Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 102d CONGRESS, SECOND SESSION

SENATE—*Tuesday, September 8, 1992*

The Senate met at 9 a.m. and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

PRAYER

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

Let us pray:

And we know that all things work together for good to them that love God, to them who are the called according to his purpose.—Romans 8:28.

Sovereign Lord of history, Ruler of the nations, this is a remarkable prospect that You make everything work together for good, and we pray that that will be a reality here and now. The Senate faces an impossible task these next 6 weeks: 24 legislative days, 17 for appropriations. You are the God of the macrocosm and of the microcosm. Whether it is a nation rising or a sparrow falling to the ground, You know.

Gracious, all powerful God of love, the Senate goes to work with imponderable crises in the world—Eastern Europe, the Middle East—not to mention unprecedented devastation in Florida and Louisiana. Grant wisdom, discernment, and strength to the Senators and committee staffs, that these next weeks will be the most satisfying, productive of any in their memory. Overrule any unworthy agenda which would frustrate such an achievement.

In the name of the Lord of heaven and earth we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 8, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

THE JOURNAL

Mr. MITCHELL. Mr. President, am I correct in stating that the Journal of Proceedings has been approved to date?

The ACTING PRESIDENT pro tempore. The Senator is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, following the time reserved for the two leaders, there will be a period for morning business extending until 9:30 a.m., with Senators permitted to speak therein for up to 5 minutes each.

When morning business closes at 9:30, under a previous unanimous consent agreement, I am to be recognized to move to proceed to S. 640, the product liability legislation.

Once that motion is made, the Senate will, also by previous order, go into executive session for 3 hours to consider the nomination of Edward Carnes.

Consideration of the Carnes nomination will resume at 9 a.m. tomorrow.

The Senate will then stand in recess today from 12:30 p.m. until 2:15 p.m., in order to accommodate the respective party conferences. Upon reconvening, the Senate will then return to the consideration of the motion to proceed to S. 640, the product liability bill.

I anticipate that debate on that motion will continue for about 2 hours, at the end of which time a cloture motion will be filed on the motion to proceed. That cloture vote would occur on Thursday under the rules, unless otherwise specified by unanimous consent.

It is my intention today, once debate has concluded on the motion to proceed to S. 640, to then have the Senate proceed to H.R. 5679, the VA-HUD appropriations bill. Just prior to the Senate's adjournment for the August recess, a unanimous-consent agreement was reached regarding the handling of this appropriations bill. The details of that agreement can be found on page 3 of the Senate Legislative Calendar.

Mr. President, as has been my practice since becoming majority leader, I have tried to provide my colleagues with as much notice as possible regarding the Senate schedule. As I indicated in August, there are a number of important measures we must complete action on prior to final adjournment this year. And I will, in a moment, make a more detailed statement regarding such measures.

Just prior to the adjournment, I said that for the remainder of this year, in order for the Senate to complete action on these important matters, it may be necessary for the Senate to be in session on any of the Saturdays prior to adjournment, with a possibility of rollcall votes occurring at any time when the Senate is in session—Monday through Saturday—with the only exception being Monday, September 28, when there will be no rollcall votes in observance of a religious holiday.

Each of my colleagues should have by now received a copy of my letter to them of August 12 outlining the Senate schedule. I now ask unanimous consent that that letter be printed in the RECORD.

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

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, August 12, 1992.

DEAR COLLEAGUE: I am writing to advise you of the voting schedule from Tuesday, September 8, until *sine die* adjournment of this Congress, which I hope will occur on Saturday, October 3.

In order to achieve an early October adjournment date, it will be necessary to continue the current voting schedule. Rollcall votes may occur at any time that the Senate is in session. *This includes Mondays through Fridays and the possibility of Saturday sessions throughout September. This includes procedural votes to ensure the attendance of Senators. All Senators are hereby placed on notice of the pos-*

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

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sibility of votes, at any time the Senate is in session.

The only exception to this announced schedule will be on Monday, September 28. There will be no rollcall votes on that day due to the observance of Rosh Hashana.

In order to achieve *sine die* adjournment by early October, it will be necessary to have long session days, with rollcall votes, throughout the final legislative period. However, with cooperation on the part of all Senators, it is possible to complete the necessary legislative business and adjourn by early October.

Sincerely,

GEORGE J. MITCHELL.

Mr. MITCHELL. Mr. President, therefore, each Senator has received a month's notice on the Senate schedule for the remainder of the year, and I hope I will be able to count upon the cooperation of my colleagues to complete action on the necessary legislation this year.

LEGISLATIVE AGENDA FOR FALL SESSION OF 102D CONGRESS

Mr. MITCHELL. Mr. President, we face a very substantial workload, and limited time within which to accomplish it, if we are to complete our work properly and adjourn the 102d Congress as planned.

Three primary issues face the Nation today, one being essential action in the aftermath of two national emergencies: The devastation of southern Florida and Louisiana by Hurricane Andrew, and the rebuilding of south-central Los Angeles.

Also, prompt action on economic growth. Throughout the summer, the economic news has not been good. Unemployment fell by a scant one-tenth of 1 percent, to 7.6 percent in August, not because of new permanent jobs, but because of an increase in temporary summer jobs. In fact, there was a substantial loss of permanent jobs.

Meantime, durable goods orders fell 3.4 percent in July. The second quarter merchandise trade deficit rose 42 percent over the first quarter. New home sales fell 2.6 percent in July, despite low-mortgage rates and falling prices. And the July index of leading economic indicators rose one-tenth of 1 percent, not enough to offset the decline of the previous month.

In all, it is clear that the economy is stagnant. Meantime, the poverty rate has reached its highest level in almost 10 years. More than 10 percent of Americans today receive food stamp assistance. More than 14 percent cannot earn enough income to lift themselves above the poverty level. Median income continues to fall. Since 1989, median income for working people has fallen by more than 5 percent. Households which in 1991 earned the median income—$31,203—last year saw their real income fall by over $1,000 to $30,126.

All three of these factors demand our attention: Disaster relief, economic growth, and the plight of working families.

That will be the agenda for the closing session of the 102d Congress. The President's generous and appropriate commitment of Federal help to the people of southern Florida and Louisiana will have the support of the Senate. People who have seen the savings of a lifetime devastated by a natural disaster need to know they can count on help to rebuild and start over.

The devastation of businesses and lives in south-central Los Angeles and the needs of our inner cities across the country also deserve prompt and responsive action.

The urban aid and tax package remains unfinished. I hope we can conclude action on that essential legislation promptly. Economic growth is essential. The urban aid tax package is a modest step in the right direction. It deserves to be approved.

We must also complete work on the defense authorization bill. Defense conversion programs in that legislation are important to the future of military service men and women who will face separation from the services, to the communities hard hit by reductions in defense contracts, and to the national economy.

A long awaited and essential energy bill is headed to conference. We need a comprehensive energy policy which encourages increased energy efficiency and proper use of domestic resources. Energy efficiency is one key to raising productivity, a vital factor in raising living standards. So long as our competitors use half the energy to produce products and services as we do, we suffer a competitive disadvantage.

The energy bill alone will not reverse this situation overnight, but it is an important first step in the right direction.

A growing economy will improve the well-being and security of working Americans and their families. Economic expansion, productivity improvement, new jobs, and a growing civilian economy are what working people need today.

The housing reauthorization bill is important to the long-term economic security of working families. Moderate- and low-income housing are essential. Housing sales last year were the lowest since World War II. Despite record low mortgage rates, millions of working families still cannot commit themselves to the long-range goal of home ownership. They are uneasy about their jobs, they know that their incomes are not rising. And the Census Bureau reports that families below the poverty level often must spend more than half their small incomes for shelter.

New home prices are down but so are new homes sales: Too many first-time and moderate-income workers do not have the job security or the income to provide one of the fundamentals of the American dream—their own home. The housing legislation is a step toward changing that.

I hope we will soon take up the conference report on the cable TV bill. It is important consumer legislation. In too many cities and communities around the Nation, cable operators have no meaningful competition. Consumers, accordingly, have no choice but to pay the rates demanded. That is a classic monopoly situation that should be corrected. The cable television bill will correct it.

The Senate passed the family leave legislation. The House will approve it soon. It will provide more practical help for working families in today's work environment than any number of speeches about family values. Why should American workers, alone among all advanced nations, have to fear for their jobs if they decide to have a new baby, or if an elderly parent falls ill? There is no good reason for it. This bill is modest; it provides only unpaid leave; it exempts small business. I hope it will soon become law.

We are moving forward on the elementary and secondary education legislation. The good news is that SAT scores nationally rose 1 point on the verbal score and recovered 2 lost points on the math score. Now is the time to build on that modest gain. The bill before the Congress provides for reform and makes resources for reform available to all schools and all the children attending them.

Shortly before the recess, the House passed the family planning legislation, the bill that does more to deter the need for abortion services than any other. The bill repeals the notorious gag rule, which interferes with the doctor-patient relationship and creates two classes of health care for American women: first-class, fully informed care for the privately insured, and second-class care for the poor women.

The Senate will act on this measure soon. It is a commonsense and important piece of legislation that deserves wide support. I hope it will have broad, bipartisan support in the Senate.

If the House acts on the Freedom of Choice Act, the Senate will take up that legislation as well. The issue presented by the bill is who shall make the choice for American women: Government or women themselves? I believe a majority of the Senate supports the right of women to choose.

We must also make every effort to move forward with meaningful health care legislation that focuses on controlling soaring health care costs to American families. The Census Bureau's report on poverty showed that those below the poverty level are twice as likely as others to have no private health insurance. The costs to the society of curing preventable conditions is soaring, and those costs are helping drive up insurance rates for all Americans.

There is no single factor in our fiscal policy or in our social environment that is more important than the con-

trol of health care costs. That will remain a primary agenda item until it is resolved.

The Senate will also attempt an override vote on the Motor Voter Act, a modest bill to ease voter registration which was, regrettably, vetoed. The bill deserves enactment. The experience of States with simplified registration has shown that it does not encourage voter fraud, but it does encourage turnout. The motor-voter bill is intended to make civic duty more compatible with everyday modern life and it deserves to become law.

I also hope we will be able to act on the Older Americans Act before adjournment. This is necessary legislation for our senior citizens.

In addition, we face the vital task of completing action on the appropriations bills.

Appropriations bills are on track for final action by the beginning of the fiscal year, October 1. The House has completed action on all 13 appropriations. The Senate has finished seven of them; one has already been signed into law.

So far in the appropriations process, the House has approved spending that is $12.5 billion less than the President requested. We will conclude these bills promptly. In addition, Congress acted swiftly on the President's request for spending rescissions. In fact, Congress went beyond his request and reduced spending by $8.2 billion.

I hope other legislation can be passed without further delay. Final action on the crime bill remains possible. The bill includes tougher sentences for drug and gun crimes and $3 billion in essential local aid for law enforcement. A majority of Americans agrees that personal safety remains one of the most important elements of a civil society. This bill, which has passed the House, deserves to be passed in the Senate.

We will be voting on product liability reform and judicial nominees. The Equal Remedies Act remains ready for action on the calendar. An assortment of other environmental, copyright, and other legislation may be cleared for action. We may be sure there will be no shortage of legislative work to be done. I hope we are prepared to move on it promptly. I look forward to a busy and productive legislative session.

DEATH OF SENATOR QUENTIN N. BURDICK

Mr. MITCHELL. Mr. President, I have just received very sad news for the Senate and for our country. At 3:05 a.m. this morning in Fargo, ND, Senator QUENTIN BURDICK died.

Senator BURDICK was born on June 19, 1908. He entered the Senate on August 8, 1960, more than 32 years ago. He served as chairman of the Environment and Public Works Committee, a committee on which I was honored to serve under his chairmanship. He served as chairman of the Subcommittee for Agricultural Appropriations; he was a member of the Special Committee on Aging, a member of the Select Committee on Indian Affairs, a cofounder of the Rural Health Caucus.

All of these are impressive public accomplishments, but they do not begin to tell the story of Senator BURDICK's immense contribution to the Senate and to our Nation. He was proud of his father's previous public career and had spoken often of his early days in public office. Those of us who knew him well, who worked with him, who laughed with him, will recall his descriptions of his early campaigns in North Dakota, will recall his struggles to represent the people of his State aggressively and effectively as he did for so many years. He was a beloved figure in the Senate, respected, I think it fair to say, by every Member of the Senate, regardless of political party or region of the country. His accomplishments are many; his integrity, unimpeachable; his character, high. He worked very hard right until the end.

I know that he will be sorely missed by every person in the Senate.

Senator BURDICK was married to Jocelyn Birch Peterson on July 7, 1960, just before he entered the Senate. He and Mrs. Burdick were neighbors of mine, friends of mine. He will be sorely missed.

In behalf of every Member of the Senate, I extend my sympathy and condolences to Mrs. Burdick.

EMPLOYEE RETIREMENT INCOME SECURITY ACT AMENDMENTS

The ACTING PRESIDENT pro tempore. Pursuant to rule XIV, the clerk will read the bill, H.R. 2782, for the second time.

The legislative clerk read as follows:

A bill (H.R. 2782) to amend the Employee Retirement Income Security Act of 1974 to provide that such act does not preempt certain State laws.

The ACTING PRESIDENT pro tempore. Is there objection to the further consideration of the bill at this time?

Mr. MITCHELL. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the Senate Calendar pursuant to rule XIV.

STATEMENT OF SENATOR SASSER UNDER SECTION 9 OF THE CURRENT RESOLUTION ON THE BUDGET

Mr. SASSER. Mr. President, I hereby submit further revised budget authority and outlay allocations to the Senate Committee on Finance and aggregates under section 9 of the concurrent resolution on the budget, House Concurrent Resolution 287, in connection with H.R. 11, the Revenue Act of 1992.

Section 9 (a) and (b) of the budget resolution states:

SEC. 9. DEFICIT-NEUTRAL RESERVE FUND IN THE SENATE FOR FAMILY AND ECONOMIC SECURITY INITIATIVES IN ACCORDANCE WITH PROVISIONS OF THE SUMMIT AGREEMENT.

(a) INITIATIVES TO IMPROVE THE HEALTH AND NUTRITION OF CHILDREN AND TO PROVIDE FOR SERVICES TO PROTECT CHILDREN AND STRENGTHEN FAMILIES.—

(1) IN GENERAL.—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding to improve the health and nutrition of children and to provide for services to protect children and strengthen families within such a committee's jurisdiction if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously passed deficit reduction) in this resolution for fiscal year 1993, and will not increase the total deficit for the period of fiscal years 1993 through 1997.

(2) REVISED ALLOCATIONS.—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) of the Congressional Budget Act of 1974 and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) REPORTING REVISED ALLOCATIONS.—The appropriate committee may report appropriately revised allocations pursuant to sections 302(b) and 602(b) of the Congressional Budget Act of 1974 to carry out this subsection.

(b) ECONOMIC GROWTH INITIATIVES.—

(1) IN GENERAL.—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding for economic recovery or growth initiatives, including unemployment compensation or other related programs within such a committee's jurisdiction if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously passed deficit reduction) in this resolution for fiscal year 1993, and will not increase the total deficit for the period of fiscal years 1993 through 1997.

(2) REVISED ALLOCATIONS.—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) of the Congressional Budget Act of 1974 and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) REPORTING REVISED ALLOCATIONS.—The appropriate committee may report appropriately revised allocations pursuant to section 302(b) and 602(b) of the Congressional Budget Act of 1974 to carry out this subsection.

The Committee on Finance reported H.R. 11, the Revenue Act of 1992, with a committee amendment that it modified on August 11, 1992. The modification appears on pages 22809 through 22810 of the CONGRESSIONAL RECORD for August 11. As reported and modified, H.R. 11 includes, among other things, several provisions that would strengthen foster care, adoption, and child welfare services, would make improvements to the Aid to Families With Dependent Children Program, better known as AFDC, would provide comprehensive substance services to pregnant women, and would modify the earned income tax credit, which benefits families. In the words of section 9(a) of the budget resolution, these provisions would increase "funding to improve the health and nutrition of children and to provide for services to protect children and strengthen families."

As reported and modified by the Finance Committee, H.R. 11 also includes provisions that would temporarily increase matching rates for job opportunities and training programs, would provide for employment demonstration programs, and would expand a targeted jobs wage credit. In the words of section 9(b) of the budget resolution, these provisions would increase "funding for economic recovery or growth initiatives."

H.R. 11, as reported and modified by the Finance Committee, also meets the other requirement of section 9 (a) and (b) of the budget resolution that—

To the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously passed deficit reduction) in this resolution for fiscal year 1993, and will not increase the total deficit for the period of fiscal years 1993 through 1997.

H.R. 11, as reported and modified, complies with the conditions set forth in the budget resolution, under the authority of section 9 (a)(2) and (b)(2) of the budget resolution, it is therefore appropriate that I file with the Senate appropriately revised budget authority and outlay allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection.

Note that I have twice submitted similar revisions this summer in connection with the Comprehensive National Energy Policy Act, H.R. 776. Those statements appear on pages 20076 through 20078 of the CONGRESSIONAL RECORD for July 29, 1992, and page 21020 of the CONGRESSIONAL RECORD for August 3, 1992. Even though the Senate passed the Comprehensive National Energy Policy Act on Thursday, July 30, 1992, Congress has not yet completed action on it. Consequently, in keeping with precedent, the Budget Committee has not yet added the Comprehensive National Energy Policy Act into its estimate of the current level of budget authority, outlays and revenues.

The filing that I make today displays revised allocations and aggregates in two ways: with the estimates of the Comprehensive National Energy Policy Act excluded and included. Consistent with the precedent of excluding legislation from the current level of spending and revenues until Congress has completed action, the Budget Committee will compare its estimate of the current level of spending and revenues to the revised allocations and aggregates that exclude the revisions associated with the Comprehensive National Energy Policy Act until Congress completes action on that act. The allocations and aggregates excluding the Comprehensive National Energy Policy Act will govern until Congress submits it to the President. The allocations and aggregates including that act will govern if and when Congress enacts both the Comprehensive National Energy Policy Act and the Revenue Act of 1992 in their current form.

e, further, that at the beginning of consideration of the Revenue Act of 1992, I filed revised allocations and aggregates in connection with that act as it was originally reported. That statement appears at pages 22815 through 22817 of the CONGRESSIONAL RECORD for August 11, 1992. The allocations and aggregates that I now file supersede those allocations and aggregates.

With this explanation, I hereby file with the Senate appropriately revised budget authority and outlay allocations under sections 302(a) and 602(a) and revised functional levels and aggregates in connection with H.R. 11.

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

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SEC. 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993—ASSUMING ENACTMENT OF H.R. 11 AS MODIFIED

[In millions of dollars]

	1993	1993–97
Spending allocations and revenue totals:		
Resolution revenue total	848,672	4,817,372
Reserve fund change—H.R. 11 as modified	438	3,077
Revised revenue total	849,110	4,820,449
Finance Committee budget authority allocations	517,888	3,012,184
Reserve fund change—H.R. 11 as modified	402	2,975
Revised Finance Committee budget authority allocations	518,290	3,015,159
Finance Committee outlay allocations	515,512	2,998,421
Reserve fund change—H.R. 11 as modified	438	3,077
Revised Finance Committee outlay allocations	515,950	3,001,498

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SEC. 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993—ASSUMING ENACTMENT OF H.R. 11 AS MODIFIED

[In millions of dollars]

	1993	1993–97
Spending allocations and revenue totals:		
Resolution revenue total	848,672	4,817,372
Reserve fund change—H.R. 776	218	1,247
Reserve fund change—H.R. 11 as modified	438	3,077
Revised revenue totals	849,328	4,821,696
Finance Committee budget authority allocations	517,888	3,012,184
Reserve fund change—H.R. 776	218	1,247
Reserve fund change—H.R. 11 as modified	402	2,975
Revised Finance Committee budget authority allocations	518,508	3,016,406
Finance Committee outlay allocations	515,512	2,998,421
Reserve fund change—H.R. 776	218	1,247
Reserve fund change—H.R. 11 as modified	438	3,077
Revised Finance Committee outlay allocations	516,168	3,002,745

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SEC. 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993—ASSUMING ENACTMENT OF H.R. 11 AS MODIFIED

[In millions of dollars]

	1993	1994	1995	1996	1997
Resolution aggregates:					
Resolution revenue aggregates	848,672	911,920	968,430	1,017,875	1,070,475
Reserve fund change—H.R. 11 as modified	438	602	641	663	733
Revised resolution revenue aggregates	849,110	912,522	969,071	1,018,538	1,071,208
Resolution budget authority total	1,249,772	1,270,020	1,309,930	1,375,175	1,468,775
Reserve fund change—H.R. 11 as modified	402	599	579	654	741

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SEC. 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993—ASSUMING ENACTMENT OF H.R. 11 AS MODIFIED—Continued

[In millions of dollars]

	1993	1994	1995	1996	1997
Revised resolution budget authority total	1,250,174	1,270,619	1,310,509	1,375,829	1,469,516
Resolution outlay total	1,242,072	1,255,720	1,258,230	1,304,975	1,416,175
Reserve fund change—H.R. 11 as modified	438	602	641	663	733
Revised resolution outlay total	1,242,510	1,256,322	1,258,871	1,305,638	1,416,908

Note.—H.R. 11.—Revenue Act of 1992.

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SEC. 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1993—ASSUMING ENACTMENT OF H.R. 11 AS MODIFIED AND H.R. 776

[In millions of dollars]

	1993	1994	1995	1996	1997
Resolution aggregates:					
Resolution revenue aggregate	848,672	911,920	968,430	1,017,875	1,070,475
Reserve fund change—H.R. 776	218	300	250	243	236
Reserve fund change—H.R. 11 as modified	438	602	641	663	733
Revised resolution revenue aggregates	849,328	912,822	969,321	1,018,781	1,071,444
Resolution budget authority total	1,249,772	1,270,020	1,309,930	1,375,175	1,468,775
Reserve fund change—H.R. 776	218	300	250	243	236
Reserve fund change-H.R. 11 as modified	402	599	579	654	741
Revised resolution budget authority total	1,250,392	1,270,919	1,310,759	1,376,072	1,469,752
Resolution outlay total	1,242,072	1,255,720	1,258,230	1,304,975	1,416,175
Reserve fund change—H.R. 776	218	300	250	243	236
Reserve fund change—H.R. 11 as modified	438	602	641	663	733
Revised resolution outlay total	1,242,728	1,256,622	1,259,121	1,305,881	1,417,144

Note.—H.R. 776—Comprehensive National Energy Policy Act of 1992, H.R. 11—Revenue Act of 1992.

QUENTIN BURDICK

Mr. THURMOND. Mr. President, just before speaking on this subject I want to express my regrets on the death of Senator BURDICK. I understand he passed away over the weekend. Senator BURDICK was a very fine gentleman and I enjoyed his friendship. He made an excellent Senator for his State.

Mrs. Thurmond and I want to express our deepest sympathy to Mrs. Burdick and all members of the Burdick family.

Later, I will be making more detailed remarks on the life of this fine man.

EULOGY FOR SENATOR BURDICK

Mr. BENTSEN. Mr. President, today the Senate mourns the passing of QUENTIN BURDICK, the distinguished son of North Dakota and one of this Chamber's most beloved Members. In the 32 years he served his State through this body, the Senate never knew a gentler spirit. I never knew a man kinder to his colleagues and more concerned and responsive to his constituents. When he spoke about the State he served so well, his affection was so strong that his listeners could scarcely believe he had been a rough-and-tumble former football player. As my friendship with him deepened, I understood that the love he had for North Dakota—and for this Chamber—was borne of his great heart. His was a competitor's heart that loved the contest, was modest in victory, and was large enough to envelop every rival after the fray was decided. Now, a great Member and a fine man represents his home in the highest chamber any of us may know. We honor his life as we grieve for its passing. And the highest tribute we pay is to remember his example as we carry on his work.

SENATOR QUENTIN N. BURDICK

Mr. BAUCUS. Mr. President, it is with great sadness that I learned this morning of the death of our esteemed colleague from North Dakota, the chairman of the Environment and Public Works Committee.

QUENTIN BURDICK set a standard for character and integrity that we would all do well to emulate. He was a man of his word. And when you shook hands with QUENTIN BURDICK on something, that was all the assurance you needed.

And let me tell you, surviving a handshake with QUENTIN was an accomplishment in itself, such was the strength of his grip.

He was fond of telling—and retelling—the story about how he once broke his arm playing high school football against a team from Wolf Point, MT. After the doctors set his arm though, it had a slight bow in it. He often showed it to visitors, and then, apparently to make the point that it did not weaken him, he would give them one of his bone crushing hand shakes.

I always valued my friendship with QUENTIN. We shared many interests, not only because our States had similar concerns, but because we had many of the same values.

He was a great defender of rural America. And at a time when show horses command more public attention, QUENTIN remained a true work horse for his constituents.

He believed in the small businessman, the farmer, the worker, the prairie populist values that are so important to the folks in North Dakota.

But to me he was more than a colleague, more than just my chairman, we was a true friend.

I particularly will miss the twinkle in his eye, his clear thinking, his sense of humor.

QUENTIN never took himself too seriously. He worked assiduously for his people in North Dakota. He did not grandstand. He had his head screwed on straight. His feet were on the ground. He was a true westerner, a true gentleman, a true man of uncommon common sense.

His passing is not only a loss to the Senate and not only a loss to North Dakota, it is a personal loss to me.

REMEMBERING QUENTIN BURDICK

Mr. DOLE. Mr. President, it was with great sadness that we learned today of the death of our friend and colleague QUENTIN BURDICK. It will be difficult to imagine a Senate without him.

QUENTIN BURDICK was one of the Senate's most respected, admired, and trusted members. His word was always his bond, and that means a lot around this place.

I had the honor of working with QUENTIN BURDICK in this body for nearly 24 years. As fellow midwesterners, we often fought shoulder to shoulder for the interests of our Nation's farmers and small-town America. As a tireless fighter for rural America, Senator BURDICK was among the first to recognize the problems of health care delivery to small towns. His commitment

led him to organize the Senate rural health caucus to tackle an issue that is absolutely crucial to our small towns and rural communities. No doubt about it, QUENTIN BURDICK always went the distance for the people of North Dakota, the Midwest, and the United States.

In the 32 years that QUENTIN BURDICK represented North Dakota in the Senate, he served on no fewer than 9 different committees, ascending to the chairmanship of the Environment Committee and the Agriculture and Rural Development Appropriations Subcommittee.

Mr. President, out of the 1,799 Americans who have served in the U.S. Senate, only 20 served longer than QUENTIN BURDICK. Being chosen to represent the people of your State six times is among the rarest tributes a public servant can ever receive.

Today, we remember this good man from Fargo, a man who never forgot his roots and the people who sent him here.

Mr. President, I know all my colleagues join me in sending our most heartfelt condolences to QUENTIN BURDICK's wife Jocelyn and to his entire family and many, many friends in the State of North Dakota.

MY BEST FRIEND IN THE SENATE

Mr. WELLSTONE. Mr. President, QUENTIN BURDICK, the Senator from North Dakota, was my best friend in the U.S. Senate. He was my best friend because he was my teacher.

Mr. President, what my father taught me toward the end of his life when he was in declining health is what you need to do is you need to slow up and take the time to talk to someone who is in failing health.

So, Mr. President, I think I was wise enough to take that time and to talk with Senator BURDICK. From Senator BURDICK I learned all about the rich history of North Dakota, from the Nonpartisan League, all the way to today.

Mr. President, QUENTIN BURDICK was an amazing human being. He would ask me, sometimes, whether I thought he should run for reelection. I never answered that question. And he would look at me and he would say, "I don't know if I should. But the thing of it is, if I don't run for reelection, I hate to give up the power." But when Senator BURDICK talked about power, he was not talking about power the way all too many people in politics talk about power today. He was not talking about self-aggrandizement. He was not talking about promoting himself. He meant, "I don't want to give up the power to do well for people in North Dakota. I don't want to give up my power to help people. I don't want to give up my power to serve people."

He did not care at all about a lot of the status. And he was the exact opposite of whatever it is to be pretentious.

Mr. President, one time I was hurrying, Friday afternoon, to catch a plane to go home. And I had a suitcase and I was rushing out in the hall in the Hart Building. Senator BURDICK's office was on the fifth floor. And he called over to me and he said, "Young man"—I always liked it when he said "young man"—he said, "Young man, where are you going?" He had a great sense of humor. And I said, "Well, Senator BURDICK, I am rushing to get home. I have to get home this weekend."

And he looked at me and he said, "You cannot go home. You have to stay here in the Senate and fight for the people."

I do not hear anybody in the U.S. Senate really talk that way anymore. But that is what Senator BURDICK believed. I think other Senators believe that. Many Senators believe that, I am sure. But this was in his heart and soul, that you are in the U.S. Senate to fight for people.

I want to say to the people of North Dakota, I really share your loss. You have lost a great Senator. You have lost just a great person. I want to send to Jocelyn and Senator BURDICK's family all my love. And I want to say to the people of Minnesota, because Senator BURDICK was well known, especially in western and northwestern Minnesota, we have lost a great Senator; a great Senator who was a voice for farmers; a great Senator who was a voice for rural people; a great Senator who was a voice for working people; a great Senator who stood for the very people that the Democratic Party should stand for. I am going to really miss him; I am going to really miss him.

QUENTIN BURDICK: A GREAT SENATOR AND A GREAT PERSON

Mr. CONRAD. Mr. President, I want to thank my colleague from Minnesota. When he talked about the passing of my colleague, Senator BURDICK, the Senator referred to him as a great Senator. QUENTIN BURDICK was also a great person.

As someone who has known him ever since I was a young boy, as someone who grew up with QUENTIN BURDICK at the family dinner table, as someone who grew up with QUENTIN BURDICK not only as a representative of our State, but as someone who was very close to my family, I regret deeply his passing. The Senate will be poorer for it, the country will be poorer for it, and my State will be poorer for it.

QUENTIN BURDICK was a lovely person. He was not only an outstanding Senator, deeply dedicated to my State, but a lovely person, as well; and we will miss him very much.

Mr. President, I rise today to review the record. Every time we headed into a campaign, QUENTIN said: Now is the time to review the record. Mr. President, perhaps this is a good time to review the record of QUENTIN BURDICK.

I know that we will hear many tributes today from my colleagues on QUENTIN BURDICK. Senators will speak of his legislative achievements, of his long list of accomplishments, of his extraordinary commitment. The friends he has known here during his long service will speak of QUENTIN BURDICK's public successes and of their private friendship and respect for him.

Like my colleagues here, I knew QUENTIN BURDICK as a public man. Mr. President, I have known him even longer than my colleagues here, and my perspective on QUENTIN BURDICK's long life of public service is I think, more personal than any other Senator's.

I have known QUENTIN BURDICK since I was a boy growing up in North Dakota. He was already a powerful political figure in our State; already a tried and tested public servant. But to me, he was a favorite guest at family dinners, where we talked long into the night about politics and ideas; where we would debate the future of our country. Many of my early memories of politics in North Dakota go back to those dinners, Mr. President. And my excitement and enthusiasm for public service was in part fostered by QUENTIN BURDICK.

QUENTIN was a tough, two-fisted fighter. Many here did not know QUENTIN in his younger days, but I did. And I tell you, there were none tougher than QUENTIN BURDICK. I can remember the person that assaulted him on the steps of the courthouse. He dispatched him with a quick punch to the solar plexus and left him stumbling down the stairs.

Mr. President, QUENTIN BURDICK stood for something. He stood for something good. He stood for a set of values that many have forgotten, and perhaps have never known.

QUENTIN BURDICK was there every minute of every day, every hour of every day, every moment, to fight for the State of North Dakota, and he knew the odds were long. He knew that North Dakota only had one Representative in the U.S. House of Representatives, and he knew that California is going to have 50. He was acutely aware that North Dakota had a chance only in this Chamber, where every State has two. QUENTIN BURDICK never forgot that.

How well I remember when I was elected to this Chamber. QUENTIN BURDICK called me and said, "KENT, I know this will be a transition period for you. It is going to be difficult. My office is available to you. My staff is available to you. Just work out of there while you engage in this transition." That is the kind of person QUENTIN BURDICK was: thoughtful, caring, and always there to help. And that is why his passing is such a loss.

Mr. President, he was funny, he was feisty, he was shrewd. But above all, he was dedicated. He was dedicated to this country, he was dedicated to the State of North Dakota, and he was dedicated to this institution. He believed in de-

mocracy. He was not one of those who went out putting down the institution to make himself look better.

He talked about what really mattered to the future of this country. He believed then, as he did his whole life, that through a life of public service, he could help make North Dakota and the world a better place. And he lived his beliefs.

Mr. President, his life spanned nearly a century—80 years of constant change. His father, Usher, served in the U.S. House for 20 years, and QUENTIN grew up in a political whirlwind.

I can still remember my first meeting with Usher Burdick in the lobby of the old Patterson Hotel in Bismarck, ND. I was with my grandfather, who was a long-time newspaper publisher in our State. He introduced me to Usher Burdick. I was just a young boy at the time.

I can remember leaving, and saying to my grandfather, "Why did Mr. Burdick have two pairs of pants on?" My grandfather said, "Well, KENT, you may not have noticed, but he had a hole in one pair of pants in one place, and a hole in the other pair of pants in a different place. So he was wearing both pairs of pants to cover up that hole." That was Usher Burdick.

I will tell you, there is a little bit of Usher Burdick in QUENTIN BURDICK. QUENTIN was not a clothes horse. I can remember one year that people offered to give him a new suit just before the campaign. QUENTIN would not accept. He was much too modest for that. And he was not a man who believed in self-adornment. You did not see a lot of jewelry hanging off QUENTIN BURDICK. He was not a man who believed in spending a lot of money to make himself look good. Nor did he believe in wasting a lot of time and energy trying to make himself look good, politically or any other way. What he believed in doing was to be here every day, to work hard to help our State and to help this country. That is the kind of person QUENTIN BURDICK was.

As a youth, he was present at the creation of the Non-Partisan League, North Dakota's version of the prairie fire populism that swept the heartland during the early 1900's.

When the League merged with the Democratic Party in 1956, QUENTIN was among the first candidates to run under the new Democratic NPL banner.QUENTIN BURDICK and a handful of stalwarts, was to change the face of politics in North Dakota forever—although few people would have predicted it at the time.

Mr. President, not many people remember now that QUENTIN BURDICK was a perennial candidate in the early part of his political life. QUENTIN BURDICK lost his first six races for elective office. He lost in 1934 and lost six races in all between then and 1956. But QUENTIN BURDICK was a man who would not take no for an answer, a man who simply refused to give up. In 1958, he won election to the United States House. And he never lost again. That was a point of great pride with QUENTIN BURDICK. He would tell you that in 1958 when he won that race and put the Democratic Party on the map in the State of North Dakota, he never lost again.

Many times, Mr. President, it was against long odds. I can remember so well that 1958 race. I was only 10 years old at the time. But it was a race that changed the destiny of our State, and it was a race that stirred the souls of men and women all across North Dakota. There was enormous activity because people knew it was a watershed year. People knew that something new was happening in the political environment in our State. The 1958 race was the first time our party had been successful. QUENTIN BURDICK defeated a very popular former Governor, and his victory gave us new energy and enthusiasm.

That race crystallized what QUENTIN BURDICK stood for and what he would become in North Dakota. It was a crucial moment for our farmers and our rural economy. QUENTIN stood up to fight for the farmers and the people of North Dakota. And he won.

As a young man, I worked for QUENTIN in some of the winning campaigns, and I watched a master at work. In my State, campaigns are still carried out the old-fashioned way, Mr. President. We still go door-to-door. Campaigning is carried out on a very personal level. We shake hands, we sit in the small-town cafes, and we visit over coffee about the future direction of our country.

Mr. President, I was with QUENTIN in 1970. I ran his campaign that year on a day-to-day basis. It was a difficult time for our State and for our Nation. It was the first campaign that brought negative TV advertising into our State, the first time we saw the infamous 30-second spot. Mr. President, Senator BURDICK was the target of many of those nasty ads in 1970. In fact, he was one of five Senators in the country that were selected by the White House for extinction. They made a decision that they were going to take control of the U.S. Senate, and they had five targets. QUENTIN BURDICK was one of the five. We only learned in later years—in the Watergate scandal—that money was being raised in an operation supported by the White House to take care of those five targeted Senators. We did not know that was going on. But I will tell you, we could feel the results in that campaign of the money pouring in from all over the country to try to take QUENTIN BURDICK's seat from him. And I tell you, QUENTIN BURDICK was ready for the fight. We went from town to town and county to county in the toughest campaign I have ever seen.

Mr. President, they tried to smear the good name of QUENTIN BURDICK in 1970, and the people of North Dakota would have none of it. They would have none of it because they knew QUENTIN BURDICK. They knew QUENTIN BURDICK personally. They had seen QUENTIN BURDICK in the neighborhood coffee shop. They had seen QUENTIN BURDICK going up and down the section lines. They had seen QUENTIN BURDICK in every kind of situation. And when people tried to diminish his character, it was not believable to the people of North Dakota.

Mr. President, that was a remarkable year. Those tactics backfired. Over and over, Mr. President, QUENTIN BURDICK stood by the people of our State. That is why, when things got tough, they stood by him. That is the central fact of QUENTIN BURDICK'S career, the reason the people of our State have sent him back to fight for them again, and again, and again.

QUENTIN BURDICK never forgot who sent him here, and why. He liked to say he was a workhorse, not a show horse, and it was true. He never caught Potomac fever. He never got too big for his britches. He never thought he was something special because he was a Member of the U.S. Senate.

He always kept the needs of the people of North Dakota first and foremost, always kept his thoughts on the people back home. His focus has always been on North Dakota and what he could do to make things better for the people of our State.

And that is why the people of our State have such an enduring affection for him. They grew up with him. They know he did not come here to feed his own ego or to represent some special interest. They know he cared about them, their families, and their future.

Mr. President, I am not going to discuss his long list of legislative accomplishments here, or the role he has played in the history of this body. I want to talk about his character.

We hear an awful lot about values these days in Washington, QUENTIN BURDICK did not talk about values; he lived them. There is a real difference. You did not hear QUENTIN BURDICK giving long-winded speeches about the importance of values. He lived them. In more than 30 years of public service, his values never wavered, never changed.

QUENTIN believed that every person ought to be able to go as far as talent and hard work will take them. He believed in knocking down the barriers of discrimination, poverty, hatred, and inequality. He believed everybody ought to have a fair shake at the American dream.

Throughout his long career, he showed a special quality of courage, quietly standing up time after time to represent those values. He was never flashy, never dramatic or theatrical. He never sought the spotlight or the glare of the TV lights. That was not QUENTIN. That was not his style.

Some people lead with words. Others lead by example. For 30 years, QUENTIN BURDICK led this Chamber through quiet integrity, quiet courage, quiet conviction, and quiet effectiveness. The Senate, North Dakota, and the Nation have been the better for it.

Mr. President, I spoke with Jocie, his wife, just moments ago to extend the condolences of my wife and our family to their family. Jocie Burdick is a wonderful, warm person. And she said to me, "Quentin lived a grand life. We had a happy family. And he did what he loved to do."

Mr. President, that is exactly right. QUENTIN BURDICK had a great life. He made a difference for our State and he made a difference for our country, and he did it doing a job that he loved to do. How we will miss him.

I thank the Chair. I yield the floor.

TRIBUTE TO QUENTIN N. BURDICK

Mr. MOYNIHAN. Mr. President, it is with great sadness and regret that I rise today to pay tribute to our departed colleague, QUENTIN N. BURDICK. I have had the privilege of serving with him in this body since 1977, and under his distinguished service as chairman of the Committee on Environment and Public Works since 1987. He became a close friend and was ever a great teacher.

Senator BURDICK was a modest man, but the accomplishments of the Committee on Environment and Public Works under his leadership were far from modest. The Clean Air Act Amendments of 1990 is surely the most important piece of environmental legislation ever enacted. And similarly, the Intermodal Surface Transportation Efficiency Act of 1991 is the most significant change in national transportation policy since the creation of the National System of Interstate and Defense Highways in 1956.

Senator BURDICK was a cherished colleague. He served his State and his country with distinction and honor for 32 years. There will not be his like again. Elizabeth and I offer our humble and heartfelt condolences to his dear wife Jocelyn and to his family.

IN HONOR OF THE LATE QUENTIN BURDICK

Mr. LAUTENBERG. Mr. President, I want to join in paying tribute to our friend and colleague, QUENTIN BURDICK, who passed away early today.

I shared two committee assignments with Senator BURDICK, on the Appropriations and the Environment and Public Works Committees. Although it may appear that our two States have little in common, over the years, we worked together on a number of issues of importance to New Jerseyites and North Dakotans alike. And, Senator BURDICK and I shared a common philosophy: that, in spite of all of the competing demands, you must never forget the people back home. His efforts on behalf of his constituents will be missed by the people of North Dakota.

His accomplishments in the Senate on behalf of the people of North Dakota are a matter of public record. He was a leader in the Senate on agricultural and public works issues. Since 1987, he ably served as chairman of the Environment and Public Works Committee. It was under his chairmanship that the committee developed landmark legislation, such as the Clean Air Act amendments and last year's Intermodal Surface Transportation Efficiency Act, which made the most sweeping changes in Federal surface transportation policy in the last 35 years. His legacy as chairman of the Environment and Public Works Committee is one that will serve his memory well.

But, Mr. President, as significant and numerous as his legislative accomplishments were, it is his character and integrity that I will remember most. Quite simply, QUENTIN BURDICK was one of the nicest people I have had the pleasure of knowing. His integrity was unimpeachable. His sense of humor was unfailing. In the most difficult and tense of times here in the Senate, he maintained his sense of humor and fairness.

But, Senator BURDICK's gentle nature did not mean that he didn't fight for his State. His quiet style worked well for him, and he delivered for his constituents. His work ethic was admired by all. Even in his advancing age, he never neglected his Senate duties. I recall the late night sessions during our conference with the House on the surface transportation bill. As the hours wore on, many conferees would call it a night. But, even when others had left, QUENTIN was still there, protecting North Dakota's interests. In that bill, like so many others, his diligence paid off in the form of benefits for his constituents.

Senator BURDICK's passing marks the end of an era in U.S. politics. His father, Usher Burdick, served in the House of Representatives for 20 years. A Republican, he left office in 1958 to make way for QUENTIN, an unabashed Democrat. QUENTIN BURDICK was the first Democrat elected to serve the people of North Dakota in Congress, and throughout his 34-year tenure, he never wavered in his dedication to the ideals and values that are the heart of our Democratic Party.

Mr. President, I send my heartfelt condolences to Senator BURDICK's wife, Jocelyn, and his family. I hope that they can take comfort in the knowledge that QUENTIN BURDICK was a cherished colleague, and that he will be missed by all of us.

TRIBUTE TO SENATOR QUENTIN BURDICK OF NORTH DAKOTA

Mr. THURMOND. Mr. President, I rise today to mourn the passing of my colleague and good friend, Senator QUENTIN BURDICK of North Dakota. Senator BURDICK was a man of character, courage, and compassion, and he will be sorely missed, both here in Washington and in his home State.

QUENTIN NORTHRUP BURDICK was born in Munich, ND, and raised in Williston. He was popular and active even as a young man, serving as president of his high school class and captain of the football team. He earned both a bachelor of arts degree and a law degree from the University of Minnesota.

Following his graduation from law school, Senator BURDICK practiced law until 1958, when he was elected to the House of Representatives, filling the seat previously held by his father, Usher L. Burdick. After just one term in the House, he was elected to the Senate in 1960.

Senator BURDICK became chairman of the Senate Environment and Public Works Committee in 1986. He also served with distinction as chairman of the Appropriations Subcommittee on Agriculture and Related Agencies. In addition, he was a member of the Special Committee on Aging and the Select Committee on Indian Affairs.

I served with Senator BURDICK during his entire Senate career, and always liked and respected him. He was a kind and courteous man, and his gentlemanly manner endeared him to his colleagues on both sides of the aisle. Even though our political views were quite different, it was always a pleasure to deal with him.

Mr. President, Senator QUENTIN BURDICK was good man and a fine public servant. He will be deeply missed. I would like to take this opportunity to extend my most sincere condolences to his lovely wife, Jocelyn, and his children, Jonathan, Jan Mary, Jennifer, Jessica, Leslie, and Birch.

THE PASSING OF SENATOR QUENTIN BURDICK

Mr. HATFIELD. Mr. President; I rise with a sense of deep sorrow to pay tribute to my recently departed colleague, QUENTIN BURDICK. I know I share the feelings of each Member of this body in wishing the Burdick family, particularly his loving wife, Jocelyn, my heartfelt sympathy for their loss.

Through his 32 years as a Member of this body, QUENTIN BURDICK demonstrated his quiet but compelling resolve on issues that to him mattered most. I came to the Senate in 1967, in part as an outspoken opponent of the war in Vietnam. This issue of great national importance brought me into an early alliance with Senator BURDICK who was also an early opponent of U.S. Government activities in Southeast Asia. I also recall sharing an unwavering alliance with Senator BURDICK as this body has debated and enacted numerous proposals to help ensure that the civil rights of all Americans are guaranteed.

Nothing was more important to QUENTIN BURDICK than serving the needs of his constituents, the people of North Dakota. As one who served with Senator BURDICK on the Appropriations Committee, I found him to be at all

times courteous and attentive. As chairman of the Agriculture Appropriation Subcommittee, his actions showed the greatest sensitivity to the needs of his North Dakota constituents and the constituents of his colleagues from other States. This was particularly true for rural States, like North Dakota and Oregon, that are so heavily dependent upon the many agricultural programs that he advanced during his tenure as chairman.

Again, I join others in this body in expressing my grief at the passing of our longtime friend and colleague, QUENTIN BURDICK. For the Burdick family, members of his staff, the citizens of North Dakota, and Members of this body, the passing of QUENTIN BURDICK is a chance to celebrate the life and accomplishments of a caring man and an effective legislator who selflessly devoted his life to public service. He will be missed.

I yield the floor.

TRIBUTE TO SENATOR QUENTIN NORTHRUP BURDICK

Mr. PELL. Mr. President, it was with sadness today that I heard the news that my colleague and friend from North Dakota, QUENTIN BURDICK, died earlier this morning. His presence and straight forward style will be sorely missed both here in the Senate and across rural America.

QUENTIN BURDICK was already here when I arrived 32 years ago practicing the brand of prairie populism which characterized his work here in the U.S. Senate. A tireless advocate for rural America and the common man, he stubbornly refused to let the needs of his constituents get lost amidst the clamor and competing interests here in Washington. Sometimes that would frustrate others who weren't used to having to pay attention to the needs of sparsely populated prairie States but QUENTIN BURDICK understood his role as a Senator from North Dakota and he fought tooth and nail to fulfil that role.

Like myself, QUENTIN BURDICK followed his father, Usher Burdick, himself a U.S. Congressman, into politics. He started his political career by losing the first six elections in which he ran. Never a quitter, however, he finished that career by winning 7 consecutive elections over a span of 34 years. He helped found the Democratic Nonpartisan League Party in North Dakota and was the first to win statewide office for that party. He served on nine different committees in the Senate and finished his career as chairman of the Environment and Public Works Committee. His name stands at the forefront of the most prominent Democrats and public servants ever to serve the State of North Dakota.

But despite all of his historic roles in North Dakota and U.S. politics, QUENTIN BURDICK never became consumed by it all. He maintained his perspective, his integrity, his honesty, and let his accomplishments speak for themselves. It is these qualities about QUENTIN BURDICK that I most admire and respect. I have a favorite saying which has guided me throughout my years in politics and I believe it applies to the way in which QUENTIN BURDICK carried out his philosophy of office. The saying is this: Always let the other man have your way. QUENTIN BURDICK understood this well and it was without fanfare or personal glory that he quietly delivered like no one else ever has for his home State.

With the death of QUENTIN BURDICK the U.S. Senate loses a man of character, decency, and impeccable reputation. We hear almost daily of how the American public is fed up with modern-day politicians. Well, QUENTIN BURDICK was a public servant from the old-fashioned mold and it is his type of individual that brings pride and respect to public office. I will miss him and I wish to extend my heartfelt condolences to his wife, Jocelyn, and his family.

THE DEATH OF SENATOR QUENTIN N. BURDICK

Mr. HEFLIN. Mr. President, I was deeply saddened by the recent death of our dear friend and colleague, Senator BURDICK of North Dakota. He was one of the most honorable, decent, and dedicated Members ever to serve in this body. A fierce defender of the interests of his State and region, he was a true inspiration to me personally and to the entire Senate.

We all recognized the tremendous value of his many years of service—the length of which was among the longest in American history. We were familiar with his quiet but engaging personality and the judicious and straightforward manner with which he tackled the complex and often emotional issues to come before us.

QUENTIN BURDICK attended the University of Minnesota and its law school, practicing law in his hometown of Fargo, ND, for 27 years before coming to the 86th Congress as a Representative in 1959. He was first elected to the Senate in 1960, where he remained until his death. Over the years, he was a member at one time or another of nine different Senate committees.

The people of North Dakota wisely reelected him to his Senate seat five times during this period. Their confidence in his abilities on their behalf and the entire Nation was entirely justified. In recent years, he served as the distinguished chairman of the Environment and Public Works Committee and as a member of the Appropriations Committee.

One might say that public service ran in QUENTIN BURDICK's family. His father was Usher Lloyd Burdick, a longtime Representative from North Dakota. His brother-in-law was Robert Woodrow Levering, a Representative from Ohio. Incredibly, between 1934 and 1990, Senator BURDICK was a candidate for public office a total of 13 times.

Mr. President, it is, indeed, rare that a man of QUENTIN BURDICK's integrity and principles becomes such a success in the public arena, but we all knew him to be just such a person. He was a gentleman whose word was his bond, and he will be sorely missed by his fellow North Dakotans and by his friends in this body. His legacy is one that many who follow him will strive to emulate, and rightfully so. I extend my sincere condolences to QUENTIN's wife, Jocelyn, and to their entire family.

