of the 1986 amendment adding "Government personnel" to 18 U.S.C. 2815(5), if that provision expressly authorized foreign or state government personnel, acting under the supervision of a federal officer, to participate in the conduct of a Title III interception. Section 746 would effect this result.

Sec. 747. Disclosure of Intercepted Communications to Foreign Law Enforcement Agencies

There has been a dramatic increase in recent years in the amount of international law enforcement interaction, necessitated by an increasingly sophisticated and active international criminal element. This has created a need for authority to disclose information obtained through electronic surveillance to foreign law enforcement agencies, in order to address effectively international criminal activity, including international terrorism.

This section accordingly augments the definition of "investigative or law enforcement officer" in 18 U.S.C. 2510(7), for purposes of 18 U.S.C. 2517(1)-(2), so as to include foreign law enforcement officers. This would permit disclosure of intercepted communications to, and use of intercepted communications by, such officers in furtherance and the performance of their duties as provided in 18 U.S.C. 2517(1)-(2).

Sec. 748. Extension of Statute of Limitations for Certain Terrorism Offenses

This section extends the statute of limitations to ten years for certain offenses that are likely to be committed by terrorists overseas. Because of the difficulty in gaining sufficient evidence to prosecute overseas offenses, the extension of the statute of limitations is necessary to better ensure that international terrorists will be brought to justice. Of course, if the offense included within any of the listed statutes is a capital offense, no statute of limitations exists (18 U.S.C. 3281).

VIII. SEXUAL VIOLENCE AND CHILD ABUSE

Sec. 801. Admissibility of Evidence of Similar Crimes in Sexual Assault and Child Molestation Cases

In cases where the defendant is accused of committing an offense of sexual assault or child molestation, courts in the United States have traditionally favored the broad admission at trial of evidence of the defendant's prior commission of similar crimes. The contemporary edition of Wigmore's treatise describes this tendency as follows (IA Wigmore's *Evidence* §62.2 (Tillers rev. 1983)):

"[T]here is a strong tendency in prosecutions for sex offenses to admit evidence of the accused's sexual proclivities. Do such decisions show that the general rule against the use of propensity evidence against an accused is not honored in sex offense prosecutions? We think so.

"[S]ome states and courts have forthrightly and expressly recogniz[ed] a "lustful disposition" or sexual proclivity exception to the general rule barring the use of character evidence against an accused. . . . [J]urisdictions that do not expressly recognize a lustful disposition exception may effectively recognize such an exception by expansively interpreting in prosecutions for sex offenses various well-established exceptions to the character evidence rule. The exception for common scheme or design is frequently used, but other exceptions are also used."

More succinctly, the Supreme Court of Wyoming observed in *Elliot* v. *State*, 600 P. 2d 1044, 1047–48 (1979):

"[I]n recent years a preponderance of the courts have sustained the admissibility of the testimony of third persons as to prior or subsequent similar crimes, wrongs or acts in cases involving sexual offenses. . . . [I]n

cases involving sexual assaults, such as incest, and statutory rape with family members as the victims, the courts in recent years have almost uniformly admitted such testimony."

The willingness of the courts to admit similar crimes evidence in prosecutions for serious sex crimes is of great importance to effective prosecution in this area, and hence to the public's security against dangerous sex offenders. In a rape prosecution, for example, disclosure of the fact that the defendant has previously committed other rapes is frequently critical to the jury's informed assessment of the credibility of a claim by the defense that the victim consented and that the defendant is being falsely accused.

The importance of admitting this type of evidence is still greater in child molestation cases. Such cases regularly present the need to rely on the testimony of child victim-witnesses whose credibility can readily be attacked in the absence of substantial corroboration. In such cases, the public interest in admitting all significant evidence that will illumine the credibility of the charge and any denial by the defense is truly compelling.

Notwithstanding the salutary tendency of the courts to admit evidence of other offenses by the defendant in such cases, the current state of the law in this area is not satisfactory. The approach of the courts has been characterized by considerable uncertainty and inconsistency. Not all courts have recognized the area of sex offense prosecutions as one requiring special standards or treatment, and those which have adopted admission rules on varying scope and rationale.

Moreover, even where the courts have traditionally favored admission of "similar crimes evidence" in sex offense prosecutions, the continuation of this approach has been jeopardized by recent developments. These developments include the widespread adoption by the states of codified rules of evidence modeled on the Federal Rules of Evidence, which make no special allowance for admitting similar crimes evidence in sex offense cases. They also include the limitation of evidence of other sexual activity by the *victim* under "rape victim shield laws," which has given rise to an argument that it would be unfair or inappropriate to be more permissive in admitting evidence of the commission of other sex crimes by the defendant.

Section 801 of title VIII would amend the Federal Rules of Evidence to ensure an appropriate scope of admission for evidence of similar crimes by defendants accused of serious sex crimes. The section adds three new Rules (proposed Rules 413, 414, and 415), which state general rules of admissibility for such evidence. The proposed new rules would apply directly in federal cases, and would have broader significance as a potential model for state reforms.

The remainder of this explanation of section 801 is set out in several parts. Part A briefly discusses the meaning and operation of the proposed new rules of evidence. Part B sets out the background of these rules in terms of the historical development and contemporary formulation of the rules of evidence, and explains why legislation addressing this issue is particularly critical at this point in time. Part C discusses the adequacy of the formulation of the proposed rules to meet concerns about the possibility of undue prejudice or other unfairness to defendants, and sets out affirmative considerations supporting the rules. Part D responds to the argument that "rape victim shield laws," which limit admission of evidence of other acts by the victim, entail a like restriction on admission of similar crimes evidence in relation to the defendant. Part E responds to other objections that might be raised to the proposal.

A. The Proposed Rules

Proposed Rule 413 relates to criminal prosecutions for sexual assault. Paragraph (a) provides that evidence of the defendant's commission of other sexual assaults is admissible in such cases. If such evidence were admitted under the Rule, it could be considered for its bearing on any matter to which it is relevant. For example, it could be considered as evidence that the defendant has the motivation or disposition to commit sexual assaults, and a lack of effective inhibitions against acting on such impulses, and as evidence bearing on the probability or improbability that the defendant was falsely implicated in the offense of which he is presently accused. These grounds of relevance are more fully discussed in part C infra.

Paragraph (b) of proposed Rule 413 generally requires pre-trial disclosure of evidence to be offered under the Rule. This is designed to provide the defendant with notice of the evidence that will be offered, and a fair opportunity to develop a response. The Rule sets a normal minimum period of 15 days notice, but the court could allow notice at a later time for good cause, such as later discovery of evidence admissible under the rule. In such a case, it would, of course, be within the court's authority to grant a continuance if the defense needed additional time for preparation.

Paragraph (c) makes clear that proposed Rule 413 is not meant to be the exclusive avenue for introducing evidence of other crimes by the defendant in sexual assault prosecutions, and that the admission and consideration of such evidence under other rules will not be limited or impaired. For example, evidence that could be offered under proposed Rule 413 will often be independently admissible for certain purposes under Rule 609 (impeachment) or Rule 404(b) (evidence of matters other than "character").

Paragraph (d) defines the term "offense of sexual assault." The definition would apply both in determining whether a currently charged federal offense is an offense of sexual assault for purposes of the Rule, and in determining whether an uncharged offense qualifies as an offense of sexual assault for purposes of admitting evidence of its commission under the Rule. The definition covers federal and state offenses involving the types of conduct prohibited by the chapter of the criminal code relating to sexual abuse (chapter 109A of title 18, U.S. Code) in light of subparagraph (1), and other federal and state offenses that satisfy the general criteria set out in subparagraphs (2)–(5).

Rule 414 concerns criminal prosecutions for child molestation. Its provisions are parallel to those of the sexual assault rule (Rule 413), and should be understood in the same sense, except that the relevant class of offenses is child molestations rather than sexual assaults. The definition of child molestation offenses set out in paragraph (d) of this Rule differs from the corresponding definition of sexual assault offenses in Rule 413 in that (1) it provides that the offense must be committed in relation to a child, defined as a person below the age of fourteen, (2) it includes the child exploitation offenses of chapter 110 of the criminal code within the relevant category, and (3) it does not condition coverage of offenses on a lack of consent by the child-victim.

Rule 415 applies the same rules to civil actions in which a claim for damages or other relief is predicated on the defendant's alleged commission of an offense of sexual assault or child molestation. Evidence of the defendant's commission of other offenses of the same type would be admissible, and could be considered for its bearing on any matter to which it is relevant.

B. Background in the Law of Evidence

The common law has traditionally limited the admission of evidence of a defendant's commission of offenses other than the particular crime for which he is on trial. This limitation, however, has never been absolute. The Supreme Court has summarized the general position of the common law on this issue as follows:

"Alongside the general principle that prior offenses are inadmissible, despite their relevance to guilt . . . the common law developed broad, vaguely defined exceptions—such as proof of intent, identify, malice, motive, and plan—whose application is left largely to the discretion of the trial judge. . . . In short, the common law, like our decision in [*Spencer* v. *Texas*], implicitly recognized that any unfairness resulting from admitting prior convictions was more often than not balanced by its probative value and permitted the prosecution to introduce such evidence without demanding any particularly strong justification. (*Marshall* v. *Lonberger*, 459 U.S. 422, 438–39 n.6 (1983))."

The Federal Rules of Evidence—which went into effect in 1975—follow the general pattern of traditional evidence rules, in that they reflect a general presumption against admitting evidence of uncharged offenses, but recognize various exceptions to this principle. One exception is set out in Rule 609. Rule 609 incorporates a restricted version of the traditional rule admitting, for purposes of impeachment, evidence of a witness's prior conviction for felonies or crimes involving dishonesty or false statement. The other major provision under which evidence of uncharged offenses may be admitted is Rule 404(b). That rule provides that such evidence is not admissible for the purpose of proving the "character" of the accused, but that it may be admitted as proof concerning any non-character issue:

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 404(b), however, makes no special allowance for admission of evidence of other "crimes, wrongs, or acts" in sex offense prosecutions. There was perhaps little reason for the framers of the Federal Rules of Evidence to focus on this issue, since sex offense prosecutions were not, at the time, a significant category of federal criminal jurisdiction.

This omission has been widely reproduced in codified state rules of evidence, whose formulation has been strongly influenced by the Federal Rules. The practical effect of this development is that the authority of the courts to admit evidence of uncharged offenses in prosecutions for sexual assaults and child molestations has been clouded, even in states that have traditionally favored a broad approach to admission in this area.

The actual responses of the courts to this development have varied. For example, in *State v. McKay*, 787 P.2d 479 (Or. 1990), in which the defendant was accused of molest-

ing his stepdaughter, the court admitted evidence of prior acts of molestation by the defendant against the girl. The court reached this result by stipulating that evidence of a predisposition to commit sex crimes against the victim of the charged offense was not evidence of "character" for purposes of the state's version of Rule 404(b), although it apparently would have regarded evidence of a general disposition to commit sex crimes as impermissible "character" evidence.

In *Elliot v. State*, 600 P. 2d 1044 (1979), the Supreme Court of Wyoming reached a broader result supporting admission, despite a state rule that was essentially the same as Federal Rule 404(b). This was also a prosecution for child molestation. Evidence was admitted that the defendant had attempted to molest the older sister of the victim of the charged offense on a number of previous occasions. The court reconciled this result with Rule 404(b) by indicating that proof of prior acts of molestation would generally be admissible as evidence of "motive"—one of the traditional "exception" categories that is explicitly mentioned in Rule 404(b). *Id.* at 1048–49.

In contrast, in *Getz v. State*, 538 A.2d 726 (1988), the Supreme Court of Delaware overturned the defendant's conviction for raping his 11 year old daughter because evidence that he had also molested her on other occasions was admitted. The court stated that "a lustful disposition or sexual propensity exception to [Rule] 404(b)'s general prohibitions . . . is almost universally recognized in cases involving proof of prior incestuous relations between the defendant and the complaining victim," but that "courts which have rejected this blanket exception have noted that in the absence of a materiality nexus such propensity evidence is difficult to reconcile with the restrictive language of [Rule] 404(b)." The court went on to hold that the disputed evidence in the case was impermissible evidence of character and could not be admitted under the state's Rule 404(b).

The foregoing decisions illustrate the increased jeopardy that the current formulation of the Federal Rules of Evidence has created for effective prosecution in sex offense cases. While the law in this area has never been a model of clarity and consistency, the widespread adoption of codified state rules based on the Federal Rules has aggravated its shortcomings. In jurisdictions that have such codified rules, the courts are no longer free to recognize straightforwardly the need for rules of admission tailored to the distinctive characteristics of sex offense cases or other distinctive categories of crimes. Important evidence of guilt may consequently be excluded in such cases.

Where the courts do admit such evidence, it may require a forced effort to work around the language and standard interpretation of codified rules that restrict admission, or may depend on unpredictable decisions by individual trial judges to allow admission under other "exception" categories. The establishment of clear, general rules of admission, as set out in proposed Rules 413–415, would resolve these problems under current law in federal proceedings, and would provide a model for comparable reforms in state rules of evidence.

C. Evidence of Motivation and Probability

Rules restricting the admission of evidence of uncharged misconduct by the defendant have traditionally been justified on two main grounds:

First, there is the concern over lack of fair notice to the defendant, if evidence of "bad acts" with which he has not formally been charged could freely be offered at trial. In the absence of limitations on such evidence, it has been argued, "a defendant could be confronted at trial with evidence implicating him in an unpredictable range of prior acts of misconduct extending over the whole course of his life, and would be denied a fair opportunity to prepare a defense to the accusations he would face at trial." *The Admission of Criminal Histories at Trial*, 22 U. Mich. J.L. Ref. 707, 728 (1989).

Second, there is the concern that evidence of other offenses or misconduct by the defendant is likely to be prejudicial or distracting, and that the potential for prejudice and distraction outweighs its probative value. Statements of this concern are sometimes accompanied by assertions that such evidence is of little probative value, merely being an indication of the defendant's "character." In light of the potential such evidence holds for prejudicing the defendant, it is argued, the general authority of the trial judge to exclude evidence that is unduly prejudicial or distracting (F.R.E. 403) is inadequate, and categorical rules of exclusion must be adopted for such evidence.

The first concern—relating to fair notice—can readily be answered in connection with proposed Rules 413–15. The Rules do not authorize an open-ended enquiry into all the "bad acts" the defendant may have committed in the course of his life, but only admit evidence of other serious criminal acts which are of the same type as the offense with which the defendant is formally charged. More importantly, the Rules specifically require prior disclosure to the defendant of the evidence that will be offered against him.

The second general concern about evidence of uncharged acts—a risk of prejudice or distraction that generally outweighs its probative value—is also adequately addressed by the limitations on the admission of evidence under the proposed rules. The rules do not admit evidence that merely indicates that the defendant is generally of "bad character," or even that he has a general disposition to engage in crime. Rather, to be admissible, the evidence must relate to other crimes by the defendant that are of the same type—sexual assault or child molestation—as the crime with which he is formally charged.

In general, the probative value of such evidence is strong, and is not outweighed by any overriding risk of prejudice. The relevance of such evidence will normally be apparent on at least two grounds—as evidence that the defendant has the motivation or disposition to commit such offenses, and as evidence of the improbability that the defendant has been falsely or mistakenly accused of the crime.

Evidence of Motivation. One of the traditional "exception" categories that hass been explicitly carried forward in F.R.E. 404(b) is admission of evidence of "other crimes, wrongs, or acts" to establish "motive." For example, in a prosecution for embezzlement, evidence may be admitted of other acts by the defendant which indicate that he was in financial straits, to show that he would have had a motive or committing a crime that offered monetary gain. Or in a prosecution for a hate crime—such as a lynching or assault with apparent racial motivation—evidence may be admitted of other acts by the defendant that manifest a general animosity towards the victim's racial group for the purpose of establishing motive.

The admissibility of evidence of similar crimes under the proposed new rules is analogous to the current "motive" exception, and is justifiable on similar grounds. The proposed sexual assault rule (Rule 413), as noted above, does not indiscriminately admit evidence of other bad things the defendant may have done, but only evidence of his commission of other criminal sexual assaults. In other words, the evidence must be of such a character as to indicate that the defendant has the unusual combination of aggressive and sexual impulses that motivates the commission of such crimes, and a lack of effective inhibitions against acting on such impulses.

Where there is evidence that the defendant has such impulses—and has acted on them in the past—a charge of sexual assault has far greater plausibility than if there were no evidence of such a disposition on the part of the defendant. *See generally The Admission of Criminal Histories at Trial*, 22 U. Mich. J.L. Ref. 707, 725–26 (1989). This seems to be the main point underlying the judicial decisions that have straightforwardly admitted evidence of similar crimes in sex offense cases as evidence of the defendant's "lustful disposition."

The case for admission on these grounds is equally strong, if not stronger, in child molestation cases. Evidence of other acts of molestation indicates that the defendant has a type of desire or impulse—a sexual or sadosexual interest in children—that simply does not exist in ordinary people. In such cases, the evidence is generally relevant as proof of "motive" in common sense terms, and admission could normally be sustained even under the current Rules on a sufficiently broad reading of the "motive" exception category. *See Elliott v. State*, 600 P.2d 1044, 1048–49 (Wyo. 1979).

Evidence of Improbability. Existing exceptions to the general presumption against admitting evidence of uncharged offenses are sometimes justified on grounds of probability (in Wigmore's terminology, the "doctrine of chances"). For example, one of the "exception" categories mentioned in F.R.E. 404(b) is for proof of "intent." Under this exception, evidence of similar crimes may be admitted to rebut a defense that the defendant engaged in allegedly criminal conduct accidentally, or otherwise lacked the state of mind required for its commission. The rationale commonly given for this exception is the probative value such evidence has on account of the inherent improbability that a person will innocently or inadvertently engage in similar, potentially criminal conduct on a number of different occasions. *See* Imwinkelried, *Uncharged Misconduct Evidence* § 5.05 (1984).

Probabilistic reasoning of this type is not limited to proof of the mental element of the offense, but may also be used to support the admission of evidence establishing the defendant's commission of the charged criminal conduct:

"[For example, suppose] that the defendant is charged with arson. The defendant claims that the fire was accidental. The cases routinely permit the prosecutor to show other acts of arson by the defendant and even nonarson fires at premises owned by the defendant. In these cases, the courts invoke the doctrine of chances. The courts reason that as the number of incidents increases, the objective probability of accident decreases. Simply stated, it is highly unlikely that a single person would be victimized by so many similar accidental fires in a short period of time. The coincidence defies common sense and is too peculiar. (Imwinkelried, *Uncharged Misconduct Evidence* § 4.01 (1984))."

Turning to the case of sex offense prosecutions, similar considerations of probability provide support for a general rule of admission for similar crimes evidence. It is inherently improbable that a person whose prior acts show that he is in fact a rapist or child molester would have the bad luck to be later hit with a false accusation of committing the same type of crime, or that a person would fortuitously be subject to multiple false accusations by a number of different victims. These points may be seen more clearly by considering the major elements of a sex offense prosecution.

In general, to obtain a conviction for a sexual assault, the government must prove that (1) the alleged sexual conduct actually took place, (2) the victim did not consent, (3) the defendant was the person who engaged in the conduct, and (4) the defendant acted with the culpable state of mind required for the commission of the offense. The elements in a child molestation case are similar, except that proof of non-consent by the victim is normally not required.

With respect to the third and fourth elements—the defendant's identity as the perpetrator and satisfaction of the mental element—similar crimes evidence will often be admissible even under a codified rule modeled on F.R.E. 404(b). Proof of "identity", and proof of "intent" or "knowledge," are explicitly mentioned as examples of permissible "non-character" uses of such evidence in the Rule.

In comparison, admission of such evidence on the first and second issues—the occurrence of the alleged act and the victim's lack of consent—is more problematic under a codified rule of this type. However, on these issues as well, similar crimes evidence is likely to have a high degree of probative value on grounds of probability.

For example, consider a case in which the defense attacks the victim's assertion that she did not consent, or represents that the whole incident was made up by the victim. Suppose further that there is practically conclusive evidence that the defendant has in fact committed one or more sexual assaults on other occasions, such as a prior conviction of the defendant on a charge of rape. In the presence of such evidence, the defense's claim of consent, or claim that the whole incident did not occur, would usually amount to a contention that the victim fabricated a false charge of rape against a person who just happened to be a rapist. The improbability of such a coincidence gives similar crimes evidence a high degree of probative value, and supports its admission, in such a case.

As a second example, consider a case like that described above, but with similar crimes evidence of a less conclusive character. For example, suppose the evidence is the testimony of another woman that the defendant raped her on a different occasion, though the defendant has not been prosecuted for that offense. In such a case, the defendant's alleged commission of rape on the earlier occasion, as well as his guilt of the presently charged offense, would be open to question.

Nevertheless, the "doctrine of chances" legitimately applies to such a case as well. If the defense concedes that the earlier rape occurred, then the case is essentially the same as the preceding one. If the defense disputes both the charged offense and the uncharged offense, this amounts to a claim that not just one but two women have made false charges of rape against the defendant. Here as well, the improbability of multiple false charges gives similar crimes evidence of high degree of probative value.

The force of the argument from improbability may be reduced if there is reason to believe that the formal charge and the accusation of an uncharged offense were not generated independently of each other. For example, where the identity of the offender is an issue, it may appear that a witness' identification of the defendant as the man who raped her could have been influenced by knowledge that the victim of the charged offense had previously identified the same man as her assailant.

In such a case, however, the defense would be free to bring out the possible connection of the charges, and the jury would consider that factor in assessing the significance of the evidence. Similar crimes evidence under the proposed rules is no different in this respect from other forms of regularly admissible evidence, whose normal probative force may also be reduced by special factors in some cases. In relation to evidence admissible under the proposed rules, as with other forms of evidence, the general standards of the Rules of Evidence and the processes of adversarial presentation and testing of evidence can properly be relied on to provide a fair picture of the relevant facts as the basis for the jury's decision.

D. The Import of Rape Victim Shield Laws

Within the past twenty years, virtually all American jurisdictions have adopted "rape victim shield laws," which limit enquiry in rape trials into the past sexual history of the victim. The shield laws have overturned earlier evidentiary rules and doctrines which tended to be highly permissive in allowing exploration of the victim's prior sexual activity in rape cases.

The pertinent provision in federal law is F.R.E. 412, which generally bars the admission in federal sexual abuse prosecutions of evidence of the victim's past sexual behavior. The Rule recognizes exceptions to this general presumption of non-admissibility for cases where admission of such evidence is constitutionally required or other specified circumstances give it an unusually high degree of relevance.

The argument has been made that the elimination of broad rules of admission for other acts of the victim in rape cases makes it improper to continue or adopt broad rules of admission for uncharged acts of the accused. If the victim is not to be taxed with evidence of unrelated conduct on her part, the argument goes, why should the defendant be taxed with evidence of other things he has done, which also have no direct relationship to the charged offense?

This argument, however, is not well-founded. The rules of evidence do not generally aim at a superficial neutrality between rules of admission affecting the victim and the defendant. Rather, the formulation of such rules must depend on a rational consideration of the relevant policies. The sound policies that underlie the rape victim shield laws provide no support for comparable restrictions in relation to the conduct of the defendant. The differences between the two contexts include the following:

First, there is a basic difference in the probative value of the evidence that is subject to exclusion under such rules. In the ordinary case, enquiry by the defense into the past sexual behavior of the victim in a rape case will show at most that she has engaged in some sexual activity prior to or outside of marriage—a circumstance that does not distinguish her from most of the rest of the population, and that normally has little probative value on the question whether she consented to the sexual acts involved in the charged offense. In contrast, evidence showing that the defendant has committed rapes on other occasions places him in a small class of depraved criminals, and is likely to be highly probative in relation to the pending charge. The difference in typical probative alone is sufficient to refute facile equations between evidence of other sexual behavior by the victim and evidence of other violent sex crimes by the defendant.

Second, the rape victim shield laws serve the important purpose of encouraging victims to report rapes and cooperate in prosecution by not requiring them to undergo public exposure of their personal sexual histories as a consequence of doing so. Rules limiting disclosure at trial of the defendant's commission of other rapes do not further any comparable public purpose, because the defendant's cooperation is not required to carry out the prosecution.

Third, the victim shield laws serve the important purpose of safeguarding the privacy of rape victims. The unrelated sexual activity of the victim is generally no one's business but her own, and should not be exposed in the absence of compelling justification. In contrast, violent sex crimes are not private acts, and the defendant can claim no legitimate interest in suppressing evidence that he has engaged in such acts when it is relevant to the determination of a later criminal charge.

E. Other Issues

This final part of this explanation of section 801 addresses two further objections to the proposed rules—the objection that the prosecutor should be barred from introducing evidence of uncharged offenses in order to require him to formally charge all the offenses he wishes to prove at trial, and the objection that fairness to the defendant or other policies require that some time limit be imposed on the uncharged offenses that could be admitted under the proposed rules.

The decision whether to charge an offense. With respect to the first objection, it should be noted that the prosecutor has practical incentives to charge fully, regardless of any compulsion arising from the rules restricting evidence of uncharged misconduct. Charging a larger number of counts tends to reduce the risk that the defendant will be entirely acquitted if the jury is not persuaded concerning a particular charge or charges. Moreover, charging more counts creates the possibility of conviction on a larger number of counts, and conviction on a larger number of counts tends to result in a higher penalty. Under the federal sentencing guidelines, for example, uncharged offenses may be given some weight in sentencing, but the largest determinants of the sentence are normally the offenses for which the defendant is convicted and his record of prior convictions.

Moreover, even if it were thought that additional incentives or requirements were needed to ensure fuller charging of available offenses, a general presumption against admitting evidence of uncharged offenses would be an unsound means of promoting this objective. In many cases it is impossible, or undesirable for entirely legitimate reasons, to charge certain offenses, but admitting evidence of such offenses is valid and important for their bearing on a charged offense.

For example, the uncharged offenses may have taken place in a different jurisdiction. This would occur in a state prosecution of a rapist or child molester whose earlier known crimes were committed in a different state.

It would also occur in a federal prosecution of a rapist or molester whose earlier offenses were committed within the jurisdiction of a state or states, but outside of federal jurisdiction. In such a case, it is legally impossible for the prosecutor to charge the earlier offenses; if they are to be disclosed in the prosecution, it must be through uncharged misconduct evidence.

A second example is situations in which there is insufficient evidence or other practical difficulties in prosecuting all of the defendant's prior offenses as separate counts, but the evidence regarding the earlier offenses is legitimately relevant to proof of the charged offense.

A common fact-pattern of this type involves fathers or stepfathers who are accused of molesting their daughters. The formally charged offenses in such a case may be limited to a particular act of molestation or a limited number of acts that happened to come to the attention of an adult witness (such as the defendant's wife). However, the victim will often testify in such a case that the molestation had been going on for a long time. A sister or sisters of the victim of the charged offense may also testify that the father had molested them as well over an extended period of time.

Charging all the prior offenses in such a case may be neither feasible nor desirable. The acts of molestation may number in the hundreds; the victim may be unable to recall most of them with any specificity; and the evidence supporting them individually would only be the uncorroborated testimony of a child victim-witness. Nevertheless, evidence that the charged offense was part of a broader pattern of molestation may be important to put the charge in perspective, and most courts have admitted such testimony by the victim. *See, e.g., State v. Graham*, 641 S.W. 2d 102, 104–05 (Mo. 1982). As *Getz v. State*, 538 A.2d 726 (Del 1988), illustrates, however, a court may regard such admission as problematic or simply prohibited under the restrictive standards of Rule 404(b).

Time limitation. Proposed Rules 413–15 do not place any particular time limit on the unchanged offenses that may be offered in evidence. The view underlying this formulation is that a lapse of time from the uncharged offense may properly be considered by the jury for any bearing it may have on the evidence's probative value, but that there is no justification for categorically excluding offenses that occurred before some arbitrarily specified temporal limit.

There is no magic line in time beyond which similar crimes evidence generally ceases to be relevant to the determination of a pending charge. This point is reflected in the current formulation of Rule 404(b), which does not specify any particular limit for admitting "non-character" evidence under the various categories it enumerates.

While there does not appear to be any precedent supporting a definite time limit on similar crimes evidence, some judicial decisions have given weight to the question of temporal proximity in a more flexible manner in deciding on the admission of such evidence in sex offense prosecutions. However, the rationales for this approach in such cases do not necessarily apply in connection with the proposed new rules. The admission of such evidence in past decisions has usually depended on ad hoc applications of other "exception" categories, such as proof of "a common scheme or plan," which comes with their own built-in limitations. If admission is thought to depend on a showing that the charged offense and uncharged offenses were part of a single on-going plan to engage in a series of sexual assaults, then too large a temporal spread among the offenses may weigh against such a finding. The theories of relevance underlying the proposed rules, however, do not depend on such a determination.

Concerns over fair notice to the defendant might also be thought to support a restrictive approach to admitting evidence of older offenses, on the view that there is a greater risk of unfair surprise if the defendant is initially confronted at trial with evidence of events that are far removed in time from the charged offense. Under the proposed rules, however, this concern is adequately met by the requirement of prior disclosure to the defendant of the evidence that will be offered.

Under the current rule admitting prior convictions for purposes of impeachment, as formulated in F.R.E. 609, prior convictions are presumptively inadmissible if they fall beyond a ten-year time period. However, the traditional version of the impeachment rule automatically admitted evidence of prior felony and *crimen falsi* convictions without limitation of time, on the view that temporal proximity (or the lack of it) should go to probative value rather than admissibility. The validity of the codified federal rule's contrary approach is open to question. *See generally The Admission of Criminal Histories at Trial*, 22 U. Mich. J.L. Ref. 707, 769 (1989).

Moreover, the impeachment rule has sometimes been criticized on the ground that it theoretically admits prior convictions only for the limited purpose of impeachment, but that the jury may realistically consider this information as affirmative evidence of guilt once it is admitted. The suspicion that evidence admitted pursuant to the rule may be misused for purposes that are not legally authorized may partially explain the view that additional restrictions on the range of admissible convictions should be imposed, including the presumptive time limit that now appears in Rule 609.

No similar considerations support a time limit on admission under proposed Rules 413–15. The basic scope of the proposed rules is narrower than the impeachment rule in that their application is confined to sexual assault and child molestation cases, and only evidence of crimes of the same type as the charged offense may be shown. Within this clearly defined range, the normal probative value of similar crimes evidence is sufficiently great to support a general rule of admission, and consideration of such evidence for its bearing on any matter to which it is relevant. In contrast to the impeachment rule, there is no risk that evidence admitted under the proposed new rules will be considered for a prohibited purpose, since the rules do not limit the purposes for which such evidence may be considered.

Sec. 802. Drug Distribution To Pregnant Women

21 U.S.C. 845 prescribes enhanced penalties for the distribution of controlled substances to persons below the age of twenty-one. Section 802 amends 21 U.S.C. 845 to make the same enhanced penalties apply to the distribution of controlled substances to pregnant women.

Conduct covered by this amendment frequently involves exploitation by the drug dealer of the pregnant mother's drug dependency or addiction to facilitate conduct on her part that carries a grave risk to her child of pre-natal injury and permanent impairment following birth. Such conduct by a trafficker in controlled substances is among the most serious forms of drug-related child abuse and plainly merits the enhanced penalties provided by 21 U.S.C. 845.

Sec. 803. Definition of Sexual Act for Victims Below 16

Section 803 amends the definitional section for federal sexual abuse offenses to provide greater protection for victims below the age of 16. Recently, the maximum penalty for engaging in a sexual act with a minor between the ages of 12 and 16 (by a person at least 4 years older than the victim) was raised from fives to fifteen years' imprisonment (§322 of the Crime Control Act of 1990). Both the original Senate-passed and House-passed versions of this legislation—§2425 of S. 1970 and §2919 of H.R. 5269—also contained amendments addressing deficiencies in the definition of the term "sexual act" in relation to victims below the age of 16. However, the enacted bill did not contain these amendments, presumably because of other differences in the sections in which they appeared.

Section 803 is the same as the corresponding amendments to the definition of "sexual act" in S. 1970 and H.R. 5269. It would extend the definition of "sexual act" to include intentional touching, not through the clothing, of the genitals of a person who is less than 16 years of age, provided the intent element common to the other touching offenses is present. This form of molestation can be as detrimental to a young teenager or child as the conduct currently covered by the term sexual act.

The current definitions of sexual act and sexual contact also involve a gender-based imbalance that effectively tends to give more lenient treatment to cases in which the victim is a boy. Under the current definitions, sexual touching that involves even a slight degree of penetration of a genital or anal opening constitutes a sexual act, rather than just a sexual contact, and the former is punished more severely than the latter under the existing statutory scheme. Since penetration is more likely with female than male victims, such conduct would more likely constitute sexual acts when committed with females than with males.

The amendment corrects this gender-based imbalance by treating all direct genital touching of children under the age of 16, with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person as sexual acts, regardless of whether penetration has occurred. Moreover, it eliminates the difficulties of proving penetration for many sexual abuse offenses against children—both boys and girls—in which there are typically no adult witnesses.

Sec. 804. Increased penalties for Recidivist Sex Offenders

Section 804 amends the penalties applicable under the sexual abuse chapter (chapter 109A) of title 18 of the United States Code by proividing that second or subsequent offenses are punishable by a term of imprisonment of up to twice that otherwise authorized. The prior conviction may be either a violation of the chapter or a violation of state law involving a type of conduct proscribed by chapter 109A. This amendment, which was passed by the Senate in S. 1970 (§2425), is designed to correct the inadequacy of current penalties with respect to recidivist sex offenders.

Sec. 805. Restitution for Victims of Sex Offenses

Section 3663(b)(2) of title 18 currently authorizes restitution covering medical and therapeutic costs and lost income in cases involving "bodily injury" to a victim. However, the sex crimes defined in chapters 109A and 110 of title 18 do not necessarily involve

physical damage to the body of the victim. For example, there may not be such physical damage where rape against an adult victim is committed through the threat of force, but without the actual use of force, or where a child molestation or exploitation offense is committed without physically injurious violence.

This section amends 18 U.S.C. 3663(b)(2) to make it clear that restitution is authorized in all federal sex offense cases, whether or not the offense involved "bodily injury" on a narrow interpretation of that phrase.

Sec. 806. HIV Testing and Penalty Enhancement in Sexual Abuse Cases

The trauma of victims of sex crimes may be greatly magnified by the fear of contracting AIDS as a result of the attack. Section 1804 of the Crime Control Act of 1990 created a funding incentive for the states to require HIV testing of sex offenders and disclosure of the test results to the victim. There is, however, no comparable requirement or authorization for federal sex offense cases.

The provisions proposed in this section remedy this omission by requiring HIV testing in federal cases involving a risk of HIV transmission. They also include related provisions requiring enhanced penalties for federal sex offenders who risk HIV infection of their victims.

The section would add a new section (proposed §2247) to the chapter of Title 18 of the United States Code that defines the federal crimes of sexual abuse (chapter 109A). Subsection (a) of proposed §2247 would require HIV testing of a person charged with an offense under chapter 109A, at the time of the pre-trial release determination for the person, unless the judicial officer determines that the person's conduct created no risk of transmission of the virus to the victim. The test would be conducted within 24 hours or as soon thereafter as feasible, and in any event before the person is released. Two follow-up tests would also be required (six and twelve months following the initial test) for persons testing negative. Under subsection (d), the results of the HIV test would be disclosed to the person tested, to the attorney for the government, and—most important—to the victim or the victim's parent or guardian.

In some instances testing may not be ordered pursuant to proposed 18 U.S.C. 2247(a) because the information available at the time of the pre-trial release determination indicated that the person's conduct created no risk of HIV transmission, but in light of information developed at a later time it may subsequently appear to the court that the person's conduct may have risked transmission of the virus to the victim. Subsection (b) of proposed 18 U.S.C. 2247 accordingly authorizes the court to order testing at a later time if testing did not occur at the time of the pre-trial release determination.

Subsection (c) of proposed 18 U.S.C. 2247 provides that a requirement of follow-up HIV testing is cancelled if the person tests positive—in which case further testing would be superfluous—or if the person is acquitted or all charges under chapter 109A are dismissed.

Subsection (e) of proposed 18 U.S.C. 2247 directs the Sentencing Commission to provide enhanced penalties for offenders who know or have reason to know that they are HIV-positive and who engage or attempt to engage in criminal conduct that creates a risk of transmission of the virus to the victim. This requirement reflects the higher degree of moral reprehensibility and depravity involved in the commission of a crime when it risks transmission of a lethal illness to the victim, and the exceptional dangerousness of sex offenders who create such a risk to the victims of their crimes. In such cases, increased penalties are warranted for incapacitative, deterrent, and retributive purposes.

Sec. 807. Payment of Cost of HIV Testing for Victim

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990, enacted as part of the Crime Control Act of 1990, currently provides that a federal government agency investigating a sexual assault shall pay the costs of a physical examination of the victim, if the examination is necessary or useful for investigative purposes. This section extends this provision to require payment for up to two HIV tests for the victim in the twelve months following the sexual assault.

IX. DRUG TESTING

Sec. 901

This section would create a nationwide program of drug testing for federal offenders on post-conviction release.

A testing program of this sort is plainly warranted for offenders who are to be released into the community in light of the likelihood that such persons will revert to criminality if they become involved with drugs, and the need for a meaningful means of detecting released offenders who possess and use drugs in light of provisions of current law that mandate revocation of release for such offenders. A drug testing requirement for federal offenders on post-conviction release was passed by the Senate as title XXV of S. 1970 in the 101st Congress. A detailed explanation of the policy considerations supporting the proposal of this section appears in Statement of Assistant Attorney General Edward S.G. Dennis, Jr., concerning the Firearms and Drug-Testing Provisions in H.R. 2709 before the House Judiciary Subcommittee on Crime (March 6, 1990).

Subsection (a) of section 901 adds a new section to the criminal code (proposed 18 U.S.C. 3608) requiring a drug-testing program for federal offenders on post-conviction release. Since the capacity to implement this program depends on the availability of appropriate personnel and/or contractors necessary to ensure quality control, this section allows a degree of flexibility and grants the Administrative Office of the United States Courts the latitude necessary to phase-in the program in stages as soon as practicable and feasible.

Subsection (b) amends existing statutes to provide that defendants placed on parole, probation or post-imprisonment supervised release will be subject to a mandatory condition that they refrain from illegal use of drugs and submit to drug tests. The class of defendants subject to this mandatory condition would include felons and misdemeanant firearms, drug, and violent offenders. The testing requirements could be suspended or ameliorated upon request of the Director of the Administrative Office or his designee.

Under the amendments of subsection (b), release could not be revoked for failure of a drug test unless the test was confirmed using gas chromatography/mass spectrometry techniques or other tests determined to be of equivalent reliability. However, in light of the high risk that a released offender who has been using drugs will become a fugitive if allowed to go after failing a preliminary test, detention of such a person would be allowed pending the results of a confirmation test.

Subsection (c) contains amendments which make revocation of release mandatory if an offender unlawfully uses drugs or refuses to cooperate in required drug testing. Current law mandates revocation of release if an offender possesses illegal drugs. *See* 18 U.S.C. 3565(a), 3583(g), 4214(f). Since use entails possession, mandatory revocation of release for unlawful use of drugs is already implicit in existing statutory requirements. The further requirement of revocation of release for non-cooperation in drug testing ensures that an offender will not be able to gain any advantage by refusing to cooperate.

Sec. 902

This section generally conditions eligibility for federal justice assistance funding on a state's adoption of a drug-testing program for targeted classes of persons subject to charges, confinement, or supervision in the state's criminal justice system.

X. EQUAL JUSTICE ACT

This title, the "Equal Justice Act," provides effective safeguards against racial discrimination and racial bias in the administration of capital punishment and other penalties. It includes provisons that:

Require administration of the death penalty and other penalties without regard to the race of the defendant or victim, and prohibit racial quotas and other statistical tests for imposing the death penalty or other penalties (section 1002);

Guard against racial prejudice or bias through provisions for enquiry on voir dire concerning potential racial bias by jurors, change of venue to avoid racial bias, and prohibition of appeals to racial bias in statements before the jury (section 1003);

Require in federal cases jury instructions and certifications guarding against consideration of race in capital sentencing decisions, and make the capital sentencing option consistently available for racially motivated murders in violation of the federal civil rights law (section 1004); and

Make provision of adequate resources to expeditiously carry out the death penalty in all appropriate cases an objective of federal justice assistance funding (section 1005).

The proposed Equal Justice Act provides a valid alternative to the so-called "Racial Justice Act" proposals that were advanced in the 101st Congress. While the "Racial Justice Act" legislation has been introduced in various formulations, all versions would have had the practical effect of abolishing the death penalty in the United States, or of requiring racially discriminatory charging and sentencing practices in capital cases to achieve the numercial proportions deemed proper by the "Racial Justice Act." The "Racial Justice Act" proposal was soundly defeated in the Senate in both the 100th and 101st Congresses, but it was passed by the House of Representatives on a closely divided vote as part of H.R. 5269 in the 101st Congress.

The main argument offered by proponents of the "Racial Justice Act" proposal is that empirical studies show that the death penalty is less frequently imposed in murder cases involving black victims. The somewhat bizarre remedy offered by the "Racial Justice Act" proposal for this statistical disparity is invalidation of capital sentences. In effect, this would redress alleged statistical "discrimination" against a class of murder victims through increased leniency towards their killers, as well as all other capital murderers.

Proponents of the "Racial Justice Act" have also sometimes suggested that there is widespread racial discrimination against black defendants in the administration of capital punishment. This claim is advanced

with less force, however, since there is little reliable empirical study that even arguably suggests that black defendants are discriminated against in this context, and a number of studies indicate that white murder defendants are more likely to be sentenced to death than black murder defendants.

Both in relation to victims and defendants, the factual premises of the "Racial Justice Act" proposal are not well-founded. Rather, the weight of reliable empirical study indicates that racially neutral factors overwhelmingly account for apparent disparities relating to the race of the victim or the offender. Moreover, numerous safeguards against racial discrimination exist under current law, and these safeguards provide effective protection against the influence of racial considerations or other invidious factors in capital charging and sentencing decisions. These points have been fully set forth and explained in testimony by the Department of Justice. *See* Statement of Assistant Attorney General Edward S.G. Dennis, Jr., Concerning the Death Penalty before the House Judiciary Subcommittee on Civil and Constitutional Rights (May 3, 1990).

Nevertheless, there is a legitimate case for legislation in this area, as proposed in the Equal Justice Act. Proponents of the "Racial Justice Act," and other opponents of the death penalty, have mounted a vigorous campaign in recent years which is designed to create the impression that pervasive, unjustified racial disparities exist in capital punishment, and that existing legal standards and remedies are inadequate to deal with the alleged problem. Scurrilous charges of this type create a serious risk of undermining public confidence in the fairness and integrity of the criminal justice system. Moreover, the vote approving the "Racial Justice Act" proposal in the House of Representatives suggests that this disinformation campaign may also have misled some Members of Congress. Legislation that articulates clear rules and policies against racial discrimination in this area, and that sets out available remedies and safeguards against such abuse, is desirable to correct these misapprehensions.

Another reason for legislation is the threat to the objective of equal justice that has been created by the "Racial Justice Act" proposal itself. By fostering race-conscious charging and sentencing practices, the "Racial Justice Act" proposal jeopardizes over a century of progress in eliminating race as a relevant consideration in criminal justice decisions. If that proposal, with its death-by-the-numbers system of quota justice for capital cases, were adopted either by the federal government or through enactments in particular states, other proposals would predictably follow to impose similar requirements of racial proportionality for penalties other than the death penalty.

The threat posed by the "Racial Justice Act" concept to the cause of equal rights, and to the overall operation of the nation's criminal justice systems, calls for a strong declaration of national policy that race is not an admissible consideration in decisions to seek or impose criminal penalties. The provisions of the Equal Justice Act embody and declare this policy.

Moreover, while there is no reason to believe that the existing remedies and safeguards against racial discrimination are generally inadequate, legitimate reforms can be identified that will further enhance the protection against racial bias.

The current standards have largely been developed by the courts through decisions that guard against invidious or biased conduct by jurors, judges, and prosecutors that may operate to the detriment of the defendant. In comparison, the rules constraining efforts by the defense to gain an advantage by exploiting racial bias may be less completely developed or less clearly articulated. The Equal Justice Act remedies this situation by stating evenhanded rules that guard against racial bias regardless of whether it would operate to the advantage of the defense or of the prosecution.

Sec. 1002. Prohibition of Racially Discriminatory Policies Concerning Capital Punishment or Other Penalties

Subsection (a) of section 1002 mandates neutrality with regard to race in policies and practices that affect capital punishment or other penalties. This codifies the constitutional principle of individualized justice, which bars treating race as a relevant factor in charging and sentencing decisions. *See McCleskey* v. *Kemp*, 481 U.S. 279 (1987); *Wayte* v. *United States*, 470 U.S. 598, 608 (1985).

Subsection (a) also explicitly prohibits racial quotas and other statistical tests for imposing the death penalty or other penalties. This is a necessary corollary of the general requirement of non-discriminatory, individualized justice. It rejects the underlying premise of the so-called "Racial Justice Act" that penalties should presumptively be imposed so as to achieve specified racial proportions, and explicitly prohibits the racial statistical tests that are the central feature of all versions of the "Racial Justice Act" proposal.

Subsection (b) contains definitions which clarify the scope and meaning of subsection (a). Paragraphs (1) and (2) of subsection (b) make it clear that subsection (a)'s prohibition of race-conscious policies and practices applies to all American jurisdictions, and constrains the actions of all agencies and instrumentalities of federal, state, and local government. Paragraph (3) defines the concept of prohibited racial quotas and statistical tests to include all standards that require or authorize the imposition of penalites so as to achieve specified racial proportions, or that require or authorize the invalidation of penalties if specified racial proportions are not achieved.

Sec. 1003. General Safeguards Against Racial Prejudice of Bias in the Tribunal

Section 1003 sets out a number of rules and remedies that guard against racial prejudice or bias which may affect the imposition of capital punishment or other penalties.

Paragraph (1) addresses examination on voir dire of potential racial bias by jurors. In part, this provision codifies existing caselaw which requires such examination, at the request of the defense, if "under all of the circumstances presented there [is] a constitutionally significant likelihood that, absent questioning about racial prejudice, the jurors would not be [impartial]." *Turner v. Murray*, 476 U.S. 28, 33 (1986); *Ristaino v. Ross*, 424 U.S. 589, 596 (1976).

Paragraph (2) addresses the remedy of change of venue. In most cases, risks of prejudice by jurors can be adequately guarded against through such means as examination on voir dire, excusing biased jurors for cause, and instructions of the court to the jury not to be influenced by invidious considerations. In cases of extreme, pervasive bias in a locality, however, these normal mechanisms may be inadequate, and a change of venue may be necessary to produce a constitutionally sustainable judgment. *See Irvin v. Dowd*, 366 U.S. 717 (1961). Paragraph (2) accordingly requires a change of venue if a party shows that an impartial jury cannot be obtained in the absence of such a change because of racial prejudice or bias.

Paragraph (3) prohibits appeals to racial prejudice or bias before the jury. Prejudicial remarks by a prosecutor may make a resulting conviction or sentence constitutionally invalid, and this point applies with particular force where such remarks are in derogation of a specific constitutional right. *See Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). Appeals to racial prejudice violate the specific constitutional right of equal protection, and paragraph (3) explicitly condemns such statements. If prejudicial statements in violation of paragraph (3) were made in a proceeding, it would be the duty of the trial judge to take appropriate corrective action requested by the adverse party, such as instructions to the jury counteracting the statements, or, if necessary, declaring a mistrial.

Judicial decisions concerning the rules and remedies addressed in section 1003 have usually involved alleged prejudice or misconduct that would operate to the detriment of the defendant. However, the objective of equal justice may also be thwarted by racial bias in favor of the defendant or against the victim, or by defense misconduct that reduces the likelihood of a warranted conviction or penalty.

The formulation of section 1003 fully reflects this point, and applies evenhandedly to the defense and the prosecution. Hence, paragraph (1) requires examination of juror bias on motion of the prosecutor, as well as on motion of the defense. This provision could, for example, be invoked by the prosecutor if there were grounds for concern that a warranted death penalty might not be imposed because of bias against the racial group of the victim. Similarly, paragraph (2) allows the prosecutor as well as the defense attorney to move for a change of venue on grounds of racial bias, and paragraph (3) prohibits appeals to racial prejudice by both the defense attorney and prosecutor. These provisions are responsive to the allegations by proponents of the "Racial Justice Act" that the death penalty is not imposed with sufficient frequency in cases involving black victims because of racial prejudice or bias.

Sec. 1004. Federal Capital Cases

Section 1004 states a number of special rules and standards for federal capital cases.

Subsection (a) requires instructions to the jury that prejudice or bias relating to the race of the defendant or victim must not affect a capital sentencing determination, and certification by all the jurors when a capital sentence is imposed that they complied with this instruction. This provision is substantially the same as instruction and certification requirements, as they relate to race, which were included in death penalty legislation passed by the Senate and the House of Representatives in the 101st Congress (titles I and XIV of S. 1970 and title II of H.R. 5269), and which appear in title I of this bill.

Both the Senate-passed and House-passed death penalty legislation in the 101st Congress, like title I of this bill, complied with current Supreme Court decisions governing capital punishment by limiting consideration of the death penalty to cases in which one or more aggravating factors from a specified statutory list are found to exist. The two existing federal statutes that contain detailed death penalty procedures—21 U.S.C. 848 (e)-(r) (drug-related murders) and 49 U.S.C. App. 1473(c) (fatal aircraft hijackings)—similarly condition consideration of

the death penalty on the existence of specified statutory aggravating factors.

Subsection (b) of section 1004 provides that the fact that the killing of the victim was motivated by racial prejudice or bias is to be treated as an additional statutory aggravating factor whose existence permits consideration of the death penalty. This effectively extends the list of statutory aggravating factors in existing statutes to include racial motivation, and ensures that racial motivation will be counted as such a factor under any federal death penalty legislation that may be enacted in the future.

Subsection (c) authorizes the death penalty for violations of 18 U.S.C. 241, 242, and 245 that result in death. These are the principal criminal provisions of the federal civil rights laws. Each of these provisions currently authorizes imprisonment for any term of years or for life in cases in which death results. However, they do not authorize capital punishment in any case, although racially motivated killings that plainly may warrant consideration of the death penalty are often covered by these provisions. *See, e.g., United States* v. *Price*, 383 U.S. 787 (1966); *United States* v. *Guest*, 383 U.S. 745 (1966).

In conjunction with subsection (b), subsecton (c) will ensure that the capital sentencing option is consistently available for racially motivated murders in violation of the federal civil rights laws. In addition to the intrinsic importance of authorizing the death penalty for the most heinous civil rights offenses, these provisions provide an additional element in the Act's response to the purported concern of proponents of the "Racial Justice Act" that the death penalty is not imposed with sufficient frequency for crimes against black victims.

Sec. 1005. Funding Objective

Subsection 1005 makes it an objective of federal justice assistance funding to ensure that adequate resources and expertise are available to expeditiously carry out the death penalty in all appropriate cases. The proposed funding objective will help ensure that efforts to carry out the death penalty will not be impeded by resource constraints, thereby promoting the equal protection of all victims and potential victims from lethal criminal violence, regardless of race through the use of the death penalty.

The proposed funding objective particularly emphasizes the provision of support to state agencies that seek to uphold and secure the execution of death sentences through litigation in habeas corpus and other collateral or post-conviction proceedings. This is responsive to an imbalance in litigation resources that has resulted from one-sided federal support of defendants' efforts to overturn capital sentences at these stages of litigation.

As President Bush observed in his signing statement on November 29, 1990, on the Comprehensive Crime Control Act of 1990, "in Public Law 101-515, the Congress appropriated substantial funds for 'Death Penalty Resource Centers.' Because S. 3266 does not include the reform of the *habeas corpus* system that I proposed, these Federal funds will inevitably be used in part to foster repetitive attacks on State court judgements and to delay unjustly the implementation of State sentences." The National Association of Attorneys General (NAAG), in a resolution adopted at its meeting of December 4-7, 1990, also noted the problems occasioned by this one-sided approach to federal funding in habeas litigation. In many cases, a State attorney general on a limited budget faces a large law firm operating *pro bona* and a federally funded capital resource center in federal habeas litigation. The NAAG resolution urges the Federal Government to provide the governmental unit which represents the state in such litigation the same amount of federal funds provided to the capital resource center in that state." The amendment proposed in section 1005 will further this objective by allowing Bureau of Justice Assistance grants to be used for this purpose.

Sec. 1006. Extension of Protection of Civil Rights Statutes

In *United States* v. *Maravilla*, 907 F.2d 216 (1st Cir. 1990), the court overturned the convictions of two customs agents for killing an alien who was briefly present in the United States. The rationale was that such a person did not qualify as an "inhabitant" for purposes of 18 U.S.C. 242. This section amends 18 U.S.C. 241 and 242 to ensure protection of all persons within the United States by these important provisions of the federal civil rights laws, regardless of whether they are "inhabitants."

XI. VICTIMS' RIGHTS

Sec. 1101. Restitution Amendments

This section makes two amendments to the restitution statute, 18 U.S.C. 3663. First, it makes the offender liable for child care, transportation, and other costs to the victim that result from participation in the investigation or prosecution of the offense or attendance at proceedings in the case.

Second, it authorizes a judge to suspend the offender's eligibility for Federal benefits if the offender is delinquent in paying restitution. This provides an additional incentive for prompt payment of restitution obligations. This provision has a precedent in section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, which provides for denial of Federal benefits to persons convicted of certain drug offenses.

Sec. 1102. Victim's Right of Allocation in Sentencing

Defendants in criminal cases have traditionally been accorded an opportunity to address the court prior to imposition of the sentence. This practice is codified in Fed. R. Crim. P. 32(a)(1)(C), which directs the sentencing judge to "address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence."

Section 1102 would amend Rule 32 to extend to the victim as well the right to address the court concerning the sentence, in cases involving violent crimes and crimes of sexual abuse. This right would normally be exercised directly by the victim—defined as any individual against whom the offense was committed—but it could be exercised instead by a parent or guardian if the victim was a minor or incompetent, or by one or more family members or relatives designated by the court if the victim was deceased or incapacitated.

CLOCK STARTS ON CRIME BILL

Mr. DOLE. Mr. President, on January 12, President Bush asked Congress for the authority to do what had to be done to stop an international criminal from terrorizing a nation and a region.

The world is for the better because we granted that authority.

Monday, President Bush asked Congress to give our law enforcement officials the authority to do what has to be done to stop America's criminals from terrorizing our streets and neighborhoods.

And America will be for the better if we grant this authority, as well.

With the transmission of the Comprehensive Violent Crime Control Act of 1991, the clock has now been set into motion. The American people now wait to see if Congress can meet the President's challenge and approve this legislation within 100 days.

Unfortunately for law abiding Americans, Congress seems more concerned with coming up with 100 excuses on why we can't meet that deadline. Already, Members of the other body are quibbling over when the 100 day clock started to run. Did it start Monday, when the President transmitted the proposal? Does it start when the bill is actually introduced? "Are those calendar days, or legislative days?" asked a House Judiciary Committee staffer.

And while Congress fiddles, America burns. By the time 100 days roll around, Mr. President, another 6,000 Americans will be murdered. Another 37,000 women will be raped. And another 460,000 will be the victims of aggravated assaults.

The President's Comprehensive Violent Crime Control Act seeks to drastically reduce these numbers by following four basic principles.

The first principle is that a primary purpose of government is to protect citizens and their property. Americans deserve to live in a society in which they are safe and feel secure.

Second, those who commit violent criminal offenses must be held accountable for their actions.

Third, our criminal justice system should seek the swift and certain apprehension, prosecution, and incarceration of those who break the law.

And finally, if we are to win the war against criminals, then Federal, State, and local law enforcement officials must work together.

Through a number of important and much-needed proposals, the President's package meets these principles.

It reforms the habeas corpus process, which criminals have used to delay their punishment, while sticking taxpayers with the bill.

It reforms the exclusionary rule that has allowed obviously guilty criminals to go free, and that has turned our justice system into a crapshoot.

It creates a workable Federal death penalty—a penalty demanded by the overwhelming majority of Americans.

It creates mandatory 10 year prison terms for drug traffickers or violent felons who use a semiautomatic firearm.

It includes stiffer sentences for gang activities, for sex crimes, and for selling drugs to pregnant woman.

These are just some of the weapons contained in the President's crime fighting package, weapons needed if we are to win the battle against violent criminals and drug dealers, weapons

needed if we are to make our streets and our neighborhoods safe again.

As President Bush said, our soldiers won the gulf war in 100 hours. Surely, 100 days is more than enough time to take this much-needed step in the war against crime.

Mr. SEYMOUR. Mr. President, I am especially pleased to join my distinguished colleagues as an original cosponsor of the President's comprehensive violent crime control legislation.

Last week, President Bush laid down a challenge to the Congress. He told us and the Nation that if we could win the ground war in Iraq in 100 hours, then surely the Congress can pass legislation to combat violent crime in 100 days. That 100-day clock starts running today with the introduction of this bill.

While this legislation covers a wide range of measures to crack down on criminals and improve our judicial system, I want to focus on two areas that I believe should be highlighted. The first is the way in which the President's bill deals with the modern-day merchants of death—the drug lords who are poisoning our society. They are part and parcel of an international criminal enterprise that kills thousands of Americans each year, and drives many thousands more into a cycle of suffering, degradation, and dependency. And as despicable as their actions are, our outrage is only compounded when their victims are children or pregnant women.

The first section of the President's package deals directly with these drug lords in a clear and unambiguous way: If an individual is found guilty of selling or providing controlled substances that result in the death of another person, then the punishment is death. The time has come for the drug lords to understand that Americans will no longer tolerate their destructive business, and that the justice system in our country will mete out punishment which is commensurate with the devastation that they sell.

The second point that I want to focus on is the way that the President's package deals with the crimes of sexual violence and child abuse. The trauma that these acts of violence have is severe, and the scars are often long to heal.

The defects in the Federal rules of evidence only compound this problem. As it stands now, an accused offender in Federal sexual assault or child molestation cases is able to avoid having the facts of prior crimes being introduced as evidence. The President's package will modify the rules of evidence, so that if a defendant has committed these acts in the past, those acts can be considered as evidence in court. It will also prevent defense attorneys from eliciting testimony that is intended to only further embarrass or humiliate the victim.

The President's package goes a long way toward helping the victims of crime help themselves, while it sends a clear and unambiguous message that life will get tougher for those who perpetrate these acts.

That 100-day clock is now running. For the good of the country, let us get to work to get this bill approved.

Mr. NICKLES. Mr. President, I wish to compliment Senator THURMOND for his leadership on this bill and on many others. I think he has shown dedication, commitment, and conviction, which maybe is unequaled in this body, for his perseverance on this very important issue of combating crime.

There is no question that combating crime is one of the serious challenges that we have before our country. Our Nation's streets are dangerous. It is not safe in many places across the country. People are nervous. In many places people are scared, they are frightened. The streets are no longer safe.

It is incumbent upon us to do all we can to protect our citizens. That is one of the real functions of government, both State government and Federal Government. Our Federal Government has a role. It is important for us to enact this legislation that Senator THURMOND has introduced and of which I am happy to be a cosponsor.

When we look at crime we look at statistics, but crime is more than just statistics. It is actions. It is people violating other people. In many cases it is murder or homicide, where people are actually taking the lives of other people.

I rejoice in the success of our operation in the Persian Gulf and I compliment our leaders and the men and women who served so nobly in the Persian Gulf. My heart goes out to those families of the 200-plus American citizens who lost their lives in the Persian Gulf. But in comparison, there are more people who lost their lives in Washington, DC, through homicides from August 2d to the conclusion of the Persian Gulf war than lost their lives in the hostilities in the Persian Gulf war.

That is a sobering statistic. Actually four times as many people were murdered in New York and in Los Angeles. In New York City and Los Angeles, four times as many people were murdered as lost their lives in the Persian Gulf over that same period of time.

Last week, when we picked up the paper and read where two youngsters in Virginia Beach, one 6 and one 9, were both killed—they had their throats slashed—it makes our hearts go out to those families and makes us think we have to do more.

I was proud of the legislation that passed the Senate last year. I thought it was a good piece of work. Again, I compliment Senator THURMOND and Senator BIDEN and others who worked to fashion a good, bipartisan piece of legislation. But I was very disappointed when that bill came out of conference. Many of the very important provisions in that bill were dropped.

In that bill we had restoring the death penalty. We do not have the Federal death penalty right now for some of the most egregious of crimes, including crimes committed by people who murder drug enforcement officials. There is no Federal death penalty for them. Most States have it, but we do not have it as a Federal crime. We need to restore it. The legislation we passed last year in the Senate would have done that, but unfortunately it was dropped in conference. We need to pick that up again and I hope we will.

Senator THURMOND mentioned again the need for habeas corpus reform, and there is no question that we desperately need habeas corpus reform as many criminals abuse the system; they work the system; they manipulate the system. They are able to continue their appeals process, not only for a year or two, but in some cases for decades. So we desperately need reform. I compliment Senator THURMOND for the excellent work he has put together, along with the administration, for habeas corpus reform.

Also proposed is a significant change or modification in the exclusionary rule, one that would will allow for good faith exception to the exclusionary rule and would render the exclusionary rule inapplicable to seizures by Federal officers of firearms to be used as evidence against dangerous offenders. Mr. President, there is no reason why we would not allow that evidence in. I hate to think we have been allowing criminals to go free because some evidence that was obtained in good faith is not allowed to be used in trials.

Also, this legislation established minimum mandatory sentences for persons using certain firearms while committing crimes. Again, I think that is excellent legislation; legislation that needs to be enacted.

I hope we will go even further when it comes to victims' rights. Legislation that passed the Senate last year also had mandatory restitution for victims. I think it is vitally important to include that. Last year it passed unanimously through the Senate and I am proud to have Senator THURMOND as a cosponsor of legislation which I have introduced again this year to provide for mandatory restitution for victims. So the criminals have to pay. They may inflict large damages, they may not be able to pay it all off, but at least those victims would be entitled to receive some compensation for their injuries, and they would not be able to waive that due to bankruptcy or other matters. I think it vitally important we do this. We included it last year. I

think it is vitally important we have that as part of our package this year.

Again I compliment the Senator from South Carolina for his leadership. I hope and pray we will be successful in passing this legislation in the very near future.

Mr. SPECTER. Mr. President, I am pleased to join my distinguished colleague from South Carolina, Senator THURMOND, and others in being original cosponsors of the President's crime package. I congratulate the President for his initiative in this regard.

I was unable to be present at the White House on Monday when this initiative was announced because of some commitments in Pennsylvania. Through the advantages of C-SPAN, however, I saw the presentation later in the day. I commend Vice President QUAYLE, as well, who was at the President's side, and the Attorney General, Dick Thornburgh, who participated in this important legislation.

Mr. President, in cosponsoring this bill, I state at the outset that there are some aspects of it that I am not in agreement with, and I believe there will have to be some modifications. But the basic thrust of this legislation, I think, is a big step forward as a package and it is an important starting point for activity in the 102d Congress.

I endorse the President's call for action within 100 days, and I conferred briefly yesterday with the distinguished chairman of the Judiciary Committee, Senator BIDEN, who commented that the expectation is present that we can complete consideration of this bill within that time.

Mr. President, the provision of the death penalty, I submit is very important as a deterrent against violent crime. I served two terms as the district attorney of Philadelphia and during that time saw very substantial evidence that the death penalty is an effective deterrent. I saw many specific cases where individuals were deterred from carrying weapons on robberies and burglaries because of their fear of the death penalty. There is a substantial body of evidence that the death penalty is, in fact, a deterrent.

I respect those who disagree with capital punishment on grounds of conscience, but my judgment is that it is an effective tool for law enforcement. It is anomalous, Mr. President, that we do not have the death penalty in the Federal system, except for the 1988 Federal legislation on drug kingpins and for the Uniform Code of Military Justice, because in 1972, the Supreme Court of the United States declared the death penalty unconstitutional unless it met certain rigorous procedural standards. The Congress has never brought back the death penalty, although some 37 States have enacted the death penalty. I believe it is time we moved in this important area.

With respect to carrying out the death penalty, Mr. President, I believe that the criminal justice system falls down badly on the long delays, some as long as 17 years, and the average about 8 years, as these cases wind their way through the Federal procedure known as habeas corpus. It is my view, Mr. President, that it is necessary to tighten up that procedural timeframe in the interest of having a meaningful deterrent.

Where you have the death penalty on the books in 37 States, and where you have some cases taking as long as 17 years, and where you have 2,500 inmates on death row where the death penalty is not carried out, it is, simply stated, an absurdity. It is unfair to society's legitimate interest, and I suggest it is also unfair in a very material sense to 2,500 inmates who are on death row, not knowing what their fate will be.

Mr. President, I will seek in committee to make certain modifications to the President's bill because I think the time standards ought to be more rigorous. It is my suggestion, after having had considerable experience in State court proceedings, that there should be only one appeal in the State court which would comprehend all of the issues involved, including the competency of counsel, which can be determined posttrial but before the State supreme court adjudication. That would eliminate the multiple State court habeas corpus proceedings which sometimes take years.

Then the Federal court should have jurisdiction immediately after the first conclusion by the State supreme court in the relevant jurisdiction. I submit there should be a tight timetable when the Federal court habeas corpus petition must be filed, with a limitation of time on consideration of the habeas petition by the district court of 120 days; similarly, for consideration by the court of appeals and by the Supreme Court. This procedure was embodied in legislation, an amendment which this Senator introduced in the 101st Congress, which passed the Senate. So I think those significant changes ought to be made.

Mr. President, this crime package is only a part of an overall attack on the problem of crime. There are many other vital aspects; for example, realistic rehabilitation.

During my tenure as chairman of the District of Columbia Appropriations Subcommittee, certain programs were initiated on job training and education and certain basic skills. There are now underway these initiatives in the Department of Education and the Department of Prisons so that we can deal with realistic rehabilitation of prisoners.

It is no surprise when a functional illiterate leaves jail without a trade or skill that that individual returns to a life of crime. That is why I believe and have maintained for the better part of three decades that the criminal justice system has to deal with such realistic rehabilitation for juveniles, first offenders, second offenders, and it is necessary as a preliminary to exacting mandatory sentences, up to life, for career criminals.

This Senator authored the armed career criminal bill of 1984 which calls for a mandatory sentence of 15 years to life when a three-time felon is caught in possession of a firearm. I believe that a mandatory sentence along that line is sensible when you deal with career criminals, habitual offenders, because of their threat to society where we know that such offenders commit as many as 700 crimes a year and where this has been tested in the more than 40 States in the United State that have enacted laws on habitual offenders.

It would be my suggestion that we have to be careful on other mandatory sentences to make sure that they are not overly stringent. We have had experience now with statutes dealing with uniformity in sentencing, and the experience in the Federal courts suggests, Mr. President, that we need some reevaluation of that particular line.

There is one aspect of the pending bill on which I think important to note my disagreement or at least reservations: the expansion of the good faith exception to the exclusionary rule. I state that for this reason, Mr. President.

Mr. President, we currently have an exception on good faith from the Supreme Court decision in the Leon case. I believe that the crafting of the exclusionary rule by the courts has been the preferable course.

I was assistant district attorney in Philadelphia when Mapp versus Ohio came down in June 1961 and it revolutionized State criminal practice by imposing on the States the exclusion of evidence obtained as a result of an unreasonable search and seizure. In the intervening 30 years, Mr. President, I submit that law enforcement has learned to live with the exclusionary rule with the modifications adopted by the courts, including the good faith exception based on written search warrants. But I believe that it is preferable to rely upon the courts, as the courts craft these good faith exceptions, and as the courts craft what constitutes probable cause, which has a substantial amount of flexibility. Reliance on the courts is a preferable course to seeking a legislative alternative.

When this issue has been presented in the past, it has been excluded from consideration because quite a number of Senators on the Republican side of the aisle with experience in this field, including myself, those with considerable law enforcement experience, have expressed reservation on this issue. Mr.

President, as is the case on all these matters, I believe we ought to have hearings; we ought to consider all of these issues; we ought to approach them listening to the experience of people in all aspects of the law.

This is a good bill. I am pleased to cosponsor it. I urge its speedy consideration by our Judiciary Committee and the full Senate.

Mr. SIMPSON. Mr. President, I commend Senator STROM THURMOND for his unceasing labor in this area. I do not know anyone more appropriately tied to the issue of criminal law and these issues of crime and justice than the greatly respected former chairman of the Judiciary Committee, our most senior member of the Senate. He has done a magnificent job once again in sponsoring a piece of legislation that I believe we can all support.

I want to briefly express support and appreciation for the President's leadership in presenting Congress with a comprehensive crime proposal. We are really faced with a very unique situation. Nearly every part of the President's proposal either adopts or builds upon an element of the crime bill which the Senate passed so overwhelmingly last summer.

We had an excellent debate in this Chamber. There were a couple of contentious issues. I think we visited the issue of assault rifles three times. Those provisions were preserved in the bill by one vote. But it was a good bill. I was right here on this floor and watched Senator THURMOND and Senator BIDEN work in a very fine bipartisan effort. The Senate gave the Nation a very good bill.

As my colleagues know, the House of Representatives did not act as swiftly as we did on a crime bill, and that resulted in a very hastily convened conference committee. In fact, we were all a little startled as to how late it came. Then there were many sleepless nights of hard work in trying to craft a compromise bill, but it was a hopelessly disjointed conference committee activity.

I was honored to have been appointed to that committee, but I have to tell you the cards were stacked on that one. In my 12 years in the Senate, working on bills that had passed, obviously by both Houses, I have never been in a conference where the conferees in one body rejected everything that their own body had done. That is exactly what happened.

It looked like murderers' row of the old New York Yankees back in 1927 or 1929. Every single one of the House Democrats was opposed to the death penalty, to any habeas corpus reform, to any exclusionary rule reform. They took the conference in hand, and they rejected their own body's will, if you will.

I have never seen that before, and I hope we do not see it ever again, because the real substance of that bill, approved by the House of Representatives and stripped by the Democrat House conferees, was, of course, the Federal death penalty, habeas corpus reform, and the exclusionary rule codification—all of it was stripped out. Some of those subjects were too politically charged to be dealt with in an election year, obviously. Some who voted in support of certain provisions actually expressed disapproval of those in committee, a most confusing exercise to observe.

As a result, Mr. President, the Senate is again faced with the task of getting those subjects back as a priority in the 102d Congress. So I am very pleased to join my colleagues in expressing support for the leadership of our fine President and our ranking members on the Judiciary Committee.

The legislation introduced establishes a constitutional death penalty and incorporates the best of our various proposals with much needed habeas corpus reform. Habeas corpus is a particular issue about which I feel very strongly. It does little good to say we are tough on criminals if we let the worst of them abuse the system, as they have thus far.

The President's proposal codifies the good faith exception to the exclusionary rule. This is something the various law enforcement agencies have asked us to do for some time. There are also new initiatives many of our colleagues have been working on for some time as well, along with our chairman, Senator BIDEN. We will be visiting issues of drug testing, sexual violence, and child abuse, terrorism, outlaw gangs, and juvenile offenders, obstruction of justice, and equal justice.

There is much work to be done in crafting a crime bill that has real teeth. The President has shown the same courageous leadership on this issue that he has shown on international issues these past difficult months.

I am pleased to voice my support and gratitude for the leadership shown by our President and by Senator STROM THURMOND and by Senator BIDEN on his important issue.

I thank the Chair.

By Mr. HOLLINGS:

S. 636. A bill to authorize the President to resume negotiations in the Uruguay round and to negotiate an agreement with the Governments of Canada and Mexico; to the Committee on Finance.

RESUMPTION OF NEGOTIATIONS IN THE URUGUAY ROUND

Mr. HOLLINGS. Mr. President, I send to the desk a bill for proper referral to authorize the President to resume negotiations in the Uruguay round, and to negotiate an agreement with the Governments of Canada and Mexico. That is a clear-cut bill to continue with negotiations in the Uruguay round, because that is what we are doing now and to begin negotiations with Mexico.

But then I send also to the desk for proper referral on behalf of myself and the distinguished Presiding Officer, former majority leader, Mr. BYRD of West Virginia, Senator THURMOND, and others—13 cosponsors—Senate Resolution 78, a resolution to disapprove the request of the President for extension of the fast-track procedures under the Omnibus Trade and Competitiveness Act of 1988.

I readily agree that the administration is the proper entity to conduct these negotiations. But the responsibility of this body cannot be abdicated. The Constitution cannot be amended by this fast-track nonsense.

The truth of the matter is that under article I, section 8 of the Constitution, the Congress, not the President, not the courts, but the Congress of the United States shall control foreign commerce and international trade. That is a primary responsibility under the Constitution.

Negotiating for us, obviously, is our executive branch. But what they want now is not merely to negotiate but to put a gun at our head and say take it or leave it. That has to stop.

We tried that take it or leave it approach and we have been left too often, by previous GATT negotiators.

I also ask unanimous consent, Mr. President, at this point that an article in the Wall Street Journal of this morning entitled "Exports Won't Pull United States Out of Recession," be printed in the RECORD.

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

EXPORTS WON'T PULL UNITED STATES OUT OF RECESSION—FOREIGN DEMAND PROVES INADEQUATE TO OFFSET DROP ON DOMESTIC SIDE

(By David Wessel)

WASHINGTON.—Exports aren't enough.

For all the well-deserved attention that U.S. exports are getting these days, they weren't enough to keep the U.S. from sliding into recession and they won't be enough to pull it out.

Even in industries most successful at the export game, foreign demand is proving inadequate to offset the downturn in demand at home. In fact, production actually declined last year in six of the 10 most export-intensive manufacturing and mining industries, according to an analysis done for The Wall Street Journal by DRI/McGraw Hill Inc., a Lexington Mass., consulting company.

"Why wasn't the recession worse? Exports. Exports. Exports," says DRI economist Vivian Singer. "But it wasn't enough to compensate. It doesn't matter if an industry is export-intensive or not. It depends largely how its domestic market is doing."

Exports are one of the few bright spots in the U.S. economy these days. Growth in exports accounted for nearly all of last year's meager increase in the U.S. gross national product, the value of all goods and services produced.

MANUFACTURED GOODS

Federal Reserve Chairman Alan Greenspan, testifying recently before a congressional committee, said that exports actually provided "little impetus to manufacturing" in the months before the recession began last summer. But since September, foreign demand has been growing again, and exports "have cushioned the steep declines that have occurred as production has responded unusually promptly to the weakness in the domestic economy," he said. The decline of the dollar on world currency markets over the past six months should help keep exports growing by making U.S. goods cheaper for foreigners.

The outlook for exports remains rosy, but growth in exports of manufactured goods can't match the torrid pace of the past several years. In a recent survey, 68% of the directors of the National Association of Manufacturers said exports will increase "more slowly than in recent years." Only 26% said exports will continue to grow "rapidly."

Exports of goods and services accounted for only 13% of the nation's $5.5 trillion GNP. In a small country such as the Netherlands, where exports account for about half of all production, they can make or break a recession. "The opposite is true for most American industries because their domestic market is so overwhelming large," says Walter Joelson, chief economist at General Electric Co.

"Take our major appliances," Mr. Joelson says. "Exports are very significant in total dollar volume, but in terms of the total major appliance business that we have, exports are maybe 5% or 6%." GE's appliance business reported world-wide revenue of $5.7 billion last year.

Few industries are as dependent on exports as the construction- and mining-equipment business. DRI figures that more than 30% of its production was exported in the last half of the 1980s and predicts that exports will account for 40% of its output this year. The industry's exports, adjusted for price changes, grew by 13.5% last year, DRI estimates.

Yet the industry's total output fell by 1.8%, DRI says. Why? Demand for construction equipment dried up as the real estate recession spread across the country.

CONSTRUCTION EQUIPMENT

For some big makers of construction equipment, even the export business turned out to be a bit disappointing last year. Caterpillar Inc., for instance, says it shipped 3 percent fewer machines world wide in 1990 than the year before. Not only did shipments to U.S. customers fall, but, to a lesser degree, shipments abroad fell, too, the company says.

Economic woes in Brazil and recessions in the United Kingdom, Canada and some other important foreign markets are to blame. After taking price increases into account, Catepillar's sales in the U.S. fell 2 percent, while sales abroad grew 6 percent.

At Ingersoll-Rand Co., foreign sales grew enough in the second half of last year to offset the decline in the machinery maker's domestic sales, but Vice President Thomas McBride says that probably won't continue in the first half of 1991.

Foreign sales don't necessarily mean U.S. exports. Mr. McBride cautions, Ingersoll's foreign business has been growing but it also has been moving manufacturing offshore. Exports accounted for about 15 percent of Ingersoll's business last year, down from 22 percent a decade ago.

According to DRI, output of the computer industry, adjusted to remove price changes, grew 14.1 percent faster than any of the other 58 industries analyzed. Exports were a major factor. "Keep in mind that the industry will see far less of an increase in total dollar sales" Ms. Singer of DRI notes. As officially measured, prices for computers fall considerably every year when adjusted for the increased power of the machines; as a result, economists figure the industry's physical output of computing power grew more than its reported sales.

Tobacco companies, increasingly looking abroad to compensate for the waning appeal of cigarettes in the U.S., also managed to increase exports sufficiently to offset a decrease in domestic demand.

EXPORTS AREN'T ENOUGH—HOW THE 10 MOST SUCCESSFUL MANUFACTURING AND MINING EXPORTERS FARED

(In percent)

Industry	Exports as percent of output, 1985–89 average	Export growth, 1990[1]	Output growth, 1990[1]
Computers, office equipment	32.5	17.4	14.1
Iron ore mining	31.2	1.2	−1.1
Construction mining equipment	30.2	13.5	−1.8
Aircraft, parts	28.2	12.4	3.9
Electronic components	24.0	11.5	−.4
Special industrial machinery	23.7	12.3	.8
Engines and turbines	20.7	7.9	−.8
Leather tanning, finishing	18.1	7.0	−8.3
Miscellaneous electrical equipment	17.7	8.5	−.4
Tobacco products	15.4	9.3	.9

[1] Dollar volume adjusted for price changes.

Source: DRI/McGraw Hill Inc.

Mr. HOLLINGS. Highlighting, then, Mr. President, I emphasize once again not just our responsibility but reality. The reality is that when Keynes went to Bretton Woods, he did not go there as a laissez faire economist. He went looking for government-controlled development of the economy. History will prove that that is the reality with respect to all of our trading competition.

So, as much as we would wish—as we did back in the late forties—to set the example of free trade and do away with the tariffs and the barriers and the restrictions and the protections, and what have you, as much as we desired that, it has developed otherwise. Realistically, then, we must get in step, now, and let market forces operate. And the fundamental, primary influence in the market is government itself: the Japanese with their MITI, and Taiwan, Korea, Europe and the world around. The EEC now is organizing for next year, not for free trade but to engage in this trade war.

We have gone from the cold war to the gulf war and we are back now to the real war of economic security. In that war look at how we have been losing the battle. Over the past several years now, 100 percent of the black and white televisions, and radios, now, are manufactured outside of the United States. Thirty percent of the automobile industry is foreign, 80 percent of the motorcycles, 90 percent of the cameras, 60 percent of apparel, 60 percent of machine tool, 67 percent of ferro alloys.

I put those in my statement, but I hasten to remind my colleagues, with the gulf war, we have had to be nice to the Japanese because if they do not give us the chips we do not get any Patriot missiles, no Tomahawk missiles. Our national security is dependent. The distinguished Chair fought that. I fought it.

I received the first SDI award and I fought the false interpretation of the ABM Treaty on this floor. But now that we are finally getting a recognition of technology, let us begin the front line of that battle, which is in the trade war itself.

The distinguished U.S. Trade Representative our ambassador, Carla Hills, says the Uruguay round will mean $5 trillion to world trade and a $1 trillion advantage to the United States. She is going around the Hill selling that idea, but, Mr. President, if we look at the study of the Economic Strategy Institute, rather than a trillion dollar advantage, it will add $14 billion to the trade deficit.

That is what really bothers this Senator.

We had 37, rather than 13, cosponsors last year. The Carla Hills bazaar opens and she goes around to my colleagues and says I will take care of you if you get off that resolution. They all say I have nothing to lose, I will get off the bill and can vote against it later. That, of course, explains it. There is no diminution in support for pursuing our responsibility here, but we have been put in a position of wheeling and dealing, trying to protect various interests.

The argument that if they do not get fast track, they cannot get an agreement, is totally false. We did not get fast track and we got SALT I. This Senator was on the floor when we voted on it, and I voted against SALT I. Later, the negotiators told me I was correct. I was the only Senator to vote against it, but we got it.

We did not approve SALT II or ratify it here, but they said that would be the end of the world. The Soviets went right ahead and agreed to the INF Treaty. We agreed to the ABM Treaty. People live in the real world.

If this agreement, Mr. President, is such an outstanding agreement, rather than the 30-day gun at our head, take it or leave it, it will be adopted and passed in 30 minutes. They say it is wonderful; we are going to burst forward with a trillion dollars more in trade, $5 trillion to the world economy; GATT is a wonderful thing. It controls less than 7 percent of world commerce, and we will show the statistics when we get into the debate. The real trade is carried on by Multifiber Arrangement, by bilateral agreements, and persons act as they do in the market to their economic interests.

Those who would bash Japan, should bash Washington instead. In Japan, it works. If I were the Emperor in the next 10 seconds, I would do it the exact same way. They win, win, win, win. They have taken over the world's pro-

duction. There is nothing wrong with it as long as they say, "We have a special relationship." I would say "We have a special relationship now if you made it to my economic interests."

That is the market. They are all talking about market forces, free market. Let those market forces operate.

Let us look at the trade agreement from the Uruguay round if and when we get it. They have been negotiating 4 years and they want us to take 30 days here, the body with the responsibility to regulate foreign commerce. They have been working on it for 4 years. Thirty days or else. None of that. I think we have grown and matured. We have not filibustered a trade agreement in the history of the Senate. We have agreed to them when other agreements have been turned down such as SALT II.

Mr. President, over the past 7 weeks, all of us have been preoccupied by events in the Persian Gulf. The swift and decisive victory of the allied forces has now granted us the luxury to focus on another confrontation that looms just over the horizon—a conflict whose battlefield is the international marketplace and whose warriors are the millions of working men and women of this country—the backbone of our manufacturing base. It is time that the Senate turn its attention to the economic struggle that is already eating away at our standard of living and now threatens our very national security.

If you want to discover why real disposable income is now below 1973 levels, all one has to do is look at what has befallen this Nation's position in the international marketplace. The high wage manufacturing jobs that made it possible for millions of Americans to realize the American dream have been gradually shipped overseas. With the assistance of the Marshall Plan and government-directed development policies, the nations of Europe and Asia rebuilt their economies. Now they are girding for the competition in the 21st century—not by freeing markets but by banding together to fight for market share through EC92.

Since the end of World War II, we have been on a mission to convert the rest of the world into laissez faire clones of our economic system. Practicing free trade, we set the example by opening our markets at all costs. In order to ensure that the world accepted our vision of free trade we supported GATT and tried to conform the regulation of trade to suit our ideological preferences. But the GATT only benefited foreign countries with Government led export strategies and American multinationals who moved their manufacturing operations offshore and then sought to import to the United States their dumped and low wage products.

Under the auspices of the GATT, trade disputes were cooled by invocations and incantations of "special relationships." In the 40-plus years of its existence, six rounds of the GATT have been negotiated, all of which were supposed to exponentially expand world trade. Instead, under the GATT we have watched as our position as the dominant economic power has eroded. Under the auspices of the GATT, manufacturing industry after manufacturing industry in the United States has gone out of business. Our benevolent policy of GATT sponsored free trade at all costs, a policy that ignored the predatory practices of our trading partners and exacted a terrible toll on our economy.

For the past 4 years, this administration and its predecessor have been on a mission to sell the Congress and the world on the merits of a successful completion of the GATT Uruguay round. We are told time and again that a successful completion of the Uruguay round would result in a 4- or 5-trillion-dollar expansion of world trade. However, a detailed study released by the Economic Strategy Institute shows how this administration and previous administrations have absurdly overstated the benefits to world trade that would result from such an agreement.

Overestimating, overstating, and overselling the benefits of GATT agreements is a time-honored tradition at the office of the U.S. Trade Representative. For example, in 1979, the USTR estimated that a successful completion of the Tokyo round would benefit U.S. consumers by as much as $10.6 billion per year. In the end, the Michigan Model of World Production and Trade estimated that the total net benefit to the economy from the Tokyo round was only $700 million—$700 million in a $5-trillion economy. The Tokyo round certainly did not benefit our balance of trade. In 1979, when it was completed our trade deficit stood at $15 billion and now it hovers around $100 billion.

Last December Mrs. Hills went to Brussels ready to negotiate away still more of our manufacturing base. In order to get another GATT agreement, she was willing to sacrifice 1.4 million jobs in the textile and apparel industry by agreeing to an end to the textile import program. To appease the demands of our trading partners, the USTR would be willing to weaken our antidumping code, the only real protection American manufacturers have against unfair trade practices.

Mr. President, a funny thing happened on the way to an agreement in Brussels. Our negotiators discovered that the Europeans and the Japanese were not willing to sacrifice substantial sectors of their economies for the sake of ideological purity. They have been too successful in international trade competition to now adopt policies that brought the U.S. triple-digit trade deficits. After 4 years, the Brussels Ministerial ended in failure because the rest of the world does not accept our concept of free trade. They are not willing to let the magic of the marketplace determine their destiny. Instead, they understand that it is affirmative government policies that create a nation's comparative advantage.

Last month, the administration declared that there was light at the end of the tunnel because the Europeans merely acquiesced to a statement by GATT Director-General Dunkel declaring a willingness to discuss, again, after 4 years of negotiations, reforming EC farm policy. As a result of this "breakthrough" the President has come to this body now and requested that Congress abdicate its constitutional authority and grant an extension of fast-track treatment for legislation implementing bilateral and multilateral trade agreements.

Mr. President, "fast-track" was written into the Trade Act of 1974. The proponents of fast-track argued that our trading partners in the GATT would not negotiate with us in the Tokyo round if Congress were again allowed to exercise its right to amend or disapprove parts of the agreement. By agreeing to fast-track, Congress took itself out of the trade war. When a trade agreement is concluded, fast-track operates like a gun to our head—no amendments, no reservations, take 30 days and vote up or down.

Mr. President, all we are asking for is time to examine a trade agreement—its merits, its deficiencies. If an agreement were really going to have $4 trillion expansionary effect on world trade, then you wouldn't need 30 days. You could pass it in 30 minutes.

After spending billions of dollars and risking our lives to protect our trading partners from totalitarian aggression, the least our trading partners can do is to show similar respect for our constitutional form of government. If we disapprove the extension of fast track, the world as we know it will not come to an end. What may end, however, is our deluded faith in the GATT's ability to protect American jobs. If the Uruguay round fails, American business will not shut down, but if it succeeds, I can tell you that certain industries will. The fact of the matter is that since GATT covers only 5 to 7 percent of world commerce, business will not come to a screeching halt. Instead we will carry on and maybe we will wake up and discover how our competition really operates. Our competitors understand that it is government that creates their comparative advantage—David Ricardo wrote that land, labor, capital and natural resources determined comparative advantage—but in today's international competition it is government guidance that determines comparative advantage—it is not the field and the streams, it is MITI in Japan and their equivalents in Korea,

Hong Kong and EC92 that make market forces operate.

In addition to an extension for the Uruguay Round, the President has also requested fast-track treatment for a free trade agreement with Mexico. Again, Mr. President, we are told that an agreement cannot be negotiated without fast-track treatment assured in advance.

Mr. President, do the Mexicans really have a choice? Since its revolution, Mexico has pursued a statist economic policy, keeping its borders closed and nationalizing its major industries. Thanks to oil wealth generated by the price explosion in the seventies, the Mexicans went on a borrowing binge, loading themselves up with close to $100 billion of commercial debt. When oil prices collapsed, so did the statist Mexican economy. I applaud the efforts of President Salinas to liberalize the political and economic system—he is selling off the government-owned enterprises such as the phone monopoly and the government-controlled banking system. But the political and economic differences that divide our two nations are wider than the Rio Grande.

Mr. President, politically the Mexicans have never had a free and fair election—one party has ruled that country for 50 years. Economically, any agreement with Mexico must address the vast differences in wages, environmental standards, and worker protections.

The average wage in Mexico is about $1 an hour. The average Mexican work week is 48 hours. Of course they have nothing comparable to OSHA or EPA or Social Security or workers compensation. If we are worried about illegal immigration now, if an FTA is negotiated, we will witness a reverse migration as American-based multinational corporations stream across the border to take advantage of low wages and this absence of regulation south of the border. Let's be done with the myth that these are patriotic American companies. Their allegiance is not to the red, white and blue, it's to the green, the almighty dollar.

The idea that an FTA would provide a vast new market for American exports is even more optimistic than USTR's estimates of the benefits from the Uruguay round. How is a nation with a per capita GNP 10 percent of ours going to buy American exports?

Mr. President, the fact of the matter is that the Mexican economy is being crushed by an onerous debt burden and its own inefficiencies. They need an agreement more than we do. They need our capital, our technology, and with 40 percent of their export earnings going to finance their debt burden, they need our market. The benefits to our own economy are marginal. If this body reasserts its constitutional authority, the Mexicans will not walk out of the negotiations, because frankly, they have nowhere else to go.

I want President Salinas to succeed and I want to promote stability in Mexico, but I do not want to pay for it with American jobs. So, today I am introducing legislation that directs the President to negotiate with the Mexican and Canadian governments to reach a comprehensive package to address all the serious concerns that have been raised. In addition, the legislation authorizes the President to resume negotiations in the Uruguay round.

I urge my colleagues to support Senate Resolution 78 which disapproves fast track extension for 2 years. I also would welcome their support of my legislation directing the President to negotiate a comprehensive North American Free Trade Agreement and to resume negotiations in the Uruguay round.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 636

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

SECTION 1. FINDINGS.

The Congress finds that the President has resumed negotiations in the uruguay Round and has indicated his intention to negotiate a North America free trade agreement with the Governments of Canada and Mexico.

SEC. 2. URUGUAY ROUND NEGOTIATIONS.

The President is authorized to resume negotiations in the Uruguay Round and shall seek to obtain the following objectives:

(1) DISPUTE SETTLEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement are—

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) IMPROVEMENT OF THE GATT AND MULTILATERAL TRADE NEGOTIAION AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) TRANSPARENCY.—The principal negotiating objective of the United States regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by Contracting Parties to the GATT.

(4) DEVELOPING COUNTRIES.—The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) CURRENT ACCOUNT SURPLUSES.—The prinicipal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) TRADE AND MONETARY COORDINATION.—The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) AGRICULTURE.—The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access. such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) UNFAIR TRADE PRACTICES.—The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targetting practices;

(B) to obtain the application of similar rules to the treatment of primary and

nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made,

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made, as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) TRADE IN SERVICES.—

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), Unitd States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(10) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish the GATT obligations—

(i) to implement adequate substantive standards based on—

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) FOREIGN DIRECT INVESTMENT.—

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) SAFEGUARDS.—The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) SPECIFIC BARRIERS.—The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 181 of the Trade Act of 1974 (19 U.S.C. 2241); and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparties that impede access to particular export markets.

(14) WORKER RIGHTS.—The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) ACCESS TO HIGH TECHNOLOGY.—

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;

(ii) denying equitable access by United States persons to government-held patents;

(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

(16) BORDER TAXES.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes.

SEC. 3. NEGOTIATIONS WITH CANADA AND MEXICO.

The President is authorized to negotiate with the Governments of Canada and Mexico an agreement. The agreement shall include—

(1) trade provisions requiring the reduction of tariffs and nontariff barriers;

(2) provisions on environmental standards, enforcement, and compliance;

(3) provisions on worker rights and workplace safety;

(4) provisions on health and safety standards; and

(5) any other provisions the President deems necessary.

By Mr. LIEBERMAN:

S. 637. A bill to establish the Industrial Development for Eastern Europe Foundation; to the Committee on Foreign Relations.

INDUSTRIAL DEVELOPMENT FOR EASTERN EUROPE FOUNDATION ACT

• Mr. LIEBERMAN. Mr. President, today I am reintroducing legislation to create the Industrial Development for Eastern Europe [IDEE] Foundation. IDEE is modeled after the highly successful Binational Industrial Research and Development [BIRD] Foundation, which was established in 1977 to develop a cooperative relationship between American and Israeli high-technology industries. BIRD has an income of approximately $10 million a year, most of which comes from its $110 million endowment. With its income, it shares the expense—50-50—with an Is-

raeli-American venture trying to develop and commercialize a nondefense technical product or process.

In the last decade, BIRD has supported over 250 joint ventures, and over 100 of these ventures led to sales of about $1.5 billion. BIRD's success is due to a number of factors, not the least of which is the advanced state of Israeli research and development.

While it will not be easy to duplicate the success of the BIRD Foundation, I nonetheless, believe that the concept is applicable to Central and Eastern Europe. In a new study I requested the Congressional Research Service to conduct, entitled "Eastern European and Soviet Science and Technology: Capabilities and Needs," Bill Boesman, the study's author, writes that Eastern European science and technology capabilities have been largely ignored but they could play an increasingly important role leading to greater East-West cooperation on science and technology issues.

The OECD held a conference March 4-6 in conjuction with the Austrian Government in Vienna and Bratislava on science and technology in Eastern Europe. The results of the conference should be of use of American firms wanting to establish an economic beachhead in Central and Eastern Europe. Through the OECD's new and highly successful Center for European Economies in Transition, which I was honored to help to establish and which focuses on economic transformation in Central and Eastern Europe, and through the creation of the IDEE Foundation, we can aid with the development of Central and Eastern European science and technology and its commercial applicability.

The creation of this IDEE Foundation would come at a good time, since export controls on the transfer of technology to Central and Eastern Europe are being updated to reflect the changed relationship between the United States and other NATO nations and Japan and the nations of that region. The fine work done recently by the Senate Banking Committee on the Export Control Act reauthorization recently is an excellent example of this.

While we have much to focus on with the reconstruction and realignment of the Persian Gulf in the aftermath of the war, we must not ignore the nations of Central and Eastern Europe. But for over four decades we promised the people of Central and Eastern Europe that we would help them in their struggle to free themslves of the yoke of communism. They have succeeded beyond our expectations, but we are not living up to our end of the bargain. We must, therefore, live up to our end of the bargain and, as Churchill said, "* * * pass with relief from the tossing sea of Cause and Theory to the firm ground of Result and Fact," and help the nations of Eastern Europe with their struggle to build democracy and a free market system.

We are understandably concerned about our domestic economic problems. There is little money to spare in our budget. That is why a cost-effective program like the IDEE Foundation is such a useful approach for channeling our aid efforts conditioned on the commitment by these nations to fundamental economic reform and elective democracy.

IDEE, like BIRD, would receive its operating expenses from the interest on its endowment, as well as any royalties it may receive from successful projects. Contributions to IDEE would be made by all member nations, not just the United States.

An initial contribution of $28 million from the United States would be complemented by a contribution of $25 million each from Central and Eastern European nations wishing to be members. The three Central and Eastern European nations best able to take advantage of IDEE initially are Hungary, Poland, and Czechoslovakia. Their contributions to the foundation would be made over a period of time and could be made in local currency. Contributions could also be made in lieu of the repayment of debt owed by these governments to the United States. Much of this debt may need to be written off anyway, so we should funnel the repayment that does occur to worthwhile projects like the IDEE Foundation.

IDEE would be governed by a board which would control its activities. The board would consist of representatives from the U.S. State Department, Treasury, Department of Commerce, and their counterparts from the other member nations. An executive director, appointed by the board, would be in charge of the day-to-day activities of IDEE. In addition, an advisory council consisting of representatives from private industry would help the board and the executive director and his or her staff evaluate projects and make recommendations on investment opportunities.

I have suggested that IDEE be headquartered in a neutral location close to the three Central and Eastern European nations that will be members of IDEE. It is important that IDEE be located in the region in order to have a hands-on working relationship with the private sector of its member nations.

IDEE will only need a one-time appropriation since its projects will be funded from the interest on its endowment and from royalties. While the primary purpose of IDEE is to foster the growth of high-technology industry in the nations of Central and Eastern Europe, there are clear advantages for American firms willing to become involved with Central and Eastern European entrepreneurs, engineers, and scientists. American investors will be able to share in any profits and innovations developed through joint ventures.

It is important that as we continue to look for more cost-effective ways to aid the nations of Central and Eastern Europe, that we make every effort to develop programs that will be of some benefit to American businesses. The best way to receive continued support for funding for such programs is by making certain that the American business community will accrue some benefit from these programs. IDEE embodies the principle of helping both American businesses while at the same time helping the private sector of its Central and Eastern European member nations.

Finally, it is my hope that IDEE will develop a close, mutually beneficial relationship with BIRD, facilitating closer contact between the Israeli private sector, the private sector of those Central and Eastern European nations belonging to IDEE, and the American business community. A close relationship between these nations is to everyone's advantage. Since BIRD has been a tremendous success, it would be very useful to have the board and staff of IDEE work closely with the BIRD staff to make certain that IDEE is equally successful.

I am attaching a copy of the legislation, as well as a bill summary to be included in the RECORD along with my statement.

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

S. 637

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 "Industrial Development for Eastern Europe Foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF THE FOUNDATION.

(a) ESTABLISHMENT.—There is hereby established the Industrial Development for Eastern Europe Foundation (hereafter in this Act referred to as the "Foundation"), which shall be governed by the Board of Governors established under section 4. It is the sense of the Congress that the President should negotiate with the governments of foreign nations for participation by such nations, consistent with section 4, in carrying out the activities of the Foundation.

(b) PURPOSES.—The purposes of the Foundation are—

(1) to promote and support joint, nondefense, industrial research and development activities of mutual benefit to the nations involved with the Foundation and its activities;

(2) to develop nondefense high technology industry in these nations, particularly through joint and cooperative projects between firms in participating nations;

(3) to aid with the modernization of the economies of these nations by helping them to create a more sophisticated manufacturing base; and

(4) to help these nations to become economically viable by providing benefits to

their industrial sector particularly through joint projects.

SEC. 3. FUNCTIONS AND POWERS OF THE FOUNDATION.

(a) The Foundation shall support and promote the purposes stated in section 2(b) and research and development activities which—

(1) involve all applied science activities in the process through which an innovation becomes a commercial product; and

(2) assist with product engineering and manufacturing start up.

(b) The Foundation shall work closely with, and to the extent practicable coordinate its activities with, the OECD and the European Bank for Economic Recovery and Development, drawing on the expertise of those institutions in achieving its purposes.

(c) The Foundation shall be a legal entity and shall have all the powers necessary to carry out its objective, including the power to—

(1) promote and support, by funding or otherwise, joint industrial research and development projects (hereafter in this Act referred to as "projects"), in accordance with subsection (d);

(2) make loans and grants;

(3) enter into contracts;

(4) provide services;

(5) acquire, hold, administer, and dispose of real and personal property;

(6) receive, hold, and disburse funds, and open bank accounts;

(7) accept contributions of property, funds, and services; and

(8) employ personnel.

(d)(1) Projects shall be undertaken and otherwise supported through direct investment and joint ventures in order to develop the more advanced technology sectors of the economies of Foundation member nations.

(2) All technology and products developed as a result of the work of the Foundation may be freely transferable among the nations participating in a project.

(3) More than one member nation of the Foundation must participate in a project.

(4) All projects undertaken must be in compliance with the export control laws of the United States.

(e) Nothing in this Act may be construed to prejudice other arrangements for scientific cooperation between the United States and other member states of the Foundation.

SEC. 4. BOARD OF GOVERNORS.

(a) A Board of Governors (hereafter in this Act referred to as the "Board"), shall be the governing body of the Foundation and shall be responsible for determining the Foundation's program, including the fields of cooperative research which will be supported by the Foundation, and the Foundation's financial and managerial policies.

(b) The Board shall consist of—

(1) the Secretary of State or his designee;

(2) the Secretary of Commerce or his designee;

(3) the Secretary of the Treasury or his designee; and

(4) a representative from the Foreign Ministry, Ministry of Finance, Ministry of Trade and Industry, and the national science foundation or its equivalent from the governments of Poland, Hungary, and Czechoslovakia.

(c) Subject to the provisions of this Act, the Board shall have the authority to—

(1) adopt bylaws and rules of procedure;

(2) establish regulations defining the policies, organization, and procedures of the Foundation;

(3) appoint an Executive Director;

(4) approve the annual budget and research program of the Foundation indicating, among other things, the research and development fields to which priority is to be given;

(5) accept contributions of property, funds, and services;

(6) establish the principal office of the Foundation in a neutral location;

(7) approve project and other expenditures by the Foundation and agreements pertaining to projects to be funded by the Foundation; and

(8) exercise and delegate any other power of the Foundation not otherwise assigned by this Act.

(d) Each other East European country shall be eligible for membership in the Foundation whenever the Board determines that such country has made sufficient progress toward marketization and democratization and is not in violation of section 502B of the Foreign Assistance Act of 1961.

(e) The chairman of the Board shall be a United States national and shall serve for a one-year term. The chairmanship shall rotate among the three Board members who are United States nationals.

(f) The Board shall meet at least twice a year, but meetings of the Board may be held at such times and places as the Board may from time to time determine.

(g) The Board shall act by a vote of at least two-thirds of its entire membership.

(h) Members of the Board shall serve without compensation from the Foundation, but the Board shall authorize the payment by the Foundation of the necessary expenses of any members in attending Board meetings and in performing other official duties for the Foundation. Acceptance of such payments by Board members of the Foundation for this purpose shall not be deemed in violation of Ethics in Government Act for the purposes of carrying out this section.

(i) The Board shall provide for annual audits by independent auditors of the accounts of the Foundation. The reports of such audits, which shall be submitted to all member governments, shall contain certification as the accounts of the Foundation and evaluate the Foundation's internal control and auditing system.

SEC. 5. ADVISORY COUNCIL.

(a) An Advisory Council (hereafter in this Act referred to as the "Council"), shall act in an advisory capacity to the Board and the staff of the Foundation. The Council shall—

(1) help the Board and the Foundation staff evaluate projects; and

(2) make proposals as to which sectors of member nation economies offer the best opportunity for a favorable return on an investment.

(b) Recommendations made by the Council to the Board and the staff of the Foundation shall not be binding.

(c) The Council shall consist of three members from the business and finance community from each nation belonging to the Foundation. In the case of the United States, the President shall appoint the members.

(d) The chairmanship of the Council shall change on a yearly basis, rotating among the members of the panel and alternating among member countries.

(e) The Council shall meet at least twice a year. To the extent practical, it shall meet at the same time and place as the Board.

(f) Members of the Council shall serve without compensation from the Foundation, but the Board shall authorize the payment by the Foundation of necessary expenses of any members of the Council attending Council meetings and in performing other official duties for the Foundation.

SEC. 6. STRUCTURE OF THE FOUNDATION.

(a)(1) The Foundation shall be administered by an Executive Secretariat. The Executive Secretariat shall be headed by an Executive Director, who is a United States citizen, and his staff, which shall—

(A) act as a liaison to the Board; and

(B) coordinate the activities of the Executive Secretariat and the Board.

(2) There shall be three Deputy Directors one each for Poland, Hungary, and Czechoslovakia who shall evaluate projects from each nation, making recommendations to the Board and the Executive Secretariat as to whether or not the Foundation shall support the project; and

(3) Additional Deputy Directors shall be created as more nations join the Foundation.

(b)(1) The Executive Director shall be the chief executive officer of the Foundation. He shall be responsible for the operations and staff of the Foundation, and act in accordance with the policies, directives, and delegation of the Board.

(2) The Executive Director shall employ, oversee, and dismiss the members of the professional administrative staff subject to the approval of the Board.

(3) The Executive Director shall, among other things—

(A) evaluate proposals for projects submitted to the Foundation and prepare and submit recommendations and draft agreements concerning project proposals to the Board for its approval;

(B) prepare and submit to the Board for its approval an annual budget and research program, including long-range plans for use of the Foundation's resources;

(C) prepare and submit to the Board for its approval an annual report, including an audited financial statement, on the activities of the Foundation; and

(D) implement decisions of the Board.

(4) Any power of the Executive Director under this Act or delegated to him by the Board may be delegated by him to other officers of the Foundation, except as otherwise prescribed by the Board.

(5) The Executive Director may obtain assistance from outside professionals and experts for the purposes of evaluating proposals and auditing and monitoring projects sponsored by the Foundation. These professionals and experts may be given compensation by the Foundation for services rendered, as approved by the Board.

(6) The Executive Director shall be permitted to organize various activities, such as consultant visits, information exchanges, and similar activities, to facilitate the achievement of the Foundation's objective. The Executive Director shall be given a budget approved by the Board to undertake these activities.

(7) The Executive Director shall maintain an appropriate system of internal control, including books and records which reflect the transactions of the Foundation and show the current financial condition of the Foundation. Such system shall include adequate internal financial and operational audits. The books, records, and internal audit reports shall be available for review by authorized representatives of governments involved with the Foundation.

SEC. 7. OPERATIONS OF THE FOUNDATION.

(a) The Foundation's operations shall consist mainly of the selection, approval, and monitoring of projects funded in whole or in part by the Foundation. All proposals for such projects shall be submitted through the

Executive Director to the Board for approval.

(b) Each proposal considered by the Board shall—

(1) be submitted by Foundation member entities;

(2) demonstrate the technical and economic feasibility of the project;

(3) contain evidence that the applicant is capable of carrying out the project, either alone or through the partial subcontracting to universities, industrial research institutes, or other qualified entities; and

(4) indicate that the applicant will contribute, from its own financial resources or resources available to it, some portion of the financial resources required to carry out the project.

(c) Each proposed project considered by the Board shall—

(1) propose a tangible, direct benefit for the national economies of Foundation member nations, such as an increase in exports, value added or new markets;

(2) be of interest to Foundation member nations' industry;

(3) be of general interest to an entire industrial field;

(4) directly or indirectly contribute to additional development of products, processes, or markets; and

(5) have tangible benefits for nations involved with a project.

(d) For purposes of subsection (c)(5), a project having a tangible benefit is one that—

(1) is submitted by one or more Foundation member firms or a joint venture between a United States firm and a member nation firm;

(2) will require expenditures for goods and services in nations involved with the project; and

(3) meets any other criteria established by the Board.

SEC. 8. FINANCING OF THE FOUNDATION.

(a) The original endowment of the Foundation shall consist of an initial contribution of $28,000,000 by the United States. In order to be a member nation of the Foundation (other than the United States), each participating nation shall be required to contribute to the Foundation the equivalent of $25,000,000 during a 12-month period.

(b) Payments may be made to the Foundation by member nations in lieu of repayment of debt to the United States Government. The terms and conditions of this repayment shall be determined by the President, and payment may be made in convertible local currency.

(c) There are authorized to be appropriated $28,000,000 for fiscal year 1992 for the purpose of making the United States contribution to the Foundation under subsection (a). Funds appropriated pursuant to the preceding sentence are authorized to remain available until expended.

(d) An endowment of $25,000,000 shall be deposited in an account or accounts in a bank or banks agreed to by Foundation member nations, and shall earn interest at prevailing market or LIBOR rates.

(e) Income shall be deposited in the bank until used.

(f) Of the amount authorized to be appropriated by subsection (c), $3,000,000 shall be used for initial administrative expenses.

(g) Investment and other income of the Foundation shall remain available for the operation of the Foundation and for carrying out its activities.

SUMMARY OF THE INDUSTRIAL DEVELOPMENT FOR EASTERN EUROPE FOUNDATION ACT

Section 1: Short title.

Section 2: Establishment and Purposes of the Foundation.

The foundation will develop nondefense high tech industry in the nations of Eastern Europe that belong to the foundation.

Section 3: Functions and Powers of the Foundation.

The foundation will make loans and grants, as well as accept contributions in order to be able to carry out its function of funding joint ventures between its member nations, working with the OECD and the new European Bank for Reconstruction and Development to the extent practicable.

Section 4: Board of Governors.

The foundation will be governed by a Board of Governors consisting of representatives from the United States Department of State, Treasury, and Commerce and their equivalents from other member nation governments. In addition to setting policy guidelines, the board will also approve all joint venture projects.

Section 5: Advisory Council.

The Advisory Council will be made up of three members of the private sector from the business and finance community from each of its member nations. It will help the board with its evaluation of projects and joint venture opportunities.

Section 6: Structure of the Foundation.

The Foundation will be run by an Executive Director, who shall establish an Executive Secretariat that will be responsible for the day to day running of the foundation.

Section 7: Operations of the Foundation.

The principle function of the foundation shall be to select, approve, and monitor projects funded by the foundation.

Section 8: Financing of the foundation.

The foundation will be funded of an initial appropriation of $25 million from the United States and contributions of $25 million from each other member nation, to be paid over time. These contributions can be made in local currency and in lieu of repayment of debt owed to the United States government.•

By Mr. FOWLER:

S. 639. A bill to direct the Secretary of the Interior to prepare a national historic landmark theme study on African-American history; to the Committee on Energy and Natural Resources.

AFRICAN-AMERICAN HISTORY LANDMARK THEME STUDY ACT

• Mr. FOWLER. Mr. President, today I would like to introduce a bill to identify national landmarks significant to African-American history. This legislation was recently introduced in the House of Representatives by my distinguished colleague and friend, Representative JOHN LEWIS of the Fifth District of Georgia.

In 1935, the Historic Sites Act established the National Historic Landmarks Program to help identify and officially commemorate sites of national importance. Since its introduction, the program has designated more than 2,000 sites as national historic landmarks. However, few of these landmarks are related to African-American history. It is my hope that the African-American History Landmark Theme Study Act will allow us to focus more attention on an important part of our national history that has been largely overlooked.

The African-American History Landmark Theme Study Act directs the Secretary of the Interior to conduct a study identifying sites of national importance in African-American history. Based on the findings of this study, the Secretary will nominate as national historic landmarks districts, sites, buildings, structures, and landscapes that illustrate or commemorate African-American history. The study will also include a list of areas proposed as national historic landmarks that would be suitable additions to the National Park System.

The bill establishes an Advisory Board consisting of scholars of African-American history and historic preservationists who will act as consultants to the study. The Secretary is also instructed to enter into a cooperative agreement with one or more scholarly and public historic organizations knowledgeable in African-American history to prepare the theme study. Three years after the enactment of the bill, the Secretary will transmit the theme study to Congress for approval.

Mr. President, the purpose of this bill is to provide a tangible reminder for all Americans of the accomplishments and history of African-Americans. Far too often we have either ignored their achievements or relegated them to the appendix of some forgotten history text. While the National Historic Landmarks Program has been very successful in identifying sites of historical significance, it has also fallen short in the area of recognizing the importance of landmarks key to the history and experiences of African-Americans.

No one can deny the vital role African-Americans have played in American history. Their triumphs and their sorrows have closely paralled our Nation's growth into the land of opportunity and equality promised by our Founding Fathers. It is not only just but long overdue that we diligently commemorate their past.•

By Mr. KASTEN (for himself, Mr. ROCKEFELLER, Mr. DANFORTH, Mr. LIEBERMAN, Mr. GORTON, Mr. RIEGLE, Mr. PRESSLER, Mr. PELL, Mr. MCCAIN, Mr. GLENN, Mr. LOTT, Mr. SANFORD, Mr. BURNS, Mrs. KASSEBAUM, Mr. DOLE, Mr. HELMS, Mr. LUGAR, Mr. COATS, Mr. CHAFEE, Mr. NICKLES, Mr. HATCH, Mr. BOND, Mr. SYMMS, Mr. WALLOP, Mr. MACK, Mr. GRASSLEY, Mr. HEINZ, Mr. GARN, Mr. CRAIG, Mr. MCCONNELL, and Mr. BOREN):

S. 640. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PRODUCT LIABILITY FAIRNESS ACT

Mr. KASTEN. Mr. President, I am pleased to introduce today the Product Liability Fairness Act, which embodies the text of S. 1400 from the 101st Congress. This legislation is the same as that which was reported by the Senate Commerce Committee by a vote of 13 to 7, had a hearing before the Senate Judiciary Committee, and unfortunately was not acted upon before the last Congress adjourned.

I am joined by 30 of my colleagues, from both sides of the aisle, who have cosponsored this bill because they recognize the need for the reasonable, moderate reform of our product liability rules.

The effort to enact product liability reform has been one which the Senate Commerce Committee has considered since 1981. We bring before the Senate a measure that is balanced, does not deprive injured victims of any causes of action, does not contain any limits, or caps, on damages, and has the cosponsorship of almost one-third of the Senate.

President Bush and his administration are strongly in support of this measure. The President called for product liability reform in his State of the Union Address last year. His Competitiveness Council, headed by Vice President QUAYLE, continues to make this issue its No. 1 priority. All of this is reflective of the concerns that large and small businesses alike have with our current system.