TRIBUTE TO SENATOR QUENTIN BURDICK

Mr. PRESSLER. Mr. President, I rise to pay tribute to a friend and colleague whose absence will be felt for many years to come. The loss of Senator QUENTIN BURDICK has saddened the citizens of North Dakota, all Members of the Senate, and all who had the privilege of knowing and working with him. He will be greatly missed in his home State of North Dakota, and he will be greatly missed here in the U.S. Senate. His passing is truly a national loss.

Very few Senators have served as long as QUENTIN BURDICK. He first came to this body in 1959 and served his State admirably since then. His years of public service clearly demonstrated his dedication and devotion to the people of North Dakota. The work he performed for his country is irreplaceable. His leadership as chairman of the Environment and Public Works Committee will have a permanent impact on North Dakota and the rest of the Nation.

He constantly worked for funding of essential agricultural research. His efforts enhanced agricultural productivity, efficiency, and food safety. He was a champion of American agriculture. He will be remembered as a strong advocate for the agricultural community. He always put the highest priority on helping our farmers and ranchers. The agricultural community always could count on him.

He was an unselfish man. In addition to his countless efforts on behalf of North Dakota, his impact stretched far beyond his home State's boundaries. His work to promote agriculture benefited the entire Nation. He fought for funding to combat diseases such as pseudorabies and brucellosis, which can be devastating to livestock. He made sure that funding was available to research and fight the Russian wheat aphid, which can devastate wheat production.

His support helped to obtain the necessary Federal funding for South Dakota State University's Northern Plains Biostress Laboratory. This state-of-the-art facility, which will greatly benefit South Dakota and all the Plains States, will open next year, thanks to Senator BURDICK's cooperation and leadership.

Senator BURDICK was a good friend to South Dakotans. In fact, all midwesterners could depend on him. I will greatly miss his friendship. My condo-

lences go out to his wife Jocelyn, his family, and the citizens of North Dakota.

TRIBUTE TO THE HONORABLE RYOICHI SASAKAWA

Mr. THURMOND. Mr. President, I rise today to pay tribute to an internationally renowned shipbuilder, philanthropist and goodwill ambassador, the Honorable Ryoichi Sasakawa. Mr. Sasakawa has made tremendous contributions to world peace and the welfare of his fellow man, especially in the area of disaster relief. He has also been an advocate of mutual understanding and cooperation between the people of the United States and the people of Japan.

As the founder of the United States-Japan Foundation, Mr. Sasakawa has been instrumental in many global efforts to promote a better life for all the world's people. The Sasakawa Foundation, established by Mr. Sasakawa in August 1959 as the Japan Shipbuilding Industry Foundation, has expanded its mission to include service, including physical and cultural education and social welfare.

Specifically, the support of the Sasakawa Foundation is directed toward solving the world's medical and environmental problems. By cooperating on an ongoing basis with agencies of the United Nations, including the World Health Organization and UNICEF, this worthy foundation is helping to make substantial progress on many fronts throughout the world. These include famine relief, aid for refugees, support for various educational programs, allocations for pharmaceutical and medical equipment, and international campaigns to eradicate smallpox, leprosy, drug addiction, and AIDS.

It is very fitting that the slogan of the Sasakawa Foundation is "Together to Tomorrow." I commend Mr. Sasakawa for his dedicated and tireless efforts to make the world a better place through service to his fellow man in need.

AM AMBITIOUS AGENDA

Mr. WIRTH. Mr. President, this morning our majority leader outlined a long and daunting list of legislative goals for the Senate—certainly an ambitious agenda for us all.

Included are our national commitments to lead the world in these very challenging and sometimes frightening days. From Bosnia to Somalia we are watching an old world unravel, and the question is: What will come in its place, and what are our responsibilities to help build this new world order?

One of our former colleagues, Gary Hart, has over the years written and spoken eloquently and thoughtfully about new directions for the globe and our Nation. I would like to share with my colleagues a statement Senator Hart recently wrote entitled "Fortune and American Reform." As ever, Senator Hart reminds us that our future requires vision and urgency in action today, and I hope that other Senators pursue and reflect on Senator Hart's essay, as I have.

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

FORTUNE AND AMERICAN REFORM

Americans will search their history in vain for any opportunity equaling today's for major progressive changes in economic and social structures. The peaceful shift of power from an adversarial communist Soviet Union to a cooperative democratic Commonwealth of Independent States, marked most dramatically by the failed coup one year ago, is unrivaled in human history. For an America caught up for a half-century in a cold war effort to secure democracy in the West and contain communism throughout the globe, the opportunity and responsibility represented by this historic power shift have emerged so unexpectedly as to leave us hesitant and drifting even so long as a year later.

We now have the human and financial resources to repair and reform neglected human health, education and housing systems, to rebuild decaying transportation, communications and public infrastructures, to invest in new peaceful technologies, and to begin the long process of repaying our debts to future generations. We can convert defense and weapons production to environmental, health and human resources research. We can reform our military institutions to conform to new security challenges and adopt a foreign policy aimed at strengthening democracy in the third world. All this, and more, can be done—but will it?

This is a monumental challenge to our will, our imagination and our leadership. All have yet to respond even after a year of opportunity. But fortune will not smile forever. This period of opportunity will not forever await our response, if for no other reason than that the democratic experiment in Russia and the Commonwealth may fail for want of help.

Too many American politicians and opinion leaders have invested the past year in pandering to the popular notion that we cannot lead a Western effort to stabilize the ruble and supply loans and credits for food, fuel and medicine in Russia while repairing the damage of the Cold War here at home. This is not only demonstrably wrong, it is totally antithetical to U.S. interests. The alternative to democracy in Russia is authoritarianism, a government composed of military and security forces, nationalists, xenophobes and undemocratic interests. But, unlike other dictatorships we have found congenial, this quasi-fascist government will have tens of thousands of nuclear weapons.

Predictably, if our lassitude helps contribute to this result, we can fully expect a renewed crusade for continued American armament and further, indefinite delay in the already long-delayed shift of our nation to a post-Cold War, post-industrial economy, one based increasingly on knowledge and information skills. This is the real revolution offered to America by the historic, unanticipated coup in Moscow a year ago. Because of the wasted year of inaction, however, this urgent outcome is neither guaranteed nor foregone.

Now heading into their second bitter winter since the coup, the people of Russia have seen few benefits of democracy and only capitalism's worst face—inflation and high prices, shortages, corruption and black-markets, unemployment, poverty and homelessness. They are free to criticize their government, but that freedom is no replacement for bread. The Russian people are among the most patient people on earth, but fathers of hungry children have been known to break shop windows to feed them. When this happens, and it could happen very soon, authoritarian forces will have the excuse they need to act. Then our own Cold War forces of confrontation will have the excuse they need to postpone indefinitely the reform and rebuilding of America.

A century and a half ago the brilliant Frenchman Toqueville predicted that America and Russia would emerge as the greatest powers on earth, that "each of them seems marked out by the will of heaven to sway the destinies of half the globe." He could scarcely have known how prescient he was. But he also suggested that the fate of these two nations was inextricably bound together. In this he could only have reflected the judgment of fortune itself.

GARY HART.

KITTREDGE, CO, *August 10, 1992.*

IRRESPONSIBLE CONGRESS? YOU BET! LOOK AT THIS

Mr. HELMS. Mr. President, on February 25 of this year, at the suggestion of a friend in North Carolina, I decided to begin a daily report of the most recent available total of the national debt—down to the penny.

The report has since appeared in the CONGRESSIONAL RECORD every day that the Senate has been in session. It has attracted a great deal of attention, which, of course, I had hoped it might. A number of newspapers around the country published the outrageous spendthrift arithmetic of an irresponsible Congress.

In late May, facing the necessity of having to go to North Carolina for heart surgery, I asked the distinguished Senator from Idaho [Mr. CRAIG] if he would be willing to make this report to the Senate while I was away. LARRY unhesitatingly agreed to do so and I am deeply grateful to him. Senator CRAIG is a fine American and a superb Senator. He recognizes the threat to America's survival as a result of the wasteful conduct of Congress and he has for years spoken out eloquently on this peril, first as a Member of the U.S. House of Representatives and now as a U.S. Senator.

Mr. President, the daily reporting of the Federal debt total will, I hope, serve as a reminder of what has become a national disgrace—the incredible burden Congress is dumping upon our children and grandchildren—a burden, Mr. President, which is constantly growing worse.

Some liberal politicians and news media people have tried to lay the blame for this national disgrace at the doorstep of the White House. This is intellectually dishonest—as anyone familiar with our Constitution knows, no President can spend a dime of the tax-

payers' money that has not first been authorized and appropriated by the Congress.

Mr. President, I made my first boxscore statement on February 25. On that day, the Nation's debt stood at $3,823,909,309,474.57—which amounted to approximately $14,887.19 for every citizen in the Nation.

When Senator CRAIG made his first boxscore statement on my behalf—on June 3, the same day I was having my encounter with the heart surgeons in Raleigh—the Federal debt had increased to $3,942,204,041,144.24.

Today, 97 days later the debt has risen by a whopping $211,477,283,605.26. The American taxpayers, thanks to the irresponsible Congress they elected, now owe a total of $4,035,386,593,079.83. Averaged out on a per capita basis, that comes to $15,710.51 for every man, woman, and child in the Nation. So, over the course of the past 3 months, the average burden imposed on each and every American by reckless Federal spending, authorized and appropriated by Congress, increased by $823.32.

I hope all Americans will give thought to the enormity of the Federal debt as Congress closes out this fiscal year. The road to financial responsibility must begin right here in the Congress which is responsible, under the U.S. Constitution, for our Nation's economic security. The future of tomorrow's stability depends on whether Congress has the courage and the integrity to make hard choices, set priorities, and operate on a balanced budget.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. BAUCUS. Mr. President, I rise this morning to address the recently concluded draft of the North American Free-Trade Agreement.

I applaud the efforts of our trade negotiators to negotiate a free-trade agreement with Mexico and Canada. As always, their efforts have been heroic and tireless.

Unfortunately, however, I cannot endorse the fruits of their labor. In my opinion, this is a flawed agreement. But even more troubling than the agreement itself, is the Bush administration's apparent concern with using NAFTA for partisan political advantage rather than getting the best possible market-opening agreement for the United States.

It has become clear to me that the timing of the conclusion of the NAFTA had far more to do with Presidential politics than good trade policy. Although important details remained to be negotiated, the administration rushed the announcement of the NAFTA to coincide with the opening gavel of the Republican National Convention.

And now, President Bush suggests that if his opponent, Governor Clinton—or for that matter, any of us who supported fast track—refuse to endorse the NAFTA, then we all must be protectionists. Mr. President, that could not be further from the truth.

For President Bush to suggest that Governor Clinton, or any of us in this Congress, should endorse a treaty which we have not even had an opportunity to review would be the height of irresponsibility.

The fact is, Mr. President, Bill Clinton has stated repeatedly that he supports the concept of a NAFTA. He joined many of us in Congress in supporting this administration's request for fast-track authority. But none of us whether we are Democrats or Republicans, whether we supported fast track or not, should be expected to give a blanket endorsement sight unseen.

As many in this body know, I have been a long-time supporter of free trade. I voted for both the United States-Canada and the United States-Israel Free-Trade Agreements. I voted to give this administration the fast-track authority to negotiate a free-trade agreement with Mexico and Canada. And I still support the concept of a North American free-trade area.

However, in the rush to conclude this agreement, it is clear that some important provisions have gotten short shrift. Despite strong advice from many of us in Congress, this agreement simply does not pay adequate attention to job displacement or environmental concerns.

And I cannot support this agreement unless additional measures are taken to protect both the environment and the Americans who may lose their jobs as a result of this agreement.

Although Mexico has made great strides on the environmental front, it remains a developing country. A developing country with a highly suspect commitment to environmental protection.

I am not willing to conclude a free-trade agreement with Mexico if it means creating an incentive for United States businesses to move south to exploit low environmental standards. I am not willing to support an agreement that ignores the environmental impacts of free trade. In short, I am not willing to conclude a free-trade agreement at the cost of the environment.

I am saddened because just as I witnessed first hand at the recent Rio Earth summit, the United States has again missed a historic opportunity. With a few relatively simple changes to the agreement, or a parallel understanding, NAFTA could have been turned into a tremendous boon to the environment—instead of the clear threat that it has become.

In fairness, progress has been made on some environmental issues. But in key areas, the environment has been ignored.

If we would have pressed for a dispute settlement procedure to require high environmental standards backed up by meaningful sanctions—as our trading partners had proposed—this agreement could have been a historic step forward for both free trade and environmental protection.

The administration could even have demonstrated a commitment to the environment and worker protection by creating a secure source of funds for these important projects.

But the administration rejected these proposals. Instead, they decided to negotiate a free-trade agreement without adequate environmental protections.

Instead, the administration has chosen to answer environmental critics with rhetoric. Those concerned with the environment are dismissed as "protectionists in environmental clothing."

I am not a protectionist. A large portion of my legislative career has been devoted to promoting free trade. But I will not support a free-trade agreement if it is a clear threat to the environment. Additional measures must be taken to ensure that this agreement promotes both free trade and a strong and healthy environment.

REPORT ON HURRICANE ANDREW

Mr. JOHNSTON. Mr. President, on behalf of the people of Louisiana and particularly the tens of thousands of victims of Hurricane Andrew, I wish to express my gratitude to the citizens, the corporations, and the communities across the country who have contributed so generously to the disaster relief effort.

Forty-eight hours after Hurricane Andrew struck our State, I met with representatives of the Gerber Food Co., which had shipped to Baton Rouge an entire truckload of baby food and juices—96,000 meals and drinks—to be distributed throughout the disaster area.

Last Thursday I met with 44 firefighters from the District of Columbia and from Clinton, MD, who were departing for Morgan City, one of the communities hit hardest by the hurricane. These men were sacrificing their vacation time to come to the aid of hurricane victims, donating their personal skills and personal equipment to help the families of Morgan City recover from the storm.

We have welcomed similar volunteer rescue teams from communities throughout America. Many thousands of others have donated money, food, medicine, and other goods to relieve the suffering and ease the tremendous personal hardships which our citizens have faced. We in Louisiana are deeply grateful for the compassion our fellow Americans have shown in the aftermath of this tragedy.

While television and other media graphically conveyed the news of this unprecedented disaster, there is more to the story. The magnitude of this

tragedy is even greater than many Americans realize.

The disaster comes at a time when Louisiana is still struggling to recover from a decade-long depression, a period during which we have experienced some of the most difficult economic problems and most severe unemployment rates in the country.

The Census Bureau reported last week that Louisiana has the third highest poverty rate of all States with 19 percent of our population below the poverty level.

This map depicts the path of Hurricane Andrew. This second map shows the portion of the State included in the Federal disaster designation.

The 36-parish area affected by Hurricane Andrew includes some of our most impoverished communities. The average per capita income in the disaster region is $10,600, 25 percent below the national average. Nearly 20 percent of the families who live in the region are below the poverty level. Average unemployment is more than 7 percent and runs as high as 13.8 percent.

The point of these statistics is that the families and communities in the path of the hurricane were already facing tremendous hardships before this latest tragedy. The State of Louisiana and local governments throughout the region were already facing enormous financial burdens before inheriting the massive additional burdens they now face in the wake of Hurricane Andrew.

The hurricane has crippled industries which are critical to Louisiana's economy. As we can see from this third graphic, agriculture will suffer losses in excess of $250 million. Damage to the fishing industry, highlighted on the next chart, including the destruction of oyster and shrimp habitat, will also exceed $250 million. Timber losses are estimated at $42 million.

The storm has ravaged some of our most fragile environmental resources including our barrier islands and coastal wetlands and marshes, as shown on the next map.

The basic infrastructure of our communities—roads and bridges, schools, and other public buildings—has been damaged along with drainage and flood control systems, parks, wildlife refuges and historic structures. Damage to public property is estimated at $80 million.

Our offshore oil and gas industry also felt the fury of this storm, as the next two graphics show. Roughly 10 percent of our 2,000 offshore structures in the hurricane's path sustained damage.

The Federal disaster assistance we have received to date has been welcome, indeed. But I regret to say that the resources committed to the hurricane relief effort will not be sufficient to address the full scope of this disaster. In the days ahead we will be appealing for support for supplemental appropriations targeted to the emergency needs that will not be met by the current disaster relief measures.

As we ask for additional Federal assistance, and acknowledge the generous outpouring of aid from private citizens across the country, I want to assure my colleagues and the American people that we in Louisiana are also doing everything we can to help ourselves.

In the days following Hurricane Andrew's violent march across our State, I toured many of the areas that were stricken hardest by the storm. I was proud, indeed, of the determined, industrious, generous spirit displayed by our people. I know that others who were visiting our State were impressed by that spirit as well.

Walking along one rubble strewn street in St. Mary Parish, I was approached by a newspaper reporter from the Chicago Tribune. "What is it about the people of Louisiana?" he asked me. "They just don't seem to let anything, even a disaster like this get them down."

He seemed genuinely bewildered by the undaunted, heroic spirit of the people, the countless acts of charity, the scenes of victims ignoring their own troubles to go to the aid of a neighbor, or even a stranger.

Another reporter from outside the State, while surveying storm damage in St. Mary Parish, had an unfortunate introduction to one of the peculiar hazards of this kind of disaster: fire ants. He had suffered numerous stings on his feet and legs. "Just sit right here," a local woman told him, "and I'll go find something to make it feel better." She had to go to a neighbor's home to borrow medicine for the reporter. Her own home had been destroyed. Even in the midst of her own personal disaster, she had found the time to help a stranger.

As a tornado swept toward the Belle Point subdivision of LaPlace, a deputy sheriff heard the roar of the storm and moved his children from the family's living room to the shelter of a bathroom. Moments later the deputy's car was thrown through the wall of the home into the living room where the children had been playing. The deputy sheriff took a few moments to see that his own family was safe and secure, then left the rubble of his home to begin searching for others who might be injured or trapped in the wreckage of neighboring houses.

Looting, so prevalent in disasters of this kind elsewhere, was virtually nonexistent in Louisiana. Local law enforcement and Louisiana National Guard personnel were free to devote all of their resources to disaster relief. Louisiana National Guard Adj. Gen. Ansel "Buddy" Stroud commanded a force of more than 1,300 guardsmen, helping to bring order out of chaos and delivering aid and comfort to thousands of victims. Buddy Stroud was our Norman Schwarzkopf in what might have been called Operation Delta Storm.

Our local government personnel rose to the occasion as well. Arriving at the town of Franklin, I was greeted by Mayor Sam Jones. It was evident from his three-day growth of beard and the weariness in his face that he had been getting by on only three or four hours sleep each night as he supervised local disaster relief efforts. In Morgan City I met with Mayor Cedric LaFleur at his command post in the courthouse. He had not left the post since the hurricane hit, except for several brief visits into the streets of the city where he had gone door to door to check on the needs of his citizens. The story was the same in every community I visited.

A sheriff's deputy from a distant parish in the northeast part of Louisiana was asked how he happened to be so far from home. He answered simply, "I heard they might need help."

Members of my own family personally observed that same generous, caring spirit. In a suburb of Baton Rouge darkened by a power outage, next-door neighbors came to the rescue of a young mother caring for the newborn daughter she and her husband had brought home from the hospital only days before. The neighbors delivered a portable generator so that power could be restored to the young couple's home. The parents will never forget that act of kindness. The grandparents, my wife, Mary and I, are deeply grateful as well.

I cannot recall a time when I have been more proud of my State than when I witnessed the spirit of courage, determination, and boundless generosity the people of Louisiana showed in the face of this disaster. As Americans witnessed the devastating drama of Hurricane Andrew and the grim aftermath, they saw the people of Louisiana in their finest hour.

TRIBUTE TO REAR ADM. WILLIAM A. SULLIVAN, U.S. NAVY

Mr. LAUTENBERG. Mr. President, I rise today to pay honor to Rear Adm. William A. Sullivan, U.S. Navy, who is known as the father of Navy salvage. A recognition ceremony will be held in his honor this month in New York.

Admiral Sullivan was born in Lawrence, MA, and graduated from the Massachusetts Institute of Technology. Upon graduation in 1917, he enlisted in the U.S. Navy. He worked at various ports during his career including the shipyards in Philadelphia, Portsmouth, NH, Bremerton, WA, New York and the Philippine Islands. The early years of his naval career also included service in India and China where he oversaw the procurement of teakwood for naval shipbuilding endeavors and was also supervising constructor.

In 1939, Admiral Sullivan qualified at the Deep Sea Diving School as a deep sea diver and was assigned to California to troubleshoot salvage problems and prepare lectures on salvage operations. In subsequent assignments he oversaw ship salvage in London, Eng-

land, and was the head of the Salvage Branch, Bureau of Ships.

In 1942, Admiral Sullivan served in Casablanca where he supervised harbor clearance operations. In 1943, he reported to Gen. Dwight Eisenhower in Algiers where he was assigned to the Allied naval forces in the Mediterranean. Admiral Sullivan was named commander of all United States and British salvage ships under General Eisenhower. He commanded the clearing of harbors at Bizerte, Tunis, Ferryville, as well as the firefighting and salvage operations of the Sicilian landings.

Admiral Sullivan went on to provide his leadership and experience as commander of Task Group 122.2 during the landings at Normandy, Omaha and Utah beach. Adm. William Sullivan was also assigned to work with Gen. Douglas MacArthur at San Fernando and Manila.

Admiral Sullivan was awarded the Distinguished Service Medal, Legion of Merit and the Naval Unit Citation. He was named Commander, Order of the British Empire. France honored Admiral Sullivan by naming him Officer of the Legion of Honor Croix de Guerre with Palm and Italy honored him as High Official, Order of the Crown of Italy.

Adm. William Sullivan died in La Jolla, CA, on September 6, 1985, and is interred in Arlington National Cemetery.

During September 1992, the members of the U.S. Navy Salvage Divers Reunited will be memorializing Adm. William Sullivan by dedicating a plaque in his honor on Pier 88 located in New York. I join Admiral Sullivan's family and the members of that organization in saluting his long and illustrious career in the U.S. Navy.

FAREWELL TO A FRIEND

Mr. LIEBERMAN. Mr. President, the Washington diplomatic community is about to lose one of its stars, as Eniko Bollobas, the Deputy Chief of Mission at the Hungarian Embassy, leaves to go back to Budapest. Eniko has served her country exceptionally well. She has been a tireless advocate of her nation's political and economic interests and has made certain that the collapse of the Berlin Wall was only the beginning of the process of opening up her nation to the rest of the world.

Hungary has made significant progress toward achieving a free enterprise system and has largely put in place a thriving democracy. It has attracted foreign investment—much of it from the United States—at a greater rate than any other nation in East-Central Europe. But in a very thoughtful essay she wrote for the Washington Post, Eniko discusses the problems that have yet to be resolved in post-Communist Hungary.

The crisis in what was once Yugoslavia is the most severe and visible in the region, but it is by no means unique. In her Post article, Eniko talks about the morning after syndrome that Hungary and every nation in East-Central Europe must confront. The first blush of freedom has faded and the task of building a modern nation is proving to be more difficult than anticipated.

I am hopeful that the nations of the region are merely going through an adjustment period and that the determination that kept the forces of democracy alive under nearly a half a century of communism will help to sustain the fight to build democracy and a free market system.

As long as people like Eniko remain committed to the process of reform and nation building, there is hope. I am certain that she will be able to do this as effectively from Budapest as she has from Washington, but I can assure you that we will miss her insight and good humor here in Washington.

I ask unanimous consent that a copy of Eniko's article from the Washington Post be printed in the RECORD following my remarks.

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

IN HUNGARY, POST-LIBERATION BLUES

(By Eniko Bollobas)

Each post-communist society has its own equivalent of the black-Irish mood—a post-liberation, morning-after funk. In Hungary, this formula is made up of melancholy, as much as of the desire to be convinced that there is no reason for melancholy. Foreign visitors to Hungary are baffled by what they often see as Hungarian pessimism. To understand the downturn of Hungary's mood, we have to look at what has happened since communism collapsed.

Both euphoria and melancholy are familiar after the intoxicating days of a revolution. "A terrible beauty is born," William Butler Yeats wrote at the time of Ireland's 1916 Easter Rising. Ours is also a time of such contradiction.

For Hungarians, melancholy is not an alternative to euphoria but a natural corollary to it. Leaving Hungary after several years of diplomatic service, an American friend of mine pointed out that one element of the Hungarian character upset him: the disinclination to see the whole picture, which is especially so when the whole is brighter than the part.

Totalitarian systems required that people suspect everybody outside the tight circle of family and friends. It was a zero-sum game: Communism wanted everyone to believe that one person's gain was in direct correlation to another's loss, so if one got rich, another had to get poor. We are familiar with the parable of what an American and an East European farmer ask from God for happiness: Looking at the neighbor's cow, the American wishes that he could have one as well. The East European asks God to please kill the neighbor's cow.

Pessimism and optimism are relative terms; their substance is defined by their relation to reality. Imagine two people inspecting a vineyard after a devastating late frost. One of them is gloomy about the harvest. The other is filled with joy over the signs of life he finds *in spite of* the frost. Is one the pessimist, the other the optimist? I would rather say that the first refuses to recognize facts or make assessments along lines of predictability; the other knows what to expect and is therefore happy with what exceeds expectation. While they both see the same vineyard, their assessments are different depending upon their view of reality.

Hungary's vineyard *is* devastated, no matter how we look at it. Forty years of wasteful economic practices and political mismanagement cannot be undone without severe budget cutbacks and the removal of subsidies, followed in turn by inflation and unemployment. To those suffering from these changes, democracy and market economy became more and more equated with poverty—and with a lack of moral justice. Those responsible for the reign of Communist terror after 1956 run private security services or own private hunting clubs for Western visitors, while their former victims struggle to cope. For most Hungarians it is hard to digest that the Communists, who supposedly lost in the political game, are in fact winners in the emerging society.

Most of the hardships of the transition could have been predicted, but there was no precedent for this experiment. The old system did everything to control how much the disenfranchised masses understood of the society they lived in. Only a select few were in the know on how political decisions were reached, how much in state subsidies certain industries received, how much the national debt added up to, how many people escaped from the country through the years. Nobody was supposed to know exactly how devastating the frost was; much is still unknown to the public.

Until recently Hungarians and their neighbors thought it was primarily in the interest of the former "privilegentia" to predict gloom and doom and even worse to come; we thought that the worst had come and gone with Hitler and Stalin and their lieutenants. Today we again start to wonder: Is the worst yet to come?

The escalation of the Balkan crisis justifies those who doubted from the start that the community of democratic nations is capable of preventive diplomacy. If "Yugoslavia" is a test of international solidarity and action in the "new order," then there isn't much to cheer.

With the Cold War over, Hungarians had hoped to enter an era when policy would no longer be shaped by experiences of World War II. Until recently we could refuse optimism on psychological grounds: We did not want to be spoon-fed another promise of a bright future. Because we associated contentment with Communist propaganda, many of us were inhibited by our own recollections of the compulsory optimism of communism.

But events seem to have taken a perilous turn. The resignation of President Vaclav Havel might be only the first step in working out a civilized split between the Czech and the Slovak parts of that country. But it intensifies our black-Irish mood in Hungary and Poland.

If it were not for the winning out of unreconstructed Communists hoping that their neighbors drop dead, or even doing the killing themselves, and if it were not for the massacres in Bosnia and the refugees in Croatia, Austria and Hungary, I would ask whether my own dark feelings might not be an example of Hungarian melancholy. I hope my instinct is wrong. The sieges of Dubrovnik and Sarajevo must not become a metaphor for our post-Communist era.

WILLIAM H. YOUNG

Mr. PELL. Mr. President, it is with a great sense of personal loss and grief that I advise the Senate of the sudden death on September 7 of William H. Young who served as my legislative director for the past 24 years.

Bill Young was one of those truly dedicated servants of the Senate who brought to his work a passionate concern for the issues of the day and a constructive view of the role of Government. His thinking, writing, and philosophy of life were like my very own.

He joined my staff in 1968, after serving as chief of the Washington bureau of the Providence Journal-Bulletin, and he brought to his Senate career his journalist's facility for expression and a priceless capacity for critical evaluation of the day's events.

For more than two decades Bill coordinated all legislative and policy activities in my office, and served as my principal adviser on domestic policy issues and Senate procedure. He specialized in tax and economic policy issues and had a special interest in ocean policy. On all of these matters he had a vast reservoir of knowledge on which I continually drew.

As all members of the Senate can appreciate, there develops in such a long relationship a special bond of friendship, mutual respect, and affection. I count myself fortunate in that Bill and I had 24 years of partnership, working together for Rhode Island and our country.

Bill was born November 14, 1932, in Putnam, CT. He was valedictorian of the Killingly High School Class of 1951 and graduated from Wesleyan University in 1955. He served in the U.S. Army, and was stationed in Okinawa and Japan from 1956 to 1958. He graduated from Columbia University's School of Journalism in 1959, and joined the staff of the Providence Journal-Bulletin in 1960, moving to the Washington bureau in 1964.

In addition to his full and often heavy burden of Senate duties, Bill had an abiding interest in musical activities which he shared with his wife Diana. He served as a board member of the D.C. Youth Orchestra Program and assisted in the establishment of the Washington Conservatory of Music and was a member of the conservatory chorus.

Bill also was a skilled craftsman and builder. He personally remodeled his home in Washington, and it somehow seems appropriate that when his life ended so suddenly on Labor Day, he was working on a project in his backyard.

Survivors, besides his wife, include his mother, Myrtice Young of Danielson, CT; two daughters, Amy Alison Young, who is the wife of David A. Malakoff of Shepherdstown, WV, and Rachel Clemens Young of Washington, DC; a son, Jonathan William of Eastport, MD; two brothers, Ralph C. Young of Avon, CT, and Roger P. Young of Granby, CT; and a grandson, Benjamin N. Malakoff of Shepherdstown, WV.

An informal memorial service will be held for Bill in the Mansfield Room, S-207 of the Capitol on Friday morning at 11.

In memory of his love of building and his commitment to social concerns, the family suggests that donations in lieu of flowers may be sent to D.C. Habitat for Humanity, a chapter of President Jimmy Carter's Low-Income Housing Construction Program.

A VISIT TO KAZAKHSTAN, UZBEKISTAN, KYRGYZSTAN, TURKMENISTAN, GEORGIA, MOLDOVA, UKRAINE, BELARUS, RUSSIA, LATVIA, AND THE UNITED KINGDOM TO EXAMINE UNITED STATES ASSISTANCE POLICY IN THE FORMER SOVIET UNION

Mr. PRESSLER. Mr. President, during the July recess, I visited nine of the countries emerging from the former Soviet Union, Latvia, and the United Kingdom. I have prepared a report outlining my impressions and conclusions from that trip. I ask consent that the text of my report be printed in the RECORD.

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

A VISIT TO KAZAKHSTAN, UZBEKISTAN, KYRGYZSTAN, TURKMENISTAN, GEORGIA, MOLDOVA, UKRAINE, BELARUS, RUSSIA, LATVIA, AND THE UNITED KINGDOM TO EXAMINE UNITED STATES ASSISTANCE POLICY IN THE FORMER SOVIET UNION

During the July 1992 Senate recess, I led a delegation to eleven countries: Russia, Kazakhstan, Uzbekistan, Kyrgyzstan, Turkmenistan, Georgia, Moldova, Ukraine, Belarus, Latvia, and the United Kingdom. I undertook this challenging schedule to learn more about the effect of U.S. assistance programs in former Soviet republics and the Baltic states. In September, the Senate is likely to consider the Conference Report to accompany the "Freedom Support Act," which provides generous U.S. assistance to states of the former Soviet Union and a considerable down payment on new United States' commitments to the International Monetary Fund. As a member of the Foreign Relations Committee, I have been designated a conferee on the "Freedom Support Act." The conferees will meet in early September. This trip was important in preparing me for work as a conferee.

The Senate passed its version of this legislation on July 2nd. I voted against reporting the bill from the Foreign Relations Committee, but joined the 76-20 majority to pass the legislation early in July. However, I supported the legislation with mixed feelings. For example, I reminded the people I met throughout this trip that foreign assistance is doubly difficult to enact during times of enormous Federal deficits in the United States.

In this report, I outlined a few of my own observations and conclusions. Without reasonable, minimal conditions, I fear any assistance will further line the pockets of the former Communist party hacks who all too often remain in control and are in a position to prevent funds from going to essential political and economic reforms in the former Soviet empire.

COUNTRY-BY-COUNTRY OBSERVATIONS

Kazakhstan

My visit to the former Soviet Union began in Kazakhstan after a visit to Moscow. I was delighted to be met at the airport by my old friend Bill Courtney, a top-notch Foreign Service officer and Ambassador-designate. I came to know Bill Courtney when we worked together in the early 1970s at the State Department, where I served as an attorney/adviser in the Legal/Economic Bureau. Mr. Courtney, a distinguished officer, is precisely the kind of envoy the United States should be sending to every former Soviet republic—he is knowledgeable, committed, and astute.

Kazakhstan, like the other Central Asian Republics, could become rich if properly developed. Unfortunately, democratic institutions are lagging behind economic opportunity. Last June, about 5,000 protesters took to the streets of Alma Ata to demand the resignation of the hold-over Communist leadership.

In Alma Ata, I visited the chairman of the Supreme Soviet in Kazakhstan, Mr. Serikvolsyn Abdildin, in his office. This was my first experience with the problem of the one-party 1990 elections. Above Mr. Abdildin's large desk in his spacious office hangs a portrait of Lenin. Mr. Abdildin noted that the current government was elected in a one-party election.

As my conversation with Mr. Abdildin ended, he asked me whether I thought Kazakhstan should have one or two houses in its legislative branch. Presently, they have just one house. This is an intriguing question because many of the communist states had unicameral legislatures. On the other hand, there generally are two houses in most Western democracies—although the upper house in Britain and some other countries are less influential. The fact that he asked me this question indicates how much they are depending on U.S. advice to shape their new democracies.

I explained to Mr. Abdildin that the state of Nebraska has a unicameral legislature, which is supposedly non-partisan, although everybody who runs is known to be a Republican or a Democrat and they do line up as such within the Nebraska legislature. Many successful democracies have unicameral legislatures and others are bicameral. I reminded Mr. Abdildin that it would have been impossible for the United States to ratify its constitution without a bicameral Congress, because the smaller states demanded the protection afforded by the United States Senate. I told him I would send him some studies from American political scientists on this subject.

On my return, I sent Mr. Abdildin and the President of Kazakhstan some political science analyses on Nebraska's unicameral state legislature, which was established in 1937 after a popular initiative. I told them that Nebraska Senator George Norris had advocated unicameralism to save money during the Depression. His position is well outlined in a chapter of his autobiography, *Fighting Liberal* (1945), which I also sent to these officials. Senator Norris also proposed that the one-house legislature be elected on a nonpartisan basis.

For a perspective on the advantages of a bicameral legislative branch, I sent to them the classic text on checks and balances in

government, *Government by the States*, by James MacGregor Burns, J.W. Peltason, and Thomas E. Cronin. This book argues that a two-house legislature permits greater scrutiny of all new laws, making it more difficult for rash, arbitrary, or emotional legislation to be enacted; provides for more access, more debate, and more representation of diverse points of view; and makes it more difficult for any one person or interest to dominate state decisionmaking.

I have set forth both sets of arguments and sent them to the leadership of Kazakhstan. This episode indicates the eagerness with which these new emerging democracies are seeking advice from the United States.

That evening in Alma Ata, during a working dinner, I was joined by Mr. Nickolay Akuyev, who chairs the Commission on Law and Order in the Kazakh Supreme Soviet. Mr. Akuyev was very cautious about the prospect for putting CSCE principles and a rule of law into place any time soon.

Following the dinner, the delegation met at our hotel with two local leaders of a free trade union, Valentina Sivrukova and Leonid Solomin. Each asked for more direct U.S. assistance to help them organize their union. In addition, they stated that the government is attempting to close down their access to the media and would like to shut down their movement completely. Both complained that the overwhelming influence of former Communist Party officials and Communist bureaucrats—referred to negatively as "chinovniki"—was stifling the new, free labor movement in Kazakhstan. I urge greater attention to the human rights situation in Kazakhstan, specifically in the areas of free press and political pluralism.

Uzbekistan

The Government of Uzbekistan typifies the problems America and the West face in dealing with the new states of the former Soviet Union. Like so many of the other newly independent states, Uzbekistan claims to support principles of the Commission on Security and Cooperation in Europe, but performance lags behind rhetoric.

The United States should not invite notorious charlatans like President Islam Karimov of Uzbekistan to visit the United States to meet and greet President Bush and high government officials unless and until his regime alters its behavior toward the "Birlik" and "Erk" political movements. I commend the Bush Administration for withdrawing for an indefinite period the invitation for Mr. Karimov to visit this country.

Thugs masquerading as democrats also should not qualify for aid. Deeds must replace words as a standard for U.S. foreign aid. As I told people in the countries I visited, it is hard enough to pass a foreign assistance bill any time, but doubly difficult during an economic downturn with staggering Federal budget deficits. I deeply regret that questionable trials and imprisonments remain the norm for supporters of Uzbek opposition movements.

Visit To Beaten, Hospitalized Dissenter In Uzbekistan

Upon arriving in Tashkent, Uzbekistan, I set about trying to visit two leaders of the "Birlik" political movement who had been brutally beaten and were in the hospital. I was first told they probably would not be able to converse because of severe head wounds and also that it is almost certain that security people would prevent me from visiting if I tried a straightforward embassy request. On July 7, 1991, John Parker, a Foreign Service officer in Tashkent, and fluent in Russian, and I made a sudden, unannounced visit to the local hospital where we believed that Abdurahim Pulatov, the chairman of the popular movement Birlik had received surgery and was being treated. We talked our way past security guards in the filthy hallways of the hospital. When we finally arrived at the room, a commotion ensured to keep us out. Then the head doctor came and said we could go in for a minute, but no pictures.

John Parker had not announced I was a visiting Senator. He had made it seem that we had some message for the beaten victim's family or something such. I do not know who the security guards thought we were, but I am sure they would not have admitted us if they knew our intentions.

Upon entering the hospital room, which was absolutely dirty, we saw two men with black eyes and bandaged wounds on their heads. Both had surgery and had been in the hospital a week to 10 days. They looked much better than they probably had earlier.

I asked Mr. Abdurahim Pulatov, Cochairman of the Birlik, who he thought had beaten him, and he said, unhesitatingly, it was done under the direct orders of President Karimov. He also explained how President Karimov's office carries out such things through a certain part of the Ministry of Justice or Interior, which reports directly to the President's office.

Mr. Pulatov said he had applied for some outdoor public meeting permits and made a speech or two. That was his crime. He was summoned to come into what is the equivalent of our Attorney General's office and was questioned. After leaving the government office, he and his lawyer had been approached by thugs and were beaten up with lead pipes in full view of security people who stood and watched. He was sure the beating was officially ordered by President Karimov, and he was sure it came as a result of his political activity.

We talked to him through our translator, John Parker, for about 10 minutes. Then the doctors came in and said I would have to leave. They asked us to leave a couple of times, as they were nervous about our presence. They did not know exactly who we were and why we were there. At that point, we took John's camera out of his bag and took a picture. The doctors objected, but we took a couple more. I took the camera and put it in my bag in case the security people tried to take the camera away from us, because I might have a better chance of holding on to it. We got out of the hospital without encountering any search or opposition.

Mr. Pulatov was very appreciative of our visit and resolved to continue his political activities if he recovered. His lawyer, Mr. Alimov, was less talkative and seemed to be very sick. I understand that Mr. Pulatov will need more surgery on his head to have plate put in. His eyes were swollen completely shut at first. They are now open, except he may have some damage in his right eye. But he clearly showed the evidence of a very severe beating which was about 8 days old.

Later, I confronted Deputy Minister of Foreign Affairs, Fatih G. Teshabayev, about the matter and he told me this was an internal issue about which a visiting Senator should not be concerned. He would not deny that such a beating had occurred, and he would not discuss whether orders for it came from the President's office, just that it was an internal matter. I told him that I very much wanted to talk to the President about this. The President was away—ironically, attending a CSCE meeting in Helsinki. So I told Mr. Teshabayev that until matter was fully settled I would oppose the double taxation treaty with Uzbekistan unless there was some explanation of this beating, and would oppose President Karimov's visit to the United States.

Mr. Karimov has requested an unofficial visit and a meeting with President Bush. Immediately on our return to Washington, I wrote President Bush, saying in part, "I see no evidence that Uzbekistan is making progress and I believe non-humanitarian assistance should be curtailed until this matter is resolved to the satisfaction of the two parties (U.S. and Uzbekistan)." I also have asked for a CSCE investigation of the beating to determine what connection, if any, the Government had with it.

Help Uzbekistan's Travel Industry When Human Rights Situation Clarifies

Instead of sending more U.S. taxpayer funds in aid programs, we can make a difference in Uzbekistan by showing those people how to build tourist potential in Samarkand. Once the human rights situation is clarified, and we are sure that Uzbekistan is abiding by the CSCE principles, private U.S. firms and retired travel executives can help develop Samarkand's great tourist assets. Registan Square is comparable to the Taj Mahal in its grandeur and historic attraction, but Samarkand has been receiving fewer than 20,000 foreign visitors annually. The lower numbers of tourist visits is explained by poor hotel facilities, costly travel, costly services which must be paid for in hard currency and a lack of tourism know-how.

The city is located on the ancient silk road to China. It was used by Alexander the Great in the 4th Century B.C. and Tamerlane in the 14th century. In addition to Registan Square, Samarkand contains a number of stunningly beautiful medreses (Muslim religious schools), a marvelous market area that is ancient and yet reflects the emergence of a freer market, and an excellent museum in honor of the 14th century astronomer Ulugbek.

Kyrgyzstan

After Uzbekistan, the delegation journeyed to Kyrgyzstan. During two days of meetings there, we heard even more reformist economic rhetoric than in the first two Central Asian countries. In addition to meeting with Kyrgyz government leaders in Bishkek, we discussed the country's potential with an American businessman, Mr. William R. Wilson of Grynberg Resources. Mr. Wilson is seeking to develop the Kyrgyz mining industry.

We visited a collective farm which was short of spare parts, seeds, and other necessities and a brewery where portraits of Lenin and Marx hung in the office of its director. We visited a collective farm in Kyrgyzstan unannounced during grain harvest and talked with some of the collective's farm leaders. They said it was impossible to convert to free enterprise, and that very little conversion had occurred.

It is possible that bilateral agricultural trade can be developed between our two countries, possibly in the wool industry and possibly with inputs such as improved seed, breeding stock, and agricultural equipment. Of course, any such trade would depend on dramatic moves away from a socialized command economy. Despite economically sensible rhetoric on privatization, even Kyrgyzstan has a long way to go to match minimal conditions for United States assistance.

During my stay in Kyrgyzstan, as in a number of other former Soviet republics, I sought out poets and writers and held a

luncheon in their honor. These people are often found among the democratic vanguard in the transition away from Communism. For example, the chairman of the "Erk" political movement in Uzbekistan is a poet. Writers and poets in Kyrgyzstan expressed considerable concern about the future of their country. At each stop, I asked their opinion of one of my friends, Joseph Brodsky, the former Poet Laureate at the Library of Congress. Everyone looked up to him and could not understand why he was not better appreciated during his tenure in that position. I frequently have learned useful information during my morning jogs with local citizens. It is also an excellent way to understand a city's personality. In Bishkek, I ran with a young Kyrgyz of Russian descent. Although he spoke the Kyrgyz language, he expressed concern that some people of Russian background might not be able to adapt easily to post-independence laws, but that they would also feel out of place in Russia itself.

Rights of Jews in Central Asia

During my visit, I met with several Jewish leaders in the Central Asian republics. One illuminating discussion was held late at night with the head of the Jewish community in Bishkek, Kyrgyzstan, Mr. Alexander Katsev, chairman of the Department of Philology of Bishkek University.

Mr. Katsev gave me permission to use his name. He was fearless. Some of the other Jewish leaders we met with in other countries admitted they did not raise the issue of the treatment of Jews with Mrs. James A. Baker during her recent visit for fear there would be reprisals in their communities. Mr. Katsev allowed no such fear to stop him.

He told me there are 9,400 Jews in Kyrgyzstan, of whom 4,700 hold passports identifying them as Jewish. In the Soviet Union, citizens had passports by nationality, and this practice continues. He said the Jewish community is very frightened. "When you do not have enough to eat, you blame someone—usually Jews," he said. He said rumors were being spread that "Americans and Zionists are buying Kyrgyzstan."

Mr. Katsev continued that because 2,000 Jews have left since 1989, people mistrusted Jews and hesitated to do business with them. Around 6,000 individuals identified themselves as having Jewish passports in 1989. Today that number is only 4,700.

The Jews in Kyrgyzstan are Bukhara Jews as opposed to Ashkenazi Jews. That is, they migrated to what is now Bukhara, Uzbekistan in the 10th Century. They are not descendants of an Old Testament "lost tribe." They speak and worship in Farsi rather than Hebrew. Mr. Katsev said that has been a law in the books since 1929 stating that learning Hebrew is illegal.

The Jewish community is fearful of the new Kyrgyzstan Constitution, because it makes Kyrgyz the official language. "Most Jewish people do not speak Kyrgyz and thus will be barred from many jobs," he said. Mr. Katsev asked me, "Can we count on your help?"

I said I would publish any human rights violations in the CONGRESSIONAL RECORD. I ask Mr. Katsev to send me periodic reports, and I said I would publish them in the CONGRESSIONAL RECORD. Mr. Katsev suggested that the American Jewish community establish an "Adopt-a-County" program wherein Jewish or non-Jewish people from the United States would systematically visit the Central Asian countries to monitor and report to the outside world what is really going on. "We are afraid," he concluded.

I said that I would fight in Congress to place human rights conditions on any U.S. aid. I would try to hold up aid if there were more human rights violations. I would write a memorandum to President Bush. I would write a memorandum to the American Jewish community leaders on the Adopt-a-Country proposal. Kyrgyzstan Jews continue to flee to Israel and the United States because they are mistreated.

Turkmenistan

The least politically reformed of any of the Central Asian republics is Turkmenistan. A Stalinesque cult of personality seems to surround the President, Saparmurad Niyazov, whose portrait is in all government offices and who is reverentially referred to as "the President," or "our leader." He was "voted" President with a 99.5% participation rate in a one candidate election. To paraphrase the Chairman of the Mejlis (Parliament), the "people do not want a party other than the Democratic Party of Mr. Niyazov."

The government of Turkmenistan has taken the popular course by coming out against environmental degradation. Much of the harm to Turkmenistan's environment has come through cotton production and the disastrous routing of the Amu Darya River to make the Kara Kum Canal.

Much of the water from the mountains of Turkmenistan is now diverted to Uzbekistan and the Aral Sea. The Turkmen government would like to re-route the water to the benefit of Turkmenistan. Obviously, this could lead to trouble with Uzbekistan. On a personal note, I would add that during my first race for Congress in 1974, I opposed construction of the Oahe Project near the Missouri River in South Dakota and compared its potential for environmental degradation with what had occurred as a result of reckless irrigation project construction in Central Asia.

Turkmenistan is close to the Iranian border. As in other Central Asian republics, there is a lively competition between Turkey and Iran for economic and political influence. The selection of a route for a new oil pipeline will be the deciding factor in determining who will have the most influence on Turkmenistan. There are two alternative routes to get Turkmen oil to port: (1) directly through Iran into Turkey; or (2) across the Caspian Sea, through Georgia, Armenia, and Azerbaijan.

The former option is preferred by the Iranians and, in the short term, would probably be less expensive to build. The latter option is preferred by the Turks, since it would economically help their allies the Azeris, even though it would be more costly. Given the current Armenian-Azeri conflict, running a pipeline through both these states would open the possibility of an economic blockade. The decision likely will be based on where Turkmenistan gets its financing for the canal—either from Iran, Turkey, Pakistan, or Saudi Arabia.

One of Turkmenistan's most abundant exports is natural gas. However, since Turkmenistan and Russia require payment in hard currency, many buyers cannot pay. The United States should monitor the situation to assure the gas is not used as a weapon to reward or punish other states of the former Soviet Union. The Turkmen government works quite closely with the Russian government. In fact, Russian military forces in Turkmenistan will be under both Russian and Turkmen control—an unusual arrangement.

Turkmen government officials claim that visiting American, Turkish, Italian, and German companies are pleased with Turkmenistan's pledge to protect investments. Turkmenistan plans to introduce its own currency and expects it will have enough hard currency reserves to make its currency convertible. Turkmenistan might adopt a Chinese model economic system in which investment is encouraged, but the government will retain, at least for the short term, the ability to monitor investments and exports.

Georgia

I am left with a sense of great unease after my visit to Georgia. Recent events in Abkhazia and elsewhere have confirmed many of my fears. Eduoard Shevardnadze, the former head of the Communist Party and KGB in Georgia and former Foreign Minister of the now defunct Soviet Union, is considered the best hope by those living in the conflict ridden nation of Georgia. Yet he seemed very reluctant to oppose the continuing presence of Russian troops in his country. This was especially surprising since, on the day before I met with Mr. Shevardnadze, the Governor of the Gori Region had told me a frightening tale of being shot at by Russian troops in the streets of his city.

There are really three conflicts in Georgia—within Georgian politics, within Ossetia, and within Abkhazia. Each contributed to the rise to power of Mr. Shevardnadze after a coup in March of this year. There currently is so much instability that a midnight curfew is in effect. This kind of control might easily slide into some form of a police state, imposed by a strong Georgian military force. The U.S. should make every effort to ensure the Georgian military does not get out of control.

Both President Shevardnadze and Prime Minister Sigua told me they believed a coup was the only way to achieve change in Georgia. They cited the paranoia of the elected President, Zviad Gamsakhurdia, as an obstacle to political pluralism in Georgia. Unfortunately, the coup meant that democracy in Georgia died while still in infancy. Despite justified criticism of Gamsakhurdia, he was an elected official who should have been deposed by political means. In the aftermath of the coup, a military council was formed which led to Shevardnadze's return—this time as a democrat.