Our product liability reform measure is justified on several grounds. We have a system that is slow in compensating victims who deserve compensation, costly to all parties, and unpredictable due to the State by State patchwork that we have today. Above all, we seek a system based on fairness.

Provisions of our bill would address the costs imposed on all parties by the current system. The transaction costs see the lawyers of both the plaintiff and the defendants taking in as much, or more, than the injured parties. Recent data collected by the National Machine Tool Builders Association indicates that in cases involving their members in 1989, only 17 percent of the moneys paid out went to claimants.

However, it is important to note that our legislation would not reduce the costs by restricting the rights of persons to sue for damages, or by instituting caps on the amounts that could be recovered. There were understandable objections made by the organized consumer interests to these provisions in prior bills. Thus, this bill may not lower insurance rates or premiums the way former bills would have.

Rather, thanks to the establishment of some uniformity on certain matters, both parties should be able to better assess the nature of their cases, and even possibly take advantage of the expedited settlements or alternative dispute resolution systems in the bill. The uniformity we seek will make the assessment of risk easier, and thus help to stabilize the insurance market.

It is important to note that we have a national problem that deserves a moderate, Federal approach. Though the current rules have developed through the judicial activism of the various State courts, the time has come for Congress to recognize the burdens our current system is imposing on interstate commerce, U.S. competitiveness, and American innovation.

Let me briefly describe the major provisions of our product liability package which will reduce unnecessary legal costs, provide incentives for the manufacture of safe products, and provide more fairness to all concerned:

This measure establishes procedures designed to expedite the settlement of product liability cases. The rules are based on rule 68 of the Federal Rules of Civil Procedure. This will help reduce the burgeoning and unnecessary legal costs that hamper the current system.

We encourage the States to make greater use of alternative dispute resolution procedures, to also help reduce the legal costs.

The product seller provision also addresses the unnecessary legal costs of the system. Today product sellers are brought into almost every case, and yet liability is imposed on them in less than 5 percent of the cases. Under our bill, sellers are only to be held liable for their own negligence, for failing to provide warnings from the manufacturer, for breaching an express warranty, or when the manufacturer is unavailable.

Legal costs are also saved by the provision dealing with the interaction between the product liability system and the workers compensation system. We have taken steps to help keep these two systems separate, and avoid the excessive and unnecessary lawsuits between manufacturers and employers.

Another priority is creating incentives for safety. Our joint and several liability provision maintains joint and several liability for economic damages. We only eliminate joint and several liability for noneconomic damages such as pain and suffering. Thus, plaintiffs can recover their full economic losses from any defendant, but defendants would only be responsible for those portions of the noneconomic damages—such as pain and suffering—which they caused.

Our package also encourages safety by barring the claims of individuals who are the cause of their own injuries because they were intoxicated or under the influence of illicit drugs.

The cause of fairness is advanced by the extremely proplaintiff statute of limitations. The time begins to run upon the claimant's discovery of the harm and the cause of that harm. This is a more proplaintiff standard than most current State standards now in existence.

Fairness is also provided for in our statute of repose, which sets an outer time limit for liability at 25 years for capital goods, where the injury is covered by workers compensation.

Fairness is also the thrust of the punitive damages provision. We recognize the quasi-criminal aspect of these damages, which are intended to be awarded in egregious cases, not every case. Therefore we establish a national standard for their imposition and the burden of proof required. Thus, these damages are to be awarded where the claimant establishes by "clear and convincing" evidence that the harm evidenced a "conscious, flagrant indifference to the safety of those persons who may be harmed by the product." We have a burden of proof that falls between the normal civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The punitive aspect of the cases may be heard separately from the case in chief if the defendant so elects.

No one wants manufacturers to introduce unsafe products or keep them in the marketplace. However, it would be equally abhorrent if the uncertainties of our product liability system were to prevent new, useful, and safer products from being brought to market. The cost to society of innovations never pursued, or improvements never made, is not obvious at first blush—but it is nevertheless a cost that hurts American consumers, manufacturers, and workers.

There has been some research indicating that the rapid expansion of product liability law, which the courts were pursuing in the past, has slowed somewhat. The courts themselves may be moving the judge-made law away from the situation where even reasonable manufacturers are held liable.

Professor Henderson, of Cornell Law School, who has been conducting this research, cautions:

> However, to conclude that this trend will resolve all of the serious inequities and legal conundrums that still exist would be a misuse of the data collected in the study. . . . The better, more efficient way to address some of the profound problems product liability law has caused our legal system and society is through thoughtful, sparing and modest legislation at the Federal level. . . . S. 1400 is a worthwhile attempt at some of the needed reforms.

It is our job to make this attempt a reality with this legislation in the 102d Congress.

Another point was made in our hearings last year—that this is neither a proplaintiff, nor a prodefendant bill. And just because it is balanced between the rights of the parties, not favoring the plaintiffs, does not make our amendment anticonsumer. The most anticonsumer effects which I have seen

arise from the costs, inefficiencies and inequities of our present system.

The proponents of fair product liability reform recognize that this bill is not a panacea for all of the problems that have plagued our product liability system. It is, however, a sound, reasoned, and balanced piece of legislation that deserves to be enacted into law.

There are those who seem to want to impugn our motives in pursuing product liability reform. They assert that the basis for this legislation has changed over the years. In fact, what I have sought since 1981 are rules to assure product safety, to establish uniformity because of the interstate nature of the problem, and to reduce the costs borne by all Americans, not just manufacturers or sellers of products. There have been immediate concerns dealing with insurance, litigation and competitiveness all growing out of a search for fairness.

Some witnesses before the Commerce Committee suggested that competitiveness was the new buzzword to justify reform. Anyone who researches or recalls the debates of some 10 years ago would also find the testimony of such parties as the American Textile Machinery Association and the National Machine Tool Builders Association concerned not only about their domestic situation, but also explaining their loss of international competitiveness as a result of American product liability laws that we have yet to reform.

We cannot have product liability insurance costs that are 20 to 50 times those of our competitors and remain viable. Product liability reform is not the only answer to our competitive predicament, but it is certainly one important element that we can address.

I am pleased that legislation identical to this bill garnered more cosponsors than any of our previous efforts, passed the Commerce Committee by a substantial 13 to 7 margin, and after one hearing in the Judiciary Committee, was returned to the Senate calendar. I believe the majority of the Senate agrees with the 31 of us who are cosponsors of this bill that it is time to enact this reasoned and moderate product liability reform measure. I will work for early Senate passage, and to have this measure sent to the House before August.

Mr. President, I ask unanimous consent that a copy of the Product Liability Fairness Act and a summary of the bill be printed in the RECORD immediately following my remarks.

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

S. 640

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

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TITLE I—SHORT TITLE

SEC. 101. This Act may be cited as the "Product Liability Fairness Act".

DEFINITIONS

SEC. 102. As used in this Act, the term—

(1) "claimant" means any person who brings a civil action pursuant to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(3) "collateral benefits" means all benefits and advantages received or entitled to be received (regardless of any right any other person has or is entitled to assert for recoupment through subrogation, trust agreement, lien, or otherwise) by any claimant harmed by a product or by any other person as reimbursement of loss because of harm to person or property payable or required to be paid to the claimant, under—

(A) any Federal law or the laws of any State (other than through a claim for breach of an obligation or duty); or

(B) any life, health, or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance, or any benefit received or to be received as a result of participation in any prepaid medical plan or health maintenance organization;

(4) "commerce" means trade, traffic, commerce, or transportation (A) between a place in a State and any place outside of that State; or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(5) "commercial loss" means economic injury, whether direct, incidental, or consequential, including property damage and damage to the product itself;

(6) "economic loss" means any pecuniary loss resulting from harm which is allowed under State law;

(7) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) "harm" means any harm recognized under the law of the State in which the civil action is maintained, other than loss or damage caused to a product itself, or commercial loss;

(9) "manufacturer" means (A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product); (B) a product seller with respect to all aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or (C) any product seller not described in clause (B) which holds itself out as a manufacturer to the user of a product;

(10) "noneconomic loss" means loss caused by a product other than economic loss or commercial loss;

(11) "person" means any individual, corporation, company, association, firm partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) "preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state (A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient; (B) which is produced for introduction into trade or commerce; (C) which has intrinsic economic value; and (D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(15) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Common-

wealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

PREEMPTION

SEC. 103. (a) This Act governs any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial, or contract law.

(b) This Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(c) Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law, except the Federal Employees Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) supersede the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment, or the threat of such contamination or pollution.

(d) As used in this section, "environment" has the meaning given to such term in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(e) This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

JURISDICTION OF FEDERAL COURTS

SEC. 104. The district courts of the United States shall not have jurisdiction over any civil action pursuant to this Act, based on section 1331 or 1337 of title 28, United States Code.

EFFECTIVE DATE

SEC. 105. (a) This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act.

(b) If any provision of this Act would shorten the period during which a manufacturer or product seller would otherwise be exposed to liability, the claimant may, notwithstanding the otherwise applicable time period, bring any civil action pursuant to this Act within one year after the effective date of this Act.

TITLE II—EXPEDITED PRODUCT LIABILITY SETTLEMENTS

SEC. 201. (a) Any claimant may bring a civil action for damages against a person for harm caused by a product pursuant to applicable State law, except to the extent such law is superseded by this title.

(b) Any claimant may, in addition to any claim for relief made in accordance with State law, include in such claimant's complaint an offer of settlement for a specific dollar amount.

(c) The defendant may make an offer of settlement for a specific dollar amount within sixty days after service of the claimant's complaint or within the time permitted pursuant to State law for a responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the defendant may tender such relief to the claimant within ten days after the court's determination regarding such motion.

(d) In any case in which an offer of settlement is made pursuant to subsection (b) or (c) of this section, the court may, upon motion made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than sixty days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(e) If the defendant, as offeree, does not accept the offer of settlement made by a claimant in accordance with subsection (b) of this section within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within thirty days after the court's determination regarding such motion, and a verdict is entered in such action equal to or greater than the specific dollar amount of such offer of settlement, the court shall enter judgment against the defendant and shall include in such judgment an amount for the claimant's reasonable attorney's fees and costs. Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the verdict.

(f) If the claimant, as offeree, does not accept the offer of settlement made by a defendant in accordance with subsection (c) of this section within thirty days after the date on which offer is made and a verdict is entered in such action equal to or less than the specific dollar amount of such offer of settlement, the court shall reduce the amount of the verdict in such action by an amount equal to the reasonable attorney's fees and costs owed by the defendant to the defendant's attorney by reason of the verdict, except that the amount of such reduction shall not exceed that portion of the verdict which is allocable to noneconomic loss and economic loss for which the claimant has received or will receive collateral benefits.

(g) For purposes of this section, attorney's fees shall be calculated on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 202. (a) In lieu of or in addition to making an offer of settlement under section 201 of this title, a claimant or defendant may, within the time permitted for the making of such an offer under section 201 of this title, offer to proceed pursuant to any voluntary alternative dispute resolution procedure established or recognized under the law of the State in which the civil action for damages for harm caused by a product is brought or under the rules of the court in which such action is maintained.

(b) If the offeree refuses to proceed pursuant to such alternative dispute resolution procedure and the court determines that such refusal was unreasonable or not in good faith, the court shall assess reasonable attorney's fees and costs against the offeree.

(c) For the purposes of this section, there shall be created a rebuttable presumption that a refusal by an offeree to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, if a verdict is rendered in favor of the offeror.

TITLE III—CIVIL ACTIONS

SEC. 301. A person seeking to recover for harm caused by a product may bring a civil action against the product's manufacturer or product seller pursuant to applicable State or Federal law, except to the extent such law is superseded by this Act.

UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY

SEC. 302. (a) Notwithstanding the provisions of section 301 of this title, in any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm.

(b)(1) In determining whether a product seller is subject to liability under subsection (a)(1) of this section, the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this title based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with those warnings and instructions which it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this title except for breach of express warranty where there was no reasonable opportunity to inspect the product is a manner which would or should, in the exercises of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) A product seller shall be treated as the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the law of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES

SEC. 303. (a) Punitive damages may, if otherwise permitted by applicable law, be awarded in any civil action subject to this title to any claimant who establishes by clear and continuing evidence that the harm suffered was the result of conduct manifesting a manufacturer's or product seller's conscious, flagrant indifference to the safety of those persons who might be harmed by a product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Except as provided in subsection (b) of this section, punitive damages may not be awarded in the absence of a compensatory award.

(b) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

(c)(1) Punitive damages shall not be awarded pursuant to this section against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(B) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

The provisions of this paragraph shall not apply (i) in any case in which the defendant withheld from or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government information that is material and relevant to the performance of such drug or device, or (ii) in any case in which the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of securing approval of such drug or device.

(2) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft which caused the claimant's harm where—

(A) such aircraft was subject to pre-market certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft which caused the claimant's harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft;

(B) the aircraft was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.); and

(C) the manufacturer of the aircraft complied, after delivery of the aircraft to a user, with Federal Aviation Administration requirements and obligations with respect to continuing airworthiness, including the requirement to provide maintenance and service information related to airworthiness whether or not such information is used by the Federal Aviation Administration in the preparation of mandatory maintenance, inspection, or repair directives.

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Federal Aviation Administration information that is material and relevant to the performance or the maintenance or operation of such aircraft.

(d) At the request of the manufacturer or product seller, the trier of fact shall consider in a separate proceeding (1) whether punitive damages are to be awarded and the amount of such award, or (2) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) In determining the amount of punitive damages, the trier of fact shall consider all relevant evidence, including—

(1) the financial condition of the manufacturer or product seller;

(2) the severity of the harm caused by the conduct of the manufacturer or product seller;

(3) the duration of the conduct or any concealment of it by the manufacturer or product seller;

(4) the profitability of the conduct to the manufacturer or product seller;

(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;

(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;

(7) prospective awards of compensatory damages to persons similarly situated to the claimant;

(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and

(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

UNIFORM TIME LIMITATIONS ON LIABILITY

SEC. 304. (a) Any civil action subject to this title shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b)(1) Any civil action subject to this title shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or railroad used primarily to transport passengers for hire shall not be subject to the provisions of this subsection.

(3) As used in this section, the term—

(A) "time of delivery" means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold;

(B) "capital good" means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(C) "toxic harm" means harm which is functional impairment, illness, or death of a human being resulting from exposure to an object, substance, mixture, raw material, or physical agent of particular chemical composition.

(c) Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

UNIFORM STANDARDS FOR OFFSET OF WORKERS' COMPENSATION BENEFITS

SEC. 305. (a) In any civil action subject to this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, any damages awarded shall be reduced by the sum of the amount paid as workers' compensation benefits for such harm and the present value of all workers' compensation benefits to which the employee is or would be entitled for such harm. The determination of workers' compensation benefits by the trier of fact in a civil action subject to this title shall have no binding effect on and shall not be used as evidence in any other proceeding.

(b) A claimant in a civil action subject to this title who is or may be eligible to receive compensation under any State or Federal workers' compensation law must provide written notice of the filing of the civil action to the claimant's employer within 30 days of the filing. The written notice shall include information regarding the date and court in which the civil action was filed, the names and addresses of all plaintiffs and defendants appearing on the complaint, the court docket number if available, and a copy of the complaint which was filed in the civil action.

A copy of such written notice shall be filed with the court and served upon all parties to the action. A claimant's failure to comply with the requirements of this subsection shall suspend the deadlines for filing responsive pleadings and commencing discovery in the civil action, until the claimant complies with the requirements of this subsection.

(c) In any civil action subject to this title in which damages are sought for harm for which the person injured is entitled to receive compensation under any State or Federal workers' compensation law, the action shall, on application of the claimant made at claimant's sole discretion, be stayed until such time as the full amount payable as workers' compensation benefits has been finally determined under such workers' compensation law.

(d)(1) Except as provided in paragraph (2) of this subsection, unless the manufacturer or product seller has expressly agreed to indemnify or held an employer harmless for harm to an employee caused by a product, neither the employer nor the workers' compensation insurance carrier of the employer shall have a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller if the harm is one for which a civil action for harm caused by a product may be brought pursuant to this Act.

(2) Paragraph (1) of this subsection shall not apply if the employer or the workers' compensation insurer of the employer establishes, and the trier of fact determines, that the claimant's harm was not in any way caused by the fault of the claimant's employer or coemployees. In order to establish this fact an employer or the workers' compensation insurer of the employer may intervene in a civil action filed by an employee at any time after the filing of a complaint. In the event that the civil action is resolved prior to obtaining a verdict by the trier of fact, any resolution of the action by settlement or other means shall afford the employer or the workers' compensation insurer of the employer an opportunity to participate and to assert a right of subrogation, contribution, or implied indemnity of the claimant's harm was not in any way caused by the fault of the claimant's employer or coemployees.

(e)(1) Except as provided in subsection (f), in any civil action subject to this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third-party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured. Any action other than such a workers' compensation claim shall be prohibited, except that nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

(f) Subsection (e) shall not apply and applicable State law shall control if the employer or the workers' compensation insurer of the employer, in a civil action subject to this title, asserts or attempts to assert, because of subsection (d), a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller.

SEVERAL LIABILITY FOR NONECONOMIC DAMAGES

SEC. 306. (a) In any product liability action, the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b) of this section. A separate judgment shall be rendered against such defendant for that amount.

(b) For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

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

(1) "noneconomic damages" means subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation; the term does not include objectively verifiable monetary losses including, but not limited to, medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, rehabilitation and training expenses, loss of employment, or loss of business or employment opportunities; and

(2) "product liability action" includes any action involving a claim, third-party claim, cross-claim, counterclaim, or contribution claim in a civil action in which a manufacturer or product seller is found liable for harm caused by a product.

DEFENSES INVOLVING INTOXICATING ALOCHOL OR DRUGS

SEC. 307. (a) In any civil action subject to this Act in which all defendants are manufacturers or product sellers, it shall be a complete defense to such action that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(b) In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c)(1) For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

(2) As used in this section, the term "drug" means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

SUMMARY OF THE PRODUCT LIABILITY FAIRNESS ACT

Expedited Settlements. Either party may make a settlement offer. If the plaintiff refuses the defendant's offer, the plaintiff will pay the defendant's legal fees and costs if the judgment is for an amount less than the offer. If the defendant refuses the plaintiff's offer, the defendant will pay the plaintiff's legal fees and costs if the judgment is for an amount greater than the offer. Discovery is allowed, and there is no mandatory arbitration. This is based on Rule 68 of the Federal Rules of Civil Procedure.

Alternative Dispute Resolution (ADR). Either party may offer to participate in an approved ADR procedure. If the court determines that a party's refusal to participate is unreasonable or not in good faith, that party will pay the opponent's legal fees and costs. If a party refuses to participate and the court enters a favorable verdict for the offeror, the refusal to participate will be presumed to be unreasonable and not in good faith. This presumption may be rebutted.

Product Sellers. Product sellers will be liable only for their own negligence or for failure to comply with an express warranty. They will be liable for a manufacturer's errors if that manufacturer cannot be brought into court or is unable to pay a judgment.

Punitive Damages. In order to recover punitive damages, a plaintiff must prove conscious, flagrant indifference to the safety of those who might be harmed. This must be proved by clear and convincing evidence. It is a defense against the awarding of punitive damages if the FDA or FAA has given premarket approval or certification. The defense does not apply if the manufacturer submitted false or imcomplete data to the FDA or FAA, or made an illegal payment to an FDA official. The defendant may request that the trial be bifurcated so that the punitive damages phase is separate from the proceedings on compensatory damages.

Alcohol and Drugs. Defendant has an absolute defense if plaintiff was under the influence of intoxicating alcohol or drugs and that condition was more than 50 percent responsible for plaintiff's injuries.

Joint and Several Liability. The bill abolishes joint and several liability with respect to noneconomic damages, such as pain and suffering.

Statutes of Limitation. The general statute of limitations is two years, which begins to run upon the claimant's discovery or when the claimant reasonably should have discovered the harm and cause. The statute of repose for capital goods is 25 years.

Workers' Compensation Offset. Eliminates employer's right to recapture benefits from employees. A product liability award will be reduced by the amount of workers' compensation benefits. Manufacturers may not sue an employer to contribute to an award. The employer loses this protection if he sues to recapture workers' compensation benefits. The employee is supposed to notify his employer if he sues a manufacturer. The employer has the right to enter into the product liability suit or into settlement negotiations to prove that it was not at fault and deserves reimbursement for the benefits it paid its employee.

Mr. ROCKEFELLER. Mr. President, today I am joining my colleagues in introducing the Product Liability Competitiveness Act of 1991. I believe this legislation deserves the attention of all of our colleagues, and their close consideration of its purpose. The changes we propose are designed to serve the best interests of all Americans, and to strengthen our capacity to compete in the highly challenging international arena.

This bill will replace some of the confusion and uncertainty in our State laws by establishing clear, stable, and uniform rules on a few key issues that arise in product liability cases. It is identical to the bill passed by the Senate Commerce Committee in the 101st Congress.

My commitment to product liability reform grows out of my abiding concern about the ability of our Nation to retain its world leadership position. For this country to successfully compete with other nations and to maintain our standard of living, we have a long list of improvements to undertake. We need to reduce our budget and trade deficits; increase our savings rate; improve education, particularly in math and science; invest more in research and development; and somehow shift our investment goals from the short-term only to include the long-term as well.

Product liability reform—while not usually thought of in connection with global competitiveness—should also be an important part of this list. In my view, a uniform Federal product liability law must be pursued as an integral part of our country's effort to achieve economic competitiveness in the world marketplace.

We are paying a high price in the global marketplace for the confusing patchwork of constantly changing product liability laws that currently exist. Our product liability laws are stifling innovation and robbing American industry of its ability to compete. Let me provide some examples.

Last year the Senate Commerce Committee heard testimony from a prominent researcher in neurophysiology at the University of Texas, Dr. Malcolm Skolnick. He provided the example of a computer controlled medication pump, invented as a way to deliver a certain drug to heart patients. Dr. Skolnick told the committee that this pump would probably never be manufactured because the small manufacturer, to whom this technology was licensed, cannot afford to take the risk.

Dr. Skolnick's overall remarks about our product liability system were very instructive. He said. "The view of the tort liability system on the part of business and academia * * * is that it is illogical. It does things that are inconsistent, that do not make sense. It turns science on its head."

In some cases, according to Dr. Skolnick, the product liability system has left scientists and physicians in a catch-22 situation. He cited a blood clotting agent, which in some very rare instances—one-half percent of the patients treated—can cause a stroke. So, if doctors do use these agents, both the doctors and the manufacturer can get sued in product liability. However, if they do not use this product, the doctor can be sued for malpractice!

Product liability costs and the threat of litigation have forced many manufacturers to withdraw useful products from the market and to cancel the research and development of new, innovative and, at times, life-saving products. For instance, Lederle Laboratory remains the sole U.S. manufacturer of the DPT vaccine and Merck & Co. the only producer of the combined measles, mumps, and rubella vaccine. All others have left the field because of the threat of product liability lawsuits.

Faced with increasing and unacceptable liability costs, some American manufacturers are abandoning product lines altogether, closing facilities, laying off workers, and opening their markets to foreign manufacturers. When Puritan Bennett—one of the leading U.S. manufacturers of hospital equipment—stopped making anesthesia machines, two foreign-owned manufacturers were the only competitors in a market once dominated by a half-dozen companies.

There are no absolute protections against foreign competitors. However, there are steps that we can take as elected officials, and as a nation, to stop the export of American jobs and to ensure a level playing field and a climate that lends itself to innovation.

The Product Liability Competitiveness Act of 1991 is one of the steps we can and should take. This bill will replace some of this very costly confusion, with a single set of clear, well-balanced national product liability rules.

This bill is fair. It does not create arbitrary barriers to recovery by injured persons. Yet it does try to give manufacturers and product sellers some guidelines as to their potential liability when a person is hurt by a product. Adopting these guidelines in a Federal statute will remove a great deal of the uncertainty that exists in the current system of state product liability laws. This, in turn, will help reduce unnecessary legal costs and load delays. The proposal will also help spur innovation by moving toward a product liability system that places full sanctions against wrongful conduct of manufacturers, but does so in a fair and balanced manner.

I am proud to be a part of this bipartisan effort. Several of my colleagues, including Senators DANFORTH and KASTEN, have worked diligently on this bill for the past decade. Over the years, this bill has been dramatically improved. The anticonsumer provisions of the past—caps on damages and limits on attorneys' fees—are no longer a part of the legislation.

I urge the Senate Commerce Committee, on which I sit, to move this bill to markup quickly. I urge my colleagues to study this legislation. I think the skeptics or newcomers to the bill will be surprised—and they should be impressed—to see how fair, balanced, and responsible our proposal is.

In several ways, this bill expands the rights of injured persons. For example, this measure expands an injured person's right to sue by providing a discovery statute of limitations. This rule preserves a person's right to sue until he or she actually knows that a harm has been suffered—for example lung cancer—and the cause of that harm—for example asbestos. It avoids the traps of several States' statutes of limitations that cut off a person's right to sue before he or she knows they are injured. Additionally, a number of provisions in the bill, such as the expedited settlement provision, are directed at speeding up trials and reducing legal costs.

In sum, I firmly believe that there is a need to place basic product liability rules in a statute, there is ample justification for Federal action, and that the rules contained in this bill are fair.

As a nation, we must respond to the enormous economic and social challenges of this decade and the next century. This legislation is one of the crucial steps that we must take immediately as part of that response; 1991 should be the year that Congress passes a product liability reform bill.

Mr. DANFORTH. Mr. President, I am pleased to be an original cosponsor of the Product Liability Fairness Act. This bill is identical to S. 1400 as reported by the Commerce Committee during the last Congress. I commend Senator KASTEN for his leadership on this issue.

Product liability reform is essential. It is essential if we are to speed the awarding of compensation to the victims of product-related injuries and if American manufacturers are to maintain their competitive position in world markets.

The victims of defective products deserve to be compensated fairly and quickly. The present system, with its transaction costs and unpredictability, does not treat victims fairly. A 1986 study by the Rand Institute for Civil Justice reveals the wasteful inefficiency of the system. In 1985, the U.S. tort system spent between $16 billion and $19 billion in legal expenses, to delivery only $14 billion to $16 billion in net compensation to plaintiffs. Plaintiffs received only 46 percent of the total expenditure. A more recent study concludes that the costs of the tort system are even higher. A 1989 study by

the Tillinghast Division of Tower Perrin indicates that the total cost of the tort system in 1987 was $117 billion. Despite escalating costs, claimants still receive less than half of the total expenditures of the tort system. A study by the Committee for Economic Development over the same time period reveals that claimants receive only 40 cents in compensation for every dollar spent on product liability insurance. Only one group benefits from the excessive transaction costs of the current system—lawyers. This system is unacceptable.

The tort system often requires plaintiffs to wait years to recover for their injuries. This is a particular concern for the most seriously injured victims, who are often in desperate financial straits. A 1989 GAO study concludes that products cases which go to trial take 2½ years to proceed from filing to verdict, and even longer for compensation to be awarded. Another study found that in cases involving the most severe injuries, those in which payment exceeded $100,000, nearly 22 percent of claimants waited more than 5 years for payment. Only 2 percent were paid less than one year after reporting their injury, and it took more than 3 years for about 63 percent to be paid.

Not only does the present system generate excessive costs and delays, it does not compensate injured victims in proportion to their losses. Numerous studies have found that the tort system grossly overpays those with small losses, while underpaying the most seriously injured. One study found that injured plaintiffs with losses between $1 and $1,000 received, on the average, 859 percent of their losses, while those with losses of over $1 million received, on the average, 15 percent of their losses. That figure does not include the share that goes to the lawyers. Severely injured claimants fare poorly in litigation because they cannot afford to wait years to be compensated. Therefore, in order to pay medical expenses and other costs, they often are forced to accept settlements for far less than the cost of their injuries. Other studies have shown that people with lower incomes and lower educational levels recover far less than their middle- and upper-class counterparts because they have less access to lawyers and cannot afford to wait as long to recover.

The system is inherently uncertain and unpredictable. It may be characterized accurately as a lottery. As Prof. Jeffrey O'Connell of the University of Virginia Law School told the Committee:

> If you are badly injured in our society by a product and you go to the highly skilled lawyer * * * in all honesty [the lawyer] cannot tell you what you will be paid, when you will be paid, or indeed if you will be paid.

This uncertainty is a problem both for defendants and plaintiffs. Defendants need greater certainty as to the scope of their liability. Plaintiffs need swift and certain recoveries which fully compensate them for their losses.

Injured victims are not alone in bearing the excessive costs of the product liability system. It is a burden on American businesses competing overseas. A study for the Department of Commerce found that domestic manufacturers have product liability insurance costs 20 to 50 times higher than those of their foreign competitors.

Higher prices are just one aspect of our competitiveness problem. The product liability system discourages innovation by U.S. firms. A 1988 Conference Board survey of 2,000 CEO's found that nearly half of all manufacturers, large and small, had decided to discontinue existing product lines, and 39 percent had decided not to introduce new product lines as a result of fear of potential liability.

The impact of product liability costs on innovation is particularly pronounced among smaller U.S. companies. A recent American Medical Association report found that product liability is slowing the development of new medical technologies. Research and development by small companies is vital to further improvements in biotechnology, but these companies are not marketing new products due to an inability to obtain affordable product liability insurance.

The product liability system is a deterrent beyond these decisions not to market innovative products. The Commerce Committee received testimony last year that the current system also has resulted in a substantial decrease in industry funding for research essential to development of new products. Dr. Malcolm Skolnick, a professor of biophysics at the University of Texas, who also is a lawyer, told the committee that, as a result of the product liability system:

> Scientific inquiry is stifled. Ideas in areas where litigation has occurred will not receive support for exploration and development. Producers fearful of possible suit will discourage additional investigation which might discover additional knowledge which can be used against them in future claims.

This leaves America with an economy that does not feature the best products that technology has to offer.

This bill encourages the settlement of lawsuits without litigation based on rule 68 of the Federal Rules of Civil Procedure. This provision encourages both parties in litigation to accept reasonable settlement offers. This will help victims to receive compensation for their losses quickly and without incurring substantial legal fees—fees which can reduce their compensation by more than 40 percent in the current system.

This bill also modifies the rule of joint and several liability with respect to noneconomic damages. This provision limits a defendant's liability to his or her percentage of fault for damages. In addition, the standard of proof for the awarding of punitive damages will be changed to a clear and convincing evidence test based on the recommendation of the American Bar Association. The bill provides for a separate proceeding on punitive damages, reflecting the fact that they are a quasicriminal type of penalty. The bill also encourages individuals to take responsibility for their own conduct. It prohibits a claimant from prevailing in product liability litigation the claimant was intoxicated or under the influence of illegal drugs and that condition was more than 50-percent responsible for the harm suffered.

Mr. President, the current system does not allocate responsibility for injuries equitably. The current system is a lottery. A severely injured plaintiff is required to take a chance on the lottery in order to be compensated. Too often, it is the victim who loses when this unpredictable system produces an unfair result. This legislation proposes improvements to encourage quick settlements that allocate responsibility equitably. Moreover, by reducing transaction costs, this legislation should improve our manufacturers' competitiveness in world markets. It is these excessive costs that burden manufacturers and discourage the development of innovative new products.

Mr. President, now is the time to enact a Federal product liability law. Since the 96th Congress, the Commerce Committee has reported 5 product liability bills and held 20 days of hearings. Opponents of reform will urge more hearings and study. The time to act is now. This bill reflects years of study and refinement. It is a moderate bill which promotes uniformity and fairness. I urge my colleagues to support this legislation.

Mr. GORTON. Mr. President, today Senator KASTEN has introduced the Product Liability Fairness Act. This bill is identical to S. 1400, which was reported favorably by the Commerce Committee on May 22, 1990. I am pleased to cosponsor this legislation, and I am confident that a majority of the Members of the Senate favor its passage.

The Consumer Subcommittee has compiled an extensive record which indicates clearly that our product liability laws are unpredictable, and that claimants are often undercompensated after lengthy litigation. It is readily apparent that the current system is overly cumbersome, wasteful, and inefficient as a means of compensating injured persons. Its transactional costs are outrageously high.

Beginning with the 96th Congress, the Commerce Committee has considered a wide variety of legislation directed at reforming the product liability system. These bills took many ap-

proaches, including alternatives to the traditional tort system, expedited settlement procedures, and alternative dispute resolution. Some of the bills also attempted to reverse the trend in State courts to adopt strict liability by establishing fault-based standards and defenses. All of these approaches were legitimate efforts to make the system fairer. None, however, gained sufficient support to be enacted into law.

The Product Liability Fairness Act is the result of all the previous bills, hearings, and of extensive consultations with legal experts. It is a moderate bill that does not restrict a claimant's right to recover for his or her injuries, and it solves the problems caused by the unpredictable patchwork of inconsistent State product liability laws by proposing a uniform statute. The bill calls for limited preemption of State law in key areas that will result in enhanced uniformity while maintaining the State's basic prerogatives to create their own tort law. Mr. President, the individual provisions of the bill are not extreme measures designed to favor one party over the other in litigation. Rather, they derive from the mainstream of State tort laws and seek balanced and fair results.

An example of the type of change proposed in the bill is the provision on punitive damages. Some legal experts have questioned the awarding of punitive damages, which are a quasicriminal penalty. Unlike compensatory damages, punitive damages are intended to punish defendants, not to compensate injured persons for their losses.

The bill provides that a claimant must prove that his injury was caused by the defendant's conscious, flagrant indifference to the safety of those persons who might be harmed by a product by clear and convincing evidence in order to be entitled to punitive damages. Also, a defendant can request a separate proceeding on punitive damages and only during this phase of the proceedings will evidence admissible to determine punitive liability be admitted. This provision is derived from studies and recommendations by the American Bar Association and the American College of Trial Lawyers. Twenty-two States have adopted the clear and convincing standard of proof and another has enacted the even higher standard of proof beyond a reasonable doubt. The State of Washington does not allow punitive damages to be awarded in products cases. The bill does not preempt State law to allow plaintiffs to recover punitive damages in Washington. Rather, it creates a uniform system for the awarding of punitive damages in those States that do allow such awards.

With regard to joint and several liability, the bill also creates a uniform standard that is derived from an emerging trend in State law. The bill provides that a claimant may recover all of his economic damages, such as medical expenses or lost wages, from any defendant. But, a claimant may recover noneconomic damages, such as pain and suffering, from an individual defendant only in proportion to that defendant's fault. This is the California rule, which voters in that State adopted in a 1986 referendum. Twenty-three States have adopted this rule. The bill does not affect the 11 other States that have abolished joint and several liability altogether.

Mr. President, this bill proposes reasonable steps to solve a national problem. A reasonable statute that promotes uniformity and predictability in the law will benefit both consumers and manufacturers. I commend Senator KASTEN for his outstanding work on this bill, and I urge my colleagues to cosponsor and support it.

Mr. LUGAR. Mr. President, I rise today in support of Senator KASTEN's products liability reform proposal. As our Nation attempts to lead the world into the next century, American business is hobbled by an extremely costly, chaotic, and counterproductive body of products liability law. There is an urgent need for Federal product liability legislation to bring certainty to the law and to stabilize the serious burden on interstate and international competition.

Widespread variations in product liability from State to State create unpredictability and confusion for manufacturers. In my home State of Indiana, for example, only about 17 percent of the products manufactured in Indiana are consumed within the State. The overwhelming majority of the products manufactured in Indiana must be designed, made, and marketed in ways that comply with 50 uncoordinated sets of product liability rules. This requirement, in many instances, contributes nothing but cost to the final product.

The most serious side effect of this jumbled approach to product liability regulation is the injection of greater uncertainty into the business environment. As a former small business person I understand the heavy cost uncertainty can have on a commercial operation. Whether it be increased risk of a new product line or increased interest rates for expansion of an existing line, the possibility of product liability litigation followed by damages made more costly by the prospect of punitive damages acts to stifle American innovation. It is this innovation which is critical to preserving America's eroding position in domestic and international markets.

The purpose of this bill is not to make products less safe and somehow less costly. Indeed, in some States this new approach will stiffen existing product liability laws. The real purpose of this legislation is to create a single nationwide standard for product safety. I am hopeful that this measure will receive a fair and thorough hearing during this session of Congress, and will be passed and signed into law.

Mr. CHAFEE. Mr. President, I want to take this opportunity to commend the distinguished Senator from Wisconsin for the work he has done on product liability. He has been here now for close to 12 years, and throughout that time he has been a staunch advocate of product liability reforms.

I am joining today with him to reintroduce the Product Liability Reform Act. It is my hope that this legislation will bring some much-needed uniformity to the product liability system, for the benefit of consumers and the well-being of our national economy.

As my colleagues are aware, this subject is not new. Over the past 10 years product liability reform has been the focus of heated debate in the Congress, and we have considered—but never enacted—a variety of comprehensive liability reform measures.

Why the fuss? Simply put, it is because we have seen an explosion in the number of product liability cases in the past decade, and this increase has imposed heavy costs—both financial and social—on both American consumers and the overall U.S. economy. These costs must be addressed if the United States is to maintain the high quality of life of its citizens and the international competitiveness of its business sector.

Let's look at the current situation with regard to product liability. In the past decade or so, the number of State court filings have been estimated to have increased by twofold to fivefold; at the same time, the number of Federal product liability lawsuits filed has jumped sharply—by one count, a tenfold increase in the last 15 years. As a result, companies are spending a significant amount of time, money, and resources on defending against lawsuits. Furthermore, as the number of tort actions has increased, the cost of insurance likewise has gone up.

The time and money committed to lawsuits—or even the possibility thereof—and insurance have several serious negative ramifications for all involved. For the manufacturers, much-needed time and money is being spent on legal actions and insurance, rather than on the research and development of new products and product improvements. In some cases, manufacturers are pulling their products from the shelves altogether.

In turn, the companies' actions impact heavily on consumers. First, the prices that consumers pay for a product often can include a substantial safety tax that goes toward covering the manufacturer's litigation costs; a large part of these costs is not for payment of legitimate claims, but rather

for transaction costs. Second, it is clear that as companies forego new production, American jobs are lost.

In my view, however, even more important than the significant financial costs incurred are the costs in terms of American innovation and creativity. When American creativity is stifled or paralyzed by corporate caution, important new products aren't developed, and our society loses in two ways: competitively and socially.

In terms of American competitiveness, the lack of a uniform product liability standard translates into widespread uncertainty among businesses. Such uncertainty prevents companies from making long-range business plans, and breeds excessive corporate timidity with regard to new initiatives. In turn, this allows foreign competitors a price and an innovation advantage in both U.S. and foreign markets. For the Nation's economy, the end result is less manufacturing, less productivity, less innovation, and less long-term stability.

There are several examples of innovative American products that have been abandoned due to liability risks. Monsanto Co. dropped the planned production of a potential asbestos substitute. Dyneet Corp. stopped production of a helicopter clutch as a result of prohibitive insurance rates. As a result of legal costs incorporated into the product price, some products have become unable to compete with foreign brands. For example, insurance has added $75,000 to the cost of every new plane made by Piper Aircraft; indeed, product liability costs now exceed the total cost of manufacturing of some small aircraft.

I cannot emphasize enough, however, the particularly high social cost of unpredictable liability laws. When companies withdraw or raise the price of socially desirable products from the marketplace because of high legal and insurance costs, we as a society lose an opportunity to improve the quality of our lives. The loss is particularly severe in cases where the product in question is manufactured by very few—or only one—company.

One well-known, oft-cited example is that of pediatric vaccines. In 1987, Lederle Laboratories, the sole manufacturer of diptheria, pertussis, and tetanus [DPT] vaccines, raised its price per dose from $2.80 to $11.40 to pay for the legal costs associated with DPT. That is nearly a fourfold increase in price. Only two other companies produce diptheria vaccines, and if Lederle were to discontinue DPT vaccines altogether, children would suffer dramatically. Likewise, there is only one producer of the measles vaccine, and that company has stated that the product remains on the market only because of the company's sense of social responsibility.

Other worthwhile and important products are being developed only to be sold or discontinued when it becomes clear that the liability costs could be overwhelming. These products include infant and child car seats; family planning devices; sports safety equipment; and medical equipment.

In sum then, given the financial, competitive, and social costs of an unpredictable product liability system, I believe that some reform should take place. The difficulty lies, however, in determining how we can ensure that consumers are protected from corporate negligence and victims are fairly compensated for their injuries, while innocent manufacturers are prevented from being hit by frivolous or unwarranted lawsuits. In other words, we need to keep a deterrent value alive, but we have to curb some of the misuses—or outright abuses—in the system that are costing all of us dearly.

The bill that we are introducing today I believe will take us a step in the right direction. Under the measure, a Federal uniform product liability standard would be established. In addition, the bill provides for expedited settlements and alternative dispute resolution procedures. the bill also clarifies who is responsible for product harm and when that responsibility begins and ends.

I recognize that there will be a great deal of discussion about this bill, and I welcome it. I am hopeful that by the end of this Congress, we will see substantive product liability reform legislation enacted.

I, again, would like to thank my colleague from Wisconsin for his hard work and tenacity on this issue.

He has run up against plenty of stone walls, and I want to express my appreciation to him for his consistency. I intend to do what I can and work with him on this matter.

Mr. KASTEN. I thank the Senator.

Mr. MACK. Mr. President, I am pleased to reintroduce, along with my colleagues Senator KASTEN and Senator SHELBY, our bill which would lower the tax rate on capital gains.

Should this legislation become law, it would easily represent the most significant economic achievement of the 102d Congress. You might then be surprised when I say that I have a concern about the bill. My concern is, however, that it may not go far enough.

The Economic Growth and Venture Capital Act nearly cuts the tax rate on capital gains in half for most individuals and businesses. This is unquestionably a significant reduction. Independent research has estimated that this alone would unleash economic activity to raise GNP by 2.8 percent, add 2.5 million new jobs, and increase Federal revenues by $30 to $40 billion over 5 years.

But there is a powerful argument to be made that capital gains should not be subject to any tax at all. In recent months, Alan Greenspan, who is the Chairman of the Board of Governors of the Federal Reserve System and one of the most respected economists in the United States, has said that he is in favor of eliminating the tax on capital gains altogether. I think he may be right.

It is unfortunate, although perhaps necessary, to tax any economic activity at all. But there are certainly some activities that are much worse to tax than others. And the creation of capital is certainly one of those activities for which the consequences of taxing are awful.

Ted Forstmann explained this eloquently in the Wall Street Journal on December 13, 1990, when he said:

> The capital gains tax is not a tax on wealth. It is a tax on one's ability to improve one's lot by creating wealth. Taxing capital gains does not much affect the wealthy, who have their capital gains behind them, and are principally concerned with maintaining their wealth. Its real impact is to suppress the initiative of Americans who are not yet wealthy, but have the talent and drive to create wealth, and thus benefit the economy.

A fundamental rule of economic behavior is that whenever you tax something, you get less of it. We are now taxing the creation of wealth at a rate that is higher than at any time in the past decade. I am confident that had this legislation been in effect a year ago, we would not be in a recession today.

Even though the legislation we are proposing today cannot turn back the clock, it is the best antirecession medicine we can take.

I have heard the following metaphor which, I think, describes the importance of a capital gains tax cut in graphic terms: Our body economic, is today battered and bruised by the recession, with even perhaps some broken bones. We are trying to heal those wounds, with such medical aids as unemployment benefits and expanded credit. But that medical help can only go so far since there remains a plastic bag over the head of the body economic—and that plastic bag is a capital gains tax. Only when we remove that plastic bag will we be able to fully resuscitate the economy. Until then, all of our other efforts will have only limited success.

Mr. President, I have with me two recent studies whose conclusions are relevant to the Economic Growth and Venture Capital Act. I ask unanimous consent that the Executive Summaries of these two studies be printed in the RECORD.

The first study, "Tax Fairness: Myths and Reality," sponsored by the National Center for Policy Analysis, addresses an argument that opponents of tax cuts have made in recent years.

The study specifically analyzes the Reagan tax cuts of the 1980's and which

income groups would be affected by these tax cuts. The NCPA's conclusion is that the tax cuts benefited Americans of every income level, and their analysis is filled with documentation to demonstrate this.

Remember that today's critics of a capital gains tax cut are largely those who opposed the Reagan tax cuts on the basis that those tax cuts would benefit the rich at the expense of the poor. The lesson to be learned is that they were wrong on income tax cuts, and they are wrong now on capital gains tax cuts.

The second study is sponsored by the Institute for Policy Innovation, and its topic is, "How Tax Policy Compounded the S&L Crisis." It analyzes some of the negative consequences of certain tax changes we have made in recent years, particularly the increase in the capital gains tax rate in 1986.

The IPI study emphasized that the increase in the capital gains tax rate significantly reduced the stock of wealth in the United States. Most of that wealth is in real estate. As a consequence, the increase in the capital gains rate reduced the value of commercial real estate in the United States by 9 percent and also lowered the value of owner-occupied housing by about $125 billion.

Mr. President, I also ask unanimous consent that a recent Washington Times article by Warren Brookes on this issue be placed in the RECORD.

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

[Center for Tax Policy Studies, National Center for Policy Analysis, March 1991]

TAX FAIRNESS: MYTHS AND REALITY

By Aldona Robbins and Gary Robbins

EXECUTIVE SUMMARY

During 1990, Americans were bombarded by reports that the U.S. tax system had become increasingly unfair. The critics seized upon two or three facts about the income tax system, repackaged those facts in misleading ways in dozens of "studies," and skillfully marketed the "findings" to the national news media.

Myth: During the 1980s, the rich got richer and the poor got poorer.

Over the past decade, the real per capita income of Americans grew by 21.2 percent. Every income class posted a substantial increase in real aftertax income.

Myth: The top 10 percent of income earners gained from the Reagan tax cuts, while the bottom 90 percent lost.

Total taxes as a percent of gross national product today are slightly higher than they were in 1980. The nation's total tax burden, therefore, did not go down—in large part because of Social Security (FICA) payroll tax increases that took effect in the 1980s but were legislated during the Carter Administration. The Reagan income tax cuts, however, lowered the personal income tax burden for every income class.

Myth: The Reagan tax cuts were a giveaway to the rich.

The tax rate on the highest income earners was reduced sharply during the 1980s in order to encourage wealthy taxpayers to earn more income and pay more taxes. The experiment was a spectacular success. The tax cuts benefitted the non-rich, as wealthy taxpayers increased their total tax payments and their share of tax payments. For example, the share of income tax payments made by the top 1 percent of taxpayers grew from 18 percent in 1981 to more than 27 percent in 1988.

Myth: Reagan tax reform was unfair to low-income families.

For the vast majority of Americans, the greatest benefit from Reagan tax reform is not that tax payments are lower but that taxes are lower than they would otherwise have been. For example:

A family earning $10,000 a year would pay 134 percent more in income taxes if the Carter Administration's tax policies were in effect today.

Including the increases in Social Security taxes, this family would pay 42 percent more in total taxes if the 1980 tax law were in effect.

The very lowest-income taxpayers realized an additional gain. As many as four million low-income taxpayers no longer pay income taxes. The personal exemption was doubled from $1,000 in 1980 to $2,000 by 1989, and the standard deduction was increased by over 50 percent for most taxpayers.

Myth: The income tax system became less progressive during the 1980s.

The U.S. tax system became more progressive, not less so.

Between 1979 and 1988, the share of income taxes paid by the top 5 percent of income earners rose from 37.6 percent to 45.9 percent.

Between 1981 and 1988, the share of Social Security payroll taxes paid by the top 5 percent of income earners rose from 10.9 percent to 12.3 percent.

By contrast, the bottom half of income earners now pay only 5.5 percent of federal income taxes and only 17 percent of Social Security payroll taxes.

Myth: During the 1980s, income of the wealthy grew faster than that of any other group.

No one really knows if this statement is true. It is certainly true of income subject to taxes. But there is no hard evidence that the total income of the wealthy grew faster than that of other taxpayers. We do not know how much of the growth in taxable income was due to a shift from nontaxable to taxable income and how much to the fact that the wealthy worked harder or invested more to produce more income.

Myth: The rich pay a smaller percent of their income in taxes today than they did in 1980, although most taxpayers a higher percent.

No one knows exactly what the "income" of the rich was in 1980. Official records show only income subject to the income tax. Taxpayers were not required to report income from tax-exempt securities or other forms of tax-sheltered income. Because of Reagan tax reform, much more of the income of the wealthy today is taxable and much less sheltered. By any reasonable estimate of total income in 1980 and 1990, taxes as a percent of income have gone up, not down, for the wealthiest taxpayers.

Myth: The tax system can be made more progressive by raising the tax rates paid by the rich.

For most of the history of the income tax, the opposite has been true. That is, whenever the highest tax rate has been increased, the total tax payments and share tax payments made by the rich have gone down. Whenever the highest tax rate has been lowered, the share of taxes paid by the rich has gone up. The experience of the 1980s replicated this historical relationship.

[From the Institute for Policy Innovation, February 1991]

HOW TAX POLICY COMPOUNDED THE S&L CRISIS

(By Aldona and Gary Robbins)

EXECUTIVE SUMMARY

Federal tax policy must be included in the list of factors that contributed to the savings and loan crisis. In particular, retroactive changes contained in the 1986 Tax Reform Act lowered real estate values, thereby weakening many institutions which had invested in real estate and adding to the cost of the savings and loan bailout.

Overall, the 1986 tax reform reduced the value of commercial real estate by 17 percent.

The value of home ownership fell by over 9 percent.

$35.6 billion of the estimated $150 billion S&L bailout cost is attributable to the 1986 tax changes.

Tax policy affects revenues to the government, income to economic actors, and the stock of wealth. Governmental assessments of the impact of tax changes focus almost exclusively on revenues. Revenues depend upon income produced by individuals and businesses. For example, social security payroll tax revenues are determined by wages and salaries. Wages, interest, dividends, and profits are flows of income over time which result from continuing productive activities.

Although not recognized in government projections, tax policy affects these income flows through its impact on U.S. economic activity. Higher tax rates lead to lower incomes by discouraging work and saving; lower tax rates lead to higher incomes by encouraging work and saving.

Tax policy also affects the stock of wealth, a fact totally ignored during consideration of the 1986 Tax Reform Act. To the extent that this oversight has contributed to fluctuations in the real estate market, recent tax legislation worsened, not improved, the savings and loan problem and its subsequent costs to taxpayers.

The capital gains changes in the 1986 Act reduced the value of commercial real estate by 9 percent.

Rental costs have gone up by 17.5 percent due to tax reform's impact on commercial real estate.

Changes in capital gains tax treatment, in combination with lower marginal rates, decreased the value of an owner-occupied home worth more than $150,000 by between 5 and 6.5 percent.

The capital gains changes in the 1986 Act lowered the value of owner-occupied housing by about $125 billion.

Provisions in the 1986 Act affecting real estate fall into two main categories. First, repeal of the 60-percent exclusion rate on capital gains raised the tax on real estate projects thereby lowering their asset values. Because about 80 percent of capital gains on real estate is due solely to inflation, the increase in capital gains taxes exposed both commercial real estate investors and homeowners to a significant inflationary tax.

The second broad category of tax provisions affecting real estate values involves deferral of tax deductions. Changes such as the extension of passive loss limitation to real estate and the at-risk loss limitation provision can cause investors to defer the deduction of normal business expenses associated

with operating a real estate project. Deferral would be all right if the deferred deductions were indexed for inflation and interest. Because they are not, these changes in the 1986 Act also reduced the value of both commercial real estate and owner-occupied real estate.

Approximately $21 billion of the $35.6 billion in S&L bailout costs due to tax changes are attributable to capital gains and passive loss.

Current estimates place the cost of the S&L bailout in the neighborhood of $150 billion, excluding government borrowing costs. The actual cost of the S&L bailout to taxpayers will depend upon: (1) how many savings and loans fail, and (2) the market value of assets held by the Resolution Trust Corporation (RTC)—the agency set up to deal with the S&L problem. Anything that lowers (raises) the value of real estate property or mortgage quality will reduce (increase) what the RTC can receive for these assets, thereby increasing (decreasing) the cost of the bailout to taxpayers.

A number of tax policy changes that could be undertaken to meliorate the cost of the S&L bailout include:

Lower the tax on capital gains through either a reduction in the rate or through indexing for inflation. In addition to beneficial effects on S&L assets values, a reduction in capital gains taxes would enhance the prospects for higher growth in general.

Repeal ineffectual tax provisions such as passive loss and at-risk limitations. The effect of these provisions is to rearrange investment portfolios, not eliminate the perceived tax abuse. Society loses, however, because of higher transaction costs associated with portfolio changes.

End the asymmetric treatment of taxpayer gains and losses. In an attempt to speed up delivery of tax receipts, the government has passed laws which force the taxpayer to pay tax on income not yet received.

Analyze the impact of taxes on the stocks of U.S. wealth as well as the income flows. Had this been done during debate over tax reform, losses from the S&L bailout could have been reduced.

Such tax policy changes would increase real estate investment incentives, promote economic growth, and raise revenue for the government.

[From the Washington Times, Mar. 7, 1991]

CURING THE BANKING CRISIS AND RECESSION

(By Warren Brookes)

Sen. Phil Gramm, Texas Republican, wants President Bush to open a "second front" on domestic policy.

Here's a good place to start: Go on national television and tell how Congress could end the U.S. banking crisis and the recession fast, just by cutting the capital-gains tax rate to 15 percent.

Such a move alone would restore $500 billion to commercial and residential property values, instantly strengthen the capital positions of all banks and thrifts, end the credit crunch and slash the budget deficit by tens of billions of dollars.

Why don't we do this? Because the Democrats have turned ideology into "idiotology," willing to shoot the nation in the foot for the sake of preventing the wealthy from getting wealthier, even if that would make everyone else better off, too.

There is not a single mainstream economist who does not believe that such a cut would stimulate economic growth and new jobs. Even Alan Sinai, a liberal economist with First Boston Corp., testified to Congress last June that this cut would create at least half a million additional jobs per year and raise total federal tax revenues by $30 billion to $40 billion over five years.

Beyond that, not only does this tax cut more than pay for itself in direct feedback of revenues (raising federal revenues from $7 billion to $11 billion over five years), but it will directly reduce the cost of the savings-and-loan bailout by $21 billion, by raising the liquidation value of its real estate assets.

That is the essential message of a new study by Washington economists Gary and Aldona Robbins for the Institute for Policy Innovation. It shows that the 1986 Tax Reform Act (which raised capital gains rates by 40 percent) cut the values of commercial real estate by 17 percent and home values by 9.2 percent.

Together, these losses add up to more than $1 trillion in total current asset values in the economy as a whole. That accounts for most of the U.S. financial sector problems. The Robbinses say the capital-gains tax increase alone cost current home-owners at least $125 billion in housing values. Since 1986, the value of commercial real estate investment trusts also plunged 60 percent.

As the Robbinses argue: "since 1983, the value of failed S&L real estate assets has fallen by $28 billion. These assets now or will belong to the Resolution Trust Corp.—the agency set up to deal with the S&L problem."

The reason for this is that real estate is the most tax-sensitive commodity there is. Every dollar that must be paid in taxes on a property is a dollar that cannot be paid either as mortgage payments or rental income. Since a property's total market value is directly related to those payments or imputed rental income, any tax increase slashes value.

"Since 86 percent of S&L assets are mortgages and mortgage-backed securities, tax policies which reduce real estate values will logically diminish the value of S&L assets" and contribute directly to the disappearance of savings-and-loan capital.

In 1986, Congress raised the top tax rate on capital gains to 28 percent, limited losses on "passive" investments, curtailed depreciation schedules on commercial real estate, repealed the 10-year amortization of construction-period costs and taxes, tightened the alternative minimum tax rules, changed and tightened the rules on real estate tax shelters and real estate investment trusts, and made a number of changes in real estate accounting rules.

It also cut the top marginal tax rates, dramatically reducing the value of the income-tax deduction on home-mortgage interest payments. While both the rate reductions and loophole closings were desirable to eliminate distortions in the economy, their powerful 8 percent impact on cutting commercial real estate values was more than doubled by the rise in capital gains.

The Robbinses conclude that altogether the effect of Tax Reform on the Resolution Trust Corp.-owned properties is some $35.6 billion, of which $21 billion is attributable to capital gains and to passive loss restrictions. (See Table.)

On Jan. 23, Federal Reserve Chairman Alan Greenspan was asked by Sen. Connie Mack, Florida Republican, "If we lowered the capital gains tax rate, what impact would it have on the value of assets, the value of real estate?"

Mr. Greenspan replied: "I think it's fairly evident that to the extent the capital-gains tax is lowered, you will get potentially higher property values . . . There's no question in my mind that a capital-gains tax cut would be helpful with respect to the issue of property values and economic growth."

In short, a capital-gains tax cut would by itself go a long way to restoring the nation's financial system, even as it reduced the deficit by $32 billion over five years. Those who oppose it are doing so strictly out of "idiotology," not "fairness."

Impact of 1986 Tax Reform on Costs of the S&L Bailout

RTC Commercial Properties	$23.7 billion
RTC Commercial Mortgages	5.9 billion
RTC Home Mortgages	6.0 billion
Total	35.6 billion
Capital gains portion	21.0 billion
Reduction in Commercial Real Estate Values	17.0 percent
Reduction in Residential Values	9.2 percent

Source: "How Tax Policy Compounded the S&L Crisis" Institute For Policy Innovation, 109, 2:91.

By Mrs. KASSEBAUM:

S. 641. A bill entitled the Improved Rural and Short-Line Railroad Service Act; to the Committee on Commerce, Science, and Transportation.

IMPROVED RURAL AND SHORT-LINE RAILROAD SERVICE ACT

Mrs. KASSEBAUM. Mr. President, I rise today to introduce legislation to address the abandonment of railroad lines across rural America.

Today, many rural communities across the country are in danger of losing their rail service. If this happens, the implications will be far reaching. Farmers and small shippers will be most directly affected by the abandonments, but they will not be alone. Rail workers and their families, schools, and local retail businesses will all suffer. Real estate values will drop, and rural highways will deteriorate all the more rapidly. In short, the very existence of a rural communty may be threatened by the loss of rail service.

We must fight for our rural communities. Rail service must be preserved to the greatest extent possible. For this reason, I am introducing legislation to encourage railroads to market their lines to companies interested in continuing rail service before simply abandoning the track to the salvage companies. The acquiring companies, which are usually small and very service-oriented, can often solicit enough new business to make these lines profitable. Because rural rail service is so important, we need to give those companies interested in continuing this service every opportunity to do so.

I know firsthand what can happen if a railroad company dedicates itself to selling its unprofitable lines to dedicated, more aggressive companies. It is impressive. In the State of Kansas the Atchison, Topeka, and Santa Fe Railway Co. has been working for several months to market over 900 miles of track that it had proposed for abandonment. Santa Fe has hired a marketing specialist who has contacted short-line

operators and local communities in an attempt to transfer these lines to companies interested in continuing rail service. The results have been very positive. Hundreds of miles have already been sold and rail service has been preserved for many of our rural communities.

Santa Fe's actions to date are exemplary and should serve as a model for other railroads. It is my sincere hope that the legislation I am introducing will encourage such behavior and will facilitate the transfer rather than the abandonment of rural rail lines. The railroad is the lifeline of many rural communities, and we cannot allow this lifeline to be cut off.

By Mr. COATS (for himself and Mr. HELMS):

S. 642. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependents of a taxpayer; to the Committee on Finance.

S. 643. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependent children of a taxpayer who are 6 years old or younger; to the Committee on Finance.

PERSONAL EXEMPTIONS FOR DEPENDENTS

Mr. COATS. Mr. President, today we are discussing some important proposals to reawaken America's slumbering economy and put us back on the path to growth—ideas rooted in the free market lessons on the 1980's.

Unfortunately, in the budget package of last year, those lessons were roundly ignored. Taxes are an enemy of growth. And less growth, inevitably, means less revenue and higher deficits. Somehow our budget agreement managed to get these basic facts wrong at every turn. Its budget cuts were illusions. Its taxes greased our economic slide. The slowdown we face has added new debt. And it is average Americans who have suffered.

Congress, it seems, has abandoned proven policies for the tired and discredited strategies of the past. But I believe some of the proposals before we today go a long way toward reversing the rush to recession we've seen—particularly the proposal by my colleague from Wisconsin to reduce the capital gains tax, with special consideration for lower- and middle-income taxpayers.

If I can take a moment, however, I want to focus a portion of this discussion on the unique needs of families. The American Tax Code is a national symbol of the way our Government treats families and their challenges. And that national symbol is a national disgrace.

Over the last several decades, America has undergone a dramatic shift in the distribution of its tax burden—but not in the direction you'd expect. Massive new tax requirements have been placed directly on families with children. In a heartless paradox we have taken resources from the people who can least afford to part with them.

This change was not intentional. But it is no less destructive for being thoughtless. Since the early part of this century when the personal exemption was first enacted, it has only recently—within the past several years—been indexed for inflation. And over those decades, inflation has eaten deeply into the margin of economic security which families once enjoyed—destroying 80 perecent of the personal exemption's worth.

In 1917 the personal exemption stood at the equivalent of $10,000 in 1990 dollars. Its value dropped in the following years, with America facing the Great Depression and the Second World War. But when those challenges were met, the original value of the exemption was never restored. And in the decades which followed, the value of the personal exemption has steadily and dramatically declined—eroded by inflation and neglect.

I played a role in doubling the personal exemption to nearly $2,000 in 1985 and 1986 during the development of the Tax Reform Act. That was an important reform, coming at a critical time. But it was only a partial step. It did not satisfy the level of need. It did not satisfy the precedent of history. That change was not the end of a process, but the beginning. And the time had come for a second step as bold as the first.

Raising a child and keeping a household is a more expensive proposition than it has ever been before. The accelerating costs of health care and education have left many families with basic needs they cannot meet. The Family Economics Review recently placed the costs of raising a child in a low-income family at somewhere between $4,000 and $5,000 per year per child.

Those problems are not caused primarily by decreasing income. Many American families now have two wage earners instead of one—sometimes out of intention, often out of necessity. In spite of this trend, many still cannot afford decent housing or adequate health care—the range of daily needs for families with children.

I strongly believe that a central cause of these difficulties is the weight of increased, unfair, and counterproductive taxation of American families. And, to be more specific, the problem has been magnified by a dramatic decline in the value of the personal exemption over the years.

For example, in 1950 when the median family income stood at $3,319, the personal exemption was $600 per year. An average family of four with no other exemptions could deduct about 72 percent of its income from taxation.

In 1989, however, when the average family income totaled $34,213 per year, Americans were allowed a $2,000 personal exemption. Despite the increase enacted in the Tax Reform Act, an average family of four with no other deductions can now exempt only 24 percent of their income from taxation.

To offset the same percentage of family income today as in 1950, the personal exemption would have to be set at about $6,184.

This inequity hurts all taxpayers, but it hurts families with children more than any other group. And it places a special burden on America's poor—particularly racial and ethnic groups which often face the greatest economic challenges. Today about 50 percent of American families have children under 18 years of age. Yet more than 60 percent of black families, and more than 70 percent of Hispanic families, have children over 18.

Our Tax Code has pressed down on families an unfair weight of taxation. It has tied their hands in a time when we must depend on families to meet needs of their own. And, for this reason, I have introduced legislation, S. 152, to increase the personal exemption to $4,000 and to index that figure for inflation. This will not bring the exemption up to its historical value, but it will bring tax relief to families. And it will be available to all families, whether or not they itemize or can afford tax shelters.

This, in my view, is the ideal. But my commitment is to meet a need, not just to pass a particular bill. I will support any legislation which allows families with children to keep more of their own money. And so I will also be introducing two other measures. The first will increase the personal exemption to $4,000 for dependents alone. The second will increase the personal exemption to $4,000 for children aged 6 and under. While these approaches are less comprehensive, they would provide immediate help to families that need it most—families with young children, families on tight budgets with pressing needs.

These are not proposals to create new government handouts. They do not address difficult needs with a new Federal program. Rather, my proposals would simply allow families to keep more of the money they earn. Money they desperately need. Money that is now unfairly taken.

Now that we are confronted with a troubled economy, a higher number of American families are grappling with the reality of financial hardship. As a result, I expect we will see a number of proposals for new or expanded entitlement programs. But good questions have been raised over the effectiveness of this approach. Often our best intentions are frustrated by excessive administrative costs, waste and unintended consequences. But by putting

money directly back into the hands of the American family, we can provide them the power to make their own choices. We can reduce their economic burdens so families can better play their vital social role—giving them the means to educate and care for their children without ineffective or intrusive Federal programs.

If we were to double the personal exemption for everyone, families would feel their burden lightened immediately. A family of four which makes $20,000 a year after subtracting the standard deduction would cut their Federal tax obligation from $1,774 to less than $600. Middle income families would also benefit. A family of five earning $40,000 per year after the standard deduction is taken would see their Federal taxes fall from about $5,500 to about $2,500.

For too many decades, the Federal Government has been blind to the practical, pressing economic needs of American families. We have a tax structure that responds to every special interest under the sun. Yet no one stalks these halls to speak for the family. No demand is made for its just treatment. And, as a result, the family has suffered in our Tax Code.

It is a problem rooted in the neglect of decades. But the bottom line is simple. American families are seeing a greater portion of their paychecks sent to Washington and seeing precious little in return. The personal exemption has steadily lost its value. It has not kept up with the rate of inflation and it does not fairly reflect today's costs of raising a child.

So as we take a look at the various economic reform proposals that have been placed on the table, I urge my colleagues to lend their support to one change that will provide direct assistance to the family. It is not a handout. It is a matter of simple justice.

I urge my colleagues to cosponsor S. 152 and yield back the balance of my time.

By Mr. SIMON (for himself, Mr. BRADLEY, and Mr. HARKIN):

S. 644. A bill to amend the Budget Enforcement Act of 1990 to allow offsetting transfers among discretionary spending categories; referred jointly to the Committee on the Budget and the Committee on Governmental Affairs.

BUDGET ENFORCEMENT ACT

Mr. SIMON. Mr. President, I am introducing in behalf of Senator BRADLEY and myself a very simple amendment to the Budget Enforcement Act of 1990.

It would do something that this Senate passed in the closing days of the last session. It would change the budget agreement so that it would take a simple majority to transfer funds from the defense function, for example, to discretionary nondefense.

Right now, we are in a ridiculous and unprecedented situation. Let us say we wanted to take $500 million from star wars and put it over to Head Start, where we are now reaching only 20 percent of the young people who need that help. Right now, it would take 60 votes of this body to do that. The amendment that Senator BRADLEY and I have introduced would bring that back down to a simple majority, to 50 votes.

The Senate, on that last long night, adopted an amendment. I offered to modify the budget agreement to do that. I am told the signal came from the White House that if my amendment was adopted in conference, the President was going to veto the bill.

I hope, on reflection, we go back to a point where a majority can get something like this done.

We are freezing defense expenditures at the cold war level. We have just gone through the experience of using our arms effectively in the Middle East. But it is interesting that most of these exotic things that we have been spending money on we could not use over there. Patriot missile production was started in 1979. We have been, I think, for 10 years arguing over the B-1 bomber. How many B-1 bombers did we use in the Middle East? Not a single B-1 bomber. It just was not practical.

So we want a strong defense. We want one that is highly mobile. But to freeze in fiscal year 1992 $296 billion for defense; to freeze in fiscal year 1993 $293 billion for defense I do not think makes sense. After World War II, we cut defense expenditures 90 percent in 3 years. Everyone acknowledges that is one of the reasons for the great growth in our economy.

I am not suggesting we do anything like that today, but I do want to maintain the flexibility so that this body can shift from one function to another. This does not change the pay-as-you-go provision. It does not add 1 penny to the deficit. It simply says if we want to transfer funds from that defense function to the discretionary nondefense function, we ought to be able to do that with a majority of votes in this body.

That is what the amendment does. It is not complicated. It is a very simple amendment. My hope is that the Senate will take the same stand it did on the last night of the last session. I hope, on reflection, the House and the President will agree that this is the approach we ought to be taking.

We have huge domestic needs. We have been able to muster unbelievable resources to meet a threat in the Middle East. I want to devote some resources in this country to meet the threat of a poor-quality education for too many people. I want to devote some resources to see that we provide adequate health care for all of our citizens. I do not want to freeze in the kind of defense spending that we see in the Budget Enforcement Act of 1990.

• Mr. BRADLEY. Mr. President, I rise to join my colleague from Illinois [Mr. SIMON] in introducing legislation that will enable us to bring the Federal budget in line with our national priorities over the next 5 years. Last year's hastily assembled budget deal locked in budget choices for 5 years. I do not believe those long-term choices were well thought out; I do not believe they reflect the appropriate priorities for American families; and I do not believe they give us the flexibility to respond to domestic and international crises as they emerge.

This bill would permit Congress to shift funds among various Federal spending categories, which will allow us to realize future savings from defense spending and address pressing domestic needs. Last year's law, in the name of budget reform, placed separate caps on defense spending, foreign aid, and domestic discretionary spending for the next 3 years. Shifting funds from one of these broad categories to another will require a 60-vote supermajority. And even when 60 Senators agree on the shift, the law still subjects all the programs in the increased category to an across-the-board cut.

What does this mean in practice? It means that it is virtually impossible to terminate funding for a wasteful program like the B-1 Bomber and use part of the savings for underfunded programs that work, such as Head Start, WIC, Maternal and Child Health Grants, and other investments in children. It does not mean that we will have more budget discipline. What incentives is there to search out and realize savings in any one area if there is no way to use any of those savings for other priorities?

This legislation solves this problem with two modifications to the Budget Act. First, it permits Congress to exceed the budget cap in any category if and only if the increase is offset by a reduction in another category. Congress may make such a transfer by simple majority vote. Second, there will be no across-the-board reductions if offsets are provided. This bill does not change the overall spending blueprint in current law. Overall discretionary spending cannot change. But we will be able to make the choices that we were elected to make.

Mr. President, last week President Bush asked a joint session of Congress to "move forward aggressively on the domestic front." The American people are also asking us to deal with the health care crisis, the recession, drugs, crime, the infrastructure, and other challenges here at home. They believe that we can give priority to these crises without raising taxes, by finding savings elsewhere in the budget. They are right. But we need a system that lets us make those transfers when we find them. The bill that my colleague,

Mr. SIMON, and I are introducing today will open the door for us to move forward on the real priorities for America's families.●

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. BURNS Mr. CHAFEE, Mr. COATS, Mr. CRAIG, Mr. DANFORTH, Mr. DOLE, Mr. EXON, Mr. GARN, Mr. GORTON, Mr. GRASSLEY, Mr. HEINZ, Mr. KASTEN, Mr. KERRY, Mr. MCCAIN, Mr. MURKOWSKI, Mr. NICKLES, Mr. PELL, Mr. RUDMAN, Mr. SIMPSON, Mr. SMITH, Mr. SYMMS, Mr. WALLOP, and Mr. HATCH):

S. 645. A bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents; to the Committee on Commerce, Science, and Transportation.

GENERAL AVIATION ACCIDENT LIABILITY STANDARDS ACT

Mrs. KASSEBAUM. Mr. President, I rise today to offer a bill that is vital for the survival of the general aviation industry. Close examination of the problems plaguing the general aviation industry is critical if we are going to help this industry survive. In the past 11 years, we have witnessed a dramatic decline in the sales of general aviation planes. In 1990 fewer than 1,200 general aviation planes were sold. Compared to the 17,000 sold in 1979, that is a decrease of over 90 percent. In the process, we have lost thousands of high-technology manufacturing jobs.

During the same period, liability costs for the industry have soared from $24 million to well over $200 million annually. This nearly tenfold increase in liability costs is not due to an increase in accidents—the accident rate has improved steadily. It is due solely to the size of damage awards and the expanding number of situations in which manufacturers are held responsible for damages from general aviation accidents. In short, with general aviation accident rates going down while liability costs are soaring, we need to ask serious questions about the standards to which aircraft manufacturers are held under our current tort system. We also need to find constructive answers, such as the General Aviation Accident Liability Standards Act.

The problem, Mr. President, is that there is no uniform standard which applies to liability cases for this industry. The result is inconsistent court judgments from State to State and, in turn, instability and unpredictability in the industry.

This point was recently illustrated by Russ Meyer, president of Cessna Aircraft which is based in Wichita, KS. Cessna is the second largest general aviation aircraft manufacturer in the United States and, until 1986, also the world's leading producer of piston-powered airplanes. Cessna stopped producing piston aircraft in 1986, in large part due to the liability crisis. Russ Meyer has said that Cessna would approve plans to resume production of single-engine aircraft within 24 hours of congressional action to address the product liability system.

The need for a uniform Federal product liability standard is clear. A Federal standard will correct the legal inconsistencies which exist for this otherwise fully federally regulated industry. The Federal Government regulates the industry from design to production; the air traffic control system is federally operated and regulated. The Federal interest and presence in aviation is all pervasive except in one area—litigation is conducted under individual and widely varying State laws. Federal product liability standards, a cornerstone of this legislation, would provide uniformity and predictability.

When a manufacturer sells an aircraft, the new owner is responsible for the inspection, maintenance, and upkeep of that aircraft. As long as a manufacturer provides the required warnings and information, he should not be held liable for an accident that results from the owner's failure to perform these responsibilities. This, Mr. President, is not the manufacturer's responsibility.

To address this, this bill establishes a 20-year statute of repose for aircraft and replacement parts—which begins anew each time a system or a part is replaced. In this way, we are not allowing anyone who is at fault to get off the hook, but we are ensuring that manufacturers are held responsible only for those wrongs they have committed, and no more. It is worth noting that the European Community is far ahead of the United States in reforming its product liability standards, including the institution of a 10-year statute of repose. This is half the 20-year statute proposed in this bill.

The bill also retains both strict liability and joint and several liability between the manufacturers of all subsystems and component parts, and it enacts comparative responsibility among other parties.

I believe it is important to point out what the bill does not do. It does not cap damages in any way. It does not cap or limit attorneys' fees. It does not waive the responsibility to supply warnings against dangers regardless of the age of the product. It does not limit warranties given by the manufacturer. Nor does it limit a person's right to sue.

As the sponsor of the General Aviation Accident Liability Standards Act, I am pleased to be joined by a bipartisan group of 24 Senators in support of this measure. This bill also has the support of both manufacturers and users of general aviation, a combination that is unique for a product liability reform bill. In addition, the administration continues to support this legislation as it has in years past.

As you know, Mr. President, the issue of aviation liability reform is not a new one. While we continue to debate the issue here in Congress, rapid changes have been taking place in the global marketplace.

When the European Community consolidates its markets in 1992, our domestic industries will face new challenges in the trade arena. With 1992 just around the corner, we cannot afford to overlook the realities of the problems for our general aviation industry if the Congress does not act expeditiously on this bill. With sales down among major manufacturers, our foreign trading partners are readying their planes for export to our country.

Wichita, KS, is currently known as the Air Capital of the World, largely because of the prowess of the three major general aviation manufacturers based there. A change in this status would not only hurt the industry in Kansas but would also further weaken our domestic industry.

General aviation is a major part of our national air transportation system and is today facing a crisis of unprecedented proportions which is related to the tort system. While rising product liability costs are not the only factor contributing to the decline of the industry, they are certainly among the most significant. I urge my colleagues to support this legislation.

Mr. MCCAIN. Mr. President, I would like to express my deep appreciation to my distinguished colleague from Kansas for her efforts. I am pleased to once again offer my strong and enthusiastic support for this legislation.

Quite frankly Mr. President, I cannot believe that we are standing here again discussing this issue. This is the fourth Congress in a row in which my colleague from Kansas has introduced this measure. Passage of this bill is not only of tremendous importance to our aviation industry, it is vital to our country as a whole. Although it is focused on one sector—general aviation, it has broad implications.

Aviation is now our most prominent mode of transportation. It is to the 20th century what railroads were to the 19th century. As we move toward the year 2000, aviation will only assume greater prominence as we struggle to compete in the global marketplace.

Here in this country, we are fortunate to have a rich and proud tradition in the field of aviation. Our "firsts" are many: the Wright Brothers, the first transoceanic flight, the first jet aircraft. These all belong to the United States. Yet we are losing our edge.

This decline was vividly illustrated in a hearing on another issue that took place before the Aviation Subcommittee several years ago. One of the witnesses was Col. Frank Borman, former Air Force pilot, former astronaut, and

former president of Eastern Airlines. At the end of the hearing, Mr. Borman wanted to make an additional point to the committee. After leaving Eastern, he had gone back to New Mexico to relax and return to flying small aircraft for enjoyment. He was both stunned and angry to discover that there are no young people around airports any more learning to fly. No one jumping in and bumming a ride, no one learning how to fly as generations of Americans have done since Kitty Hawk.

Mr. President, I must ask why? The sad answer is: They simply cannot afford to. This unfortuante situation is going to have an increasingly serious impact on the industry. Demand for pilots will continue to expand. Unless we encourage general aviation and make learning to fly affordable again for our young men and women, we are going to face a crisis in pilots.

Colonel Borman rightly laid the blame for the problem on product liability costs. The industry can no longer afford to produce the type of planes so many Americans used to learn to fly in. Product liability costs have escalated almost 900 percent in the last decade, devastating the industry, despite a steadily improving safety record. Consequently, we now make fewer aircraft in 1 year than we did per month in the 1970's. Especially hard hit have been single engine piston powered craft. Deliveries have declined over 40 percent just in the past year.

Furthermore, aviation has been one of the few industries where we still maintain a positive balance of trade. How much longer will this last if the general aviation industry continues to decline? From 1989 to 1990, exports of general aviation aircraft declined 20 percent, from 566 to 442. In the late 1970's, we exported nearly 4,000 units a year. The astronomically high costs of U.S. product liability insurance makes our small aircraft uncompetitive abroad. And you can be sure that where our manufacturers are being forced out of the field by product liability costs, foreign competitors are filling the void.

We must have reasonable standards. This legislation does not cap damages. It does not impose restrictions on attorneys' fees. It does not limit or waive responsibility to provide warnings on known dangers or defects, regardless of the age of the product. It does not affect the rights of persons injured on the ground or other, more general areas of product liability law. It simply establishes uniform Federal standards liability.

Mr. President, we need to act on this legislation if the United States is to maintain its leadership role in the aviation industry. The Department of Justice, the Department of Transportation, and the Department of Commerce have all expressed their support for the bill. I urge my colleagues to likewise show their support, and I again salute my friend from Kansas for all her hard work on this issue.

Mr. SIMPSON. Mr. President, I am and always have been a cosponsor of this bill, and I strongly support it. As a general rule, I would usually oppose Federal legislation that may preempt matters that are traditionally and properly left to State law remedies. I see this bill as one of those rare and necessary exceptions to that general rule.

As the Judiciary Committee learned during hearings last year, liability costs to the general aviation industry have literally skyrocketed in the past few years. This is in spite of equally significant positive leaps in overall safety records. However, as the issue is presented today, there are almost as many differing standards of potential liability as there are States in our Nation. Yet of all the forms of transportation, this industry stands virtually unprotected against the whims of ever-changing State product liability laws. I think that this situation has become so extreme that it necessitates national standards.

We must also remember that this particular form of transportation has possibly the best safety record in our country. There have been fewer deaths and injuries in this industry than any other.

It is also important to note that this is not a bill which places caps on damages or otherwise prevents a deserving plaintiff from recovering for his or her injuries in the event of an accident or tragedy. This bill simply apportions liability for damages according to a defendant's degree of fault. This is most equitable and fair. Liability is apportioned according to a defendant's degree of involvement in the manufacture, design, maintenance, sale, and operation of the product. All parties are potentially liable in proportion to their participation in the cause of injuries.

This legislation is most reasonable and fair. Our general aviation industry is a valued and important part of American history and culture. This industry has demonstrated its responsibility and awareness of safety and its commitment to safety, in terms of both financial commitment and research, is unparalleled.

With all of this in mind, it is fair to ask why this bill has been so controversial in past years. The hearings in the Judiciary Committee last year made that very clear. By far, the real significant opposition to this legislation is coming from one source: the American Trial Lawyers' Association. For all of the fine efforts exerted by this fine association, it still has members who are less motivated by the principles of the vast majority of its members than by greed. That is what gives rise to opposition to this bill, Mr. President—greed, and little else.

Well, I do not believe that should stand in the way of good legislating. It is time for the full Senate to address this bill and to vote on this session. Let's address this problem in the manner and with the attention that it deserves. And I certainly again commend my intrepid and courageous friend and colleague, Senator NANCY KASSEBAUM, for her sincere efforts in this regard. I so admire her perseverance.

Mr. CHAFEE. Mr. President, I am pleased to join today with my colleague from Kansas in reintroducing the General Aviation Accident Liability Standards Act, a bill to establish Federal standards of liability for injury or property damage resulting from a general aviation accident. This bill is identical to last year's S. 640, as reported favorably on a voice vote by the Commerce Committee.

Our legislation addresses one of the most significant factors that have brought about the decline of the general aviation industry: increased product liability exposure and its cost to aircraft manufacturers. Today, manufacturers are spending considerable time and resources on defending lawsuits—Piper Aircraft estimates that they spend $250,000 per month just on defense costs—instead of developing or perfecting technology. Despite the fact that the number of fatal accidents in general aviation has plummeted to 1.49 per 100,000 flight hour flown, the amount of money spent on paid claims and out-of-pocket defense expenses has skyrocketed from about $24 million in 1977 to roughly $209 million in 1985. Let me repeat that particular fact: Fatal accidents in general aviation have gone down and stayed down, yet claim and defense costs have shot up.

That helfty cost burden has a heavy impact on the health of the general aviation industry—and the thousands of jobs in that sector. Sales of domestic aircraft have dropped sharply since the peak years in the late 1970's. As the Commerce Committee noted in its 1989 committee report: "This decline has affected virtually every manufacturer and is reflected in sales of all types of aircraft." Cessna Aircraft, Piper Aircraft, and Beech Aircraft are scaling back or halting production of some aircraft, and that has caused employment to drop precipitously—by 65 percent over the past decade. I am sure that the ripple effect of such a drastic industry downswing on the economies of the industry's home communities is all too clear to my colleagues.

Neither is the effect of high liability costs evident only within the industry. These costs ultimately are borne by the consumer, and by our national economy. Today, product liability costs, averaging $70,000 per new aircraft in 1985, have become the largest single factor in the price of a new sin-

gle engine airplane. Further, while 1981 general aviation exports contributed an annual multimillion dollar surplus to our Nation's balance of trade, in the past 10 years the U.S. general aviation industry has suffered significant trade deficits. That contributes to our national trade deficit, a source of much concern.

The bill we are introducing today is meant to provide for some uniformity, and thus some certainty, in the areas of liability exposure for the general aviation industry. It is narrowly tailored to general aviation, and would apply only to aircraft that carry fewer than 20 passengers and are not engaged in regularly scheduled passenger service.

Under this measure, three important changes in liability law would be made. First, the act would create one set of Federal standards governing accident liability in the general aviation industry, and limit the availability of punitive damages to those situations where the manufacturer's conduct was proven to manifest conscious, flagrant indifference to safety. Today, the variation in state liability laws presents general aviation manufacturers with a wide range of liability standards, and the unpredictability and uncertainty caused by the variation contribute to overall instability in the industry. With the adoption of a uniform standard, manufacturers will be better able to do longterm business planning, and spend more resources on the research and development of new, safe aircraft.

Second, the measure would adopt the rule of comparative responsibility for lawsuits resulting from a general aviation accident. Comparative responsibility would ensure that the parties to the lawsuit each bear responsibility for their proportionate share of the damages.

Third, a 20-year statute of response, to start on the date of delivery, would be established in manufacturer liability. General aviation manufacturers currently remain liable for an aircraft regardless of its age and whether or not it has been subject to modifications beyond the control of the manufacturer.

These changes are essential to the future of the general aviation industry in the United States. Without them, we will continue to see a decline in the general aviation industry—and equally important, a decline in jobs and trade. We need to give manufacturers some relief, in the shape of one uniform standard, from the confusing patchwork of state liability laws if we are to help stabilize the industry and promote its competitiveness both at home and abroad. At the same time, we must ensure that the rights of those suffer injury in general aviation accidents are protected. In my view, this bill is a step toward that end, and I urge my colleagues to support it.

By Mr. DECONCINI (for himself, Mr. THURMOND, Mr. HOLLINGS, Mr. WIRTH, Mr. SPECTER, Mr. GRAHAM, Mr. MACK, Mr. ROBB, Mr. WARNER, Mr. MCCAIN, Mr. SARBANES, Mr. GORE, Mr. SASSER, Ms. MIKULSKI, and Mr. BROWN):

S. 646. A bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges; to the Committee on the Judiciary.

APPOINTMENT OF ADDITIONAL BANKRUPTCY JUDGES

Mr. DECONCINI. Mr. President, today I am introducing legislation which will authorize the appointment of 14 additional bankruptcy judges for placement in districts recommended by the Judicial Conference. The U.S. Bankruptcy Court is suffering from significant increases in bankruptcy filings and the need for these new judges is clear.

During fiscal year 1990, there was a 14.2-percent increase in the number of bankruptcy filings nationwide for a total of almost 750,000 filings. There were 993,000 bankruptcy cases pending, a 12.8-percent increase and the per judge annual caseload increased from 1,427 to 2,337 in 1989. Between 1981 and 1985, the total number of bankruptcy filings nearly doubled. In light of the downturn in the GNP and the general business climate, bankruptcy filings are expected to continue to rise.

My home State of Arizona has been extremely hard hit by the increasing number of bankruptcy filings. This is due, in large part, to the falling real estate market and failing financial institutions. In 1990, Arizona saw a 12.1- percent increase in the number of bankruptcy cases filed—18,252 new bankruptcy cases were received compared to 16,278 cases filed in 1989. And, for the year ending June 30, 1990, Arizona ranked first in the number of chapter 11 filings per judge. Each of Arizona's five judges has 216 new chapter 11 cases, compared to the national average of 67 cases per judge. In overall filings, Arizona has 3,544 cases per judge while the national average is 2,493. These statistics rank Arizona ninth in the Nation.

1990 also brought a number of extremely large chapter 11 cases to Arizona.

For example, last May, the Circle K Corp. and its 23 related subsidiaries, of almost 5,000 stores, filed for bankruptcy protection under chapter 11 in Phoenix. This bankruptcy case involves close to $2 billion in assets and $1.6 billion in liabilities. Arizona's five judges have had to find time for very complex cases in addition to handling over three times the national average of chapter 11 filings. This large increase in their workload warrants the creation of two new judgeships in Arizona.

There are currently 291 authorized bankruptcy judges. They serve in 94 judicial districts which includes the 50 States, the District of Columbia, and Puerto Rico. Districts receiving authorization for new bankruptcy judges by this bill include middle and southern Florida, Arizona, Colorado, northern Georgia, eastern Maryland, eastern Pennsylvania, middle Tennessee, South Carolina, eastern Virginia, and Puerto Rico. In reviewing the justifications for the other districts receiving new judges under this legislation, I have found their needs to be equally compelling. I urge my colleagues to act quickly on this legislation to ensure that the demand for bankruptcy judges is adequately met.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD following this statement.

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

S. 646

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

SECTION 1. ADDITIONAL BANKRUPTCY JUDGES.

Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the district of Arizona by striking out "5" and inserting in lieu thereof "7";

(2) in the item relating to the district of Colorado by striking out "5" and inserting in lieu thereof "6";

(3) in the item relating to the middle district of Florida by striking out "4" and inserting in lieu thereof "6";

(4) in the item relating to the southern district of Florida by striking out "3" and inserting in lieu thereof "4";

(5) in the item relating to the northern district of Georgia by striking out "6" and inserting in lieu thereof "8";

(6) in the item relating to the district of Maryland and striking out "3" and inserting in lieu thereof "4";

(7) in the item relating to the eastern district of Pennsylvania by striking out "3" and inserting in lieu thereof "4";

(8) in the item relating to the district of Puerto Rico by striking out "2" and inserting in lieu thereof "3";

(9) in the item relating to the district of South Carolina by striking out "2" and inserting in lieu thereof "3";

"(10) in the item relating to the middle district of Tennessee by striking out "2" and inserting in lieu thereof "3"; and

"(11) in the item relating to the eastern district of Virginia by striking out "4" and inserting in lieu thereof "5".

Mr. THURMOND. Mr. President, I rise today along with Senator DECONCINI to introduce legislation that will authorize the creation of 14 new bankruptcy judgeships. These judgeships are vitally necessary to reduce the heavy caseload currently existing in many States today.

The rising number of bankruptcy filings across the country has created a heavy burden on existing bankruptcy judges. In some States a bankruptcy judge has over 2,000 filings on his dock-

et every year. In addition, a portion of these filings are complex chapter 11 cases, which are often very time consuming.

Several States and Puerto Rico have a strong justification for the creation of new judgeships to reduce the burden on existing judges. This legislation will authorize 14 judgeships; three for Florida, two for Arizona, two for Georgia, and one each for Colorado, Maryland, Pennsylvania, Puerto Rico, Tennessee, South Carolina, and Virginia.

Mr. President, each district has clearly demonstrated its need for these judgeships. The Administrative Office of the U.S. Courts has formally recommended these judgeships. I believe that this bill will greatly assist the efficiency of the bankruptcy system and will ensure a more balanced caseload for bankruptcy judges. I urge my colleagues to support this legislation.

By Mr. SPECTER:

S. 648. A bill to assist States in crime control, law enforcement efforts, and prisoner education projects, and for other purposes; to the Committee on the Judiciary.

CRIME CONTROL ACT

Mr. SPECTER. Mr. President, today I am introducing a bill to provide Federal assistance and incentives to States to encourage them to implement prisoner education projects and to provide treatment rather than expensive imprisonment for drug-addicted nonviolent offenders.

DRUG COURT PROGRAM

The bill authorizes a novel program by which States and cities who wish to will be able to obtain Federal funds in order to establish demonstration projects for the creation of drug divisions within State and local criminal courts. These drug divisions are designed to skim off first-time nonviolent offenders who test positive for drugs from the general criminal population in State criminal court systems and put them through a program of court-supervised drug treatment and rehabilitation. In this way, we can both aid first-time drug offenders and keep them from becoming career criminals and provide localities with funds to stem the serious backlogs in their criminal courts caused largely by the drug crimewave. In the long term, this solution to the drug plague promises to be much less expensive than incarcerating these nonviolent offenders.

State and local courts are increasingly overwhelmed with greater and greater numbers of drug-related offenders. For example, in Philadelphia, the number of criminal cases filed there have more than doubled in the last 10 years, growing from 7,138 in 1979 to an estimated 16,474 in 1989, according to a study commissioned by the Philadelphia Bar Association entitled "Clearing the Road to Justice" and issued on March 26, 1990. Although the number of cases disposed of each year has also risen, this increase has resulted in a backlog of at least 12,516 by the end of 1989. The study found that the primary reason for this huge backlog were drug cases. Drug felonies constituted 25 percent of all cases disposed of in 1989 and 33 percent of the cases filed in Common Pleas Court in 1989, up from one-fifth of the dispositions in 1988. Moreover, when drug-related crimes are factored in; that is, crimes like robberies committed to obtain cash for drugs, this percentage skyrockets to 75 percent of all cases on the docket. Given this backlog, the administration of justice for all crimes suffers. Without the certainty of swift and sure punishment, our criminal laws will lose their deterrent effect.

These drug cases represent a serious challenge to the court systems in more than just numbers. Many drug-related crimes are committed by first-time offenders. Early intervention and drug treatment could potentially end the horrible cycle of recidivism. Thus, the Philadelphia study concluded that a separate drug court division could both speed the processing of drug-related cases—as well as freeing up the rest of the court system to focus on violent crimes—and provide mandatory drug screening programs to target first-time drug-dependent nonviolent offenders and offer them treatment.

I believe that this novel proposal by the Philadelphia study which is contained in this bill will assist not only Philadelphia, but many other localities whose court systems are collapsing under the weight of drug cases. At the same time, the program will offer hope in the form of treatment to first-time drug-dependent nonviolent offenders to stem the tide of recidivism.

STATE FUNDING AND INCENTIVES FOR PRISON EDUCATION

Mr. President, we must also implement realistic rehabilitation programs for first-time and for some repeat offenders. It can come as no surprise when an inmate with no trade or literacy skills returns to a life of crime after release from jail. Because rehabilitation is essential to reducing the rate of recidivism, I introduced legislation in the 97th, 98th, 99th, 100th and 101st Congress—S. 1690, S. 59, S.1190, S. 413, and S. 181 and 746, respectively—to encourage States to provide certain prisoners with a marketable job skill and with basic literacy skills. In so doing, we can help to break a vicious cycle of crime and punishment that traps many individuals.

As former chairman of the Appropriations Subcommittee on the District of Columbia, I worked to help establish a model rehabilitation program for District inmates which received over $40 million between fiscal year 1984 and fiscal year 1986. Still in its initial phase, it is proving successful. A January 1989 study conducted by the National Institute of Corrections reported a significant improvement in the quality of education and vocational programs, and improvement in their administrative structure as well, and a followup study in June 1990 confirmed those findings.

Such programs have enormous potential to provide former inmates with job opportunities. A related benefit is that inmates who participate in these programs are more likely to avoid reincarceration than those who do not. On September 22, 1988, in testimony before the Senate Subcommittee on the District of Columbia, then-director of the D.C. Department of Corrections, Hallem H. Williams, reported that as of August 31, 1988, 73 percent of participating former inmates remained in the community, as compared with 52 percent of those who did not participate. We must take advantage of what has been learned in the District's programs and work to replicate them nationally.

The Crime Control Act of 1990, passed in the last Congress, authorized funds for increased education for Federal prisoners. Now is the time to aid State prison systems.

Toward that end, this bill provides both new Federal funding and new incentives to States. The bill provides $5 million to the Bureau of Prison's National Institute of Corrections [NIC] for grants to States to expand and develop education and vocational training programs in State correctional institutions. Based on past success of Federal funding for State correctional institutions for prisoner education, in particular a fiscal year 1984 appropriation of $2.5 million to the NIC for State prisoner education projects which I introduced in Congress, I believe that this $5 million appropriation will have meaningful results. The March 10, 1989 preliminary results of a study issued by the Institute for Economic and Policy Studies [IEPS] concluded that the 1984 appropriation has had a significant long-term impact on the institutions and systems involved in the project. Eighty-seven percent of the NIC grantees who completed and returned the final survey have continued their projects and 62 percent of those grantees have developed programs and/or products that have become an integral part of the educational programs in their institution or system.

The bill also requires that, in order to receive Federal antidrug moneys, States will have to certify that they are making a good faith effort to ensure that prisoners released after a term of imprisonment of 2 years or more and who desire such educational opportunities have had training in reading, writing, and a basic job skill.

The composition of our State prison population reflects a disproportionate number of individuals who do not possess basic education and job skills, a situation which ultimately contributes

to prisoners being released and committing more crimes because they do not have the necessary skills to compete effectively in our society. In 1986, approximately 75 percent of the more than 500,000 adult inmates was severely educationally deficient. Studies indicate that in the same year, only 40 percent of the inmate population, as compared with 85 percent of the U.S. population as a whole, had completed high school. The percentage of true illiterates in correctional facilities—persons who cannot read at all—has been estimated at 10 to 15 percent. The NIC reported in 1987 that it is probably a conservative estimate that at least 75 percent of the prison population is in need of academic, vocational, and life skills education. Yet, only 25 to 30 percent of the inmate population is reported to be enrolled in education, full or part time.

Mr. President, these provisions will provide support and encouragement to States to break this cycle of recidivism among our criminals.

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. 648

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 "Crime Control Act of 1991."

TITLE I—DRUG COURT PROGRAMS FOR STATES

SEC. 101. GRANT FOR THE ESTABLISHMENT OF DRUG COURT DIVISIONS.

(a) IN GENERAL.—The Attorney General in consultation with the Secretary of Health and Human Services, is authorized to make grants to States and local governments for the purpose of establishing narcotics divisions with their judicial systems with exclusive jurisdiction over cases in which the most serious charge involves narcotics.

(b) FUNCTIONS OF DRUG DIVISION.—Each narcotics division funded under subsection (a) shall include—

(1) an independent administrator;

(2) a mixed case scheduling system, specific caseflow management standards, with a continual circulation of judges from other parts of the judicial system, and an individual judge calendar system;

(3) mandatory, on-site, drug treatment;

(4) screening of every arrestee to determine drug-dependency;

(5) mandatory treatment for—

(A) consenting first time drug-dependent, nonviolent offenders;

(B) nonviolent offenders who are charged with crimes not subjecting them to mandatory sentences;

(C) treatable drug-dependent probationers;

(D) Drug-dependent defendants on bail; and

(E) all treatable drug-dependent convicts sentences to prison; and

(6) a program that employs alternative sentencing methods, including electronic monitoring, home detention, community service, intensive supervision probation, and random drug testing, for appropriate defendants.

(c) SUFFICIENT FUNDING.—Each drug division funded under section (a) shall receive sufficient funds for—

(1) implementation and operation of rehabilitation and drug-treatment programs;

(2) implementation and operation of alternative sentencing programs; and

(3) enhanced data processing and court reporting systems.

(d) STATE AND LOCAL GOVERNMENT APPLICATIONS.—To request an application under this section, the chief executive officer of a State or local government shall submit an application within 60 days after the Attorney General has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Attorney General may require.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE II—LITERACY AND MARKETABLE JOB SKILLS TRAINING FOR INMATES IN STATE PRISONS

SEC. 201. GRANTS FOR TRANING IN LITERACY AND MARKETABLE JOB SKILLS FOR INMATES IN STATE PRISONS.

There are hereby authorized to be appropriated $5,000,000 to the National Institute of Corrections of the Federal Bureau of Prisons to make grants to States for educational programs for criminal offenders in State correctional institutions, including—

(1) academic programs for—

(A) basic education with special emphasis on reading, writing, vocabulary, and arithmetic; and

(B) secondary school credit programs;

(2) vocational training programs;

(3) training for teaching personnel specializing in corrections education; and

(4) guidance and counseling programs.

The Institute shall set aside a portion of this appropriation for a grant to track, document, and evaluate the overall correctional education initiative.

SEC. 202. CONDITION ON ELIGIBILITY OF STATES TO RECEIVE FEDERAL ANTI-DRUG FUNDS.

(a) IN GENERAL.—Notwithstanding any other law, beginning on the date that is 1 year after the date of enactment of this Act, a State shall not be eligible to receive any grant, contract, award, or other assistance paid for with Federal anti-drug funds unless it meets the requirements of subsection (b).

(b) PROGRAM REQUIREMENTS.—(1) Subject to paragraph (2), a State meets the requirements of this subsection if the prison authority of the State provides to all prisoners who need and desire it—

(A) training in a marketable job skill and basic literacy; and

(B) treatment and rehabilitation for drug addiction.

(2) A State is not required to provide training or treatment to—

(A) a prisoner for whom a reasonable good faith effort has been made to provide training or treatment, even though the result has been less than fully satisfactory;

(B) a prisoner who refuses training or treatment; or

(C) a particular prisoner for whom, in the judgment of the State prison authority concurred in by the Attorney General and Secretary of Health and Human Services, the provision of training or treatment would be unreasonably costly.

(3) Paragraph (2)(C) shall not be construed to allow a State to be exempted generally from the requirements of this subsection on the ground that compliance would be unreasonably costly.

(c) CERTIFICATION.—A State that desires to establish eligibility to receive the Federal assistance described in subsection (a) shall certify to the Attorney General and the Secretary of Health and Human Services that it meets the requirements of subsection (b), or if the State cannot make such a certification, may apply to the Attorney General and the Secretary of Health and Human Services to be granted probationary status under subsection (d).

(d) PROBATIONARY STATUS.—(1) If, on application by a State for probationary status, the Attorney General and the Secretary of Health and Human Services determine that a State has made a good faith effort to meet the requirements of subsection (b), they may grant the State probationary status for 1 year, during which time the State shall be eligible for the Federal assistance described in subsection (a).

(2) No State shall be eligible for probationary status under paragraph (1) for more than 2 years.

(e) REGULATIONS.—(1) Not later than 180 days after the date of enactment of this Act, the Director of the Office of Treatment Improvement and the Director of the National Institute of Corrections, shall, after consultation with the Correctional Literacy and Vocational Skills Advisory Council, promulgate regulations to carry out this Act.

(2) The regulations promulgated pursuant to paragraph (1) shall include—

(A) a definition of the term "marketable job skill and basic literacy" and a means of determining whether a State meets the requirements of subsection (b)(1)(A); and

(B) a definition of the term "treatment and rehabilitation for drug addiction" and a means of determining whether a State meets the requirements of subsection (b)(1)(B).

(f) ADVISORY COUNCIL.—(1) There is established the Correctional Literacy and Vocational Skills Advisory Council (referred to as the "Council").

(2) The Council shall be composed of—

(A) the Director of the National Institute of Corrections, who shall serve as its chairman;

(B) the Assistant Secretary of Education for Vocational and Adult Education;

(C) the Assistant Secretary of Labor for Employment Training and Administration; and

(D) representatives of the American Correctional Association, the American Jail Association, the Association of State and Federal Directors of Correctional Education, and the Correctional Education Association.

(3) It shall be the duty of the Council to advise the National Institute of Corrections in formulating the regulations described in subsection (e)(2)(A).

(g) ADVISORY COMMITTEE.—(1) There is established the Correctional Drug Treatment Advisory Committee (referred to as the "Committee").

(2) The Committee shall be composed of—

(A) the Director of the Office of Treatment Improvement, who shall serve as chairman;

(B) the Director of the National Institute of Drug Abuse;

(C) the Director of the National Institute of Corrections; and

(D) representatives of the American Correctional Association, the American Jail Association, and the National Association of State Alcohol and Drug Abuse Directors.

(b) It shall be the duty of the Committee to advise the Office of Treatment Improvement in formulating the regulations described in subsection (e)(2)(B).

(h) NO CAUSE OF ACTION.—Nothing in this Act shall be construed to create any cause of action, defense, or claim of right of any other kind in favor of a State prisoner.

TITLE III—PRISON CONSTRUCTION

SEC. 301. PRISON CONSTRUCTION.

There is hereby authorized to be appropriated $250,000,000 for fiscal year 1992 to the Federal Bureau of Prisons, Federal Prison System, Buildings and Facilities, in additional funds for construction of additional Federal correctional institutions, expansion projects of existing facilities, and modernization and repair projects at existing facilities.

By Mr. BREAUX (for himself, Mr. CHAFEE, and Mr. PELL):

S. 649. A bill to amend the Internal Revenue Code of 1986 to repeal the luxury tax on boats; to the Committee on Finance.

REPEAL OF LUXURY TAX ON BOATS

Mr. BREAUX. Mr. President, every now and then the Congress, in our efforts to try to do good, sometimes engages in legislative activity that, on hindsight, proves to be a mistake. I think in last year's Budget Committee, in our tax-writing efforts, one of the areas in which I think there were good intentions ended up now, on hindsight, being a mistake that needs to be rectified, and, hopefully, we will have an opportunity to do it in this Congress.

What I am speaking about is the so-called luxury tax, which was aimed at a certain number of activities in this country. It was the sense of the Congress at that time that it necessitated a tax for the purpose of generating revenues, and also for the purpose of bringing about some tax equity and tax fairness in the code.

Mr. President, I am now interested in some of the early reports. The early reports are now in. In one of the areas, it looks like we have made a serious mistake that we need to rectify.

A New York Times article in early January, when the tax was beginning, pointed out that the new luxury tax may cost more than it can bring in. If there was ever a mistake, it would be that the Congress, in trying to generate revenues, embarks upon a program that will cost us more to implement than it brings in. The results of this type of activity could result in the fact that we are costing the American taxpayers more by this new tax that is on other books than, indeed, we would be costing them if it, in fact, were not on the books. In other words, this new tax could actually be a revenue loser.

So, Mr. President, today I am introducing, along with my colleague from the State of Rhode Island, legislation which will, hopefully, bring about a rectification of this situation.

Last Congress, we voted to impose the 10-percent excise tax on boats valued over $100,000. We thought we were doing the right thing. It was at that time called the luxury tax. Yet, at that time, no one expected that the impact of the action of that tax would have such a devastating impact on the marine manufacturing industry.

An article also in another paper, the Los Angeles Times, points out, "The new luxury tax on boats may cost the rich some money, but it costs workers their jobs."

I think this is another unintended consequence of the boat excise tax.

Mr. President, there are apparently 450 boat builders in the United States, and it happens that 103 of them are in my home State of Louisiana. The recreational marine industry employs between 350,000 and 400,000 Americans, and a private estimate indicates that up to 8,000 jobs would be lost due to the exise tax.

The tax itself is only expected to generate $3 million in the entire year of 1991. On balance, $3 million in revenues is hardly worth the cost of so many jobs—8,000—in the industry. This is one of the few net exporting industries in the United States. Therefore, I am pleased to offer legislation, along with my good friend, the Senator from Rhode Island, to try to rectify this mistake, as I see it, by repealing this luxury tax on boats.

Also, I point out that in the New York Times article there was a statement that said, "Congress has wound up producing a tax that will cost more to administer, collect, and comply with than it will bring in in revenues, probably by order of magnitude."

That statement is from a partner in one of the big accounting firms and a former acting general counsel of the Internal Revenue Service. In addition, the Commissioner of Internal Revenue said that he had no estimate yet of the cost of collecting the new taxes, but he agreed that it was an important question whether the revenues we are collecting are worth the burden, not just a cost, but a burden on the taxpayer as well.

If you look at some of the information that is provided, of course, by the National Marine Manufacturers Association, obviously, the association that represents the manufacturers, who have studied it, of course, very intently, show that in their factsheet, a boat excise tax is likely to have a net tax yield—when you consider the amount of jobs lost, the amount of less sales of boats due to the tax and other ways that this tax affects the economy, they are estimating a net tax yield of somewhere between zero and $8 million.

Well, Mr. President, the legislation that we are introducing this afternoon will begin, I hope, a set of hearings where we will be able to look at this question in depth and bring about a conclusion that I and my colleague, Senator CHAFEE, share that, indeed, when the Congress recognizes that something we did was not in keeping with the goal and is in fact producing the opposite result, the best thing that the Congress, and particularly this body, can do is to rectify that mistake.

This legislation would, in fact, rectify that mistake and also be a very positive impact on the industry that needs our help, not our penalties, because it is indeed one of the industries that is a net exporter in this country.

So, Mr. President, today I will be filing this legislation and, hopefully, our committee will be able to proceed with it in an expeditious fashion.

I yield the floor.

Mr. CHAFEE. Mr. President, every so often the Congress of the United States does something that does not make much sense. If we stumbled into such a situation with nobody calling attention to it, that is not very good. But, if we plunge into one of these situations after the alarm has been sounded, then I really think it reflects adversely on the Congress. Such was the case with this luxury tax.

Less than 6 months ago, in conjunction with the big tax measure that we passed last fall, the Revenue Reconciliation Act of 1990, we passed a so-called luxury tax. What did it do? Well, let us take what it did, particularly in connection with boats. It said that anybody who bought a boat that cost over $100,000 would have to pay a 10-percent tax on the amount over $100,000. This was meant to soak the rich.

Well, it was a terribly unfair tax, Mr. President. It did not say anything about somebody who bought a $250,000 second home in Vail, CO. That is not a luxury under this new excise tax. If somebody buys a boat, a boat made in Rhode Island or Louisiana, that is a luxury.

What was the effect of this, Mr. President? At the time those of us who represented States that had large boat-building industries sounded the alarm and said this is foolish and unfair, and it is not going to produce the revenue, therefore we should not do it.

But, nonetheless, it came through as a small part of the great big revenue reconciliation package of 1990 that we passed last fall. I am pleased today to join with my distinguished friend and colleague from Louisiana in presenting legislation to repeal that foolish tax.

Let me just tell you a little bit about what that tax did to my State. I come from a small State, a million people. We build more yacht hulls, more sailing boat hulls, than any State in the Nation. A little State like ourselves builds more sail boat hulls than California, for example. So it is a major industry for us, and it is an important industry in a whole series of ways.

Not only do we have those who work for the boat-building companies, but their spinoffs; another company makes the rope that we use, another company makes the winches; we have sail mak-

ers in our State. All of them make up a very sizable industry oriented around the boat-building business.

One of the important facts to remember about the boat-building business is it is a very important industry for those who newly come to our country, who do not have the skills that might qualify them to build computers, those who can least afford to be laid off work in our boat-building industry and in the laying up of the fiberglass on the molds that are there.

Now, we soon recognized this was bad business for the Nation and bad business for the employees, because the boat-building business was already having trouble.

The boat-building business is obviously sensitive to the times, that is, to the economy. When the economy goes down, somebody does not buy a boat. That is one of the first things they do not buy. So when you have an adverse economy, which we are experiencing—and nobody, Republican, Democrat, or independent can ignore that—and you saddle on top of that a 10-percent tax for the products made by so many Rhode Islanders, the effect is disaster.

I have here a letter written to me at the time, in November, by Mr. David Walters, the owner of David Walters Yachts, and he states the following:

Like all Americans, we in the yacht-building industry want to see the deficit reduced. Unfortunately, this luxury tax is revenue negative or at best revenue neutral.

In other words, you are going to lose money on it. Now, how do you lose money when you have a tax? You lose money because the tax kills off the jobs of those wage earners who would be paying taxes to the Federal Government on their salaries and wages. So what you pick up, supposedly, on the luxury tax, the 10 percent above $100,000, you lose because scores of employees are laid off and their income taxes are foregone to the Nation.

In addition, Mr. Walters pointed out it will put thousands of additional boat employees out of work; have an adverse impact on blue collar and immigrant workers; and is discriminatory. Why choose boats or yachts and not choose second homes? The effect would be disastrous. Indeed the point in fact is that just recently David Walters closed his yard, closed it up, as a result of lack of business caused by the luxury tax. So he predicted it and it came true.

I would like to put in the RECORD the letter from Mr. Walters, written to me in November 1988; clippings from the Providence Journal indicating that Pearson Yachts, a major boat builder in my State, just filed for bankruptcy, and I quote from the article:

Pearson's problems come at a time when many regional boatbuilders are reeling because of the sluggish economy and a new 10-percent Federal luxury tax on recreational boats selling for more than $100,000. The tax took effect in January 1991.

Also an article from the New York Times dated January 22, 1991, "New Luxury Tax May Cost More Than It Can Bring In."

Finally, a letter to the editor written to the Los Angeles Times on January 6, 1991, by a boatbuilder citing the facts from the National Marine Manufacturers Association where they cite more than 8,000 layoffs and numerous boat manufacturers are going out of business as a result of this tax.

Mr. President, I further would like to point out in my State, as I mentioned before, Pearson Yachts filed for bankruptcy; David Walters Yachts closed; Bristol Yachts filed for bankruptcy; Shannon Boats laid off 60 employees and lost $800,000 in business; and Johnson's Boat Yard has filed for bankruptcy.

This tax is a disaster and I do hope the efforts the distinguished junior Senator from Louisiana and I are making to repeal this unfair tax are successful.

Mr. President, I am pleased to join my colleague and friend from Louisiana, Senator BREAUX, in the introduction of legislation that is vitally important to the boat-building industry in my State and throughout this country. Our bill would repeal the excise tax on the purchase price of boats in excess of $100,000 that was imposed by the Revenue Reconciliation Act of 1990.

This new tax as enacted was part of the effort in last year's deficit reduction bill to "soak the rich." Unfortunately, this is not a tax on the people that buy these boats, it is a tax on the boat-building industry that was already losing sales. Ultimately, this tax will be paid by the Americans who lose their jobs as a result of slower sales for boats built in the United States.

When the budget summit negotiations began last May, I was hopeful that the negotiators would have been able to reach an agreement that reduced the deficit without overburdening any one segment of the economy. Unfortunately, when the summit ended and the Congress had made its changes, the bill included this new excise tax that has had a negative impact on the boat-building industry of dramatic proportions.

Some Members of this body might ask why I did not vote against last year's bill, if I was so strongly opposed to this excise tax. My answer would be: I voted for that bill because I believed then, as I do today, that the budget deficit is the No. 1 problem facing this great country and the international competitiveness of our businesses and manufacturers.

One of the main goals of last year's bill was to increase the progressivity of the Tax Code by increasing the taxes paid by the wealthiest Americans. That goal was accomplished by increasing the income tax rates for the wealthiest taxpayers, which should have obviated the need for this excise tax. Instead, the excise tax remained in the bill.

Today, less than 6 months after this bill was approved by the Congress and signed into law by the President, the boat-building industry in Rhode Island is being devastated by this excise tax. I have received numerous letters from small, independent boatyards in Rhode Island whose business has declined to almost nothing since the excise tax was first discussed last summer.

Let me give you a few examples:

The Rhode Island Marine Trade Association, which has more than 200 member companies, estimates that more than 1,000 Rhode Islanders have lost their jobs during the past 12 months.