Elections with international observers are now scheduled for October 11, 1992, according to Shevardnadze. However, the presence of Russia's military, the breakdown of law and order, the stifling of fundamental human rights, and the possibility of a police state frightens opposition forces who wish to participate in such elections.

During my time in Georgia, I was surprised at being unable to find anyone opposed to Mr. Shevardnadze. With his great international connections, most considered him irreplaceable. Most agreed they really had no choice but to hope that Shevardnadze would remain faithful to the ideals he now espouses. However, questions continue to surface about the current Georgian government's commitment to human rights and democratic institutions—such as free press and free association.

Possibilities for bilateral agricultural trade exist in Georgia, assuming a restoration of democratic elections. Georgia is critically short of wheat and other staples, such as butter. During the Soviet era, thousands of acres were devoted to a few crops as part of a centralized control system. Now Georgia must convert to private agriculture if it is to produce sufficient basic foodstuffs to feed its people. Wherever possible the U.S. should look for opportunities to assist in this regard.

Moldova

In Moldova, I was told by President Mircea Snegur that Russian President Yeltsin

agreed to negotiate withdrawal of Russian forces from the Transdniestria region, one day after the Senate adopted my amendment calling for immediate withdrawal of the Russian 14th Army from the conflict in Moldova.

Congress can make a difference. If we take a strong stand, U.S. goals can be met. The United States should support international supervision of the ceasefire in Moldova by neutral, Western observers.

Unfortunately, following my departure, President Snegur agreed with Russia on July 22 that Russian, Moldovan, and self-proclaimed "Dniester" officials would monitor the ceasefire. This is incredible. The very forces involved in the fighting will be given equal status to monitor a cease-fire—a formula for failure and continued conflict.

This precarious solution has two costs for Moldovan self-determination. First, Russian separatist elements in the Dniester region will be given a special status within Moldova, permitting the Dniester region the right to leave Moldova if Moldova undergoes a change in sovereignty—that is, reverses the consequences of the Nazi-Soviet Pact by rejoining Romania. Unfortunately, the "peace" document says nothing about a peaceful change in leadership in Transdniestria—including real elections without the specter of Russian Army threats and surveillance. The key to the solution in Moldova is for people to have an opportunity to work out issues themselves without manipulation by the governments involved.

The second cause for concern arising from the agreement is that it seems to have given President Snegur a green light both to push for the Commonwealth of Independent States treaty before his Parliament and to intensify his criticism of opposition leaders and protesters in Moldova.

The root cause of the current conflict in Moldova is not ethnic; rather, it has arisen from the presence and involvement of the Russian Army. While I believe that President Yeltsin would like to remove his armies from foreign lands, thereby reducing needless defense spending, his encouraging rhetoric does not match the bellicose statements of his generals. Addressing a Supreme Soviet session of the rebel "Dniester republic" on July 28th, Major General Aleksandr Lebed, the new commander of Russia's 14th Army in Moldova, stated that his Army cannot withdraw from Moldova for at least another 15 years. I do not understand why a representative of the Russian Army would address a group that encouraged war and insurrection only a week after a so-called ceasefire and peace settlement was reached.

The history of Moldova is complex. Moldova did not exist as an independent state until last year. However, as a nation, the territory of Moldova has existed for centuries. In order to learn more about Romanian and Moldovan history, I met with the Chairman of the Moldovan Parliament, Dr. Alexandru Mosanu. During our meeting, he outlined the incongruity of Moldova becoming too aligned with Russia when its natural, historical inclinations and experience are Western. As the head of Parliament, he has opposed parliamentary consideration of a treaty to join the Commonwealth of Independent States. His comments were echoed by Mr. Valeriu Matei, the Chairman of the Mass Media Committee of the Parliament, who as an historian can document the difficulties imposed on Moldova by outside invaders, including the Ottoman Turks, the Czarists and then Soviet Russians.

I also met with Iurie Rosca, the President of the Executive Committee of the opposition Christian Democratic Popular Front. The participation of the Popular Front of Moldova in the development of human rights and political freedom is vital. Mr. Rosca called for the removal of Russian forces, and release of all prisoners, many from his political party, who remain in captivity on the left bank of the Dniester River. The regime in Tiraspol has waged a no-holds-barred campaign to imprison, harass, or murder Moldovan policemen on the left bank, as well as anyone else considered an enemy of the Transdniester regime.

As an advocate of political pluralism in the states of the former Soviet Union, I believe it is important for the future of democracy in Moldova for groups such as the Christian Democratic Popular Front to continue their good work without harassment. The Popular Front has played a critical role in defining Moldova's freedom from the Soviet Union over the last couple of years. Many of the Front's positions recently have been adopted by new converts to democracy in the Moldovan government.

I also urge full respect by the Moldovan government for freedom of speech. This includes prohibiting censorship of political opinions and permitting time on television for opposition groups.

I also am very concerned by the refugee situation in Moldova. At the time of our trip, 43,370 refugees had fled the left bank and Bendery and now seek shelter in Moldova. As of July 22nd, the number had grown to 50,377. Ms. Ludmilla Scalnyi the President of the women's association, "Dacia," sponsored a roundtable discussion with representatives of Ukrainian, Russian, and Moldovan populations in Transdniestria. The panelists spoke of the devastation in their lands and described how the rebel regime of that region is not working to protect minorities. They said it exploits them in a cynical grab for power, as if it yearned to revive the old Soviet Union. These women of Dacia believe that the true story of devastation at the hands of this regime is not being heard in the West.

I urge international human rights groups to meet with these women to hear their stories of devastation and to investigate the questionable human rights record of the Transdniester regime.

Ukraine

The delegation arrived in Kiev the day after President Kravchuk's dismissal of Volodymyr Lonovoy, the Minister in charge of economic reforms. Sadly, Mr. Lonovoy was dismissed for criticizing President Kravchuk's snail's-pace view of economic change and for moving too quickly on economic reform recommendations made by the IMF and others. Mr. Lonovoy was replaced by Valentine Simonenko, a former Communist and the former economic reform chief for the ex-Soviet Union. Upon assuming office Mr. Simonenko stated, "I am categorically against any help from the West."

Quite frankly, such disdain for economic policy reform assistance is more than a little disappointing. What is Mr. Simonenko complaining about? Does he really not want U.S. help? Or would he prefer the IMF pull out and make American business leaders pack their bags and go home?

The old adage, "what goes around, comes around" appears appropriate to describe the current situation. Last December, the people of Ukraine had a choice among several non-Communist candidates. Instead, Mr. Kravchuk was chosen for his presumed ability to mediate between Russia, Ukraine, and the West. Unfortunately, old habits die hard and current leaders in many former Soviet republics are capable of going only so far.

Whatever the United States does, we should not be in the business of building these leaders up in the estimation of their people. We should call a spade a spade.

Belarus

The people of Belarus long have been misunderstood. During the Soviet period, they were the most assimilated of all—their Slavic dialect has all but disappeared. Belarus officials always were considered the most orthodox of communists, and for this loyalty, Belarus was given a seat at the United Nations. Belarus sovereignty during the Soviet period was more apparent than real.

Following Lithuania's declaration of independence on March 11, 1990, Soviet President Gorbachev stated that Lithuania could not be independent unless it ceded its southern territory to Belarus. Last year, further territorial claims on Lithuania were made by the Belarus foreign minister. Such claims were later withdrawn and Lithuanian-Belarus relations progressed in a more positive direction under non-Communist President Shushkevitch. Nevertheless, there is a great search for national identity within Belarus after years of Russian, Lithuanian, and Polish domination.

Following the Chernobyl disaster of 1986, anti-nuclear organizations flourished. However, as in their Baltic counterparts, these movements had as their real goal national self-determination and the end of bondage to the Soviet Union. The largest of these groups is the Belarus Popular Front.

Shortly before my arrival, the Popular Front of Belarus organized a petition drive which collected almost half a million signatures to force a referendum on new elections. As a visiting U.S. Senator, I endorsed this call while in Belarus because of the urgent need for new elections throughout the former Soviet Union and because I question whether the true will of the people is reflected in the current Belarus government.

During my visit to Belarus, I felt it was especially important to visit one of the few industries in the former Soviet Union that exports to the United States—the Belarus Tractor Factory. This huge, dilapidated factory—using assembly line methods that seem not to differ much from Henry Ford's day—produces a tough, simple tractor that successfully competes in the American market. I have no doubt the factory could be sold to private investors, or even be reorganized as a joint venture.

Meeting with the company's top management, I was struck by the presence of a large bust of Lenin in the hallway and a Lenin photo in the General Manager's office. When I asked about privatization plans, the manager suggested that some of the stock would go to some of the employees, but he implied that state control was the developmental path he still preferred. Given the crying shortage of reliable farm equipment and parts, it occurred to me that this plant—one of the few successful non-military manufacturing efforts in the former Soviet Union—still seems to be mired in the socialist mindset.

Latvia

Despite a Russian pledge to the Latvian government on February 1, 1992, to agree to troop removal and state the number and composition of Russian controlled forces in Latvia, Russian troop levels in that country are not decreasing. At the same time, rhetoric from members of the Russian government, including Defense Minister Pavel Grachev, to the effect that Russia does not rule out the use of force to protect the Russian minority, ominously escalates. Relevant

documents and articles on this communique were submitted with my remarks to the Senate on July 22, 1992.

During my visit to Latvia, I met with numerous government officials and representatives of the Russian military. I heard again the questionable Russian argument regarding alleged Latvian mistreatment of minorities. The world is now being told that the Russians are the peacemakers, the peacekeepers and the persecuted. At the same time, it is possible that Latvian magnanimity toward non-military Russian residents of Latvia might begin to heal old wounds. Indeed, throughout Europe there is a desperate need for rivalries to be brought to a peaceful end.

I was the first Westerner allowed to visit the Russian Phased Array Radar facility in Skrunda, Latvia. Although the commanders of the base were courteous and provided a lunch to our party, they claimed they could not get permission from their superiors to allow me to walk through the facility.

I was stuck during my visit by statements from the Russians that it might take 10 to 15 years for them to leave Skrunda. This parallels the statements of General Lebed in occupied Transdniestria. It is my impression these timetables reflect the view of the military high command of Russia. Only Russian political leadership, encouraged by foreign actions, will shorten the time Russian forces are stationed on foreign soil.

Skrunda, according to its Russian commanders, is a defensive facility to protect against incoming missile attacks. But the end of the Cold War surely means, at a minimum, that threat no longer exists—if it ever did. Certainly, Sweden, Norway, and Finland pose no threat to the Russians. Unquestionably, they are no threat to an independent Latvia.

I called on President Bush and Secretary of State Baker to defend the rights of the newly independent states, especially the Baltic states and Moldova. The bottom line in all of these states is that Russian military forces must be removed expeditiously, consistent with the language of amendments I offered and the Senate adopted during consideration of S. 2532, the "Freedom Support Act."

During my discussions with Janis Jurkans, Latvia's Foreign Minister, and Andrejs Krastins, Deputy Chairman of Latvia's Supreme Council, both stated that territorial disputes and claims of ethnic animosity are coordinated disinformation efforts of the Russian KGB. Mr. Jurkans, for example, stated that there are 76 people in the Baltic department of the Russian KGB working to sow seeds of instability there. I believe that most Latvians, and citizens of the other Baltic states, will readily accept citizens of Russian background who invest their loyalty where they live.

However, I am concerned that some Russians in the former Soviet Union and the Baltic states wish to remain Russians, with the special rights they had under Communism. Russian efforts to justify a military presence and protect some Russian imperialist agenda must be opposed. Still, in the current circumstances, I cannot but wonder on a personal level what effect might result from greater magnanimity by independent governments towards resident Russians who are not associated with Russian efforts to control or subvert the Baltic states. I found much good will in the Baltic states. My personal hope is that the collapse of an evil empire will inspire the people of independent nations to negotiate a peaceful accommodation with the ordinary civilians who were sent by the imperialists to colonize their territories. It is tough to turn the other cheek, but economic circumstances in the former Soviet Union and the Baltic States may be improved by altruistic behavior. Just as Russians should not exclude Jews, non-Russians should not exclude Russian civilians who want to play a positive role in their nations' future.

While meeting with Foreign Minister Jurkans, I expressed my personal hope that—when Latvia writes its laws—it will demonstrate magnanimity, tolerance and love towards even Soviet-born residents who are loyal Latvians. This will be much easier after all Russian troops are gone. Mr. Jurkans said he personally believes in a liberal citizenship law—the zero option—similar to that of Lithuania. He has expressed himself publicly on citizenship. My hope is that no loyal Latvian of Russian origin will be excluded from voting or owning property.

Russia

Under provisions of the "Freedom Support Act," Russia is likely to receive the lion's share of American cash and credits. Russia especially should keep in mind how difficult it is for the American people to extend foreign aid with huge Federal budget deficits here at home. I believe that relatively more of our foreign aid and credits should go to some of the other countries of the former Soviet Union.

At the beginning of my visit to the region, I was privileged to share a working dinner with a delegation from the Tax Foundation in Washington. Our hosts, Dan Witt, executive director of the foundation, and David C. Jory, vice president of Citicorp/Citibank, joined other United States business leaders in a seminar with Russians to discuss a fair tax policy emphasizing the following principles: stability, reliability, simplicity, clarity, economic neutrality, the need for open discussions of policy, free and fair taxation of international transactions, moderate tax rates, and uniformity of tax policy at all levels of government. Were Russia to follow the recommendations of the Tax Foundation, it would progress greatly.

Hard working, realistic Americans from the private sector can do more with technical assistance and solid advice than armies of consultants from the State Department or the Agency for International Development. I highly commend the Tax Foundation for its leadership in these efforts. I hope many other principled American business leaders can become active throughout the former Soviet Union in demonstrating how United States know-how and experience with free institutions are the best investment this country could make in overcoming socialism.

United Kingdom

At the end of my trip while traveling back to the United States, I stopped in England to visit Whitehall, the British Foreign Service. For comparative purposes, I wanted to get Britain's point of view on aid to the Soviet Union. I met with a number of officials in Whitehall, including Kevin Tebitt, Head of the Economic Relations Department; David Logan, Assistant Undersecretary; and Rod Lyne, Head of the Eastern Department. They were most interested in analyzing my trip. Great Britain has yet to establish diplomatic posts in most of the former Soviet Union. There are fruitful areas jointly addressing the needs of the new states of the former Soviet Union. On a comparative basis, direct British assistance to the former Soviet Union and the Baltic States, as of January 20, 1992, was about $140 million. Of this, about two-thirds is technical assistance and one-third is medicine and food. All assistance is in the form of grants. However, England also gives about fifteen percent of the total amount contributed by the European Community. As an organization, the European Community had given $3.8 billion as of January 20, 1992.

Individual member states have given $55.5 billion. However, $44.8 billion of this is from Germany. It is very difficult to sort out how much of this is direct aid, how much is business investment, or tied aid—that is aid that must be spent in Germany. The figure represents loan guarantees and credit commitments with some technical assistance.

In comparison, as of January 20, 1992, United States assistance totalled about $4.5 billion. Since then, we have provided roughly another $2 billion, including $1.1 billion in grain credits. It is difficult to compare European and U.S. efforts because there are different ways of calculating what is given. The U.S. tends to give more hard currency and supports real projects, while other countries tend to give credits for purchasing items in their own countries, supplying items built in their own countries, or providing surplus property of one sort or another.

The House and Senate versions of the Freedom Support Act authorize different amounts and programs. The conference report likely will amount to $500 million in assistance, excluding $12 billion for IMF replenishment.

Certain other areas lend themselves to cooperation, as well. For example, the special Baltic initiative, monitoring of human rights violations through CSCE, and the development of democratic institutions in states without a history of such institutions are examples of some of the ways in which the U.S. and Great Britain can work in concert. We must remember that European countries are much closer to the former states of the Soviet Union and will benefit more from expanded trade opportunities. However, I did find an attitude that Europeans expect the United States to do more. However, I pointed out that they are overall, on a per capita basis, just as wealthy, and in some cases, wealthier than we are.

CONCLUSIONS

The major conclusions of my trip include the following:

Conclusion I: Expectations of the United States are extremely high

People in the countries I visited think the United States has more money than it actually does. I found myself opening every meeting by saying that the United States has many domestic problems. We have huge budget deficits. I indicated that it is very hard for Senators to vote for foreign aid in this day and age, but that our country felt obligated to try to help these emerging democracies. I found somewhat of a cynical attitude on the part of many officials who expected more from the United States. There is a belief that we are extremely rich and that we have money to shower around the world.

There also is a belief that the United States has such an interest in seeing these democracies emerge that we should pay many of the bills and extend vast credits without much attention given to whether they will ever be repaid. When I would say, "Why don't you request Europe or Japan do more?," they would shrug their shoulders and say, "Well, the United States is the country we are really looking to." I kept having to repeat that they probably should not expect so much hard currency. We can give surplus food and help out with technical

assistance, but in the long run, our taxpayers are going to want us to pay more attention to the problems here at home.

Conclusion II: Ex-Communists Still Hold Power

With the exception of the Baltic States, democratic hopes are far from being fulfilled in most of the former Soviet Union. In country after country, I found that the 1990 one-party elections had done little more than shuffle titles of institutions and shift around a few people who had been Communist Party apparatchiks. In most of the non-Baltic countries I visited, some political opposition exists, but it is treated with disdain and contempt by leaders elected in 1990, or it is aggressively opposed by local governments.

All of the countries of the former Soviet Union have signed the Helsinki Principles of the Commission on Security and Cooperation in Europe (CSCE). But few of the nine former Soviet republics I visited are paying more than lip-service to the CSCE's cornerstone concepts of free press, free association, tolerance of political opponents, and basic rules of fair play.

Conclusion III: Russia should quickly remove its military forces and facilities from foreign territory

I often have called the Senate's attention to the vexing problem created by the continuing presence of Russian forces and facilities in the Baltic states, Moldovia, Georgia and other portions of the former Soviet empire. Russian President Yeltsin made some encouraging comments when he attended the G-7 Summit in Munich in July. However, Russian military commanders and even officials of the Russian Foreign Ministry have failed to embrace his pledges. Russian troops are neither peacemakers nor peacekeepers. Their presence is an intolerable imperialist leftover.

Conclusion IV: The Baltic States deserve special incentives

Arriving in Latvia after visiting nine states of the former Soviet Union was literally a breath of fresh air. Only in Lithuania, Estonia, and Latvia, in my opinion, is there currently a realistic chance that U.S. assistance at this time might succeed. Congress should put special emphasis on expanding effective aid to the Baltic states as soon as possible. Democracy will succeed faster there than in any other part of the former Soviet Union.

Conclusion V: Foreign investors can profit from partnership with former Communists in the former Soviet Union

Americans want to see free enterprise and private property ownership flourish in the former Soviet Union. However, former Communist party functionaries—by virtue of the one-party 1990 elections—have traded privilege based on party loyalty for profiteering based on the national assets of the new republics. Everywhere, raw materials and national assets have somehow come under the control of the former Communist leaders. These leaders use their current positions to generate profit for themselves and their associates. These countries have no conflict of interest laws.

This unusual form of privatization has little to do with the kind of free enterprise most Americans favor and that the former Soviet Union badly needs to promote economic growth and development.

At present, United States and other foreign investors must respond to a rapidly changing legal framework. This framework will become institutionalized only if the United States and other donor nations insist that a rule of law be established before taxpayer assistance is granted. Without such rules, numerous decrepit state enterprises are likely to remain in business, replete with photos of Marx and Lenin in the offices of company leadership. Many unprofitable enterprises must be allowed to die. One of the first tasks facing any investor is to find ways to bring into play Western business practices in the former Soviet Union.

Conclusion VI: Armed conflicts require neutral international observers

Throughout the former Soviet Union a number of armed conflicts exist as Russian troops or surrogate forces attempt to seize and hold territory against the will of newly independent states. As I have already noted, the mere presence of Russian forces is a provocation. In Georgia, Moldova, and the Baltic states, actual or potential conflicts should be resolved by internationally supervised talks.

It is not enough for the Russian-controlled Commonwealth of Independent States (CIS) to supervise talks. It is wishful thinking to believe that CIS observers can impartially monitor withdrawal of foreign troops, cease-fires or negotiated agreements. Only CSCE, UN or other international bodies are impartial enough to be entrusted with these responsibilities.

Conclusion VII: New elections are needed throughout the former Soviet Union

I previously referred to the one-party elections of 1990 that brought sham democracy to most of the former Soviet republics. The U.S. State Department knows that the governments installed by the 1990 elections are essentially illegitimate and undemocratic. Notable abuse of human rights in Uzbekistan and elsewhere, combined with the need for new blood in the leadership of all states, requires that new elections be held as rapidly as possible. Ideally, new elections should occur with international observers present.

Unfortunately, however, new elections alone may not make a great difference. After decades of repression, political opposition has not made headway at the grassroots level. Many people remain afraid of going against the current leadership who were once brutal Communist party leaders. People are intimidated by the current media and leadership arguments that some "good old boy" network is the best way to improve their way of life. Additionally, news does not travel very quickly, especially in agrarian communities. Full and accurate reporting is hard to find and is often stifled by the new governments.

Until a climate conducive to free elections is created, I do not have confidence that U.S. assistance can be spent wisely or that boatloads of IMF credits will be able to make a positive difference.

Conclusion VIII: CSCE signatories must abide by CSCE principles

Much United States policy toward Russia and the rest of the former Soviet Union seems to depend on smoke and mirrors. Russian troops are one example. Another is the willingness of our country to accept rhetoric about freedom and CSCE principles as a substitute for demonstrable action. Freedom and democracy are recognized by practices, not words. Mere lip-service to the principles of free speech, free association, free press, and other key concepts are meaningless if not combined with concrete actions. During consideration of the Freedom Support Act in the Senate, I offered several amendments and participated in a number of debates. These efforts were directed at determining whether U.S. assistance could make a difference and what minimal conditions Congress should add to protect the American taxpayer's investment. Adoption of such conditions in the Senate bill justified my support for the legislation.

Conclusion IX: American Embassy staffs should forcefully advocate human rights and free enterprise priorities

During my visit, I found a wide range of Foreign Service Officers assigned as Ambassadors-designate and staff members. Some highly effective officers such as William Courtney, James Kenney, Jackson McDonald, Tom Niblock and John Parker, impressed me as the kind of people who are able to forcefully articulate American positions on human rights, democratic development, and free enterprise. I regret to report that I found several career officers who seemed resentful of their assignments, others who showed symptoms of "clientitis," and additional officers who seemed to have less than an ideal understanding of the pioneering and important role they could play in these new states.

American embassies and United States Information Service posts must provide the vital link between people suppressed for decades by Communist tyranny and the country many of those citizens admire most—the United States. However, I found some officers who were even concerned when I asked to meet with political opponents of the government in power.

Consistent, aggressive representation of American interests is the key to building fruitful relations with the people of the former Soviet Union. The people of these new states are infinitely more important than their governments.

Conclusion X: United States should encourage realistic commercial relations with new states

After meeting with U.S. businessmen during my trip, my desire to see stronger U.S. business involvement in the new states has been strengthened. This should lead to increased opportunities for agricultural trade, possibly on a barter basis.

For years, Czarist Russia and then the Soviet Union teased foreign investors with prospects of entering their large market. Unfortunately, unless an investor was willing to play by their rules of the game (including crushing taxes, restrictions on profit repatriation, and cozying up to the socialist elite, among others) business as usual meant no business.

Russia will have to make great changes unless it wants to be characterized once again as the big tease of the East—offering the prospect of new markets with vast raw materials and an educated labor force without living up to these promises. I believe in the ability of U.S. business entrepreneurship (especially small and medium-sized businesses) to help transform authoritarian societies into pluralistic societies. Thus, I am convinced the United States should move forward with negotiations on bilateral trade treaties, bilateral investment treaties, and double taxation treaties with the new states. However, perhaps with a few exceptions, ratification of such agreements should be contingent upon significant progress on political, economic, and human rights criteria.

The United States has concentrated most of its efforts in the commercial field in Russia. The United States will have Foreign Commercial Centers in Moscow, St. Petersburg, and Kiev, and will handle commercial inquiries from other states from these posts. It may prove to be difficult to gather and use information from the other states from offices in Russia.

Last year, the United States and the Soviet Union signed a trade agreement grant-

ing reciprocal most-favored-nation (MFN) trading status contingent on the enactment of emigration laws by the Supreme Soviet of the Soviet Union. Russia fulfilled the criteria the Soviet Union refused to adopt and has been granted MFN. All other former Soviet republics are eligible for MFN once they adopt similar emigration legislation.

MFN has been granted to Armenia, Moldova, and Ukraine. The Stevenson and Byrd statutory prohibitions on OPIC and Export-Import Bank (EXIM) assistance have been lifted. OPIC benefits have been extended to U.S. businesses operating in Armenia, Belarus, Georgia, Tajikistan, and Turkmenistan. EXIM credits for the purchase of U.S. goods and services have been extended in Armenia, Belarus, Kazakhstan, Russia, and Uzbekistan.

The Baltic states enjoy MFN, GSP, OPIC, and EXIM benefits. I urge ratification of bilateral investment and tax treaties with these three nations. In addition, the United States Trade Representative is negotiating investment agreements with 12 nations of the former Soviet Union. The Senate Foreign Relations Committee marked up the United States-Russia treaty on August 6, 1992, and soon will consider a United States-Kazakhstan treaty.

I must express reservations about these treaties. As I have already stated, rhetoric in the political arena in Russia does not always match reality. The same goes for rhetoric versus reality in economic matters. The investment treaty with Russia permits continuation of its state-planned economic system, with a phased transition to a market economy. The United States should guard against the institutionalization of Russian bad habits.

Several days after my departure from Moscow, the Russian Parliament adopted new tax legislation. Unfortunately, these new tax laws do not go into effect until January 1, 1993. Additionally, U.S. investors continue to face a myriad of complicated, often conflicting, tax laws. Businesses and individuals have to deal with a variety of taxes, including those on individuals, corporations, profits, and exports. The combined tax burden might prove too much to sustain viable foreign investment.

The new Russian tax laws represent some progress. Yet, I continue to feel uneasy over the fact that the leading proponent of reform, Yegor Gaidar, was the first to lobby against a decrease in the Russian VAT tax based on his belief that high taxes help reduce inflation. This questionable assumption seems to be shared by the IMF.

New tax laws in Russia and the other new states might well consider the following suggestions:

(1) Elimination of massive government subsidies to albatross companies and state enterprises.

(2) Enactment of real privatization measures, including privatization of companies that will hold real interest for foreign investors. These measures also should include private ownership of real property.

(3) Establishment of a modern banking system, including laws permitting repatriation of profits, competition, choice of banks for foreign investors, and a convertible ruble with one market exchange rate.

(4) Enactment of conflict of interest laws which separate government officials from their often overwhelming desire to make changes which profit themselves but damage overall economic progress.

(5) Creation of realistic valuation procedures for all types of property that will not be prejudiced against foreign investors.

This list is by no means comprehensive. Above all, tax laws will not matter if there is not enough profit to tax.

Many difficult choices face the Russian government and the Russian people. Governments must balance the need to keep people at work with the need to reconfigure the moribund economic structure and eliminate the parastatal business dinosaurs. People must balance the desire to rely on the old mechanisms which made decisions for them with the often frightening prospect of self-reliance. Failure to take these steps will enhance the deterioration of the current system and may create a 1992/1993 winter of discontent worse than last year's.

Conclusion XI: International law concerning human rights must be observed

I agree with Jeane Kirkpatrick's observation in The Washington Post of August 3, 1992 that, "Building collective security requires abandoning preferred myths and facing the fact that it is not poverty, not ethnicity, not the break-up of empires that cause war. It is violent men and lawless governments."

The United States should help establish the rule of law in the new states of the former Soviet Union. For example, for several years I have advocated an early withdrawal of all Russian armed forces from the new states of the former Soviet Union. The continued presence of these troops represents a provocation and, in my view, a violation of international law. They are poised for action in any trumped up situation.

My observations in some of the former Soviet republics also lead me to believe that Jews and other persecuted groups should work together closely to insist that a rule of law is established. Inevitably, their best allies should be committed personnel at the embassies of the United States. During my trip, I made contact with Jewish leaders and leaders of other identifiable groups. Our embassies should do no less. In fact, groups that can establish that internationally recognized rights are being violated ought to work together. Embassy staff and the U.S. State Department should investigate and document such cases in the annual Human Rights Report and push hard for those who are otherwise powerless. We must not accept the argument that military force is needed to protect "ethnic rights." Under a truly democratic system, groups peacefully oppose each other within the political structure. They do not resort to violence.

Recently, the Russian government has begun to complain about Baltic mistreatment of the Russian minority. It has tied the resolution of this Russian minority question to the removal of Russian troops. Russia has made threatening statements that the Russian Army will be used to protect the rights of ethnic Russians and that sanctions may be employed.

The Baltic governments, on the other hand, know that the majority of the Russian population in the Baltic States are there as a result of an illegal occupation. Therefore, as colonizers, they want the Russians to fulfill citizenship criteria.

The three states have taken different positions. The Lithuanians granted blanket citizenship to all Russians who applied from 1989 to 1991. The Estonians have a short residency requirement and also require demonstration of some language ability. The Latvians have not yet passed a citizenship law.

This matter must be resolved soon. Based on my discussions with both sides, I do not believe that the Russian government should link the issue of troop removal to citizenship for Russian-speaking residents. That only inflames the situation. However, I personally hope the Baltic governments will display magnanimity toward those Russian civilians who clearly desire citizenship in the Baltic States. It may seem idealistic to request such magnanimity after decades of Russian oppression of the Baltic States. Yet I hope the goal of avoiding future disagreements might inspire good faith efforts to achieve an accommodation of historical and contemporary rivalries. These questions must be resolved by negotiations, not threats or violence.

At the end of this trip, I attended what is probably one of the leading popular plays in London at this time, "Death and the Maiden," by Ariel Dorfman. Ironically and coincidentally, the theme of this play could have been a description of the human rights practices in some of the countries I had just visited in Central Asia. The play discusses how one group when it comes to power punishes, tortures or mistreats the last group that had been in power, which previously had mistreated them. And the cycle continues on and on, generation after generation. At one point, one of the leading characters in the play said:

"So we go on and on with violence, always more violence. Yesterday they did terrible things to you and now you do terrible things to me and tomorrow the same cycle will begin all over again. Isn't it time we stopped?"

PROSPECTS FOR PEACE AND DEMOCRACY IN SURINAME

Mr. PRESSLER. Mr. President, I am cautiously optimistic about events that have unfolded in Suriname over the past several weeks. On August 8, a peace treaty was signed between the Government and five guerrilla groups. The treaty is designed to put an end to fighting that has killed at least 200 people in this country of 400,000. More than 10,000 civilians fled to French Guyana and Holland after fighting broke out in 1986.

I am cautiously optimistic because, having visited this small South American country last December, I know the task of rebuilding Suriname is very difficult. One of the greatest threats to the reform efforts of President Ronald Venetiaan remains former dictator of Suriname and commander of that nation's armed forces, Desi Bouterse.

Bouterse ruled Suriname from 1980 to 1987 and overthrew an elected government in December 1990. Free elections later brought Venetiaan to power. As a result of my discussions with President Venetiaan and key cabinet ministers, I am convinced Bouterse will not retire quietly. It will be difficult for the democratically elected government to make real progress so long as Bouterse remains a threat. Indeed, the peace accord itself is threatened. Rebels took up arms in 1986 in an effort to topple the military strongman. Should he reassert his power, I believe these groups will resume their civil war.

I have encouraged President Bush to make it clear another military coup will not be tolerated in Suriname. Should another coup materialize, the United States should respond swiftly by imposing sanctions. This policy should be made clear to Bouterse well before he takes any such actions.

I am pleased that following my letter to President Bush, he met with President Venetiaan to discuss Suriname's plans for economic reform. During that meeting, President Bush underscored our strong support for democratic, civilian government in Suriname. I hope the meeting sent a strong signal to the Surinamese military of our solidarity with President Venetiaan and his government.

The peace treaty was signed by two major rebel groups on behalf of all such organizations in Suriname. The largest guerrilla group, the jungle commando, is led by Ronny Brunswijk—who knows Bouterse well, having served as his bodyguard. At the signing ceremony, Brunswijk stated his "goal has been reached, democracy has returned." The United States should do everything feasible to ensure these are more than mere words.

Under the terms of the treaty, all rebels will be given amnesty in exchange for their weapons. The accord also calls for the rebels' reintegration into Suriname society, the orderly return of refugees from French Guyana and the reconstruction of the country. Roughly $7 million has been set aside for development projects. This money will come out of the annual assistance package given Suriname by the former colonial power, the Netherlands. In addition, many of the rebels will be drafted into an enlarged rural police network.

Mr. President, I also am pleased to note that the disarmament, demobilization and reintegration of the rebel groups will be supervised by officials from other countries in the region under the auspices of the Organization of American States [OAS]. The OAS plan calls for an observer team consisting of three officials each from Brazil and Guyana. This is exactly the approach the United States should support under the new world order that is discussed so frequently these days.

I long have advocated increasing the role of regional organizations in peacekeeping and democracy building activities. Rather than trying to be the world's policeman, the United States should encourage nations to take a more active role in affairs occurring on their doorstep—activities that directly affect their national interests. For instance, I believe the European Community should take the lead role in resolving the violent bloodshed occurring in the former Yugoslavia. The Association of South East Nations should do the same in Cambodia.

I commend the OAS for its plan and the Governments of Brazil and Guyana for putting that plan into action. I also commend the Dutch Government, which over the past decade has played a critical role in restoring democracy to Suriname. The Dutch suspended development aid to Suriname in 1982 after Bouterse had his army assassinate critics of his regime. President Venetiaan enjoys strong support from The Netherlands. The United States has been, and should remain, a major proponent of the Dutch policy agenda.

Mr. President, some may ask why should we care? After all, Suriname is a small State with a population much less than even my home State of South Dakota. How could it possibly affect the interests of the United States? The answer is, quite significantly.

During the Senate's recent consideration of the resolution regarding the use of multilateral action in Bosnia-Hercegovina, I rose to mark the debate as a defining moment in American history. That debate and the resulting resolution marked the first time this body actively considered how America, as the world's sole remaining superpower, will face the new challenges of dealing with a world made up mostly of small states. Rather than just dealing with a single superpower such as the former Soviet Union which, in turn, dealt with each of its republics, we are suddenly faced with the task of dealing individually with more than 10 new countries in that part of the world—each with different needs and concerns.

It is a new order, but in many ways it is more difficult than the old order. We must reconsider our foreign policy if we are to meet successfully the challenges of dealing with a world comprised of small states. If we fail to do so, we will surely lose out on a unique opportunity to remain the leader of a new world.

SOMALIA

Mr. LEAHY. Mr. President, on Sunday, I read a story in the New York Times entitled "Officials Say Somali Famine Is Even Worse Than Feared." I decided to find out how much military aid we gave that country that is now awash in guns and being destroyed by clan violence.

I wonder how many Senators would have any idea? Ten million dollars? Fifty million? A hundred million?

Between 1962 and 1990, when the Congress finally put a stop to it, successive administrations gave Somalia, a country of only 8 million people, most of whom are nomads earning on average $120 per year, over $200 million in military aid.

Most of that aid went to Siad Barre, the ruthless dictator who carried out a 20-year scorched Earth campaign against his countrymen who had the misfortune of belonging to other clans, and in wars of territorial aggression against Ethiopia.

I would guess that the Soviets, who preceded us in supporting Barre's regime, poured in at least as much lethal aid as we did.

Since then the guns and shells and tanks that filled Siad Barre's warehouses have been seized by the clans and subclans that have been trying to destroy each other. In the process, they have destroyed Somalia. The agricultural and commercial fabric of the country are devastated.

Today, an estimated 4 to 5 million people, half of Somalia's population, are facing starvation. Estimates of the number dying of famine each day range from hundreds to thousands.

Much of this was predicted by the relief agencies nearly a year ago.

Unlike the 1985 Ethiopian famine, when the United Nations coordinated a massive effort that saved the lives of a million people, the United Nations, until recently, has been almost invisible in Somalia. But the primary responsibility for this catastrophe rests squarely on those who claim to be Somalia's leaders. General Aideed and Mohammed Ali Mahdi. They have carried on savage fighting while their people starve, and relief agencies have been prevented from getting food to the hungry because of the lack of security.

The International Red Cross, and small private relief organizations like the International Medical Corps, have struggled against impossible odds to save lives. They have kept their fingers in the dike, while the rest of the world's attention has been on Yugoslavia, Iraq, Russia—anywhere but the Horn of Africa.

Perhaps that is understandable. Perhaps there is a limit to the amount of suffering that can hold the world's attention.

But whatever the reason, today the Somali people are paying a terrible price for the incredible callousness of their leaders, and the inaction of the international community. A month ago, faced with pictures on the nightly news of starving children and reports that as many as 1 to 2 million people would die, the President finally announced an airlift of food by United States military forces to Somalia.

I welcomed that step, but anyone familiar with disasters like this knows that an airlift is a sure sign of doing too little, too late. Our planes cannot begin to deliver anything like the 50,000 tons of food per month that is needed.

Two weeks ago I sent a member of my staff to Somalia, to tell me first hand what needs to be done.

We should expand the airlift as rapidly as possible, but the only real hope of averting a far worse disaster is to deliver food by ship, and then on the ground. A single truck can carry the same amount as the C-130's we have flying into Somalia, for a tiny fraction of the cost.

The problem is that convoys of trucks with food have been unable to get out of the port city of Mogadishu, without being diverted and the food stolen by armed gangs. It is a 3-hour drive over paved road from Mogadishu to Baidoa, one of the worst areas, yet no food can get through.

U.N. special envoy Mohammed Sahnoun, who has the respect of vir-

tually all clans in Somalia and the donor countries, reached agreement with the two main factions for the use of 500 U.N. troops to escort food convoys to areas hardest hit by famine.

This is crucial, but that was over a month ago. There is still no date for their arrival, no plan for where they will be stationed, what they will do, what the rules of engagement will be or how long they will stay. Nor has any of this been coordinated with the relief organizations or the Somali clan leaders.

Despite the fact that private relief organizations have been operating in Somalia day in and day out for over a year, the United States still does not have any official representative there. We are trying to orchestrate massive, extraordinarily complex relief operation from Nairobi and Washington.

No one should minimize the dangers there, but the risks are not so great to justify such a timid policy. Last week the British Foreign Secretary, Douglas Hurd, went to Somalia. There is no reason why Assistant Secretary Cohen could not do the same.

We should immediately station adequate State Department and AID personnel there with the authority to speak for the United States and who can regularly consult with the relief organizations and Somali leaders.

They can actively assist in preparing for the arrival of the U.N. troops and coordinate our part of the relief effort.

I know this is being discussed at the State Department, Senator KASSEBAUM has mentioned it, and I want to emphasize that nothing less will do.

This is no typical famine where the problem is simply moving large amounts of food and relief supplies from point A to point B.

In Somalia there are ports where food and fuel can be delivered, there are trucks, and there are roads. But until now the people with the guns have been able to steal the food with impunity. U.N. troops, adequately armed and with orders to shoot back if fired on, are the only hope, and they are long overdue.

In addition, we need to immediately escalate our visible, active involvement in support of U.N. special envoy Sahnoun. He is doing a fine job, but he needs help. We should offer diplomatic personnel of sufficient rank who can assist Sahnoun to impress upon the Somali warlords that in return for our help in saving their people from starvation and rebuilding their country, they have got to stop lamenting that people are dying of hunger while their own troops continue to steal food out of the mouths of the starving. It's time for them to stop the hypocrisy and start talking seriously about ending the fighting.

Mr. President, there is a perception in the world that the United States, the only remaining superpower, can alone solve the world's problems. I am told that in Somalia everyone is looking to the United States to come up with the answer.

We can do a lot. A lot more than we are doing. As chairman of the Foreign Operations Subcommittee I plan to schedule a markup of the 1993 foreign aid bill next week, and I will recommend substantial increases in assistance for famine victims and refugees in Africa.

But at least as important for Somalia, I believe, is dramatically increasing the visibility of our presence in there and our contact with the rival clans. Because it is they, not us, who hold the key to the future of their country. It is they who are responsible for the devastation there, and they who must reconcile if there is to be any future for Somalia in their lifetimes.

Mr. President, 2 weeks ago, I sent a member of my staff to Somalia to tell me first hand what needs to be done. I want to praise the courage of Tim Rieser of the Senate Appropriations Committee staff, who works with me on Foreign Operations. Tim, in what had to be not only a risk to his own life, but a tremendous difficulty, went in there to come back and give me an account of the tragedy that is unfolding in Somalia.

Mr. President, I ask unanimous consent that an article on Somalia in today's Washington Post be printed in the RECORD.

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

AIDEED: WARLORD IN A FAMISHED LAND

(By Keith B. Richburg)

BAARDHEERE, SOMALIA.—Gen. Mohamed Farah Aideed, a warlord wearing a pinstriped shirt and gray slacks, was outlining his country's plight. "The situation of hunger and starvation in Somalia is very big," he said. "So many people are dying every day."

Then the warlord's de facto foreign minister, a former District of Columbia taxicab driver, asked a group of journalists to join Aideed for lunch.

If the invitation seemed out of place in a country wracked by famine, it was, nonetheless, characteristic of Aideed, a man known for contradictions and verbal contortions.

He has talked of the need for peace and development while his troops killed livestock and looted food meant for starving villagers. He has claimed to have "complete control of my forces," but then added that rogue elements in his ranks steal relief supplies because they are hungry.

Since longtime dictator Mohamed Siad Barre fled the capital in January 1991, Aideed, as chairman of the United Somali Congress, has been a central player in this country's slide into anarchy. Many describe him as a brutal regional warlord, although some see him as the only strongman capable of forcing unity on Somalia's warring factions.

Aideed's brutality was demonstrated last year when he began his campaign to wrest control of the capital, Mogadishu, from his rival, President Ali Mahdi Mohamed. His relentless shelling of Ali Mahdi's stronghold of Karan in the northern part of the capital failed to oust Ali Mahdi, but left thousands of civilians dead, tens of thousands wounded and countless homeless. Aideed's forces now control all of southern Mogadishu, including the international airport where most relief flights arrive and the port, considered vital for food supplies. All international relief agencies have their offices on Aideed's side of town, and officials have to negotiate with his aides for landing rights for planes, safe passage for vehicles and security for staffs.

More recently, Aideed's troops have routed the remnants of forces loyal to Siad Barre after weeks of heavy fighting here in southwestern Somalia, driving the ousted dictator's fighters across the border into Kenya.

Aideed has remained in Baardheere since his victory, leading some relief workers to speculate that his hold on this area remains tenuous. But Aideed said his "presence in this area is very important," and he left open the possibility that his troops may have to deal with cross-border attacks by Siad Barre's forces.

With his latest military victory and the merger of his United Somali Congress with three other political groups, Aideed claims to control 11 of 18 provinces, or two-thirds of the country. He noted that his power stretches through key areas, including the coast and the most fertile agricultural land in the south-central region.

As Aideed's power base inside Somalia has expanded, so too, it seems, has his intransigence. After some concessions to Ali Mahdi and the international community—including his agreement in March to a United Nations-brokered truce in the capital that allowed food shipments into the city and his acceptance more recently of the deployment of 500 Pakistani U.N. troops—Aideed has lately sounded more obstructionist.

He has remained opposed to a Security Council decision to dispatch an additional 3,000 U.N. peace-keepers to Somalia. "This has been announced without consultation with us," Aideed said during a recent interview. "Without our consent, we believe it will not be constructive." He added, "What we need is food, not troops."

Aideed did not say specifically that his forces would go on the offensive if additional U.N. troops were deployed without his consent. "We don't want the bloodshed to go on," he said.

But he insisted that his forces were adequate to guarantee the security of food shipments in the areas he controls, and he urged the United Nations to devote more money to rebuilding the old Somali national police force into a security unit of 6,000 men. Whether such a police force would be controlled by the United Nations or placed under Aideed's command is "a technical matter," he said.

An Italian-trained officer, Aideed rose through the ranks of the Somali military until Siad Barre and his Supreme Revolutionary Council seized power in a bloodless coup in October 1969. Aideed claims to have encouraged Siad Barre to hand over power to civilian technocrats—and to have been arrested and imprisoned for six years because of that recommendation.

After his release in 1975, Aideed worked as a civil servant until he was recalled to the military, with a colonel's rank, to help fight Somalia's war with Ethiopia over the disputed Ogaden region. Two years later, Siad Barre appointed Aideed to his rubber-stamp parliament, and in 1984, when he perceived the general as a potential rival, sent him to India as ambassador.

Aideed left the embassy in 1989, returning to Somalia to join the growing opposition to Siad Barre. From base camps near the Somali-Ethiopian border, he began directing

the final military offensive of the newly formed United Somali Congress that captured Mogadishu and toppled Siad Barre.

An international conference in Djibouti installed Ali Mahdi, then a little-known, exiled Somali businessman and hotelier, as the country's interim president. Ali Mahdi's critics say he was selected with backing from Italy, the former colonial power, because he could be manipulated. Ali Mahdi is also from Aideed's Hawiye clan, but from a different sub-clan.

The United Somali Congress never accepted Ali Mahdi's appointment and elected Aideed as its chairman, setting the stage for war. The rival forces fought three battles—in May, July and September of 1991—that destroyed most of the capital. A final clash last November demolished what little remained of Mogadishu. The United Nations, which had been absent from Somalia during 1991, finally stepped in and negotiated a truce.

Aideed said his wife now is in Canada and his 12 children are all abroad, including several living in the Los Angeles area where they are employed as engineers.

His new group, the Somali National Alliance, is working toward forming a government of national reconciliation to rebuild the war-torn country, Aideed said, adding that the alliance will soon make "new proposals" to bring about peace and multi-party democracy.

Mr. LEAHY. Mr. President, there are many, many problems throughout the world. We have many problems at home. All should be addressed. But the international community will find it will be forever to their shame if we do not address more forcefully the situation in Somalia.

It is cruel; it is truly inhuman in the greatest sense of the word, to allow so many millions of people to starve, some even while relief food is only a stones-throw away, stolen and hoarded by the same armed gangs that have ruined their country.

I yield the floor.

RESERVATION OF LEADER TIME

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

I suggest the absence of a quorum.

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

PRODUCT LIABILITY FAIRNESS ACT

Mr. MITCHELL. Mr. President, I now move to proceed to Calendar No. 653, that is S. 640, the product liability legislation.

The ACTING PRESIDENT pro tempore. The motion has been made and the motion is pending.

The Senate proceeded to consider the motion.

EXECUTIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go to executive session to resume consideration of Edward E. Carnes to be U.S. circuit judge for the eleventh circuit for which there will be 3 hours of debate. The clerk will report the nomination.

NOMINATION OF EDWARD E. CARNES, OF ALABAMA, TO BE U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The legislative clerk read the nomination of Edward E. Carnes of Alabama to be the U.S. circuit judge for the eleventh circuit.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today to voice my strong support for President Bush's nominee, Mr. Edward Carnes, who was nominated on January 27, 1992, almost 8 months ago, to serve on the U.S. court of appeals for the eleventh circuit. The Judiciary Committee conducted an extensive and thorough review of Mr. Carnes' record. Mr. Carnes' confirmation hearing was held on April 1, 1992, at which time the Judiciary Committee heard testimony from prominent witnesses who support his nomination. The committee considered his nomination quite some time ago, on May 7, and voted 10 to 4 to favorably report the nomination to the Senate for confirmation.

Mr. President, I would like to briefly review Mr. Carnes' background for this important position. He has a distinguished academic record. Mr. Carnes earned his undergraduate degree from the University of Alabama, where he was awarded the Beta Gamma Sigma Scholarship Key for having the highest grade point average in the 1972 graduating class of the School of Commerce and Business Administration. In 1975, Mr. Carnes graduated cum laude from Harvard Law School.

Since that time, he has served in the Alabama attorney general's office as an assistant attorney general. In this capacity, Mr. Carnes has gained extensive experience in appellate work. He has had at least 86 oral arguments as sole or chief counsel in State and Federal appellate courts—that number does not include oral arguments made on issues at the Federal district court or State trial court level.

Throughout his career, Mr. Carnes has received numerous professional awards, such as: In 1984, he became an honorary member for instructional service of the Alabama Judicial College in acknowledgment of the distinguished service he rendered to the judiciary and people of the State of Alabama. In 1988, Mr. Carnes was recognized by the Alabama Crime Victims Compensation Commission as an outstanding victim's advocate, and the Alabama Narcotics Officers Association recognized him for the vital role he played in the fortification of Alabama's drug laws. Also in 1991, he received an award from the Alabama Victims of Crime and Leniency Organization in appreciation for his concern for the plight of the victims of crime and for his dedicated service in capital litigation.

Mr. President, an extensive review of Mr. Carnes' record was conducted by the Judiciary Committee. His confirmation hearing, over which Senator HEFLIN presided, was thorough and comprehensive. Numerous individuals have endorsed his nomination, some of whom testified before the committee at his hearing, and others have written urging his swift confirmation. I would like to mention a few of the individuals who have voiced their overwhelming support and some of the very compelling examples they cite which I believe attest to Mr. Carnes' commitment to the cause of justice:

Mr. Morris Dees, director of the Southern Poverty Law Center, who has been instrumental in defending approximately 75 people who faced the death penalty, testified that he is personally strongly opposed to the death penalty yet he highly recommends Mr. Carnes. Mr. Dees commented on Mr. Carnes' involvement in the Flowers case, in which a 15-year-old was sentenced to death, stating that Mr. Carnes first read about the case in the newspaper. Mr. Carnes contacted the judge and the district attorney and informed them that they could not execute this person because the U.S. Supreme Court had ruled it was unconstitutional. Mr. Dees, referred to a letter which Mr. Carnes wrote to the prosecutor:

> Unless Judge Reed changes the sentence in this case before it reaches the appellate stage, I will confess error in this case in the Court of Criminal Appeals, I will do that in my capacity as an Assistant Attorney General representing the State on appeal, because I believe it is my duty to follow the Constitution as has been interpreted by the Supreme Court, even if that interpretation came in a 5-to-4 decision.