On November 16, 1990, I received a letter from David Walters, owner of David Walters Yachts, Ltd., in Portsmouth, RI, the builder of Cambria Yachts, a builder of 40- to 50-foot sailboats that sold for as much as $600,000. This letter discussed the impact he could already see that this excise tax has had on the boat-building industry throughout the United States. Unfortunately, Mr. Walters has now had to close his small boatyard and lay off 20 employees.

On February 25, 1991, the owner of Pearson Yachts in Bristol, RI, filed for chapter 11 bankruptcy protection to try and restructure his business and avoid closing the boat yard completely. His boat yard had been in the business of building boats up to 53 feet; now they have reduced the maximum length to 30 feet. The majority of their sales had come from power boats costing as much as $160,000, for which sales have completely dried up after the excise tax.

Mr. President, I ask unanimous consent to print in the RECORD the material to which I have referred.

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

DAVID WALTERS YACHTS, INC.,
Portsmouth, RI, November 8, 1990.

Hon. John Chafee,
Longworth House Office Building,
Washington, DC.

DEAR SENATOR CHAFEE: John Rotenberg, Tom McLaughlin and I appreciated your time at the Union Oyster House and also appreciate your concern and offer to hold a hearing about the condition and disastrous adverse impact the new 10% luxury tax has on the boating industry in the United States.

Like all Americans, we in the yacht building industry want to see the deficit reduced. Unfortunately, this luxury tax is revenue negative or at best revenue neutral, and will put thousands of additional boat employees out of work.

We request a hearing that will document the following:

Revenue Negative or at Best Revenue Neutral.—The program is revenue negative or at best revenue neutral because there will be little or no new sales of yachts in the next 12 months. Without sales, jobs will be lost. Lost payroll tax revenue will result from large, widespread layoffs.

No New Sales.—The added 10% tax has made it virtually impossible to close a yacht sale this fall and in both my opinion and others in the industry there will be very few sales for nine to twelve months. Eighty percent of our annual sales are made between September and November. Without exception, all buyers are deferring their decision to purchase a new boat because of the new tax. For seven consecutive years, my company had enjoyed a 25% annual growth rate in sales. Last year we built $2,600,000 of new boats. At this time all our building employees are laid off and the company is trying to finalize a few new orders to keep the company going.

Lost Jobs.—The N.M.M.A., National Marine Manufacturers Association estimates that there will be an additional 8,000 manufacturing jobs lost in the boat industry nationally as a direct result the new luxury tax. New England boat builders were already fighting for survival before the new luxury tax. Dunn and Bradstreet reported this week that bankruptcies have increased 195% over last year in New England. A survey of seven of the larger boat building companies around the Fall River, MA area shows that 1673 jobs have been lost and only 417 remain. Three of the seven companies have already gone bankrupt and the others are fighting for survival. All the remaining companies are now faced with the prospect of little or no sales because the "price sensitive" boat buyer will not pay an additional 10% tax on top of state taxes that average 7%.

Ripple Effect.—In addition to the layoff of 40 employees at my company which has resulted in $1,000,000 in lost payroll and payroll taxes, there are over 300 of our suppliers that will also be affected. In addition to the 8000 manufacturing jobs lost, as mentioned above, there will also be thousands of additional jobs lost to companies that supply to the manufacturers.

Price Sensitive.—High priced yacht buyers are very sensitive to price increases and will look for alternatives if the total cost increases too much. Just as the yacht buying public were about to begin purchasing again, (the recession in yacht buying led the recession a year ago) the consumer for a new boat is faced with an additional 10 percent price increase/tax. I am sure few industries, even in good-times, could withstand such an increase. What would most consumers do if someone told them a car, vacation house, or other luxury items had just gone up in price by 10 percent. Probably wait, or purchase an alternative? RESULT: No sales, no tax revenue.

Consumers True Cost of Luxury Tax.—The actual cost of the luxury tax to the consumer is much higher than 10 percent because it is paid with after tax dollars. This makes the purchase of a yacht even less attractive.

Reduced Imports.—American boat builders produce quality products that have kept American consumer dollars in this country. Cambrias, which are built by my company, are one of the finest yachts built in the world today and for the last seven years have been a successful alternative to high-quality imports. One of our recent owners, actor, Christopher Reeve (Superman), formerly owned a Swan 40, built in Finland. We sold him a new Cambria 46 two years ago and allowed American dollars to stay on our shores. Over 40 percent of our $10,000,000 production has resulted in American dollars staying in this country.

Adverse Impact on Blue Collar and Immigrant Workers.—The group that can least afford lost income resulting from layoffs will be most affected by lost boat sales. The blue collar and immigrant workers comprise the major source of labor to build boats. The wealthy will simply defer their purchases and not feel any adverse effect from the new tax law.

Discriminatory.—Most yacht buyers use their boats as a second home on the weekends. Vacation and second homes are not included in the new tax law. What is the difference between a vacation home in the mountains and a vacation home on the water?

Lost Investments.—Like other boat builders in New England, I have my life investment and hard work in my company. My family's investment created over 40 jobs which produced eight years of payroll taxes. The investment, payroll taxes and jobs are gone if the buyers do not start purchasing new boats.

Summary.—

(A) The luxury tax is revenue negative or at best revenue neutral. Reduced payroll taxes and less new tax collected will result because there will be no new sales.

(B) Over 8000 additional manufacturing jobs will be lost.

(C) The luxury tax is discriminatory. Most yachts are used as second homes which are not taxed under the new law.

(D) Blue collar and immigrant workers will be most affected—not the wealthy.

(E) Buyers will defer yacht purchases or look for less expensive imported alternatives.

(F) The final result of the new luxury tax is that there will be no additional net gain in tax revenue.

(G) My 23 years of very successful building and sales experience and the benefit of a superior product will not be enough to keep my company going with the negative sales environment resulting from America's poor economy and particularly the additional 10 percent luxury tax.

On behalf of New England boat builders, I request a hearing as soon a possible to avoid the adverse impact of the tax which has virtually stopped boat sales and will bankrupt most of New England's small boat building companies this year.

We need your help and respectfully request a senate and congressional hearing before the appropriate committee.

Best regards,

DAVID WALTERS.

[From the New York Times Jan. 22, 1991]

NEW LUXURY TAX MAY COST MORE THAN IT CAN BRING IN

(By Philip Shabecoff)

WASHINGTON, January 21.—The luxury tax that Congress adopted in its closed-door budget sessions last year may cost retailers and the Internal Revenue Service more to collect than the revenues it brings in, some tax experts and business leaders contend.

The excise tax on high-priced automobiles, aircraft, pleasure boats, jewelry and furs went into effect on Jan. 1 and is now expected by Congress to bring in slightly under $1.5 billion in the next five years.

Budget negotiators in Congress originally forecast revenues of $9 billion from the tax. But during their debate they dropped several items that would be taxed, including electronic equipment, drastically lowering the anticipated revenues. Electronics was dropped after several legislators argued that equipment like computers were not really a luxury.

Other items disappeared in the political give and take of the negotiations, including some types of aircraft made in Kansas, the home state of the Senate minority leader, Bob Dole. The negotiators knew the tax revenues would be sharply curtailed but the final package reflected what was politically achievable.

"Congress has wound up producing a tax that will cost more to administer, collect and comply with than it will bring in in revenues, probably by orders of magnitude," said Peter K. Scott, a partner in the big accounting firm of Coopers & Lybrand and a former acting general counsel of the I.R.S.

Fred T. Goldberg Jr., the Commissioner of Internal Revenue, said he had no estimate yet of the cost of collecting the new taxes. But he agreed that it was an "important question" whether "the revenues we are collecting are worth the burden—not just our costs but the burden on the taxpayer as well."

New taxes are almost always confusing and require a break-in period as taxpayers learn their responsibilities and the I.R.S. prepares regulations and a collection apparatus.

The luxury tax is likely to prove more difficult than most taxes to put into effect. It was drafted hastily in virtual secrecy. That meant there was no research about its impact and no chance for early comment by the public, accountants or tax lawyers who might have pointed out flawed assumptions or other pitfalls. Tax legislation is ordinarily prepared during an extended legislative process that involves public hearings and intense analysis.

Mr. Scott noted that while the Internal Revenue Service was given a new kind of tax to administer—there has been no excise tax on luxury items since the 1960's—the service got no more money or staff to help collect it.

The tax places a 10 percent levy on the retail price of five luxury goods, when the price exceeds a specified threshold. For autos it is $30,000. So when a consumer buys a car that cost $33,000, the tax is 10 percent on $3,000, or $300. For private aircraft the threshold is $250,000, for pleasure boats $100,000, and for jewelry and furs $10,000.

BURDEN FOR RETAILERS SEEN

Mr. Goldberg said the I.R.S. was trying to make it as easy as possible for retailers to comply with the luxury tax. But some tax analysts and industry officials say the tax will not only create a great deal of uncertainty for retailers, but will also cost them money in time, extra paperwork and perhaps lost business.

If a customer is buying a car with a base price of $28,000, for example, and then buys $5,000 worth of options like stereo equipment and leather seats, he must pay the $300 excise tax on a $33,000 car. If the options are not bought with the car but within six months at the same dealer, the excise tax must still be paid.

But, as the tax legislation is worded, the customer could go to a different dealer for the options and not have to pay the tax, said Alan Wilbur, spokesman for the National Automobile Dealers Association. "Something like that could drive people away from the dealership where they bought their car," he said.

Most analysts said the tax on autos, planes and boats, for which licenses are required, would be relatively easy to collect compared with the tax on jewelry and furs, which leave no legally mandated paper trail.

AN EARRING PUZZLE

Edward S. Cohen, a former Under Secretary of the Treasury, raised the issue of a

pair of diamond earrings that cost $20,000, thereby requiring a tax of $1,000. What if, Mr. Cohen asked in an article for the publication Tax Notes, two male movie stars who liked to wear an earring in one ear only, each bought one of the earrings for $10,000? Would there then be no tax due?

Michael Roman, chairman of Jewelers of America Inc., a trade group for 13,000 retail jewelers, noted that if an heirloom piece of jewelry worth $20,000 that may have been in a family for generations were brought in for a new $1,000 setting, taxes would have to be paid under the new law on the value of a $21,000 piece of jewelery.

"It is outrageous," Mr. Roman said in a telephone interview. "Congress was highly discriminatory in what they classified as a luxury."

But most of the criticism of the new tax is not about possible unfairness but about the likelihood that it will require a great deal of cost and effort for relatively little revenue.

"A POLITICAL STATEMENT"

"This was a painless way to make a political statement in a process conducted behind closed doors," said Pamela J. Pecarcich, a partner in Coopers & Lybrand.

Ronald A. Pearlman, who recently resigned as chief of staff of the Joint Committee on Taxation of Congress to become a partner at the law firm of Covington & Burling, said of the new tax: "It is quite conceivable that it will cost us more in compliance than it brings in in revenue. Only the I.R.S. will know that."

Commissioner Goldberg of the I.R.S. said it would take some time and experience with the tax to determine the cost of collecting it.

Representative Byron L. Dorgan, Democrat of North Dakota, a member of the House Ways and Means Committee who participated in the budget negotiations, reluctantly defended the tax:

"It is safe to say nobody likes any tax any more. We all know that. But we had to construct some revenues and one item on a long list was a luxury tax."

Mr. Dorgan conceded that the closed budget process did not permit a study of the consequences of any revenue-raising plan. The luxury tax, like most other elements of the package, "was plugged in the middle of the process without hearings," he said. "We do not have much information on what the compliance costs will be."

[From the Los Angeles Times, Jan. 6, 1991]

NEW LUXURY TAX ON BOATS MAY COST THE RICH SOME MONEY, BUT IT COSTS WORKERS THEIR JOBS

(By Joe Meglen)

I have been in the boat business since 1972. The luxury tax in general is unfair but grossly so as it pertains to boats, "Costly Cars Sell; Yachts Just Bob at Dock" (Dec. 12). My industry is in the process of being crushed by this tax. It translates into lost jobs for thousands of workers if something is not done quickly.

The luxury tax on new boats is a cruel hoax played on the public at the expense of those who work in the industry. The U.S. boat industry and the 600,000 workers employed directly in manufacturing were served up as sacrificial lambs to appease those who insisted on "soaking the rich" during the federal budget negotiations.

The truth is that the Treasury Department has acknowledged that the 10% luxury tax on boats will not produce tax revenue to help solve the budget crisis. The luxury tax revenue will not even cover income tax revenue lost as a result of unemployed workers and bankrupt manufacturers.

The reasoning seems to be that the rich can afford it and an extra 10% tax isn't going to stop "fat cats" from indulging themselves.

Since the luxury tax went into effect for newly ordered boats, nobody has bought a new boat on which the tax would apply! The National Marine Manufacturers' Assn., the trade group that tracks such things, hasn't found a single sale in the entire country. However, the NMMA has been able to document more than 100,000 layoffs (those are blue-collar workers—not fat cats) and numerous boat manufacturers going out of business.

A great number of people who buy boats are not rich; they plan to live on the boat in lieu of a house. A significant number who buy boats that cost more than $100,000 do live on board. Should they be penalized for such a lifestyle?

Why is a new boat a luxury but a used boat is not? Why is a new boat that costs more than $100,000 a luxury when a $500,000 vacation home in Aspen is not?

The fact is that all excise taxes are regressive by nature. The politicians tell us they are soaking the rich, but it is the average worker who suffers the most. Don't be fooled by all the political posturing. The real fat cats are in Washington piloting a ship that's sinking as the direct result of their 20-year spending binge.

The luxury tax on boats should be repealed. Our government representatives should balance the budget by cutting their spending, not by increasing our taxes.

PEARSON YACHTS FILES FOR CHAPTER 11—PORTSMOUTH FIRM SAYS RESTRUCTURING VITAL FOR SURVIVAL

(By Peyton Fleming)

PORTSMOUTH.—A dramatic drop in cruising-boat sales has forced Pearson Yachts Corp., the world's oldest builder of Fiberglas boats, to file for bankruptcy protection.

"It is our intent to remain in business long-term, but to do so we must go through some restructuring and refinancing," J. Gordon Clayton, Pearson's president, said yesterday.

The three-decade-old firm, which also builds smaller boats such as Sunfish, Lasers and O'Days; filed for Chapter 11 protection from its creditors on Feb. 25 in U.S. Bankruptcy Court in Providence.

Court papers list assets of $5.6 million and total liabilities of $8.6 million. Of that, $4.7 million is secured debt.

Clayton said the filing was necessary if the privately held company is to remain in business. "Pearson needs some clearcut relief from some of its creditors," he said, without elaborating.

Clayton declined to discuss sales figures or how much money the company is losing.

He said all of Pearson's product lines are struggling, but none more so than its larger cruising boats, which sell for as much as $160,000. "From 18 to 20 months ago, sales are down between 70 and 80 percent," he said of the product line, which accounts for more than half of the company's sales.

Pearson's work force has fallen to under 100 from 500 in the mid-1980s when boat sales were booming.

What little activity the company has seen has been overseas, particularly in Japan. "Since August, the American public just quit buying because of the recession and the war," Clayton said.

The company has responded to the slowdown by reducing the size of its sailboats—the maximum length is now 30 feet compared with 53 feet a few years ago. It also has pared down its inventory. "We've pretty well cleaned them out, but we took a beating on it," Clayton said.

He said the bankruptcy petition would have come earlier if the company hadn't expanded into the small-boat business. Pearson acquired the Laser and O'Day sailboat lines in 1988. It had purchased the producer of Sunfish sailboats a year earlier.

Clayton said small-boat sales have been "holding relatively level, although they are down slightly."

Pearson's problems come at a time when many regional boatbuilders are reeling because of the sluggish economy and a new 10 percent federal "luxury" tax on recreational boats selling for more than $100,000. The tax took effect Jan. 1.

"That's taken an industry that was in a severe recession and put it in a deep depression," said Ken Kubic, legislative chairman of the Rhode Island Marine Trade Association, which has more than 200 members.

"It's like walking off the edge of a cliff," added Bill Shaw, Pearson's chief boat designer who retired last month after 26 years. "This has been by far the most acute and devastating impact I've seen on the business."

In the last 12 months, Kubic estimates more than 1,000 boatbuilders have lost their jobs in Rhode Island. Among those is David Walters, who closed his Portsmouth boatbuilding company, Cambria Yachts, last fall. Twenty workers lost their jobs there.

"We were shut down as a result of the luxury tax," said Walters, who built 40- to 50-foot sailboats that sold for as much as $600,000. "We're in a real depression."

Mr. PELL. Mr. President, I am pleased to join as an original cosponsor of legislation introduced by the distinguished Senator from Louisiana [Mr. BREAUX] to repeal the luxury excise tax on the cost of boats in excess of $100,000.

The State of Rhode Island is one of the Nation's largest producers of recreational boats. The State has a concentration of companies that produce yachts and boats in the so-called luxury class of more than $100,000. The 10 percent excise luxury tax is having a devastating effect on the industry, on the workers in the industry in Rhode Island, and the tax is adding significantly to the depressed State of the Rhode Island economy.

Mr. President, the luxury tax was enacted as part of the Federal budget deficit reduction agreement last year. I opposed the tax at that time. In truth, the so-called luxury tax was a symbolic gesture, intended as an offset to increases in the excise taxes on cigarettes, beer and gasoline that would bear most heavily on middle- and low-income Americans. In actual practice, however, the luxury tax on boats is no burden to the wealthy. They have the choice, which they have exercised, to avoid the tax by spending money on almost anything else—vacations abroad, for example—on which there is no excise tax.

The real burden of the luxury tax on boats has been borne by the workers in the boating industry who have lost their jobs because of declining sales. There are in fact very strong indications that the luxury tax on boats will produce no net revenue for the Treasury—that the costs of collection will far exceed the meager revenues the tax produces.

It was for these reasons I opposed the luxury tax when it was proposed last year. And it is for these reasons that I join today in proposing that it be repealed.

By Mr. DASCHLE (for himself, Mr. BOREN, Mr. BREAUX, Mr. BUMPERS, Mr. BURDICK, Mr. BURNS, Mr. COCHRAN, Mr. CONRAD, Mr. CRAIG, Mr. DIXON, Mr. GRASSLEY, Mr. HELMS, Mr. JOHNSTON, Mr. LOTT, Mr. PRYOR, Mr. STEVENS, and Mr. SYMMS):

S. 650. A bill to amend the Trade Act of 1974 to strengthen the U.S. ability to respond to foreign trade practices that threaten U.S. commerce; to the Committee on Finance.

DEALING WITH UNFAIR TRADE PRACTICES

Mr. DASCHLE. Mr. President, I am introducing legislation today to clarify section 301 of the Trade Act of 1974. Section 301 empowers the U.S. Trade Representative to investigate, negotiate and, if necessary, retaliate against any unjustifiable, unreasonable or discriminatory act, policy of practice of a foreign government that unfairly burdens or restricts U.S. commerce.

The bill I am introducing today clarifies that USTR may take appropriate action under section 301 when an act, policy or practice threatens to burden or restrict U.S. commerce. When such a threat is reasonably foreseeable, USTR should respond in a timely manner.

Our other major trade laws—countervailing duty, antidumping and sections 201 and 406—all contain the "threat of injury" language. The objective is to prevent the damage from occurring. Bringing section 301 in line with these other laws, would give USTR more flexibility and leverage to resolve trade disputes before American companies, industries, or producers are injured.

Section 301 is more than a mechanism to gain market access. The law can be used against any foreign government act, policy, or practice that violates international trade agreements, or which is found to be unjustifiable, unreasonable, or discriminatory and which burdens or restricts U.S. commerce. It has been used to address many unfair trade practices including subsidies. Cases have been initiated under section 301 to investigate European community subsidies on pasta exports and canned fruit production.

One of the reasons I am proposing this clarification is to address a situation that has raised concerns among many people in my State and around the country. The Canadian Provincial Government of Saskatchewan has approved plans to enter a joint venture with a Canadian company to construct a world-scale nitrogen fertilizer plant. The provincial government is providing significant equity and is guaranteeing commercial debt that will account for most of the plant's cost. Industry analysts and U.S. producers have concluded that this heavily subsidized plant will cause serious injury to the U.S. market.

This case is a problem for American fertilizer consumers, as well as U.S fertilizer producers. If one Canadian company, through the aid of government subsidies, gains control of the market and drives out the American competition, then the Canadian company will be free to raise prices. Farmers who are shareholders in their farmer-owned cooperatives lose out twice, as investors in an enterprise injured by this action, and as consumers forced to pay higher prices to a monopoly supplier.

Because of the severe impact unfair trade has on producers as well as consumers, it is important for all U.S. trade policy channels to be available to resolve unfair trade disputes as early as possible. The statute does not make clear that USTR may pursue a section 301 action against the provincial subsidy before the market disruption has occurred. The countervailing duty and antidumping laws are of little help because they require evidence of sales or irrevocable offers to sell in America. By then, in cases such as the Canadian fertilizer plant, the damage is done. It is much easier to try to revolve the problem before subsidized products flood the U.S. market. I believe the U.S. Government has the flexibility to deal with such a situation under current law, but to clarify the point, and to ensure that American producers can obtain help from our Government when they need it, I am introducing this legislation today.

I am joined by 16 Senators who are cosponsoring the bill: Senators BOREN, BREAUX, BUMPERS, BURDICK, BURNS, COCHRAN, CONRAD, CRAIG, DIXON, GRASSLEY, HELMS, JOHNSTON, LOTT, PRYOR, STEVENS, and SYMMS.

I ask unanimous consent to include in the RECORD the text of the bill, a list of groups supporting the bill, and the text of letters in support of the bill.

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

S. 650

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

SECTION 1. ACTIONS BY THE UNITED STATES TRADE REPRESENTATIVE.

(a) MANDATORY ACTION.—Section 301(a)(1)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2411(a)(1)(B)(ii)) is amended by inserting "(or threatens to burden or restrict)" after "restricts".

(b) DISCRETIONARY ACTION.—Section 301(b) of such Act (19 U.S.C. 2411(b)(1)) is amended by inserting "(or threatens to burden or restrict)" after "restricts".

(c) DEFINITIONS. Section 301(d) of such Act (19 U.S.C. 2411(d)) is amended—

(1) by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (7), (8), (9) and (10), respectively, and

(2) by inserting after paragraph (5) the following paragraph:

"(6) An act, policy, or practice that threatens to burden or restrict United States commerce is an act, policy, or practice that does not currently burden or restrict United States commerce, but, if not corrected, is reasonably expected to burden or restrict United States commerce."

ASSOCIATIONS IN SUPPORT OF A CLARIFYING AMENDMENT TO SECTION 301 OF THE TRADE ACT OF 1974

National Association of Wheat Growers.
National Council of Farmer Cooperatives.
Independent Petroleum Association of America.
National Cattlemen's Association.
National Farmers Union.
Rice Millers' Association.
National Pork Producers Council.
Ad Hoc Committee of Domestic Nitrogen Producers.
American Mining Congress.

NATIONAL ASSOCIATION OF WHEAT GROWERS,
Washington, DC, March 11, 1991.

Hon. TOM DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: The National Association of Wheat Growers wishes to express its support for you in your effort to clarify Section 301 of the 1974 Trade Act. We believe your amendment is necessary because it will direct the USTR to investigate and respond when a foreign government's act, policy or practice threatens to burden or restrict U.S. commerce.

Under current law, U.S. wheat producers are not fully protected against the threat of injury by the unfair trading practices of competing nations. In particular, we are concerned about the administered pricing policies of wheat into the U.S. market by the Canadian Wheat Board. We strongly suspect the Canadian wheat is entering the U.S. at prices well below the U.S. market. Without access to the price information, however, we are unable to determine injury to the domestic producers. Your bill would enable us to receive special consideration from the Administration for our situation and might result in discouraging Canadian exports from entering the U.S. at the expense of American farmers.

In light of the Canadian example, we support your efforts to clarify Section 301.

Sincerely,

RON RIVINIUS,
President.

NATIONAL FARMERS UNION,
March 12, 1991.

Hon. THOMAS A. DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: The National Farmers Union wants to commend you for authoring an amendment clarifying Section 301 of the 1974 Trade Act that would give a clear direction to the U.S. Trade Representa-

tive's Office that it has authority to investigate and respond when a foreign government's actions, policies or practices threaten to burden or restrict U.S. commerce.

The amendment you are offering will be vital to a variety of U.S. industries who need the assistance of the U.S. government when they are facing threats from foreign government actions.

The Farmers Union hopes your amendment will be of aid in particular to a problem facing U.S. agricultural supply cooperatives which supply their members and others with nitrogen products. As you are aware, the government of Saskatchewan, Canada is providing significant aid in the construction of a major fertilizer plant in that Canadian province and that industry analysts have concluded the plant could cause significant damage to the U.S. fertilizer industry.

Given the financing aid and the reported marketing arrangements for sale of products from the plant in the U.S., our farmer owned supply cooperatives could suffer significant damage unless the U.S. government becomes involved in a positive way in this issue.

Once again, we want to thank you for your efforts on this issue and stand ready to help you in any way possible to secure passage of your amendment.

Sincerely,

LELAND SWENSON,
President, National Farmers Union.

NATIONAL COUNCIL OF FARMER COOPERATIVES,
March 8, 1991.

Hon. THOMAS A. DASCHLE,
Senate Hart Building,
Washington, DC.

DEAR SENATOR DASCHLE: On behalf of the National Council of Farmer Cooperatives, I would like to take this opportunity to express our support for your proposed legislation aimed at clarifying Section 301 of the 1974 Trade Act.

The National Council of Farmer Cooperatives is a nationwide trade association representing nearly 100 major regional marketing of supply cooperatives, 32 State Councils and the banks of the cooperative Farm Credit System. Our members, in turn, represent nearly 5,000 local cooperatives with a combined membership of nearly 2 million individual farmers.

It is our understanding that your proposed legislation would amend Section 301 to provide USTR with the authority to investigate and respond when a foreign government's act, policy, or practice threatens to burden or restrict U.S. commerce.

We believe such expanded authority is essential in order to allow USTR to take such action as may be necessary and appropriate to prevent or minimize injury to U.S. industry as a result of such practices. Currently, any such review or investigation is generally limited until there is evidence of actual injury. This is like waiting to call the fire department after the house has already burned down instead of when there is indication of smoke.

For this reason, we strongly support this needed legislation and urge its enactment.

Sincerely,

WAYNE A. BOUTWELL,
President.

AMERICAN MINING CONGRESS,
Washington, DC, March 12, 1991.

Hon. THOMAS A. DASCHLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DASCHLE: The American Mining Congress is pleased to endorse your proposed legislation aimed at clarifying Section 301 of the 1974 Trade Act.

AMC is an industry association that encompasses (1) producers of most of America's metals, coal and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies; and (3) engineering and consulting firms and financial institutions that serve the mining industry.

The legislation you have proposed would amend Section 301 to provide the United States Trade Representative with the authority to investigate and respond when an act, policy, or practice of a foreign government threatens to burden or restrict United States commerce. We believe that the USTR should be permitted to take appropriate action when necessary to prevent or minimize injury to U.S. industry resulting from such practices.

The American Mining Congress strongly supports this legislation and urges its prompt enactment.

Sincerely,

JOHN A. KNEBEL,
President.

Mr. COCHRAN. Mr. President, I support the amendment to clarify section 301 of the 1974 Trade Act, which allows the United States to retaliate against any action, policy, or practice of a foreign government that unfairly burdens or restricts U.S. commerce. Since its adoption by Congress in 1974, section 301 has proved useful in the battle against unfair trade practices. In most cases, the threat of retaliation under section 301 has been effective in resolving trade disputes through negotiation.

There is an open question, however, regarding the timing for the use of section 301. Should U.S. companies be forced to wait until a foreign government's act, policy, or practice has had its negative impact before section 301 is invoked? Should jobs and sales be lost in the meantime?

The answer should be clear. Section 301 should be an option whenever an act, policy, or practice even threatens to burden or restrict our industries unfairly. The U.S. Trade Representative should be able to respond under section 301 before disruption takes place. I believe this was the original intent of Congress.

Adopting the clarification will bring section 301 into line with other major trade items, such as countervailing duty, antidumping, sections 201 and 406, all of which incorporate the threat of injury language. It is far better to act promptly to prevent an unfair practice than to wait until an industry suffers needless injury.

In my State of Mississippi we have two large fertilizer companies. Both companies are tough competitors using world-class technology, directly and indirectly providing thousands of jobs in Mississippi. They have proven their efficiency by competing successfully against large foreign firms for years. These companies and their workers are now threatened, however, by actions in Canada.

The provincial government of Saskatchewan is undertaking a joint-venture project with a Canadian company to build a world-scale nitrogen fertilizer plant costing some $435 million. The Province has given $64 million in equity and is guaranteeing an additional $305 million debt for construction costs. The Canadian company, which has made a 15-percent investment of $65 million, has been granted a 50-percent interest in the plant and exclusive marketing rights.

Industry analysts have concluded that the plant will significantly oversupply the nitrogen fertilizer market and drive down prices. If Saskatchewan proceeds with this project, unsubsidized U.S. producers in Mississippi and elsewhere will suffer injury and possible shutdown while the provincial government subsidizes its plant.

I am concerned that the U.S. Trade Representative may be reluctant to use section 301 in this case because no market disruption has yet occurred. I do not think it makes sense to delay action until people lose jobs and plants close. I urge the Senate to adopt this amendment so there can be no doubt that Congress intends section 301 to be used even before U.S. commerce is actually damaged by unfair acts, policies, or practices of our trading partners.

By Mr. GARN:

S. 651. A bill to improve the administration of the Federal Deposit Insurance Corporation, and to make technical amendments to the Federal Deposit Insurance Act, the Federal Home Loan Bank Act, and the National Bank Act; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL DEPOSIT INSURANCE IMPROVEMENTS ACT

• Mr. GARN. Mr. President, today I am introducing legislation to amend the Federal Deposit Insurance Act in order to improve the operations of the FDIC and the Resolution Trust Corporation. This legislation is very similar to S. 2827 which I introduced last year, except that it contains certain modifications to take into account testimony that we heard during Banking Committee hearings on that bill, as well as other comments received during the year. This bill will save the FDIC and RTC considerable sums of money, will make it easier for the FDIC to suspend deposit insurance for unsafe institutions, and authorize the Comptroller of the Currency to place a national bank into receivership if it is in an unsafe or undercapitalized condition. It also contains other provisions of critical importance to our Federal banking regulators and to insured institutions. I ask unanimous consent that the text of the legislation be printed in the RECORD. I plan to insert in the RECORD a complete section-by-section description of this bill in the near future.

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

S. 651

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Deposit Insurance Improvements Act of 1991".

(b) TABLE OF CONTENTS.—

TITLE I—AMENDMENTS TO FEDERAL BANKING ACTS

SUBTITLE A—IMPROVEMENTS

Sec. 101. Short title; table of contents.
Sec. 102. Terms of office.
Sec. 103. Conversions.
Sec. 104. Temporary suspension of deposit insurance.
Sec. 105. Priority of claims.
Sec. 106. Repealer.
Sec. 107. Disclosure of uninsured status.
Sec. 108. Asset disposition amendments.
Sec. 109. Penalties.
Sec. 110. Appointment of receiver.

SUBTITLE B—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

Sec. 151. Short title.
Sec. 152. Amendment to the Federal Deposit Insurance Act.

SUBTITLE C—AMENDMENTS TO PUBLIC LAW 96-510.

Sec. 171. Conforming amendments.

TITLE II—CLARIFYING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

Sec. 201. FSLIC resolution fund.
Sec. 202. Branching.
Sec. 203. Removal.

TITLE III—TECHNICAL AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

Sec. 301. Technical amendments.

TITLE I—AMENDMENTS TO FEDERAL BANKING ACTS

Subtitle A—Improvements

SEC. 101. SHORT TITLE.

This subtitle may be cited as the "Federal Banking Agency Improvements Act of 1991".

SEC. 102. TERMS OF OFFICE.

Section 2(c) of the Federal Deposit Insurance Act (12 U.S.C. 1812(c)) is amended to read as follows:

"(c) TERMS.—

"(1) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 6 years.

"(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring 2 or more years before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. Any member appointed to fill a vacancy occurring within 2 years of the expiration of the term for which such member's predecessor was appointed shall be appointed for a new term of 6 years.

"(3) CONTINUATION OF SERVICE.—The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified. This provision applies notwithstanding the date on which such member was initially appointed.".

SEC. 103. CONVERSIONS.

Section 5(d)(2)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(C)) is amended to read as follows:

"(C) APPROVAL DURING MORATORIUM.—The Corporation may approve a conversion transaction at any time if—

"(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution acquired as part of such conversion transaction;

"(ii) the conversion occurs in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the Savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of the loss of assessment income to such insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A), and the Resolution Trust Corporation concurs in the Corporation's determination; or

"(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of loss of assessment income to the insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A).".

SEC. 104. TEMPORARY SUSPENSION OF DEPOSIT INSURANCE.

Section 8(a)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(8)) is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—If, the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution."; and

(2) by amending subparagraph (C) to read as follows:

"(C) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in a proceeding authorized hereunder, shall remain effective until an order of the Board under paragraph (3) becomes final or until the Corporation otherwise dismisses or sets aside the order.".

SEC. 105. PRIORITY OF CLAIMS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following:

"(s) PRIORITY OF CERTAIN CLAIMS.—In any proceeding relating to a claim acquired under this section or section 13 against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other person employed by or providing services to an insured depository institution, any suit, claim, or cause of action brought by the Corporation shall have priority over any other suit, claim, or cause of action asserted by depositors, creditors, or shareholders of the depository institution, except for claims of Federal agencies brought pursuant to section 6321 of the Internal Revenue Code of 1986 or section 3713 of title 31, United States Code. This priority shall apply to both the prosecution of any claim and to the execution of any subsequent judgments resulting from such action.".

SEC. 106. REPEALER.

Section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) is amended by striking paragraph (5).

SEC. 107. DISCLOSURE OF UNINSURED STATUS.

Section 28(h) of the Federal Deposit Insurance Act (12 U.S.C. 1828(h)) is amended to read as follows:

"(h) DISCLOSURES BY UNINSURED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—Any depository institution the deposits of which are not insured by the Corporation shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the institution's deposits are not 'federally insured'.

"(2) MANNER AND CONTENT.—The Corporation may, by regulation or order prescribe the manner and content of the disclosures required by paragraph (1).

"(3) ENFORCEMENT.—Compliance with the requirements of this subsection, and any regulation prescribed or order issued under this subsection, shall be enforced under section 8 in the same manner and to the same extent as if the depository institution were an insured State nonmember bank.".

SEC. 108. ASSET DISPOSITION AMENDMENTS.

Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended—

(1) in subsection (b), by amending paragraph (12) to read as follows:

"(12) REGULATIONS, POLICIES, AND PROCEDURES.—

"(A) IN GENERAL.—Subject to the review of the Oversight Board, the Corporation shall adopt the rules, regulations, standards, policies, procedures, guidelines, and statements necessary to implement the strategic plan established by the Oversight Board under subsection (a)(14). The Corporation may issue such rules, regulations, standards, policies, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out this section.

"(B) REVIEW, ETC.—Such rules, regulations, standards, policies, procedures, guidelines, and statements—

"(i) shall be provided by the Corporation to the Oversight Board promptly or prior to publication or announcement to the extent practicable;

"(ii) shall be subject to the review of the Oversight Board as provided in subsection (a)(6)(C); and

"(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.

"(C) PREPARATION AND MAINTENANCE OF RECORDS RELATING TO SOLICITATION AND ACCEPTANCE OF OFFERS.—The Corporation shall—

"(i) document decisions made in the solicitation and selection process and the reasons for the decisions; and

"(ii) maintain such documentation in the offices of the Corporation, as well as any other documentation relating to the solicitation and selection process.

"(D) REAL ESTATE ASSET DIVISION.—The Corporation shall establish a Real Estate Asset Division to assist and advise the Corporation with respect to the management, sale, or other disposition of real property assets of institutions described in paragraph (3)(A). The Real Estate Asset Division shall have such duties as the Corporation establishes, including the publication of an inventory of real property assets of institutions subject to the jurisdiction of the Corporation. Such inventory shall be published before January 1, 1990 and updated semiannually thereafter and shall identify properties

with natural, cultural, recreational, or scientific values of special significance.

"(E) SUPPORT STAFF.—The Corporation shall maintain an executive-level position and dedicated staff to assist and advise the Corporation and other agencies in pursuing cases, civil claims, and administrative enforcement actions against institution-affiliated parties of insured depository institutions under the jurisdiction of the Corporation. These personnel shall have such duties as the Corporation establishes, including the duty to compile and publish a report of the Congress on the coordinated pursuit of claims by all Federal financial institution regulatory agencies, including the Department of Justice and the Securities and Exchange Commission. The report shall be published before December 31, 1990 and updated semiannually after such date.";

(2) in subsection (c), by amending paragraph (6)(A) to read as follows:

"(A) PURCHASE LOAN.—The Corporation may provide a loan at market interest rates to the purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide such a loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit—

"(i) a lower-income family to purchase an eligible single family property under paragraph (2); or

"(ii) a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to the purchase of an eligible residential property under paragraph (2) or (3). The Corporation shall provide such loan in a form which would permit its sale or transfer to a subsequent holder."; and

(3) in subsection (c), by amending paragraph (9) to read as follows:

"(9) DEFINITIONS.—For purposes of this subsection—

"(A) ADJUSTED INCOME.—The term 'adjusted income' has the same meaning as such term has under section 3 of the United States Housing Act of 1937.

"(B) CLEARINGHOUSES.—The term 'clearinghouses' means—

"(i) the State housing finance agency for the State in which an eligible residential property is located,

"(ii) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board, and

"(iii) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968) that the Corporation determines has the capacity to act as a clearinghouse for information.

"(C) CORPORATION.—The term 'Corporation' means the Resolution Trust Corporation either in its corporate capacity or as receiver, but does not include the Corporation in its capacity as an operating conservator.

"(D) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'eligible multifamily housing property' means a property consisting of more than 4 dwelling units—

"(i) to which the Corporation acquires title; and

"(ii) that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (without regard to any increase of such amount for high-cost areas).

"(E) ELIGIBLE RESIDENTIAL PROPERTY.—The term 'eligible residential property' includes eligible single family properties and eligible multifamily housing properties.

"(F) ELIGIBLE SINGLE FAMILY PROPERTY.—The term 'eligible single family property' means a 1- to 4-family residence (including a manufactured home)—

"(i) to which the Corporation acquires title; and

"(ii) that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high-cost areas).

"(G) LOWER-INCOME FAMILIES.—The term 'lower-income families' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

"(H) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means a private organization (including a limited equity cooperative)—

"(i) no part of the net earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

"(ii) that is approved by the Corporation as to financial responsibility.

"(I) PUBLIC AGENCY.—The term 'public agency'—

"(i) means any Federal, State, local, or other governmental entity; and

"(ii) includes any public housing agency.

"(J) QUALIFYING HOUSEHOLD.—The term 'qualifying household' means a household (i) who intends to occupy eligible single family property as a principle residence; and (ii) whose adjusted income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

"(K) QUALIFYING MULTIFAMILY PURCHASER.—The term 'qualifying multifamily purchaser' means (i) a public agency, (ii) a nonprofit organization, or (iii) a for-profit entity which makes a commitment (for itself or any related entity) to satisfy the lower-income occupancy requirements specified under paragraph (3)(E) for any eligible multifamily property for which an offer to purchase is made during or after the periods specified under paragraph (3).

"(L) RURAL AREA.—The term 'rural area' has the meaning given such term in section 520 of the Housing Act of 1949.

"(M) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(N) STATE HOUSING FINANCE AGENCY.—The term 'State housing finance agency' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout such State.

"(O) VERY LOW-INCOME FAMILIES.—The term 'very low-income families' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.".

SEC. 109. PENALTIES.

Section 8(j) of the Federal Deposit Insurance Act (12 U.S.C. 1818(j)) is amended to read as follows:

"(j) Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

"(1) any insured depository institution;

"(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(8);

"(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act);

"(4) any institution chartered under the Farm Credit Act of 1971;

"(5) any appropriate Federal depository institution regulatory agency;

"(6) the Federal Housing Finance Board and any Federal Home Loan Bank; or

"(7) the Resolution Trust Corporation,

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

SEC. 110. APPOINTMENT OF RECEIVER.

Section 1 of the Act of June 30, 1876 (12 U.S.C. 191) is amended to read as follows:

"SECTION 1. APPOINTMENT OF RECEIVER.

"The Comptroller of the Currency may, without notice or prior hearing, appoint a receiver to take possession and control of a national bank (as defined in the Bank Conservation Act) whenever the Comptroller determines that one or more of the following circumstances exists:

"(1) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business;

"(2) the bank is in an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

"(3) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the bank's capital to be replenished without Federal assistance;

"(4) There is a violation or violations of laws, rules, or regulations, or there exists any unsafe or unsound practice or condition that is likely—

"(A) to cause insolvency or substantial dissipation of assets or earnings, or

"(B) to weaken the bank's condition or otherwise seriously prejudice the interests of its depositors; or

"(5) the bank has been dissolved, or its rights, privileges, and franchise have been declared forfeited, as prescribed in section 5239 of the Revised Statutes.".

Subtitle B—Asset Conservation and Deposit Insurance Protection

SEC. 151. SHORT TITLE.

This subtitle may be cited as the "Asset Conservation and Deposit Insurance Protection Act of 1991".

SEC. 152. AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 36. ASSET CONSERVATION.

"(a) LIABILITY LIMITATIONS.—

"(1) INSURED DEPOSITORY INSTITUTIONS.—The liability of an insured depository institution under any Federal law imposing strict liability for the release or threatened release of a hazardous substance at or from property—

"(A) acquired through foreclosure;

"(B) held in a fiduciary capacity;

"(C) held by a lessor pursuant to the terms of an extension of credit; or

"(D) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution by a removal, remedial, or other response action undertaken by another party.

"(2) MORTGAGE LENDERS.—The liability of a mortgage lender under Federal law imposing strict liability for the release or threatened release of a hazardous substance at or from property—

"(A) acquired through foreclosure; or

"(B) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution by a removal, remedial, or other response action undertaken by another party.

"(3) UNEXERCISED CAPACITY TO INFLUENCE.—Notwithstanding paragraphs (1) and (2), an insured depository institution or mortgage lender shall not be liable under any Federal law described in paragraph (1) or (2) based solely on the fact that the institution or lender has the unexercised capacity to influence operations at or on property in which it has a security interest.

"(b) ACTUAL BENEFIT.—For purposes of this section, the actual benefit conferred on an institution or company by a removal, remedial or other response action shall not exceed the fair market value of the property following such action.

"(c) EXCLUSION.—The limitation on liability provided under subsection (a) shall not apply to—

"(1) any person that has caused or contributed to the release of a hazardous substance that forms the basis for liability described in subsection (a);

"(2) any person that, following the acquisition of property through foreclosure or the termination of a lease agreement, failed to take reasonable steps to prevent the continued release of a hazardous substance that forms the basis for liability described in subsection (a), if such release is discovered by such person prior to or after that acquisition or termination of the lease; or

"(3) any person that actively directs or conducts operations that result in the release of a hazardous substance that forms the basis for liability described in subsection (a).

"(d) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—A Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of a hazardous substance from property acquired—

"(A) in connection with the exercise of receivership or conservatorship authority or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) LIMITATION.—The immunity provided by paragraph (1) shall not apply to any entity that has caused or contributed to the release of a hazardous substance that forms the basis for a liability described in paragraph (1).

"(3) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in (A); or

"(C) fails to take reasonable steps to prevent the continued release of a hazardous substance that gives rise to a removal, remedial, or other response action, if such release is discovered by such purchaser prior to or after such purchase.

"(4) LIMITED LIABILITY FOR EMERGENCY RESPONSE ACTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a Federal banking or lending agency shall not be liable for costs or damages in connection with actions taken in response to an emergency created by the release or threatened release of a hazardous substance from a property described in paragraph (1). Such response actions shall not be considered to have caused or contributed to damages resulting from such release or threatened release.

"(B) GROSS NEGLIGENCE STANDARD.—This paragraph does not preclude liability for costs or damages resulting from the gross negligence or intentional misconduct by a Federal banking or lending agency in responding to an emergency created by the release or threatened release of a hazardous substance in connection with a property described in paragraph (1).

"(C) DEFINITION.—For the purpose of this paragraph, the term 'gross negligence' means reckless, willful, or wanton misconduct.

"(e) LIEN EXEMPTION.—Any property transferred pursuant to subsection (d) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of a hazardous substance known to exist at the time of the transfer.

"(f) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that remedial action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (d)(1).

"(g) DUE DILIGENCE.—

"(1) DEPOSITORY INSTITUTIONS.—The appropriate Federal financial institutions regulatory agencies shall, after consulting with the Administrator of the Environmental Protection Agency, promulgate regulations that require insured depository institutions to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments in order to account for different levels of risk that may be posed by different classes of collateral.

"(2) MORTGAGE LENDERS.—The Secretary of Housing and Urban Development shall, after consultation with the Administrator of the Environmental Protection Agency, promulgate regulations to assure that mortgage lenders develop and implement procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments in order to take into account the level of risk that may be posed by particular classes of collateral.

"(3) FINAL REGULATIONS.—Final regulations required to be promulgated pursuant to paragraph (1) shall be issued within 180 days after the date of enactment of this section.

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

"(1) The term 'property acquired through foreclosure' means property acquired from a nonaffiliated party by an insured depository institution or mortgage lender—

"(A) through purchase at sales under judgment or decree, power of sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) through conveyance pursuant to an extension of credit previously contracted; or

"(C) through any other formal or informal manner by which the insured depository institution or mortgage lender temporarily acquires, for subsequent disposition, possession of collateral in order to protect its security interest.

Property is not acquired through foreclosure if it is property held for investment purposes, or if the insured depository institution or mortgage lender does not seek to sell or otherwise divest such property at the earliest practical time, taking into account market conditions and regulatory requirements.

"(2) The term 'mortgage lender' means a company (other than an insured depository institution) that—

"(A) is regularly engaged in the business of making extensions of credit secured, in whole or in part, by real property to nonaffiliated parties, and

"(B) complies with the environmental assessment requirements imposed under subsection (g), after final regulations under that subsection become effective.

The term 'mortgage lender' also includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation if such Association or Corporation complies with regulations promulgated by the Secretary of Housing and Urban Development to assure that environmental risks are considered by lenders prior to the acquisition of mortgage obligations or interests therein from such lenders.

"(3) The term 'fiduciary capacity' means acting for the benefit of a nonaffiliated person as a trustee, executor, administrator, custodian, guardian of estates, receiver, conservator, committee of estates of lunatics, or any similar capacity.

"(4) The term 'extension of credit' includes lease transactions that are functionally equivalent to a secured loan and that are authorized by and comply with regulations issued by the appropriate Federal banking agency or State banking authority.

"(5) The term 'insured depository institution' has the same meaning as in section 3(c), and shall also include—

"(A) a federally insured credit union;

"(B) a leasing company that is an affiliate of an insured depository institution; and

"(C) a farm credit bank or association chartered under the Farm Credit Act of 1971, as amended.

"(6) The term 'Federal banking or lending agency' means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank, a Federal Home Loan Bank, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, and the Small Business Adminis-

tration, in any of their capacities, and their agents.

"(7) The term 'appropriate Federal financial institutions regulatory agency' has the same meaning given such term in section 8(e), except that it does not include the Secretary of the Treasury or the Oversight Board.

"(8) The term 'release' has the meaning given such term in section 101(22) of Public Law 96-510, and also includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(9) The term 'hazardous substance' includes any substance or material that is subject to regulation or response under Federal or State environmental laws or regulations.

"(i) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under other applicable law to any person subject to the provisions of this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective upon the date of enactment of this subtitle, except that it shall not affect any administrative or judicial claims that have been formally filed as of such date.

Subtitle C—Amendments to Public Law 96-510

SEC. 171. AMENDMENTS.

(a) DEFINITIONS.—Section 101 of Public Law 96-510 is amended—

(1) in paragraph (20), by striking subparagraph (D); and

(2) in paragraph (35)(A)(ii), by inserting "State or Federal" before "government".

(b) FEDERAL BANKING OR LENDING AGENCY LIABILITY.—Section 107(d)(2) of Public Law 96-510 is amended by inserting "or Federal banking or lending agency (as defined in section 36 of the Federal Deposit Insurance Act)" after "local government", each time it appears.

TITLE II—CLARIFYING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 201. FSLIC RESOLUTION FUND.

Section 11A(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821a(a)) is amended to read as follows:

"SEC. 11A. FSLIC RESOLUTION FUND.

"(a) ESTABLISHED.—

"(1) IN GENERAL.—There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

"(2) TRANSFER OF FSLIC ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—Except as provided in section 21A of the Federal Home Loan Bank Act, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the date before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be transferred to the FSLIC Resolution Fund.

"(B) ADDITIONAL CLAIMS ON ASSETS.—The FSLIC Resolution Fund shall pay to the Savings Association Insurance Fund such amounts as are needed for administrative and supervisory expenses from the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 through September 30, 1991.

"(3) SEPARATE HOLDING.—Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Bank Insurance Fund, or the Corporation for accounting, reporting, or any other purpose.

"(4) USE OF FDIC POWERS.—As of August 10, 1989, the Corporation shall have all of the powers and rights to carry out its duties with respect to the assets and liabilities of the FSLIC Resolution Fund as the Corporation otherwise has under this Act.

"(5) CORPORATION AS RECEIVER.—As of August 10, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any institution for which the Federal Savings and Loan Insurance Corporation was appointed conservator or receiver on or before December 31, 1988. When acting as such conservator or receiver, the Corporation shall have all of the powers and rights as the Corporation has as conservator or receiver under this Act".

SEC. 202. BRANCHING.

Section 13(k)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(4)) is amended to read as follows:

"(4) BRANCHING PROVISIONS.—

"(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, the resulting entity may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

"(B) RESTRICTIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

"(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

"(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

"(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).".

SEC. 203. REMOVAL.

Section 21A(*l*) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(*l*)) is amended to read as follows:

"(*l*) POWER TO REMOVE; JURISDICTION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Corporation, in any capacity, is a party shall be deemed to arise under the law of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding. The Corporation, in any capacity, shall be an agency of the United States for the purpose of section 1345 of title 28, without regard to whether the Corporation commences the action.

"(2) CORPORATION AS PARTY.—The Corporation shall be substituted as a party in any civil action, suit, or proceeding to which its predecessor in interest was a party with respect to institutions which are subject to the management agreement dated February 7, 1989, among the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation. The Corporation shall be deemed substituted in any action, suit, or proceeding for a party upon the filing of a copy of the order appointing the Corporation as conservator or receiver for that party or the filing of such other pleading informing the court that the Corporation has been appointed as conservator or receiver for such party.

"(3) REMOVAL AND REMAND.—The Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States District Court, including the United States District Court for the District of Columbia. The removal of any action, suit, or proceeding shall be instituted (A) not later than 90 days after the date the Corporation is substituted as a party, or (B) not later than 30 days after service on the Corporation, if the Corporation is named as a party. The Corporation may appeal any order of remand entered by a United States District Court.".

TITLE III—TECHNICAL AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 301. TECHNICAL AMENDMENTS.

(a) FEDERAL DEPOSIT INSURANCE ACT AMENDMENTS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3(q)(2)(E), by striking "Depository Institutions Supervisory Act" and inserting "Financial Institutions Supervisory Act of 1966";

(2) in section 5(d)(3)(B), by striking "shall" in clauses (ii) and (iii);

(3) in section 5(e)(4), by striking the designations "(i)" and "(ii)" and inserting the designations "(A)" and "(B)", respectively;

(4) in section 7(a)(8), by striking "the the" and inserting "the";

(5) in section 7(*l*)(7), by striking "the value of";

(6) in section 7(m)(5)(A), by striking "institution" the second time it appears;

(7) in the third sentence of section 8(a)(7), by striking "the period" the first time it appears;

(8) in paragraphs (3) and (4) of section 8(b), by striking "subsection (u)" and inserting "subsections (u) and (v);"

(9) in section 8(b)(6)(F), by inserting "appropriate" before "banking";

(10) in section 8(c)(2), by striking "injuction" and inserting "injunction";

(11) in section 8(g)(1), by striking "party," the first time it appears and inserting "party";

(12) in section 8(g)(2), by striking "depository institution" each time it appears and inserting "bank".

(13) in section 8(o), by striking "board of directors" each time it appears and inserting "Board of Directors";

(14) in section 8(r)(2), by striking "therof" and inserting "thereof";

(15) in section 10, by redesignating subsection (e) as subsection (d);

(16) in section 11(a)(2), by striking the designation "(b)" and inserting the designation "(B)";

(17) in section 11(c)(6)(B), by striking "Owner's" and inserting "Owners'";

(18) in section 11(d)(2)(B)(iii), by striking "is" and inserting "are";

(19) in section 11(d)(8)(B)(ii), by inserting "provide" after "disallowed,";

(20) in section 11(d)(16)(B)(iv), by striking "dispositions" and inserting "disposition";

(21) in section 11(e)(12)(B), by striking "directors or officers" and inserting "directors' or officers'";

(22) in section 11(i)(3)(A), by striking "or" the last time it appears and inserting "of";

(23) in section 11(q)(1), by striking "decided" in the second sentence and inserting "held";

(24) in section 13(f)(6)(A), by striking "has in default" and inserting "is in default";

(25) in section 13(i), by redesignating paragraphs (11) and (13) as paragraphs (10) and (11), respectively;

(26) in section 18(k)(4)(C)(ii), by striking "Board" and inserting "Corporation";

(27) in section 30(e)(1)(A), by striking "venders" and inserting "vendors";

(28) in section 31(b)(1), by striking "Board of Directors" and inserting "board of directors"; and

(29) in section 34(a)(1)(A)(iii), by striking "and" and inserting "or".

(b) TITLE 28 AMENDMENT.—Section 1657 of title 28, United States Code is amended by inserting "section 11, 12, or 13 of the Federal Deposit Insurance Act or" after "the consideration of any action brought under".●

By Mr. KOHL:

S. 652. A bill to protect the privacy of telephone users by amending section 3121 of title 18, United States Code; to the Committee on Commerce, Science, and Transportation.

TELEPHONE PRIVACY ACT

Mr. KOHL. Mr. President, a new technology is sweeping the country and changing the way that we use the telephone. It is known as Caller ID, and it lets someone see the number of the person who is calling before picking up the receiver. Caller ID is already being offered in New Jersey, Maryland, Virginia, and the District of Columbia, and it will soon be in place in a number of other jurisdictions, including California. In these areas, customers can buy the service by purchasing a device for between $50 and $100, and paying their phone companies a few dollars each month. Indeed, this technology is developing so rapidly that some telephone companies soon expect to offer services that display not only the number from which a call is placed, but also the name of the calling party.

In my mind, Caller ID is a welcome development. It can help us screen our calls and ultimately enhance our privacy. In fact, when Caller ID arrives in Milwaukee, I plan to be one of the first to subscribe to it.

But in what form should it spread? Should there be forced Caller ID, in which a phone company requires our phone numbers to be displayed every time we make a call—even if we have an unlisted number? Or should there be voluntary Caller ID, in which consumers continue to decide when it's appropriate to give out their numbers? Since a call recipient can easily obtain the caller's address with his or her phone number, mandatory disclosure means revealing where you live—whether or not you want the other person to know.

Forced Caller ID violates our fundamental right to privacy because there are a variety of situations where callers need and deserve to keep their phone numbers to themselves. Don't we have the right to call a crisis hotline, or a Senator's office, or even the IRS to ask for help without saying who we are? And why should the phone company compel us to identify ourselves when we call a business for information? That business could use Caller ID to make unsolicited sales pitches to the consumer, even though he or she had called anonymously. If the hotline or the business wants my number, fine. I can decide whether to give it out. But that decision may be too important, too personal or even too embarassing for a phone company to make. Put another way, such disclosure doesn't even seem logical: after all, if a stranger came up to you on the street and asked you for your home phone number, would you give it to him? Of course not.

There are even times when forced Caller ID is dangerous. Prosecutors often call witnesses at night from home. Surely they should not be compelled to reveal where they live. Undercover officers sometimes call drug dealers from precincts to arrange buys. If a target recognizes where the call came from, it could scuttle the bust—or, worse, result in the death of an agent. Battered women often take refuge with friends but call home to check on things. They should not be compelled to tell their abusing husbands where they're staying. Troubled persons may call crisis hotlines to avoid doing harm to themselves or others. We ought not undermine the effectiveness of these hotlines because callers are afraid of revealing who they are. We know of other dangerous situations, but the point is this: phone companies can't determine when it's safe to reveal our numbers and addresses. There are just too many circumstances and too many variables that the phone companies cannot foresee.