Alabama State Representative Alvin Holmes, chairman of the Black Legislative Caucus, wrote:

> I have known Mr. Carnes for many years and have known him to be fair and impartial toward all citizens without regard to race or color.

Mr. David Bagwell is an attorney who has been an opposing counsel to Mr. Carnes in habeas corpus proceedings. Mr. Bagwell was a law clerk to Judge Johnson, the individual whom Mr. Carnes has been nominated to succeed. Mr. Bagwell, who testified in support of Mr. Carnes' nomination, stated that he was appointed to represent two of the first four people executed in Alabama and in these cases he dealt with Mr. Carnes as an opposing counsel. Mr. Bagwell testified:

Nobody could have been more fair, nobody could have been more cooperative than Ed Carnes. * * * He was straight. He did not overreach. There was no ex parte conservation. There was no impropriety. He has immense credibility with the judges in Alabama * * *.

As well, Mr. Bagwell addressed Mr. Cranes' involvement in connection with the Alabama Capital Resource Center. Mr. Bagwell commented:

This business about Ed killing the funding of that center, in whole or in part, is a red herring. * * * Ed Carnes, at considerable personal risk, took it on himself to work with Dennis Balsky to work up a statute which would have adequately or more adequately funded representation by lawyers * * *.

In capital cases. Mr. Bagwell concluded by commenting:

Mr. Carnes is brilliant, he is fair, he is racially sensitive, he has absolute integrity. He is the kind of man * * * to fill Judge Johnson's slot. * * * I believe he ought to be confirmed.

Mr. Don Siegleman, a Democrat and former Alabama attorney general, who is currently in private practice wrote:

Ed is one of the brightest lawyers I have ever know. * * * Ed has an unassailable reputation and unimpeachable character. * * * He is known as a tough advocate but one who is completely fair and ethical.

Justice Kenneth F. Ingram, of the Supreme Court of Alabama wrote:

For eight years I served on the Alabama Judicial Inquiry Commission. During six of those years, I served as Chairman of the Committee * * * which investigates and brings charges against Alabama judges for misconduct in office or violations of the canons of judicial ethics * * * Throughout the entire time I was on the Judicial Inquiry Commission, Ed served as counsel to the Commission * * * As the Commission's attorney, Ed prosecuted eighteen cases against judges charged with misconduct in office or unethical behavior * * * all eighteen judges he prosecuted either resigned from office or were convicted. * * * Ed has been absolutely tenacious in his commitment to and insistence upon the highest level of judicial ethics. I can think of no better attribute for a nominee of a judgeship.

Judge Samuel H. Monk II, presiding judge of the Seventh Circuit of Alabama wrote:

I am the judge after whom the Alabama Supreme Court case of Ex Parte Monk derives its name. This case commenced upon me entering an * * * order requiring the district attorney to maintain an "open file" policy in a capital case. The D.A. sought mandamus to require me to rescind my order as it greatly expanded the scope of discovery as governed by Alabama procedural rules. While he was under no legal obligation to do so, Mr. Carnes * * * represented me in this action. * * * The Alabama Supreme Court, primarily due to Mr. Carnes' efforts, overturned the intermediate appellate court and held that my order was not an abuse of discretion because of the exceptional circumstances encompassed in capital litigation.

Judge Monk stated that he entered this order after hearing Mr. Carnes ask judges at a seminar to consider such orders in capital cases. Mr. Carnes told the judges about cases in which he had discovered and disclosed exculpatory evidence that prosecutors had kept hidden in their files. Judge Monk concluded by stating:

Though he is a dedicated advocate, I know him to be a moral, ethical and compassionate individual who is concerned about the rights of all litigants. I seriously doubt that I would have ordered the state to open its file * * * had it not been for the expressed feelings and opinions of Mr. Carnes. A man who subjects himself to the public criticism of his colleagues in doing what he thinks is right, not what he might think is expedient.

Judge Charles Price, a circuit judge for the 15th Judicial Circuit also wrote in strong support. Judge Price is a prominent black leader and is the first black circuit judge in Montgomery County, Alabama. Judge Price submitted written testimony for the record during Mr. Carnes' hearing. Judge Price stated:

Mr. Carnes is completely fair, and he has an unsurpassed reputation for integrity and candor * * *. He is an excellent attorney, and he is eminently qualified to be on the United States Court of Appeals for the Eleventh Circuit.

Mr. Rick Harris, an attorney currently with the Alabama Department of Health, who was an opposing counsel to Mr. Carnes in the Chick Bush cases testified in support of his nomination. In the statement Mr. Harris submitted to the committee, he stated he is opposed to capital punishment yet he supports Mr. Carnes. Mr. Harris testified that:

Mr. Carnes again and again told the judge that he should grant the stay of execution so that Mr. Bush would have an opportunity to have his claims heard and decided in Federal court. Finally, just twelve hours before the scheduled execution, Mr. Carnes convinced the Federal judge to issue a stay of execution. In March, Mr. Harris received a telephone call from Mr. Carnes who informed him that he had just discovered a document in the district attorney's file which was plainly exculpatory evidence that had not been used by the defense at the trial. As a result, Mr. Bush got a new trial. Mr. Bush is alive today on Alabama's death row, nine years after Mr. Carnes convinced the federal judge to issue a last-minute stay of execution.

Mr. President, in addition, I received a joint letter from the chief legal officers of each of three States in the eleventh circuit: Alabama Attorney General James Evans, Georgia Attorney General Michael Bowers, and Florida Attorney General Robert Butterworth—all Democrats—strongly endorsing Mr. Carnes' confirmation.

Lastly, I received a joint letter from 31 State attorneys general strongly supporting his confirmation. This letter states in part:

Mr. Carnes is a highly qualified attorney with in-depth experience in appellate practice and expertise in criminal law, Constitutional law, and federal procedure. His career has been distinguished, and he has displayed a fine sense of principled fairness. Mr. Carnes' record on civil rights is outstanding.

Mr. President, of the 31 State attorneys general who have endorsed Mr. Carnes' nomination, 19 are Democrats and 12 are Republicans, and 24 of the 31 States have capital punishment statutes, and 7 States do not.

Mr. President, I was extremely impressed with the testimony and letters in support of Mr. Carnes. As well, I have reviewed the criticisms which have been leveled against Mr. Carnes. I firmly believe the Judiciary Committee cannot and should not relitigate cases—cases that have been settled by the courts and cases where are currently pending before the courts. I found it to be particularly persuasive that some of Mr. Carnes' most ardent supporters indicated that they were personally opposed to the death penalty but that their personal feelings regarding this issue were overshadowed by Mr. Carnes' fairness in dealing with defense counsel and litigants involved in capital cases.

Mr. President, I have studied Mr. Carnes' record and firmly believe that his outstanding academic and professional credentials will serve him well on the eleventh circuit. All who have endorsed his nomination have praised his intellect, reputation, and character. As well, I am convinced that Mr. Carnes possesses the experience, integrity, and temperament to become an outstanding circuit judge.

Mr. President, I strongly support his nomination and urge my colleagues to do the same.

Mr. President, I reserve the remainder of my time and appoint the able Senator from Alabama [Mr. HEFLIN] to control the time in my absence. It is necessary that I leave the Senate floor for a short period to make some remarks at the opening ceremony for the White House initiative on historical black colleges.

Mr. BIDEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, today and tomorrow, the Senate will debate the nomination of Ed Carnes to serve on the U.S. Court of Appeals for the Eleventh Circuit, a seat being vacated by one of the truly courageous and great judges in recent American history, a man who made his reputation at his own peril by standing up, when he did not necessarily have to, for civil rights and for the rights of African-Americans at a time when they were being blatantly denied and when he, Judge Johnson, found himself in a position that to pursue what he believed the Constitution mandated and fairness dictated put his very person in danger.

Mr. President, before my friend leaves, the Senator from South Carolina indicated that ardent opponents of the death penalty supported Mr. Carnes. I might point out that ardent supporters of the death penalty oppose Mr. Carnes as well.

Mr. President, there is a bit of a red herring here. It is not, as some will suggest today and tomorrow, as some of Mr. Carnes' supporters will suggest, a debate about the death penalty. They will try to make it about the death penalty because they all know full well that the vast majority, or a majority of the Members of this body, as I do,

support the death penalty and they will attempt to cast it in the terms of the only reason anyone would oppose Mr. Carnes is because Mr. Carnes, in his professional capacity and in his personal views, supports the death penalty.

We all know that for more than a decade, Mr. Carnes has served as assistant attorney general for the State of Alabama in charge of the State's capital litigation unit, a fancy way to saying he is the fellow who went up on appeal to the higher courts in South Carolina arguing that death penalties which had been handed out, meted out to individual defendants in the lower court cases at the trial level should be upheld.

That is his job. That is what he has done. But those who suggest that the only opposition to Mr. Carnes boils down to opposition to the death penalty are attempting to set up a straw man.

As my colleagues know, I for one believe the death penalty is an appropriate sanction for those most egregious crimes where we have in fact guaranteed the criminal defendant all the safeguards he or she is entitled to under the Constitution. If those safeguards have been afforded, if a fair trial has been had, a fair appeal, habeas corpus has been made available, and the conviction is sustained and upheld, I believe there are circumstances in which the death penalty is appropriate.

As a matter of fact, I am an author of a bill before the Senate, the so-called crime bill, that reinstates the death penalty for literally scores of offenses.

So if the vote for Mr. Carnes' nomination were a referendum on the death penalty, I would vote for Mr. Carnes; I would vote "yes." But the question of Mr. Carnes' nomination is not that simple.

You will hear some oppose Mr. Carnes because of how zealous and ardent he appears to be in support of the death penalty, in what appears to be in most any circumstances. You will hear that argument made.

We must not lose sight of the fact that this is not a debate about the death penalty per se. All of us who oppose Mr. Carnes do not oppose him because he supports the death penalty. Once again, I support the death penalty. Senator BRADLEY supports the death penalty. Others of us who are strongly opposed to the Carnes nomination have supported, do support and vote for the death penalty.

The question raised by this nomination, so I would argue again, is not the propriety of the death penalty. It is a vastly more important question of the integrity of our justice system, of the commitment to those who control the system to justice above all else.

One of the ways our system promotes justice, Mr. President, is through the procedural and constitutional safeguards designed to prevent important factors like race discrimination from infecting the outcome of any jury decision, any court decision. The presence of race discrimination in a courtroom so undermines the promise of justice that we cannot and should not tolerate it in any form, to any degree, at any time.

Those who represent the Government in the courtroom, Mr. President, as judge or as prosecutor, bear in my view a special responsibility not merely to withhold from practicing race discrimination themselves but to work actively to prevent its occurrence and to condemn it presence if and when it occurs.

No. Mr. President, the question before us today is not the merits of the death penalty. The question before us today is the degree of Mr. Carnes' appreciation for the harm done to our system of justice when discrimination infects the process. The question for today is the depth of Mr. Carnes' commitment to a system absolutely intolerant of race discrimination.

In his professional career, Mr. Carnes has had to confront a most unfortunate part of our country's history, and that is purposeful face discrimination in jury selection. Such discrimination has persisted in all States at one time or another—not just in Alabama—despite being denounced by the U.S. Supreme Court as early as 100 years ago.

In 1879, in a case entitled Strauder versus West Virginia, the Court held that a State law prohibiting African-Americans from serving on a jury was unconstitutional. Justice Strong, delivering the opinion for the Court, simply asked:

> How can it be maintained that compelling a colored man to submit to a trial for his life by a jury drawn from a panel from which the State has expressly excluded every man of his race, because of color alone * * * is not a denial to him of equal legal protection?

In 1965, the Supreme Court reaffirmed this fundamental principle: In Swain versus Alabama, the Court held that just as the State may not pass a statute to exclude African-Americans from jury service, it also may not exclude African-Americans from jury service through a trial prosecutor's peremptory challenge.

By peremptory challenges I mean—we, as lawyers, refer to them as peremptory challenges—where a prosecutor or defense attorney, in certain circumstances, can say I do not want that person to serve on the jury just because I do not want them. They do not have to give any reasons. They do not have to say it is because they would be unfair; they do not understand; they are prejudiced. They do not have to say anything. They can, by peremptory challenge, say I do not want that man or woman to serve on this jury.

And so what has happened in Swain, although the Supreme Court, close to 100 years prior to that, came along and said, by the way, a State cannot pass a law saying no black man or black woman can serve on the jury, that was settled.

But then what State prosecutors started to do—again, not only in Alabama but my State as well, Delaware during its history, and many other States—was to come along and say all right, I have a black defendant here. I am prosecuting that black accused person, and I tell you what: Anybody who comes in this jury box who is black, I am going to say, "Out." I do not want a black person on this jury, hearing the facts in the case and the evidence against this black defendant. So they exercised peremptory challenges.

We have found that discrimination is insidious. We all know from our personal experience, regardless of our age, that discrimination is fairly sophisticated. We came along and said there cannot be any statutes in States saying the black folks and white folks cannot go to school together. All of a sudden, we found some States having privately funded public schools, academies for only white folks, and saying this really is not discrimination; these are just different. When they tried that, then we found gerrymandering of school districts to see to it that only white folks ended up in this one school and black folks ended up in another school. We found the same thing in job discrimination. Well, the same thing occurred, everyone should be reminded, in the selection of jurors. And it still occurs in the selection of jurors.

As recently as 1965, the Supreme Court reaffirmed the principle in an Alabama case. I might add that it is just not fair, it is not constitutional to say, without any good reason, I do not want that person on this jury because that person is black.

And then again, in 1986, in Batson versus Kentucky, the Supreme Court put some teeth in the promise it made in the Swain case. It first articulated that promise to rid the jury selection system of discrimination a century earlier. We remember now, in a West Virginia case a century earlier, they said States cannot go out and say black folks cannot be on juries. Then later they found out that States got around that by letting the State prosecutors and district attorneys say, you are black; I am going to challenge you. You cannot sit on that jury.

They said you cannot do that either. Then they came along, as recently as 1986, in Batson versus Kentucky, and they reinforced that promise of nondiscrimination in this fashion, when they said, "The defendant does have the right to be tried by a jury whose members are selected pursuant to a nondiscriminatory criteria."

(Mr. REID assumed the chair.)

Mr. BIDEN. Recognizing that race discrimination would not be eradicated through admonition alone, the court replaced the Swain test with a test relating to burden of proof.

The message of Batson is that discrimination must be fought not merely with words but with actions, and with real sanctions.

So in considering the nomination of Ed Carnes I have looked at how he responded when confronted with race discrimination in the selection of juries, of what he has said, and at what he has done. We listened, I might note parenthetically, in the Judiciary Committee to an awful lot of very fine witnesses. And the distinguished Senator from Alabama, a man who has the trust and confidence of the whole Judiciary Committee, went throughout his State and other environs I assume and sought out opinions about this nominee. Some came, some men whom we respect very much, some people whom we respect very much on both sides of the aisle, and said this man is not a racist; this man does not discriminate; this man has not actively engaged in attempting to discriminate.

That at first, to me, seemed to be fairly persuasive, particularly in light of some of the people who were making that assertion. But then, quite frankly, after the second series of hearings about the nominee and with the nominee, after long hearings with him, and testimony in which he was very cooperative and appeared to be very forthcoming, a pattern emerged that worried me as much as if he in fact had been someone who had, as the head of that department in the State of Alabama, that was to take these death penalty cases on appeal to assure that the death penalty was carried out—it worried me as much as if he had somehow engaged in some pattern to discriminate.

When you go to law school you are required to learn a lot, much of which you do not learn and much of which you do. But there is an expression. "There is a difference between a malfeasor and a nonfeasor." I will never forget a professor explaining that to us in a tort class once and he said, you know the difference between a malfeasor and a nonfeasor is the malfeasor is someone who will walk out to end of a fishing pier, and someone is standing at the end of the pier fishing and, knowing he cannot swim, pushed him of the pier, and he drowns. That is a malfeasor.

He said a nonfeasor is the guy who is standing there with a life preserver in his hand, and he watches the person in the water and he does not throw him the life preserver. He knows he is drowning. He did not push him in. But he does not throw the life preserver. That is a nonfeasor.

I respectfully suggest that our nominee today, in terms of race discrimination is a nonfeasor. I am not suggesting he personally is a racist. I am not suggesting that he personally promotes the notion of saying to his State prosecutor, look, when you have a black defendant, you do not want to have black jurors. It is not a good thing. You have a better chance of convicting a black defendant if you do not have any black women or men on the jury, pick only white folks; do what they did in Los Angeles; find a jury that has no black folks on it. That is the thing to do.

I am not suggesting that is what he did. There is no evidence of that. There is no reason to believe that. I am not trying to be cute here by saying there is no evidence of that, implying that he really did. There is no evidence of that, and there is nothing in his background to suggest he is a man who would do that. But let me tell you what he has done, or more importantly, what he has not done and why I think what he has not done warrants, in this case, his being kept from being on the 11th circuit, replacing one of the heroes, a white man, of the civil rights movement in the South, Judge Frank Johnson.

Let us go through it a little bit here. Let us look at what he said and what he is doing. It is clear that Mr. Carnes has personally condemned race discrimination in the selection of juries. He has called it loathsome and has instructed trial prosecutors that such a practice is unlawful. He has actually gone, in the State of Alabama, to the trial prosecutors and I assume in the context of seminars, meeting with these folks because he is an experienced prosecutor and said look, you have to understand the rules. One of the rules is that you cannot be discriminatory. It is unlawful to be discriminatory in jury selection.

But when asked to defend convictions won by some of these same trial prosecutors who used peremptory challenges to strike African-Americans from a jury, based on a their race alone, Mr. Carnes has complied. Mr. Carnes concedes that he pursued appeals in "a number of cases in which district attorneys, or their assistants, either did not have race-neutral reasons for striking blacks or could not recall them when it was necessary to do so."

Make sure we understand what that means. Here is a man who, as a senior person in the Justice Department of the State of Alabama, calls the selection of jurors based on race loathsome, and there is evidence that he has instructed State attorneys general and prosecutors and district attorneys, that you cannot do that, folks. He said, when you select a jury, do not go out there and challenge someone to sit on the jury. Remember what we call peremptory challenges. You cannot peremptorily challenge someone without a reason. Just because they are black, that is unconstitutional. It is unlawful.

And then he acknowledges on the record that when, notwithstanding his admonition and the Constitution, a State prosecutor has done that or appears at least to have done that in some cases, clearly done it—I will speak to those cases in a few minutes—or when asked why they struck that black person, could not remember why they struck the black person—when faced with those cases that resulted in the conviction, the death penalty for a black man.

Let us make sure we keep this in focus.

A black defendant, a white prosecutor, a jury about to be selected, black folks drawn from that jury pool, white prosecutor says that black person I do not want on the jury. That black person I do not want on the jury. As a matter of fact, I do not want any black persons on the jury. I challenge them all. That is not the wording he used. But that was the effect of the action.

So you end up with a white jury trying a black man or woman, white jury finds black man or woman guilty. white jury or judge or both impose the death penalty, defendant, black defendant, appeals; says, hey wait a minute, I did not get a fair trial. My constitutional rights were violated. That prosecutor in such and such a county would not let any black folks on the jury; only white folks. And I got convicted. I should get a chance to be tried over again, this time with a fair jury selection.

What did Mr. Carnes do in those cases, and I will get into the specific cases? Mr. Carnes said basically—I will quote him in a moment—but basically Mr. Carnes said, hey, look, I work for the State of Alabama. That guy was convicted. He is appealing his conviction. I am going to go ahead and defend the State of Alabama and say we should put that man to death.

Maybe a neutral jury would have found the same way. Arguably, a jury made up of all blacks might have found the person guilty, but that begs the question. The jury was not fairly selected.

What Mr. Carnes should have said in the cases I will mention in a moment is: Hey, wait a minute, on appeal, Judge Smith, or Jones, or Wilson, whatever the name, judge—in layman's language—the State of Alabama made a mistake, judge; we confess that we made a mistake. That prosecutor, in such-and-such a county did not select the jury fairly. We ought to do this thing again, judge.

That is not what he said. He did not do that. He concedes that never once during his tenure with a capital litigation unit did he refuse to defend such a case. Never once did he seek to convince a district attorney—again legal terms—to confess error in such a case. Never once did he challenge the Alabama attorney general's policy that if any technical argument could be used to sustain such a conviction, notwithstanding that the jury might not have been properly selected under the Constitution, the attorney general's policy has been that if there is any technical argument that can be made to sustain the conviction, it should be made.

I appreciate that Mr. Carnes acted as an advocate for the State in these matters, but his duty to the State is to

pursue justice, not a conviction at all costs. In my view, Mr. Carnes lost sight of this greater goal. For example, Mr. Carnes argued the Federal collateral appeal in the Jackson case, after the trial prosecutor admitted that he struck African-Americans from the jury based solely on their race, using 12 peremptory strikes to remove all such potential jurors.

Make sure you understand what I am saying, because if you look at this, here is chairman of the Judiciary Committee who says this guy is not a racist, and yet, he is making a big deal trying to keep this guy from taking Judge Frank Johnson's seat on the eleventh circuit. Why? What is the big deal? Well, the big deal is there is a little principle of immense consequence that is essential, in my view, for Federal judges to understand and adhere to.

In the Jackson case, you had a trial prosecutor in a trial court in Alabama having achieved a conviction of a black man, who subsequently gets sentenced to death. In the appeal the defendant says no, no, no, no, do not put me to death, I did not get a fair trial, and you have the prosecutor who tried him saying or admitting that, yes, on 12 occasions when a black juror stood in that box, I said, out, I do not want you sitting on this case. Why? Because you are black. I do not want you on this case. Any other reason? No, you are black. The defendant is black, you are a black person, and I do not want you passing judgment here. I want an all-white jury.

Twelve times he does that; 12 times under Alabama State law, the black prospective juror is bumped out of the box, and a white person is put in their place. Again, maybe had all 12 of those black people—maybe if it had been an all-12-person black jury—I assume it is 12 persons. Some States have six persons. I do not presume to know Alabama law that well. Assuming a 12-person jury, and let us assume they were all black. They may have come along and found—and I do not know any of facts of the case beyond this—Miss Jackson guilty. Maybe.

But guess what? The fix was in at the front end. In the eyes of the Constitution, you are not allowed to do that any more than you can say, when you have a woman defendant to say, hey, by the way, no women on the jury. What would happen in this country if we said no women can serve on a jury in this day and age, where there is a woman defendant? They may be sympathetic to a woman, so I do not want any women on this jury. We would all say that that is outrageous. But guess what, it still happens with black folks, African-Americans.

Here you have the Jackson case, and Miss Jackson gets convicted of murder by a jury, where on 12 occasions the State prosecutor says, yes, I struck—or it was proven—I struck 12 people from the jury, that is, kept them from sitting on the jury. Why? Because they were black.

And what did Mr. Carnes do? Did Mr. Carnes say, I am not going to take that case up on appeal, I am not going to defend the State's position? Did he say that it should go back and get a fair trial? That is not fair?

No. He followed the attorney general of the State of Alabama's guidelines and said, if there is any technical reason upon which you could attempt to sustain a conviction notwithstanding such a blatant violation of somebody's constitutional rights, you should do it. I call that a nonfeasor—someone who has the life raft in their control and possession, and someone is drowning who is innocently pushed over the end of the dock, and does not throw it. He withholds it. As a matter of fact, he goes further. When somebody else tries to throw it to him, he says, no, no, you cannot do that.

The Jackson case is not a close case, a case that could reasonably be argued on the merits either way. This was a case where the Federal district court found that the Swain test described by the Supreme Court as imposing a crippling burden of proof on the defendant was met. The Supreme Court says that the Swain test puts a crippling burden of proof on the defendant. The defendant cannot just say maybe they discriminated against me, maybe that happened, or I think it did. They have the burden of proving that it did. In this case, Miss Jackson's lawyers proved—proved—that the State of Alabama and the local prosecutor prosecuting her violated the Constitution by, for no good reason, saying black folks cannot serve on the jury.

Mr. Carnes personally handled the appeal before the eleventh circuit, arguing that the Federal court should uphold the conviction and sentence, without reviewing the claim of discrimination. Why? In fairness to him, he did not attempt to defend the actions of the prosecutor. He did not say that is a good thing the prosecutor did. Again, the malfeasor. He did not go out and say that is what we should do.

He did not say that. He followed the guidelines of the attorney general of the State. He said, if you can find any technical reason—any technical reason—to uphold a conviction even where it is clear someone's constitutional rights have been violated, as they have been in this case, you should do it.

So what technical objection did he find? He was a very good lawyer. I do not doubt that. No one questions that. The technical objection he found was that the defense counsel, the person representing Miss Jackson, did not raise her constitutional right in a timely way. In other words, she did not have a lawyer who was sharp enough to do it on time, within the time limits required.

Keep in mind, this is not a case where somebody is going to now have to pay $250 for a traffic fine instead of $35. This is not a case that is being appealed where someone is going to go to jail for 7 years instead of 3. This is not a case where someone is going to go to jail instead of get parole. This is a case where someone is going to be put to death and the person's rights have been clearly violated. The prosecutor admits it. Twelve times in selecting the jury, that prosecutor said, "You cannot serve, because you are black," and 12 times that black person had to get up out of the box and walk out of the courtroom and a white person came in and sat down in that seat and ultimately passed judgment.

Again, maybe 12 black people would have found Miss Jackson guilty. I do not know. But it is clear she did not get a fair trial based on what the Supreme Court says is fairness. Under our Constitution you are entitled to a trial by jury, a jury of your peers. For over 100 years, the Supreme Court has said, by definition, it cannot be a jury of your peers if the State in any way jerry-rigs it so someone of your same race or color cannot serve on the jury.

What did Mr. Carnes do? Mr. Carnes said, well, that may be true—I am paraphrasing—that may be true, but her defense counsel—who was an appointed counsel, not getting paid $300 an hour, may be a great counsel, I do not want in any way to besmirch that person's reputation, but one of the things we have before us right now is a bill relating to habeas corpus where I want to see to it that you only get one chance in habeas corpus, but you get one good lawyer when you get your chance, because there is an overwhelming body of evidence that the people who take these cases for criminal defendants are people appointed by the court or public defenders—I was a public defender—who may get, 2, 5, 10, 12 of them or it may be the first case they ever got, because we all know the major senior partners of law firms do not jump in and say, instead of making that $800 or $300 or $500 an hour on this case, let me go down and defend someone accused of an offense who cannot afford a lawyer.

So there is an overwhelming body of evidence, that I am sure he learned about at Harvard Law School, in capital cases, that people who are minorities do not always get the best lawyer.

Now what does he say again? Let us review the bidding here. He says, "Yes, 12 times the State's prosecutor said, 'You are black, you cannot sit in judgment on this African-American defendant,' and that is wrong. But her court-appointed attorney was not sharp enough to have raised that objection quickly enough; therefore, we should put her to death."

Like I said, we are not talking about a purse snatch here, although it would

still be denial of constitutional rights. We are not talking about whether or not someone was driving recklessly and going to get their license taken away. We are talking about a very bright, articulate man, who I do not think is a racist, taking his charge from the attorney general of the State of Alabama, his boss, literally, when told that, if there is any technical reason that could sustain the conviction, any technical argument made, make it. He is a very good lawyer, and he made the technical argument, I suspect the only one he could find.

In describing his advocacy in that case, Mr. Carnes told the Judiciary Committee, and I quote from the transcript of his hearing.

I am not saying that the district attorney in that particular case did not strike all the blacks off the jury for facially discriminatory reasons, and I do not condone that. But my position was not to judge whether or not that was good practice or a permitted practice.

My position in the lawsuit was to advocate the position of the state of Alabama that that conviction should not be overturned with the possibility that someone who was guilty might go free, if there was any legally available basis for doing that.

Now, those are his words, not mine. Let us take a look at them. I think his statement illustrates the flaws in Mr. Carnes' thinking at least at three separate junctures. First, no exercise of judgment was needed here. That is one of his contentions; it was not his responsibility to exercise judgment here. The trial prosecutor admitted using racially discriminatory strikes. In doing so, he deprived the defendant of her constitutional right. This action was clearly illegal, and, under the Supreme Court precedents, was grounds for reversal. And yet he says in his statement that his responsibility was not to exercise any judgment here. It says: "But my position was not to judge whether or not this was a good practice or a permitted ±practice."

I would ask him then, well, why is it not your position as an officer of the court? The court is there to dispense justice. Justice and the procedural ground rules for arriving at it are laid out in the Constitution. When any portion is in doubt, it is argued before the Supreme Court, and the Supreme Court, for over 100 years, has said, "State, you cannot say black folks can't sit in judgment of a black woman." If it is not his responsibility to judge, whose is it? Is he not an officer of the court?

What would happen, by the way, what would happen if he had done—let me double check this. What would be the worst thing that could have happened if he had said we made a mistake under Alabama law and under the Constitution and we deprived her of her rights for a fair jury selection? Well, she would have had to be retried if the State chose to retry her. What a risk. What a risk.

Second, fair process is not a mere nicety to be swept away in the zeal for conviction. Those who represent the Government must not be passive in the face of race discrimination. Mr. Carnes says he does not condone the use of race-based jury strikes, but his statements and actions betray a willingness to tolerate them, if need be, to preserve a guilty verdict.

Third, Mr. Carnes ignores completely the damage caused by the prosecutor's actions—the specific harm in depriving the defendant of her constitutional rights, and the broader harm in undermining the public's trust in our justice system.

Mr. Carnes' discussion of another case handled by his office, though not argued by him personally, is revealing on this last point as well.

Mr. President, how much time is controlled by the Senator from Delaware?

The PRESIDING OFFICER. Forty-six minutes.

Mr. BIDEN. That is what is remaining?

The PRESIDING OFFICER. Yes.

Mr. BIDEN. Mr. President, I will short-circuit the rest of my statement in order to give my friend from Massachusetts and others an opportunity to speak. But just let me briefly mention this other case—and there are others—the Jefferson case.

In the Jefferson case, following a conviction of African-American defendant, defense counsel discovered the trial prosecutor's notes from the jury selection.

He actually found the notes that the prosecutor had when he was selecting the jury, sitting at his or her desk, and writing out, you know, on the table like those tables right there, before a judge sitting there and making notes. And the notes revealed that the trial prosecutor had divided the prospective jurors—they came into the box to be questioned as to whether they could or could not be jurors—into four categories: Strong—and, so if it had Mr. Wilson, it would have behind Mr. Wilson's name and one of the following four words, Mr. Wilson would be in one of the following four categories: Strong—I assume meaning strong for the prosecution in the mind of the prosecutor, which is all right for him to make a judgment about; weak, medium, or black. There was a fourth category he had. Strong, I assume strong for the prosecutor; weak, meaning bad for the State; medium, meaning unsure, I assume; but the fourth one, black.

In response to written questions from me about this case, Mr. Carnes confirmed that neither he nor any one else in his office sought permission to confess error in the case. Instead, though admitting race-based jury selection is wrong, he argued in response to my question that:

Whether it renders a particular trial fundamentally unfair to the defendant and undermines the relability of a guilty verdict depends upon the facts and circumstances.

Do you have this now? Here is a man who says, OK, even if a prosecutor uses race as a basis of selection, that is not enough for me, the prosecutor, to say I will not appeal that case. I want to look behind it. Because every case is individual. Maybe they did that to an innocent person. That is neat. Or maybe they did that to a guilty person. Maybe they denied the person who did pull the trigger his constitutional rights, in which case, implict in his statement, I would appeal it. But maybe they denied the constitutional rights of someone who did not pull the trigger, then I might use it as a means to not appeal the case. They are my words, not his. But how else can you read that?

Let me read it again:

Whether it renders a particular trial fundamentally unfair to the defendant and undermines the reliability of a guilty verdict depends upon the facts and the circumstances.

Is it the facts and circumstances of denying a black person the right to sit in the jury? Or is it the facts and circumstances of the case? If it is the first, why do you not find out what the facts and circumstances are? And if it is clearly the circumstance that someone was preemptively challenged because of their race, then do not appeal. If it is the latter, it is totally irrelevant.

This statement contradicts the critical rationale underlying the line of Supreme Court decisions culminating in Batson:

That such a practice is always fundamentally unfair to the defendant, whose life, quite literally, is on the line; and

That such a practice destroys the very notion of a just, fair, and reliable verdict.

Not only criminal defendants pay the price for this illegal practice—all of us do. Race discrimination, when practiced by those who represent the Government itself, feeds a perception that a distinct, recognizable, and significant minority of Americans are treated differently by the criminal justice system.

It creates precisely the result the Batson decision sought to protect against—a loss of public confidence in the system.

This spring, I might add, our Nation again witnessed the real-world consequences of this loss of confidence, as south central Los Angeles burned following the acquittal of the police officers who beat Rodney King—by a jury with no African-American members.

Over the last century, the means used to exclude African-Americans from juries has varied—from laws prohibiting African-Americans from serving on juries; to methods designed to keep African-Americans off jury rolls; to trial attorney's use of racially discriminatory peremptory challenges.

Though the means have differed, the pernicious consequences persist. We must bring this painful history to an end.

We must ensure the integrity of the courts; foster faith in the system; and instill confidence that our system of justice is, indeed, just that—an institution free from bias, committed to equality and protective of all Americans' constitutional rights.

And that cannot possibly be communicated when people are denied the right, specifically denied the right, to have someone of their own skin color sit on a jury when they are being tried.

Some may argue it is unrealistic to think we can eliminate all vestiges of discrimination. But if anybody argues it is silly for us or idealistic for us to think we could eliminate the vestige of discrimination in the selection of juries, they do not understand the consequences for all of us in this Nation when a significant portion of Americans believe, rightly or wrongly, but believe that there are two sets of rules—one for white folks and one for them.

Mr. President, I conclude, for the moment at least, by suggesting that the record of this nomination falls short. I oppose the nomination of Ed Carnes for the Eleventh Circuit Court of Appeals.

I withhold the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield to the Senator from Massachusetts 8 minutes.

PRIVILEGES OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Linda Blauhut on September 8 during the pendency of the Carnes nomination and each day following.

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

Mr. KENNEDY. Mr. President, I oppose the nomination of Edward Carnes to the U.S. Court of Appeals for the Eleventh Circuit, and I urge the Senate to reject the nomination.

The court to which Mr. Carnes has been nominated is among the most important in the Nation. It has the last word on the vast majority of the civil rights cases in the United States, and many other significant cases come before it as well.

The vacancy to which Mr. Carnes has been nominated is a historic one. It was created by the retirement of one of the most respected judges in the Nation's history—Judge Frank Johnson, a judge of extraordinary courage and commitment to principle who presided over many of the most controversial and important civil rights cases of our times. In a commencement address at Boston University Law School, Judge Johnson once stated:

> The law should be realistic enough to treat certain issues as special; as racism is special in American history. A judiciary that cannot declare that is of little value.

By contrast, the nominee before us to replace Judge Johnson is a man who appears to be remarkably insensitive to racial discrimination. As chief of the capital punishment unit of the Alabama Attorney General's Office, Mr. Carnes oversaw the application of the death penalty in Alabama.

In that State, and in other jurisdictions, too, prosecutors frequently excluded black citizens from juries in death penalty cases involving black citizens defendants. Mr. Carnes personally defended the death sentences in several of those cases. Yet he told the Judiciary Committee:

> I do not believe that capital punishment is applied in a racially discriminatory manner in Alabama or in the Nation.

That is what Ed Carnes said. Here is what Judge Frank Johnson said in McCleskey versus Kemp, a case challenging the imposition of the death penalty in Georgia:

> Warren McCleskey has presented convincing evidence to substantiate his claim that Georgia administered its death penalty in a way that discriminates on the basis of race.* * *
>
> [He] has certainly presented evidence of *intentional racial discrimination* at work in the Georgia system.

In other cases as well, Judge Johnson has authored opinions overturning death sentences because of pervasive racial discrimination in juror selection.

The contrast could not be sharper: Judge Johnson found evidence of racial discrimination in the application of the death penalty; Ed Carnes believes there is no such discrimination in the Nation.

Yet, cases which Ed Carnes defended himself demonstrate flagrant evidence of racial discrimination. In 1986, the Supreme Court's decision in Batson versus Kentucky set new guidelines to prohibit racial discrimination in jury selection, by making it more difficult for prosecutors to exclude Blacks from juries. Yet in more than 20 cases, Mr. Carnes or staff attorneys under his supervision have sought to evade the Court's rule and defend jury selection practices that reek of racial discrimination.

It is important to point out, Mr. President, that there may be during the course of the debate, suggestions that Mr. Carnes really did not know what was going on in these particular cases. He had one responsibility and that was to deal with capital cases. That was his responsibility. And either he understood and he knew what his staff attorneys were talking about, what actions they were taking on small numbers of extremely important issues—he knew what they were doing. They knew what they were doing. And any suggestion that he did not, I think, defies any kind of comprehension.

In the Jefferson case, the prosecutor divided prospective jurors into four categories: strong, medium, weak, and black. And he used all 26 of his peremptory challenges to strike blacks from the jury. The defendant Jefferson was sentenced to death, and he challenged the sentence.

Mr. Carnes' office opposed the challenge, claiming that Jefferson's lawyer had failed to raise the issue in a timely fashion. That was their prerogative as prosecutors, but the evidence of racial discrimination could not be denied by any fair-minded individual. Yet Mr. Carnes told the Senate Judiciary Committee:

> I do not believe that capital punishment is applied in a racially discriminatory manner in Alabama or in the Nation.

Or take the Jackson case, another death penalty case. The prosecutor used 12 peremptory challenges to exclude all black jurors. He testified in the postconviction proceedings that he struck all the black jurors from the panel because "in his judgment, black jurors are less willing to give the State a fair trial and are less likely to convict."

The Federal district court found that the prosecutor's office had a policy of using challenges—"to strike as many blacks as possible * * * in cases involving serious crimes." The court concluded that the prosecutor had engaged in intentional racial discrimination in violation of the equal protection clause of the Constitution.

Mr. Carnes' office opposed Jackson's challenge to his death sentence. Once again, the prosecutor asserted that the challenge was not raised in a timely manner. Once again, that was his prerogative. But the evidence of racism was undeniable. Yet Ed Carnes believes that there is no racial discrimination in the application of the death penalty.

Or take the Floyd case. The prosecutor in that death penalty case used 11 peremptory strikes against black potential jurors to get an all white jury. The Alabama Supreme Court found that the defendant had offered prima facie evidence of purposeful discrimination and ordered a hearing on the issue.

Once again, Mr. Carnes' office argued that the defendant raised the Batson claim too late. That was his prerogative. But the evidence of race discrimination was compelling. Yet Ed Carnes believes that there is no race discrimination in the application of the death penalty.

As a matter of fact, Mr. Carnes has never refused to defend a conviction where racially motivated exclusion of blacks from the jury was at issue. That may be his prerogative as a prosecutor where a technical objection to the claim is available, but time after time, the evidence of race discrimination was compelling. Yet Ed Carnes believes that there is no race discrimination in the application of the death penalty.

In fact, study after study has come to the conclusion that the death penalty

is applied in a racially discriminatory manner. Those who murder whites are more likely to be sentenced to death than those who murder blacks. Put another way, the findings are that those who murder blacks do not deserve the same level of serious prosecution as those whose victims are white.

In Alabama, there are more black homicide victims than white victims.

Yet comparatively few of those cases are prosecuted to the fullest extent of Alabama's law.

It is an incredible disparity. Two-thirds of the State's murder victims are black. Yet in more than 85 percent of death penalty cases, the murdered victims were white. Two-thirds of those executed in Alabama have been black.

This pattern is repeated throughout the Nation. In a study required by the 1988 crime bill, the General Accounting Office found a "pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty."

Yet Ed Carnes believes that there is no race discrimination in the application of the death penalty.

Courts throughout America have found such discrimination. The General Accounting Office has found it. But Ed Carnes—who has spent virtually his entire professional career handling death penalty cases—believes that there is no race discrimination in the application of the death penalty.

Death penalty justice in America is separate and unequal. The imposition of the death penalty is rife with racial discrimination, and the Senate should not confirm a nominee who cannot see it.

I am also deeply troubled about other aspects of Mr. Carnes' commitment to basic fairness in death penalty cases. He told an American Bar Association task force on the capital punishment process that defendants in capital cases in Alabama receive "excellent legal representation * * * even more than the Constitution requires."

Let me describe a few examples of this so-called "excellent" representation in Mr. Carnes' jurisdiction:

An attorney showed up drunk to defend a capital case. The judge sent him to jail for a day to sober up.

A defendant's court-appointed counsel submitted a brief to the Alabama Supreme Court with only a single page of argument, raising only a single issue, and citing only one legal precedent.

In another case, the defendant's counsel asked for time between the guilt and penalty phases of the trial. He explained this request, saying he needed to read the Alabama death penalty statute.

We have been told of a case where the imprisoned defendant was visited by his lawyer once in 8 years, and of another where the lawyer never visited in 8 years.

We have received reports of many instances where trial attorneys simply failed to offer evidence or present witnesses. In one case, George Daniel, a man with an IQ in the forties, was convicted and sentenced to death for killing a police officer. On appeal his lawyer said of the trial counsel:

> They did not present any evidence. They did not present any witnesses.
>
> They did not present any defense for Mr. Daniel at his trial.

The trial lawyers admitted as much, and Mr. Daniel eventually won his action for ineffective assistance of counsel.

A trial attorney neglected to mention to the jury that the defendant was mentally retarded. Mental retardation is a mitigating circumstance that can make the difference between being sentenced to life in prison or the electric chair. When the juror at the trial later learned the truth, she said publicly that the jury would have made a different decision if it had known about the defendant's retardation.

Until recently, the maximum compensation available to a trial attorney for out-of-court work in a capital case in Alabama was $1,000. The State has recently raised that limit to $2,000. Lawyers representing defendants in post-conviction collateral proceedings have been limited to $600 in compensation.

These figures are a cap—the most an attorney can get to mount a defense that makes the difference between life and death. Alabama, ranked sixth highest in the Nation in number of executions, still has one of the lowest compensation levels for defending death penalty cases. The State has no public defender system, so an indigent defendant has no choice but to rely on underpaid, court-appointed counsel.

Mr. Carnes effectively blocked funding requests for the Capital Resource Center, the agency that pays private attorneys to handle capital cases, even while he lobbied for funding increases for his own office. The center sought a modest appropriation of $50,000—less than Mr. Carnes' individual salary, and far less than the budget for his death penalty office. Mr. Carnes insisted that the legislature give his office the same additional amount, and the legislature denied funding for both.

Thirty-nine present and former prosecutors recently wrote to the Senate to express their opposition to the Carnes nomination. Their letter states in part:

> We are * * * alarmed at Mr. Carnes' view that indigent capital defendants receive excellent legal representation in Alabama. Only a very cynical advocate could hold such a view.
>
> Alabama has no State-wide defender system, and the funds available for trial counsel in capital cases are grossly inadequate by any measure. * * * Using these criteria alone, Alabama might well be considered one of the very worst providers of legal representation for indigents.

Finally, I urge my colleagues to consider this administration's abysmal record in appointing racial minorities to the Federal courts of appeals. Of President Bush's 52 appeals court nominees, only one is black. By contrast, more than 16 percent of President Carter's appeals court nominees were black.

There are 4.5 million black citizens in the States in the eleventh circuit, more than 19 percent of the population. Yet none of the judges nominated by Presidents Reagan or Bush to that court is black.

All Americans deserve to have confidence in the fairness of the judiciary. The Carnes nomination is a civil rights issue, and the Senate too is on trial. The Eleventh Circuit Court of Appeals has played an historic role in the legal battles to wipe out racial discrimination in America, and so has the Senate. This is no time for us to turn back. I urge the Senate to reject this nomination.

Mr. President, I ask unanimous consent that an editorial from the Tennessean dated September 5, an editorial from the Atlanta Constitution dated September 6, and an article from the New York Times dated September 8, 1992, be printed in the RECORD.

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

[From the Nashville Tennessean, Sept. 5, 1992]

SENATE SHOULD REFUSE CARNES' CONFIRMATION

If the U.S. Senate votes to confirm the nomination of Edward Carnes, it will telegraph the message that injustice and racism rule in southern courtrooms.

Carnes, an assistant attorney general in Alabama, has been nominated to the 11th Circuit Court of Appeals, which hears cases from Alabama, Georgia and Florida. Although the nearness of the presidential election is causing the Senate to slow-walk most of President Bush's judicial nominations, Carnes' is being pushed to a vote next week.

The nominee can thank the persuasiveness and power of Alabama Sen. Howell Heflin for getting his name to the Senate floor. But no senator should be so indebted to Heflin that he or she votes to put Carnes in the high judicial seat.

Carnes embodies the worst instincts of the Bush administration in regard to criminal justice. In his appearance before the Senate Judiciary Committee, Carnes insisted that no racial discrimination exists in the criminal justice process in Alabama. He has consistently defended the systematic striking of black jurors in order to get an all-white jury and he asserted before the Judiciary Committee that the exclusion of jurors on the basis of race did not necessarily violate fundamental fairness.

Carnes, who wrote Alabama's death penalty law, has said that death row inmates in Alabama are adequately represented by court-appointed counsel. That assertion files in the face of overwhelming evidence to the contrary. He has also lobbied for limiting the legal rights of those condemned to die by cutting off their right to habeas corpus appeals.

Carnes' nomination would be appalling in any federal circuit in the nation. But it is particularly galling because he is being nom-

inated to fill the seat of Judge Frank Johnson, who at the age of 73 is taking semi-retired status. Johnson, one of this nation's more respected jurists, is a civil rights hero. As a federal district judge appointed by Eisenhower, Johnson forced Alabama's institutions to comply with civil rights laws. He faced down the segregationist policies of Gov. George Wallace. Although Johnson was frequently ostracized in his community, he desegregated Montgomery's transit system and brought racial equality into the state's jury system.

Judging from his professional record and his personal comments, Edward Carnes is simply incapable of dispensing justice. His nomination insults the people of the 11th Circuit. The Senate should deny Carnes the opportunity to succeed Frank Johnson.

[From the Atlanta Constitution Sept. 6, 1992]

KEEP ED CARNES OFF THE BENCH

On Tuesday, the U.S. Senate takes up President Bush's nomination of Alabama assistant attorney general Ed Carnes to the 11th circuit court of appeals. Mr. Carnes is a prosecutorial zealot whose defense of death-penalty convictions has run roughshod over manifest evidence of racial injustice. He has neither judicial experience nor judicial temperament.

In order to kill the nomination, opponents must prevent 60 votes from being cast to terminate debate. It will be a close call.

To his credit, Georgia's Wyche Fowler has become the first senator from the 11th-circuit states to oppose Mr. Carnes publicly. Now Sen. Sam Nunn needs to follow suit.

One reason the opposition has not grown more swiftly is that Mr. Carnes has enjoyed the fervent support of fellow Alabamian Morris Dees, head of the Southern Poverty Law Center and prominent Democratic fund-raiser. In the minds of many, the endorsement of Mr. Dees is sufficient guarantee that someone is a friend of racial justice. Not so.

Since the mid-1980s, Mr. Dees has largely abandoned representing impoverished defendants in order to concentrate on bringing to justice the Ku Klux Klan and other perpetrators of hate crimes. As a result, he has come to depend on prosecutors like Mr. Carnes. They, in turn, have learned they can depend on him.

A few years ago, for example, Mr. Dees lobbied strenuously for Sam Currin, a protege of Sen. Jesse Helms (R-N.C.) whom the Reagan administration had put forward for a federal judgeship. Never mind that the American Bar Association and the North Carolina civil rights community so completely demonstrated Mr. Currin's unfitness to serve that the nomination was withdrawn. As U.S. attorney, the man had once prosecuted a Klansman, and Mr. Dees owed him.

Although Northerners may not realize it, in the South of today the Klan is a pitiful fringe group that even racist prosecutors are ready to haul before the bar of justice. In the criminal justice system nowadays, racial discrimination manifests itself in subtler ways.

It manifests itself through the decisions of prosecutors to systematically strike black jurors in capital cases. It manifests itself through the decisions of prosecutors to seek the death penalty disproportionately when the victim is white and the defendant is black. It manifests itself in the refusal of white authorities to adequately fund indigent defense, and the determination of prosecutors to then prevent defendants from appealing their convictions because of inadequate representation.

Whether or not Ed Carnes is personally a racist is irrelevant. He has been a paladin of this system of racially discriminatory justice. He does not deserve to sit in judgment on the quality of justice in Alabama, Florida and Georgia.

[From the New York Times, Sept. 8, 1992]

THE CARNES NOMINATION: TALK IT DOWN

On its return to work today, the Senate will confront the nomination of Edward Carnes to the U.S. Court of Appeals that hears cases from Georgia, Florida and Alabama. Mr. Carnes, a 41-year-old prosecutor who specializes in enforcing Alabama's death penalty, would replace a giant of the bench, retiring Judge Frank Johnson.

The senators have agreed to a brief debate, then a vote on whether to close debate and proceed to a final tally. The opposition's best hope is to defeat cloture and kill the nomination with a filibuster. Their biggest challenge will be to find enough to say about a lawyer who seems to have chosen a career in executions.

But they will not be wholly bereft of talking points. They might profitably observe, for example, that Judge Johnson, who courageously ruled for civil rights in Alabama despite personal threats, deserves the finest replacement available. They can also clear the record of claims that Judge Johnson endorses Mr. Carnes, since the judge is politely, appropriately neutral.

And they can point out that the nominee's support from the Administration stems from recent political service. He rallied other prosecutors to support both the death penalty and the virtual demolition of Federal habeas corpus, the procedure many condemned prisoners have used to expose the constitutional flaws in their sentences.