The answer is to allow consumers to retain their freedom of choice. Let them dial a few digits on the phone when they want to make private calls. With this per-call blocking option, people can display their numbers when calling friends and family—and they can keep their numbers confidential when they need to do so. The recipients of calls will always see the word "private" flash on the Caller ID box. Then, they can choose to ignore the calls, screen them with a tape machine, or simply answer the phone.

A growing number of telephone companies have recognized the importance protecting the caller's right to privacy. But in order to ensure that all telephone customers retain this crucial freedom of choice, I am today introducing the Telephone Privacy Act of 1991. MIKE SYNAR and DON EDWARDS are introducing a companion bill in the House later this afternoon.

My measure is simple, effective and straightforward. It would require phone companies that offer Caller ID to give callers the option of blocking the display of their telephone numbers or any other individually identifying information without charge. However, calls to 9-1-1 services would not be blocked, so that police and medical emergency units could continue to pinpoint the location of those in need. In this way, the bill would balance the privacy interests of both callers and recipients.

This proposal makes sense for several important reasons. First, we now have the ability to stop harassing phone callers without in any way undermining the privacy of law-abiding citizens. Under the new technologies that will be available with Caller ID, obscene phone call victims can use Call Trace, Call Return, and Call Block to hunt down or foil their assailants. For example, Call Trace lets the victim of a harassing phone call automatically send the number of the harasser to the authorities after hanging up—merely by dialing a three-digit code. And Call Block—which is different than blocking—allows the victim to punch a few buttons and forever stop any more calls from getting through from the number that last called.

Though a few telephone companies are trying to promote Caller ID as the most effective way to reduce obscene phone calls, this approach is ultimately deceptive. Simply put, these new technologies work even if a caller withholds his number—in other words, even if the caller uses blocking. So it turns out that we have the ability to protect victims and privacy at the same time.

Second, before we go any further with Caller ID, we've got to make sure that it's legal. Last summer, a Pennsylvania court of appeals ruled that Caller ID violates that State's constitution and its wiretap statute—which is almost identical to the Federal version. The case is currently before the Pennsylvania Supreme Court. Moreover, some experts have argued that Caller ID may be an illegal "trap and trace device" under the Electronic Communications Privacy Act [ECPA]. My proposal would resolve the ambiguities in our Federal wiretap statutes, ensure the legality of Caller ID and establish a uniform, national privacy policy in this area.

Finally, there is one more reason to pass this legislation. Blocking already exists for the wealthy. A new 900 service allows people to make private calls for a few dollars a minute. That's wrong. Blocking is a matter of fairness as well as privacy: I believe phone companies should make blocking available to everyone—both rich and poor.

The widespread support for this proposal underscores its commonsense approach. All around the country—in the District of Columbia, California, Nevada, Arizona, Delaware, and other areas—telephone companies are opting for blocking, or State PUC's are requiring it. And here in Washington—in part

due to the hearing held last year in Patrick Leahy's Judiciary Subcommittee on Technology and the Law—a consensus is developing that Caller ID with blocking strikes the proper balance between telephone callers and recipients alike. That's a powerful rationale, Mr. President, and that's why I believe my bill will soon become law.

I ask unanimous consent that the text of the Telephone Privacy Act of 1991 be printed in the RECORD.

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

S. 652

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 "Telephone Privacy Act of 1991".

SEC. 2. PURPOSE.

The purpose of this Act is to protect the right to privacy of telephone users by enabling them to limit the dissemination of their telephone numbers to persons of their choosing.

SEC. 3. AMENDMENTS TO TITLE 18.

Section 3121 of title 18, United States Code, is amended—

(1) In subsection (b) by—

(A) striking "or" after the semicolon at the end of paragraph (2);

(B) striking paragraph (3);

(C) adding after paragraph (2) the following:

"(3) if the nongovernmental recipient of wire or electronic communication consents and its provider enables any originator to block receipt of any individually identifying information about the originator, without charge, except that the provider is not required to enable an originator to block receipt of the individually identifying information on the emergency assistance telephone line of a State or municipal police or fire department, or on a 911 emergency line; or

"(4) on the emergency assistance telephone line of a State or municipal police or fire department, or on a 911 emergency line.";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

"(c) CIVIL ACTION.—Any user of wire or electronic communication service aggrieved by a provider's failure to enable an originator to block receipt of the individually identifying information without charge under subsection (b)(3) may recover from the provider in accordance with section 2707 of this title.".

By Mr. HEFLIN (for himself, Mr. HATCH, Mr. THURMOND, Mr. DECONCINI, Mr. SIMPSON, Mr. GRASSLEY, Mr. D'AMATO, Mr. SHELBY, Mr. COCHRAN, Mr. EXON, Mr. GORTON, and Mr. REID):

S. 653. A bill to prohibit injunctive relief, or an award of costs, including attorney's fees, against a judicial officer for action taken in a judicial capacity; to the Committee on the Judiciary.

JUDICIAL IMMUNITY

• Mr. HEFLIN. Mr. President, today I am reintroducing legislation to reverse the 1984 Supreme Court decision in *Pulliam* v. *Allen* (466 U.S. 522 (1984)). In Pulliam, a sharply divided (5-4) Court held that the doctrine of judicial immunity neither prevents injunctive relief in Federal civil rights actions challenging decisions of a State judge, nor bars attorney fee awards against the judge. In essence, Pulliam disregards four centuries of unbroken precedent and destroys an ancient doctrine that is the bedrock of the Anglo-American system of justice.

Understandably, this decision has caused a tremendous amount of concern among our Nation's judicial officers. Indeed, at the time Pulliam was handed down, the conference of Chief Justices said of the decision: "no development in recent times has aroused greater concern on the part of state judges." If anything, that concern is greater today. Judges fear that this decision will have a chilling effect on judicial independence in both State and Federal courts, and I agree with them.

The ability of a judge to decide a case, without fear, is of paramount importance to judicial effectiveness. It is a cornerstone of our judicial system. Harassing litigation brought by disappointed parties against judicial officers can only result in the increasing timidity of judges, along with a tendency to avoid close and controversial decisions whenever possible. Consequently, the threat of a potential suit alone is enough to substantially impair the exercise of independence by judges.

In addition to the chilling effect of Pulliam of judicial independence, my colleagues in the judicial branch are concerned that this decision will create a new class of Federal litigation against State decisions. State court plaintiffs are placed, in effect, in a position of appealing to the Federal courts to enjoin State court action when they should be in State courts appealing through the State judicial system. This encroachment on the doctrine of federalism destroys comity between the two separate but equal judicial systems. State judges cannot act effectively if their decisions, no matter how closely they are made in keeping with State law, are subject to immediate challenge in the Federal courts.

Mr. President, the Court in Pulliam challenged us to remedy this situation by stating, "that it is for Congress, not this Court, to determine whether and to what extent to abrogate the judiciary's common-law immunity." Congress must accept this challenge.

An identical bill passed the Judiciary Committee last Congress, and it is my hope that the full Senate will get the opportunity to debate this bill in the 102d Congress. I look forward to working with my colleagues on this legislation, and ask for their support. I request that a copy of the bill be printed in the RECORD following my remarks.

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

S. 653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting before the period at the end thereof ", except that in action brought against a judicial officer for an act or omission committed in such officer's judicial capacity—

"(1) such officer shall not be liable for costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction; and

"(2) injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

SEC. 2. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by adding before the period at the end of the first sentence: ", except that in action brought against a judicial officer for an act or omission committed in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

SEC. 3. Notwithstanding any other provisions of law, no judicial officer shall be held liable for any costs, including attorney's fees, in any proceeding brought against such judicial officer for an act or omission taken in a judicial capacity.•

By Mr. DECONCINI (for himself, Mr. HATCH, Mr. KOHL, Mr. LAUTENBERG, Mr. SPECTER, and Mr. GRASSLEY):

S. 654. A bill to amend title 35, United States Code, with respect to patents on certain processes; to the Committee on the Judiciary.

BIOTECHNOLOGY PATENT PROTECTION ACT OF 1991

Mr. DECONCINI. Mr. President, the President's Council on Competitiveness, which is chaired by Vice President QUAYLE, recently released a report on the administration's national biotechnology policy. The report stresses the importance of the biotechnology industry, which is projected to grow from a $2 billion domestic industry to $5 billion by the year 2000. The report states that,

> Some of the most promising advances will be in new drugs and gene therapies to treat previously incurable diseases. In the next decade biotechnology also will produce healthier foods, safer pesticides, additional energy resources, and innovative environmental clean-up techniques.

The Council recommends several steps to promote advancement in biotechnology. One of the most crucial measures is protecting the intellectual property rights of American biotechnology inventors. It is with that in mind, Mr. President, that I am introducing today with my colleagues, Senators HATCH, KOHL, LAUTENBERG, SPECTER, and GRASSLEY, the Biotechnology Patent Protection Act of 1991. This bill corrects the inadequacies in our patent laws that limit the patentability in the biotechnology field. It will ensure that U.S. biotechnology inventors will con-

tinue to lead the world in commercializing their ingenuity.

In its simplest terms, biotechnology is the study and application of genetic engineering techniques, sometimes referred to as recombinant DNA technology. Sections of DNA called genes contain chemical instructions that guide the cell's machinery in constructing proteins. Proteins give living things their unique characteristics. Through biotechnology drug research, scientists can discover beneficial substances that naturally occur in the body and duplicate these rare substances with gene-splicing techniques resulting in useful and commercial quantities. The end result is a whole new generation of lifesaving products.

Unlike some other industries, the biotechnology industry is highly dependent on patent protection. But the ability to obtain this protection has been inversely related to its need. Without process patent protection, not only does investment dwindle but U.S. biotechnology firms remain vulnerable to the unauthorized use of their patents abroad. The detrimental result of this practice was outlined last year by the Commissioner of the Patent and Trademark Office, Harry Manbeck, in testimony before the House Subcommittee on Courts, Intellectual Property and the Administration of Justice:

> They [inventors] cannot prevent importation of a product made abroad by a process which uses a material patented in the United States, unless they have patent protection for the process. Although not unique, the field of biotechnology is particularly susceptible to this problem. Take the not uncommon example of an inventor who develops a "'host cell" through genetic engineering. Such a cell can be used in a biotechnological process to produce a protein which may or may not be patentable. The inventor may obtain a patent for the host cell. However, the steps of the biotechnological process may be, and typically are conventional part from the use of that patentable host cell and under current law, may or may not be patentable.
>
> Under present U.S. patent law, the holder of a patent of the host cell would be able to preclude another from using that cell *in the United States* to make the protein. However, without patent protection for the process, the inventor has no effective remedy against someone who takes the patented host cell to another country, uses it to produce the protein, and imports the protein back into the United States. Thus, our law currently provides an unfair advantage to unauthorized users abroad of technology patented in the United States.

Last year I introduced the Biotechnology Patent Protection Act of 1990, which addressed this very problem. The bill had clear objectives: correct the inadequacy in the Patent Code for biogenetic inventions; prevent the importation of infringing biotechnology products. Over the course of the past year, Representative BOUCHER and I have consulted with the Patent Office, the patent community and representatives from the biotechnology industry to refine this bill to achieve the objectives of the earlier legislation in a more limited fashion. The revised bill, which we are introducing today, adopts the language of H.R. 5664 from last Congress.

This legislation amends the Patent Code by overruling the Federal circuit decision in in re Durden. Durden involved the asserted patentability of a process for producing a novel and nonobvious compound from a novel and nonobvious starting material using a known chemical reaction. The patent applicant in Durden admitted that the nature and conduct of the chemical reaction as it related to the change made in the molecules was known for other, analogous, starting materials to make other corresponding products. The Federal circuit held that a process of using a patentable starting compound to make a patentable final compound was not patentable. The court indicated that the patentability of each process must be evaluated on a case-by-case basis. More recent Federal Circuit decisions have not resolved this problem. Exacerbating the Durden decision has been its inconsistent application by the Patent Office, leaving patent applicants uncertain whether they can obtain process patents of this nature.

The Biotechnology Protection Act of 1991 resolves the Durden dilemma by providing a proper criteria for recombinant processes. The bill provides that a process of making or using a product will not be considered nonobvious if the starting material or resulting product is novel. As Commissioner Manbeck testified in the House last year, this bill will "eliminate any need to resolve whether a particular process was one of making or of using a specific patentable machine, manufacture or composition of matter."

By overruling Durden, this act provides a solution to another deficiency in our law that has created an obstacle for the U.S. biotechnology industry. As mentioned by Commissioner Manbeck, current law permits an infringer to take a patented biogenetic host cell offshore to produce an end product and ship back into the United States. This legislation closes the loophole in our Patent Code that permits this form of infringement. It provides no more than what is already granted by the European and Japanese Patent Offices.

An important but ancillary benefit of this legislation is that it will reduce the search and examination burden before the Patent Office in biotechnology patent applications. Over the years, the Patent Office has been greatly criticized for its patent pendency period. As examined in a recent GAO report, this problem has been acute in the area of biotechnology. Reducing pendency for biotechnology patents will bring stability to this area.

This legislation is the answer to the Durden problem that has stymied the growth of our biotechnology industry. If Durden continues, so too will the Patent Office's inconsistent application of that case to biotechnology applications. The Federal circuit has passed up opportunities to resolve the Durden dilemma. It is time to end the uncertainty and litigation and provide the biotechnology industry the benefits afforded by the DeConcini-Hatch Process Patent Act of 1988.

The biotechnology industry is a vital industry to the future of America. The industry not only generates billions of dollars for the U.S. economy, but more importantly it offers potential solutions to seemingly hopeless problems. Currently, biotechnology researchers are searching for new energy sources, cures for cancer and AIDS, and new foods and food products just to name a few. Recognizing the impact this field has on our economic growth, President Bush has designated biotechnology research as a funding priority in his budget. The budget notes how the recent breakthroughs in the biotechnology field "offer unprecedented opportunities for improving the Nation's productivity, health, and well-being."

American scientists invented biotechnology and the United States continues to lead in the industry; however, without this legislation, many inventors and companies will shy away from investing their time and money into products that can be stolen from them once they reach the market. This legislation will increase the incentive to invest in biotechnology research resulting in commercial development by correcting the inadequacies in our patent laws and ending foreign infringement.

Mr. President, this legislation moves the U.S. biotechnology industry in the right direction—forward. The time has arrived to end the uncertainty in this area of the law that has hampered the essential progress of this dynamic scientific area; an area that is driven by U.S. firms who are constantly seeking to improve their products and transform their discoveries into commercial products.

Time and time again we hear of a U.S. industry losing its global lead to another country that is willing to provide that industry with the tools to succeed. Time and time again, we have been forced to look back in retrospect lamenting what little needed to be done to maintain U.S. dominance in a particular high-technology industry. This bill is an essential tool to ensure the continued success of the U.S. biotechnology industry. If we act now on this legislation, we will never have to lose the U.S. lead in biotechnology.

We expect wide support from the patent community on this legislation because it provides them with what they constantly request from Congress—greater protection for intellectual property. They more than anyone be-

lieve that the Patent Code should serve as an incentive, not an impediment, to the commercialization of biotechnology research.

In light of the input we have received since I first introduced S. 2326 last Congress and the urgent need for the protection this bill provides, we plan to move quickly on this legislation in this Congress. With the hope of resolving any concerns with the particular language of the bill, I have sent a letter to Commissioner Manbeck, today, requesting comments on a proposed amendment that would resolve some concerns raised by the Industrial Biotechnology Association.

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. 654

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 "Biotechnology Patent Protection Act of 1991".

SEC. 2. PATENTABILITY OF CERTAIN PROCESSES.

Section 103 of title 35, United States Code, is amended by adding at the end the following new paragraph:

"When a process of making or using a machine, manufacture, or composition of matter is sought to be patented in the same application as such machine, manufacture, or composition of matter, such process shall not be considered as obvious under this section if such machine, manufacture, or composition of matter is novel under section 102 and nonobvious under this section. If the patentability of such process depends upon such machine, manufacture, or composition of matter, then a single patent shall issue on the application.".

SEC. 3. EFFECTIVE DATE.

The amendment made by section 2 shall apply to all United States patents granted on or after the date of the enactment of this Act and to all applications for United States patents pending on or filed after such date of enactment, including any application for the reissuance of a patent.

Mr. HATCH. Mr. President, today I am pleased to cosponsor the Biotechnology Patent Protection Act of 1991 with my colleague, Senator DECONCINI.

This legislation is the result of a great deal of work by numerous Members of Congress over the past 2 years. The Vice President's Council on Competitiveness is also to be commended for its activity in this area. In a report issued recently, the Council said:

The uncertainties in intellectual property rights for innovations in the biotechnology area continue to hamper the industry. Changes in U.S. law have been suggested as a way of improving patent protection. Legislation has been introduced to overturn a court case (In re Durden) that suggests that use of a novel starting material in combination with a known chemical process is not eligible for a process patent. The application of Durden in the biotechnology area could deny protection to innovations that only can be protected through process patents. If Durden were overturned, patenting these processes would permit the patent holder to exclude the importation into this country of a product produced by using a patented biotechnological material.

The Administration should support passage of legislation to provide necessary process patent protection for products, such as those in the biotechnology area, that can be protected only through process patents.

The key elements of this legislation are the protection of major scientific breakthroughs involved in the methods of making and using new products. The best examples of the types of processes that will benefit from this legislation are those that arise in the biotechnology industry.

As noted by the Council on Competitiveness, for a variety of reasons, the patent position of the biotechnology industry is not as strong as that available to traditional pharmaceuticals. This means that under current law it is possible for a major innovation, such as creation of the first commercially effective process for making a recombinant human therapeutic, to be without adequate patent protection. In some instances there may be no product patent protection available for the end product, no process protection for the method of making the product, and no ability to prevent foreign manufacture of the end product using the patented intermediate or host cell. In biotechnology, the use of an intermediate—most frequently a host cell or organism—is the modern equivalent of creating a miniature factory for the production of a product. Thus, the inability to prevent the transportation of a patented host cell offshore and the subsequent importation of an end product is a serious defect in our current patent system. Our bill addresses this problem directly by extending process patent protection to cover the inventor's process of making the product. Such process patents may be enforced under current law to stop importation of a product made by a patented process. Thus, this bill will give inventors the full promise of the process patent amendments Senator DECONCINI and I authored in the 1988 omnibus trade bill.

The other important reason that this bill makes sense is that it will produce an international patent norm that no longer leaves our inventors at a competitive disadvantage. Under current law, it is possible for innovators to face unfair foreign competition from parties who would be barred from using a patented host cell in the United States. This legislation will correct that anomaly by granting process patent protection. In my view, this approach is preferable to attempting the creation of a new set of remedies for the making, using, or selling of products of host cells. This bill removes a court-created barrier resulting from an anomalous interpretation of the patent laws. Removal of this barrier will result in: First, process patent allowance; and second, application of existing process patent laws to enforce the newly allowed process patents to stop the importation into the United States of products made outside the United States by the patented process.

By Mr. WALLOP:

S. 655. A bill to establish the National Park System Visitor Facilities Trust Fund; to the Committee on Energy and Natural Resources.

NATIONAL PARK SYSTEM VISITOR FACILITIES TRUST FUND

• Mr. WALLOP. Mr. President, I am pleased to introduce today legislation which will amend the National Park System Visitor Facilities Fund Act—Public Law 97-433.

The National Park System Visitor Facilities Fund Act of January 8, 1983, established a fund in the Treasury into which were credited all fees received by the Government from private concessioners in the National Park System. These funds were then available for appropriation back to the National Park Service for reconstruction and improvement of facilities used to provide food, lodging, and other services to park visitors. The 1983 act provided that improvement projects were to be accomplished by the National Park Foundation with grants from the fund. A total of $54 million was credited to the fund, of which $28 million was appropriated for improvement projects.

Authorities contained in the 1983 act expired on September 30, 1989. Concession fees thereafter were covered into the Treasury as miscellaneous receipts, and $26 million, which represents the unappropriated balance of the fund, was transferred to miscellaneous receipts at that time.

This legislation would reestablish the fund and require that it be programmed, expended, and accounted for directly by the Secretary of the Interior, rather than by the National Park Foundation as was the 1983 fund.

The need for a predictable source of funds to improve and maintain the commercial service facilities in the parks is greater now than in 1983. Nationwide there are 540 concession operations in 130 units of the National Park System. These parks account for 78 percent of total annual visitation to the System. Park visitors spend a significant portion of their time in concession facilities and they must be modern and safe. I estimate that the cost of reconditioning all concession facilities, both Government-owned and concessioner-owned, is about $200 million.

I believe enactment of the enclosed bill will help to assure the millions of park visitors safe and modern facilities for food, lodging, and other services.•

By Mr. KASTEN (for himself, Mr. MACK, Mr. SHELBY, Mr. SYMMS,

Mr. HELMS, Mr. LOTT, Mr. COATS, Mr. GORTON, Mr. WALLOP, Mr. MCCAIN, Mr. BROWN, Mr. HATCH, Mr. BURNS, Mr. GARN, Mr. GRAMM, Mr. D'AMATO, and Mr. THURMOND):

S. 656. A bill to amend the Internal Revenue Code of 1986 to provide for a maximum long-term capital gains rate of 15 percent and indexing of certain capital assets, and for other purposes; to the Committee on Finance.

ECONOMIC GROWTH AND VENTURE CAPITAL ACT

• Mr. KASTEN. Mr. President, today I am introducing the Economic Growth and Venture Capital Act of 1991. I am pleased to say that Senators MACK, SHELBY, SYMMS, HELMS, LOTT, COATS, GORTON, WALLOP, MCCAIN, BROWN, HATCH, BURNS, GARN, GRAMM, and D'AMATO join me as cosponsors. This measure would reduce the cost of capital in general—and of venture capital in particular—by establishing a maximum 15-percent capital gains tax rate on the sale of all capital assets by all taxpayers, both individuals and corporations. The bill would cut the capital gains tax for low- and middle-income taxpayers to 7.5 percent. This measure would also provide for capital gains indexing in order to prevent the unfair taxation of inflationary gains.

The Economic Growth and Venture Capital Act of 1991 is a simple, fair, broad-based and fiscally responsible capital gains tax cut designed to maximize economic growth.

This proposal is simple in that it avoids the complicated holding periods, carve-outs, and limited coverage of other measures that have been introduced. It is a fair proposal because it reduces the tax penalty on saving and investment and eliminates the taxation of phantom gains caused by inflation.

By providing broad-based coverage for all capital assets, and all taxpayers, it would maximize the mobility and efficiency of capital.

The most important benefit of this proposal is that it would create jobs and promote economic growth. In fact, last year, the respected economist Dr. Allen Sinai, with the Boston Company Economic Advisors, Inc., estimated that over 6 years a 15-percent capital gains tax would increase real GNP by over 2 percent, create 2.5 million new jobs, and generate $30-$40 billion in new Federal revenue.

It is my hope that this year we can finally enact this pro-growth proposal to create jobs and boost economic growth.

I ask unanimous consent that the full text of the bill be printed in the RECORD immediately following my remarks.

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

S. 656

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 "Economic Growth and Venture Capital Act of 1991".

SEC. 2. REDUCTION IN INDIVIDUAL CAPITAL GAINS RATE.

(a) GENERAL RULE.—Subsection (h) of section 1 of the Internal Revenue Code of 1986 (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the taxable income reduced by the net capital gain, plus

"(B) a tax equal to the sum of—

"(i) 7.5 percent of so much of the net capital gain as does not exceed—

"(I) the maximum amount of taxable income to which the 15-percent rate applies under the table applicable to the taxpayer, reduced by

"(II) the taxable income to which subparagraph (A) applies, plus

"(ii) 15 percent of the net capital gain in excess of the net capital gain to which clause (i) applies.

"(2) TRANSITIONAL RULE.—In the case of a taxable year which includes March 7, 1991, the amount of the net capital gain for purposes of paragraph (1) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year after such date."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 170(e) of such Code is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "13/28 (19/34 in the case of a corporation) of the amount of gain".

(2)(A) The second sentence of section 7518(g)(6)(A) of such Code is amended by striking "28 percent (34 percent in the case of a corporation)" and inserting "15 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936, is amended by striking "28 percent (34 percent in the case of a corporation)" and inserting "15 percent".

SEC. 3. REDUCTION IN CORPORATE CAPITAL GAINS RATE.

(a) GENERAL RULE.—Section 1201 of the Internal Revenue Code of 1986 (relating to alternative tax for corporations) is amended by redesignating subsection (b) as subsection (c), and by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by section 11, 511, or 831(a) (whichever applies), there is hereby imposed a tax (if such tax is less than the tax imposed by such section) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the net capital gain, at the same rates and in the same manner as if this subsection had not been enacted, plus

"(2) a tax of 15 percent of the net capital gain.

"(b) TRANSITIONAL RULE.—In the case of a taxable year which includes March 7, 1991, the amount of the net capital gain for purposes of subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year after such date."

(b) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 852(b)(3)(D) of such Code is amended by striking "66 percent" and inserting "85 percent".

(2) Paragraphs (1) and (2) of section 1445(e) of such Code are each amended by striking "34 percent" and inserting "15 percent".

SEC. 4. REDUCTION OF MINIMUM TAX RATE ON CAPITAL GAINS.

Subparagraph (A) of section 55(b)(1) of the Internal Revenue Code of 1986 (relating to tentative minimum tax) is amended to read as follows:

"(A) the sum of—

"(i) 15 percent of the lesser of—

"(I) the net capital gain (determined with the adjustments provided in this part and (to the extent applicable) the limitations of sections 1(h)(2) and 1201(b)), or

"(II) so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, plus

"(ii) 20 percent (24 percent in the case of a taxpayer other than a corporation) of the amount (if any) by which the excess referred to in clause (i)(II) exceeds the net capital gain (as so determined), reduced by".

SEC. 5. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Except as provided in paragraph (2), if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) tangible property (or any interest therein), which is a capital asset of property used in the trade or business (as defined in section 1231(b)).

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) OPTIONS.—Any option or other right to acquire an interest in property.

"(C) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (h)(1)).

"(D) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) STOCK IN CERTAIN CORPORATIONS.—Stock in—

"(i) an S corporation (within the meaning of section 1361),

"(ii) a personal holding company (as defined in section 542), and

"(iii) a foreign corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Clause (iii) of paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)), and

"(B) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross national product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross national product deflator for the calendar quarter in which the asset was acquired by the taxpayer (or, if later, the calendar quarter ending December 31, 1990).

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest one-tenth of 1 percent.

"(3) GROSS NATIONAL PRODUCT DEFLATOR.—The gross national product deflator for any calendar quarter is the implicit price deflator for the gross national product for such quarter (as shown in the first revision thereof).

"(4) SECRETARY TO PUBLISH TABLES.—The Secretary shall publish tables specifying the applicable inflation ratios for each calendar quarter.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) a substantial improvement to property,

"(B) in the case of stock of a corporation, a substantial contribution to capital, and

"(C) any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—

"(A) IN GENERAL.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset was not an indexed asset.

"(B) CERTAIN SHORT SALES.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(6) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(e) CERTAIN CONDUIT ENTITIES.—

"(1) REGULATED INVESTMENT COMPANIES; REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST FUNDS.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(E) QUALIFIED INVESTMENT ENTITY.—For purposes of this paragraph, the term 'qualified investment entity' means—

"(i) a regulated investment company (within the meaning of section 851),

"(ii) a real estate investment trust (within the meaning of section 856), and

"(iii) a common trust fund (within the meaning of section 584).

"(2) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(3) SUBCHAPTER S CORPORATIONS.—In the case of an electing small business corporation, the adjustment under subsection (a) at the corporate level shall be passed through to the shareholders.

"(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(g) TRANSFERS TO INCREASE INDEXING ADJUSTMENT OR DEPRECIATION ALLOWANCE.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is—

"(1) to secure or increase an adjustment under subsection (a), or

"(2) to increase (by reason of an adjustment under subsection (a)) a deduction for depreciation, depletion, or amortization,

the Secretary may disallow part or all of such adjustment or increase.

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

"(1) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased real property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

"(2) STOCK INCLUDES INTEREST IN COMMON TRUST FUND.—The term 'stock in a corporation' includes any interest in a common trust fund (as defined in section 584(a)).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of such chapter 1 of such Code is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets for purposes of determining gain or loss."

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 of such Code (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—

For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets after December 31, 1990, see section 1022(a)(1)."

SEC. 6. INDEXING OF LIMITATION ON CAPITAL LOSSES OF INDIVIDUALS.

Section 1211 of the Internal Revenue Code of 1986 (relating to limitation on capital losses) is amended by adding at the end thereof the following new subsection:

"(c) INDEXATION OF LIMITATION ON NONCORPORATE TAXPAYERS.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1990, the $3,000 and $1,500 amounts under subsection (b)(1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the applicable inflation adjustment for the calendar year in which the taxable year begins."

"(2) APPLICABLE INFLATION ADJUSTMENT.—For purposes of paragraph (1), the applicable inflation adjustment for any calendar year is the percentage (if any) by which—

"(A) the gross national product deflator for the last calendar quarter of the preceding calendar year, exceeds

"(B) the gross national product deflator for the last calendar quarter of 1990.

For purposes of this paragraph, the term 'gross national product deflator' has the meaning given such term by section 1022(c)(3)."

SEC. 7. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall apply to sales or exchanges occurring after March 7, 1991, in taxable years ending after such date.

(b) INDEXING OF LOSS LIMITATION.—The amendments made by section 6 of this Act shall apply to taxable years beginning after December 31, 1990.●

● Mr. MACK. Mr. President, I am pleased to reintroduce, along with my colleagues Senator KASTEN and Senator SHELBY, our bill which would lower the tax rate on capital gains.

Should this legislation become law, it would easily represent the most significant economic achievement of the 102d Congress. You might then be surprised when I say that I have a concern about the bill, my concern is, however, that it may not go far enough.

The Economic Growth and Venture Capital Act nearly cuts the tax rate on capital gains in half for most individuals and businesses. This is unquestionably a significant reduction. Independent research has estimated that this alone would unleash economic activity to raise GNP by 2.8 percent, add 2.5 million new jobs, and increase Federal revenues by $30 to $40 billion over 5 years.

But there is a powerful argument to be made that capital gains should not be subject to any tax at all. In recent months, Alan Greenspan, who is the Chairman of the Board of Governors of the Federal Reserve System and one of the most respected economists in the United States, has said that he is in favor of eliminating the tax on capital gains altogether. I think he may be right.

It is unfortunate, although perhaps necessary, to tax any economic activity at all. But there are certainly some activities that are much worse to tax than others. And the creation of capital is certainly one of those activities for which the consequences of taxing are awful.

Ted Forstmann explained this eloquently in the Wall Street Journal on December 13, 1990, when he said:

> The capital gains tax is not a tax on wealth. It is a tax on one's ability to improve one's lot by creating wealth. Taxing capital gains does not much affect the wealthy, who have their capital gains behind them, and are principally concerned with maintaining their wealth. Its real impact is to suppress the initiative of Americans who are not yet wealthy, but have the talent and drive to create wealth, and thus benefit the economy.

A fundamental rule of economic behavior is that whenever you tax something, you get less of it. We are now taxing the creation of wealth at a rate that is higher than at any time in the past decade. I am confident that had this legislation been in effect a year ago, we would not be in a recession today.

Even though the legislation we are proposing today cannot turn back the clock, it is the best antirecession medicine we can take.

I have heard the following metaphor which, I think, describes the importance of a capital gains tax cut in graphic terms: Our "body economic", is today battered and bruised by the recession, with even perhaps some broken bones. We are trying to heal those wounds, with such medical aids as unemployment benefits and expanded credit. But that medical help can only go so far since there remains a plastic bag over the head of the body economic—and that plastic bag is a capital gains tax. Only when we remove that plastic bag will we be able to fully resuscitate the economy. Until then, all of our other efforts will have only limited success.

Mr. President, I have with me two recent studies whose conclusions are relevant to the Economic Growth and Venture Capital Act. I ask that the executive summaries of these two studies be printed in the RECORD.

The first study, "Tax Fairness: Myths and Reality", sponsored by the National Center for Policy Analysis, addresses an argument that opponents of tax cuts have made in recent years.

The study specifically analyzes the Reagan tax cuts of the 1980's and which income groups would be affected by these tax cuts. The NCPA's conclusion is that the tax cuts benefited Americans of every income level, and their analysis is filled with documentation to demonstrate this.

Remember that today's critics of a capital gains tax cut are largely those who opposed the Reagan tax cuts on the basis that those tax cuts would benefit the rich at the expense of the poor. The lesson to be learned is that they were wrong on income tax cuts, and they're wrong now on capital gains tax cuts.

The second study is sponsored by the Institute for Policy Innovation, and its topic is, "How Tax Policy Compounded the S&L Crisis." It analyzes some of the negative consequences of certain tax changes we have made in recent years, particularly the increase in the capital gains tax rate in 1986.

The IPI study emphasized that the increase in the capital gains tax rate significantly reduced the stock of wealth in the United States. Most of that wealth is in real estate. As a consequence, the increase in the capital gains rate reduced the value of commercial real estate in the United States by 9 percent and also lowered the value of owner-occupied housing by about $125 billion.

Mr. President, I also ask that a recent Washington Times article by Warren Brookes on this issue be placed in the RECORD.

The material follows:

[Center for Tax Policy Studies, National Center for Policy Analysis, March 1991]

TAX FAIRNESS: MYTHS AND REALITY

(By Aldona Robbins and Gary Robbins)

EXECUTIVE SUMMARY

During 1990, Americans were bombarded by reports that the U.S. tax system had become increasingly unfair. The critics seized upon two or three facts about the income tax system, repackaged those facts in misleading ways in dozens of "studies," and skillfully marketed the "findings" to the national news media.

Myth: During the 1980s, the rich got richer and the poor got poorer.

Over the past decade, the real per capita income of Americans grew by 21.2 percent. Every income class posted a substantial increase in real aftertax income.

Myth: The top 10 percent of income earners gained from the Reagan tax cuts, while the bottom 90 percent lost.

Total taxes as a percent of gross national product today are slightly higher than they were in 1980. The nation's total tax burden, therefore, did not go down—in large part because of Social Security (FICA) payroll tax increases that took effect in the 1980s but were legislated during the Carter Administration. The Reagan income tax cuts, however, lowered the personal income tax burden for every income class.

Myth: The Reagan tax cuts were a giveaway to the rich.

The tax rate on the highest income earners was reduced sharply during the 1980s in order to encourage wealthy taxpayers to earn more income and pay more taxes. The experiment was a spectacular success. The tax cuts benefitted the non-rich, as wealthy taxpayers increased their total tax payments and their share of tax payments. For example, the share of income tax payments made by the top 1 percent of taxpayers grew from 18 percent in 1981 to more than 27 percent in 1988.

Myth: Reagan tax reform was unfair to low-income families.

For the vast majority of Americans, the greatest benefit from Reagan tax reform is not that tax payments are lower but that taxes are lower than they would otherwise have been. For example:

A family earning $10,000 a year would pay 134 percent more in income taxes if the Carter Administration's tax policies were in effect today.

Including the increases in Social Security taxes, this family would pay 42 percent more in total taxes if the 1980 tax law were in effect.

The very lowest-income taxpayers realized an additional gain. As many as four million low-income taxpayers no longer pay income taxes. The personal exemption was doubled from $1,000 in 1980 to $2,000 by 1989, and the standard deduction was increased by over 50 percent for most taxpayers.

Myth: The income tax system became less progessive during the 1980s.

The U.S. tax system became more progressive, not less so.

Between 1979 and 1988, the share of income taxes paid by the top 5 percent of income earners rose from 37.6 percent to 45.9 percent.

Between 1981 and 1988, the share of Social Security payroll taxes paid by the top 5 percent of income earners rose from 10.9 percent to 12.3 percent.

By contrast, the bottom half of income earners now pay only 5.5 percent of federal income taxes and only 17 percent of Social Security payroll taxes.

Myth: During the 1980s, income of the wealthy grew faster than that of any other group.

No one really knows if this statement is true. It is certainly true of income subject to taxes. But there is no hard evidence that the total income of the wealthy grew faster than that of other taxpayers. We do not know how much of the growth in taxable income was due to a shift from nontaxable to taxable income and how much to the fact that the wealthy worked harder or invested more to produce more income.

Myth: The rich pay a smaller percent of their income in taxes today than they did in 1980, although most taxpayers pay a higher percent.

No one knows exactly what the "income" of the rich was in 1980. Official records show only income subject to the income tax. Taxpayers were not required to report income from tax-exempt securities or other forms of tax-sheltered income. Because of Reagan tax reform, much more of the income of the wealthy today is taxable and much less sheltered. By any reasonable estimate of total income in 1980 and 1990, taxes as a percent of income have gone up, not down, for the wealthiest taxpayers.

Myth: The tax system can be made more progressive by raising the tax rates paid by the rich.

For most of the history of the income tax, the opposite has been true. That is, whenever the highest tax rate has been increased, the total tax payments and share tax payments made by the rich have gone down. Whenever the highest tax rate has been lowered, the share of taxes paid by the rich has gone up. The experience of the 1980s replicated this historical relationship.

[From the Institute for Policy Innovation, February 1991]

HOW TAX POLICY COMPOUNDED THE S&L CRISIS

(By Aldona and Gary Robbins)

EXECUTIVE SUMMARY

Federal tax policy must be included in the list of factors that contributed to the savings and loan crisis. In particular, retroactive changes contained in the 1986 Tax Reform Act lowered real estate values, thereby weakening many institutions which had invested in real estate and adding to the cost of the savings and loan bailout.

Overall, the 1986 tax reform reduced the value of commercial real estate by 17 percent.

The value of home ownership fell by over 9 percent.

$35.6 billion of the estimated $150 billion S&L bailout cost is attributable to the 1986 tax changes.

Tax policy affects revenues to the government, income to economic factors, and the stock of wealth. Governmental assessments of the impact of tax changes focus almost exclusively on revenues. Revenues depend upon income produced by individuals and businesses. For example, social security payroll tax revenues are determined by wages and salaries. Wages, interest, dividends, and profits are flows of income over time which result from continuing productive activities.

Although not recognized in government projections, tax policy affects these income flows through its impact on U.S. economic activity. Higher tax rates lead to lower incomes by discouraging work and saving; lower tax rates lead to higher incomes by encouraging work and saving.

Tax policy also affects the stock of wealth, a fact totally ignored during consideration of the 1986 Tax Reform Act. To the extent that this oversight has contributed to fluctuations in the real estate market, recent tax legislation worsened, not improved, the savings and loan problem and its subsequent costs to taxpayers.

The capital gains changes in the 1986 Act reduced the value of commercial real estate by 9 percent.

Rental costs have gone up by 17.5 percent due to tax reform's impact on commercial real estate.

Changes in capital gains tax treatment, in combination with lower marginal rates, decreased the value of an owner-occupied home worth more than $150,000 by between 5 and 6.5 percent.

The capital gains changes in the 1986 Act lowered the value of owner-occupied housing by about $125 billion.

Provisions in the 1986 Act affecting real estate fall into two main categories. First, repeal of the 60-percent exclusion rate on capital gains raised the tax on real estate projects thereby lowering their asset values. Because about 80 percent of capital gains on real estate is due solely to inflation, the increase in capital gains taxes exposed both commercial real estate investors and homeowners to a significant inflationary tax.

The second broad category of tax provisions affecting real estate values involves deferral of tax deductions. Changes such as the extension of passive loss limitation to real estate and the at-risk loss limitation provision can cause investors to defer the deduction of normal business expenses associated with operating a real estate project. Deferral would be all right if the deferred deductions were indexed for inflation and interest. Because they are not, these changes in the 1986 Act also reduced the value of both commercial real estate and owner-occupied real estate.

Approximately $21 billion of the $35.6 billion in S&L bailout costs due to tax changes are attributable to capital gains and passive loss.

Current estimates place the cost of the S&L bailout in the neighborhood of $150 billion, excluding government borrowing costs. The actual cost of the S&L bailout to taxpayers will depend upon: (1) how many savings and loans fail, and (2) the market value of assets held by the Resolution Trust Corporation (RTC)—the agency set up to deal with the S&L problem. Anything that lowers (raises) the value of real estate property or mortgage quality will reduce (increase) what the RTC can receive for these assets, thereby increasing (decreasing) the cost of the bailout to taxpayers.

A number of tax policy changes that could be undertaken to meliorate the cost of the S&L bailout include:

Lower the tax on capital gains through either a reduction in the rate or through indexing for inflation. In addition to beneficial effects on S&L asset values, a reduction in capital gains taxes would enhance the prospects for higher growth in general.

Repeal ineffectual tax provisions such as passive loss and at-risk limitations. The effect of these provisions is to rearrange investment portfolios, not eliminate the perceived tax abuse. Society loses, however, because of higher transaction costs associated with portfolio changes.

End the asymmetric treatment of taxpayer gains and losses. In an attempt to speed up delivery of tax receipts, the government has passed laws which force the taxpayer to pay tax on income not yet received.

Analyze the impact of taxes on the stocks of U.S. wealth as well as the income flows. Had this been done during debate over tax reform, losses from the S&L bailout could have been reduced.

Such tax policy changes would increase real estate investment incentives, promote economic growth, and raise revenue for the government.

[From the Washington Times, Mar. 7, 1991]

CURING THE BANKING CRISIS AND RECESSION

(By Warren Brookes)

Sen. Phil Gramm, Texas Republican, wants President Bush to open a "second front" on domestic policy.

Here's a good place to start: Go on national television and tell how Congress could end the U.S. banking crisis and the recession fast, just by cutting the capital-gains tax rate to 15 percent.

Such a move alone would restore $500 billion to commercial and residential property values, instantly strengthen the capital positions of all banks and thrifts, end the credit crunch and slash the budget deficit by tens of billions of dollars.

Why don't we do this? Because the Democrats have turned ideology into "idiotology," willing to shoot the nation in the foot for the sake of preventing the wealthy from getting wealthier, even if that would make everyone else better off, too.

There is not a single mainstream economist who does not believe that such a cut would stimulate economic growth and new jobs. Even Alan Sinai, a liberal economist with First Boston Corp., testified to Congress last June that this cut would create at least half a million additional jobs per year and raise total federal tax revenues by $30 billion to $40 billion over five years.

Beyond that, not only does this tax cut more than pay for itself in direct feedback of revenues (raising federal revenues from $7 billion to $11 billion over five years), but it will directly reduce the cost of the savings-and-loan bailout by $21 billion, by raising the liquidation value of its real estate assets.

That is the essential message of a new study by Washington economists Gary and Aldona Robbins for the Institute for Policy Innovation. It shows that the 1986 Tax Reform Act (which raised capital gains rates by 40 percent) cut the values of commercial real estate by 17 percent and home values by 9.2 percent.

Together, these losses add up to more than $1 trillion in total current asset values in the economy as a whole. That accounts for most of the U.S. financial sector problems. The Robbinses say the capital-gains tax increase alone cost current homeowners at least $125 billion in housing values. Since 1986, the value of commercial real estate investment trusts also plunged 60 percent.

As the Robbinses argue: "since 1983, the value of failed S&L real estate assets has fallen by $28 billion. These assets now or will belong to the Resolution Trust Corp.—the agency set up to deal with the S&L problem."

The reason for this is that real estate is the most tax-sensitive commodity there is. Every dollar that must be paid in taxes on a property is a dollar that cannot be paid either as mortgage payments or rental income. Since a property's total market value is directly related to those payments or imputed rental income, any tax increase slashes value.

"Since 86 percent of S&L assets are mortgages and mortgage-backed securities, tax policies which reduce real estate values will logically diminish the value of S&L assets"

and contribute directly to the disappearance of savings-and-loan capital.

In 1986, Congress raised the top tax rate on capital gains to 28 percent, limited losses on "passive" investments, curtailed depreciation schedules on commercial real estate, repealed the 10-year amortization of construction-period costs and taxes, tightened the alternative minimum tax rules, changed and tightened the rules on real estate tax shelters and real estate investment trusts, and made a number of changes in real estate accounting rules.

It also cut the top marginal tax rates, dramatically reducing the value of the income-tax deduction on home-mortgage interest payments. While both the rate reductions and loophole closings were desirable to eliminate distortions in the economy, their powerful 8 percent impact on cutting commercial real estate values was more than doubled by the rise in capital gains.

The Robbinses conclude that altogether the effect of Tax Reform on the Resolution Trust Corp.-owned properties is some $35.6 billion, of which $21 billion is attributable to capital gains and to passive loss restrictions. (See Table.)

On Jan. 23, Federal Reserve Chairman Alan Greenspan was asked by Sen. Connie Mack, Florida Republican, "If we lowered the capital gains tax rate, what impact would it have on the value of assets, the value of real estate?"

Mr. Greenspan replied: "I think it's fairly evident that to the extent the capital-gains tax is lowered, you will get potentially higher property values . . . There's no question in my mind that a capital-gains tax cut would be helpful with respect to the issue of property values and economic growth."

In short, a capital-gains tax cut would by itself go a long way to restoring the nation's financial system, even as it reduced the deficit by $32 billion over five years. Those who oppose it are doing so strictly out of "idiotology," not "fairness."

Impact of 1986 Tax Reform on Costs of the S&L Bailout

RTC Commercial Properties	$23.7 billion
RTC Commercial Mortgages	5.9 billion
RTC Home Mortgages	6.0 billion
Total	35.6 billion
Capital gains portion	21.0 billion
Reduction in Commercial Real Estate Values	17.0 percent
Reduction in Residential Values	9.2 percent

Source: "How Tax Policy Compounded the S&L Crisis" Institute For Policy Innovation, 109, 2:91.•

By Mr. LEAHY (for himself and Mr. METZENBAUM):

S. 657. A bill to amend the Child Nutrition Act of 1966 to provide for more competitive pricing of infant formula for the special Supplemental Food Program for Women, Infants, and Children [WIC], and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

WIC INFANT FEEDING INITIATIVE ACT

Mr. LEAHY. Mr. President, hungry infants and their mothers are more important than corporate profits.

Questionable business practices by giant drug companies are keeping an estimated 270,000 hungry women and children from getting the food they need. These practices are costing taxpayers as much as $168 million each year.

The program that is suffering is WIC, the Supplemental Food Program for Women, Infants and Children. Created in 1972, it is universally acclaimed as one of our Nation's most successful nutrition programs.

WIC serves children at some of the most critical times of their lives. It feeds mothers when they are pregnant or breastfeeding. And it feeds children during their important, early development years.

WIC is a proven success story. A 1990 USDA study showed that for every WIC dollar spent on a pregnant woman, between $2.84 and $3.90 was saved in infant Medicaid during the first 60 days after birth. And, according to the Surgeon General, the average medical cost of a low birthweight baby can exceed $39,000. The average cost of the WIC package is $30 a month.

At retail stores, WIC participants exchange special vouchers for infant formula. The recipients pay nothing; the State reimburses the store for the full retail cost of the formula. The infant formula manufacturers then rebate a portion of the retail price to the State.

To help States get higher rebates from formula companies, Congress enacted competitive bidding legislation in 1987 and 1989. By 1991, the average rebate climbed to $1.36 per can.

USDA estimates that these laws have generated $600 million in rebates, allowing WIC to serve 950,000 additional recipients at no extra cost.

Three large companies—Ross Laboratories, Mead Johnson, and Wyeth Laboratories—produce 96 percent of infant formula consumed in the United States. In March 1990, Mead Johnson publicly announced that it would submit bids of only $0.75 for all rebates. During the next 8 months, Mead submitted $0.75 rebate bids to 12 different States. In several States, Ross and Wyeth followed Mead's lead.

When one company bids a rebate of $0.75 and soon after another bids $0.757, as Mead and Ross did in Wisconsin in March 1990, it does not take a genius to see how this could frustrate competitive bidding.

Clearly the companies can do better. After being sharply criticized at hearings last year chaired by Senator METZENBAUM and after the Federal Trade Commission began an antitrust investigation, the bids increased. In Florida and California, the rebates after inflation adjustment are $1.72 and $1.88, respectively.

I commend Senator METZENBAUM for his leadership in this area and for agreeing to hold a joint hearing with me tomorrow on this subject.

Today I am introducing legislation together with Senator METZENBAUM to ensure that infant formula companies pay States the highest rebates that are competitively possible. The bill will:

Encourage competition by requiring infant formula companies to bid in seven large regions, instead of 50 States.

Promote high volume discounts and prevent pharmaceutical companies from taking advantage of smaller States.

Penalize pharmaceutical companies that coordinate pricing practices by revealing bids before they are announced by USDA.

Mr. President, I ask that more detailed information concerning the legislation be printed in the RECORD.

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

BACKGROUND ON THE "WIC INFANT FEEDING INITIATIVE OF 1991"

Created by Congress in 1972, WIC (the Supplemental Food Program for Women, Infants and Children) reduces infant mortality, low birthweight, and improves infant health by providing low-income recipients with specially designed packages of foods such as milk, cheese, infant formula, cereals, juice, eggs, beans, and peanut butter. Administered by the Department of Agriculture, WIC provides cash grants to states to implement the program.

At retail stores, WIC participants exchange special vouchers for infant formula. The recipients pay nothing; the state reimburses the store for the full retail cost of the formula. The infant formula manufacturers then rebate a portion of the retail price to the state.

In 1987, legislation passed by Congress allowed states to obtain higher rebates from infant formula companies through competitive bidding procedures. Because less than half the states participated, a 1989 law made the competitive bidding procedure mandatory for all states. By 1991, the average rebate climbed to $1.36 per can. USDA estimates that the two provisions have generated $600 million in rebates, allowing WIC to serve 950,000 additional recipients at no extra cost.

Three companies produce 96 percent of infant formula consumed in the U.S.—Ross Laboratories (a division of Abbott Laboratories; approximately 52 percent of the U.S. market), Mead Johnson Nutritionals (a division of Bristol-Myers-Squibb; approximately 34 percent) and Wyeth-Ayerst (a division of American Home Products; approximately 9 percent). In March 1990, Mead sent letters to several states, disclosing it would submit rebate bids of only $0.75 per can when the bids were later due. During the next eight months, Mead submitted $0.75 competitive rebate bids to 12 different states.

Ross and Wyeth followed Mead's lead. The companies submitted the following rebate bids, all of which are 20 to 45 percent lower than the average rebate of $1.36 per can:

State	Date	Mead Johnson	Ross Labs	Wyeth
Wisconsin	March 3, 1990	$0.75	$0.757	$1.10
Montana	April 4, 1990	.75	.75	.69
Oklahoma	do	.75	.80	.775
Kentucky	do	.75	.88	.805

Recent bidding in two large states has shown that rebates can be substantially higher than $1.36 a can, perhaps as high as

$1.75. In Florida and California, the rebates after inflation adjustment are $1.72 and $1.88, respectively.

OVERVIEW OF THE "WIC INFANT FEEDING INITIATIVE OF 1991"

To guarantee the most children possible are served by WIC at the least expense to the program, Senator Leahy has introduced the "WIC Infant Feeding Initiative of 1991", which will:

Encourage Competition: The country would be divided into seven regions, each of which would be a separate market. The infant formula companies would bid directly to USDA for an exclusive contract with these regions. Because each region is a large and lucrative market, only available to the highest bidder, the bill will increase competition between infant formula companies, ensuring that states are paid high rebates.

Promote High Volume Discounts: Experience shows that rebate bids are highest in states with more WIC participants. By establishing seven regions nationwide (blocks of seven to 10 states, instead of 50 separate state purchasers) to solicit bids, high volume discounts are encouraged. Also, pharmaceutical companies are prevented from taking advantage of smaller states.

Set Penalties for Pharmaceutical Companies: Any pharmaceutical company that coordinates pricing practices by revealing bids before they are announced by the Department of Agriculture will be banned from the WIC program for up to two years. (These penalties are in addition to to any antitrust penalties.)

PROJECTED SAVINGS OF THE "WIC INFANT FEEDING INITIATIVE OF 1991"

The Senate Agriculture Committee estimates that under this legislation, states could recover $168,500,000 in additional rebates, enough to put an additional 270,000 eligible women and children on the program at no taxpayer expense.

Mr. METZENBAUM. Mr. President, infant formula is an important component of the special Supplemental Food Program for Women, Infants and Children [WIC]. In fact, sales to State-supervised WIC programs account for one-third of infant formula sales in the United States. Food provided to women and children through the WIC program has resulted in lower infant mortality rates, fewer premature births, higher birth weights, and lower health care costs in the long run for low-income families. In short, WIC programs produce healthy mothers and healthy babies.

Congress has shown its commitment to the WIC program by increasing WIC funding throughout the 1980's. However, these additional moneys, in large part, went to cover higher food costs. Today, WIC serves less than half of the women and children who are eligible to receive nutritional supplements of milk, cereal, cheese and formula. We have to do better.

One way States have tried to reduce costs is to initiate competitive bidding for infant formula supplied to the WIC Program. Although the formula manufacturers at first refused to even bid on these contracts, the States have had great success in obtaining significant rebates off the retail price paid for infant formula.

Unfortunately, two things have worked against the States to limit the overall cost savings. First, wholesale prices for infant formula have risen steadily for years. This increases the net price to the State even if rebate levels remain high. In May 1990 the Subcommittee on Antitrust, Monopolies and Business Rights, which I chair, conducted a hearing to look at pricing by infant formula companies. At this hearing, witnesses testified that formula prices increased more than 150 percent during the 1980's, far outstripping inflation and the Consumer Price Index for food. More importantly, prices for milk—one main component of infant formula—increased only 16 percent over that same time period. This raised questions that the three major formula companies, which control over 90 percent of sales, have coordinated prices in a parallel manner in violation of the antitrust laws.

Second, one formula company sought to undermine competitive bidding by announcing in advance that it would offer only 75 cents in its future bids. This pricing announcement has greatly influenced the level of rebates offered by the companies, and has once again resulted in higher net formula prices to the States.

This legislation is designed to mitigate these inflationary pressures on formula prices. The bill does three essential things. First, infant formula companies that, in advance, reveal rebates contained in sealed bids, or make statements regarding rebates with the purpose of influencing the bids submitted by others, are barred from bidding on WIC contracts for 2 years. Second, the bill permits the States to consider bids for specific formula products as a means of helping new companies which do not make a full line of products break into the market. Third, the bill requires States to enter into joint regional bidding. This is likely to benefit all States by increasing rebate levels and reducing overhead costs.

Congress cannot sit by and watch more and more WIC dollars pad the profits of the huge drug companies that make infant formula. This legislation is an important step toward reducing costs and serving many more needy women and children.

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

S. 659. A bill to suspend temporarily certain bars to the furnishing of veterans benefits to certain former spouses of veterans and to suspend temporarily a bar to the recognition of certain married children of veterans for veterans benefits purposes; to the Committee on Veterans' Affairs.

TEMPORARY SUSPENSION OF BARS TO CERTAIN VETERANS BENEFITS

• Mr. GRAHAM. Mr. President, Senators AKAKA, DECONCINI, and I are introducing legislation today to correct an unfair policy that was enacted as part of the Omnibus Budget Reconcilation Act of 1991.

Prior to this change in the law, if a surviving spouse of a veteran who died from a service-connected condition or the needy surviving spouse of a wartime veteran who died from nonservice connected causes remarried, the spouse no longer qualified for dependency and indemnity compensation or VA needs-based pension. However, the spouse did become eligible again when the remarriage became void, annulled, or terminated by death or divorce. The same law applied to a veteran's child.

The Omnibus Budget Reconciliation Act repealed the reinstatement of benefits for remarried surviving spouses or children who had lost a second spouse effective November 1, 1990.

Mr. President, without getting into the overall appropriateness of this policy change, what we are worried about first and foremost is the effective date of the policy change.

Although this law did not effect those currently receiving benefits, the law did deny benefits to any one who would have become eligible this year without any advance notice being given of such a change.

Our concern, Mr. President, is that we have made a major change in law that effects the income security of veterans' survivors without proper notification to these individuals.

One Floridian wrote me that, when she contemplated remarriage after the passing of her first husband, she was reassured by the VA that her benefits could be restored should something happen to her second husband. Her second husband's insurance plan has no survivor benefits. He is now age 65. This women is worried about her future in the event of her husband's death. Her retirement plans have been based on the reinstatement of DIC eligibility.

Now, with no notice whatsoever, Congress has taken those benefits away.

Another individual spent the better part of last year tending to her ailing husband, not keeping up with Congress' debate on the Federal budget. When he passed away in December, she went to the VA to have her benefits reinstated and was shocked to learn that she no longer qualified.