Though he applies to his narrow specialty the skills he learned at Harvard Law School, Mr. Carnes reaches odd conclusions. He denies the commonly understood truth that an alarming number of capital cases are poorly defended. And whereas Judge Johnson argued that the race of the victim is an influential factor in a vast number of death penalty cases, Mr. Carnes' expertise tells him otherwise.

Nor has Mr. Carnes ever questioned fellow prosecutors for systematically getting rid of potential jurors in a pattern showing racial bias.

President Bush argues that Mr. Carnes' confirmation is necessary to advance the cause of law and order. It is not. Capital punishment, though ruled constitutional, need not be applied in the discriminatory pattern that Mr. Carnes finds acceptable. It need not be applied against defendants with drunken or slovenly lawyers, or in a manner that undermines confidence that the punishment actually fits the crime.

A fitting disposition to this nomination would be for the Senate to talk it to death.

The PRESIDING OFFICER. The Senator from Delaware controls 28½ minutes; the Senator from Alabama, 73 minutes.

Who yields time? The Senator from Alabama.

Mr. HEFLIN. Mr. President, I have spoken before the Senate previously, as well as making a statement before the Judiciary Committee, outlining the intensive investigation that I undertook pertaining to Ed Carnes. Ed Carnes is a Republican. I have no reason to try to fight a battle for him, although I always try to be fair. The President makes the nomination and I look into their background. Unless there are questions raised that substantially affect the administration of justice, and in particular racial justice, I will normally vote in favor of the President's nomination.

If, on the other hand, if there are questionable matters proven particularly relating to racial justice, I will fight the nomination. My history in the Judiciary Committee has proven that on numerous occasions my vote was the swing vote or one of the swing votes in killing at the committee level nominations that raised serious questions pertaining to equal justice under the law and their temperament as potential judges.

Mr. BIDEN. If the Senator will yield on that point just for a second, I want to make it clear to the Senator from Alabama, I in no way question his judgment on this nomination or his motivation, because it is true, the Senator from Alabama has on numerous occasions cast some very difficult votes that seem to be at odds with what was popular at the moment and on issues of like matter. I think he is wrong in this case, but I would attest to the fact that that is his record.

Mr. HEFLIN. Mr. President, when Ed Carnes' name was submitted, I performed a thorough and intensive investigation. I am not going to go through all of this again, but I found he had strong support in the civil rights community in Alabama. He was hired as a bright young Ivy League-trained attorney by one of the most progressive Attorneys General that the State of Alabama has ever had, a young man named Bill Baxley. Mr. Baxley was elected in 1970 at the height of the racial tension in the State of Alabama. He hired many bright young lawyers, hired a number of African-American lawyers to the attorney general's office, and proceeded to fight for racial justice. He hired Ed Carnes and, as Ed Carnes' history reveals, he was in the forefront of moving the State toward racial justice during these years.

He was in the forefront of battles involving the prohibition of the sale of South African coal into the State; the bombing of the 16th Avenue Church where four black children were killed; and numerous other historic events. He fought the Ku Klux Klan. All of this was outlined in a letter that Morris Dees, a well-known civil rights lawyer in Alabama who heads the Southern Poverty Law Center, wrote pertaining to Ed Carnes' nomination. That letter has been circulated to all of the Members of the Senate in a "Dear Colleague" letter that I and Senator SHELBY have sent out.

Morris Dees has been in the pit; if you will, in the courtroom, in the fight where Ed Carnes was on the other side. It has been my experience, if you want to know an individual, you get into the courtroom and, if he is your adversary, you soon find out a great deal about

him or her. You find out about their ethics, you find out whether they follow the law, whether or not they are overzealous in their advocacy, whether they believe in the protection of constitutional rights of individuals, whether they will go too far. And Morris Dees has been in the pit with Mr. Carnes and Morris Dees has high respect for him. The letter he wrote to Dr. Joseph Lowery is one of the most compelling letters that I have ever seen in outlining a position taken by a person who has been on the other side, not on his side, but on the other side, in fighting many, many courtroom battles with the nominee in regard to the capital punishment issue.

Regardless of what people say, this whole debate is a disguised referendum on the death penalty, and it is where the opposition originated and that is its driving force. They have picked up every stone that Ed Carnes had ever walked on by nitpicking and distorting documented facts.

Morris Dees has written another letter, a letter which was addressed to me and addressed to some other Members of the Senate dated September 1, 1992. And for the Senators who have not had the benefit of this letter, I want to read excerpts from it since I think his letter very succinctly answers the various charges and allegations that have been leveled against Ed Carnes.

Let me read this letter:

SOUTHERN POVERTY LAW CENTER,
Montgomery, AL, September 1, 1992.

Sen. HOWELL T. HEFLIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR HEFLIN: Although I have long been active in Democratic Partly affairs, I have strongly supported the Bush administration's nomination of Ed Carnes to a position on the Court of Appeals for the Eleventh Circuit. Because many of those opposed to Ed's nomination have resorted to a vicious and unfair campaign against him, I write to reiterate my support.

Ed has been labelled "racially insensitive." The charge has been made that he has defended numerous cases where African Americans were discriminatorily excluded from jury service. In the wake of the verdict in the Rodney King case, Ed's opponents have tried to make the vote on his nomination a litmus test for the Senate's concern over racial justice.

In today's political climate, it is easy to label someone a racist but hard to defend against the charge. The truth rarely catches up with the lie, and it takes more words to defend against a charge than to level one. A white Albamaian who has worked for the State in the criminal justice system is a particularly easy target for a smear campaign. As one who has always been leery of those quick to call others racists, I feel that it is especially important to explain why I believe that the charge against Ed is so baseless.

To me, the great irony of the smear campaign against Ed is that he has an exemplary record of fighting racial discrimination in jury selection. Before the Supreme Court's decision in *Batson* v. *Kentucky* provided a practical way to stop prosecutors from excluding black jurors, Ed lectured Alabama district attorneys to put an end to the practice. As one district attorney explained in a letter to Senator Biden—

Which I printed in the RECORD previously—

Long before the *Batson* v. *Kentucky* decision ever came down, Mr. Carnes urged Alabama district attorneys, including me, not to strike blacks off juries unless there were race-neutral reasons to do so.

Race neutral means that there are reasons such as a person who does not believe in capital punishment or another example is where a district attorney's office has prosecuted a relative of a prospective juror.

He told us not to strike a black juror unless we would strike a white juror in the same situation. Before the Baston decision came down in 1986, Mr. Carnes admonished us not to use such strikes in a racially discriminatory manner and he felt it was wrong.

It is simply unfair to accuse Mr. Carnes of being insensitive to the problem of racial discrimination in jury selection when he did his very best to end racial discrimination in jury selection long before the Batson decision forced an end to it.

I do not believe that is nonfeasance.

In one murder case involving a black defendant and a white victim, Ed actually advised the Alabama attorney general to try to get the case moved to a county with a larger black population to increase the chances of having African Americans on the jury. In other words, Ed wanted to do exactly the opposite of what was later done in the Rodney King case where the trial of the four policemen was moved to the overwhelmingly white Simi Valley area.

After the Batson decision, Ed led the effort to extend the decision to defense attorneys to prevent them from discriminating against black jurors. In a murder case involving Ku Klux Klansmen who had lynched a young black man, Ed went all the way to the Supreme Court in an effort to prevent the Klansmen from striking all the blacks off the jury. So dedicated was he to that effort that he convinced 45 other states to join a friend of the court brief supporting his position against racial discrimination. The Southern Christian Leadership Conference and the Southern Poverty Law Center filed a brief joining his effort. Although the Supreme Court declined to review that particular case, Ed continued the fight. He convinced the Alabama appellate courts to rule that no one, including defendants and their attorneys, could strike African Americans off juries because of race. Through his efforts, that rule was established in Alabama before the United States Supreme Court reached the same conclusion in 1992.

I am reading from Morris Dees' letter, but as an aside let me say that this particular incident certainly is not nonfeasance.

Instead of acknowledging Ed's strong record in fighting racial discrimination in jury selection, Ed's opponents have sought to hold him responsible for every instance of jury discrimination that has occurred in capital cases in Alabama over the last decade. Although Ed is an appellate lawyer who does not prosecute cases at the trial level or pick juries, his critics claim that he should have confessed error in all those cases where district attorneys exercised a disproportionate number of preemptory strikes against black jurors. By failing to do so, his critics charge, Ed became a kind of "accessory after-the-fact" to discrimination at the trial court level.

In my view, this charge deliberately distorts Ed's role in capital litigation in Alabama. Ed is an assistant attorney general. He does not set policy for the attorney general's office, and he does not control the actions of the various district attorneys. In the typical case to which Ed's critics point, the question of jury discrimination was not even raised at trial or on appeal. Instead, it was raised for the first time in "collateral" proceedings (federal habeas or the state analog to such proceedings). The fact that Ed has argued his client's position that claims of racial discrimination in jury selection should not be heard for the first time in such proceedings does not mean that he is "racially insensitive." United States Supreme Court precedent holds that such claims should not be heard in federal courts unless they have been timely raised and properly presented in state court.

In numerous capital cases, Judge Frank Johnson—the legendary liberal jurist Ed has been nominated to replace—has ruled that constitutional claims of death row inmates should not be considered because the claims were not raised in a timely or proper fashion. It would be absurd to argue that Judge Johnson is insensitive to constitutional concerns because he has followed the law barring such claims in capital cases. Likewise, it is absurd to argue that Ed is insensitive to constitutional concerns because he has argued for the application of the same law that Judge Johnson has applied. Saying that Ed has been "racially insensitive" because he has argued his client's position that Batson claims should not be considered because they were not raised in the trial court is analogous to saying that a criminal defense attorney is "insensitive" to crime because he raised a procedural objection to his client's murder conviction.

In addition to the fact that the issue of jury discrimination was not raised at trial in the typical case to which Ed's critics point, the trial and appeal in those cases often took place before the Batson decision was rendered. The Supreme Court has held that Batson does not even apply to such cases. Justice William Brennan—one of the most liberal jurists ever to sit on the Court—joined in that ruling. If Ed is "racially insensitive" for arguing in line with Supreme Court precedent that Batson does not apply to cases if the direct appeal was over prior to the date of the Batson decision, then Justice Brennan must have been a blatant racist for deciding the relevant precedent in the first place.

Under the yardstick of political correctness used by Ed's opponents, virtually every state attorney general in the country would be disqualified from judicial service because they routinely object when state court convictions are challenged for the first time in collateral proceedings. Recognizing this point, thirty-one state attorneys general—nineteen Democrats and twelve Republicans—have expressed their alarm at the nature of the opposition to Ed's nomination. As they explained in a letter to Senators Mitchell and Dole, the arguments being made by Ed's detractors "would threaten the confirmation prospects of every government attorney who has ever fulfilled his ethical duty to advocate the state's position on appeal in a criminal case. Someone will always be able to charge that by doing so the government attorney has condoned or defended some violation of the Constitution that the prosecutor allegedly committed."

So reckless are some of Ed's opponents that they have misrepresented his written answers to questions submitted by the Chairman of the Judiciary Committee. Ed, we are told, stated that racial discrimination in

jury selection is not necessarily fundamentally unfair. What Ed actually said was as follows:

"Question: In your view, would racial discrimination in jury selection affect the fundamental fairness of a trial and conviction?

"Answer: Racial discrimination in jury selection is a loathsome practice which is always fundamentally unfair to the excluded jurors who are victims of it and to society at large. Whether it renders a particular trial fundamentally unfair to the defendant and undermines the reliability of a guilty verdict depends upon the facts and circumstances. For example, if a Ku Klux Klansman is being tried for a crime against a black victim and all the black veniremembers are struck off the jury because of their race, that is wrong, but it is not a wrong which would undermine confidence in a guilty verdict. We should not make the race-based assumption that any particular race is invariably more favorable to the defense in a criminal case. Whether it affects the outcome of a particular case or not, racial discrimination against jurors is wrong because racial discrimination is wrong."

Besides distorting Ed's role in the capital case process and failing to give him credit for his work against racial discrimination in jury selection, Ed's critics have failed to acknowledge other aspects of Ed's professional and personal life that demonstrate a commitment to equal justice. Early in his career, Ed worked to bar the importation of coal from South Africa. He personally prosecuted disciplinary charges against two racist judges and succeeded in having both removed from the bench. As chief counsel for the state on appeal, he preserved the conviction of a Klansman responsible for murdering four young black girls in the notorious bombing of the Sixteenth Street Baptist Church in Birmingham.

Ed's stand against discrimination in the courtroom has been matched by his stand in the community. When he learned several years ago that a racially insensitive remark had appeared in the student newspaper at his daughter's school, he immediately wrote the principal and expressed his outrage in this way: "Racial discrimination is wrong. Racially hostile and denigrating comments are wrong. Publishing or condoning such comments is wrong."

Ed's sentiments were not the product of a "confirmation conversion." Unlike many other nominees, Ed has never been a member of an organization that discriminated on the basis of race or sex. He has long attended an integrated church.

I have spent over 32 years as a lawyer fighting for the underdog in courts from Alabama to Oregon. I don't choose sides based on public opinion or an appeal to special interests. I represented the Klan's right to march and sued the Klan when they lynched Michael Donald. I used to integrate the Alabama State Police and defended law enforcement officers falsely charged with abuse. I hope that you will join with me in supporting Ed and not be swayed by cheap, unfair attacks on this good man's legal career and character.

Please feel free to call me if I can answer any questions.

Sincerely,

MORRIS DEES,
Chief Trial Counsel.

I quote that again. "He has long attended an integrated church."

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Sincerely,

MORRIS DEES,
Chief Trial Counsel.

Mr. President, there have been questions raised pertaining to the Jefferson case. That is a case where the court found categories for jurors—"strong, medium, weak, black." This case has been used against Ed Carnes. Yet, the facts of the case are that Ed Carnes has never participated in any issue whatsoever dealing with the jury selection. The only thing in that case that he ever did was, after a trial judge died, attend, along with several other attorneys general, a scheduling conference to determine the timing of the case. That is all that he ever did in this case. Still, this case has been publicized, put in newspapers, and used throughout this process to try to denigrate Ed Carnes.

This is a case which is not hard to remember. It is known as the Jefferson case, but you can remember it because the opposition always raise the four categories—"strong, medium, weak, black." I think this is distortion. This case serves as an example of what I said earlier. This debate is a disguised referendum on capital punishment. There are people who feel strongly about the death penalty, they have this right, and they are very emotional about it. They feel very strongly that we should not have capital punishment. I disagree. Ed Carnes disagrees. But when they are faced with a situation where a person they know had participated in a capital case or capital punishment cases, they will start—unfairly nitpicking, by examining under the microscope every word that the nominee ever said. That is what has been done here.

Using distortion as a tool, the opposition referred to Jefferson where these jurors' case notes referred to the jurors as "strong, medium, weak, and black." But don't forget, Mr. Carnes never participated, and never had anything to do with that case other than attend a scheduling conference.

He has been criticized for his role in the Jackson case. This case involved an African-American woman who was convicted of murdering another African-American woman. Because it was the second murder that the defendant had committed and the first had involved an African-American victim, under the Alabama law it was a capital offense, and, therefore, it was tried as a capital punishment case.

At the trial in 1981, long before the Batson decision was rendered, the assistant district general used his 22 strikes against 12 blacks and 10 whites. In that particular case, no objection was made about the jury strikes—and no issue was raised about it on an appeal. The jury strike issue was raised for the first time in a Federal habeas corpus proceeding in 1987, over 5 years after the murder.

Ed Carnes did not participate in that Federal habeas corpus trial proceeding. The charge was made by Mr. Carnes' opponent in the Jackson case that he should have confessed error when it came to the appeal stage in regard to jury selection.

Mr. Carnes did not handle this case before the Federal district court. He did file a notice of appeal and write the State's brief to the Eleventh Circuit Court of Appeals. But under the policies and requirements of the Alabama attorney general, who is his boss, he had no choice. The Alabama attorney general wrote the Judiciary Committee a letter making all of this quite clear.

He stated in no uncertain terms that when there was any colorable arguments for upholding a State court conviction on any grounds, his assistants are required to make those arguments. There is a policy against confessing error, and no assistant attorney general has any authority to waive that policy. As the Alabama attorney general stated when he wrote the Judiciary Committee, "no assistant attorney general, including Ed Carnes, has the authority to vary my policies in respect to all our defense of State court judgments."

The Judiciary Committee received a letter from the district attorney who was involved in this case, and he clearly says, "First and foremost, Mr. Carnes did not make the decision to appeal the Federal district court order in this case. It was not his role. I know, because I am the one who decided the order should be appealed." The district attorney said that he insisted that the case be appealed on all available grounds for overturning the lower court's decision. Under the policy of the attorney general which Mr. Carnes did not create, the district attorney's insistence meant that there would be an appeal.

It is also interesting in that letter from the district attorney to the Judiciary Committee to note the following. His letter tells how Mr. Carnes worked hard to settle the appeal so that the defendant would receive a life without parole sentence instead of a death sentence.

Here is a case in which Batson was not the law. Because the case was tried before Batson came along. Jury selection issues were not raised until the case to the Federal district court on a habeas corpus after exhausting all State trial and appellate post-conviction procedures.

Interestingly, Carnes is working all along to say that the State ought to let

this woman have a life sentence instead of capital punishment. He persuaded the district attorney and the attorney general to go along with this deal. But the defendant herself turned it down. Dismissing, the offer of a settlement which would have been a life sentence instead of a death penalty.

So I think the Dees letter is about an succinct and strong as possible pointing out the argument that have been made as clearly as anyone could possibly present. I comment him for such an excellent letter. I feel that what we have here is a great deal of distorted facts. I believe that when you get down to the true facts, read the history, his personal life, as well as his professional life, you will find that Ed Carnes is not racially insensitive.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 18 minutes to my friend from Ohio.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, before addressing myself to this entire issue, a considerable amount of time has been spent quoting the Morris Dees letter. I have a lot of respect for Morris Dees. However, Julius Chambers, Director of the NAACP Legal Defense and Educational Fund of New York, has sent in a very strong response to the Dees letter.

Mr. President, I ask unanimous consent that at the conclusion of my remarks, the letter be printed in the RECORD.

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

(See exhibit 1.)

Mr. METZENBAUM. Mr. President, I rise in opposition to the nomination of Ed Carnes. He has been chosen for a seat on the Eleventh Circuit Court of Appeals. Mr. Carnes was nominated to replace Judge Frank Johnson, an extraordinary jurist whose courage, fairness, and commitment to equal justice helped to strengthen the public's faith in our judicial system.

The violent outburst in Los Angeles which resulted after the Rodney King verdict underscored the importance of ensuring public confidence in the fairness and impartially of the criminal justice system.

There were no Afro-Americans on the jury which acquitted the officers accused of beating Rodney King. Their absence from that jury reminded many Americans, both black and white, that racial bias can still infect our criminal justice system. One poll taken after the Rodney King verdict shows that half of all Americans, including 89 percent of African-Americans, believe that blacks and other minorities do not receive equal treatment from the criminal justice system. The lesson of the Rodney King verdict is that racial exclusion in our judicial system cannot and must not be tolerated.

I fear that the confirmation of Ed Carnes would signal that the Senate has failed to grasp this reality. Mr. Carnes' record and his statements suggest that he simply does not understand the fundamental importance of ensuring that the criminal justice system must be impartial and untainted by racial bias.

For over a decade, Mr. Carnes has been head of the Alabama capital litigation unit, which defends death sentences imposed by Alabama State courts. In at least a dozen cases, Ed Carnes and the attorneys he supervises have defended death sentences imposed upon African-American defendants, even though there was strong evidence showing that the prosecution had deliberately excluded blacks from the jury.

Mr. Carnes has stated repeatedly, in the face of ample evidence to the contrary, that there is no racial discrimination in the administration of the death penalty in this country. Who does he think he is kidding? Mr. Carnes denies that defendants in death penalty cases, who are almost always poor, disproportionately black, and often illiterate or mentally disturbed, face problems obtaining adequate legal representation.

Let me be clear, Mr. President. I do not oppose Mr. Carnes because he and I have different positions on the death penalty. I have voted for hundreds of Reagan-Bush nominees whose views on the death penalty differ from mine. The issue before us is not whether Senators support or oppose the death penalty. Many Senators who support the death penalty oppose this nominee. But we cannot assess the merits of the nomination without examining his record as Alabama's chief legal advocate for the death penalty. In order to evaluate his temperament, his sense of fairness and justice, his commitment to the Constitution, we have to focus on his record in that position.

Two years ago, Mr. Carnes told the National Law Journal that—

> The problem defendants have is 99.9 percent of them are guilty as hell. I don't care what kind of defense strategy you have, the jury that hears the facts is going to give a death sentence.

Can you believe it that any lawyer, forgetting about his being a member of the circuit court of appeals which he aspires to would say that—

> The problem the defendants have is that 99.9 percent of them are guilty as hell. I don't care what kind of defense strategy you have, the jury that hears the facts is going to give the death sentence.

If there were no other reason, Mr. Carnes should not be confirmed for this position for having made that statement alone. But there are so many other reasons.

It is a judge's duty to respect the presumption of innocence that is the foundation of our criminal justice system. Imagine for a moment that you have been falsely accused of capital murder, which has happened all too many times in this country. Would that statement by Mr. Carnes produce some doubt in your mind as to whether or not he could or would hear your case impartially?

Would it not bother you to know that Mr. Carnes believes that capital punishment trials are "tilted in favor of the damn defendant", which is what he said to the Philadelphia Inquirer in 1984.

Would it not unnerve you to hear Mr. Carnes state that—

> Under Alabama law you cannot execute someone who is insane. You have to send him to an asylum, cure him up real good, and then execute him?

That was the statement he made to the UPI 1983. Is that the man we should be confirming tomorrow to be a circuit court of appeals judge for Alabama, Florida, and Georgia, where appellate cases are taken?

Mr. Carnes also has denied that defendants in capital cases—who are uniformly poor and often illiterate or mentally disturbed—face problems in obtaining adequate legal representation. In 1989, Mr. Carnes testified before that American Bar Association's task force on death penalty cases that—

> Capital defendants receive excellent representation and I would take strong exception to anyone who contends to the contrary.

In what world is Mr. Carnes living?

I practiced law before I came to the U.S. Senate. I know what happens in capital punishment cases even in a northern city like Cleveland. And in Southern States certainly anyone who would claim that they get good and adequate legal representation just is absolutely denying the facts.

Mr. President, I would consider the statement of Mr. Carnes a joke if it were not such a serious matter. A broad spectrum of experts, ranging from former Justice Lewis Powell, to the American Bar Association, to prosecutors and judges around the country agree that the poor quality of counsel in death penalty cases is a critical problem. Mr. Carnes does not think so. The ABA concluded that the principal failing of our capital punishment review process is the inability of capital defendants to secure competent and adequately compensated counsel. Mr. Carnes does not think so.

In Mr. Carnes' own State of Alabama, there is no public defender program, and strict ceilings are imposed upon the compensation paid to the court-appointed attorneys who handle capital cases. If ever I heard an absurd statement with respect to the payment of lawyers who defend individuals in capital punishment cases one need only look at the amount of pay that attorneys receive for defending those accused of capital punishment.

Under the Alabama law in the part of Carnes' tour, the limit on compensation for court-appointed lawyers in capital cases was $1,000 per case. Now, the rate of compensation is all of $20 per hour for out-of-court time, up to a limit of $2,000 per case, and $40 per hour for in-court time. Alabama still limits compensation to $600 per case for representation of indigents in postconviction review cases.

Does anyone think you can get a lawyer to do a decent job for $20 an hour, or $40 an hour, or a maximum of $600 for the review process when the lawyer has to go back and read the record, figure out what the law is, study the law and gets all of $600?

In Mr. Carnes own State of Alabama, there is no public defender program, that says that lawyers are adequately compensated in capital punishment cases in Alabama and the defendants receive adequate compensation.

The Judiciary Committee heard numerous examples of the poor representation received by death row defendants in Alabama. An Alabama defendant earlier this year was represented by a court-appointed lawyer who filed a one-page brief to the Alabama Supreme Court which cited only one case. Another defendant who was executed in 1986 had his case handled by a lawyer who made no opening statement at trial or at the sentencing phase, offered no evidence about the defendant at the penalty phase, and gave no closing argument during the penalty phase. In another case, a capital defendant was represented by a lawyer who appeared drunk in court.

Mr. Carnes would argue that capital offense defendants are adequately represented by counsel in Alabama. It is not true. The reality is that defendants in death penalty cases often receive terrible, abominable legal representation. Mr. Carnes' inability to acknowledge this plain fact raises serious doubts about both his level of compassion and common sense. It also raises questions about his candor since Mr. Carnes frequently exploits poor lawyering by defense counsel. Time and again his office has urged judges to ignore the merits of serious constitutional claims because of technical procedural errors by incompetent defense attorneys.

Then there is the issue of racial discrimination and the application of the death penalty. The administration of the death penalty in this country is infected by racial bias. Numerous studies have shown that those who kill whites are far more likely to be executed than those who kill blacks. A General Accounting Office report found that since 1972 there has been—

> A pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty.

But Mr. Carnes does not believe it.

In Alabama the death penalty is far more likely to be applied when the victim is white than when the victim is black. Indeed, the head of the Alabama NAACP testified that while murder cases involving African-American offenders and white victims constitute less than 4 percent of all homicides in Alabama, the death penalty is most frequently applied in these so-called black-on-white killings.

Despite all this evidence, Mr. Carnes denies the existence of any racial bias in the administration of the death penalty. He testified that:

> I do not believe that capital punishment is applied in a racially discriminatory manner in Alabama or in the Nation.

That statement simply defies reality, Mr. President the man who Mr. Carnes hopes to replace—Judge Frank Johnson—was well aware that the death penalty is being carried out in a racially discriminatory manner. Judge Johnson wrote from the bench about the critical need to remedy this problem. But Ed Carnes does not even recognize the existence of a problem which Frank Johnson stood ready to correct.

By far the most disturbing aspect of Mr. Carnes' record is his willingness to defend death sentences imposed upon African-American defendants in cases where blacks were systematically excluded from the jury by prosecutors.

The Supreme Court has long held that discrimination in jury selection is unconstitutional. When prosecutors exclude Americans from juries on the basis of race, they fatally taint the fairness of a defendant's trial, they implicate the Government in the perpetuation of racial stereotypes, and they damage the public's trust in our judicial system. As the head of the Alabama NAACP stated to the Judiciary Committee:

> How can African-Americans have any respect for a criminal justice system that does not even trust them to participate as jurors?

During this hearing in the Judiciary Committee, Mr. Carnes admitted that:

> There have been a number of cases in which district attorneys, or their assistants, either did not have race-neutral reasons for striking blacks or could not recall them when it was necessary to do so.

Nevertheless, Mr. Carnes' office has never refused to defend the validity of a death sentence imposed by a jury whose selection was tainted by a prosecutor's racial discrimination.

Mr. President, a number of these cases involved clearcut instances of prosecutors attempting to rig juries on the basis of race. In one case, previously mentioned, Jefferson versus State, the prosecution divided potential jurors into four categories: Strong, medium, weak, and black. The prosecution used 26 peremptory jury strikes in that case; each one was used to strike a black. Despite this clear evidence that racial considerations infected the fairness of Mr. Jefferson's trial, Mr. Carnes' office is vigorously opposing his efforts to obtain a new trial free of racial animus.

Then there is the case of Jackson versus Thigpen, which involved an African-American woman who was sentenced to death by an all-white jury in Tuscaloosa. The prosecutor used 12 of his peremptory strikes to eliminate all qualified African-Americans from the Jackson jury.

In 1990, a Federal district court found that the exclusion of blacks from juries in serious criminal cases was the "standard operating procedure of the Tuscaloosa County district attorney's office."

The lead prosecutor in Jackson's case testified that he struck all blacks because he felt that "black jurors are less willing to give the State a fair trial and are less likely to convict." He also testified that black jurors "tend to be more forgiving and more willing to give a defendant a second or third chance than are white jurors." The Federal district court found that the prosecution's use of racial considerations to exclude potential jurors "compelled a conclusion" that Ms. Jackson's constitutional rights were violated.

Mr. President, this is another appalling example of a case in which a prosecutor's racial misconduct denied an African-American defendant a fair trial free of any racial animus. But instead of confessing error in this case—or at least attempting to persuade the attorney general to confess error—Mr. Carnes has written an appellate brief opposing the district court's order that Ms. Jackson be granted a new trial.

In both the Jefferson and Jackson cases—and in other cases as well—Mr. Carnes' office argued that the appellate courts should not even review the merits of these outrageous racial exclusion claims because of technical, procedural errors by defense counsel. As for the merits of the issue, Mr. Carnes has taken the position—both in court and before the Judiciary Committee—that a prosecutor who rigs a jury on the basis of race does not necessarily violate a defendant's constitutional rights. That is absurd. That position flies in the face of the Supreme Court's holdings on this issue, eleventh circuit precedent, and basic notions of fairness and common sense. And this is a man we are being asked to confirm for the appellate court for the eleventh district.

Some say that when Mr. Carnes defended death sentences imposed in cases where the prosecution had deliberately excluded blacks, he was simply doing his job as head of the Alabama capital litigation unit. I cannot accept that, Mr. President, and neither can 38 former Government prosecutors who have written a letter in opposition to this nomination.

I ask unanimous consent that the letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. METZENBAUM. A Government prosecutor always has an obligation to ensure that justice is done. The duty to serve justice supersedes a prosecutor's desire to obtain or defend a conviction in a particular case.

Mr. President, justice is not served when African-Americans are sentenced to death by juries selected on the basis of race. But Mr. Carnes' record shows that he sees nothing unfair or unjust about allowing an African-American to be executed even though the jury which imposed the death sentence was rigged by the prosecutor on the basis of race. That is a view of justice which does not belong on the Federal bench. And that is a view of justice which would, if it prevailed, weaken the public's faith in the integrity and legitimacy of our judicial system.

If you believe that the Federal judiciary should be composed of men and women who have the capacity to recognize—and the commitment to remedy—racial discrimination, then you cannot support this nomination. If you believe in equal justice and the supremacy of the Constitution, then you cannot support this nomination. And if you believe that the public deserves Federal judges whose impartiality and even handedness is beyond question, then you cannot support this nomination. There is simply too much in Mr. Carnes' record to raise doubts about his impartiality, his sense of fairness, his commitment to the Constitution, and his dedication to extinguishing race discrimination.

I urge my colleagues to reject this nomination.

EXHIBIT 1

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,

New York, NY, September 4, 1992.

Re nomination of Edward E. Carnes to United States Court of Appeals for the Eleventh Circuit.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.
Hon. BOB DOLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATORS MITCHELL AND DOLE: I am writing in response to a letter Morris Dees of the Southern Poverty Law Center circulated on September 1, 1992 concerning the Carnes nomination. I am concerned because Mr. Dees alleges that many of the groups and distinguished individuals who oppose this nomination are engaging in a "vicious," "unfair," "cheap," smear campaign that distorts Mr. Carnes' views.

With all due respect to Mr. Dees, those of us who have opposed this nomination have asserted from the beginning that the Senate should look at Mr. Carnes' entire record, and not embrace the contrived, selective version Mr. Dees has repeatedly advanced. Because I believe the Senate debate on the merits of this nominee will be aided more by facts than by innuendo, I shall proceed directly to the facts.

Mr. Dees' central assertion is that those opposed to this nominee have distorted Mr. Carnes' true views on racial discrimination as it affects jury selection. In Mr. Dees' opinion, Mr. Carnes "has an exemplary record of fighting racial discrimination in jury selection." He asserts this primarily because prior to the Supreme Court's decision in *Batson* v. *Kentucky*, 476 U.S. 79(1986), Mr. Carnes told some Alabama prosecutors they should not strike blacks from juries, and because after its announcement, Mr. Carnes aggressively sought extension of the Batson rule to defense attorneys. These few acts do not constitute an exemplary record, or even a satisfactory one, when viewed in context. Moreover, they are far outweighed by Mr. Carnes' record of impeding the elimination of racism in the jury selection process.

The Supreme Court in Batson sought to deal with a very serious problem that has long plagued our criminal justice system—the exclusion of large numbers of African-American and other minority jurors from the jury box in criminal cases by the prosecution. The root of the problem has been the deeply held view that blacks and other minorities cannot be trusted to convict, particularly in serious cases, and even more so when the victim is white and the defendant is a minority.

While prosecutors throughout the country have held these views, I know of no state where the exclusion of African-American jurors by the prosecution has been and continues to be a greater problem than in Alabama. And I am not talking about the 1930's or 1940's. For example, federal courts have recently found that during the early 1980's, just prior to Batson, prosecutors were systematically excluding blacks, regardless of their qualifications in case after case, in Madison, Mobile, and Tuscaloosa Counties.[1]

Further, while Batson has had some effect, African-Americans continue to be struck in large numbers in many parts of Alabama. There are scores of cases in which prosecutors have excluded 10, 15, or even 20 or more blacks in one case. This context is essential to any meaningful appraisal of Mr. Dees' claim that Mr. Carnes' has an "exemplary record of fighting racial discrimination in jury selection."

With regard to Mr. Carnes' pre-Batson "discussions" with some prosecutors not to strike blacks, I think this hardly rates as "fighting racial discrimination." Rather, it seems to me that Mr. Carnes was doing the very least that was incumbent upon him as an assistant attorney general sworn to uphold the Constitution. If discrimination could be eradicated with nothing more than casual admonitions to obey the law, we would have seen its end decades ago.[2] And while several Supreme Court justices had invited the states to propose solutions to the recurring problem of minority exclusion, Mr. Carnes made no suggestions and continued to defend the status quo.[3]

Indeed, Mr. Dees' reference to Talladega County District Attorney Robert L. Rumsey's letter wherein Mr. Rumsey recalls that Mr. Carnes urged him years ago not to strike blacks, and that he and his staff "follow strictly race-neutral strike policy," makes my point, not his.[4] Just two weeks ago, a capital case Mr. Rumsey tried was reversed because of *Batson* error.[5] The record showed that he personally used 11 of 15 strikes against blacks in that case, and had struck large numbers of blacks in 45 other capital and felony cases. As we all know, "frank discussions" have never deterred those bent on discriminating, and simply cannot be characterized as "fighting racial discrimination."

Moreover, it is disingenuous for Mr. Dees to characterize Mr. Carnes' post-*Batson* efforts as ones designed to diminish in any real sense the continuing exclusion of large numbers of blacks from jury service. While Mr. Carnes sought *Batson*'s extension to defense lawyers, no one seriously contends that such expansion will lead to significantly greater African-American participation on criminal trial juries. Quite simply, his effort was aimed at the wrong target. Prosecutors, not defense counsel, are responsible for the overwhelming number of African-American jurors denied a seat in the jury box. If anything, Mr. Carnes' efforts were self-serving, doing more to increase convictions than to increase minority participation on Alabama juries.

A more accurate description of Mr. Carnes' post-*Batson* activities would be a systematic effort to *limit dramatically its application. For example, on the question of whether the Batson* decision would apply to cases tried prior to its announcement but which were not yet final, Mr. Carnes argued that the rule should not apply.[6] Both the state court and the U.S. Supreme Court rejected Mr. Carnes' argument. On the question of whether white or non-black defendants had standing to assert to claim under *Batson*, Mr. Carnes and his staff argued that *Batson* addressed only black defendant cases.[7] In one case, Mr. Carnes' office argued that the Supreme Court would not apply *Batson* to white defendants because Justice Brennan has just retired.[8] This argument was also rejected by the Supreme Court.[9] And in a case in which counsel raised a *Batson* issue for the first time on certiorari shortly after *Batson* was announced, Mr. Carnes and his staff argued that the state courts should give the claim no review. The state court disagreed and ordered the claim heard on its merits.[10]

It is this systemic attempt to limit *Batson*, *inter alia*, that led many to reject Mr. Dees' claim that Mr. Carnes has displayed a commitment to ending the extraordinary role that race continues to play in jury selection. As Mr. Dees offers nothing new to alter this record, the Senate should reject his view as well.

Because Mr. Dees fails to address this record, he instead distorts the case against Mr. Carnes. He asserts that Mr. Carnes has been unfairly held responsible for the conduct of every district attorney in Alabama. This is simply not so; the focus has always been on Mr. Carnes and his own record. Moreover, he claims that we have erected an impossible standard that few attorneys who have served in government can satisfy. This is also plainly mistaken. There is no new standard. There have been a considerable number of recent judicial nominations involving lawyers who have served in government. I am aware of no effort to defeat any of them on this or any other related basis.

This nomination is unique because, contrary to Mr. Dees' assertions, Mr. Carnes has confronted numerous cases involving meritorious race discrimination claims in which, although the stakes could not be higher, he has used every conceivable argument to insure that no court would ever review the merits of the claim. In the process, in a number of particularly egregious cases, he has ignored his duty as a government attorney to see that justice is done so that convictions and sentences stained by racial prejudice were not disturbed.[11]

In my testimony in April, I mentioned two such cases in which Mr. Carnes urged a court to permit execution of the offender even though the conviction was brought about by naked, egregious, discrimination. In the *Jackson v. Thigpen* case,[12] a federal judge found that the prosecutor used 12 strikes to remove all the black jurors, and did so pursuant to a systematic, longstanding docket

manipulation scheme "to preserve the racial purity of criminal juries." That court found the evidence of discrimination to be so strong that it granted relief under the nearly insurmountable *Swain v. Alabama* standard.[13]

In *Jefferson v. State*,[14] it is now known that the prosecutor used 26 of 26 strikes against African-American jurors, and did so pursuant to a list which divided the jurors into four categories: "Strong," "medium," "weak," and "black." Contrary to Mr. Dees' suggestion, this evidence was uncovered by Jefferson's counsel during state collateral proceedings in which the state was represented by Mr. Carnes and his office.[15]

In each case, Mr. Carnes argued vigourously—not for a remedy—but that the courts should not even review the claim. He argued that justice demanded that the courts not reach the egregious state conduct because defense counsel failed to lodge a timely objection. Yet in each, much of the evidence showing the scope and extent of the intent to discriminate was unknown to the defense until long after the trial. In such circumstances, the Supreme Court has plainly held that the merits of such claims should be reached.[16]

Mr. Carnes' persistence to preserve these convictions, in the face of such outrageous *and* illegal conduct, demonstrates, not a commitment to ending racial discrimination in jury selection, but an excessive willingness to defend such conduct, regardless of its character. It is no wonder that trial prosecutors, like Mr. Rumsey, continue to strike large numbers of African-Americans, since they know that, even in capital cases, Mr. Carnes will aggressively defend the convictions and sentences.

Mr. Dees strains in attempting to show that Judge Frank Johnson approves of Mr. Carnes' tactics. While Judge Johnson has enforced the procedural default rule when the record contained no adequate excuse for the absence of a timely objection, he has repeatedly rejected such technical arguments in cases where the showing of racial discrimination was far less egregious than in *Jackson* and *Jefferson*, and in many of the other cases Mr. Carnes has defended.

For example, in one Georgia capital case, Judge Johnson held that a state court's finding of default on a jury discrimination claim should not be accepted where state law was not clear when the objection had to be made, and where the record showed considerable evidence of racial discrimination.[17] In another, he joined in dissenting from the unwillingness of the full court to review a panel decision that had refused to review a meritorious defaulted jury discrimination claim.[18]

And where claims alleging racial discrimination have been properly presented, Judge Johnson has unhesitatingly provided a remedy. In *Horton v. Zant*,[19] in a case very similar to the *Jackson* case that Mr. Carnes is defending, he found the evidence of intentional discrimination so strong that he held the prosecutor's long-standing practice of striking blacks from capital juries violated *Swain v. Alabama*. In *Gibson v. Zant*,[20] he wrote the opinion for the court overturning a capital conviction and sentence after finding that African-Americans had long been significantly underrepresented on the jury pools. In this opinion, he noted that "the importance of non-discriminatory jury composition is magnified in capital cases, . . ."[21]

Mr. Dees' also faults us for not acknowledging other aspects of Mr. Carnes' career and life in which he has worked for fairness and even-handed justice. We have acknowledged these incidents.[22] Again, it is Mr. Dees who ignores highly relevant indicators.

Before the Judiciary Committee, Mr. Carnes testified that he did not believe that racial discrimination influences the administration of capital punishment in Alabama or elsewhere. This is truly a remarkable statement given the following: while African Americans comprise only a quarter of Alabama's population, and constitute more than 60% of the State's homicide victims, more than 80% of the cases that result in death sentences are white victim cases; only five of the 128 circuit and appellate judges in Alabama are African-American; all of the elected District Attorneys are white, and the long history of Alabama prosecutors using large numbers of strikes to exclude blacks from jury service in capital cases. While I do not claim for a moment that any of this is Mr. Carnes' fault, it is truly difficult for me to understand how he can honestly believe that race simply is not a factor, and that it wields no influence in the criminal justice system when a capital case is being considered or tried.

Moreover, Mr. Dees is silent on the conclusion we should draw from Mr. Carnes' assertion that indigent defendants in Alabama facing capital trials receive "excellent" representation. Supporters and opponents of the death penalty, conservatives and liberals, Republicans and Democrats agree, with very few exceptions, that the quality of representation in these cases is inadequate and detrimental to the fair administration of justice.[23]

Mr. Carnes' statement is particularly distressing because the general quality of representation provided to capital defendants in his own state of Alabama is among the worst in the nation.[24] In light of his extensive involvement in many of these cases, Mr. Carnes' view cannot be attributed to lack of experience or exposure to the issue. Rather, it evinces either an alarming lack of candor, or a deep insensitivity to pervasive injustice. Either quality suggests still additional reasons to conclude that consent should be withheld from this nomination.

I hope these observations set the record straight.

Respectfully submitted,

JULIUS L. CHAMBERS,
Director-Counsel

FOOTNOTES

[1] See *Love v. Jones*, 923 F.2d 816 (11th Cir. 1991)(Madison County); *Jones v. Davis*, 906 F.2d 552 (11th Cir. 1990)(Mobile County); *Jackson v. Thigpen*, 752 F.Supp. 1551 (N.D.Ala. 1990)(Tuscaloosa County).

[2] It is important to remember that Batson did not impose any new obligation upon prosecutors: for more than 100 years, striking jurors because of their race has constituted unconstitutional behavior, and can also constitute illegal conduct. Reminding prosecutors of their duty to uphold, and not subvert, the law does not, in my mind, constitute "fighting racial discrimination."

[3] See *McCray v. New York*, 461 U.S. 961 (1983)(opinion of Justice Stevens, joined by Justice Blackmun and Justice Powell respecting denial of certiorari)("In my judgment it is a sound exercise of discretion for the Court to allow the various States to serve as laboratories in which the issue receives further study before it is addressed by this Court.")

[4] See Cong. Rec. S11913 (daily ed. August 7, 1992).

[5] See *Walker v. State*, —— So.2d —— (Ala.Cr.App. August 21, 1992).

[6] See Ex parte *Jackson*, 516 So.2d 768 (Ala. 1986). Here, the prosecutor used ten peremptory strikes to exclude all qualified blacks. Thus, an all-white jury was empaneled to try a black male charged with the rape and murder of a white female. Counsel raised the Batson issue shortly after that decision was handed down while the case was pending on direct appeal.

[7] See Ex parte *Quang Ngoc Bui*, 1991 Ala. Lexis 688 (Ala. 1991)(9 out of 13 blacks struck by prosecution; state claimed Asian defendant lacked standing); Ex parte *Bankhead*, 585 So.2d 112 (Ala. 1991)(8 of 10 strikes used to remove blacks; state argued white defendant lacked standing).

[8] See State's Brief and Argument in Support of Certiorari filed in Ex parte Duncan, Alabama Supreme Court, September 14, 1990.

[9] See *Powers v. Ohio*, 111 S.Ct. 1364 (1991).

[10] See Ex parte *Floyd*, 571 So.2d 1234 (Ala. 1990).

[11] Mr. Dees' argument that Mr. Carnes lacked authority to confess error is a red herring. As head of the capital litigation division, he had considerable authority to make policy decisions. The record before the Senate surely established that Mr. Carnes exerted considerable influence over numerous policy matter affecting the administration of justice in capital cases. The ABA Code of Professional Responsibility states that "[a] government lawyer who had discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair." Ethical Consideration 7-14, ABA Code of Professional Responsibility (1987). And surely if he lacked any authority, in the face of the egregious discrimination he saw in some of the cases, he had a duty to seek authority to settle the case. "A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommended avoidance of unfair litigation. "*Id.*, Ethical Consideration 7-14.

[12] 752 F.Supp. 1551 (N.D.Ala. 1990).

[13] 380 U.S. 202 (1965).

[14] Circuit Court of Chambers County, No. CC-81-77.

[15] Mr. Carnes' office has just indicated that documents like the one uncovered in *Jefferson* explaining the prosecutor's reasons for excluding jurors will no longer be discoverable.

[16] See *Amadeo v. Zant*, 486 U.S. 214 (1988).

[17] *Spencer v. Zant*, 715 F.2d 1562 (11th Cir. 1983), *aff'd*, *Spencer v. Zant*, 781 F.2d 1458 (11th Cir. 1986) (en banc).

[18] *Gates v. Zant*, 880 F.2d 293 (11th Cir. 1989) ("At the core of effective trial advocacy is the duty of trial counsel to know the legal rights of the client and to explore the possible factual underpinnings that would support an effort to secure those rights. Yet it appears that this court finds reasonable an attorney's unresearched decision to forego a challenge to the racial composition of the jury based substantially upon the attorney's belief that such a challenge could only alienate the jurors that would try the defendant.")

[19] 944 F.2d 1449 (11th Cir. 1991).

[20] 705 F.2d 1543 (11th Cir. 1983).

[21] *Id.*, at 1546.

[22] See Statement of Julius L. Chambers before Committee on the Judiciary, United States Senate, April 1, 1992 at 2-3.

[23] See e.g., American Bar Association, Toward a More Just and Effective System of Review in State Death Penalty Cases 56 (August 1990)(citing near unanimity of support for improving the quality of representation for defendants in capital cases).

[24] I list the numerous cases where counsel provided hapless representation in the attached memo.

EXHIBIT 2

SEPTEMBER 4, 1992.

Re: Nomination of Edward E. Carnes to United States Court of Appeals for the Eleventh Circuit.

Hon. GEORGE J. MITCHELL,
Majority Leader, United States Senate, SR-176 Russell Office Building, Washington, DC.

Hon. BOB DOLE,
Minority Leader, United States Senate, SH-142 Hart Senate Office Building, Washington, DC.

DEAR SENATORS MITCHELL AND DOLE: We are 38 former prosecuting attorneys, and one current prosecuting attorney. Some of us have represented the interests of the federal government as the appointed United States Attorney or have served in a United States Attorney's office. Others have served as an elected state's Attorney General or District Attorney, or have served as assistant attorneys general or assistant district attorneys in states throughout our country. We are Republicans and Democrats. Many of us support the death penalty while others oppose its use.

Today, we speak with one voice in urging the Senate to withhold its consent to President Bush's nomination of Edward Carnes to

take the seat previously occupied by Frank Johnson on the United States Court of Appeals for the eleventh Circuit. Few of us have ever weighed in on the fitness of a nominee for a seat on the federal court. Even fewer have opposed for public service one who, like us, has served as a prosecutor. Yet we feel compelled to do so in this instance.

It has been said that few legal positions prepare one better for the bench than service as prosecutor. This is so because the prosecutor, unlike private counsel, must always keep an eye on what is right and just, and not act solely upon what is best for his or her client. As the Supreme Court noted nearly 60 years ago:

"The [prosecutor] is the representative not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice is done * * *"[1]

Accordingly, it is not the role of the prosecutor to win at any cost. Possessing extensive power and discretion, government attorneys are obliged at all times to seek not only to convict, but to do so in a manner that is compatible with their duty to see that justice is done. Put another way, "it is [the prosecutor's] duty to recall that his sword, though not forged in the flame heat of zeal, is alloyed with the iron of restraint."[2]

After reviewing Mr. Carnes' record as an assistant attorney general, we are convinced that while he has represented the state's interests with great zeal, he has too often failed to show sufficient concern that the end result be fair and just. Our concerns flow chiefly from his handling of the numerous cases where claims alleging racial discrimination in jury selection have been raised, and from his views on the quality of representation that many Alabama indigent defendants receive.

1. *The Race Discrimination Cases*—During the past several years, Mr. Carnes, or attorneys under his supervision, have represented the interests of the State of Alabama in a considerable number of cases where state trial prosecutors have used large numbers of peremptory strikes to remove African-Americans from jury service.[3] In some of these cases, the trial prosecutors have used more than 15 strikes to remove African-American jurors.

Racial discrimination in the selection of a jury is reprehensible whenever it occurs, but it is particularly egregious when its source is the prosecutor.[4] Few acts can destroy the integrity of the judicial system more quickly and more thoroughly than when citizens perceive that state officials extend special treatment to whites, or blacks, or to others, at the courthouse.

Several reasons for concern about Mr. Carnes' sense of fair play emerge from his involvement in these cases. First, whenever possible, he has sought to avoid defending the prosecutor's conduct on the merits by asserting technical, procedural arguments. These arguments have often prevailed, and have succeeded in preventing the reviewing court from deciding whether the prosecutor's actions were illegal and amounted to discrimination.

Second, even in cases where there is no doubt the trial prosecutor engaged in intentional racial discrimination in exercising his peremptory strikes, Mr. Carnes has refused to confess error, and in so doing, has cast a blind eye to his duty to see that justice be done.[5] Neither the State, nor the ends of justice win when a judgment brought about by such disgraceful conduct is allowed to stand. In these cases, Mr. Carnes never once exercised his discretion to acknowledge racial discrimination; instead, and without exception, he has elected to defend the conduct, regardless of its character, to preserve the tainted conviction and sentence.

Equally disturbing, however, is Mr. Carnes' assertion before the Judiciary Committee that racial discrimination does not taint capital cases in Alabama or elsewhere. This is simply not the case. The Supreme Court has recognized that discrimination continues to influence the administration of justice,[6] and in capital cases.[7] This is one reason the Court adopted a far less demanding standard of proof concerning the prosecution's use of peremptory strikes in *Batson* v. *Kentucky*, 476 U.S. 79 (1986). Indeed, the volume and character of the *Batson* cases alone in Alabama show that some prosecutors continue to believe that all-white, or nearly all-white, juries are necessary to secure capital sentences.

After the Simi Valley trial last spring, we learned once again that our judicial system cannot deliver just results, or ones that will be credited as fair by the community, when actors in the criminal justice system arbitrarily exclude from the process distinct groups in the community.[8] Perhaps at no time in our history have we more needed judges, prosecutors, defense lawyers and jurors who understand our history of racial intolerance and injustice, and who possess a resolute commitment to apply the law in a truly even-handed manner. Mr. Carnes' record and public views give us little confidence that he possesses these essential qualities.

2. *The Quality of Counsel Issue*—We are also alarmed at Mr. Carnes' view that indigent capital defendants receive excellent legal representation in Alabama. Only a very cynical advocate could hold such a view.

Alabama has no state-wide defender system, and the funds available for trial counsel appointed in capital cases are grossly inadequate by any measure. Appointed counsel are compensated only a few thousand dollars for a case; not long ago, compensation was limited to $1000. Using these criteria alone, Alabama might well be considered one of the very worst providers of legal representation for indigents.

Moreover, it is now well known that in a considerable number of Alabama cases, lawyers appointed to represent indigent capital defendants have provided clearly unacceptable representation. Some have been extremely inexperienced. One did not even read the death statute until after the guilt phase had ended. Another came to court intoxicated. Others have failed to present any mitigating evidence at the sentencing phase of trial. Others have filed shockingly inadequate briefs in the state appellate courts and in the Supreme Court. Mr. Carnes is plainly aware of these instances as he and members of his staff have represented the state's interests in appeals in each case.

By no measure have many of these defendants received "excellent" representation. Candor from Mr. Carnes would have caused him to describe such representation instead as wholly inadequate for most cases, and unacceptable in capital cases.

Like his approach in the race cases, Mr. Carnes unwillingness here to recognize the obvious reveals a profound lack of a sense of fair play, and of a commitment to every prosecutor's duty to see that justice is done. Without able counsel, not only is an indigent defendant unlikely to receive the kind of defense the Bill of Rights guarantees, but the capacity of the adversarial process to deliver a just result is seriously jeopardized. Perhaps that is why numerous other prosecutors who have commented on the quality of indigent representation have remarked that our indigent defense systems nationwide are in need of much improvement, and rarely are able to provide "excellent" representation in capital cases. Mr. Carnes' assertion simply flies in the face of these facts.

Our system bestows few honors more coveted than appointment to the federal bench. As we understand it, the Senate's role is to ensure that the President's choice is bestowed appropriately, and only upon those who have demonstrated the skill, the temperament, and the strong sense of fair play that is essential to even-handed judging. Our informed view is that Mr. Carnes' record shows him to be undeserving of such honor.

For the sake of our law, and of respect to our criminal justice system, we strongly urge each Senator to withhold consent on the nomination of Edward Carnes to replace Frank Johnson on the Eleventh Circuit.

Respectfully yours,

Stephen H. Sachs, Attorney General of Maryland, 1979–87, United States Attorney, District of Maryland, 1967–70, Assistant United States Attorney, District of Maryland, 1961–64; Stephanie Tubbs Jones, Current Cuyahoga County, Ohio Prosecuting Attorney, Former Judge, Court of Common Pleas, Cuyahoga County, 1982–91, Former Assistant Prosecuting Attorney, 1976–79.

for

Gary Abramson, Assistant Attorney General, New York, 1978–80; William I. Aronwald, Former Assistant United States Attorney, Federal Strike Force, Southern District New York; James C. Banks, Former Assistant State Attorney, Second Judicial Circuit, Leon County, Florida; R. Vinson Barrett, Jr., Division Chief, State Attorney's Office, 2nd Judicial Circuit, Leon County, Florida;

Richard C. Bicki, Assistant United States Attorney, District of Columbia, 1977–82, Rhode Island, 1982; Thomas M.

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[1] *Berger* v. *United States*, 295 U.S. 78, 88 (1935).

[2] *Houston* v. *Estelle*, 569 F.2d 372, 384 (5th Cir. 1978).

[3] *See* Statement of Julius L. Chambers, Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., to the Committee on the Judiciary, United States Senate, April 1, 1992 at 2–12; Statement of Stephen B. Bright, Director, Southern Center for Human Rights, to the Committee on the Judiciary, United States Senate, April 1, 1992 at 20–25.

[4] It can also constitute illegal and criminal conduct. See 18 U.S.C. 243 (federal crime for a state officer "charged with any duty in the selection * * * of jurors" to exclude any citizen "on account of race").

[5] "The government is, as the Supreme Court has reminded us, not an ordinary party litigation. [footnote omitted] It has an obligation to govern fairly, and to be seen to do so. It should not evaluate every case from the perspective "can this be won," but with some sense of whether the government deserves to win." Tigar, *Federal Appeals: Jurisdiction and Practice*, McGraw-Hill, 1987 at 153–54.

[6] See *Rose* v. *Mitchell*, 443 U.S. 545 (1979).

[7] See *Amadeo* v. *Zant*, 486 U.S. 214 (1988) (prosecutor ordered jury commissioners to rig jury lists to underrepresent African-Americans and women); *Turner* v. *Murray*, 476 U.S. 28 (1986)(voir dire on racial prejudice constitutionally required in black defendant/white victim capital case because some whites continue to embrace stereotypical views of blacks).

[8] In that case, it was the trial court's decision to move the case to the nearly all-white community that virtually guaranteed that all the decision-makers would be white. In numerous capital appeals that Mr. Carnes has handled over the years, it was the prosecutor, via the peremptory strike, who guaranteed the exclusion of African-Americans from the process.

Breen, Assistant States Attorney, Cook County, Illinois 1972–78; A. Bates Butler, III, Deputy Pima County Attorney, Arizona, 1970–77, First Assistant United States Attorney, District of Arizona, 1977–80, United States Attorney, District of Arizona, 1980–81;

Jerome D. Carter, Assistant Commonwealth Attorney; Jefferson County, Kentucky, 1979–84; Martin Cirincione, Deputy Chief Assistant District Attorney, Schenectady County, New York, 1977–79; Scott Fein, Assistant District Attorney, Nassau County, New York, 1976–80.

Bennett L. Gershman, Assistant District Attorney, Manhattan, New York, 1966–72, Special Assistant Attorney General, New York State, 1972–76; Terence P. Gillespie, Former Assistant State's Attorney, Cook County, Illinois, 7 years; Stanley Greenberg, Assistant United States Attorney, Los Angeles, California, 1971–74; Hal D. Hardin, United States Attorney, Middle District, Tennessee, 1977–81, Assistant District Attorney, Nashville, Tennessee, 1969–70;

Sanders Heller, District Attorney, St. Lawrence County, New York, 1961–64, Special Assistant, 1984; Nicholas A. Lotito, Assistant United States Attorney, Northern District of Georgia, 1976–1982; Bruce Lyons, Supervisor, County Solicitor's Office, Broward County, Florida, 1967–71; Seth Kirschenbaum, Assistant United States Attorney, Northern District of Georgia, 1978–84;

Michael J. Malkewicz, Deputy Attorney General, Delaware, 1981–86; Royal B. Martin, Jr., Assistant United States Attorney, Northern District, Illinois, 1970–75; William Martin, Chief of Special Prosecutions, Cook County, Illinois, 1966–68, Assistant State Attorney, Cook County, Illinois, 1962–68; Dan McClain, Former Assistant State Attorney, 13th Judicial Circuit, Hillsborough County—Tampa, Florida, 1983–1989;

James J. McGinnis, Assistant District Attorney, Cordele and Macon Judicial Circuits, State of Georgia, 1982–1985; Tom McNamara, United States Attorney, Eastern District, North Carolina, 1972–76, Assistant United States Attorney, Eastern District, North Carolina, 1969–72; L. William Porter II, Former Special Assistant State Attorney, 5th Judicial Circuit/7th Judicial Circuit, Florida, Police Officer for 12 years;

Robert A. Rand, Former Assistant State's Attorney, 2nd Judicial Circuit of Florida, Former Special Prosecutor, Florida Statewide Grand Jury, Former Prosecutor, Office of State Prosecution; Donald Rehkopf, Jr., United States Air Force Prosecutor, 1976–81 and 1973–75; J. Randolph Randy, District Attorney, 10th Prosecutorial District of North Carolina, 1977–86, Prosecutor, Wake County, North Carolina, 1971–76; James Rizzo, Assistant District Attorney, Monroe County, New York, 1986–88;

J. Stephen Salter, Assistant United States Attorney, District of South Dakota, 1971–73, Northern District, Alabama, 1973–76; Richard Scanlan, Assistant Attorney General, New York, 1970–73; Benjamin Sender, Assistant United States Attorney, District of Columbia, 1979–82; Norman Shapiro, Special Deputy Attorney General, New York, 7 years, District Attorney, Orange County, New York, 1975;

Carl Silverstein, Assistant District Attorney, Sullivan County, New York, 1965–73; Neal R. Sonnett, Assistant United States Attorney, Chief of Criminal Division, Southern District, Florida, 1967–72; Patrick Tuite, State Attorney's Office, Chief, Criminal Division, 1967–69, Cook County, Illinois, 1962–69; Henry Wykowski, Assistant United States Attorney, Northern District, California, 1980–82, Trial Attorney, Department of Justice, Criminal Division, 1977–80.

The PRESIDING OFFICER. The Senator's time has expired.

CLOTURE MOTION

Mr. THURMOND. Mr. President, under the previous agreed-upon unanimous consent, I send a cloture motion to the desk.

I now yield 12 minutes to the distinguished Senator from Alabama.

Mr. BIDEN. Will the Senator yield to me for a unanimous-consent request?

Mr. SHELBY. I yield to the Senator.

The PRESIDING OFFICER. Will the Senator withhold so the clerk may read the cloture motion?

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the Edward Carnes nomination:

Strom Thurmond, Frank H. Murkowski, Bob Dole, Larry Pressler, Thad Cochran, Larry E. Craig, Bob Kasten, Mitch McConnell, Ted Stevens, Conrad Burns, Slade Gorton, Alfonse D'Amato, J. Warner, Al Simpson, Trent Lott, Malcolm Wallop.

The PRESIDING OFFICER. Under the previous order, the vote on the cloture will occur on tomorrow.

NOMINATION OF ED CARNES

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent that instead of the debate on the Carnes nomination ceasing at 12:30 today, that we be able to have another 20 minutes, equally divided, today, on that nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

It is the Chair's understanding that the Senator from South Carolina yielded 12 minutes to the Senator from Alabama [Mr. SHELBY].

Mr. THURMOND. Mr. President, that is correct.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I listened with some amazement to some of the arguments made by my distinguished friend from Ohio. I do not believe that he knows Ed Carnes, the Ed Carnes that I know from Alabama that I have known since 1973 when he graduated from Harvard Law School and came back to his home State to work in the attorney general's office. I was amazed at some of the statements because I believe, if he really knew him and knew what he stood for, what he believed in, that he would not be arguing against him—at least I would hope not—here on the Senate floor today.

Mr. President, I am proud to have an opportunity today to speak on behalf of Ed Carnes. Mr. Carnes was nominated to the Eleventh Circuit Court of Appeals many months ago. Unfortunately, since his nomination, there have been many inaccurate statements made about this fine lawyer. I am glad to have an opportunity to set the record straight.

Several weeks ago, I addressed the Senate on Mr. Carnes' background and qualifications, which are quite impeccable. There is no doubt that he is qualified for this important position. He excelled as a student at the University of Alabama and at Harvard Law School. He has served with distinction for 17 years as an assistant attorney general. During these 17 years, he has served the people of Alabama—young and old, black and white—with honor, respect, and sensitivity. He has more trial experience than the majority of nominees I have seen in my years in the Senate who have come before us for confirmation.

One of the arguments used against Mr. Carnes' nomination is that he is racially insensitive. This argument is based on his work as an assistant attorney general in those cases in which he argued that convictions should be affirmed even where there was evidence that the prosecutor at trial engaged in racial discrimination in selecting a jury. Let us talk about that for just a minute.

First, Ed Carnes is not racially insensitive. He has a strong civil rights record. The only thing Ed Carnes is guilty of is carrying out his ethical duty to defend his client—the State of Alabama. As an assistant attorney general, Ed Carnes has had the duty and responsibility to represent the State of Alabama in post conviction proceedings and appeals involving criminal convictions and sentences, including capital sentences. Through its elected attorney general, the State of Alabama has insisted upon its rights to have criminal convictions and sentences upheld on appeal if there is any legal basis for doing so. Mr. Carnes' instructions and orders as an assistant attorney general are to make available every legal argument to sustain a conviction and sentence after it has been imposed by a jury and judge. His instructions are like those given to all assistant attorney generals in the 50 States.

The American Bar Association's model code of professional responsibility provides that every lawyer owes the

same duty to both his client and to our system of justice: "A lawyer should represent a client zealously within the bounds of the law." Canon 7 and Ethical Consideration 7–13.

Charges have been leveled against Ed Carnes that he opposed claims of racial discrimination in jury selection in a few of the many cases he handled on appeal. In the 17 years he has served as an assistant attorney general, for the State of Alabama, and out of the hundreds of cases he has personally handled on appeal, only about six cases have involved claims of racial discrimination in jury selection. The arguments made by Mr. Carnes in these cases were based upon law announced by the Supreme Court and Federal appeals courts.

The decision that a lot of people are familiar with here in *Batson* v. *Kentucky*, 476 U.S. 79 (1986), a Supreme Court case, radically changed the law relating to racially discriminatory use of peremptory challenges in jury selections. Under Batson, the law became much more favorable for criminal defendants. Under Batson, a defendant could have his conviction overturned based solely on a prosecutor's discriminatory actions in his own trial. The previous law gave the defendant the onerous burden of proving a systematic pattern of excluding blacks from juries in case after case over a period of time. However, the Supreme Court has also established as law three defenses to Batson claims, all of which attorneys representing the State of Alabama or any State on appeal are expected to raise, and do raise, if applicable.

The first defense is nonretroactivity. In *Allen* v. *Hardy*, 478 U.S. 255 (1986) a case decided 2 months after Batson, the Supreme Court said that the Batson decision did not apply to cases that has already finished the direct appeal stage when Batson was announced in April 1986. It is interesting to note that Justice Brennan, one of the most liberal Justices to ever serve on the Supreme Court, joined in the opinion establishing this defense.

The second defense to a Batson claim is procedural default. This means if the defense did not raise a Batson claim by objecting at trial and on appeal in State court, the defense cannot raise the claim for the first time in the Federal court review of the case.

The third defense to a Batson claim exists if the prosecutor's reasons for striking some of all of the blacks off the jury were race neutral. The Batson decision itself establishes this defense. This defense often comes down to the prosecutor testifying why he exercised his peremptory strikes as he did, and the Court passing judgment on the credibility of the prosecutor and his reasons.

However much one may disagree with these defenses, they are the law of the land. I believe that it is unfair to oppose any nominee on the basis of racial insensitivity for arguing any of the above defenses. An attorney representing any client—whether a State or individual—has an ethical obligation to put forward every available argument in support of his clients' position.

Furthermore, if it is racially insensitive for an attorney to argue such defenses, then it is certainly racially insensitive for courts to establish and apply such defenses to bar claims of racial discrimination. Justice Brennan was one of the Justices who joined in the Supreme Court decision establishing nonretroactivity defenses to Batson claims. Moreover, many fine Federal judges, both liberal and conservative, including Judge Frank M. Johnson, have applied nonretroactivity defenses to bar Batson claims. No one can truly say that Justice Brennan or Judge Johnson are racially insensitive and neither can it be fairly said that Mr. Carnes is racially insensitive.

Therefore, it is a fact that in the few cases where Batson claims arose, Mr. Carnes used only defenses that are established in law. Mr. Carnes would not have served his State or the bar well had he not so acted.

Mr. President, I think it is important to note for the record some facts about Ed Carnes that totally refute any ideas of racial insensitivity.

First of all, even before the Batson decision, Ed Carnes strongly urged prosecutors not to discriminate against black prospective jurors.

Second, Ed Carnes worked within the system to extend the Batson decision to protect more black citizens from being discriminated against in jury selection. Mr. Carnes was a leader in the national effort to apply Batson to defense attorneys to prevent them from discriminating against blacks.

Third, before it became politically correct to do so in Alabama, Ed Carnes represented black public officials sued by whites.

Fourth, Ed Carnes worked to ban the importation of South African coal that had been mined by indentured black labor under penal sanction.

Fifth, and this is important, he had fought the Ku Klux Klan. In the infamous Birmingham church bombing case, he was the chief counsel for the State on appeal and convinced the court to affirm the conviction of the klansman who murdered four young black girls by blowing up the church.

Sixth, in two separate cases—Ed Carnes prosecuted charges against two State judges who made racially derogatory remarks or engaged in racist behavior. Ed Carnes successfully obtained the removal of both judges from the bench, in my home State of Alabama.

Mr. Carnes does not have a bad civil rights record—in fact it is just the opposite—he has a strong civil rights record. I would not support him if this were not the case.

Mr. President, I believe that it is important to note that the majority of the opposition to Mr. Carnes is based on opposition to the death penalty.

Make no mistake about it. This vote is a referendum on the death penalty here in the Senate. People will tell you otherwise, but look under the veil.

I base this on the fact that all of the witnesses who opposed Ed Carnes at his hearing opposed the dealth penalty. Furthermore, all of the groups opposing Ed Carnes also oppose the death penalty. Mr. President, the death penalty is not unconstitutional. Mr. Carnes was merely doing his job by enforcing Alabama's death penalty law, which I applaud.

Last, Mr. President, Ed Carnes has the strong support of the State Attorneys General of Alabama, Florida, and Georgia. They are all Democrats, not Republicans. He also has the strong support of the top elected Democratic officials in Alabama. Mr. President, I urge all of my colleagues to closely examine the fabrications and smokescreens thrown up about Ed Carnes. I honestly do not know how anyone who closely examines Ed Carnes' record can vote against him. He has the intellect, experience, and compassion to make a fine court of appeals judge. I believe that it would be a tragedy if we do not vote to invoke cloture on this nomination and then vote for the nominee.

Mr. President, I have a list of people, elected officials in my State of Alabama and around the country, who support the nomination of Ed Carnes. I urge the confirmation of Ed Carnes. I yield the remainder of my time, and ask unanimous consent to have the list printed in the RECORD.

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

ORGANIZATIONS AND INDIVIDUALS SUPPORTING THE NOMINATION OF ED CARNES TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

National:

Charles E. Cole, Alaska Attorney General.

Daniel E. Lungren, California Attorney General.

Charles M. Oberly, III, Delaware Attorney General.

Michael J. Bowers, Georgia Attorney General.

Larry EchoHawk, Idaho Attorney General.

Chris Gorman, Kentucky Attorney General.

Frank J. Kelley, Michigan Attorney General.

Don Stenberg, Nebraska Attorney General.

John P. Arnold, New Hampshire Attorney General.

Lacy H. Thornberg, North Carolina Attorney General.

Lee Fisher, Ohio Attorney General.

Ernest D. Preate, Jr., Pennsylvania Attorney General.

Grant Woods, Arizona Attorney General.

Gale A. Norton, Colorado Attorney General.

Robert A. Butterworth, Florida Attorney General.

Warren Price, III, Hawaii Attorney General.

Robert T. Stephen, Kansas Attorney General.

Richard P. Ieyoub, Louisiana Attorney General.
Mike Moore, Mississippi Attorney General.
Frankie Sue Del Papa, Nevada Attorney General.
Robert J. Del Tufo, New Jersey Attorney General.
Nicholas J. Spaeth, North Dakota Attorney General.
Susan B. Loving, Oklahoma Attorney General.
James E. O'Neal, Rhode Island Attorney General.
Mark Barnett, South Dakota Attorney General.
Paul Van Dam, Utah Attorney General.
Ken Eikenberry, Washington Attorney General.
Robert Macy, President, National District Attorney's Association.
Norman S. Early, Jr., District Attorney, Denver, Colorado.
John M. Mamoulides, District Attorney, Gretna, Louisiana.
Bruce Walker, Oklahoma District Attorneys Association.
Paul B. Ebert, Commonwealth's Attorney, County of Prince William, Commonwealth of Virginia.
Robert J. Humphreys, Commonwealth's Attorney, City of Virginia Beach, Commonwealth of Virginia.
Arkansas Sheriffs Association.
Dan Moralas, Texas Attorney General.
Jeffery L. Amestoy, Vermont Attorney General.
Joseph B. Meyer, Wyoming Attorney General.
Thomas Charron, Chairman of the Board, National District Attorneys Association.
Spencer Lawton, Jr., District Attorney, Savannah, Georgia.
Stephen D. Neely, District Attorney, Tucson, Arizona.
Michael C. Redman, Washington Association of Prosecuting Attorneys.
John M. White-Hurst, Commonwealth's Attorney, County of Mecklenburg, Commonwealth of Virginia.
John R. Doyle, III, Commonwealth's Attorney, County of Norfolk, Commonwealth of Virginia.
Alabama (Judges, Lawyers, Officials & Civil Rights Activists):
Alabama State Bar Board of Commissioners.
Alabama District Attorneys Association.
Alabama Sheriffs Association.
James H. Evans, Alabama Attorney General.
Miriam Shehane, President, Victims of Crime and Leniency.
Morris Dees, Executive Director, Southern Poverty Law Center.
Richard Cohen, Legal Director, Southern Poverty Law Center.
Justice Oscar Adams.
Justice Kenneth F. Ingram.
Judge William M. Bowen.
Judge H. Ward McMillan, Jr.
Judge Sam W. Taylor.
Judge Mark Montiel.
Judge James H. Hard.
Judge Michael E. Zoghby.
Judge William C. Sullivan.
Judge Samuel H. Monk, II.
Judge Herman Thomas.
State Representative Alvin Holmes, Chairman, Affirmative Action Committee of the Alabama Black Legislative Caucus.
William B. Blount, Chairman, Alabama Democratic Party.
James E. Folsom, Jr., Lieutenant Governor.
George C. Wallace, Jr., State Treasurer.
Billy Joe Camp, Secretary of State.
Tom Bevill, Democratic Member of Congress.
Ben Erdreich, Democratic Member of Congress.
Glen Browder, Democratic Member of Congress.
Bud Cramer, Democratic Member of Congress.
Claude Harris, Jr., Democratic Member of Congress.
Jimmy Clark, Speaker of the Alabama House of Representatives.
Ryan deGraffenreid, President Pro-Tem of the Alabama Senate.
Frank McDaniel, Chairman, Small Business Committee of the Alabama House of Representatives.
James M. Campbell, Speaker Pro-Tem of the Alabama House of Representatives.
Hinton Mitchem, Chairman, Business and Labor Committee of the Alabama Senate.
State Senator Doug Ghee.
Professor Albert P. Brewer.
Professor W. James Ellison.
William J. Baxley.
Don Siegelman.
Gerrilyn V. Grant.
Tori Adams-Burks.
Fred Bell.
Robert Ward.
Courtney W. Tarver.
James Prude.
Joseph A. Fawal.
William M. Dawson.
Rick Harris.
Robert S. Vance, Jr.
David A. Bagwell.
J. Don Foster.
Francis H. Hare, Jr.
Lee E. Bains, Jr.

NEWSPAPERS AND COLUMNISTS SUPPORTING THE NOMINATION OF ED CARNES TO THE ELEVENTH CIRCUIT COURT OF APPEALS

James Kilpatrick, "Carnes Life Illustrates Racial Progress."
The Alabama Journal.
The Birmingham News.
The Birmingham Post-Herald.
The Daily Oklahoman.
The Dothan Eagle.
The Mobile Press.
The Mobile Register.
The Montgomery Advertiser.
The Selma Times-Journal.
The Tuscaloosa News.
The Wall Street Journal.
The Washington Times.
Patrick McGuigan, "Edward E. Carnes & His Enemies."
Terry Eastland, "Pursuit of New Quarry."

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Delaware.

Mr. BIDEN. Mr. President, I yield 8 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I rise in opposition to the nomination of Edward Carnes to the U.S. Court of Appeals for the Eleventh Circuit. I cannot support a judicial appointment of someone who would send a dangerous message to the American people that not only is race discrimination OK, but is rewarded.

I am joined in my opposition to this nomination with a stellar group of individuals and organization which includes the Southern Christian Leadership Conference, the NAACP, Coretta Scott King, the Congressional Black Caucus, the Leadership Conference on Civil Rights, the Alliance for Justice, Rev. Joseph Lowery, and more than 45 law school deans and professors and nearly 40 former and current prosecuting attorneys from across the country.

The Senate should not be giving its consent to a nominee who has shown such an extreme lack of commitment to equal justice and constitutional rights. It is the role of the courts to protect the rights of the minority against the will of the majority. We should not be giving our vote of approval to a nominee who is not sensitive to this role, especially when it is to replace a long-time champion of civil rights such as Judge Johnson.

While Mr. Carnes is undoubtedly a skilled and intelligent lawyer, there were so many things in his record that I found disturbing, I cannot in good conscious support his nomination.

Let me just focus on a few of the most glaring incidents that raise grave concerns about Mr. Carnes' fitness to serve a lifetime appointment to the federal bench.

MR. CARNES LACKS A COMMITMENT TO EQUAL JUSTICE AND CONSTITUTIONAL RIGHTS

In case after case, Mr. Carnes has played a major role in protecting prosecutors use of preemptors strikes to remove African-Americans from trial juries. In one instance, and the chair of the Judiciary Committee already mentioned this, Mr. Carnes defended a case on appeal in which the prosecutor divided a potential juror list into strong, medium, weak, and black. He argued that this classification did not constitute a violation of the defendants constitutional rights. Mr. Carnes testified before the Senate Judiciary Committee that selecting a jury in this manner would not necessarily violate fundamental fairness.

In another capital case, Mr. Carnes defended a prosecutor's action to strike 12 potential African-American jurors to get an all-white jury. In this case, Mr. Carnes conceded that there was racial discrimination in selecting the jury. But when he argued the case he said that this racial discrimination should be ignored because of a procedural technicality. In the case of Jesse Morrison, Mr. Carnes defended the prosecutors use of jury strikes against African-American citizens in 20 of 21 strikes. Again Mr. Carnes argued that this discrimination should be ignored on appeal because of a technicality.

Racial discrimination in jury selection is unconstitutional yet, Mr. Carnes never questioned his office's defense of even the most egregious instances of illegal racial discrimination by prosecutors. I think the Atlanta Constitution said it best in an editorial on July 31, 1992.

The paper writes that Mr. Carnes has—

> Turned a singularly blind eye toward evidence of racial bias and constitutional violations in the criminal justice system. In defending capital cases on appeal, Mr. Carnes has steadfastly ignored manifest evidence of bias by local prosecutors.

Mr. Carnes has testified he does not believe there is any racial bias in the judicial system. I find that to be just an outrageously insensitive statement.

In testimony to the Senate Judiciary Committee and the American Bar Association task force, Mr. Carnes stated that he believes that people charged

with capital crimes receive "excellent representation." Not underpaid, inexperienced court-appointed lawyers, which is the reality all across this land, but excellent representation.

And despite the overwhelming evidence to the contrary, including a report by the GAO, Mr. Carnes testified before the Judiciary Committee in April, that he does "not believe that capital punishment is applied in a racially discriminatory manner in Alabama or in the Nation." For me these statements raise a question not only about his sensitivity to issues of discrimination and equal justice but also about his honesty.

Instead of working to eradicate the legal justice system of inadequate representation of indigent defendants, Mr. Carnes has exploited it. Indeed, Mr. Carnes has lobbied hard to prevent additional funding for programs to aid representation of indigent persons charged with capital crimes. He helped block State funding for the Alabama Capital Representation Resource Center. He insisted that if the center were to receive any State funds an equal amount should be given to his division of the attorney general's office.

At another time, Mr. Carnes lobbied against a bill in Congress that would have required any State that receives Federal funds to support court cases involving capital punishment to appropriate an equal amount of funds to capital resource centers to help indigent defendants. Mr. Carnes actions to frustrate funding efforts only acts to further perpetuate a system in which lawyers are paid only a paltry sum to represent a defendant in a capital case.

In addition, Mr. Carnes organized national support of State attorneys general for an unsuccessful White House effort to cut back on Federal habeas corpus protection, the means by which defendants can bring alleged violations of their constitutional rights to Federal court.

LACKS EXPERIENCE

Mr. Carnes, currently the chief of the capital litigation division of the Alabama Attorney General's Office, has spent his entire career prosecuting death penalty cases and opposing efforts in habeas corpus proceedings to set aside death sentences because they were obtained in violation of the Constitution. His only legal experience is in the narrow areas of death penalty habeas corpus cases and judicial discipline. As indicated from his record, he has spent a lot of his time defending racial discrimination by which African-Americans are tried by all-white juries.

CONCLUSION

Many of Mr. Carnes supporters claim that people who are opposed to his nomination are only opposed because of Mr. Carnes' position on the death penalty. That is simply not the case. My opposition to this nomination is not based on Mr. Carnes' philosophical support of the death penalty. Rather, after thoroughly examining Mr. Carnes' record, I strongly believe that his lack of commitment to, or understanding of, the principle of equal justice under law, his failure to acknowledge the prevalent problems of racial discrimination and inadequate legal representation of indigent defendants, and his lack of experience should disqualify him for a lifetime appointment to the second highest court in the country. I, therefore, intend to vote against cloture and against the nomination. I strongly urge my colleagues to do the same.

Mr. President, it has been stated by some that this vote is all about capital punishment. I do not believe that is true. I do not think this vote has anything to do with positions on capital punishment, with various philosophical positions that all of us take, that each and every one of us take. But rather, after examining Mr. Carnes' record—and I received many calls from people on different sites of this question—it seems to me that the real principle is that Edward Carnes does not understand or is not committed to the principle of equal justice under the law; that he refuses to acknowledged patterns of racial discrimination; that he does not understand the inadequate legal representation of indigent defendants. And on those counts, it strikes me that his nomination should not be confirmed.

Mr. President, let me just read from a letter that was sent to Senators on September 1, 1992, addressed to the majority leader, by Dennis Sweet III:

> African Americans have much to fear from hateful, misguided people in white robes. I know because I grew up in Mississippi fearing "white robe justice." When I was a child, my neighbor, Medgar Evers, was shot and killed by a sniper as he returned home one evening from work. However, some of us overcame racial bigotry and I am a lawyer today because of courageous federal judges in black robes who understood that both overt and subtle racism are cancers in our democracy.
>
> While I am concerned about the threat of racial violence, I am even more concerned about whether African Americans can continue to look to the federal judiciary for protection from racial prejudice and discrimination not only in the courts, but in housing, employment, and so many other areas of life. Ed Carnes would bring to the Court of Appeals a narrowness of experience and outlook that would diminish the court and the quality of its adjudications. His confirmation would be a major step backward toward an earlier era when the courts played no role in the business of ensuring equality. That would be tragic not only for African Americans, but all Americans.
>
> Thirty years of justice is at stake. I urge the Senate to withhold confirmation.

Mr. President, I urge the Senate to vote against cloture. I urge the Senate to withhold confirmation.

Mr. GRASSLEY addressed the Chair.

Mr. THURMOND. Mr. President, I yield 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I have had an opportunity to sit here for quite a while and listen to this debate. Obviously, this has been and is continuing to be one of the most controversial nominees to the circuit courts of appeals.

In the process of this very controversial nomination, Mr. President, I have decided to support the nomination. I supported the nomination in the Judiciary Committee. I was one of the 10 votes, bipartisan—both bipartisan Republican-Democrat; and bipartisan philosophically, liberal and conservative—of the 10-to-4 vote by which this nominee was voted out of the committee.

So I want it made very clear that even today I still support the nomination of Edward Carnes. And I do this because I believe that his credentials are impeccable. Not only is he very intelligent, but he has a distinguished record of service. At the University of Alabama, he had an outstanding academic record, receiving straight A's. More importantly, as it relates directly to the study of law and his profession, he graduated cum laude from Harvard Law School.

And then, in his work in that profession of the law, he has a distinguished record of more than 15 years of service in the attorney general's office in Alabama.

Not unexpectedly, as I suppose was true when the White House first decided on Mr. Carnes' nomination, his road to the bench was considered to be and has turned out to be a very bumpy road. Opponents to his nomination make claims that he is racially prejudiced. That is horseradish. The facts demonstrate otherwise.

Mr. Carnes' record is unblemished. Just a few examples from his professional life clearly show this. Mr. Carnes' record is full of examples of how he has fought against discrimination. Mr. Carnes led the removal of two Alabama judges for racist conduct. How is that for a record of fighting prejudice?

He also successfully represented the State on appeal against a Klansman convicted of killing four young black girls in a 1963 Birmingham bombing. He worked to stop the importation of South African coal.

Mr. Carnes' opponents rely on just one line of argument for their claim of racial prejudice. In the performance of his job as assistant attorney general, Mr. Carnes argued to sustain the imposition of death penalty sentences on appeal. It is important to understand that he was arguing these cases when they were on appeal. In some of these appeals, it was argued that the trial prosecutor had used peremptory challenges to strike black jurors for no reason other than race. On appeal now,

Mr. Carnes had to argue that the peremptory challenges were based on other lawful reasons. That was his duty. His opponents are blaming him, then, for simply performing that duty, representing the State on these appeals.

Although I am not a lawyer, I know that under our advocacy system of law, the attorney general and his staff are under an obligation to represent the State's interest in sustaining a conviction on appeal, and to do it very zealously, and to do it within the bounds of the law.

We cannot fault him for doing what the law requires. Furthermore, in private, Mr. Carnes has repeatedly advised district attorneys in Alabama not to use peremptory challenges based solely on a racial basis.

Not only does Mr. Carnes' record show a total absence of racial prejudice, civil rights champions have lined up in support of him. Morris Dees, the executive director and chief trial counsel at the Southern Poverty Law Center, has ardently supported Mr. Carnes' nomination. This is not because the two have similar opinions or that they are friends. The two have opposed each other in court many times.

Instead Mr. Dees supports Edward Carnes because of his temperament and intellect; the qualities my colleagues ought to be looking at. Even the man that Mr. Carnes is to replace, Judge Frank Johnson, a person held highly in the eyes of all civil rights groups, has said that Mr. Carnes is a very good choice.

It is apparent that Mr. Carnes is extremely well qualified for the Federal bench. What this debate has turned into is political posturing. Some people, especially certain interest groups and the media, have complained for years about the alleged use of divisive racial politics by the Reagan and Bush administrations. Beside the fact that that is untrue, that's what these attacks boil down to. Interest groups are fabricating these claims to pit the races against one another. It is a sad approach, and I would hope my colleagues do not let this despicable type of politics prevent Mr. Carnes from being confirmed.

Mr. BIDEN. Mr. President, I yield 10 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, no judge has done more to promote racial justice in Alabama than Frank M. Johnson. Appointed by Republican President Dwight Eisenhower, he has presided over some of the most important cases involving civil rights and civil liberties in this country. Along with our distinguished colleague, a former judge, Senator HEFLIN, he stands at the top of the rollcall in Alabama history in terms of standing up for civil rights in the judicial system.

In 1955, Johnson joined another judge in declaring Montgomery, Alabama's bus segregation ordinances unconstitutional, the first application of the Brown versus The Board of Education decision to a nonschool setting. This decision cleared the way for the eventual desegregation of public facilities throughout the South.

Another Johnson decision permitting civil rights advocates to march 50 miles from Selma to Montgomery has been credited by many people with promoting the passage of the 1965 Voting Rights Act.

During his 36 years on the Federal bench, Judge Johnson has handed down landmark decisions in voting rights, civil liberties, and civil rights. Martin Luther King once called him, "the man that I know in the United States, who gives true meaning to the word justice."

Shortly after Judge Johnson announced he would take senior status, another Republican President, George Bush, nominated Ed Carnes to replace him on the eleventh circuit. The most prominent feature of this nominee, Mr. President, is that he has spent the last 10 years heading Alabama's capital litigation unit, representing the State in death penalty cases.

Like any good lawyer, Ed Carnes has argued zealously on behalf of his client, the State of Alabama. Unfortunately, Mr. President, his representation of the State has often led him to argue in favor of upholding death sentences which are tainted by racial discrimination. The most disturbing thing about Ed Carnes is that he does not seem to appreciate the importance of ensuring that racial discrimination not undermine our system of justice. His willingness to defend death penalty sentences despite obvious constitutional violations at trial suggests that he might be insensitive to racial discrimination in the criminal justice system and civil rights concerns in general as a judge.

It has long been a violation of the 14th amendment's equal protection clause for the State to discriminate based on race in jury selection. In its 1986 decision in Batson versus Kentucky, the Supreme Court reaffirmed this important holding, prohibiting the discriminatory use of peremptory challenges by criminal prosecutors.

During Judiciary Committee hearings on his nomination, Ed Carnes admitted that he pursued appeals on behalf of the State of Alabama where racially discriminatory jury strikes had been used at trial. He conceded that in several cases which he handled on appeal, district attorneys and assistant district attorneys had struck potential black jurors at trial solely on the basis of their skin color. Yet, despite knowledge of this racial discrimination, Carnes could not recall any instance in which he refused to pursue an appeal or sought permission from his superiors to admit error. Although he personally abhors discrimination, it did not seem to occur to him to raise the possibility of admitting error with his superiors so that the persons suffering from this racial discrimination could receive fair trials.

A couple of egregious examples are worth mentioning, Mr. President. In the Federal habeas corpus proceeding of Patricia Jackson, the petitioner proved by overwhelming evidence in Federal district court that race was improperly used at trial to strike all blacks from the all-white jury that sentenced her to death. Jackson's claim was bolstered by testimony from the lead prosecutor, who said that every strike of black jurors was based upon the notion that "blacks are less willing to give the State a fair trial, less willing to convict, and tend to be more forgiving and more willing to give a defendant a second or third chance than are white jurors."

Although Carnes now concedes that the State's actions were discriminatory, he nonetheless argued before the court of appeals that Jackson should not receive a new trial because her claim lacked merit and she had failed to raise the issue in a timely manner. He even requested that the State be permitted to submit new evidence directly to the court of appeals to enchance the prospects for reversal of the district court. He admitted during the Judiciary Committee hearings that he failed to ask the Alabama attorney general for permission not to appeal the Jackson decision, even though he was convinced that racial discrimination had taken place in jury selection. Explaining his decision, Ed Carnes stated:

> I am not saying that the District Attorney in that particular case did not strike all the blacks off the jury for racially discriminatory reasons, and I do not condone that. But my position was not to judge whether or not that was good practice or a permitted practice. My position in the lawsuit—

He told Senator HEFLIN in Judiciary Committee hearings—

> was to advocate the position of the State of Alabama that the conviction should not be overturned with the possibility that someone who was guilty might go free, if there was any legally available basis for doing that.

In the case of Albert Jefferson, the prosecuting attorney used 26 strikes to remove 26 blacks from the jury over the course of three trials, and divided prospective jurors into four categories: strong, medium, weak, and black. Despite knowing of this blatant discrimination, Carnes once again worked zealously to support the conviction and sentence, arguing that Jefferson's attorney had failed to raise the issue of racial discrimination in a timely fashion.

Racial discrimination in jury selection in Alabama does not just occur in isolated cases, Mr. President. The NAACP legal defense fund reviewed four death penalty cases during the

last year for the use of peremptory challenges at trial. In those four cases, Alabama prosecutors used 60 of 77 strikes to exclude blacks from juries. It is fairly clear that the systematic exclusion of blacks from capital juries continues in Alabama, supported or at least acquiesced in by Ed Carnes. As Julius Chambers of the NAACP legal defense fund stated in testimony against Mr. Carnes:

> We find disturbing evidence of a stubborn and persistent willingness to tolerate and condone even egregious instances of discriminatory conduct by state officials.

Is there any wonder, Mr. President, why many in our country believe a dual system of justice exists along racial lines exists from place to place? How can we reverse this trend if we reward indifference to racial discrimination with judicial appointments?

His indifference to racially discriminatory jury strikes is not the only thing that troubles me about Ed Carnes. In his Judiciary Committee testimony, Carnes said, "there is no racial discrimination in the application of the death penalty in Alabama." This assertion goes against the prevailing evidence which shows that the race of the victim has a lot to do with who receives the death penalty. Over 65 percent of the murder victims in Alabama are black, yet over 80 percent of the cases in which the death penalty has been imposed in the State have involved victims who were white. Murder cases involving black offenders and white victims constitute less than 4 percent of all homicides in Alabama. However, these cases are the ones most likely to receive the death penalty. Perhaps these statistics can be explained. But to dismiss racial discrimination as an explanation without confronting the statistical disparity between African Americans and white Americans is negligent at best and reckless at worst. The message this statement conveys is that certain lives are more important than others, and nothing need be done to change that fact. I think the eleventh circuit deserves better.

Mr. President, I am not opposed to the death penalty. Unlike many of my colleagues, I believe that certain crimes are so heinous as to deserve society's ultimate act of retribution. My support for the death penalty stops, however, at the point where it is meted out in a racially discriminatory manner or without adequate constitutional protections. I would hope that a nominee for a Federal judgeship would be particularly sensitive to these concerns. Americans have decided that the death penalty is appropriate in certain situations. However, I do not think most Americans would tolerate maneuverings which would result in a patently unfair process of delivering that penalty.

In nominating Ed Carnes, President Bush has made a very important statement about his vision for the Federal judiciary. The legacy of Frank Johnson, the need for an experienced, balanced, and well-rounded jurist on the eleventh circuit—these issues were not considered important by George Bush. Instead, he nominated a man who has spent his entire legal career on a single issue and, in the process, arguing that racial discrimination and other civil rights violations should not be confronted.

Instead of promoting someone from the lower courts or nominating an attorney with a wide range of experiences, President Bush nominated a man who could effectively symbolize what is increasingly becoming his mantra about crime. For months, we have heard from the President that all our problems with crime will be solved by extending the death penalty and federalizing traditional state crimes. Now we have a judicial nominee who symbolizes that claim. Once again, we have to settle for the nominee best qualified to send a political message, instead of the nominee best qualified to interpret Federal law.

Mr. President, racial discrimination stigmatizes its victims and saps the moral vigor of those who practice it. It is not essential to our nature, but is learned, inculcated, and propagated through social interaction. Racial discrimination is arbitrary and dehumanizing. It diverts our attention away from the characteristics which we share with others on the basis of our common humanity, and focuses our attention on the characteristics beyond our control which set us apart. Racial discrimination interferes disastrously with our ability to recognize that our destiny as a multi-ethnic people is bound together, that each race's strength is inseparable from the well-being of the Nation as a whole, and that each race is in need of the others' contributions to create a common whole.

In a shocking example of indifference to the poisonous effect of racial discrimination in our judicial system, Ed Carnes testified before the Judiciary Committee that:

> Whether [the discriminatory use of jury strikes] renders a particular trial fundamentally unfair to the defendant and undermines the reliability of a guilty verdict depends on the facts and circumstances.

In contrast, Justice Powell's opinion for the majority in Batson echoed the feeling of what I believe to be the majority of people in this country by declaring:

> The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposely exclude black persons from juries undermine public confidence in the fairness of our system of justice.

Mr. President, most Americans would not approve of excluding people from a jury solely on the basis of their race. Just as it would be difficult to convince them that a person should not be punished for a crime he or she committed, so would it be difficult to justify a trial tainted by racial discrimination. Every American wants to believe in the legitimacy of our judicial system. We only need to remember the outrage over the Rodney King verdict to understand that. To say to Americans that a person would be justified in not admitting the fundamental unfairness of a trial tainted by racial discrimination—a trial that literally decided life or death for the defendant—would be to speak against much of what this country has proudly stood for throughout its history. As an advocate for the State of Alabama, Ed Carnes was charged with defending its capital sentences. Yet this charge did not give him the right to turn a blind eye to activity which calls into question the very legitimacy of the legal system itself.

A recent Atlanta Constitution editorial warns that:

> The 13 U.S. Courts of Appeals are effectively courts of last appeal for 99 percent of Federal litigants. While the Supreme Court heard some 100 cases last term, the appeals courts decided 41,000.

Mr. President, almost 4,500 appeals were handled by the eleventh circuit in 1991. Of those cases, only 20 were reviewed by the U.S. Supreme Court. Given the eleventh circuit's importance in ensuring that the rights of Federal litigants in Alabama, Georgia, and Florida are protected, why, Mr. President, should we confirm a man to that court whose statements and actions raise doubts about his sensitivity to issues of basic fairness? When strong doubts exist about a judicial nominee's ability to recognize the importance of ensuring basic fairness in our judicial system, I see no choice but to oppose his confirmation.

Mr. President, when future generations look back on this period they will wonder about the society we created for ourselves. They will want to know what our values were, how we treated each other, and what our vision was for the future. When future generation's look back on this period they will no doubt wonder about our system of justice. In recent years, we have seen key American values ignored by our courts. We have allowed a Federal judiciary to emerge which is now squarely to the right of the American mainstream. We have a clear majority on the Supreme Court which is willing to narrow the freedom of privacy so much as to put into serious jeopardy a woman's right to reproductive freedom. Less than 1 year ago we confirmed a Justice to the Supreme Court who wrote in a decision last term that the eighth amendment's prohibition against cruel and unusual punishment did not apply to physical beatings by prison guards. And now we could be on the verge of confirming a man to the court of appeals for the eleventh circuit who has turned a blind

eye to the systematic use of peremptory challenges to prevent blacks from serving on juries in Alabama. When future generations see this about us, Mr. President, I am not sure that they will believe that we stood for justice and basic fairness. When future generations learn this and learn about the despair, hopelessness, and indifference which plagues our society, I do not think they are going to be proud of the legacy we left them. When future generations assess our actions against the backdrop of alienation, discontent, confusion, and resentment that many of our citizens now feel toward our government institutions, including our courts, they will not think we acted wisely or in the best interest of this Nation.

As U.S. Senators we have been asked to play an important role in defining our Federal judiciary. We have the right to consult with the President about Federal judicial nominees and grant or withhold our consent depending on how our judgment or conscience directs us.

We have a duty to insure that the men and women who serve on the Federal bench are not zealots, Mr. President. We have a duty to insure that they are sensitive to ideals of basic fairness, share the values which made this country great, and have not already made up their minds about a defendant before they see the evidence. We have a duty to insure that our judges place a very high value on procedural fairness and do not try to change the tenor and breadth of the protections built into our system in order to ensure that a particular result they deem just is achieved. We have a duty to insure that the judges we appoint appreciate the importance of demonstrating to the people that our courts are not morally bankrupt or biased against a particular segment of society.

We should not regard this as a vote for or against the death penalty, but a vote for or against justice. If we are not convinced that this nominee respects the concept of basic fairness we should reject him and demand another. Ed Carnes is 41 years old. He could sit on the eleventh circuit—a circuit which handles a disproportionate number of important racial discrimination cases—for generations. His decisions will likely affect the lives of thousands of people. If we have doubts about Ed Carnes, we should not confirm him to a lifetime appointment. I urge my colleagues to examine the record and reject this nominee.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, we are expecting further speakers in a minute. In the meantime, I will take a few minutes.

Mr. President, in my 38 years in the Senate I have never seen a nominee that has more commendations than the nominee here.

I just want to mention a few people who have endorsed this man, Carnes. The joint letter from 31 State attorneys general, 31 State attorneys general, 19 of whom are Democrats, 12 Republicans; a joint letter here from six African-American attorneys. They talk about racial matters. These are black attorneys who have endorsed this man.

There is an endorsement here by Catherine Gallagher Smith, executive director, North Carolina Victim Assistance Network. They say he is not sensitive. He must be if he is endorsed by these victim assistance groups.

Dane Gillette, Deputy Attorney General, president of Association of Government Attorneys in Capital Litigation.

Joseph A. Fawal, attorney for the law firm of Fawal & Spina, who opposed Mr. Carnes in two capital murder cases. They say he is not fair in those. Here are attorneys on the other side of the case, who opposed him. Here they endorse him as being fair, and as being just.

Rick Harris, another attorney who opposed him in the Chick Bush case, who says he is fair and he is just.

Morris Dees, executive director of the Southern Poverty Law Center of Montgomery, AL, a poverty center. And they say he is not sensitive, not fair. Here is a poverty center attorney who endorses him.

Then here are the circuit judges; thirteenth circuit, the fifteenth circuit and the seventh circuit—judges. He has to work with them, judges, and they have endorsed him.

Professor of law at Stanford University. And here is a justice of the Supreme Court of Alabama who has endorsed him.

Here is a State representative, Alvin Holmes, chairman of the affirmative action committee of the Alabama black legislative caucus. I will repeat that. Here is a man, chairman of the affirmative action committee of the Alabama black legislative caucus. How can he be unfair to blacks when all these black lawyers are coming in here, even the chairman of the affirmative action committee, and endorsing Mr. Carnes? They would not do that. They would not stick their necks out and do this if it was not the fair and honest thing to do.

Alabama State Bar Board of Commissioners; Alabama District Attorneys Association; Alabama Sheriffs Association; Alabama attorney general; president of Victims of Crime and Leniency; a legal director, Southern Poverty Law Center. Do you think they would endorse this man if he was not sympathetic and sensitive to racial matters? Of course not.

And then Justice Oscar Adams, Judge William M. Bowen. And here are Judges McMillan, Taylor, Montiel, Hard, Sullivan, and Thomas. All these judges would not do that and take the risk if it was the unfair thing to do and where people could jump on him.

Chairman of the Alabama Democratic Party. He has been nominated here by the Republican President, here is the chairman of the Alabama Democratic Party. Would he endorse him and stick his neck out if it was dangerous to do so? You know he would not.