Her husband did not have a survivor's insurance plan either. Now she is struggling to pay doctor's bills and figure how she will take care of her own expenses.

Mr. President, we understand the importance of reducing the Federal deficit. As a member of the Senate Veterans' Affairs Committee which authored this proposal, I regret not having spoken up sooner on the negative con-

sequences of this action. All of the cuts made by Congress in reconciliation were painful, but this cut has an immediate and deep effect on individual Americans which I do not think we properly anticipated.

Individuals were planning on these funds to ensure economic security in their retirement. This provision means the loss of as much as $1,000 per month for some individuals.

The legislation we are introducing today would change the effective date of the denial of reinstatement of DIC payments from November 1, 1990 to November 1, 1991. The legislation also requires the VA to take appropriate steps to notify the public of this change in the law so that individuals can make the necessary arrangements for their future financial security.

For example, there will be an open season from October 1991 to September 1992 for enrollment in the survivor benefit plan. Some individuals that originally opted out of this plan may determine that participation is now desirable.

Mr. President, I ask unanimous consent that a copy of the legislation follow my remarks in the RECORD and that a letter from the National Military Family Association supporting this measure also be included.

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

S. 659

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

SECTION 1. TEMPORARY SUSPENSION OF BENEFITS BARS.

(a) SUSPENSION OF BAR TO BENEFITS.—Notwithstanding the amendments made by section 8004(a)(1) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-876), a person who, except for such amendments, would not be barred from being furnished benefits referred to in subsection (d)(2) or (d)(3) of section 103 of title 38, United States Code, as those subsections were in effect on October 31, 1990, shall not be barred from being furnished such benefits in the case of a claim referred to in subsection (c).

(b) SUSPENSION OF BAR TO RECOGNITION FOR BENEFITS PURPOSES.—Notwithstanding the amendments made by section 8004(a)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-876), the recognition of a person for benefits purposes referred to in paragraph (2) of section 103(e) of title 38, United States Code, as such paragraph was in effect on October 31, 1990, shall not be barred in the case of a claim referred to in subsection (c) if the recognition of such person for such purposes would not be barred pursuant to such section 103(e) except for such amendments.

(e) APPLICABILITY OF SUSPENSION OF BARS.—Subsections (a) and (b) shall apply with respect to claims for benefits filed with the Secretary of Veterans Affairs after October 31, 1990, and before November 1, 1991.

(d) NOTIFICATION OF SUSPENSION OF BARS.—The Secretary of Veterans Affairs shall take appropriate steps to notify persons eligible for benefits, or for an adjustment of benefits, by reason of the enactment of this Act.

(e) REIMPOSITION OF BARS.—(1) A person permitted to be furnished a benefit by reason of the enactment of this Act may not be furnished such benefit for months beginning on or after the date that is 180 days after the date on which the award of such benefit takes effect.

(2) Effective on the first day of the first month beginning on the date 180 days after the effective date of the recognition of a person for benefit purposes by reason of the enactment of subsection (b), the recognition of such person for such purposes shall terminate and the award or computation of benefits on the basis of that recognition shall be redetermined consistent with the termination of such recognition.

NATIONAL MILITARY FAMILY ASSOCIATION,
Alexandria, VA, March 11, 1991.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: The National Military Family Association requests your assistance in our endeavor to protect widows whose husbands have died in the service of their country. The change made by the 101st Congress to Section 103 of Title 38 U.S.C. (Veterans Benefits) has severely restricted the options for some military widows and totally disfranchised others. Dependency and Indemnity Compensation (DIC) benefits will be denied to those requesting reinstatement because of the termination of a subsequent marriage. The reinstatement of benefits will be denied if the claim was filed after October 31, 1990, regardless of the date of termination of the subsequent marriage.

DIC widows who have not entered a second marriage, may find that they dare not. Many of these widows opted to work part time in order to provide as stable a home life as possible for their fatherless children. Their decision was predicated on not having to provide a pension for themselves. They were assured that even if a second marriage failed, they would always have their DIC. Some of these women may today be remarrying without the knowledge that they will forever lose their DIC benefits. Has the Department of Veterans Affairs notified all these widows of the change in the law?

Those already in a second marriage have made financial decisions based on the law that allowed reinstatement of their DIC benefits if their second marriage ended. Those who married other military men have made decisions to take a reduced amount of the Survivor Benefit Plan annuity, based on the assumption that DIC benefits would be restored. That election may not currently be changed. DIC widows in a second marriage when the couple is in their 60s and 70s would find the purchase of life insurance to compensate for the loss of DIC prohibitively expensive. Home mortgages have been assumed, prenuptial agreements and other financial commitments made, all based on the law that allowed reinstatement of DIC benefits. Many of these widows will join the ranks of the health care uninsured with their unexpected loss of CHAMPVA eligibility. Even those who have family members willing and able to pay their insurance premiums, may find themselves uninsurable because of pre-existing conditions. Since there has been no attempt to publicize the change in the law, the majority of these widows will only discover the devastating effects of the change when they apply for reinstatement after the death of their spouse or a divorce. The information will come at a time when they can do nothing about it. A new group of military widows living in poverty?

The National Military Family Association believes that it is patently unfair to change the benefits for existing DIC widows. The reinstatement right was not a vague promise, it was the law. To totally disfranchise those already in second marriages is unconscionable.

The change to Title 38 was made without public hearings and apparently only for budgetary reasons. NMFA believes that such a drastic change in the law should be carefully reviewed. At the very least, those who elected to remarry based on the protection in the law, should be grandfathered. Not one of these widows should be entering into the process of divorce or remarriage without full knowledge regarding the loss of DIC benefits. Yet, this is happening every day because the change in the law has not been publicized. DIC widows who have remarried other military personnel and declined participation in the Survivor Benefit Plan (SBP) based on their DIC reinstatement eligibility, will have a once in a life time opportunity to join SBP, because of an open enrollment period starting in April of 1992. Will these widows even be aware that they are at risk and need to participate in SBP?

Thank you for considering our position on this issue.

Sincerely,

SUSAN W. BUSHEY,
President.●

By Mr. SIMON (for himself and Mr. DIXON):

S. 660. A bill to amend title 28, United States Code, to authorize the appointment of an additional bankruptcy judge for the Southern District of Illinois; to the Committee on the Judiciary.

ADDITIONAL BANKRUPTCY JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS

● Mr. SIMON. Mr. President, I rise today to introduce legislation to authorize an additional bankruptcy judgeship in the Southern District of Illinois.

In recent years the number of filings in bankruptcy courts across the Nation have escalated sharply. The Southern District of Illinois is certainly no exception. In fact, the number of filings in this district, which has just one bankruptcy judge—Judge Kenneth J. Meyers—has almost tripled over the last 10 years.

Just yesterday the U.S. Judicial Conference approved a new standard for evaluating requests for additional bankruptcy judgeships. Under this new standard, the Judicial Conference will examine a variety of factors related to the court's workload and determine the average weighted case hours worked by the judges in the district.

According to the Administrative Office of the U.S. Courts, the average weighted case hours per judge in the U.S. bankruptcy courts is 1,254 hours. Under this standard, the Judicial Conference believes that the creation of an additional bankruptcy judgeship may be authorized when the average weight-

ed case hours in a district exceeds 1,500 hours per judge.

Currently there is only one bankruptcy court in the Southern District of Illinois. The judge for that district holds court in four locations in southern Illinois—East St. Louis, Alton, Mt. Vernon, and Effingham. The sole bankruptcy judge in the southern district, Judge Kenneth J. Meyers, has 1,655 weighted case hours—well over the national average and in excess of the 1,500 weighted hours that warrant the creation of an additional bankruptcy judgeship.

Mr. President, there is no sign that the upward trend of bankruptcy case filings in the southern district will abate. The weighted case hours, coupled with the amount of travel involved in the district, create a critical need for an additional bankruptcy judge for the citizens of southern Illinois.

I urge my colleagues' prompt and favorable consideration of this legislation.•

• Mr. DIXON. Mr. President, I rise today, with my distinguished colleague and warm friend, PAUL SIMON, to introduce legislation creating an additional bankruptcy judgeship for the Southern District of Illinois.

Justice is best served when the system is able to deal effectively and efficiently with the cases before it. The Southern District of Illinois, unfortunately, is overwhelmed with cases, and is therefore, not able to serve the people effectively or efficiently. The problem is not with the judge and staff of the southern district. They are doing Yeoman's service. The problem, simply put, is another judge is needed to handle the ever growing caseload.

Mr. President, the Southern District of Illinois encompasses 38 counties, constituting over 15,000 square miles. It is larger than the States of Massachusetts, Connecticut, Rhode Island and Delaware combined. Yet, there is only one judge for this sprawling area.

Judge Kenneth Meyers, the sole bankruptcy judge in the district, hears cases in East St. Louis, Alton, Mt. Vernon, and Effingham, IL. He is constantly on the road. While he sometimes gets a hand from two retired judges, their continued service is by no means assured.

One of the criteria for an additional bankruptcy judgeship is the caseload in a district. According to the Administrative Office of the U.S. Courts, the average weighted caseload hours per bankruptcy judge in the United States is 1,254 hours. The tentative standard for the authorization of an additional position is 1,500 weighted hours per bankruptcy judge. The Southern District of Illinois had a total of 1,655 weighted hours in 1990, clearly above and beyond the tentative standard.

The current heavy caseload is not an aberration, Mr. President. The caseload in the district has grown consistently over the last 10 years, while there remains only one judge. In 1981, over 1,400 bankruptcy petitions were filed in the southern district. In 1990, the number of petitions had ballooned to over 3,800. There may be no other one-judge district in the country with a higher number of filings.

Further, the Southern District of Illinois has a higher total caseload than 13 of the 29 bankruptcy court districts with two judges. Mr. President, the time for redress of this problem is now.

There is a process for judges to follow in order to request an additional judgeship. A number of factors other than weighted case hours are considered by the Administrative Office of the U.S. Courts, which ultimately makes recommendations for additional judgeships. The southern district is pursuing a favorable recommendation from the administrative office for an additional bankruptcy judgeship.

However, it may be fall before the next recommendations are made for additional judgeships. The evidence in favor of an additional bankruptcy judgeship for the Southern District of Illinois is clear and convincing.

The burden of Judge Meyers must be alleviated. The band-aid solutions employed to date will not solve the problem. An additional judgeship is needed in short order for justice to be served, and served well.

I urge my colleagues' favorable consideration of this legislation at the earliest opportunity.•

By Mr. HEFLIN:

S.J. Res. 93. Joint resolution to designate the period of September 13, 1991, through September 19, 1991, as "National Ballroom Dance Week"; to the Committee on the Judiciary.

NATIONAL BALLROOM DANCE WEEK

• Mr. HEFLIN. Mr. President, today I rise to introduce a joint resolution to designate this week of September 13 to September 19, 1991, as "National Ballroom Dance Week."

The origin of dance dates back to primitive man as he made dancing the expression of emotion. Recorded history shows us that there was no civilization that did not know of dancing. Egyptians, Hebrews, Assyrians, Hindus, Romans, and Greeks all danced. The Greeks held dancing in high esteem, and from there the Romans continued the development of dancing. The Roman fancies introduced the world to a new age of leisure and irresponsibility through their celebrations of dance.

"Le Bal Des Ardents" was one of the first great, recorded celebrations which occurred in the late 14th century. From this time point on, numerous grand ball celebrations continued the gayety of dance: The Grande Fete D'Amour at Versailles, the Jubilee Masquerade at Ranclagh, and the Sultan's Ball at Constantinople to name a few.

Today people continue to dance and mainly for one reason: enjoyment. Social dancing is one of the main forms of interaction in our society. From the early Basse, Paranes, and Quadrille dances, today's society has the Swing, Fox-Trot, Cha-Cha, and the ever beautiful Waltz.

Ballroom dancing has been around in various forms since early civilization and it has been a crucial factor in the development of mankind. Numerous groups have increased the interest in the Tango, the Lindy, and the Rumba in the past few years, and I believe it is important to commemorate this grand form of dance with its own special week of recognition.

Mr. President, I ask my fellow Senators to join their fun-loving constituents of the big band era and those of more current times that cherish the frivolity of ballroom dancing in sponsoring National Ballroom Dance Week.•

ADDITIONAL COSPONSORS

S. 10

At the request of Mr. DOLE, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 10, a bill to amend title II of the Social Security Act to phase out the earnings test over a 5-year period for individuals who have attained retirement age, and for other purposes.

S. 88

At the request of Mr. DURENBERGER, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 88, a bill to amend the Internal Revenue Code of 1986 to make permanent the deduction for health insurance costs for self-employed individuals.

S. 89

At the request of Mr. DURENBERGER, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 89, a bill to amend the Internal Revenue Code of 1986 to permanently increase the deductible health insurance costs for self-employed individuals.

S. 153

At the request of Mr. COATS, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 153, a bill to authorize States to regulate certain solid waste.

S. 160

At the request of Mr. MCCAIN, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 160, a bill to extend the period of unemployment compensation for individuals involuntarily separated from the Armed Forces.

S. 205

At the request of Mr. GLENN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor

of S. 205, a bill to amend title 5, United States Code, to equalize the treatment of members of the Armed Forces of the United States and former employees of the Federal Government for purposes of eligibility for payment of unemployment compensation for Federal service.

S. 223

At the request of Mr. MCCONNELL, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 223, a bill to amend the National School Lunch Act to extend eligibility for reimbursement for meal supplements for children in afterschool care, and for other purposes.

S. 224

At the request of Mr. MCCONNELL, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 224, a bill to amend the National School Lunch Act to modify the criteria for determining whether a private organization providing nonresidential day care services is considered an institution under the child care food program, and for other purposes.

S. 242

At the request of Mr. GLENN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 242, a bill to amend the Ethics in Government Act of 1978 to modify the rule prohibiting the receipt of honoraria by certain Government employees, and for other purposes.

S. 250

At the request of Mr. FORD, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 280

At the request of Mr. DOLE, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 280, a bill to provide for the inclusion of foreign deposits in the deposit insurance assessment base, to permit inclusion of non-deposit liabilities in the deposit insurance assessment base, to require the FDIC to implement a risk-based deposit insurance premium structure, to establish guidelines for early regulatory intervention in the financial decline of banks, and to permit regulatory restrictions on brokered deposits.

S. 284

At the request of Mr. LIEBERMAN, the name of the Senator from Idaho [Mr. CRAIG] 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. 310

At the request of Mr. PELL, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 310, a bill to provide for full statutory wage adjustments for prevailing rate employees, and for other purposes.

S. 349

At the request of Mr. BUMPERS, the name of the Senator from Utah [Mr. GARN] 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. 384

At the request of Mr. MCCAIN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 384, a bill to delay the effective date of reductions in the CHAMPUS mental health benefit, and for other purposes.

S. 396

At the request of Mr. WIRTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 396, a bill to amend the Solid Waste Disposal Act to require producers and importers of tires to recycle a certain percentage of scrap tires each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirement, to establish a management and tracking system for such tires, and for other purposes.

S. 403

At the request of Mr. WALLOP, the names of the Senator from Maine [Mr. COHEN], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 403, a bill to clarify the intent of Congress with respect to establishment and collection of certain fees and charges.

S. 457

At the request of Mr. DODD, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 457, a bill to provide for a National Board for Professional Teaching Standards.

S. 470

At the request of Mr. KOHL, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 470, a bill to amend the Agricultural Act of 1949 to repeal the reduction in the milk price support for calendar year 1992.

S. 493

At the request of Mr. KENNEDY, the name of the Senator from Colorado [Mr. WIRTH] 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. 511

At the request of Mr. DODD, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 511, a bill to establish programs to improve foreign instruction and to amend the Higher Education Act of 1965 in order to promote equal access to opportunities to study abroad, and for other purposes.

S. 544

At the request of Mr. HEFLIN, the names of the Senator from Idaho [Mr. CRAIG], the Senator from South Carolina [Mr. THURMOND], the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. PRYOR], the Senator from Idaho [Mr. SYMMS], the Senator from Texas [Mr. BENTSEN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 544, a bill to amend the Food, Agriculture, Conservation and Trade Act of 1990 to provide protection to animal research facilities from illegal acts, and for other purposes.

S. 565

At the request of Mr. WARNER, the names of the Senator from Utah [Mr. GARN], the Senator from Idaho [Mr. CRAIG], the Senator from Oregon [Mr. PACKWOOD], the Senator from California [Mr. SEYMOUR], the Senator from Texas [Mr. GRAMM], the Senator from Mississippi [Mr. COCHRAN], the Senator from Connecticut [Mr. DODD], the Senator from Michigan [Mr. RIEGLE], the Senator from Oklahoma [Mr. BOREN], the Senator from Illinois [Mr. SIMON], the Senator from Maryland [Mr. SARBANES], the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. D'AMATO], the Senator from Wyoming [Mr. SIMPSON], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Washington [Mr. GORTON], the Senator from Tennessee [Mr. SASSER], the Senator from Florida [Mr. GRAHAM], the Senator from New York [Mr. MOYNIHAN], the Senator from North Carolina [Mr. SANFORD], the Senator from South Dakota [Mr. PRESSLER], the Senator from Missouri [Mr. BOND], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Delaware [Mr. ROTH], the Senator from Washington [Mr. ADAMS], the Senator from Arizona [Mr. DECONCINI], the Senator from Virginia [Mr. ROBB], the Senator from California [Mr. CRANSTON], and the Senator from Nevada [Mr. REID] were added as cosponsors 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 Oklahoma [Mr. BOREN] 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. 575

At the request of Mr. LAUTENBERG, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 575, a bill entitled "Radon Testing for Safe Schools Act."

SENATE JOINT RESOLUTION 69

At the request of Mr. RIEGLE, the name of the Senator from Mississippi [Mr. COCHRAN] 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 RESOLUTION 53

At the request of Mr. MITCHELL, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of Senate Resolution 53, a resolution expressing the sense of the Senate that the United States should take a leadership position in calling for worldwide carbon dioxide emissions reductions at the first meeting of the Intergovernmental Negotiating Committee on a Framework Convention on Climate Change to be held in Washington, DC, on February 4–14, 1991.

SENATE RESOLUTION 72

At the request of Mr. KASTEN, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Maine [Mr. COHEN], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Massachusetts [Mr. KENNEDY] 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 RESOLUTION 76

At the request of Mr. SPECTER, the names of the Senator from Indiana [Mr. COATS], the Senator from Illinois [Mr. DIXON], the Senator from Nebraska [Mr. KERREY], the Senator from Hawaii [Mr. AKAKA], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Arizona [Mr. DECONCINI], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of Senate Resolution 76, 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 77

At the request of Mr. D'AMATO, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Utah [Mr. GARN], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Resolution 77, a resolution concerning mass transit programs.

SENATE RESOLUTION 78—DISAPPROVING THE REQUEST OF THE PRESIDENT FOR EXTENSION OF FAST TRACK PROCEDURES UNDER THE OMNIBUS TRADE AND COMPETITIVENESS ACT AND THE TRADE ACT

Mr. HOLLINGS (for himself, Mr. BYRD, Mr. FORD, Mr. CONRAD, Mr. HELMS, Mr. THURMOND, Mr. INOUYE, Mr. HEFLIN, Mr. SANFORD, Mr. AKAKA, Mr. WELLSTONE, Mr. SHELBY, Mr. SASSER, Mr. JOHNSTON, and Mr. BURDICK) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 78

Resolved, That the Senate disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.

• Mr. SANFORD. Mr. President, I am pleased to be a cosponsor of the resolution offered by the gentleman from South Carolina which calls for the disapproval of fast track procedures under the Omnibus Trade and competitiveness Act of 1988 and the Trade Act of 1974.

First, I want to thank my colleague, the gentleman from South Carolina, for his leadershp on this issue and for raising it at this time. Senator HOLLINGS and I share many common interests and without a doubt the stability and well-being of textile and apparel workers in our respective States is foremost among them.

North Carolina is the largest fiber, textile and apparel State in the country with over 350,000 workers. We are proud of our record, proud of this industry and determined to ensure that any trade policy that is adopted recognizes and treats fairly this essential segment of our economy.

The textile industry has always played an important role in basic manufacturing in the United States. With 2.2 million workers and an annual payroll of $25 billion, the U.S. textile and apparel industry has more employees than our steel and auto industries combined, and serves as the largest manufacturing employer of women and minorities. It is unfortunate that this vital and important industry has been suffering. With the end of the 1980's, orders for domestic textiles are at their lowest level in several years, employment is down and plants have closed. In North Carolina alone 391 plants have closed and over 47,000 employees have been let go in the last decade.

My colleagues have heard me speak of my grave concern for these textile and apparel workers on many occasions. The industry attributes much of its decline to the unrestricted flow of imported textiles, apparel, and footwear into the United States. Indeed, imports have captured huge portions of both the apparel and footwear markets in the United States. Since 1980, imports have virtually doubled their claims on this country's market. In 1980, imports already accounted for 28 percent of the market, but they now account for 59 percent of the market. That number represents an alarming statistic. Equally disturbing is the fact that the United States now imports 2.3 billion more in textiles and apparel than we export. Imports continue to surge while the domestic market remains stable at a 1-percent growth level. As a result, U.S. profits are down by 71 percent. We cannot let this invasion of foreign textiles continue, as the textile industry is vital to the American economy. The American people cannot afford to lose an industry that contributes $46 billion annually to the U.S. gross national product. And, the people of North Carolina cannot continue to suffer the loss of textile plants and workers as they have.

It is with these concerns in mind that I approach the request for fast track approval. I do not dispute efforts to improve the economic outlook for all Americans. I, too, am distressed that our proud country has moved, in only a short period of time, from a creditor to a debtor nation, from a net exporter to an importer, and from a stockpiler of trade surpluses to an accumulator or deficits. But let us not rush head-long into action, any action before we have had the opportunity to ensure that what we do works to the benefit of the country and not to its ultimate detriment—that what we do helps our workers and manufacturing and does not hurt them, that the road to recovery is not only paved with good intentions but realized actual benefits. I support the resolution of my colleague because I am not convinced at this juncture that fast track approval is necessary. I want to reserve my judgment, to keep an open mind about this process toward achieving these trade agreements and whether on balance what is achieved through negotiations is ultimately toward the good.

We have as recently as last Friday been asked by the President to extend fast track procedures for the implementation of international trade agreements for a period of 2 years. While the extension would apply to any bill implementing trade negotiations, this request particularly focuses on the Uru-

guay round of the GATT negotiations. At stake in these multilateral negotiations may well be the continued viability of an entire industry. I am very concerned about the plight of the textile industry in this country. Agreement in principle on a phaseout of the multifiber arrangement and integration of textiles into the GATT system of liberal trade rules could aggravate an already volatile and fragile situation doing serious disservice to an entire industry.

Fast track procedures are also specifically spoken of with regard to a free trade agreement with Mexico and Canada, and the pursuit of trade objectives of the enterprise for the Americas initiative. The Mexico Free Trade Agreement, like GATT, raises many sensitive issues. Differentials in labor standards and wages between our two countries are a major concern. Implementation and enforcement of environmental standards may also confer competitive disadvantages to American business. It is true that improving the standard of living in Mexico is needed in order to improve that country's purchasing power. Ultimately a rise in the Mexican standard of living is in America's interest. The question is whether fast track is the appropriate mechanism to provide the greatest benefit to our industry and our wage earners.

The fast track procedure would require the Congress to vote up or down on legislation submitted by the President to implement the agreement without amendment. I am supporting the resolution to deny fast track. Critics may argue that the fast track procedures are designed to give our trading partners some confidence that what is negotiated will stand up once the negotiators leave the table. That may be true. But, why must we be asked to accord a more preferred status to a trade agreement than is allowed under an arms control treaty? In that latter instance the Congress may exercise its authority to offer reservations, among other things. Is there not enough confidence in the Congress to act responsibly with a trade agreement?

Voting against fast track procedures is not a vote against foreign trade negotiations. It is not a vote against free trade. Moreover, it is not a vote that will blow up the GATT negotiations, or derail the opportunity to discuss a trade agreement with Mexico, or cause harm to the enterprise for the Americas initiative. To the contrary, it is a vote that recognizes how much has been lost already in the interests of foreign trade. Before we stand to lose anymore let us just take time to consider what it is we are doing. Let us not agree merely to say we have agreed.

I strongly urge my colleagues to join me in support of the Hollings resolution to disapprove fast track procedures under the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974.●

Mr. THURMOND. Mr. President, I rise today to join with Senator HOLLINGS and others in submitting a resolution which will deny the extension of the fast track procedures for congressional consideration of trade agreements which was recently requested by the administration.

Mr. President, since 1986, the previous and current administration has been negotiating the Uruguay round of the General Agreements on Tariffs and Trade, known as GATT. The negotiators have worked to improve trade rules that had been implemented in the seven previous GATT rounds. The major areas of negotiations have focused on agricultural trade, services and trade related to foreign investment, as well as protection of intellectual property rights. In 1988, Congress most recently approved fast track procedures which prevent Congress from amending trade agreements submitted for approval. The current authority for fast track procedures expires on May 31, 1991, and the administration has requested a 2-year extension. Approval of this extension is granted unless either body of Congress passes a resolution denying fast track procedures.

Mr. President, while the current trade negotiations may be helpful to some of the industries of this country, they will be devastating to the domestic textile industry. It is estimated that over the 10-year phaseout period of the multifiber arrangements, as proposed in the GATT talks, the domestic textile and apparel industry could lose as many as 1.4 million jobs. Further, the industry could lose two-thirds of its production capacity. Some sectors of the textile industry would also be opened to unrestricted imports immediately, so they would not have the phase out period to adjust to the agreement.

Mr. President, during the last 10 years—and these figures are important, and I wish my colleagues would please read them—the national textile and appeal industry has lost approximately 400,000 jobs. Further, 332 textile plants were closed, with 174 of these plants located in South Carolina. According to the U.S. Department of Labor, South Carolina lost 2,600 textile jobs during 1989. In the last year, South Carolina lost 5,400 jobs in the textile industry and 4,000 jobs in the apparel industry. From 1980 to 1990, South Carolina lost 42,643 jobs in the textile and related industries. The work force in South Carolina for the textile and apparel industry has decreased almost 10 percent since 1980. All of these lost jobs and disruptions have occurred with our current trade laws and policy. The proposed changes included in GATT will have an even more detrimental effect on this most important industry.

The textile industry is essential to the economy and the national security of this Nation. This industry is second only to steel in its importance to our National Security. Our domestic textile industry is not at the capacity it should be to produce the goods needed for such a large scale operation as we recently experienced in the Persian Gulf. During this operation, some sectors of the domestic textile industry were working several shifts just to produce the necessary items. This industry can ill afford to provide the same service if more workers are fired and textile mills are closed.

Mr. President, we cannot allow ourselves to become dependent upon foreign countries for the basic requirements of our Armed Forces. While most people think of uniforms and footwear as textile industry products used by the military, many other essential products are produced by this industry. The textile industry supplies the military with tents, canvas, ammunition powder bags, parachutes, and many other items.

Mr. President, the textile industry has continued to suffer from increased imports because the American industry is not competing with foreign countries on an equal basis. If they did, then the U.S. textile and apparel industry could compete with that of any other nation. However, the domestic textile industry cannot be expected to compete or should it have to, with foreign industries that are heavily subsidized by their governments.

The current position of the United States in the GATT negotiations is harmful to the domestic textile and apparel industry. In the report submitted to Congress asking for the extension of fast track procedures, it states that the U.S. position with regard to textiles will, among other things, help ensure an orderly increase in imports. Any agreement that could force 1.3 million people to become unemployed and an industry to lose two-thirds of its production capacity is not an orderly increase.

Mr. President, imports have already caused much damage to the domestic textile and apparel industry. We cannot allow this industry to be further harmed by the current GATT proposals. The legislation we are introducing today will not prevent consideration of the GATT agreement. It will simply take the agreement off the fast track procedures so that provisions with regard to individual industries may be considered separately rather than as one package.

Mr. President, I urge my colleagues to give this measure their careful consideration and to join in working for its swift enactment.

SENATE RESOLUTION 79—AUTHORIZING PRINTING OF THE REPORT ENTITLED "DEVELOPMENTS IN AGING, 1990"

Mr. PRYOR submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 79

Resolved, That there shall be printed for the use of the Special Committee on Aging the maximum number of copies of volumes 1 and 2 of its annual report to the Senate, entitled "Developments in Aging: 1990", which may be printed at a cost not to exceed $1,200.

SENATE RESOLUTION 80—AUTHORIZING TESTIMONY BY A SENATE EMPLOYEE

Mr. NUNN (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 80

Whereas in the case of *Tennessee* v. *Ralph Hutchinson*, No. 9100652MMACI, and related cases, pending in the General Sessions Court of Knox County in the State of Tennessee, Keith Hill, an employee in Senator Gore's Knoxville office, has been subpoenaed by the state of Tennessee to testify at trial;

Whereas by the privileges of the Senate of the United States and rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas when it appears that testimony by a Senate employee may be needed in any court for the promotion of justice, the Senate will act to promote the ends of justice in a manner consistent with the provileges and rights of the Senate: Now, therefore be it

Resolved, That Keith Hill, and any other employee in Senator Gore's office who may be asked, is authorized to testify in the case of *Tennessee* v. *Hutchinson*, and related cases, except concerning matters for which a privilege should be asserted.

SENATE RESOLUTION 81—COMMENDING THE BALTIC STATES FOR THEIR EFFORTS TO REGAIN INDEPENDENCE

Mr. BRADLEY (for himself, Mr. BIDEN, Mr. HATCH, Mr. RIEGLE, and Mr. LEVIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 81

Whereas the United States has never recognized the illegal annexation of the Baltic states of Estonia, Latvia, and Lithuania by the Soviet Union as a result of the 1939 Pact between Hitler and Stalin;

Whereas the Baltic states have recently completed plebiscites to determine the extent of public support for their independence, and such plebiscites were conducted freely and fairly according to observers who monitored the voting;

Whereas the overwhelming majority of people in each Baltic state expressed support for independence;

Whereas support and eventual recognition of legitimate governments would be consistent with the long-standing United States policy of not recognizing the forcible annexation of Estonia, Latvia, and Lithuania in 1940; and

Whereas the United States can take useful steps toward recognition by establishing United States Government offices in the Baltic states to facilitate diplomatic relations, technical assistance, cultural exchanges, and other mutually beneficial programs: Now, therefore, be it

Resolved, That the Senate—

(1) commends the governments and peoples of the Baltic states on their use of democratic processes to regain their independence; and

(2) urges the President, if so requested by the government of any Baltic state, to establish offices in that state to facilitate diplomatic relations, technical assistance, cultural exchanges, and other mutually beneficial programs.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

• Mr. BRADLEY. Mr. President, already several times this year this body has turned its attention away from our men and women winning the war against Iraqi aggression and responded to the unfolding crisis in the Baltic States. Clearly, those who planned and executed the violent repression in Lithuania and Latvia hoped that we would be too preoccupied to oppose them or that we would be too inhibited by the Soviet Union's qualified support for the coalition. Instead, we pointed out that the principles which the President invoked in defending Kuwait apply as well to the Baltics. There too, we saw small nations invaded and occupied by their larger, repressive neighbors.

I introduced the first resolution late on the night of January 11, 1991, condemning the Soviet action which had just begun. Together we also adopted a second resolution calling for a review of our economic assistance to the Soviet Union in light of the occupation. In addition, many of my colleagues made very strong and eloquent statements about the situation here on the floor of the Senate.

The Senate's actions had an important impact on the situation. Many of us have met with representatives of the Baltic States and Russian and Soviet democrats over the last year. All the ones I have talked to have told me that our resolutions, our attention to the problem, our efforts to find tools in American foreign policy, have slowed the Soviet repression. Conservative forces in the Soviet Union, I have heard from many sides, are not restrained by domestic voices of reason, democracy, and morality. They do however, look abroad, and gauge the limits of what they can do by the reaction of democratic bodies with the will and power to counter their moves, like the U.S. Senate.

The time has come to put substance behind our words. Over the years we heard from Baltic leaders who have told us about the need for self-determination and the desire of the people for democracy and independence. Now, after free and fairly conducted plebiscites in all three Baltic States, we have heard from the Baltic people. In each country, an overwhelming majority voted for independence, and support for independence and self-determination came from every ethnic group.

In Lithuania, 76 percent of the eligible voters participated and 90 percent of those voted for independence;

In Latvia, 88 percent of eligible voters participated and 74 percent of those voted for independence; and

In Estonia, 83 percent of eligible voters participated and 74 percent of those voted for independence.

We now have the opportunity to give substance to the longstanding policy of not recognizing the annexation of these nations by the Soviet Union and to show our support for the expressed will of the Baltic people for independence.

This resolution calls on the President to establish offices in the Baltic States to facilitate technical assistance, to help educational exchange programs, and other mutually beneficial programs. This step is diplomatically important because it sends the Soviet Union the message that the Baltic States have the rights and protections which should be accorded to all countries.

It is substantively important as well. The United States is working to encourage democratic and market institutions in the Baltic States and the Soviet Union. We can best do that by having offices in the Baltic States. Those offices can help arrange educational exchanges so that our students can study in the Baltics, and young women and men from the Baltics can come here and study our system and way of life and share their experiences in their homeland. Offices that can be conduits for the many private initiatives like the ones that are already flowing to the new democracies in central Europe. The State Department has already begun to take steps in this direction by working through private voluntary organizations to direct donated medical assistance to the Baltic States, as well as the Ukraine.

While calling on the President to take these useful steps, this resolution also recognizes the constraints that are imposed by the continuing Soviet occupation. Full recognition is not possible as long as the Baltic States don't control their borders, don't have the authority to grant visas and are still in the process of self-determination.

While the Baltic States enjoy a special status under international law, we should not forget that other republics of the Soviet Union are also struggling to redefine their relationship with the Soviet Union.

Georgia deserves special mention because it was the first Soviet Republic to suffer brutal military repression in recent years. Tanks, gas, and sharp-

ened shoves were used to break up a peaceful protest in the central square of Tbilisi on April 9, 1989. The bloodshed and deaths were even greater than in the Baltics, and Georgia's quest for freedom and independence has been thwarted by the same sorts of lies, covert activities, economic pressures, and other coercive techniques that the Soviets have used against the Baltics independence movements. For instance, the Soviets have been interethnic strife, including inciting armed opposition to the Georgian Governments by Ossetian separatists in the north and Abkhozian nationalists in the west.

A democratically elected government in Tbilisi has been striving to keep these centrally instigated tensions and provocations from escalating into much more violent and bloody conflict. It has scheduled a plebiscite of its own on independence on March 31, and we will be paying close attention to how it is conducted and its results.

Mr. President, I urge all my colleagues to join me in urging the President to take this step in the Baltics. It is important not only as an expression of our intent to see the process of democratization, reform and self-determination continue in the Baltic States and the Soviet Union, they will serve as a marker for other legislation that deals with Eastern Europe and the emerging democracies of Europe that I hope my colleagues on the Foreign Relations Committee will be working to complete this year. I have been a strong supporter of aid for countries that are struggling with the difficult transition to democracy. I continue to support measures which target countries that have made the commitment to democracy for U.S. assistance. There is no better investment than an investment in democracy.●

AMENDMENTS SUBMITTED

DEPARTMENT OF DEFENSE DESERT STORM SUPPLEMENTAL AUTHORIZATION AND MILITARY PERSONNEL BENEFITS ACT

WARNER AMENDMENT NO. 30

Mr. WARNER proposed an amendment to the bill (S. 578) to authorize supplemental appropriations for fiscal year 1991 for the Department of Defense for Operation Desert Storm, to provide military personnel benefits for persons serving during Operation Desert Storm, and for other purposes, as follows:

At an appropriate place in the bill, insert the following new section:

(a) FINDINGS.—Congress makes the following findings:

The growing proliferation of ballistic missile technology and weapons of mass destruction clearly represent an increasing threat to our forces overseas, as witnessed in the Persian Gulf war.

According to the Director of Central Intelligence, William Webster, by the end of the century 15 to 20 developing countries will be capable of producing ballistic missile capabilities; at least six developing countries will have ballistic missiles with ranges over 2,000 miles, of which, at least three of them may develop missiles with ranges of over 3,400 miles that, in some cases, could threaten the United States.

The devastation and loss of life from ballistic missile attacks was evident in the Scud attacks against Saudi Arabia and Israel.

The concern of widespread ballistic missile proliferation is compounded by growing ethnic unrest and political instabilities in the Soviet Union which could increase the possibilities of unauthorized or accidental use of ballistic missiles.

The SDI Program has made remarkable progress in the research of technologies aimed at defending against ballistic missiles.

While the demise of the Warsaw Pact represents a major favorable change in the United States-Soviet relationship, the Soviet Union nonetheless remains, at the present time, the only country that has the nuclear and ballistic missile capability to threaten the United States.

Despite its enormous economic difficulties, the Soviet Union is continuing its relentless strategic offensive and defensive modernization program within the currently defined numerical START limits.

The ABM Treaty of 1972 was negotiated under a significantly different world situation and state of technology than the United States faces today.

Article 5 of the ABM Treaty of 1972 prohibits the development, testing, and deployment of those ABM systems or components described in article 2, which are sea-based, air-based, space-based, or mobile land-based.

Continuing restrictions on the development and testing of ABM systems unduly restricts effective demonstration of ballistic missile defense technology and unnecessarily complicates ABM experiments, which results in added risk to the program schedule and increased cost to taxpayers.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) The United States, its forces, its friends and allies face a growing threat from ballistic missile strikes.

(2) It is in the national interest of the United States to protect the United States, its friends and allies and United States forces overseas from ballistic missile strikes.

(3) It is in the national interest of the United States to be permitted to develop and test ballistic missile defense systems and components, without restriction as to mode or environment, and therefore the administration should negotiate and sign with the Soviet Union, within two years or less, an agreement which would clearly remove any limitations on the United States having effective defenses against ballistic missiles.

(4) During the period described in clause (3), in expectation that such an agreement will be signed, the Secretary of Defense should undertake preparations for the development and testing of systems and components designed to defend the United States and its armed forces, wherever deployed, from ballistic missiles even though some of the actual development and testing may not be permitted by the ABM Treaty of 1972.

(5) If such an agreement is not reached within the period described in clause (3), the President should make immediately a determination as to whether continuing United States adherence to the terms of the ABM Treaty of 1972 is in the United States national interest, and should immediately thereafter advise Congress of such a determination.

NUNN (AND OTHERS) AMENDMENT NO. 31

Mr. NUNN (for himself, Mr. HEFLIN, Mr. SHELBY, Mr. DIXON, Mr. BINGAMAN, Mr. LEVIN, and Mr. KENNEDY) proposed an amendment to amendment No. 30 proposed by Mr. WARNER to the bill S. 578, supra, as follows:

In the pending amendment, strike out all after "(a)" and insert in lieu thereof the following:

PROCUREMENT OF NEW PATRIOT MISSILES.—Of the amounts authorized to be appropriated to the Army for procurement of missiles for fiscal year 1991, $224,000,000 shall be available for the procurement of Patriot missiles and Patriot fire units. Such amount is in addition to amounts otherwise made available for the procurement of such items for fiscal year 1991 by this Act or any other Act.

(b) ACCELERATION OF RESEARCH AND DEVELOPMENT FOR NEAR-TERM ANTI-BALLISTIC MISSILE DEFENSES.—Of the amounts authorized to be appropriated to the Department of Defense for the Strategic Defense Initiative for fiscal year 1991, $487,000,000 shall be available for ground-based sensors and interceptors designed for early deployment to protect the United States against attack by strategic ballistic missiles, as follows:

(1) For E2I (project 2203), $95,000,000.

(2) For exoatmospheric interceptor GBI-X (project 2202), $142,000,000.

(3) For ground-based radar (project 2104), $150,000,000.

(4) For ground surveillance and tracking systems (project 2103), $100,000,000.

(c) ADMINISTRATIVE ADJUSTMENT OF INITIAL FY91 SDI ALLOCATIONS.—(1) The Secretary of Defense shall adjust—

(A) the initial FY91 SDI allocation for each Strategic Defense Initiative program, project, or activity referred to in subsection (b) in accordance with such subsection; and

(B) subject to paragraph (3), the initial FY91 SDI allocation for the other Strategic Defense Initiative programs, projects, and activities as necessary to ensure that the total amount allocated among the Strategic Defense Initiative programs, projects, and activities for fiscal year 1991 after such adjustments are made does not exceed the total amount of the initial FY91 SDI allocations for all Strategic Defense Initiative programs, projects, and activities.

(2) In making adjustments under paragraph (1)(B), the Secretary shall ensure that each adjustment to a program, project, or activity is proportional to that program, project, or activity's share of the total amount to be adjusted.

(3) In making adjustments under this subsection, the Secretary shall not adjust—

(A) any initial FY91 SDI allocation of $20,000,000 or less; or

(B) the initial FY91 SDI allocation for any program, project, or activity listed under the heading "Theater and ATBM Defenses" in the FY91 SDI allocation report.

(4) In this subsection:

(A) The term "initial FY91 SDI allocation", with respect to a program, project, or activity of the Strategic Defense Initiative, means the amount of the funds appropriated

for the Strategic Defense Initiative for fiscal year 1991 that has been allocated to such program, project, or activity, as contained in the FY91 SDI allocation report.

(B) The term "FY91 SDI allocation report" means the report, dated February 4, 1991, that was submitted by the Under Secretary of Defense to the congressional defense committees pursuant to section 221(c)(4) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1513).

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on Wednesday, March 20, 1991, on the Small Business Administration's Small Business Investment Companies [SBIC] Program. The focus of the hearing will be the status of proposed and new regulations for the SBIC Program as well as the overall posture of the program. The hearing will take place in room 428A of the Russell Senate Office Building and will commence at 9:30 a.m. For further information, please call John Ball, staff director of the Small Business Committee at 224-5175.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON SECURITIES

Mr. NUNN. Mr. President, I ask unanimous consent that the Securities Subcommittee of the Committee on Banking, Housing and Urban Affairs be allowed to meet during the session of the Senate Wednesday, March 13, 1991, at 9:30 a.m. to conduct a hearing on State and local governments under stress and the role of the capital markets.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. NUNN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, March 13, 1991, at 9:30 a.m., to receive testimony on the following congressional election campaign finance reform proposals: S. 3, S. 6, S. 7, S. 53, S. 91, S. 128, S. 143, S. 294, and Senate Resolution 70. Witnesses include Senator PACKWOOD, Senator DOMENICI, Senator NICKLES, Mr. John McGinnis of the U.S. Department of Justice, and Mr. Norman Ornstein of the American Enterprise Institute.

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

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. NUNN. Mr. President, I ask unanimous consent that the Subcommittee on Surface Transportation, of the Committee on Commerce, Science and Transportation, be authorized to meet during the session of the Senate on March 13, 1991, at 2 p.m. on reauthorization of the Motor Carrier Safety Assistance Program.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. NUNN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, March 13, at 10 a.m. to hold a hearing on post war issues in the Middle East.

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

SPECIAL COMMITTEE ON AGING

Mr. NUNN. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Wednesday, March 13, 1991, at 10 a.m. to hold a hearing to examine the effectiveness of the evaluation program for health maintenance organization [HMO's] treating Medicare recipients.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. NUNN. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, March 13, beginning at 10 a.m., to conduct a hearing to examine and evaluate global warming and other environmental consequences of energy strategies.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY

Mr. NUNN. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Trade, Oceans and Environment of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, March 13, at 2:30 p.m. to hold an overview of U.S. foreign assistance hearing.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. NUNN. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on March 13, 1991, beginning at 9:30 a.m., in room 485, Russell Senate Office Building, to adopt the committee rules.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. NUNN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet on March 13, 1991 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. NUNN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, March 13, 1991, at 9:30 a.m., for an executive session on pending business.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. NUNN. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Wednesday, March 13, 1991, at 9:30 a.m., on the subject: The National Association of Attorneys General Heating Fuels Report.

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

COMMITTEE ON ARMED SERVICES

Mr. NUNN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, March 13, 1991, at 2 p.m. in open session to receive testimony from the unified commands oriented to regional defense concerns on their military strategy and operational requirements, and the fiscal years 1992-93 defense authorization request and fiscal years 1992-97 future year defense plan.

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

COMMITTEE ON THE JUDICIARY

Mr. NUNN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, March 13, 1991, at 2:30 p.m., to hold a hearing on the nomination of Richard W. Goldberg, to be a judge of the U.S. Court of International Trade, Oliver W. Wanger, to be a U.S. district judge for the eastern district of California and Robin J. Cauthron, to be a U.S. district judge for the western district of Oklahoma.

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

ADDITIONAL STATEMENTS

LIBRARIES FIGHT ILLITERACY

• Mr. ROCKEFELLER. Mr. President, I am proud to join my distinguished colleague from Maryland, Senator SARBANES, in fighting to protect Federal funding for our libraries, and the Library Literacy Grant Program in particular. I am cosponsoring his bill, S. 420, because I believe that we should be strongly promoting the Library Literacy Grant Program, not eliminating it as the administration's budget suggests.

One of the six education goals for the year 2000 approved by the President, is: "Every adult American will be literate

and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship."

This is a vital goal, but to achieve it we will need to make a serious commitment to strengthen literacy programs at all levels. Libraries are an essential part of our communities, and they play a vital role in promoting education and serve as natural centers for activities to combat illiteracy.

West Virginia is fortunate to have a strong network of libraries, headed by Mr. Frederic Glazer, director of the West Virginia Library Commission. Under his extraordinary leadership, our library system has established strong links with our State literacy council to lead the fight against illiteracy.

I am very proud of the work done in West Virginia libraries to combat adult literacy and would like to tell my colleagues about just one of my State's successful initiatives that was made possible, in part, by the Federal Library Literacy Grant Program.

Read my Lipps [Library Literacy Project for Parents] is an extraordinary program designed to break the cycle of illiteracy by focusing on the family, specifically, the parent and child unit. The project increases the parent's motivation by emphasizing that parents who learn to read better can help their children. Parents are taught how to read to their children and encouraged to do so on a daily basis. They are provided with books and materials so they can read to their child as they work to improve their own skills. Tutors work closely with parents to help select appropriate books, including previewing the books to help parents with pronunciation and difficult words. Children are included in this program, participating in language activities while their parents are in tutoring sessions.

The Read my Lipps Program has been initiated in Monroe County, a very rural mountainous area in my State. Forty-three percent of the households have annual incomes of less than $10,000, and 40 percent of the adults age 18 and over have not graduated from high school. The people of Monroe County truly need the Read my Lipps Program, and in its first year, the program already has wonderful success stories. Two of the students in the project have developed their reading skills well enough to be accepted into a nurse's aide program and are in GED preparation. One student obtained her driver's license by passing a written examination instead of an oral test. Another student is preparing to take his commercial driver's license test. When this student started the program several months ago, he did not know all of his letters. Now he can read many of the words and sentences in the Commercial Driver's License Manual. All of these stories are remarkable achievements, made possible in part by strong Federal support for libraries.

Libraries are cornerstones in our communities that promote education and literacy for both children and adults. I am greatly disturbed that the President's budget proposal dramatically cuts back on Federal support of libraries. I believe this is a mistake, and I am committed to pushing for full funding for our library programs.•

FIRST PRESBYTERIAN CHURCH OF NEWARK (OLD FIRST CHURCH) CELEBRATES 325TH ANNIVERSARY

• Mr. LAUTENBERG. Mr. President, I rise to pay tribute to the First Presbyterian Church of Newark, NJ, also known as Old First Church, celebrating its 325th anniversary this year.

Founded in 1666, Old First has been designated as "Newark's First Bicentennial Landmark", and an "Official New Jersey American Revolution Site." I would like to bring to my colleagues' attention some of the history of this New Jersey institution.

In 1666, Robert Treat led settlers from Connecticut attempting to establish a Puritan theocracy. He led them to lands granted by Governor Carteret and purchased from the Hackensack Indians. Thus began Newark, and its name honors its first minister, Abraham Pierson, who came from Newark-on-Trent, England.

Pierson was pastor of Old First for 23 years, and became the first president of Yale. Under Nathaniel Bowers, 1709–16, the second "meeting house" was built about 1715. Col. Josiah Ogden's effort to save his wheat on the Sabbath caused division during Josiah Webb's tenure, 1719–36, and Trinity Episcopal Church was founded in 1735 as a result.

Under Aaron Burr, whose son was Vice President and dueled with Alexander Hamilton, David Brainerd was ordained "missionary to the aborigines" and the church's rule in temporal affairs ended. Burr founded the College of New Jersey but continued as minister, and in 1756, he and the college moved to Princeton.

In 1753, the King of England granted the church its charter, and John Brainerd, brother of David, was minister from 1755 to 59. In 1775, under Alexander MacWhorter, work began on a larger church. However, this was halted by British troops following the retreating armies of Washington. The minister's books, papers, and church records were stolen or destroyed and Dr. MacWhorter fled Newark for his life. He became a chaplain, and sat with his friend George Washington when the decision was made to cross the Delaware.

In 1791, the post-war population of Newark was barely 1,200, yet the present building was completed at that time. Edward D. Griffin, 1801–09, became pastor of MacWhorter's death, and later was president of Williams College in Massachusetts.

Jonathan F. Stearns supported Lincoln during the Civil War and helped to organize Bloomfield Seminary and wrote a history of First Church. W.J. Dawson, 1912–25, added a new dimension to the church through his love of culture and music. A tradition of great music was established which continues today. William Foulkes, 1926–41, pioneered a worldwide radio ministry, and Dr. Lloyd E. Foster saw the fourth parish house and chapel completed in 1952. Under Dr. Conrad H. Massa, 1961–66, the sancturary was refurbished, and R. Lloyd George Schell became the 21st pastor of Old First following the tenure of Dr. George L. Knight.

Over the years the ministry of Old First has attracted preachers, missionaries, educators, and dedicated lay people. These committed individuals have worked hard to help establish schools, colleges, hospitals, clinics, churches, chapels, and missions.

Mr. President, I am pleased to honor Old First Church and to pay tribute to its rich history. As it celebrates its 325th anniversary, I extend heartiest congratulations to the congregation and my warmest wishes for a bright future and continued success as a dynamic force in the community of Newark.

May First Presbyterian Church of Newark continue to flourish for many more years to come.•

A TRIBUTE TO THE GEORGIA WILDLIFE FEDERATION FOR ITS SERVICE TO THE STATE OF GEORGIA

• Mr. FOWLER. Mr. President, I rise today to honor the Georgia Wildlife Federation for its most unique educational endeavor since it was founded in my home State in 1936.

The project of which I'm speaking has captured the interest of thousands of students across Georgia and, already, many have become conservation-minded and have learned how they can contribute to the preservation of natural resources.

The Georgia Wildlife Federation has published the poster "A Wish for the World" that includes 11 illustrations chosen from thousands of entries in an art contest the federation held last autumn.

These illustrations accurately depict conservation issues that, among others, include scenes of endangered animals, ozone depletion, and recycling. On the back of the poster, detailed information touching on each of the 11 conservational themes represented on the poster is provided, making it a colorful and attractive educational tool.

I am impressed by the insight and maturity of the children whose entries

are included in the poster. Their drawings left me with an impression that the next generation understands that the continued depletion of our natural resources is untenable and that we must keep developing and implementing sound stewardship policies.

Historically, the Georgia Wildlife Federation has emphasized the importance of educating young people about environmental issues, giving tomorrow's leaders an understanding of their role in protecting natural resources. Through this project, the federation has once again played this all-important role in Georgia.

The level of environmental awareness shown by these students tells me that, surely, we have come a long way in educating our young people in the last few decades. Credit for that rests with the parents, instructors, and organizations that teach our children to respect and preserve our environment.

I applaud this recent effort as a most ingenious one and salute the federation for its tireless efforts in Georgia. Specifically, I would like to commend Jerry McCollum, executive vice president of the Georgia Wildlife Federation, for his recognition of the importance of meaningful educational projects in building strong environmental awareness in our children, by far the most precious of our natural resources.●

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1991

● Mr. AKAKA. Mr. President, last week the Senate passed the Resolution Trust Corporation Funding Act of 1991 by a vote of 69-30. At issue was the Government's request to provide an additional $30 billion to cover losses in failed savings and loans through September 30, 1991.

I wish to explain my votes, which reflect my belief that Congress has two primary responsibilities regarding the savings and loan bailout: protect depositors and protect taxapayers. The two interests are not mutually exclusive. To protect depositors—I voted to provide the RTC with $15 billion to continue the bailout process. To protect taxpayers—I voted to reduce the bailout's cost through needed reforms to RTC operations and its financing method.

With this in mind, I voted against final passage of S. 419 because there was nothing in the measure for taxpayers. We have ample evidence that the RTC is conducting its business in a way that is increasing taxpayer costs. There were no provisions to ensure that the RTC would conduct the bailout in a more responsible or efficient manner. I could not vote for a bill where the interests of taxpayers were so completely ignored.

It is disheartening that taxpayer moneys are even needed to finance the savings and loan bailout in the first place.

In my view, the savings and loans failed in many parts of this country because they were improperly regulated and strayed too far from their original purpose of providing home mortgages. Savings and loan executives entered, often times with the encouragement of Federal regulators, into risky areas of business in which they had no expertise. At the same time, the Reagan administration cut the number of examiners—thereby increasing the Government's risk with respect to insured deposits. My views are supported by the fact that Hawaii's savings and loans are healthy because they have stayed close to home and close to their original purpose.

Equally disturbing is the way those taxpayer funds are being spent.

I 1989, I voted against providing the initial $50 billion to bail out the savings and loan industry. I did so because $30 billion of those funds were placed "off-budget" at the Bush administration's request. As a result, the taxpayers' cost was going to be more than it had to be.

Since that time, the RTC has conducted its business in a way that has also increased the taxpayers' cost more than necessary.

In a September 1990 report, the House Committee on Banking, Finance and Urban Affairs indicated that the RTC almost always pays off uninsured deposits. It was estimated that as much as $7.8 billion of uninsured deposits had been paid out by the RTC in resolving only a portion of the thrifts under its control.

A recent General Accounting Office report criticized the RTC for developing inadequate contracting procedures. It was reported that the lack of contract oversight has caused the RTC to pay its contractors in full even when there is only partial or poor performance. And, when one considers that the RTC estimates spending between $15 billion and $20 billion for contract services over the next 4 years, inadequate procedures cannot be tolerated.

According to the GAO report, over 50 percent of the assets acquired by the RTC have not been sold. As of December, 1990, the RTC had an inventory of assets valued at $144 billion. Speedier sale of these assets would reduce asset management costs and provide additional funds to cover losses—thereby saving taxpayers money.

I could not vote for an additional $30 billion for the RTC when such gross mismanagement is occurring and when opportunities for improvement have not been sought.

I supported amendments that would have allowed the resolution of failed thrifts to have proceeded and would have sent a strong signal that bureaucratic inefficiency would not be tolerated.

I supported an amendment introduced by Senators TOM HARKIN and HERB KOHL that would have reduced the appropriation for the RTC from $30 billion to $15 billion. The measure would have also required the President to accompany any additional RTC funding request with proposals for a pay-as-you-go approach to the financing of the RTC to minimize the bailout costs to middle- and low-income families.

I also supported an amendment offered by Senator BOB KERREY to restructure the RTC by replacing the two oversight boards by a single independent board of governors.

I also supported an amendment introduced by Senator BOB GRAHAM that would have provided $15 billion to the RTC for the continued resolution of failed institutions and provided another $15 billion on a dollar-for-dollar basis as the RTC disposes of its current assets.

None of these proposals were adopted by the Senate. But without at least these changes and in light of the RTC's current inadequate performance, I could not support $30 billion in additional funds.

The administration claims that an additional $50 billion will be needed for the RTC in fiscal year 1992. By the time we are called upon to provide these funds, I hope that the RTC improves its performance and that the administration and Congress have reasserted their responsibility to protect the interests of taxpayers.●

MARIETTA E. SPENCER RECEIVES MORRIS HURSH AWARD

● Mr. DURENBERGER. Mr. President, I rise today to applaude a Minnesotan who has demonstrated leadership in the field of human service. Today, the Minnesota Social Service association is presenting Marietta E. Spencer with the prestigious Morris Hursh award. I congratulate her and thank her for being a fine example of the spirit of caring for which Minnesota is known, and ask that the text of the citation be entered into the RECORD.

The citation follows:

This year's Morris Hursh Award is proudly presented to Mrs. Marietta Spencer. She was originally nominated for the Distinguished Service Award for Individual Service and Initiative, but after reviewing her extensive qualifications, she was unanimously declared a worthy recipient of this award.