Lieutenant Governor of Alabama, Jim Folsom; State treasurer of Alabama, George Wallace, Jr.; secretary of state, Billy Joe Camp.

And here are six Members of Congress from Alabama who have endorsed him: TOM BEVILL, BEN ERDREICH, GLEN BROWDER, BUD CRAMER, CLAUDE HARRIS. These are Members of Congress who have to run before the people, and they have a large black population down there in Alabama.

Here is Jimmy Clark, speaker of the house of representatives down there; Ryan deGraffenreid, the president pro tempore of the Alabama Senate. Here is Frank McDaniel, the chairman of the small business committee of the Alabama House of Representatives; James M. Campbell, speaker pro tempore of the Alabama House of Representatives; Hinton Mitchem, chairman of the business and labor committee of the Alabama Senate; Robert Macy, president, National District Attorney Association; Thomas Charron, chairman of the board of the National District Attorneys Association. I can go on and on.

These people have endorsed this man Ed Carnes. Why did they do it? Because they think he is honest. They think he is a man of integrity. They think he is fair. They think he is just. Yet they come around and try to say he is racially insensitive. There is no sense in that when the black people endorsed him, the white people endorsed him, the officials endorsed him, the chairman of the Democratic Party of Alabama endorsed him.

Mr. President, it does not make sense. This man ought to be confirmed, and I predict he will be confirmed. I do not think this Senate would turn down a good man like this. Who knows this man best, the Senator from Massachusetts, or the Senator from Minnesota, or somebody else, or the two Senators from Alabama? You are a Senator from your State. Do not you know people in your State better than others do? I ask the Chair, I ask every Senator here. The Senator from Delaware is a good man, friend of mine; he does not know this man like the two Senators from Alabama. The two Senators from Alabama know this man better than anybody here, and they both favor him, and they both want him. Mr. President, he ought to be confirmed.

BATSON ISSUE

Mr. THURMOND. Mr. President, I would like to comment on the Batson

issue that was raised in connection with Mr. Carnes' nomination.

I received a copy of a letter from six African-American attorneys who work in the Alabama Attorney General's Office, and know Mr. Carnes personally. I would like to read a portion of that letter that addresses the Batson issue. This letter states, and I quote:

As African-Americans, we regret that there has been an attempt at racial polarization by a handful of people whose opposition to this nomination is motivated by their opposition to capital punishment. Some of us are strongly opposed to capital punishment. Some of us support it, and some of us have ambivalent feelings about it. But we all recognize that Ed Carnes is an excellent lawyer, he is fair, and he is opposed to racial discrimination.

We have heard that a few people are contending that Mr. Carnes has condoned racial discrimination because as an attorney assigned to advocate the State's position in post-conviction proceedings he has argued, where there is a legal basis for doing so, that a conviction should be affirmed even though the defendant raises a Batson claim on appeal. That contention is absurd, and it is offensive to those African-American attorneys who as advocates have argued the same positions Ed Carnes has. * * * It is the ethical duty of every government attorney to raise in a post-conviction proceeding any and all available arguments on behalf of sustaining a conviction. * * * Some of us, as part of our duty as attorneys representing the State in post-conviction proceedings, have also argued that convictions should be upheld even where Batson claims are raised, if there is any legal basis for doing so. We are not condoning racism when we do that, nor is Mr. Carnes. * * * Ed Carnes has a strong record of achievement in the area of minority rights. During his career, he has worked to ban the importation of South African coal into Alabama; he has defended black public officials who were sued by whites; he has personally prosecuted misconduct charges against two judges for racist conduct and got both of them removed from the bench; and on more than one occasion he has gone into court against white racists, including Ku Klux Klansmen, who had committed violent crimes against African-American citizens * * * we support Ed Carnes and urge the confirmation of his nomination.

The letter was signed by the following individuals: Gerrilyn Grant, Tori Adams-Burke, Fred Bell, Robert Ward, Courtney Tarver, and James Prude. Mr. President, I agree with these individuals that Mr. Carnes' record reflects that he is strongly opposed to racial discrimination. I support his nomination and urge my colleagues to do the same.

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

APRIL 16, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: We the undersigned attorneys in the Alabama Attorney General's Office are writing to express our support for Ed Carnes and to urge the confirmation of his nomination to the United States Court of Appeals for the Eleventh Circuit.

As African-Americans, we regret that there has been an attempt at racial polarization by a handful of people whose opposition to this nomination is motivated by their opposition to capital punishment. Some of us are strongly opposed to capital punishment. Some of us support it, and some of us have ambivalent feelings about it. But we all recognize that Ed Carnes is an excellent lawyer, he is fair, and he is opposed to racial discrimination.

We have heard that a few people are contending that Mr. Carnes has condoned racial discrimination because as an attorney assigned to advocate the State's position in post-conviction proceedings he has argued, where there is a legal basis for doing so, that a conviction should be affirmed even though the defendant raises a Batson claim on appeal. That contention is absurd, and it is offensive to those African-American attorneys who as advocates have argued the same positions Ed Carnes has.

The Code of Professional Responsibility requires that every attorney represent his client "zealously within the bounds of the law." It is the ethical duty of every government attorney to raise in a post-conviction proceeding any and all available arguments on behalf of sustaining a conviction. That duty is a necessary part of our adversary system. Some of us, as part of our duty as attorneys representing the State in post-conviction proceedings, have also argued that convictions should be upheld even where Batson claims are raised, if there is any legal basis for doing so. We are not condoning racism when we do that, nor is Mr. Carnes. To say that a government attorney who carries out his ethical duty to advocate in favor of sustaining convictions is condoning racism is like saying that criminal defense attorneys who advocate on behalf of their clients are condoning crime.

Far from supporting racial discrimination, Ed Carnes has a strong record of achievement in the area of minority rights. During his career, he has worked to ban the importation of South African coal into Alabama; he has defended black public officials who were sued by whites; he has personally prosecuted misconduct charges against two judges for racist conduct and got both of them removed from the bench; and on more than one occasion he has gone into court against white racists, including Ku Klux Klansmen, who had committed violent crimes against African-American citizens.

We are all independent of the supervision of Mr. Carnes. We hold various political views. However, we know Ed Carnes. Based upon our knowledge of him and his record, we endorse his nomination and urge his confirmation.

Sincerely,

GERRILYN V. GRANT.
TORI ADAMS-BURKS.
ROBERT WARD.
JAMES PRUDE.
FRED BELL.
COURTNEY W. TARVER.

Mr. THURMOND. Mr. President, I would like to insert into the RECORD several letters regarding Mr. Carnes and the policy of the attorney general involving Batson claims raised in postconviction proceedings.

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

Montgomery, AL, April 6, 1992.

Senator HANK BROWN,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BROWN: I am writing in connection with your request to be informed of policies I have followed in connection with litigation involving claims that trial prosecutors used peremptory strikes against blacks in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and related decisions.

The primary role of the Alabama Attorney General in connection with criminal cases is to represent the State of Alabama in the post-conviction review process in state and federal court. Very rarely does the Alabama Attorney General or his staff actually prosecute cases at the trial level. On the relatively few occasions when I have done jury trial work, I have never struck black veniremembers off the jury because of their race. I have never done that and would never do that, because I believe that racial discrimination is wrong.

At the appellate level, the Attorney General's Office receives a record and an opposing brief that the Attorney General and his staff did not create. Nonetheless, under our adversary system it is the Attorney General's responsibility to vigorously defend the validity of that conviction on any and all legally permissible grounds. The Attorney General's Office does not impartially decide the merits of any claims, because that is not the duty of an advocate. Instead, it is the ethical responsibility of the Attorney General and his staff to represent the State's interest in sustaining a conviction on appeal "zealously within the bounds of the law." Ethical Canon 7-1 Model Code of Professional Responsibility. That means arguing, if there is any basis for doing so, that a Batson claim lacks merit under the facts, e.g., peremptory strikes were based upon race-neutral reasons; or that the claim was not properly raised and presented for decision as the law requires; or that the Batson rule is inapplicable to the case because the Supreme Court has held that it does not apply retroactively to cases that finished the direct appeal process before the Batson decision was announced.

The policy that all Assistant Alabama Attorney Generals follow of being advocates for sustaining the validity of conviction if there is any legally permissible basis for doing so, even where a *Batson* type claim is involved, is a necessary product of the adversary system; it is reflected in the ethical constraints that require each attorney to advocate his client's case "zealously within the bounds of the law;" and it has also been the firmly established policy of each Attorney General under whom I have served.

Each Alabama Attorney General under whom I have served has had a strict policy against confessing error in a conviction unless there is no arguable way to defend the validity of that conviction. Even in those rare cases, no assistant attorney general has the authority to decide not to defend the validity of a conviction on appeal. Under the practicable of each Attorney General under whom I have served, the Attorney General himself decides if and when there will be a confession of error.

Because I personally loathe racial discrimination, where I have been able to do so consistent with my adversarial duty to advocate the convictions be sustained, I have taken every step I can to fight racial discrimination. I assisted with a civil action filed to ban the importation of South African coal. I was chief counsel for the State in the successful effort to sustain the conviction of the Ku Klux Klansman who bombed the Sixteenth Street Baptist Church and murdered four young black girls. I successfully prosecuted two judges who engaged in racist conduct and got both of them removed from the bench. I also personally initiated and led the

successful effort to have Alabama courts extend the *Batson* decision to defense counsel, so that now both sides are prohibited from racial discrimination in jury selection.

I hope that this letter answers your concerns, and please let me know if you have any further questions.

Sincerely,

ED CARNES.

OFFICE OF THE ATTORNEY GENERAL,
Montgomery, AL, April 6, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I understand that in connection with the nomination of Edward Carnes, some question has arisen about the policies of the Alabama Attorney General's Office concerning appeals from orders overturning convictions or sentences.

I know those policies, because in addition to being the present Attorney General, for eighteen continuous years before assuming my present position, I was District Attorney of Montgomery County, and in that capacity I worked very closely with the three previous Alabama Attorneys General.

It is and always has been the policy of this Office to vigorously represent the interest of the people of this state in sustaining state court convictions. Towards that end, we do not forego appeals. We do not confess error, and we do not waive procedural bars. The only exception is where I am absolutely convinced that no colorable argument at all can be made in favor of sustaining the judgment of the state court that convicted and sentenced the criminal defendant. Both the district attorney who prosecuted the case and I have to be convinced of that. No assistant attorney general, including Ed Carnes, has the authority to vary my policies in respect to all out defense of state court judgments.

This has been my policy, and the policy of my predecessors in this Office, because we are elected to represent the people of this state as vigorously as we can. That is our authority and our duty.

In very rare instances no argument can be made and a confession of error occurs. Even then, I have insisted that all assistants in this office receive the express permission of the district attorney involved before that is done. That policy of mine applies to Mr. Carnes, as well as to others. In fact, I made sure that was the policy because I strongly disagreed with predecessor's permitting Mr. Carnes to litigate against the district attorney's position on open file discovery in the *Ex Parte Monk* case.

The case of *Clayton Joel Flowers V. State* is the only time during my administration that an assistant attorney general has been allowed to take a position contrary to that of a district attorney in the appeal of a criminal case. Ed Carnes convinced me to allow him to argue that the death sentence in that case should be reduced even though the district attorney disagreed. After Ed made that argument, I changed my mind and the position of this office in the case agree with the district attorney. The Court of Criminal Appeals sided with Carnes, anyway. I then assigned another assistant to handle the remainder of the appeal and to advocate the district attorney's position.

To reiterate, as I have had occasion to tell assistants in this Office, including Mr. Carnes, I am the Attorney General. They are not.

Sincerely,

JAMES H. EVANS,
Alabama Attorney General.

LAW OFFICES OF CHERRY, GIVENS, TARVER, PETERS, LOCKETT & DIAZ, P.C.,
Mobile, AL, May 11, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: I understand that in discussing Ed Carnes' nomination in last Thursday's Judiciary Committee meeting, you mentioned in a complimentary fashion that prosecutors in a Miami case were seeking a change of venue to ensure that there would be blacks on the jury at a retrial. I wanted you to know that Ed Carnes had done a similar thing which was even more praiseworthy.

While I was Alabama Attorney General, my office was considering the retrial of a case involving a black defendant charged with the brutal murder of a white victim. The two prior trials of the defendant, which produced convictions, had been before all-white juries. Even though Ed Carnes had had nothing to do with those prior trials, I asked him to look over the files and give me his advice.

He did so. Mr. Carnes told me that he thought it essential to fairness and to public acceptance of the result that any retrial of the case be before a jury which contained a substantial number of black citizens. He also advised me that if there was a retrial we should seek a change of venue to a county with a higher black population so that we could guarantee that there would be a balanced, multi-racial jury. I accepted his advice and intended to do just that.

As it turned out, that case was never retried. However, I thought you would find it interesting that Mr. Carnes had done several years ago what you complimented some Miami prosecutors for doing recently. Indeed, Mr. Carnes' actions are even more praiseworthy than that of the Miami prosecutors. In the Miami case, it was within the prosecutorial interest to have more blacks on the jury because the victims were black and the defendant is not. In our case, the opposite was true. The defendant was black and the victim was white. Mr. Carnes took the position that we should act to ensure more blacks on the jury not because of any interest in obtaining a conviction, but out of a sense of fairness.

I hope that after you consider this new information about Mr. Carnes' racial sensitivity, you will support his nomination.

Sincerely,

DON SIEGELMAN.

OFFICE OF THE DISTRICT ATTORNEY,
Birmingham, AL, May 8, 1992.

Chairman JOSEPH R. BIDEN, Jr.,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am District Attorney of Jefferson County, the most populous judicial circuit in Alabama, and I have been a prosecutor for twenty years. I have known Ed Carnes for over fifteen years. I know his attitudes about many subjects, including racial discrimination. He is adamantly opposed to it.

I have been told that his nomination to the federal appeals court is being opposed because some people say he did not do enough to stop racial discrimination in jury selection. That is not true.

At least as early as the early to mid-1980's, Mr. Carnes in talking with district attorneys, including me, spoke out against the use of peremptory strikes in a racially discriminatory way. In that pre-Batson era, there were very few practical restrictions on the way a prosecutor could use his peremptory strikes, and as a practical matter, there was no effective remedy for a defendant if a prosecutor removed blacks from the jury because they were black. Still, Mr. Carnes, on more than one occasion, told Alabama district attorneys not to do that. I personally heard him say that. It was before the 1986 Batson decision.

Those opposing Mr. Carnes' nomination seem to be concerned only with the possibility of racially discriminatory strikes by prosecutors. I can tell you that defense attorneys, particularly those representing white defendants charged with crimes against black victims, often strike all the blacks off a jury just because of their race. That is wrong, and no one in this entire country has done as much to stop that pernicious practice as Ed Carnes has.

Mr. Carnes drafted legislation to extend the prohibition against racial discrimination in jury selection that already applies to prosecutors to defense counsel as well. The purpose of that legislation was to ensure that neither side removed black citizens from jury service because of race. Mr. Carnes' bill, which was supported by the Alabama Black Legislative Caucus, did not pass the Alabama Legislature. Mr. Carnes did succeed in getting the Alabama appellate courts to adopt the rule of law that criminal defense attorneys, like prosecutors, could not strike black jurors because of their race. That success came only after Mr. Carnes had raised and argued the issue on a number of different occasions. Once he took the issue all the way to the Supreme Court in a case involving the Ku Klux Klan lynching of a black man. So tenacious was Mr. Carnes in his fight against racial discrimination in jury selection that he convinced forty-five other states to join his effort in that case. The Southern Christian Leadership Conference and the Southern Poverty Law Center also joined him.

The Rodney King case, and its aftermath, shows the wisdom of Mr. Carnes' years of efforts to ensure that white defendants accused of crimes against blacks are not permitted to arrange an all-white jury. What Mr. Carnes has spent much effort doing is obtaining a rule of law to prevent any white defendants, including white policemen, from striking all the blacks off their jury because of race. That rule, which he has almost single-handedly established as the law of Alabama, will help reduce the number of all-white juries like those in the Rodney King case. That case vindicates Mr. Carnes' efforts. It is evidence that his nomination should be confirmed.

I do not know anyone else who has done nearly as much as Ed Carnes to fight racial discrimination in jury selection. To say that Ed Carnes has not done enough to end racial discrimination in jury selection does a grave injustice not only to Mr. Carnes but also to the truth.

Very truly yours,

DAVID BARBER,
District Attorney.

TALLADEGA, AL,
May 7, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing in response to what I understand to be some accusations that Ed Carnes has been insensitive to the problem of black prospective jurors being struck from juries for racially discriminatory reasons. Let me tell you why such accusations are completely unfair.

Long before the *Batson* v. *Kentucky* decision ever came down, Mr. Carnes urged Alabama district attorneys, including me, not to strike blacks off juries unless there were

race-neutral reasons to do so. He told us not to strike a black juror unless we would strike a white juror in the same situation. Before the Batson decision came down in 1986, Mr. Carnes admonished us not to use such strikes in a racially discriminatory manner and he felt it was wrong.

I, for one, followed Mr. Carnes's advice. I also order every assistant district attorney in my office to follow a strictly race-neutral jury strike policy even before the Batson decision came out.

It is simply unfair to accuse Mr. Carnes of being insensitive to the problem of race discrimination in jury selection when he did his very best to end racial discrimination in jury selection long before the Batson decision forced an end to it.

Please see the Mr. Carnes gets credit for the extraordinary action he took in trying to end racial discrimination in jury selection.

With every good wish, I am

Yours very truly,

ROBERT L. RUMSEY,
District Attorney,
28th Judicial Circuit of Alabama.

SOUTHERN POVERTY LAW CENTER,
Montgomery, AL, September 1, 1992.

Senator HOWELL T. HEFLIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR HEFLIN: Although I have long been active in Democratic Party affairs, I have strongly supported the Bush administration's nomination of Ed Carnes to a position on the Court of Appeals for the Eleventh Circuit. Because many of those opposed to Ed's nomination have resorted to a vicious and unfair campaign against him, I write to reiterate my support.

Ed has been labelled "racially insensitive." The charge has been made that he has defended numerous cases where African Americans were discriminatorily excluded from jury service. In wake of the verdict in the Rodney King case, Ed's opponents have tried to make the vote on his nomination a litmus test for the Senate's concern over racial justice.

In today's political climate, it is easy to label someone a racist but hard to defend against the charge. The truth rarely catches up with the lie, and it takes more words to defend against a charge then to level one. A white Alabamian who has worked for the State in the criminal justice system is a particularly easy target for a smear campaign. As one who has always been leery of those quick to call others racists, I feel that it is especially important to explain why I believe that the charge against Ed is so baseless.

To me the great irony of the smear campaign against Ed is that he has an exemplary record of fighting racial discrimination in jury selection. Before the Supreme Court's decision in *Batson* v. *Kentucky* provided a practical way to stop prosecutors from excluding black jurors, Ed lectured Alabama district attorneys to put an end to the practice. As one district attorney explained in a letter to Senator Biden,

"Long before the Batson v. Kentucky decision ever came down, Mr. Carnes urged Alabama district attorneys, including me, not to strike blacks off juries unless there were race-neutral reasons to do so. He told us not to strike a black juror unless we would strike a white juror in the same situation. Before the Batson decision came down in 1986, Mr. Carnes admonished us not to use such strikes in a racially discriminatory manner and he felt it was wrong.

"It is simply unfair to accuse Mr. Carnes of being insensitive to the problem of racial discrimination in jury selection when he did his very best to end racial discrimination in jury selection long before the Batson decision forced an end to it."

In one murder case involving a black defendant and a white victim, Ed actually advised the Alabama attorney general to try to get the case moved to a county with a larger black population to increase the chances of having African Americans on the jury. In other words, Ed wanted to do exactly the opposite of what was later done in the Rodney King case where the trial of the four policemen was moved to the overwhelmingly white Simi Valley area.

After the Batson decision, Ed led the effort to extend the decision to defense attorneys to prevent them from discriminating against black jurors. In a murder case involving Ku Klux Klansmen who had lynched a young black man, Ed went all the way to the Supreme Court in an effort to prevent the Klansmen from striking all the blacks off the jury. So dedicated was he to that effort that he convinced 45 other states to join a friend of the court brief supporting his position against racial discrimination. The Southern Christian Leadership Conference and the Southern Poverty Law Center filed a brief joining his effort. Although the Supreme Court declined to review that particular case, Ed continued the fight. He convinced the Alabama appellate courts to rule that no one, including defendants and their attorneys, could strike African Americans off juries because of race. Through his efforts, that rule was established in Alabama before the United States Supreme Court reached the same conclusion in 1992.

Instead of acknowledging Ed's strong record in fighting racial discrimination in jury selection, Ed's opponents have sought to hold him responsible for every instance of jury discrimination that has occurred in capital cases in Alabama over the last decade. Although Ed is an appellate lawyer who does not prosecute cases at the trial level or pick juries, his critics claim that he should have confessed error in all those cases where district attorneys exercised a disproportionate number of peremptory strikes against black jurors. By failing to do so, his critics charge, Ed became a kind of "accessory after-the-fact" to discrimination at the trial court level.

In my view, this charge deliberately distorts Ed's role in capital litigation in Alabama. Ed is an assistant attorney general. He does not set policy for the attorney general's office, and he does not control the actions of the various district attorneys. In the typical case to which Ed's critics point, the question of jury discrimination was not even raised at trial or on appeal. Instead, it was raised for the first time in "collateral" proceedings (federal habeas or the state analog to such proceedings). The fact that Ed has argued his client's position that claims of racial discrimination in jury selection should not be heard for the first time in such proceedings does not mean that he is "racially insensitive." United States Supreme Court precedent holds that such claims should not be heard in federal courts unless they have been timely raised and properly presented in state court.

In numerous capital cases, Judge Frank Johnson—the legendary liberal jurist Ed has been nominated to replace—has ruled that constitutional claims of death row inmates should not be considered because the claims were not raised in a timely or proper fashion. It would be absurd to argue that Judge Johnson is insensitive to constitutional concerns because he has followed the law barring such claims in capital cases. Likewise, it is absurd to argue that Ed is insensitive to constitutional concerns because he has argued for the application of the same law that Judge Johnson has applied. Saying that Ed has been "racially insensitive" because he has argued his client's position that Batson claims should not be considered because they were not raised in the trial court is analogous to saying that a criminal defense attorney is "insensitive" to crime because he raised a procedural objection to his client's murder conviction.

In addition to the fact that the issue of jury discrimination was not raised at trial in the typical case to which Ed's critics point, the trial and appeal in those cases often took place before the Batson decision was rendered. The Supreme Court has held that Batson does not even apply to such cases. Justice William Brennan—one of the most liberal jurists ever to sit on the Court—joined in that ruling. If Ed is "radically insensitive" for arguing in line with Supreme Court precedent that Batson does not apply to cases if the direct appeal was over prior to the date of the Batson decision, then Justice Brennan must have been a blatant racist for deciding the relevant precedent in the first place.

Under the yardstick of political correctness used by Ed's opponents, virtually every state attorney general in the country would be disqualified from judicial service because they routinely object when state court convictions are challenged for the first time in collateral proceedings. Recognizing this point, thirty-one state attorneys general—nineteen Democrats and twelve Republicans—have expressed their alarm at the nature of the opposition to Ed's nomination. As they explained in a letter to Senators Mitchell and Dole, the arguments being made by Ed's detractors "would threaten the confirmation prospects of every government attorney who has ever fulfilled his ethical duty to advocate the state's position on appeal in a criminal case. Someone will always be able to charge that by doing so the government attorney has condoned or defended some violation of the Constitution that the prosecutor allegedly committed."

So reckless are some of Ed's opponents that they have misrepresented his written answers to questions submitted by the Chairman of the Judiciary Committee. Ed, we are told, stated that racial discrimination in jury selection is not necessarily fundamentally unfair. What Ed actually said was as follows:

Question: In your view, would racial discrimination in jury selection affect the fundamental fairness of a trial and conviction?

Answer: Racial discrimination in jury selection is a loathsome practice which is always fundamentally unfair to the excluded jurors who are victims of it and to society at large. Whether it renders a particular trial fundamentally unfair to the defendant and undermines the reliability of a guilty verdict depends upon the facts and circumstances. For example, if a Ku Klux Klansman is being tried for a crime against a black victim and all the black veniremembers are struck off the jury because of their race, that is wrong, but it is not a wrong which would undermine confidence in a guilty verdict. We should not make the race-based assumption that any particular race is invariably more favorable to the defense in a criminal case. Whether it affects the outcome of a particular case or not, racial discrimination against jurors is wrong because racial discrimination is wrong.

Besides distorting Ed's role in the capital case process and failing to give him credit for his work against racial discrimination in

jury selection, Ed's critics have failed to acknowledge other aspects of Ed's professional and personal life that demonstrate a commitment to equal justice. Early in his career, Ed worked to bar the importation of coal from South Africa. He personally prosecuted disciplinary charges against two racist judges and succeeded in having both removed from the bench. As chief counsel for the state on appeal, he preserved the conviction of a Klansman responsible for murdering four young black girls in the notorious bombing of the Sixteenth Street Baptist Church in Birmingham.

Ed's stand against discrimination in the courtroom has been matched by his stand in the community. When he learned several years ago that a racially insensitive remark had appeared in the student newspaper at his daughter's school, he immediately wrote the principal and expressed his outrage in this way: "Racial discrimination is wrong. Racially hostile and denigrating comments are wrong. Publishing or condoning such comments is wrong."

Ed's sentiments were not the product of a "confirmation conversion." Unlike many other nominees, Ed has never been a member of an organization that discriminated on the basis of race or sex. He has long attended an integrated church.

I have spent over 32 years as a lawyer fighting for the underdog in courts from Alabama to Oregon. I don't choose sides based on public opinion or an appeal to special interests. I represented the Klan's right to march and sued the Klan when they lynched Michael Donald. I sued to integrate the Alabama State Police and defended law enforcement officers falsely charged with abuse. I hope that you will join with me in supporting Ed and not be swayed by cheap, unfair attacks on this good man's legal career and character.

Please feel free to call me if I can answer any questions.

Sincerely,

MORRIS DEES,
Chief Trial Counsel.

OFFICE OF THE ATTORNEY GENERAL,
Montgomery, AL, August 13, 1992.

Letters to the Editor,
The Washington Post,
Washington, DC.

DEAR EDITOR: As African-American attorneys who have worked with Ed Carnes, we know Nat Hentoff's latest column against his nomination is misleading and unfair.

Mr. Carnes has never condoned or defended the exclusion of blacks from juries. He has carried out his duty as an attorney to argue his client's position that convictions of violent criminals should be affirmed on appeal if there is any legal basis for doing so. Those of us who represent the State in criminal appeals have made the same arguments as Mr. Carnes, and we are certainly not racially insensitive. It makes no more sense to say that we have condoned racial discrimination by arguing for murder convictions to be affirmed than it does to say that defense attorneys condone murder when they argue for convictions to be reversed.

Mr. Carnes has worked hard to prevent racial discrimination in jury selection. For years he has urged prosecutors not to discriminate against black jurors. He advised the Attorney General to transfer a case involving a black defendant to a county with a greater black population to increase the number of blacks on the jury. He led the fight for the rule of law that now prohibits defendants from striking black jurors because of race.

Mr. Carnes' civil rights record is also impressive in other respects. He worked to ban importation of South African coal. He has defended black officials sued by whites and fought the KKK in a number of cases. In two separate cases, he personally prosecuted judges for making racist comments, and he got both of them removed from office. He has never belonged to an all-white club.

The real basis of the opposition is capital punishment. It is a shame the opponents have felt compelled to smear with phony racial discrimination charges a man with such a strong record on civil rights. His nomination should be confirmed.

Sincerely,

Gerrilyn V. Grant, Assistant Attorney General; Fred Bell, Assistant Attorney General; Courtney W. Tarver, Deputy Attorney General; Tori Adams-Burks, Assistant Attorney General; Robert C. Ward, Jr., Assistant Attorney General; James Prude, Assistant Attorney General.

Mr. THURMOND. Mr. President, I now yield 7 minutes to the distinguished Senator from Utah [Mr. HATCH].

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH] is recognized for 7 minutes.

Mr. HATCH. Mr. President, I just came from out in the hall where I spent some time with Morris Dees. Morris Dees is one of the leading civil rights advocates in America. He is a person I have inestimable respect for. We may differ on some applications of the law but there is no question he is one of the best lawyers in the country. He deserves a great deal of respect from everybody. And he is with the Southern Poverty Law Center and has fought many, many civil rights cases through the years. He has a great reputation. He is fighting as hard as he can for Ed Carnes, and the reason he is is because Ed Carnes has a reputation for standing up for people's rights. He has a reputation for standing up for civil rights.

There is only one reason why Ed Carnes is being given a difficult time here and that is because of some in this body who believe that he is just too tough on capital punishment. He is one of the leading authorities in the world on capital punishment.

So, Mr. President, I urge my colleagues to vote for the confirmation of Ed Carnes of Alabama to the position of judge of the U.S. Court of Appeals for the Eleventh Circuit.

Mr. Carnes has a distinguished professional record, and not one of his detractors has even suggested that he lacks the professional fitness for this job. For good reason, I might add, because there is not a good argument against him.

Mr. Carnes is eminently qualified for the position to which he has been nominated. He is an honors graduate of the University of Alabama and of the Harvard law school. He has litigated hundreds of jury and bench trials as assistant attorney general of the State of Alabama.

In the Alabama Attorney General's Office, Mr. Carnes has for over 10 years served as the chief of the capital litigation division. Does anybody here realize how difficult it is to bring capital cases and to try them? It is takes a special nerve, a special capacity, a special constitution. In that capacity he has overseen all of Alabama's responses to postconviction death penalty appeals. And this is in my judgment why Mr. Carnes is facing the opposition he is: He was a vigorous advocate for his client, the State of Alabama, in capital cases. And make no mistake, the campaign against Mr. Carnes is simply an extension of the campaign against the death penalty.

What I would like to do for the next 2 minutes is respond to some of the more egregious distortions we heard about Mr. Carnes' record.

Some of our colleagues argued that Mr. Carnes has "failed to demonstrate an appreciation for the fundamental unfairness of race-based jury selection." With all due respect, Mr. President, these colleagues have their facts wrong. Long before the Supreme Court in Batson versus Kentucky in 1986 struck down the use of race-based peremptory challenges by prosecutors, Mr. Carnes repeatedly urged prosecutors not to use race-based peremptory challenges. Moreover, Mr. Carnes even argued that defendants should not have the right to use race-based peremptory challenges. In a case involving klansmen accused of murdering a black man, Mr. Carnes went all the way to the U.S. Supreme Court to block the klansmen defendants from using their peremptory challenges to keep blacks off their jury. Although the Supreme Court declined to review this particular case, Mr. Carnes was successful in persuading the Alabama appellate courts to extend the rationale of Batson to the exercise of peremptory challenges by criminal defendants.

And I should add parenthetically here I hope my liberal colleagues are not now making fealty to the rationale of Batson their latest litmus test for confirmation for judicial nominees. First, this most recent litmus test would clash with their old litmus test of unswerving fealty to the doctrine of stare decisis, because Batson overruled an earlier decision of the Supreme Court, Swain versus Alabama, which was decided 21 years before the Batson case. Second, while Mr. Carnes advocated the substance of Batson before it was decided, some respectable legal scholars believe that Batson represented a case of judicial overreaching. Reasonable people can disagree about Batson, and Mr. Carnes happens to believe it was correctly decided.

Some of our colleagues have charged that "Mr. Carnes appears to be remarkably insensitive to the existence of racial discrimination." Yet, some of these, even some on the Judiciary Committee, said that "Mr. Carnes is not a racist. On a number of occasions

in both his professional career and private life he has demonstrated opposition to such discrimination."

Some Senators have made it quite clear they are opposing Mr. Carnes because Mr. Carnes does not share their view that the death penalty is meted out in a racially discriminatory fashion in this country, and on whether—as a matter of policy—the current Federal habeas corpus laws ought to be reviewed to end endless appears.

Neither does a majority of the Senate share their views on those questions.

In taking this position, those Senators are telling us they will vote to deny confirmation to any judicial nominee who does not share their personal views on various controversial policy issues. This, of course, demonstrates a misunderstanding of the role of the judge, which is to apply the written law as he finds it, rather than making policy. Mr. Carnes has not been nominated to a policymaking position, notwithstanding the great efforts of some, both on and off the courts, to turn the judiciary into a policymaking institution.

I should note here my colleagues who hold the view that the death penalty is applied in a discriminatory manner refer to various statistical studies of the question. To be sure, there are just as many statistical studies that rebut the studies upon which they rely. But the reliance on statistics, I think, demonstrates two other points that ought to be made.

First, it demonstrates that in some quarters nothing less than a wholly quota society is acceptable. In this vision, any deviation from statistical proportionality in outcomes or results must be attributable to racism, regardless of neutral factors that might well account for difference. This vision would have us extend the quota regime to the administration of criminal justice, and mete out punishment according to statistical proportionality.

Second, this mindset also betrays a misunderstanding of the rule of law and the role of the judiciary. This mindset assumes one can reach sweeping conclusions about judicial performance by making statistical studies which turn on how whole classes of litigants fare, statistically speaking, rather than by analyzing whether the written law was fairly applied to particular litigants in individual cases. In short, under this vision, we stand not as individual citizens before the law, but rather as members of particular groups queuing up for our proportional share of benefits and disadvantages.

Mr. President, I will close by commending to my colleagues who are undecided the remarks made by Senator HEFLIN shortly before the Judiciary Committee voted on Mr. Carnes' nomination. Senator HEFLIN thoroughly and persuasively made the case for Mr. Carnes, and no one has made it better. Mr. President, I ask unanimous consent that Senator HEFLIN'S remarks be inserted into the RECORD.

After reading Senator HEFLIN'S remarks, I believe that my undecided colleagues will agree with him that the charges against Mr. Carnes are unfair or inaccurate or both, and that Mr. Carnes will make a fine addition to the court of appeals. Mr. President, I urge the prompt confirmation of Mr. Carnes.

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

STATEMENT OF SENATOR HOWELL HEFLIN BEFORE THE SENATE JUDICIARY COMMITTEE REGARDING THE NOMINATION OF EDWARD CARNES, U.S. COURT OF APPEALS, 11TH CIRCUIT, MAY 7, 1992

Mr. Chairman and members of this committee, I support the nomination of Ed Carnes to the U.S. Court of Appeals for the 11th Circuit which includes my home State of Alabama as well as the States of Georgia and Florida. I would like to review the record before the committee and cite to you the basis for that support.

As the head of the Capital Litigation Division of the Attorney General's Office for the State of Alabama, it has been Mr. Carnes' responsibility for representing the state in capital litigation at the post-conviction stage—on direct appeal as well as state and federal collateral litigation. Mr. Carnes has extensive litigation experience at both trial and appellate levels in federal and state courts and he will, therefore, be no stranger to the federal appellate bench.

This committee has conducted an extensive investigation of the nominee's background and held a hearing where witnesses were heard both in support of and in opposition to his nomination. Further, the committee has submitted additional questions to which the nominee has fully responded, and we have before us an extensive record upon which to base our judgment.

When the President submitted Mr. Carnes' nomination, I did an extensive investigation into his background, as I endeavor to do relative to all judicial nominations that affect my state and region, on the issues of integrity, qualifications, judicial temperament, civil rights and general philosophy. I knew Mr. Carnes' nomination would be controversial because of his background in representing the State of Alabama in capital punishment cases.

I was surprised to learn of his strong support from the civil rights community in Alabama. I heard from or discussed this nomination with most of the leaders of the civil rights community in my state. Among those with which I discussed Mr. Carnes' nomination or heard from are the following:

Judge Frank M. Johnson, Jr.

Leaders of the Southern Poverty Law Center, including Morris Dees and Richard Cohen.

John Carroll, former Associate Director of the Southern Poverty Law Center and now a U.S. Magistrate Judge.

Justice Oscar Adams, an African-American member of the Alabama Supreme Court.

Judge Charles Price, an African-American trial judge of the Circuit Court bench in Montgomery.

State Representative Alvin Holmes, Chairman of the Affirmative Action Committee of the Black Caucus of the Alabama State Legislature.

Bill Dawson, a civil rights attorney of Birmingham.

David Bagwell, former law clerk to Judge Frank M. Johnson and former U.S. Magistrate.

Steve Glassworth, a Montgomery criminal defense attorney.

Rick Harris, a Montgomery criminal defense attorney.

Other civil rights and political leaders whose names I hold in confidence at their request.

The answer that I got was that Ed Carnes was a highly intelligent, competent lawyer, a tenacious advocate, but an individual of the highest integrity and who at all times practiced fairness and ethical conduct. I became convinced that he was a tough battler, but an honorable battler. Most of these individuals told me that personally they opposed capital punishment, but they realize that a potential judge should not be evaluated on a one issue basis, but should be viewed on a much broader spectrum, particularly on issues that will affect the future of the Eleventh Circuit Court of Appeals on civil and human rights.

In reviewing the opposition that has been generated against Mr. Carnes, one can conclude that his opponents view this confirmation as being a referendum on capital punishment, although they deny it. There is strong evidence that most of the opposition to Mr. Carnes has originated from one individual who vehemently opposes capital punishment. This is Steve Bright, who is Director of Southern Center for Human Rights in Atlanta. Mr. Bright has marshalled considerable forces to oppose Mr. Carnes' nomination. I have only observed Mr. Bright as a witness before the Judiciary Committee so therefore I will not attempt to personally evaluate Mr. Bright's nomination, but I direct your attention to the words of Morris Dees, the Director of the Southern Poverty Law Center, which was contained in a letter to Dr. Joseph Lowery, President, Southern Christian Leadership Conference, a portion of which follows:

"Dear Joe: I would like to reply to Steve Bright's sixteen page letter opposing Ed Carnes for the Eleventh Circuit Court of Appeals. My copy of Steve's letter did not arrive until ten days after it was dated. I had no way to reply earlier.

"First let me say that I sympathize with Steve for opposing anyone for a judgeship who favors capital punishment. Steve is a one-issue person because of the work he does. I also oppose the death penalty, but view a potential judge on a much broader range of issues that are important to civil and human rights.

"Ed Carnes has an outstanding record on civil rights and this is the reason I support him so strongly. I'd like to take a few pages and point to the more obvious omissions and misstatements in Steve's letter.

* * * * *

"Steve compares Ed unfavorably to Judge Johnson. Everyone, including Steve himself, compares unfavorably to Judge Johnson who is on of the greatest jurists of our time. However, Steve neglected to tell you what Judge Johnson himself thinks about Ed. Judge Johnson has sat on many of Ed's cases, and he knows Ed's true record better than Steve does. That is why Judge Johnson stated publicly in a *Birmingham News* article that Ed was a "very good" choice of the position. * * * I hope that you will trust Judge Johnson's judgment.

* * * * *

"In discussing capital punishment in Alabama, Steve neglected to tell you about a case involving a client of his who was scheduled for execution at the time of Steve's letter, and whose sentence has since been carried out. The man, whom Steve defended,

was white. He hired two African American men to kill his wife, who was nine months pregnant, so he could marry another women to who he was secretly engaged. Both of the African American men who actually carried out the murder got life sentences in Alabama. Steve's client, who is white got a death sentence which was carried out last week. I am surprised Steve did not use that case to argue that Ed is prejudiced against whites.

"I can understand that Steve is upset because his client was executed. But it is simply unfair for Steve not to admit that Ed has by far the strongest record on civil rights, of any federal judicial nominee in the state in at least the past decade. * * *

"Steve Bright cannot tell you the name of any other recent federal judicial nominee in Alabama who has prosecuted state judges for racist misconduct and gotten them thrown off the bench, as Ed has done. Steve cannot tell you the name of any other recent federal judicial nominee in Alabama who, as early as the 70's, defended black public officials who were being sued by whites, as Ed did. Steve cannot tell you the name of any other recent federal nominee who has gone to the United States Supreme Court in an attempt to prevent members of the Ku Klux Klan from discriminating against blacks, as Ed did. Steve cannot tell you the name of any other recent federal judicial nominee who has been joined by the SCLC in one of his efforts to fight racial discrimination, as Ed was.

"Ed has been successful in getting the Alabama Court of Criminal Appeals to rule in two cases that white criminal defendants cannot practice racial discrimination against African-American members of the jury. Steve omitted these two important cases.

"Judge Frank Johnson is the epitome of a courageous jurist whose decisions on the bench have done much to advance the cause of civil rights. But, before he was first appointed to the federal bench Frank Johnson had no public record for civil rights. He was a prosecutor who had been active in Republican politics. Ed, too, is a prosecutor, but he has a stronger record on civil rights than Frank Johnson had when he was first appointed to the federal bench. What the two of them have in common is integrity and a devotion to the rule of law. That is why Judge Johnson has said that Ed Carnes is a "very good" choice for this judgeship.

"Steve says you should oppose Ed because he supports Bill Baxley's opponent in the Alabama gubernatorial race in 1986. The irony of Steve's argument is that Bill Baxley strongly supports Ed's nomination. Bill recalls the hard work Ed did to ensure that the murder conviction of Klansman Robert Chambliss was upheld in the Birmingham Church bombing case, which involved the murder of four young African American girls. Bill also recalls that Ed assisted him in the mid 1970's in a legal action to prevent Alabama Power Company from importing South African coal. That legal action that Bill and Ed took so threatened the economy of South Africa that it was forced to change its laws involving use of indentured black labor. I invite you to call Bill Baxley (phone number) about Ed.

"Steve lists the names of others he says would be better nominees. It was ironic that he includes Justice Oscar Adams in that list, because Justice Adams strongly supports Ed's nomination. He has sat on a number of Ed's cases. I invite you to call Justice Adams (phone number) about Ed * * *.

"The facts are that Ed Carnes drafted legislation to increase money paid to attorneys to represent indigent capital defendants; he wrote an official advisory opinion of the Attorney General which doubled the amount of money to be paid for out-of-court work in such cases; and he succeeded in having the Legislature appropriate thousands of dollars for use in paying litigation expenses of indigent defendants under capital sentences. Ed Carnes has done more than virtually any other attorney in Alabama to increase state funding for indigent capital defendants.

"Steve ignores the fact that, in case after case, Ed Carnes has been fair to defendants even when doing so angered district attorneys. In one case Ed went into the appellate courts and argued that a death sentence was unconstitutional and should be reversed, while the district attorney argued to the contrary. In another case Ed argued to the Alabama Supreme Court that trial judges should have authority to order district attorneys to open their files to capital defendants. The entire Alabama District Attorneys Association argued against Ed's position, but he won. As a result, Alabama has one of the most liberal discovery rules in capital cases of any state in this country.

"Steve also chooses to ignore the fact that Ed Carnes has exposed attempts of district attorneys to hide evidence favorable to capital defendants. In at least two cases involving African Americans under sentence of death, Ed discovered and disclosed evidence favorable to them that the prosecutors had not divulged at trial. As a result of Ed's efforts, and his integrity and sense of fairness, both those African American defendants won new trials. * * *

"The SCLC should not oppose this nomination. For once, we have a nominee who is not a country club lawyer who has served corporate interests. For once, we have a nominee who has fought the Klan and who has fought racist judges. For once, we have a nominee with a strong record of fairness.

"Sincerely,

"MORRIS DEES.

"cc: Stephen Bright."

In making up my mind to support Mr. Carnes, I gave much more credence and weight to the opinions of Morris Dees, Richard Cohen, John Carroll, and other criminal defense attorneys who have been in court with Ed Carnes far more times than Mr. Bright. I am also persuaded by fair-minded jurists who have observed the abilities, ethics, and integrity of Mr. Carnes in court on far more numerous occasions than Mr. Bright.

It appears that the second paragraph of Morris Dees' letter to Joseph Lowery sums up this issue in a succinct manner:

"First let me say that I sympathize with Steve for opposing anyone for a judgeship who favors capital punishment. Steve is a one-issue person because of the work he does. I also oppose the death penalty, but view a potential judge on a much broader range of issues that are important to civil and human rights."

I have reviewed the evidence for and against Ed Carnes with care. One must realize the emotional atmosphere that capital cases bring to a courtroom. They are messy * * * passions are aroused * * * frequently lawyers explode at each other. If a lawyer loses at the appellate level he usually blames the opposing counsel or the judge. It is remarkable how many loosing lawyers nevertheless praise the fairness and ethical conduct of Ed Carnes. The entire record supports the conclusion that Ed Carnes' conduct has been fair, ethical and within the bounds of existing law.

I am convinced that Mr. Carnes' background, intelligence, integrity, and record qualify him for a position on the U.S. Court of Appeals, Eleventh Circuit. I urge his confirmation.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

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

I yield to the Senator from Alabama if he would like to say any more.

Mr. HEFLIN. I shall yield to the Senator from Montana. He wanted time in morning business.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I respond to the Senator Alabama saying I wish to speak on another matter but not on the Carnes nomination. I thank the Senator.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I ask unanimous consent that a series of letters, statements, articles, be placed into the RECORD at this time.

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

APRIL 22, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: We are the Attorneys General of the three states of the Eleventh Circuit, and we are writing to wholeheartedly urge the Senate to confirm the nomination of Edward Carnes to the United States Court of Appeals for the Eleventh Circuit.

As you know, the American Bar Association Standing Committee for the Judiciary unanimously rated him qualified for the position. Mr. Carnes is of the highest character, and he has a reputation for ethical propriety that is unsurpassed. Many attorneys who have litigated against him over the years have stated publicly that he has always been fair and straightforward with opposing counsel and with the courts. He has earned and enjoys a reputation as one of the finest attorneys in the Eleventh Circuit.

As the chief legal officers for our states, we are disturbed by the tactics being employed by those who are opposing confirmation of Mr. Carnes' nomination. While the opposition obviously springs from the capital punishment issue, the opponents are unfairly attacking Mr. Carnes because of the role he has had as an advocate for his client, the State of Alabama, in post-conviction review of convictions and sentences. It is the duty of state attorneys general and their assistants to advocate that convictions be sustained when there is any legally appropriate basis for doing so. All attorneys, including government attorneys, have a duty to represent their clients to the utmost of their abilities. It is only if that duty of advocacy is carried out that our criminal justice system, which relies upon a vigorous presentation of competing arguments by opposing advocates, can work.

It is preposterous for those opposing Mr. Carnes' nomination to suggest that rather than doing his duty as an advocate he should have taken it upon himself to decide the merits of each case or argument and acted accordingly. That is not the role of an attorney in our system, as you know. Any attorney who modifies his representation of a client based upon his personal feelings about how a case should come out is not carrying

out his ethical duty to represent his client zealously within the law. If the position of those opposing this nomination is adopted, then no government attorney who has carried out the ethical duty of being an advocate can be confirmed to the federal bench.

We have also heard that Mr. Carnes' nomination is being opposed by some because he supported the version of federal habeas corpus reform that passed the Senate last year. Fifty-eight Senators voted for that measure, and each of us supported it. Mr. Carnes' views on habeas reform are certainly not outside the mainstream.

The Eleventh Circuit is the busiest federal appeals court in the nation. It has been two-and-a-half years since the Court had a full complement of active judges, and it is currently operating with only seventy-five percent of its judgeships filled. We fear that there may soon be serious delay in the decision of cases if the vacancies are not filled promptly. We would appreciate anything you and the Senate could do to expedite the confirmation process for all three pending appointments to the Eleventh Circuit.

JAMES H. EVANS,
Alabama Attorney General.
ROBERT A. BUTTERWORTH,
Florida Attorney General.
MICHAEL J. BOWERS,
Georgia Attorney General.

June 9, 1992.

Senator GEORGE J. MITCHELL,
Majority Leader, U.S. Capitol, Washington, DC.
Senator ROBERT DOLE,
Republican Leader, U.S. Capitol, Washington, DC.

DEAR SENATORS MITCHELL AND DOLE: We, the undersigned state attorneys general, are writing to urge a prompt and affirmative vote on confirmation of the nomination of Ed Carnes to the United States Court of Appeals for the Eleventh Circuit.

Mr. Carnes is a highly qualified attorney with in-depth experience in appellate practice and expertise in criminal law, constitutional law, and federal procedure. His career has been distinguished, and he has displayed a fine sense of principled fairness. Mr. Carnes' record on civil rights is outstanding.

We are concerned that some of the groups opposing Mr. Carnes' nomination are not only distorting his record but are also taking a position that threatens to undermine our adversary system. Every attorney, including every government attorney, has an ethical duty to his client and to the legal system as a whole, to represent his client "zealously within the bounds of the law." See, Model Code of Professional Responsibility, Canon 7-1.

When a state attorney general, or his assistants, represent his state in a criminal case after conviction, it is his duty as an advocate to argue available factual or legal bases for affirming the conviction and to leave it up to the courts to decide the outcome. When we do that we are not condoning any alleged misconduct or misbehavior on the part of the prosecutor or any others. Instead, we are fulfilling our ethical duty as advocates, something that our justice system depends upon and the Code of Professional Responsibility demands.

Mr. Carnes should not be criticized because he has been a vigorous and effective advocate. That has been his duty, and it is to his credit that he has discharged that duty well. Because he discharged his duty as an appellate advocate, he should not be accused of condoning what some prosecutors are alleged to have done, any more than criminal defense attorneys should be accused of condoning crime when they act in their role as advocates.

We view with alarm this tactic of those opposing Mr. Carnes' nomination, because its success would threaten the confirmation prospects of every government attorney who has ever fulfilled his ethical duty to advocate a state's position on appeal in a criminal case. Someone will always be able to charge that by doing so the government attorney has condoned or defended some violation of the Constitution that the prosecutor allegedly committed.

A few opposing this nomination have even alleged that Mr. Carnes should somehow be held responsible for the Rodney King case and its aftermath. Mr. Carnes had nothing to do with that case, and he certainly was not responsible for the fact that it was tried before a jury which contained no African-Americans. The attempt of those opposing Mr. Carnes to exploit the Rodney King case is particularly unjust, because Mr. Carnes has been a leader of the effort to establish a rule of law that would prevent white defendants from using racial discrimination to remove African-American citizens from juries.