Marietta has exemplified unusual leadership statewide, nationally and internationally by helping to develop post-legal adoption services for those individuals who are adopted adults, birth parents who have selected adoption as the best plan for themselves and their children, and adoptive families past the point of legal adoption.

She has contributed theoretical definitions for this service area, has formulated modes of service delivery, has been involved in effective legal advocacy, community organization and the production of educational mate-

rials in the training of other professionals in the adoption field and in related human service areas.

Through her efforts, Children's Home Society of Minnesota had the first post-legal adoption department in the United States.

Marietta has put together and sponsored the first three national conferences on post-legal adoption services held in America. Each of these conferences was well attended and highly evaluated by those attending.

Marietta has done research in her field of endeavor and has encouraged others in their research efforts as well. Since 1953, she has published more than 20 articles and brochures on adopted-related matters. She is recognized throughout the country as an excellent workshop leader and keynote speaker through her participation in hundreds of programs, both in the United States and internationally.

She is a strong advocate for members of the adoption triad through her work on legislative matters and meeting with a wide variety of community groups.

Her expertise includes medical social work, case work and group work. She has incorporated insights from the fields of human genetics and anthropology in her service approach.

She founded an administratively separate post-legal adoption service department and served on the Children's Home Society's administrative team.

Marietta has been very active in vast amounts of client service. In fact, she has served more than 12,000 clients in workshops, and hundreds in family and individual counseling situations.

Over the past several years she has participated in several community and board activities. She is active on the Legislative Task Force headed by Roger Toogood concerning child welfare legislation in the State of Minnesota. She served for five years on the Child Welfare League of America's Committee of Standards on Adoption and Post-Adoption Services. She served for five years on the Governor's Commission on Aging, on the health committee, and served as the chairwoman of the Mental Health Subcommittee. She served on the board of the Minnesota Epilepsy League for 12 years. She served for six years on the board of the Minnesota Human Genetics League; and two years with the Minnesota Asthma and Allergy Chapter. Marrietta also served as a dicussant for a main speaker at the INTER-RACE (International Institute for Inter-Racial Interaction); second anniversary consultation lecturer; and led a panel of adopted persons and adoptive parents.

It is clearly evident to those who have had the opportunity to work with Marietta Spencer that she has made a significant impact on the clients she has worked with directly, as well as those she has worked with in a broader way through the development of high standards and services to members of the adoption triad. She is highly deserving of the Morris Hursch Award.•

JURISDICTION AND RULES OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

• Mr. INOUYE. Mr. President, on behalf of the members of the Select Committee on Indian Affairs, I am submitting to the Senate the "Jurisdiction and Rules of the Select Committee on Indian Affairs," adopted by the committee on Wednesday, March 13, 1991.

The rules follow:

JURISDICTION AND RULES OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

(Excerpts from S. Res. 4, the Committee System Reorganization Amendments of 1977, As Amended and Revised To Reflect Membership in the 102nd Congress)

Select Committee on Indian Affairs, to which select committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to Indian affairs:

SEC. 105. (a)(1) There is established a Select Committee on Indian Affairs (hereafter in this section referred to as the "select committee") which shall consist of sixteen members, nine to be appointed by the President of the Senate, upon recommendation of the majority leader, from among members of the majority party and seven to be appointed by the President of the Senate, upon recommendation of the Minority leader, from among the members of the minority party. The select committee shall select a chairman from among its members.

(2) A majority of the members of the committee shall constitute a quorum thereof for the transaction of business, except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony. The select committee shall adopt rules of procedure not inconsistent with this section and the rules of the Senate governing standing committees of the Senate.

(3) Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee.

(4) For purposes of para. 6 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member or chairman of the select committee shall not be taken into account.

(b)(1) All proposed legislation, messages, petitions, memorials, and other matters relating to Indian affairs shall be referred to the select committee.

(2) It shall be the duty of the select committee to conduct a study of any and all matters pertaining to problems and opportunities of Indians, including but not limited to Indian land management and trust responsibilities, Indian education, health, special services, and loan programs, and Indian claims against the United States.

(3) The select committee shall from time to time report to the Senate, by bill or otherwise, on matters within its jurisdiction.

(c)(1) For the purposes of this resolution, the select committee is authorized, in its discretion, (A) to make investigations into any matter within its jurisdiction, (B) to make expenditures from the contingent fund of the Senate, (C) to employ personnel, (D) to hold hearings, (E) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (F) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (G) to take depositions and other testimony, (H) to procure the services of individual consultants or organizations thereof, in accordance with the provisions of sec. 202(i) of the Legislative Reorganization Act of 1946, and (I) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(2) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(3) Subpoenas authorized by the select committee may be issued over the signature of the chairman, or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpoena.

(NOTE.—On June 4, 1984, in the 98th Congress, the Senate adopted S. Res. 127 to establish the Select Committee on Indian Affairs as a permanent committee of the Senate.)

RULES OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

COMMITTEE RULES

Rule 1. The standing Rules of the Senate, Senate Resolution 4, and the provisions of the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, to the extent the provisions of such Acts are applicable to the Select Committee on Indian Affairs and supplemented by these rules, are adopted as the rules of the committee.

MEETINGS OF THE COMMITTEE

Rule 2. The committee shall meet on the Wednesdays and Fridays of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

OPEN HEARINGS AND MEETINGS

Rule 3. Hearings and business meetings of the committee shall be open to the public except when the committee by majority vote orders a closed hearing or meeting.

HEARING PROCEDURE

Rule 4(a). Public notice shall be given of the date, place, and subject matter of any hearing to be held by the committee at least one week in advance of such hearing unless the Chairman of the committee determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of the committee involved concurs. In no case shall a hearing be conducted with less than 24 hours notice.

(b) Each witness who is to appear before the committee shall file with the committee, at least 24 hours in advance of the hearing, a written statement of his or her testimony in as many copies as the Chairman of the committee prescribes.

(c) Each Member shall be limited to five (5) minutes in the questioning of any witness until such time as all members who so desire have had an opportunity to question the witness unless the committee shall decide otherwise.

(d) The Chairman and Vice Chairman of the ranking Majority and Minority Members present at the hearing may each appoint one committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman or Vice Chairman the ranking Majority and Minority Members present may agree.

BUSINESS MEETING AGENDA

Rule 5(a). A legislative measure or subject shall be included in the agenda of the next following business meeting of the committee if a written request for such inclusion has been filed with the Chairman of the committee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the committee to include legislative measures or

subjects on the committee agenda in the absence of such request.

(b) The agenda for any business meeting of the committee shall be provided to each Member and made available to the public at least two days prior to such meeting, and no new items may be added after the agenda is published except by the approval of a majority of the Members of the committee. The Clerk shall promptly notify absent Members of any action taken by the committee on matters not included in the published agenda.

QUORUMS

Rule 6(a). Except as provided in subsections (b) and (c), nine Members shall constitute a quorum for the conduct of business of the committee.

(b) A measure may be ordered reported from the committee unless by a motion made in proper order by a Member followed by the polling of the Members in the absence of a quorum at a regular or special meeting.

(c) One Member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure before the committee.

VOTING

Rule 7(a). A rollcall of the Members shall be taken upon the request of any Member.

(b) Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only on the date for which it is given and upon the items published in the agenda for that date.

SWORN TESTIMONY AND FINANCIAL STATEMENTS

Rule 8. Witnesses in committee hearings may be required to give testimony under oath whenever the Chairman or Ranking Minority Member of the committee deems such to be necessary. At any hearing to confirm a Presidential nomination, the testimony of the nominee, and at the request of any Members, any other witness shall be under oath. Every nominee shall submit a financial statement, on forms to be perfected by the committee, which shall be sworn to by the nominee as to its completeness and accuracy. All such statements shall be made public by the committee unless the committee, in executive session, determines that special circumstances require a full or partial exception to this rule. Members of the committee are urged to make public a complete disclosure of their financial interests on forms to be perfected by the committee in the manner required in the case of Presidential nominees.

CONFIDENTIAL TESTIMONY

Rule 9. No confidential testimony taken by or confidential material presented to the committee or any report of the proceedings of a closed committee hearing or business meeting shall be made public in whole or in part by way of summary, unless authorized by a majority of the Members of the committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 10. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open committee hearing tends to defame him or otherwise adversely affect his reputation may file with the committee for its consideration and action a sworn statement of fact relevant to such testimony or evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 11. Any meeting or hearing by the committee which is open to the public may be covered in whole or in part by televison broadcast, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the sight vision, and hearing of Members and staff on the dais or with the orderly process of meeting or hearing.

AMENDING THE RULES

Rule 12. These rules may be amended only by a vote of a majority of all the Members of the committee in a business meeting of the committee: *Provided*, That no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the committee agenda for such meeting at least two days in advance of such meeting.●

MINNESOTA SOCIAL SERVICE ASSOCIATION PRESENTS AWARDS

● Mr. DURENBERGER. Mr. President. I rise at this time to salute four Minnesotans who have distinguished themselves as compassionate, loving servants of their fellow human beings. Today, the Minnesota Social Service Association, a nearly 100-year-old organization dedicated to social justice and equal opportunity, is honoring Ruth Johnson, Janet Oachs, and Richard and JoNell Rutten for their priceless contributions to their communities. I join in the thanks and applause for these fine Minnesotans and ask that the text of their citations be entered into the RECORD:

The citations follow:

DISTINGUISHED SERVICE AWARD FOR VOLUNTEER SERVICE

RUTH JOHNSON

Ruth Johnson is well known throughout Aitkin County as she has been a life-long resident and as she has dedicated many years to volunteering her services to seniors, youth and community programs.

Ruth has been an RSVP volunteer since 1988. Her duties have included being an RSVP Advisory Committee member, a senior office site manager and a senior citizens' office secretary.

In 1989, she contributed the highest number of volunteer hours in the program—over 600 hours! Ruth has volunteered her time in the Tax Assistance Program, Medicare/Medicaid Assistance Program, 4-H; and volunteered as a guardian, as a Social Services Advisory Committee member and as a driver. In fact, as a volunteer driver in 1989, she drove more than 2,100 miles transporting seniors and handicapped persons to medical appointments and children to foster care homes and facilities.

Ruth is an outstanding volunteer, a wonderful advocate for volunteerism, a great asset to Aitkin County.

DISTINGUISHED SERVICE AWARD FOR ADULT FOSTER CARE

JANET OACHS

Janet Oachs has been a foster care provider for Carlton County for 12 years. She started as a child foster care provider, but now provides care for adults with developmental disabilities.

in order to provide the best care possible, Janet has attended various seminars to refine and develop her skills. Some topics include self esteem and grief support. She has become certified in CPR and administering medications. She also has learned how to bathe and transfer individuals.

Janet encourages her clients to be as independent as possible. She does this by focusing on their abilities rather than on their disabilities. In one case, Janet provided intensive foster care services for a young, mildly developmentally delayed mother and her children. Social workers involved with the case feel that this mother and her children have a chance to function as a family due to Janet's dedication.

Janet is a wonderful advocate for her clients, making sure they receive services appropriate for them. She has displayed a deep commitment to foster care. Because of this, she has made a great difference in the lives of each person who has walked through the doors of her home.

DISTINGUISHED SERVICE AWARD FOR CHILD FOSTER CARE RICHARD AND JONELL RUTTEN

Richard and JoNell Rutten have shared their lives with a variety of children since being licensed by Sherburne County in 1984. They have had 22 respite placements, as well as 16 on-going placements.

The Ruttens have provided excellent care to children with emotional, behavioral and physical handicaps. Training, experience, involvement in a foster parents program support group, patience, realistic expectations, respect for the children and their natural parents and good rapport with community professionals have made this possible.

Richard and JoNell have shown their dedication time and time again by the effort they put into working with each child. They approach the children with open arms and provide a loving and stable home environment in which the children may grow. The Ruttens demonstrate to the children that they are value members of the family.

On December 22, 1990, an article appeared in the West Sherburne Tribune about the Ruttens and one of their foster children, Ben. He had been placed with them when he was only three days old. At 3 months of age it was determined that Ben was mentally handicapped. It was predicted that he would probably live a year, but he outlived those predictions as a result of care and a lot of personal attention. On January 13, 1991, Ben passed away after a long hospital stay. The Ruttens are grateful for the life that he had as he taught them about love, understanding and the meaining of life. Richard and JoNell are fine examples to foster parents throughout the State. No amount of money or appreciation can equal the chance of a better life that they have provided their foster children.●

THE 1991 NATIONAL PUBLIC SERVICE AWARD WINNERS

● Mr. PRYOR. Mr. President. I am pleased to announce the winners of the 1991 National Public Service Awards. This prestigious award, cosponsored by the National Academy of Public Administration and the American Society for Public Administration, recognizes the outstanding efforts of government managers throughout the United States. Four years ago I was privileged to be appointed to the selection committee for the award. This committee is chaired by Elmer B. Staats, the distinguished former Comptroller General

of the United States. Others on this committee include, Anthony S. Fauci, Melvin Laird, Alice Rivlin, Elspeth Rostow, and Paul Volcker.

There are too few opportunities to recognize excellence in the public service of our Nation and I am pleased that these two organizations have undertaken to do so. Therefore, I ask that the announcement of the winners, including brief biographical statements on each one, be included in the RECORD.

The material follows:

NAPA, ASPA ANNOUNCE 1991 WINNERS
NATIONAL PUBLIC SERVICE AWARDS

The National Academy of Public Administration (NAPA) and the American Society for Public Administration (ASPA) are pleased to announce the winners of the 1991 National Public Service Awards. Up to five awards are presented annually to public service practitioners in recognition of outstanding public management at all levels of government—local, state, federal and international.

The 1991 National Public Service Award winners, each of whom have made outstanding contributions on a sustained basis, are:

Alvin L. Brooks, Director, Human Relations Department, City of Kansas City, Missouri;

Frank C. Conahan, Assistant Comptroller General for National Security and International Affairs, U.S. General Accounting Office;

Diana Lam, Superintendent, Chelsea Public Schools, Chelsea, Massachusetts;

Robert H. "Tex" McClain, Jr., Former Undersecretary for Administration, Massachusetts Executive Office of Administration and Finance, Commonwealth of Massachusetts;

Michael J. Murphy, Deputy Commissioner, U.S. Internal Revenue Service.

Biographical statements of the 1991 winners appear below.

The Academy and ASAP have established the National Public Service Award Program to:

Pay tribute to public service practitioners whose careers exhibit the highest standard of excellence, dedication, and accomplishment;

Provide recognition for outstanding individuals; and

Underscore the need to have creative and highly skilled individuals as managers of complex and demanding government functions.

The awards will be presented on March 25, 1991 at the ASPA National Conference in Washington, DC.

The National Academy is chartered by Congress to provide independent advice and counsel of the highest professional standards on the organization and operations of government at all levels. Its elected membership consists of more than 400 distinguished individuals of all political parties—Cabinet members and governor, members of Congress and mayors, prominent business executives who have served in government, professional government managers, and scholars specializing in public affairs and administration.

ASPA is a national association of some 16,000 members dedicated to advancing excellence in public service and promoting its dignity and worth. Through its networks and local chapters, national special focus sections, individual members, and other supporters, ASAP supports recognition of public service achievements and enhances the professional and educational development of its membership.

Beginning his public service career as a police officer in 1954, Alvin L. Brooks' management skills immediately became apparent through his ability to ease tensions and quell disputes between rival street gangs. Ten years later, Brooks went to work for the Kansas City (MO) School District, and as Director of Public Information for Title I schools, he focused much of his energy on improving the quality of education for students from poorer neighborhoods.

In 1981, Brooks demonstrated his innovative approach to his position by creating a novel mediation program. By coordinating volunteer mediators to resolve domestic, juvenile, and employment disputes, Brooks has saved the city thousands of dollars and many precious hours of municipal court time.

The Ad Hoc Group Against Crime, formed in the late 70s is perhaps Brooks' most significant contribution to the field. Created in response to a rash of unsolved murders in 1977, Brooks was able to use the group to reopen all the cases and solve many of them. Today, the Ad Hoc Group is at the forefront of a community-based effort to combat escalating crime and violence in Kansas City, thanks in large part, to Brooks tireless support and ability to secure a full time staff and $200,000 in annual funding.

In his current position of Director of Human Relations for Kansas City, Brooks continues to act as a catalyst for positive change by building dialogue and consensus among diverse groups.

Frank C. Conahan's service to the U.S. General Accounting Office (GAO) began in 1955. He worked for the newly-created International Division in 1963, and was named Director of the European Branch in 1974. In 1981, he became Director of the International Division, and subsequently was appointed as Director of the newly-created National Security and International Affairs Division. In 1986, he was named as an Assistant Comptroller General.

Under Conahan's direction, GAO has expanded its scope of work to include increasingly strategic and comprehensive issues. Such work is ultimately more valuable to Congress, the executive branch, and the public.

Among his accomplishments have been the development of several in a series of "transition reports." These 1988 reports identified critical program management issues facing the new administration and contributed significantly to the new administration's policy making efforts.

However, his most significant contributions have been in the area of defense. Conahan consistently has sought new methods of improving the efficiency of defense programs which have been presented in 45 personal congressional testimonies. Here he brought a fresh perspective to old problems. For example, Conahan's division insightfully identified and documented crucial defense budgeting problems. He has also streamlined GAO's process of auditing and evaluating defense contractor's pricing. Under his leadership, GAO's defense and international affairs work has resulted in dollar savings and other accomplishments totaling over $40 billion.

Conahan's contributions include work within GAO's internal structure as well as it's external dealings with the public. As a member of its Executive Resources Board, he was vital to GAO's recent refocusing of its organizational approach to defense and international work.

Diana Lam brings to her public service a profound understanding of the tremendous needs in her urban community. She is superintendent of a school system with a 52-percent drop-out rate and a 25-percent percent teenage pregnancy rate. Seventy percent of the students speak English only as a second language. Challenged before she started, the Boston University appointee became Chelsea (MA) superintendent under considerable objection from local school officials after the university took command of the troubled system.

Lam oversaw the complete restructuring of the system's high school, introduced a year-round, full day Early Learning Center, opened a Parent Information and Support Center, and worked to bring curriculum objectives to the elementary school level.

She has inspired pride and confidence in a normally frustrating and thankless environment by initiating such projects as a Teacher's Advisory Board, a monthly newsletter written by and for teachers, and monthly teacher coffees.

Lam has also commissioned the United States' first survey of urban parents in an effort to understand more clearly their concerns. She tries to respond to those concerns with School Talk/Charlas en la Escuela, a local cable television show which she hosts.

It is her ability to perceive and unlock the unlimited potential and hope within the children and the teachers of the Chelsea system that has earned her the title of Massachusetts Superintendent of the Year after one year on the job.

Robert H. "Tex" McClain's 37-year career with the Commonwealth of Massachusetts has been characterized by "fidelity to the highest standards of public service." So wrote former Massachusetts governor Michael Dukakis in his recommendation to the NPSA selection committee.

In 1965, McClain was given command of a pioneer position designed to ensure that the principles of good public administration and the intricacies of sound fiscal management would be reflected in the statutes enacted by the legislature. Breaking new administrative ground, McClain's management skills and his ability to work with legislators of both parties has created a better informed legislature independent enough to take on more responsible courses of action.

In 14 years as Undersecretary of Administration and Finance, McClain consistently demonstrated not only his management ability, but his expertise in almost every area of state government administration and legislation.

McClain's example and commitment to the public service enabled him to continuously recruit men and women who share his dedication into state government. He also devoted much of his energies to the encouragement and development of those already there.

Since becoming deputy commissioner, Michael J. Murphy has guided the Internal Revenue Service (IRS) through key organizational issues that will determine how the IRS performs its functions for decades to come and how taxpayers view the fairness and integrity of the federal tax system.

Murphy's tireless advocacy of the IRS' need to modernize has placed the IRS' Tax Modernization System (TMS)—a multi-billion dollar effort spanning the next 10 years—high on the President's Management Objectives priority list.

Much of Murphy's time is spent overseeing the TMS effort, ensuring the plan will be carried out in a manageable and realistic manner.

His efforts to institutionalize the quality improvement process of the agency mani-

fests itself in the highly successful IRS/National Treasury Employees Union Joint Quality Improvement Process Agreement, a landmark management/labor agreement.

Taking a cue from the private sector, Murphy created the Office of Assistant to the Commissioner to ensure that quality improvement becomes a working function of the organization.●

AID TO ISRAEL

● Mr. FOWLER. Mr. President, the easy part is over. Our victory over Saddam Hussein was made possible because of the bravery of our soldiers and the unity of our people. Desert Storm will set a new example for textbook warfare.

However, we must do more than simply rejoice at our success. We are now entering the next stage in our Middle East efforts: that of shaping the peace. As a part of this process, the United States is willing to assist the countries which supported our cause in the war against Saddam Hussein.

There are many nations which deserve, and will receive, our assistance and praise for active participation in the Allied effort: Egypt, Turkey, and Saudi Arabia to name a few. However, there is one nation which had a profound impact on the war simply by holding back and not becoming involved in the fighting.

Saddam made every attempt to divide the United States-led coalition, including firing over three dozen Scud missiles at Israel's civilian population. No one who witnessed the courageous restraint shown by the Israelis in the face of these attacks can honestly question whether Israel needs our help today.

This tiny nation broke its longstanding, firm tradition of retaliation in order to help the allied cause. At the same time its military was on high alert throughout the entire Persian Gulf crisis. The Israeli Government faced increased costs due to its enhanced state of war readiness. An example is the Government pulling up reserves to full-time duty. Thus, the economy was burdened by a sudden exodus of workers to the Armed Forces.

It is for these reasons that I fully support the $650 million in assistance for Israel contained in the House-passed supplemental appropriations bill. Without Israel's policy of restraint, it is very likely that the situation in the Middle East would be much more complex and difficult than it is today.

With this in mind, I call on all of America's friends in the Middle East to bring the courage they showed in the face of Saddam's attacks to the search for peace. All the States in the region must work in good faith for political solutions to end the generations of strife in the region. We in Congress will continue to work toward this goal in the hope that there will soon be a lasting peace in the Middle East.●

NOMINATION OF ROCKWELL A. SCHNABEL TO BE DEPUTY SECRETARY OF COMMERCE

● Mr. HOLLINGS. Mr. President, last evening the Senate confirmed Rockwell A. Schnabel as the next Deputy Secretary of Commerce.

I am pleased that this nominee has been confirmed expeditiously. The position of Deputy Secretary of Commerce is an important one, and has been vacant for some months now. With a Deputy Secretary in place, the Secretary of Commerce will be better able to conduct the important affairs of the Department.

Earlier this week, the Commerce Committee held a hearing on this nomination, which I chaired myself. Mr. Schnabel and I reviewed the many important issues before the Department, including trade, technology, and oceans, to name a few. Mr. Schnabel previously held another senior Commerce Department post, that of Under Secretary for Travel and Tourism, and he has served ably in that post. I know that, with his background, he will tackle these other important issues.

I look forward to working with Secretary Mosbacher and now confirmed Deputy Secretary Schnabel as we work to improve the competitiveness of the United States in the global marketplace.●

A TRIBUTE TO BAILEY, AND PARK COUNTY, CO

● Mr. WIRTH. Mr. President, I would like to take this opportunity to pay tribute to the people of Park County, CO.

I happen to think every city and community in Colorado is worth congressional tribute, but I am compelled to speak briefly about Park County and the town of Bailey, CO, because of what many Park County residents feel was a negative and derogatory depiction of their community in the NBC television program, "The Chase."

Without going into a description of the television show or its creative merits, I think it is fair to say that many Bailey and Park County residents were offended by the suggestion that their community is a sleepy community "out of touch with the 20th century." Park County residents who live along the U.S. Highway 285 corridor resent the program's fictionalized description of their lifestyle as unsophisticated and out of date.

I can only say that, judging from the growth this part of Colorado has experienced in recent years, thousands of Americans from all parts of the country are itching to move to Park County.

And it is no wonder. This community is settled along the scenic Highway 285 corridor and enjoys proximity to the Lost Creek Wilderness Area, one of Colorado's most spectacular locations.

Although Park County and Bailey residents enjoy a unique rustic pioneer heritage, no one who has ever been to this part of Colorado would ever say that the community's social, economic and educational life is 40 years behind the times. Rather, it is a growing area in a location that blends the best of both an urban and a rural environment. Only the most blatant and absurd fiction would create a contrary image.

The people of Bailey have taken the insult in their stride. With the assurance that comes from knowing they are raising their families in one of Colorado's most beautiful locations, they certainly do not need my assistance in setting the record straight. But as a Coloradan, I could not help but take a stab at it—and ask that a copy of an editorial which recently ran in the High Timber Times be inserted in the RECORD.

The article follows:

[From the High Timber Times, Feb. 14, 1991]

"HICKSVILLE" CRIES FOUL

NBC's television movie "The Chase," aired last Sunday night on KCNC Channel 4, was bad to begin with.

But it stepped from just plain bad to awful with its portrayal not only of Bailey and its residents but also of Denver area people and law enforcement officers.

Bailey area residents are justified in being offended, if not outraged, by their portrayal in this dog of a drama.

Even if we allowed the producers some dramatic license in their geography, like putting a Bailey sign in front of Morrison's famous red rocks and pretending that Morrison is Bailey, we find the producers of this awful movie overstepped the bounds of good taste in their seemingly intentional slurs against Bailey.

It wasn't necessary. But given the quality of the overall piece, it wasn't too surprising. It was painful to watch. It's sad that such an exciting true life drama wasn't portrayed more accurately. We believe the viewing public, whether or not they knew their geography, would have much preferred a factual story. All characters in the movie, whether hero, villain or ordinary citizen were shallow, boring and corny—hicks if you will.

Truth is stranger than fiction, and in this case, infinitely more interesting and in much better taste. "The Chase" was the epitome of Hollywood sleaze minus the porn. It was not just an insult to Bailey residents, but to all Denverites and all Coloradans. In fact, it was an insult to all television viewers. We sincerely hope this one never makes the rerun circuit.

A request for an apology from NBC and KCNC is not unreasonable. In the meantime, your opinions are valuable and we encourage you to voice them. Maybe it will help put a stop to such trash on television.●

WYOMING: LEADING IN AGRICULTURE

● Mr. WALLOP. Mr. President, I am proud to note that we have in Washing-

ton, DC, this week from my State of Wyoming, 19 young men and women who are involved with the Wyoming Leadership Education and Development Program [LEAD]. This program was established in 1984 through funding from the W.K. Kellogg Foundation and the Wyoming Agricultural Extension Service to develop agricultural leadership.

LEAD is designed to broaden young agriculturalists' perceptions of State, national, and global issues through study and State, and national and international seminars. This 2-year program offers study tours to national and international areas with focus on Government, economics, communications, social and cultural understanding.

Participants in the Wyoming Leadership Education and Development program come from every sector of agriculture and every part of Wyoming. Participants must be employed in agriculture or an ag-related occupation. The decrease in the percentage of agricultural producers in Wyoming has placed greater demands on our agricultural leaders. The Wyoming LEAD Program will help create a competent and highly motivated cadre of agricultural leaders able to speak forcefully and articulately for agriculture and Wyoming communities.

I am proud to have these fine men and women here for their national seminar. They are impressive spokesmen for an important industry, and they make a vast difference in our State.•

RETIREMENT OF EDWARD M. HALLENBECK

• Mr. DECONCINI. Mr. President, on February 23, 1991, Edward M. Hallenbeck retired after 29 years of Government service. As the Regional Director of the Bureau of Reclamation for the Lower Colorado Region, Ed was headquartered in Boulder City, NV. With the indulgence of my colleagues I would like to take this opportunity to recognize the achievements of this outstanding public servant.

In 1963, 4 years after graduating from South Dakota State University with a B.S. degree in electrical engineering, Ed began his Reclamation career by working as an electrical engineer in Huron, SD. In 1966, he moved to the Boulder City regional office where in 1968 he was named chief of the Power Operations and Maintenance Branch. In 1969, he moved to Phoenix as assistant manager of the Parker-Davis project and was promoted to manager of the project in 1971. Mr. Hallenbeck was appointed to head the Bureau of Reclamation's Arizona Projects Office in 1980. In this position he had the responsibility for planning and constructing the central Arizona project, or CAP, the largest single water resource project ever authorized by Congress. In February 1986, he was named Regional Director of Reclamation's Lower Colorado Region.

Among the many awards and honors that Ed has received are the National Water Resources Association Distinguished Service Award and the Meritorious Service Award of the Department of the Interior.

Edward Hallenbeck's accomplishments have resulted in efficient operation of the Lower Colorado River System, enhanced delivery of power and water for public use, and an improved image of the Bureau of Reclamation. Ed has been a terrific resource for me and my staff and a tremendous public servant for our country. His expertise and dedication have been particularly helpful for Arizona and I am sure that I speak for the rest of the delegation when I say that he will be missed.

I ask that this body join me in conveying this country's gratitude for Ed's devotion and exemplary service to the United States of America.•

COSPONSORS OF S. 593, THE VISUAL POLLUTION CONTROL ACT OF 1991

• Mr. CHAFEE. Mr. President, on March 7 I introduced the Visual Pollution Control Act of 1991. In my statement on this bill, I listed the 10 original cosponsors of S. 593. Unfortunately, because of a typographical error, one of these original cosponsors, Senator BENTSEN, was not printed on the bill.

My colleague from Texas, Senator BENTSEN, has been an advocate of reforming the Federal billboard law, and has provided important leadership in this area which is much appreciated. I regret that his name was not printed on the bill. Senator BENTSEN's contribution to this legislation has been extremely valuable, and it is important for people to know that he is an original cosponsor of S. 593.•

IRENE CONLAN

• Mr. DECONCINI. Mr. President, in light of the overwhelming solid waste disposal problem currently facing our country, I thought it appropriate to bring to the attention of my colleagues the efforts of Irene Conlan of Scottsdale, AZ.

Irene, while working for the Arizona Department of Health Services, witnessed the disposal of hundreds of laser printer cartridges into trash bins. She was aware that the cartridges were costing the State of Arizona tens of thousands of dollars annually, and furthermore, she knew that these nonbiodegradable units were being dumped into Arizona landfills.

Irene was unable to accept such a squandering of resources and energy and decided to actively combat this wastefulness. When she left her position with the Department of Health Services, Irene learned how to recycle laser printer toner cartridges and proceeded to set up a remanufacturing laboratory in her garage. Today, 2 years later, her company, Cartridge Technology Network, Inc. [CTN], has 20 manufacturing centers, with Western and Eastern regional headquarters.

Although Irene is pleased with the rapid growth of her company, she is equally proud of the more than 40 tons of nonbiodegradable waste that CTN has kept out of Arizona landfills alone.

At a time when our country faces enormous environmental challenges, Irene is a fine example of what a conscientious citizen can do to confront these obstacles. I ask that all of my colleagues join me in applauding Irene's noble and ambitious undertaking and in wishing her continued success in the future.•

CBO BUDGET ESTIMATE FOR THE NIOBRARA SCENIC RIVER DESIGNATION ACT OF 1991

• Mr. JOHNSTON. Mr. President, on March 7, the Committee on Energy and Natural Resources filed the report to accompany S. 248, the Niobrara Scenic River Designation Act of 1991.

At the time this report was filed, the Congressional Budget Office has not submitted its budget estimate regarding this measure. The committee has since received this communication from the Congressional Budget Office, and I ask that it be printed in the RECORD.

The budget estimate follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 1991.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 248, the Niobrara Scenic River Designation Act of 1991, as ordered reported by the Senate Committee on Energy and Natural Resources on February 27, 1991. CBO estimates that enactment of S. 248 would result in additional management and study costs totaling about $750,000 over the next five years, assuming appropriation of the necessary amounts. Additional costs are likely to be incurred after 1993 for land acquisition, facility construction, and operation of the new river areas; however, we are unable to estimate these costs at this time. Enactment of S. 248 would not affect the budgets of state or local governments.

S. 248 would designate 70 miles of the Niobrara River in Nebraska as a scenic river and would grant recreational river status to another 25 miles of that river and to a 39-mile segment of the Missouri River. An additional 6-mile segment of the Niobrara would be studied for possible inclusion in the Wild and Scenic River system. The Department of the Interior (DOI) would be directed to establish a Niobrara Scenic River Advisory Council and a recreational river advisory group for the Missouri River. These groups would provide advise to DOI on the management of the rivers. The bill would also require DOI to prepare two studies: one on the feasibility of creating a national recreation area adjacent

to the recreational segment of the Niobrara River, and another on the feasibility of establishing the Niobrara-Buffalo Prairie National Park. Finally, S. 248 would authorize the appropriation of whatever sums are necessary to carry out these activities.

Based on information from the National Park Service, CBO estimates that enactment of S. 248 would result in costs of about $350,000 for planning and $400,000 for the studies authorized in the bill. These costs would be incurred over a three-year period. Support of the advisory commissions is expected to cost about $20,000 annually.

Enactment of S. 248 would also result in certain other costs, including land acquisition, facility construction, and ongoing river operations. The NPS is unable to provide us with the information necessary to estimate these costs until after it completes management planning activities, probably in 1994.

This bill does not affect direct spending or receipts and therefore would not affect pay-as-you-go scoring.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.•

MOTOR CARRIER SAFETY ASSISTANCE PROGRAM REAUTHORIZATION ACT

• Mr. DANFORTH. Mr. President, over the past decade, Congress has passed a variety of laws to ensure the safe operation of heavy trucks and buses on our Nation's highways. I am pleased to join several colleagues on yet another bill to improve highway transportation safety.

Let me take a moment to summarize these efforts over the last decade. The congressional effort on motor carrier safety started in 1982 when we created the Motor Carrier Safety Assistance Program, which is known as MCSAP. This program provides funds to States to do roadside safety inspections of commercial drivers and vehicles and safety audits at the terminals of motor carriers. MCSAP has far exceeded even the high expectations of those of us who created it. In fiscal year 1990, MCSAP funded 1.6 million roadside inspections and 9,863 safety audits. In the State of Missouri alone, MCSAP funded 61,360 roadside inspections and 496 safety audits. Those safety inspections and audits have removed thousands of unsafe vehicles and drivers from the road.

Five years ago, the President signed into law the Commercial Motor Vehicle Safety Act of 1986. That legislation prohibits drivers from spreading their bad driving records over numerous licenses. It also eliminates the 20-State practice of giving a commercial license to applicants who may have taken a driving test in nothing more than a subcompact car.

Three years ago, I sponsored the Truck and Bus Safety and Regulatory Reform Act of 1988—a bill that became law as an amendment to the Omnibus Drug Initiative Act of 1988. This legislation eliminated a loophole allowing heavy trucks and buses to operate within vast urban commercial zones without obeying critical Federal safety regulations. The act also required a Department of Transportation [DOT] rulemaking on driver compliance with the hours-of-service regulations, which help to prevent driver fatigue.

Last year, we passed the Motor Carrier Safety Act of 1990. This legislation prohibited any trucking firm that receives a DOT unsatisfactory safety rating from hauling hazardous materials. It also prohibited bus companies with unsatisfactory safety ratings from transporting passengers. In addition, it required DOT to establish a program to ensure that commercial vehicles which fail roadside safety inspections do not return to the highway without fixing safety problems.

Although these and other laws represent great progress, we have a long way to go. Medium and heavy truck and bus accidents account for almost 6,000 deaths in this country annually. Eighty percent of those killed were not truck drivers, but rather occupants of passenger cars. Each year, motor carrier accidents also account for about 160,000 injuries. Many of these accidents not only involve loss of life and injuries, but also the loss of countless millions of dollars in the form of traffic delays and cleanup expenses.

In September of last year, for example, a collision between two trucks on I-70 in St. Charles, MO, set off an explosion that killed one driver and closed this vital highway for 6 hours.

We must continue our efforts to prevent such tragedies. The majority of motor carriers and commercial drivers take their safety responsibilities seriously. The bill we are introducing, the Motor Carrier Safety Assistance Program Reauthorization Act of 1991, focuses on the few operators who disregard safety.

Improved highway safety is not a partisan issue. I would like to thank Senator EXON, chairman of the Surface Transportation Subcommittee, for taking the lead. In addition, I want to commend Senator KASTEN, the ranking member of the subcommittee for his support.

Anticipating MCSAP's reauthorization, the Commerce Committee commissioned an extensive study of the program by the Congressional Research Service [CRS]. CRS found that MCSAP enjoys broad support from the administration, the States, and the trucking industry for its reduction of commercial vehicle crashes that cost lives and cause injuries and property losses. CRS also found, however, that MCSAP could be strengthened significantly if it increased its efforts on driver-related causes of commercial vehicle crashes.

CRS found that driver-related factors, such as reckless driving behavior, drug and alcohol use, fatigue, and lack of adequate training, are the principal causes of commercial vehicle accidents. Similarly, a 1988 Office of Technology Assessment [OTA] study that found that human error is the cause of over 60 percent of motor carrier accidents. In addition, a Federal Highway Administration-sponsored study found that 95 percent of preventable accidents are related to driver factors.

Presently, MCSAP does very little driver oriented enforcement. To determine whether a driver is fatigued, MCSAP inspectors examine the logbooks in which drivers record their hours. Inspectors also do cursory checks to determine if drivers have a medical certificate and a license. MCSAP does not, however, address commercial driver errors resulting from reckless driving behavior, such as excessive speeding, improper lane changes, and tailgating. In addition, MCSAP plays only a limited role in drug interdiction and drugged and drunk driving enforcement. Moreover, MCSAP inspectors are not prepared or equipped to take on the task of roadside checks on the status of drivers' CDL's. This bill expands MCSAP's mission to include these factors in the future.

Drugs are everywhere in today's society. The trucking industry is no exception. For example, in January 1988, the Office of the California Attorney General released the results of a 6-month sting operation in which 130 people were arrested for selling cocaine, speed, and other drugs to truckdrivers at truckstops. Undercover officers reported that the drug trade was so active, in many instances, that by the time they could reach a drug pusher advertising drugs over his CB radio, the sale was already completed. Such drug sales at truckstops and over CB radios are common.

Drug use by truck and bus drivers is not a victimless crime. In May of 1988, a truck driver rammed more than two dozen vehicles on an L.A. freeway, but miraculously caused only minor injuries. Police found drug paraphenalia, a partly smoked marijuana cigarette, and other narcotics in his cab. In October of 1988, near Fort Hancock, TX, a truck driver forced several motorists off the highway, killing a woman. After shooting a police officer, he tried to run the officer down with his tractor trailer. The police on the scene said the driver was on drugs. There was a similar tragedy in December of 1988. The driver of a tractor trailer rig went on an 80-mile long rampage down Interstate 10 and through rush hour traffic in San Antonio. During this rampage, the huge truck crashed into more than 20 other vehicles and seriously injured 2 people. When the driver was arrested, he did not seem to know that he had done anything wrong. Police later found cocaine in the cab of the truck

and filed drug charges against the driver.

We must stop these tragedies. Since truck stops are the most common places for drug sales to commercial drivers, our bill doubles the penalty level for persons convicted of distributing drugs within 1,000 feet of a truck stop. This provision is modeled after a provision in the Omnibus Drug Initiative Act of 1988, which establishes drug-free zones around our Nation's schools. Drug-free school zones protect our children from drug dealers by doubling penalties for pushers who sell drugs near schools or playgrounds. By establishing similar zones around our Nation's truck stops, we can reduce the supply of drugs to truck drivers. This provision has already passed the Senate as part of the Motor Carrier Safety Act of 1990. I hope that it will become law this year.

This legislation contains a number of other provisions that will enable trucks and buses to operate more safely. Our bill requires DOT to conduct a rulemaking on whether brake performance improvements, such as antilock braking systems and better brake compatibility, are needed. In March 1987, DOT completed a congressionally ordered study, which determined that poor brake performance contributed to one-third of all truck accidents. Since that time, both the National Transportation Safety Board and OTA have concluded truck safety studies that find brake performance a leading factor in truck accidents.

In the mid-1970's DOT wrote a rule requiring antilock brakes which were primitive in design. Because these brakes had mechanical problems, the DOT rule was struck down by the courts. Over the past decade, a new generation of successful antilock brakes has emerged. These brakes are widely used in Europe and will be required on all European Economic Community registered commercial vehicles this fall. Moreover, there is already a large stopping distance differential between cars and large trucks and buses, which is being exacerbated because many cars are being equipped with antilock brakes. With these technology advances in antilock brakes and the documented safety problem posed by current truck braking systems, the time has come for a DOT rulemaking on whether to require brake performance improvements.

Finally, this measure requires DOT to establish penalties for those who continue to operate trucks and buses placed out of service for safety infractions, and to develop guidelines for ensuring that State intrastate motor carrier rules are consistent with Federal interstate motor carrier safety regulations.

I urge all my colleagues to support this important truck and bus safety legislation.●

HONORING JASON YUAN

● Mr. KASTEN. Mr. President, I rise today to honor a very good friend who recently received an important promotion.

For 11 years, Jason Yuan has been the chief congressional liaison for the Republic of China. He has nurtured the steady improvement of United States-Taiwanese relations, and has been a truly indispensable diplomatic resource.

The Republic of Taiwan has seen fit to recognize Mr. Yuan's years of achievement with a significant promotion. Mr. Yuan will soon be serving as Assistant Secretary of State in charge of North American Affairs in the Republic of China's Ministry of Foreign Affairs.

I hope all my colleagues will join me in congratulating Mr. Yuan. We will all miss him.●

MODIFICATIONS TO SENATE RESOLUTION 76

Mr. BROWN. Mr. President, on March 7, 1991, when amendment No. 27 to S. 419 was sent to the desk as a freestanding resolution (S. Res. 76) certain modifications that had been agreed to upon request by Senator PELL were inadvertently not included. Therefore, I ask unanimous consent that Senate Resolution 76 be modified and reflect the following changes which are sent to the desk.

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

NOMINATION OF A. LAMAR ALEXANDER

Mr. NUNN. Mr. President, as if in executive session, I ask unanimous consent that when the Senate proceeds to the nomination of A. Lamar Alexander, to be Secretary of Education, there be 2 hours of debate equally divided between the chairman and ranking member of the Committee on Labor and Human Resources or their designees; that at the conclusion or yielding back of time, the Senate proceed without any intervening action to vote on the nomination; that the motion to reconsider be tabled; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

Mr. NUNN. Mr. President, I ask unanimous consent it be in order to request the yeas and nays at this time.

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

Mr. NUNN. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE CALENDAR

Mr. NUNN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of Calendar Nos. 23, 24, 29, and 35; that the bills be deemed read a third time and passed; that the resolutions be agreed to; that the motions to reconsider the passage of these items be laid upon the table en bloc; and that the preamble, where appropriate, be agreed to.

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

Mr. NUNN. Mr. President, I further ask unanimous consent that any statement relating to these calendar items appear at the appropriate place in the RECORD and that the consideration of these items appear individually in the RECORD.

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

The measures agreed to and deemed read a third time and passed are as follows:

ALBERT EINSTEIN CONGRESSIONAL FELLOWSHIP PROGRAM

The concurrent resolution (S. Con. Res. 11) to establish an Albert Einstein Congressional Fellowship Program, was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 11

Whereas a need exists to facilitate understanding, communication, and cooperation between Congress and the science education community;

Whereas the science education community includes a cadre of nationally recognized outstanding secondary school science and mathematics teachers; and

Whereas secondary school science and mathematics teachers can provide insight into education programs that work effectively. Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. FELLOWSHIP PROGRAM.

(a) IN GENERAL.—The Speaker of the House of Representatives and the President pro tempore of the Senate are authorized to enter into an agreement with the Triangle Coalition for Science and Technology Education to establish an Albert Einstein Congressional Fellowship Program (referred to in this concurrent resolution as the "fellowship program"), which provides for each fiscal year, beginning with fiscal year 1991, two fellowships within the House of Representatives (referred to in this concurrent resolution as the "House fellowships") and two fellowships within the Senate (referred to in this concurrent resolution as the "Senate fellowships").

(b) RESPONSIBILITIES.—The Speaker of the House of Representatives and the President pro tempore of the Senate may enter into the agreement described in subsection (a), and fund fellowships as specified in section 4(a), only if the Triangle Coalition for Science and Technology Education—

(1) undertakes the application responsibilities referred to in section 2(a);

(2) participates in the evaluation referred to in section 3; and

(3) provides the funding for administration and evaluation costs referred to in section 4(b).

SEC. 2. SELECTION PROCESS.

(a) APPLICATION.—The Triangle Coalition for Science and Technology Education shall—

(1) publicize the fellowship program;

(2) develop and administer an application process; and

(3) conduct an initial screening of applicants for the fellowship program.

(b) SELECTION.—

(1) HOUSE FELLOWSHIPS.—The Speaker and the Minority Leader of the House of Representatives, in consultation with the chairmen and ranking minority party members of the Committee on Education and Labor of the House of Representatives and the Committee on Science, Space, and Technology of the House of Representatives, shall each select one of the recipients of the House fellowships.

(2) SENATE FELLOWSHIPS.—The President pro tempore and the Minority Leader of the Senate, in consultation with the chairmen and ranking minority party members of the Committee on Labor and Human Resources of the Senate and the Committee on Commerce, Science, and Transportation of the Senate, shall each select one of the recipients of the Senate fellowships.

(c) PLACEMENT OF FELLOWSHIPS.—

(1) HOUSE FELLOWSHIPS.—The Speaker of the House of Representatives, in consultation with the Members referred to in subsection (b)(1), may place one fellowship recipient on the staff of the Committee on Education and Labor of the House of Representatives, and one recipient on the staff of the Committee on Science, Space, and Technology of the House of Representatives. Either or both of these recipients may instead serve on the personal staff of a member of the House of Representatives.

(2) SENATE FELLOWSHIPS.—The President pro tempore of the Senate, in consultation with the Members referred to in subsection (b)(2), may place one fellowship recipient on the staff of the Committee on Labor and Human Resources, and one recipient on the staff of the Committee on Commerce, Science, and Transportation. Either or both of these recipients may instead serve on the personal staff of a member of the Senate.

(d) ELIGIBLE RECIPIENTS.—Recipients shall be selected from a pool of nationally recognized outstanding secondary school science and mathematics teachers. The pool shall include teachers who have received Presidential Awards for Excellence in Science and Mathematics Teaching, as established by section 117(a) of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1881b), or other similar recognition of skills, experience, and ability as science or mathematics teachers.

(c) COMPENSATION.—

(1) HOUSE FELLOWSHIPS.—The Speaker of the House of Representatives shall fix the compensation of each recipient of a House fellowship.

(2) SENATE FELLOWSHIPS.—The President pro tempore of the Senate shall fix the compensation of each recipient of a Senate fellowship.

(f) LENGTH OF TERM.—Each fellowship recipient shall serve for a period of up to 1 year.

SEC. 3. EVALUATION.

The Chairman of each committee referred to in section 2(b) and the Executive Director of the Triangle Coalition for Science and Technology Education shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, as appropriate, an annual report evaluating the fellowship program, and shall make recommendations concerning the continuation of the program.

SEC. 4. FUNDING.

(a) FELLOWSHIPS.—

(1) HOUSE FELLOWSHIPS.—For fiscal years 1991 and 1992, the funds necessary to provide any House fellowships shall be paid from the contingent fund of the House of Representatives, but not to exceed a total of $40,000 in fiscal year 1991 and $42,500 in fiscal year 1992 for the House fellowships.

(2) SENATE FELLOWSHIPS.—For fiscal years 1991 and 1992, the funds necessary to provide any Senate fellowships shall be paid from the contingent fund of the Senate, but not to exceed a total of $40,000 in fiscal year 1991 and $42,500 in fiscal year 1992 for the Senate fellowships.

(b) ADMINISTRATION AND EVALUATION.—The Triangle Coalition for Science and Technology Education shall provide the funds necessary for the administration of the fellowship program and for the evaluation referred to in section 3.

PRINTING OF A COLLECTION OF THE RULES OF THE COMMITTEES OF THE SENATE

The resolution (S. Res. 58) to authorize the printing of a collection of the committees of the Senate, was considered and agreed to, as follows:

S. RES. 58

Resolved, That a collection of the rules of the committees of the Senate, together with related materials, be printed as a Senate document, and that there be printed 600 additional copies of such document for the use of the Committee on Rules and Administration.

FOREIGN RELATIONS PERSIAN GULF CONFLICT EMERGENCY SUPPLEMENTAL AUTHORIZATION ACT, FISCAL YEAR 1991

The bill (H.R. 1176) to provide authorizations for supplemental appropriations for fiscal year 1991 for the Department of State and the Agency for International Development for certain emergency costs associated with the Persian Gulf conflict, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

EMERGENCY SUPPLEMENTAL ASSISTANCE FOR ISRAEL ACT OF 1991

The bill (H.R. 1284) to authorize emergency supplemental assistance for Israel for additional costs incurred as a result of the Persian Gulf conflict, was considered, ordered to a third reading, read the third time, and passed.

CLARIFICATION OF EMERGENCY DESIGNATION

Mr. DOMENICI. Mr. President, in the interest of expediting the authorizing process and protecting the 1990 Budget Enforcement Act, I would like to engage in a brief exchange with the chairman and ranking Republican member of the Foreign Relations Committee.

Mr. PELL. I understand the concern of the Senator from New Mexico, and I believe that we can reach an accommodation.

Mr. HELMS. I, too, am concerned that we make clear that the language in this bill in no way seeks to alter, amend or interpret the 1990 Budget Enforcement Act.

Mr. PELL. The factual situation in this case is that on March 7, the President asked the Congress for a dire emergency supplemental appropriation for fiscal year 1991. In his letter to the Speaker of the House of Representatives, the President stated that "Pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, I am hereby designating this supplemental request, in the amount specified, as an emergency requirement." The bill before the Senate would authorize the appropriation requested by the President and would have the Congress join the President in designating this specific authorization of an appropriation as meeting an emergency requirement. Nothing more or less is intended, and I ask unanimous consent that the correspondence from the President to which I referred be printed at this point in the RECORD.

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

THE WHITE HOUSE,
Washington, March 7, 1991.

The Speaker of the House of Representatives.

SIR: I ask Congress to consider a request for a dire emergency supplemental appropriation for FY 1991 in the amount of $650,000,000 for International Security Assistance. Pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, I am hereby designating this supplemental request, in the amount specified, as an emergency requirement.

The details of this request are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Sincerely yours,

GEORGE BUSH.

Mr. DOMENICI. Would the managers of the bill agree that the language in this bill stating that the funds authorized be "designated emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985" is intended solely to indicate congressional concurrence with the emergency designation communicated to the Congress in the President's letter of March 7?

Mr. PELL. With regard to this specific authorization, the Senator is correct. However, the sequence of congressional and Presidential designation of an emergency is not at issue here. Indeed, Members of Congress were the first to urge emergency aid for Israel

to offset part of the cost that the State of Israel incurred during the recent war in the Persian Gulf.

Mr. HELMS. I concur.

SUPPLEMENTAL STATE DEPARTMENT AND AID AUTHORIZATION

Mr. PELL. Mr. President, I appreciate the cooperation of the majority leader in scheduling so quickly the two supplemental authorization bills the companions of which the Committee on Foreign Relations ordered reported on Thursday, March 7. Action on these bills today will provide the necessary authorization for appropriations to be considered this week in the Senate Appropriations Committee.

Both of the bills are related to Operations Desert Shield and Desert Storm. The first provides $19.3 million in additional authorization to cover emergency costs incurred by the Department of State and the Agency for International Development. The second authorizes $650 million in additional assistance to Israel to compensate that country for losses suffered in connection with the Persian Gulf conflict. Both bills authorize in full the requests made by the administration, and I urge my colleagues to support both bills.

THE EMERGENCY ISRAEL AID PROPOSAL

Mr. HELMS. Mr. President, I have always opposed foreign aid, and I am obliged to vote "no" on the Israel aid package. The American people simply do not understand why billions of their hard-earned money has been transferred to other countries with so little to show for it.

At the same time, there are indeed situations when it seems that foreign aid would solve a problem, or help an ally. Israel is one of these hard cases. It is particularly a hard case right now, when Israel has not only suffered direct blows, but has had a high level of military expense in calling up its reserves and keeping its troops on 24-hour alert for an extended period of time. Moreover, Israel's cooperation with the strategy and tactics of General Schwarzkopf and the coalition forces has demonstrated Israel's deep commitment to partnership with the United States.

But in the long run, Israel must realize the United States foreign aid is a two-edged sword. United States aid has become a line-item in the Israeli budget. Every dollar we give makes it more and more difficult for Israel to normalize its economy. Every dollar we give is a link in an iron chain that makes Israel so dependent upon the whims of the United States State Department that Israel's independence of action, its very freedom to pursue its most vital long-term interests is threatened.

Even now, it is clear that the policy being proposed for peace in the region is a policy that Israel has long identified as a threat to its survival. Nothing has changed since the gulf war to suggest that the surrender of actual territories for alleged peace will guarantee Israel's survival.

Indeed, the gulf war demonstrates the opposite. Saddam Hussein imposed his own kind of peace on Kuwait on August 2. Yet the United States believed, up to and including August 1, that Kuwait was secure.

Israel had enough difficulty defending itself against missiles launched from a distance of 200 miles. Can you imagine the problem if the missiles had been launched from the mountaintops of a PLO state 10 or 15 miles from Tel Aviv?

Moreover, the recent subjugation of the Christian community in Lebanon, and the installation of a Syrian-controlled puppet government, with the acquiescence of the United States State Department, is an example that Israel must examine with care.

Finally, Israel has already given up 90 percent of the territories that it occupied during the 6-day war, and substantially complied with U.N. Resolution 242, yet it has had little experience of peace.

The massive levels of United States foreign aid that Israel has accepted in the past, and is seeking at the present moment, could well create an unhealthy leverage against Israel in the forthcoming talks, and make it difficult, or impossible, for Israel to choose freely about its future.

I am under no illusion that the present bill will fail. And even if it does, the appropriation committees have already declared their willingness to provide the funds without an authorization. Nevertheless, as a friend of Israel, I vote "no" because I believe that a no-vote is in the best interests of Israel in the long run.

MEASURES INDEFINITELY POSTPONED

Mr. NUNN. Mr. President, I ask unanimous consent that Calendar Nos. 31 and 32 be indefinitely postponed.

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

AUTHORIZING TESTIMONY OF EMPLOYEE OF THE SENATE

Mr. NUNN. Mr President, on behalf of the majority leader, and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution on authorization of testimony by a Senate employee and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 80) to authorize testimony by a Senate employee in the case of Tennessee vs. Hutchinson, No. 9100652MMACI (General Sessions Court of Knox County) and related cases.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, on January 14, 1991, a number of demonstrators were arrested at Senator GORE's Knoxville, TN, office after they refused to leave when the office was closed at the end of the day. The State of Tennessee has brought trespass charges against these individuals.

Keith Hill, Senator GORE's field representative in his Knoxville office, has been subpoenaed by the State of Tennessee to testify at the trials for trespass. The following resolution would authorize him, and any other employee in Senator GORE's office who may be asked, to testify, except concerning matters for which a privilege should be asserted.

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

The resolution (S. Res. 80) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 80

Whereas, in the case of Tennessee v. Ralph Hutchinson, No. 9100652MMACI, and related cases, pending in the General Sessions Court of Knox County in the State of Tennessee, Keith Hill, an employee in Senator Gore's Knoxville office, has been subpoened by the state of Tennessee to testify at trial;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony by a Senate employee may be needed in any court for the promotion of justice, the Senate will act to promote the ends of justice in a manner consistent with the privileges and rights of the Senate: Now, therefore be it

Resolved, That Keith Hill, and any other employee in Senator Gore's office who may be asked, is authorized to testify in the case of Tennessee v. Hutchinson, and related cases, except concerning matters for which a privilege should be asserted.

Mr. NUNN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ORDERS FOR TOMORROW

Mr. NUNN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45 a.m., March 14; that following the prayer, the Journal of the proceedings be approved to date; that the time for the leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 10:15

a.m., with Senators permitted to speak therein; that the time between 9:45 and 10 o'clock be under the control of the Republican leader or his designee, and from 10 a.m. until 10:15 a.m. Senators be permitted to speak for up to 5 minutes each.

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

RECESS UNTIL TOMORROW AT 9:45 A.M.

Mr. NUNN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order until 9:45 a.m., Thursday, March 14, 1991.

There being no objection, the Senate, at 7:35 p.m., recessed until Thursday, March 14, 1991, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate March 13, 1991:

U.S. INTERNATIONAL TRADE COMMISSION

JAMES A. NUZUM, OF VIRGINIA, TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 16, 1996, VICE RONALD A. CASS, RESIGNED.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RAOUL LORD CARROLL, OF THE DISTRICT OF COLUMBIA, TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, VICE ARTHUR J. HILL, RESIGNED.

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