Four years ago, Mr. Carnes filed a petition in the Supreme Court to prevent Ku Klux Klan murder defendants from striking all the African-Americans off their jury in a case involving an African-American victim. We are well aware of Mr. Carnes' efforts in that case, because he persuaded forty-five states to join an amicus curiae brief supporting his position. The Southern Christian Leadership Conference and the Southern Poverty Law Center also filed a brief supporting Mr. Carnes' position.

After the Supreme Court declined to decide the issue in that case, Mr. Carnes persevered. He succeeded in getting an Alabama appellate court to hold that both the federal Constitution and state law prohibited defendants from engaging in the racially discriminatory use of peremptory strikes. Such a holding will make it far more difficult for white defendants charged with crimes against African-Americans to obtain an all-white jury. Therefore, the Rodney King case illustrates the wisdom of Mr. Carnes' efforts, which argues strongly in favor of confirming his nomination.

Consideration of this nomination is not and should not be a partisan matter. While Mr. Carnes is the nominee of a Republican President, he has served under four Alabama Attorneys General, all of whom were Democrats and all of whom strongly support his nomination. The Judiciary Committee vote in favor of his nomination came from both Democrats and Republicans. Some of us are Democrats and some of us are Republicans, but we are united in asking you to use your influence to secure prompt confirmation of this nomination.

Sincerely,

James H. Evans, Alabama Attorney General; Grant Woods, Arizona Attorney General; Charles E. Cole, Alaska Attorney General; Daniel E. Lungren, California Attorney General; Gale A Norton, Colorado Attorney General; Robert A. Butterworth, Florida Attorney General; Larry Echohawk, Idaho Attorney General; Chris Gorman, Kentucky Attorney General; Frank J. Kelley, Michigan Attorney General; Don Stenberg, Nebraska Attorney General; Robert J. Del Tufo, New Jersey Attorney General; Nicholas J. Spaeth, North Dakota Attorney General; Charles M. Oberly III, Delaware Attorney General; Michael J. Bowers, Georgia Attorney General; Robert T. Stephen, Kansas Attorney General.

Richard P. Ieyoub, Louisiana Attorney General; Mike Moore, Mississippi Attorney General; Frankie Sue Del Papa, Nevada Attorney General; Lacy H. Thornburg, North Carolina Attorney General; Susan B. Loving, Oklahoma Attorney General; Ernest D. Preate, Jr., Pennsylvania Attorney General; Dan Morales, Texas Attorney General; Jeffrey L. Amestoy, Vermont Attorney General; Joseph B. Meyer, Wyoming Attorney General; Lee Fisher, Ohio Attorney General; John P. Arnold, New Hampshire Attorney General; Mark Barnett, South Dakota Attorney General; Paul Van Dam, Utah Attorney General; Ken Eikenberry, Washington Attorney General; Warren Price III, Hawaii Attorney General; James E. O'Neil, Rhode Island Attorney General.

DISTRICT COURT OF ALABAMA,
Mobile, AL, August 28, 1992.

Hon. HOWELL HEFLIN,
Dirksen Senate Office Building, Washington, DC

DEAR SENATOR HEFLIN: I have had the pleasure of working and associating with Mr. Carnes since I relocated my law practice back to Mobile in 1987. As an Assistant District Attorney in Mobile, I had regular contact with Mr. Carnes and found him to be an enthusiastic, competent attorney and a pleasant person.

I have no reservations about supporting Mr. Carnes for the United States Court of Appeal for the Eleventh Circuit. If I can be of any further assistance, please do not hesitate to contact me.

Highest personal regards, I am.

Yours very truly,

HERMAN THOMAS,
Judge.

ALABAMA DEMOCRATIC PARTY,
Birmingham, AL, August 19, 1992.

Senator GEORGE J. MITCHELL,
Majority Leader, U.S. Capitol, Washington, DC.

DEAR SENATOR MITCHELL: We, the undersigned elected Democratic officials in Alabama, are writing to urge the Senate to confirm the nomination of Ed Carnes to the United States Court of Appeals for the Eleventh Circuit.

Mr. Carnes is an excellent attorney with expertise in constitutional law, criminal law, federal habeas corpus, and federal litigation. He has more experience before the court to which he has been appointed than virtually any other attorney in Alabama. As you know, the American Bar Association's fifteen-member Standing Committee on the Federal Judiciary unanimously rated him qualified for the position.

Mr. Carnes has a strong civil rights record and the support of a number of Alabama's civil rights leaders and African-American attorneys, judges, and officials. In addition, he has an unsurpassed record of fairness. Many of the attorneys who have litigated against him in the courtroom have come forward to support him and to attest to the fine sense of fairness he has displayed through his career.

The Alabama Bar's Board of Commissioners, which is the fifty-seven member governing body of Alabama's attorneys, has issued a resolution strongly supporting confirmation of this nomination. In that statement, the Bar condemns the opposition to Mr. Carnes' nomination which it correctly points out stems from his having done his duty as an attorney for his client, the State of Alabama.

We agree with Senators Heflin and Shelby that, although they deny it, the opponents to this nomination are motivated by their opposition to capital punishment. In representing the State of Alabama and post-conviction capital punishment litigation, Mr. Carnes has carried out his duty as an assistant attorney general to enforce the laws of this State. The overwhelming majority of Americans support capital punishment, it has been upheld by the Supreme Court, and it is the law of this and many other states. It is unfair and simply wrong for the opponents of this nomination to attempt to punish Mr. Carnes for his involvement as an attorney general representing the State in capital punishment cases.

This matter should not be a partisan affair. Although nominated by a Republican President, Mr. Carnes has not been active in politics, and he has broad bipartisan support throughout this entire state. His nomination should be confirmed.

William B. Blount, Chairman, Alabama Democratic Party; James E. Folsom, Jr., Lieutenant Governor; George C. Wallace, Jr., State Treasurer; Tom Bevill, Member of Congress; Ben Erdreich, Member of Congress; James. H. Evans, Attorney General; Billy Joe Camp, Secretary of State.

Glen Browder, Member of Congress; Bud Cramer, Member of Congress; Claude Harris, Jr., Member of Congress; Jimmy Clark, Speaker of the Alabama, House of Representatives; Ryan deGraffenreid, President Pro-Tem of the Alabama Senate; Frank McDaniel, Chairman, Small Business Committee of the Alabama House of Representatives; James M. Campbell, Speaker Pro-Tem of the Alabama House of Representatives; Hinton Mitchem, Chairman, Business and Labor Committee of the Alabama Senate.

THE SOUTHERN POVERTY LAW CENTER,
Montgomery, AL, March 25, 1992.

Dr. JOSEPH LOWERY,
President, Southern Christian Leadership Conference, Atlanta, GA.

DEAR JOE: I would like to reply to Steve Bright's sixteen page letter opposing Ed Carnes for the Eleventh Circuit Court of Appeals. My copy of Steve's letter did not arrive until ten days after it was dated. I had no way to reply earlier.

First let me say that I sympathize with Steve for opposing anyone for a judgeship who favors capital punishment. Steve is a one-issue person because of the work he does. I also oppose the death penalty but view a potential judge on a much broader range of issues that are important to civil and human rights.

Ed Carnes has an outstanding record on civil rights and this is the reason I support him so strongly. I'd like to take a few pages and point some of this out to you and to also refute some of the more obvious omissions and misstatements in Steve's letter.

Steve lambasts Ed because he has participated, as an attorney in eight legal proceedings (now nine) that led to executions in Alabama. What Steve fails to mention is that Judge Frank Johnson, whom Steve so rightly praises, has voted as a judge on the Eleventh Circuit to uphold the death sentence in at least twelve legal proceedings in which defendants were executed. At least six of those twelve defendants whom Judge Johnson let be executed were African Americans. Using Steve's "logic," Steve would have to say of Judge Johnson, as Steve has said of Ed: "he has brought about the deaths of six African Americans." Neither Judge Johnson, nor Ed, has acted out of racial prejudice. They both have followed the law.

Steve compares Ed unfavorably to Judge Johnson. Everyone, including Steve himself, compares unfavorably to Judge Johnson who is one of the greatest jurists of our time. However, Steve neglected to tell you what Johnson himself thinks about Ed. Judge Johnson has sat on many of Ed's cases, and he knows Ed's true record better than Steve does. That is why Judge Johnson stated publicly in a Birmingham News articles that Ed was a "very good" choice for the position. (A copy of that article is enclosed.) I hope that you will trust Judge Johnson's judgment.

The American Bar Association agrees with Judge Johnson's opinion of Ed Carnes. Steve says that Ed is unqualified. What Steve did not tell you is that the ABA Standing Committee on the Federal Judiciary, after conducting an exhaustive investigation into Ed and his record, unanimously rated Ed qualified. That fifteen member ABA committee is composed of attorneys from all over the country. There are no prosecutors on the committees, and several members are criminal defense attorneys. They talked to Steve Bright. Still, every single member of the ABA Committee rated Ed Carnes qualified for the judgeship.

In discussing capital punishment in Alabama, Steve neglected to tell you about a case involving a client of his who was scheduled for execution at the time of Steve's letter, and whose sentence has since been carried out. The man, whom Steve defended, was white. He hired two African American men to kill his wife, who was nine months pregnant, so he could marry another woman to whom he was secretly engaged. Both of the African American men who actually carried out the murder got life sentences in Alabama. Steve's client, who is white, got a death sentence which was carried out last week. I am surprised Steve did not use that case to argue that Ed is prejudiced against whites.

I can understand that Steve is upset because his client was executed. But it is simply unfair for Steve not to admit that Ed has by far the strongest record on civil rights, of any federal judicial nominee in this state in at least the past decade. For one thing, Ed is one of the few, if not the only, federal judicial nominees in Alabama in the past decade who has never in his life belonged to a country club or other racially exclusive organization. Just last week the Senate confirmed the nomination of an Alabama judicial nominee who had been a member of the Montgomery Country Club and resigned only so he could be confirmed. Steve Bright did not utter one peep against that nominee from the Country Club set.

Steve Bright cannot tell you the name of any other recent federal judicial nominee in Alabama who has prosecuted state judges for racist misconduct and gotten them thrown off the bench, as Ed has done. Steve cannot tell you the name of any other recent federal judicial nominee in Alabama who, as early as the 1970's, defended black public officials who were being sued by whites, as Ed did. Steve cannot tell you the name of any other recent federal judicial nominee who has gone to the United States Supreme Court in an attempt to prevent members of the Ku Klux Klan from discriminating against blacks, as Ed did. Steve cannot tell you the name of any other recent federal judicial nominee who has been joined by the SCLC in one of his efforts to fight racial discrimination, as Ed was.

Ed has been successful in getting the Alabama Court of Criminal Appeals to rule in two cases that white criminal defendants cannot practice racial discrimination against African American members of the jury. Steve omitted these two important cases.

Judge Frank Johnson is the epitome of a courageous jurist whose decisions on the bench have done much to advance the cause of civil rights. But, before he was first appointed to the federal district court bench Frank Johnson had no public record for civil rights. He was a prosecutor who had been active in Republican politics. Ed, too, is a prosecutor, but he has a stronger record on civil rights than Frank Johnson had when he was first appointed to the federal bench. What the two of them have in common is integrity and a devotion to the rule of law. That is why Judge Johnson has said that Ed Carnes is a "very good" choice for this judgeship.

Steven says you should oppose Ed because he supported Bill Baxley's opponent in the Alabama gubernatorial race in 1986. The irony of Steven's argument is that Bill Baxley strongly supports Ed's nomination. Bill recalls the hard work Ed did to ensure that the murder conviction of Klansman Robert Chambliss was upheld in the Birmingham Church bombing case, which involved the murder of four young African American girls. Bill also recalls that Ed assisted him in the mid 1970's in a legal action to prevent Alabama Power Company from importing South African coal. That legal action that Bill and Ed took so threatened the economy of South Africa that it was forced to change its laws involving use of indentured black labor. I invite you to call Bill Baxley (205-939-0995) about Ed.

Steve lists the names of others he says would be better nominees. It is ironic that he includes Justice Oscar Adams in that list, because Justice Adams strongly supports Ed's nomination. He has sat on a number of Ed's cases. I invite you to call Justice Adams (205-325-5086 or 205-242-4584) about Ed.

Contrary to what Steve says, Ed has *never* blocked capital resource funds. The person who best knows Ed's record in this regard is former Governor Albert Brewer who headed the Alabama Bar task force that set up Alabama's resource center. He was also the first chairperson of its Board of Directors and is still on the Board. Governor Brewer has written that Ed "participated actively in the establishment of the resource center," and that "many defendants were protected by Mr. Carnes concern for, and commitment to, fairness in the criminal justice system."

The facts are that Ed Carnes drafted legislation to increase money paid to attorneys to represent indigent capital defendants; he wrote an official advisory opinion of the Attorney General which doubled the amount of money to be paid for out-of-court work in such cases; and he succeeded in having the Legislature appropriate thousands of dollars for use in paying litigation expenses of indigent defendants under capital sentences. Ed Carnes has done more than virtually any other attorney in Alabama to increase state funding for indigent capital defendants.

Steve ignores the fact that, in case after case, Ed Carnes has been fair to defendants even when doing so angered district attorneys. In one case Ed went into the appellate courts and argued that a death sentence was unconstitutional and should be reversed, while the district attorney argued to the contrary. Ed won, and the appellate court reversed the death sentence. In another case Ed argued to the Alabama Supreme Court that trial judges should have authority to order district attorneys to open their files to capital defendants. The entire Alabama Dis-

trict Attorneys Association argued against Ed's position, but he won. As a result, Alabama has one of the most liberal discovery rules in capital cases of any state in this country.

Steve also chooses to ignore the fact that Ed Carnes has exposed attempts of district attorneys to hide evidence favorable to capital defendants. In at least two cases involving African Americans under sentence of death, Ed discovered and disclosed evidence favorable to them that the prosecutors had not divulged at trial. As as result of Ed's efforts, and his integrity and sense of fairness, both those African American defendants won new trails. The lawyer for one of them has recently written that:

"Ed Carnes could have pretended to overlook the evidence he found in the district attorney's file. He had no reason to doubt the defendant's actual guilt. He could have justified it to himself, telling himself that the failure of this evidence to appear at trial was harmless error. By turning over the evidence he aroused considerable ire from the local district attorney. . . . If Ed had not confessed error in that case, there is no way that we possibly could have discovered the additional exculpatory evidence on our own. [The defendant] would not be alive today."

It is disingenuous of Steve to cite The Atlanta Constitution editorial in support of his opinion about Ed, because Steve himself procured that editorial, and an op ed piece, and they simply repeat what Steve himself is saying.

The SCLC should not oppose this nomination. For once, we have a nominee who is not a country club lawyer who has served corporate interests. For once, we have a nominee who has fought the Klan and who has fought racist judges. For once, we have a nominee with a strong record of fairness.

Sincerely,

MORRIS DEES.

KENNETH F. INGRAM,
Montgomery, AL, January 30, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing to urge your committee to confirm the nomination of Ed Carnes to the Eleventh Circuit Court of Appeals.

During the past twenty-nine years, I have been a practicing attorney, a judge on a state trial court of general jurisdiction, a judge on an intermediate level state appellate court, and a Justice on the Alabama Supreme Court. I am familiar with the work and reputation of the top attorneys in Alabama, and I know from personal observation that Ed Carnes is one of the very best attorneys in this state. He has a sterling reputation and is known throughout the bench and bar as a tough advocate but one who is fair and whose ethics are above reproach. He has skillfully handled cases of mind-boggling complexity and has shown a gift for analyzing, organizing, and solving difficult problems.

Let me also tell you about Ed Carnes' dedication to the cause of judicial ethics. For eight years I served on the Alabama Judicial Inquiry Commission. During six of those years, I served as chairman of the Commission, which is the body the Alabama Constitution gives the authority and responsibility to investigate and bring charges against Alabama judges for misconduct in office or violation of the canons of judicial ethics. Any charges the Commission brings are tried in the Alabama Court of the Judiciary. Throughout the entire time I was on the Judicial Inquiry Commission, Ed served as counsel to the Commission. He not only met with us each month, and advised us on legal matters, but he also litigated in the Alabama Court of the Judiciary the charges we brought against judges.

As the Commission's attorney, Ed prosecuted eighteen cases against judges charged with misconduct in office or unethical behavior. In every single case, he was successful—all eighteen judges he prosecuted either resigned from office or were convicted after a trial and received sanctions, ranging from a public censure to removal from office. Ed has been absolutely tenacious in his commitment to and insistence upon the highest level of judicial ethics. I can think of no better attribute for a nominee to a judgeship.

Every judge and lawyer I have spoken with concerning this nomination is absolutely delighted that one who is so well qualified and who has such high moral character and dedication to public service has been chosen.

Sincerely,

KENNETH F. INGRAM.

FIFTEENTH JUDICIAL CIRCUIT,
Montgomery, AL, March 12, 1992.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, U.S. Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing in support of Ed Carnes who has been nominated to a position on the United States Court of Appeals for the Eleventh Circuit.

I am particularly qualified to speak about Mr. Carnes, because I have known him for over fifteen years, and I have observed his work from three different perspectives. I first came to know Ed when he and I were both employed by the Alabama Attorney General's Office in the 1970's. Later, I knew and worked with him after I became an assistant district attorney. Finally, I have had an opportunity to observe Ed as an attorney in my court during the nine years I have been a state trial court judge in Montgomery, Alabama.

Without reservation, I can say that Ed Carnes is an excellent attorney who is eminently qualified to be on the Eleventh Circuit Court of Appeals. He is one of the leading criminal law experts in this state.

More importantly, Ed is completely fair and has an excellent reputation for integrity and candor. On occasion, when a particularly thorny legal issue has arisen in a criminal case, some of the judges in this state, including me, have called upon Ed to join a conference and offer his views to the court and counsel for both sides. We have done that because we know that no one knows more about the criminal law than Ed Carnes does, and we also know that if the law is against the State's position Ed will not hesitate to tell us that. In fact, on more than one occasion when his advice was solicited, he informed the court and counsel for both sides that the prosecutor was wrong and defense counsel was right.

For these and other reasons, Ed Carnes has an unsurpassed reputation for fairness. I urge your committee to confirm him.

Sincerely,

CHARLES PRICE,
Circuit Judge.

[Telegram]

BIRMINGHAM, AL,
March 31, 1992.

Senator HOWELL HEFLIN,
Senate Judiciary Committee, Capitol One DC.

I recommend attorney Ed Carnes to be selected to fill the vacancy on the 11th Circuit Court of Appeals. I have known Attorney Carnes for approximately thirteen years. I know that he has represented the State in death penalty cases. However, he is competent, capable and fair and will make an excellent appointment.

Justice OSCAR W. ADAMS,
Associate Justice.

MONTGOMERY, AL,
March 2, 1992.

Hon. JOSEPH R. BIDEN, Chairman,
Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I write in support of the President's nomination of Ed Carnes to fill a vacancy on the Eleventh Circuit Court of Appeals. My support does not come because I am a death penalty advocate or because I am pro-prosecution. I am neither.

I initially came to Montgomery, Alabama in 1980, to work for Legal Services Corporation of Alabama, where I represented indigent people in civil matters. Subsequently, I entered the private practice of law. A substantial portion of that practice consisted of representing indigent criminal defendants. In 1989, I left private practice to accept a position with the Alabama Department of Public Health. While I hold a commission as an assistant attorney general, I do not prosecute criminal cases; I neither draw a salary from nor report to the Attorney General of Alabama. The small amount of litigation I now handle is entirely civil in nature and concerns licensure of health care facilities. My relationship with Mr. Carnes has been exclusively as a fellow professional and opposing counsel. I am not in favor of the death penalty and certainly entertain no bias in favor of criminal prosecutors.

While in private practice, I handled some capital murder cases, both as appointed, reimbursed counsel in trials and direct appeals and a volunteer in collateral appeals. In 1985, I was privileged to be the first recipient of the Alabama State Bar's annual Clarence Barrow Award, which is given for volunteer work in capital murder cases. I received this award in recognition of work I did on behalf of William "Chick" Bush. Ed Carnes was my opponent on that case. He proved his integrity and honesty. I want to share the story.

In late 1983, I was recruited by the Alabama Prison Project to assist Chick Bush. He had been convicted of capital murder in late 1981 and sentenced to die. His trial attorney had handled direct appeals as far as the Alabama Supreme Court, for which he was reimbursed. The same attorney filed a certiorari petition to the U.S. Supreme Court without compensation. When the petition was denied, he told his client that he would not handle any further appeals. The Alabama Supreme Court set a December 30 execution date.

I had never handled a capital murder case. I was relatively inexperienced and very reluctant to get involved. I did so only on condition that another, experienced attorney be recruited to help me. Eventually, the NAACP Legal Defense and Education Fund, Inc., volunteered Mr. Deval Patrick, a very able lawyer working in their New York City office. By December 22, I was able to file in state court papers that had been prepared by Mr. Patrick. This was a collateral appeal of Mr. Bush's conviction and a request for stay of execution pending the collateral appeal.

In late 1983, pending executions were page five news as they are today. There had been only one execution under Alabama's latest death penalty statute: Alabama's prior statute had been held unconstitutional several years before. The first man executed under

the new statute, John Louis Evans, had for all intents and purposes withdrawn his appeal a few months prior to his execution date. Chick Bush's execution would be fully contested, and as the date grew near, there was a considerable amount of publicity, much more than is drawn by an execution today.

The state court judge hearing the case scheduled a hearing for Saturday, December 24. I will never forget that day. I was all alone, the only person seated at the petitioner's counsel table. The judge was extremely upset with me because my application for writ of error and application for stay of execution were filed at such a late date (eight days before the execution). Ed Carnes was opposing counsel. He did not try to take advantage of the judge's anger nor did he inflame the situation. Instead, he very calmly explained to the judge that I was entitled to a full round of collateral remedy hearings in federal court, that I would almost certainly receive a prompt stay of execution from a federal court judge, that it was necessary for me to have that stay denied by a state court judge before going to federal court, that the judge should simply deny my state court applications so that the case could proceed to federal court where we all agreed it belonged, and that I was merely doing my job.

The following Monday, December 26, I filed a habeas corpus petition and an application for stay of execution in federal court. The execution was still scheduled for 12:01 a.m., Friday, December 30. Mr. Carnes, Mr. Patrick, and I held repeated telephone conferences with the judge during that week. That judge repeatedly expressed reluctance to grant the stay, to my growing consternation. Mr. Carnes again and again told the judge that he should grant the stay. Finally, at noon, on Thursday, December 29, twelve hours before the execution, the judge issued a stay which stopped execution.

The largest radio station in Montgomery broadcast an editorial that night criticizing the judge's decision and castigating me by name. Mr. Carnes again did not make any inappropriate or inflammatory comments. I am sure that he had ample opportunity to do so, judging from the dozens of calls and inquiries that I received from reporters.

As discovery progressed in the case, Mr. Patrick and I became increasingly pessimistic about our chanves. Our lynchpin arguments concerned the disproportionate number of death sentences given in Alabama to those convicted of murdering white victims rather than black victims. We had held out great hopes for the *McClesky* v. *Zant* case, which was then pending in U.S. District Court in Georgia and which raised the same issue about the death penalty there. During the course of our preparation, the district court there ruled against Mr. McClesky, and as you may be aware, this ruling was later affirmed by the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. Mr. McClesky was recently executed.

In March, I received a phone call from Ed Carnes. While preparing his case, he had discovered a document in the district attorney's file. It was a piece of plainly exculpatory evidence that had not been elicited by the defense at trial. Ed told me that this meant that the evidence either had not been provided to the defense, a clear violation of the defendant's constitutional rights, or that its non-use by the defense made out a case of ineffective assistance of counsel. Either way, the defendant was entitled to a new trial and he intended to let the judge know that.

Chick Bush got his new trial. I'm sorry to say that he was convicted again, but the state did have some rather impressive evidence against him, including a taped confession to the murder. That conviction was also overturned on appeal, on which he received a third trial where he was again convicted. That conviction is presently on appeal. Chick Bush is alive today on Alabama's death row, more than nine years after his last-minute stay of execution.

Ed Carnes could have pretended to overlook the evidence he found in the district attorney's file. He had no reason to doubt the defendant's actual guilt. He could have justified it to himself, telling himself that the failure of this evidence to appear at trial was harmless error. By turning over the evidence he aroused considerable ire from the local district attorney. He must have been tempted to save the state endless additional appeals and expense. If Ed Carnes had not confessed error in that case, there is no way that we possibly could have discovered the additional exculpatory evidence on our own. Chick Bush would not be alive today.

What Ed Carnes did in the Bush case was fundamentally honest and courageous. I am impressed, as is everyone who has opposed him, with his intelligence and legal ability. But I am most impressed with his integrity. If he could be a fair and impartial prosecutor in the atmosphere that surrounded the Bush case in 1983, then I have no doubt that he will easily do the same as a federal judge. I would be comfortable arguing any kind of case before him. I whole-heartedly support his nomination.

Sincerely,

RICK HARRIS.

HOUSE OF REPRESENTATIVES,
ALABAMA STATE HOUSE,
Montgomery, AL, March 6, 1992.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, Russell Senate Building, Washington, DC.

DEAR SENATOR BIDEN: It is my understanding that Edward E. Carnes, an Assistant Alabama Attorney General, has been nominated to be a United States District Judge in the Middle District of Alabama.

This letter comes to highly recommend Mr. Carnes for said position. I have known Mr. Carnes for many years and have known him to be fair and impartial toward all citizens without regard to race or color.

s Chairman of the Affirmative Action Committee of the Alabama Black Legislative Caucus, one of my responsibilities is to observe public officials and others in their actions toward minorities in the state of Alabama and I have found nothing that is negative in regards to Mr. Carnes' record in this matter.

Please give Mr. Carnes your great consideration.

Sincerely,

ALVIN HOLMES,
State Representative.

OFFICE OF THE DISTRICT ATTORNEY,
Denver, CO, August 6, 1992.

Senator GEORGE J. MITCHELL,
Majority Leader, S-221, U.S. Capitol, Washington, DC.

DEAR SENATOR MITCHELL: As a Black man who has worked in the criminal justice system as a prosecutor for almost 20 years, I have had the opportunity to test long standing assumptions which I had made about the criminal justice system. Always having been concerned about the disparity between minorities and whites in the criminal justice system, I was uncertain as to whether I would feel comfortable as a prosecutor. I fully recognize that justice is not meted out the same in all parts of this country and that there are many procedural safeguards which could be extended to give defendants a greater amount of security. However, through the years I have not only been concerned with protecting the rights of defendants but have become an ardent supporter of the rights of victims of crime. It seems to me that the true measure of the criminal justice system will be whether it is able to strike a balance between these competing rights and, eventually resolve criminal conflicts in a manner which holds those accountable for the wrongs they commit.

Because of my concerns about bringing diversity to this system from a prosecutorial perspective, I founded the National Black Prosecutor's Association. Our organization attempts to provide a support system for those who are already in the field of prosecution while at the same time attempting to recruit and retain individuals who respect the rights of victims as well as defendants.

While I do not know Ed Carnes personally, I'm very aware of the kinds of assignments he has had in the Alabama Attorney General's Office. I'm also aware of the fact that he has attacked these assignments with passion and diligence. It appears that his penchant for doing a good job has caused some to question whether his zealousness is a result of genuine work ethic or the result of the latent racism which protects vestiges of our legal system which often inure to the detriment of minorities. I have read with interest Mr. Carnes' background as well as the comments made by individuals whom I trust concerning their support for Mr. Carnes. I have been impressed by the wide array of individuals who have come to his defense and we both know the sense of morality and justice that many of them have brought to this system.

Your decision is a difficult one. It is made especially difficult since you do not know Mr. Carnes personally. However, if the representatives of such a diverse group of individuals who know him well is not persuasive, the message you send is that prosecutors should not be on the cutting edge of the issues that impact victims of crime. I have served as the President of the National Organization For Victim Assistance and, have, like Mr. Carnes, been on the front lines of many of these issues. Mr. Carnes is a change agent. Those who do not fully embrace concepts arising from the victim's movement may find them to be somewhat offensive. However, no one should be penalized for doing their job and doing it to the best of their ability. This is what Mr. Carnes has done and I would heartily encourage you to support his nomination.

Thank you very much for your consideration. If you should have any questions, please contact me personally at the above numbers or address.

Very truly yours,

NORMAN S. EARLY, Jr.

OFFICE OF THE ATTORNEY GENERAL,
Montgomery, AL, April 6, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I understand that in connection with the nomination of Edward Carnes, some question has arisen about the policies of the Alabama Attorney General's Office concerning appeals from orders overturning convictions or sentences.

I know those policies, because in addition to being the present Attorney General, for eighteen continuous years before assuming my present position I was District Attorney

of Montgomery County, and in that capacity I worked very closely with the three previous Alabama Attorneys General.

It is and always has been the policy of this Office to vigorously represent the interest of the people of this state in sustaining state court convictions. Towards that end, we do not forego appeals. We do not confess error, and we do not waive procedural bars. The only exception is where I am absolutely convinced that no colorable argument at all can be made in favor of sustaining the judgment of the state court that convicted and sentenced the criminal defendant. Both the district attorney who prosecuted the case and I have to be convinced of that. No assistant attorney general, including Ed Carnes, has the authority to vary my policies in respect to all out defense of state court judgments.

This has been my policy, and the policy of my predecessors in this Office, because we are elected to represent the people of this state as vigorously as we can. That is our authority and our duty.

In very rare instances no argument can be made and a confession of error occurs. Even then, I have insisted that all assistants in this office receive the express permission of the district attorney involved before that is done. That policy of mine applies to Mr. Carnes, as well as to others. In fact, I made sure that was the policy because I strongly disagreed with my predecessor's permitting Mr. Carnes to litigate against the district attorney's position on open file discovery in the *Ex parte Monk* case.

The case of *Clayton Joel Flowers* v. *State* is the only time during my administration that an assistant attorney general has been allowed to take a position contrary to that of a district attorney in the appeal of a criminal case. Ed Carnes convinced me to allow him to argue that the death sentence in that case should be reduced even though the district attorney disagreed. After Ed made that argument, I changed my mind and the position of this office in the case to agree with the district attorney. The Court of Criminal Appeals sided with Carnes, anyway. I then assigned another assistant to handle the remainder of the appeal and to advocate the district attorney's position.

To reiterate, as I have had occasion to tell assistants in this office, including Mr. Carnes, I am the Attorney General. They are not.

Sincerely,

JAMES H. EVANS,
Alabama Attorney General.

OFFICE OF THE DISTRICT ATTORNEY,
Birmingham, AL, May 8, 1992.

Chairman JOSEPH R. BIDEN, Jr.,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am District Attorney of Jefferson County, the most populous judicial circuit in Alabama, and I have been a prosecutor for twenty years. I have known Ed Carnes for over fifteen years. I know his attitudes about many subjects, including racial discrimination. He is adamantly opposed to it.

I have been told that his nomination to the federal appeals court is being opposed because some people say he did not do enough to stop racial discrimination in jury selection. That is not true.

At least as early as the early to mid-1980's, Mr. Carnes in talking with district attorneys, including me, spoke out against the use of peremptory strikes in a racially discriminatory way. In that pre-*Batson* era, there were very few practical restrictions on the way a prosecutor could use his peremptory strikes, and as a practical matter, there was no effective remedy for a defendant if a prosecutor removed blacks from the jury because they were black. Still, Mr. Carnes, on more than one occasion, told Alabama district attorneys not to do that. I personally heard him say that. It was before the 1986 *Batson* decision.

Those opposing Mr. Carnes' nomination seem to be concerned only with the possibility of racially discriminatory strikes by prosecutors. I can tell you that defense attorneys, particularly those representing white defendants charged with crimes against black victims, often strike all the blacks off a jury just because of their race. That is wrong, and no one in this entire country has done as much to stop that pernicious practice as Ed Carnes has.

Mr. Carnes drafted legislation to extend the prohibition against racial discrimination in jury selection that already applies to prosecutors to defense counsel as well. The purpose of that legislation was to ensure that neither side removed black citizens from jury service because of race. Mr. Carnes' bill, which was supported by the Alabama Black Legislative Caucus, did not pass the Alabama Legislature. Mr. Carnes did succeed in getting the Alabama appellate courts to adopt the rule of law that criminal defense attorneys, like prosecutors, could not strike black jurors because of their race. That success came only after Mr. Carnes had raised and argued the issue on a number of different occasions. Once he took the issue all the way to the Supreme Court in a case involving the Ku Klux Klan lynching of a black man. So tenacious was Mr. Carnes in his fight against racial discrimination in jury selection that he convinced forty-five other states to join his effort in that case. The Southern Christian Leadership Conference and the Southern Poverty Law Center also joined him.

The Rodney King case, and its aftermath, shows the wisdom of Mr. Carnes' years of efforts to ensure that white defendants accused of crimes against blacks are not permitted to arrange an all-white jury. What Mr. Carnes has spent much effort doing is obtaining a rule of law to prevent any white defendants, including white policemen, from striking all the blacks off their jury because of race. That race, which he has almost single-handedly established as the law of Alabama, will help reduce the number of all-white juries like those in the Rodney King case. That case vindicates Mr. Carnes' efforts. It is evidence that his nomination should be confirmed.

I do not know anyone else who has done nearly as much as Ed Carnes to fight racial discrimination in jury selection. To say that Ed Carnes has not done enough to end racial discrimination in jury selection does a grave injustice not only to Mr. Carnes but also to the truth.

Very truly yours,

DAVID BARBER,
District Attorney.

TALLADEGA, AL,
May 7, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing in response to what I understand to be some accusations that Ed Carnes has been insensitive to the problem of black prospective jurors being struck from juries for racially discriminatory reasons. Let me tell you why such accusations are completely unfair.

Long before the *Batson* v. *Kentucky* decision ever came down, Mr. Carnes urged Alabama district attorneys, including me, not to strike blacks off juries unless there were race-neutral reasons be do so. He told us not to strike a black juror unless we would strike a white juror in the same situation. Before the *Batson* decision came down in 1986, Mr. Carnes admonished us not to use such strikes in a racially discriminatory manner and he felt it was wrong.

I, for one, followed Mr. Carnes' advice. I also ordered every assistant district attorney in my office to follow a strictly race-neutral jury strike policy even even before the *Batson* decision came out.

It is simply unfair to accuse Mr. Carnes of being insensitive to the problem of race discrimination in jury selection when he did his very best to end racial discrimination in jury selection long before the *Batson* decision forced an end to it.

Please see that Mr. Carnes gets credit for the extraordinary action he took in trying to end racial discrimination in jury selection.

With every good wish, I am

Yours very truly,

ROBERT L. RUMSEY,
District Attorney,
29th Judicial Circuit of Alabama.

OFFICE OF DISTRICT ATTORNEY,
SIXTH JUDICIAL CIRCUIT OF ALABAMA,
Tuscaloosa, AL, April 6, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: For eleven years, I have been District Attorney of the Sixth Judicial Circuit of Alabama. Although I did not personally prosecute the Patricia Jackson capital murder case, an Assistant District Attorney, who is no longer a member of my office, did. I am personally familiar with the post-conviction events in the case and with Mr. Ed Carnes' role in them.

I have been furnished a copy of the written statement of Stephen Bright in opposition to Mr. Carnes' nomination, and I want to correct the grossly false impression that Mr. Bright is attempting to create concerning that case and Mr. Carnes' role in it.

First and foremost, Mr. Carnes did not make the decision to appeal the federal district court's order granting relief in the Jackson case. That was not his role in the case. I know, because I am the one who decided that that order should be appealed.

In Alabama, District Attorneys prosecute criminal cases, and the Alabama Attorney General's Office handles litigation at the appellate stage including any federal habeas corpus proceedings and appeals therefrom. There are dozens of Assistant Attorneys General. They do not decide which cases will be pursued on appeal and which ones will not be. That authority belongs in a strict sense to the Alabama Attorney General himself, but as a practical matter the decision is actually made by the District Attorney who will have to retry the case if an order setting aside the conviction is not appealed. During the entire eleven years I have been a District Attorney, the Attorney General's Office has never failed to appeal an order setting aside a conviction without my express consent. That has always been the policy of the Alabama Attorney General. It is not a policy of Mr. Carnes.

After the Federal District Court set aside the conviction and sentence in the Jackson case, I received a copy of the decision and order in that case. Although Mr. Carnes did not personally handle that capital case in the state collateral or Federal District Court stages, I talked to him about the appeal of the decision to the Eleventh Circuit, and I told him in absolutely no uncertain terms

that decision had to be appealed and that all available grounds for reversing it should be asserted. I made that decision. He did not. If Mr. Carnes had declined to appeal the decision in the Jackson case, I would have contacted the Alabama Attorney General and insisted that he either order Mr. Carnes to appeal it or assign someone else to do it. I felt very strongly about the matter, and I know I could have convinced the Attorney General to appeal if it had been necessary for me to go to him.

The reason I felt so strongly about the necessity of an all-out appeal on all available grounds is that the Federal District Court made some findings and holdings about my office as a whole that were wrong and that falsely branded my entire office with having followed race-based policies. Whatever may have been the actions and motivation of the single prosecutor who tried the Jackson case—and who is no longer employed in my office—the office as a whole has certainly not engaged in the practice of excluding black citizens from jury service. I consider the District Court's contrary finding to be wrong and to be an unfair mark against me and my entire office. I do not want that erroneous holding to stand.

Moreover, there are some more specific fact findings that the Federal District Court made that are simply wrong and that must be corrected. As just one example, the District Court held that my office had manipulated the trial docket in a racially discriminatory way. That is blatantly false. The evidence, and all the evidence, was that that had happened in the administration of a prior District Attorney. It had not taken place at all during my administration, and it did not occur during the Jackson trial. I hope you can understand why I could not simply stand aside and let the erroneous finding that my office had engaged in such conduct become final.

Moreover, if the District Court's broadly sweeping language stands, it could possibly invalidate scores, or even hundreds of older convictions, even though the Defendants were guilty and clearly dangerous. Because of the great difficulty of retrying old cases, the decision in the Jackson case could lead to large numbers of guilty, violent criminals going free. That is especially true because the District Court effectively "repealed" Alabama's contemporaneous objection rule. If procedural default doctrine is going to be abandoned and hundreds of cases jeopardized, it should not be because of the opinion of a single District Court judge.

All of these reasons are why I decided an appeal must be pursued in the Jackson case. I still feel that way.

Mr. Bright also conveniently omits from his statement the fact that Mr. Carnes tried to get Patricia Jackson out from under a death sentence. After the District Court decision, Mr. Carnes contacted me and asked that I agree to a settlement whereby Jackson would receive a life imprisonment without parole sentence instead of a death sentence in return for not contesting the validity of her conviction. I was reluctant at first, because Ms. Jackson has murdered two people in cold blood several years apart. Nonetheless, Mr. Carnes persisted, and I agreed to the proposal provided the District Court opinion with its erroneous findings would be vacated. I did tell Mr. Carnes in no uncertain terms that I would take nothing less than a life imprisonment without parole sentence. I was later informed that Jackson's attorney favored the sentence reduction proposal, but Jackson vetoed it. In any event, Mr. Carnes tried to get her sentence reduced.

For these reasons, and others, Mr. Bright's criticisms of Mr. Carnes' role in the Jackson case is completely off base. Mr. Carnes did not decide to appeal the order granting relief. I did. Mr. Carnes, after some resistance on my part, got me to agree to a reduction in sentence proposal for Jackson but she rejected it. Jackson's present situation is not the result of anything Mr. Carnes did. Instead, it is the product of my decision to have the case appealed and her decision to reject a reduction in sentence offer.

I would like to point out in closing that Jackson's two murder victims were not white. Each one was a black or African-American citizen. If she gets out and kills again, in all probability, her next victim will also be the same. It seems clear to me who has the most to lose from Jackson ever being released.

Respectfully submitted,

CHARLES FREEMAN,
District Attorney.

APRIL 16, 1992.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: We the undersigned attorneys in the Alabama Attorney General's Office are writing to express our support for Ed Carnes and to urge the confirmation of his nomination to the United States Court of Appeals for the Eleventh Circuit.

As African-Americans, we regret that there has been an attempt at racial polarization by a handful of people whose opposition to this nomination is motivated by their opposition to capital punishment. Some of us are strongly opposed to capital punishment. Some of us support it, and some of us have ambivalent feelings about it. But we all recognize that Ed Carnes is an excellent lawyer, he is fair and he is opposed to racial discrimination.

We have heard that a few people are contending that Mr. Carnes has condoned racial discrimination because as an attorney assigned to advocate the State's position in post-conviction proceedings he has argued, where there is a legal basis for doing so, that a conviction should be affirmed even though the defendant raises a Batson claim on appeal. That contention is absurd, and it is offensive to those African-American attorneys who as advocates have argued the same positions Ed Carnes has.

The Code of Professional Responsibility requires that every attorney represent his client "zealously within the bounds of the law." It is the ethical duty of every government attorney to raise in a post-conviction proceeding any and all available arguments on behalf of sustaining a conviction. That duty is a necessary part of our adversary system. Some of us, as part of our duty as attorneys representing the State in post-conviction proceedings, have also argued that convictions should be upheld even where Batson claims are raised, if there is any legal basis for doing so. We are not condoning racism when we do that, nor is Mr. Carnes. To say that a government attorney who carries out his ethical duty to advocate in favor of sustaining convictions is condoning racism is like saying that criminal defense attorneys who advocate on behalf of their clients are condoning crime.

Far from supporting racial discrimination, Ed Carnes has a strong record of achievement in the area of minority rights. During his career he has worked to ban the importation of South African coal into Alabama; he has defended black public officials who were sued by whites; he has personally prosecuted misconduct charges against two judges for racist conduct and got both of them removed from the bench; and on more than one occasion he has gone into court against white racists, including a Ku Klux Klansman, who had committed violent crimes against African-American citizens.

We are all independent of the supervision of Mr. Carnes. We hold various political views. However, we know Ed Carnes. Based upon our knowledge of him and his record, we endorse his nomination and urge his confirmation.

Sincerely

GERRILYN V. GRANT.
TORI ADAMS-BURKS.
FRED BELL.
ROBERT WARD.
COURTNEY W. TARVER.
JAMES PRUDE.

STATEMENT OF SENATOR HOWELL HEFLIN BEFORE THE SENATE JUDICIARY COMMITTEE REGARDING THE NOMINATION OF EDWARD CARNES, U.S. COURT OF APPEALS, 11TH CIRCUIT, MAY 7, 1992

Mr. Chairman, and members of this committee, I support the nomination of Ed Carnes to the U.S. Court of Appeals for the 11th Circuit which includes my home State of Alabama as well as the States of Georgia and Florida. I would like to review the record before the committee and cite to you the basis for that support.

As the head of the Capital Litigation Division of the Attorney General's Office for the State of Alabama, it has been Mr. Carnes' responsibility for representing the state in capital litigation at the post-conviction stage—on direct appeal as well as state and federal collateral litigation. Mr. Carnes has extensive litigation experience at both trial and appellate levels in federal and state courts and he will, therefore, be no stranger to the federal appellate bench.

This committee has conducted an extensive investigation of the nominee's background and held a hearing where witnesses were heard both in support of and in opposition to his nomination. Further, the committee has submitted additional questions to which the nominee has fully responded, and we have before us an extensive record upon which to base our judgment.

When the President submitted Mr. Carnes' nomination, I did an extensive investigation into his background, as I endeavor to do relative to all judicial nominations that affect my state and region, on the issues of integrity, qualifications, judicial temperament, civil rights and general philosophy. I knew Mr. Carnes' nomination would be controversial because of this background in representing the State of Alabama in capital punishment cases.

I was surprised to learn of his strong support from the civil rights community in Alabama. I heard from or discussed this nomination with most of the leaders of the civil rights community in my state. Among those with which I discussed Mr. Carnes' nomination or heard from are the following:

Judge Frank M. Johnson, Jr.

Leaders of the Southern Poverty Law Center, including Morris Dees and Richard Cohen.

John Carroll, former Associate Director of the Southern Poverty Law Center and now a U.S. Magistrate Judge.

Justice Oscar Adams, an African-American member of the Alabama Supreme Court.

Judge Charles Price, an African-American trial judge of the Circuit Court bench in Montgomery.

State Representative Alvin Holmes, Chairman of the Affirmative Action Committee of

the Black Caucus of the Alabama State Legislature.

Bill Dawson, a civil rights attorney of Birmingham.

David Bagwell, former law clerk to Judge Frank M. Johnson and former U.S. Magistrate.

Steven Glassworth, a Montgomery criminal defense attorney.

Rick Harris, a Montgomery criminal defense attorney.

Other civil rights and political leaders whose names I hold in confidence at their request.

The answer that I got was that Ed Carnes was a highly intelligent, competent lawyer, a tenacious advocate, but an individual of the highest integrity and who at all times practiced fairness and ethical conduct. I became convinced that he was a tough battler, but an honorable battler. Most of these individuals told me that personally they opposed capital punishment, but they realize that a potential judge should not be evaluated on a one issue basis, but should be viewed on a much broader spectrum, particularly on issues that will affect the future of the Eleventh Circuit Court of Appeals on civil and human rights.

In reviewing the opposition that has been generated against Mr. Carnes, one can conclude that his opponents view this confirmation as being a referendum on capital punishment, although they deny it. There is strong evidence that most of the opposition to Mr. Carnes has originated from one individual who vehemently opposes capital punishment. This is Steven Bright, who is Director of Southern Center for Human Rights in Atlanta. Mr. Bright has marshalled considerable forces to oppose Mr. Carnes' nomination. I have only observed Mr. Bright as a witness before the Judiciary Committee so therefore I will not attempt to personally evaluate Mr. Bright's motivation, but I direct your attention to the words of Morris Dees, the Director of the Southern Poverty Law Center, which are contained in a letter to Dr. Joseph Lowery, President, Southern Christian Leadership Conference, a portion of which follows:

"Dear Joe: I would like to reply to Steven Bright's sixteen page letter opposing Ed Carnes for the Eleventh Circuit Court of Appeals. My copy of Steven's letter did not arrive until ten days after it was dated. I had no way to reply earlier.

"First let me say that I sympathize with Steve for opposing anyone for a judgeship who favors capital punishment. Steve is a one-issue person because of the work he does. I also oppose the death penalty, but view a potential judge on a much broader range of issues that are important to civil and human rights.

"Ed Carnes has an outstanding record on civil rights and this is the reason I support him so strongly. I'd like to take a few pages and point to the more obvious omissions and misstatements in Steve's letter.

* * * * *

"Steve compares Ed unfavorably to Judge Johnson. Everyone, including Steve himself, compares unfavorably to Judge Johnson who is one of the greatest jurists of our time. However, Steve neglected to tell you what Judge Johnson himself thinks about Ed. Judge Johnson has sat on many of Ed's cases, and he knows Ed's true record better than Steve does. That is why Judge Johnson stated publicly in a Birmingham News article that Ed was a "very good" choice for the position. * * * I hope that you will trust Judge Johnson's judgment.

* * * * *

"In discussing capital punishment in Alabama, Steve neglected to tell you about a case involving a client of his who was scheduled for execution at the time of Steve's letter, and whose sentence has since been carried out. The man, whom Steve defended, was white. He hired two African American men to kill his wife, who was nine months pregnant, so he could marry another woman to whom he was secretly engaged. Both of the African American men who actually carried out the murder got life sentences in Alabama. Steve's client, who is white got a death sentence which was carried out last week. I am surprised Steve did not use that case to argue that Ed is prejudiced against whites.

"I can understand that Steve is upset because his client was executed. But it is simply unfair for Steve not to admit that Ed has by far the strongest record on civil rights, of any federal judicial nominee in the state in at least the past decade. * * *

"Steve Bright cannot tell you the name of any other recent federal judicial nominee in Alabama who has prosecuted state judges for racist misconduct and gotten them thrown off the bench, as Ed has done. Steve cannot tell you the name of any other recent federal judicial nominee in Alabama who, as early as the 70's, defended black public officials who were being sued by whites, as Ed did. Steve cannot tell you the name of any other recent federal nominee who has gone to the United States Supreme Court in an attempt to prevent members of the Klu Klux Klan from discriminating against blacks, as Ed did. Steve cannot tell you the name of any other recent federal judicial nominee who has been joined by the SCLC in one of his efforts to fight racial discrimination, as Ed was.

"Ed has been successful in getting the Alabama Court of Criminal Appeals to rule in two cases that white criminal defendants cannot practice racial discrimination against African American members of the jury. Steve omitted these two important cases.

"Judge Frank Johnson is the epitome of a courageous jurist whose decisions on the bench have done much to advance the cause of civil rights. But, before he was first appointed to the federal bench Frank Johnson had no public record for civil rights. He was a prosecutor who had been active in Republican politics. Ed, too, is a prosecutor, but he has a stronger record on civil rights than Frank Johnson had when he was first appointed to the federal bench. What the two of them have in common is integrity and a devotion to the rule of law. That is why Judge Johnson has said that Ed Carnes is a "very good" choice for this judgeship.

"Steve says you should oppose Ed because he supports Bill Baxley's opponent in the Alabama gubernatorial race in 1986. The irony of Steve's argument is that Bill Baxley strongly supports Ed's nomination. Bill recalls the hard work Ed did to ensure that the murder conviction of Klansman Robert Chambliss was upheld in the Birmingham Church bombing case, which involved the murder of four young African American girls. Bill also recalls that Ed assisted him in the mid 1970's in a legal action to prevent Alabama Power Company from importing South African coal. That legal action that Bill and Ed took so threatened the economy of South Africa that it was forced to change its laws involving use of indentured black labor. I invite you to call Bill Baxley (phone number) about Ed.

"Steve lists the names of others he says would be better nominees. It was ironic that he includes Justice Oscar Adams in that list, because Justice Adams strongly supports Ed's nomination. He has sat on a number of Ed's cases. I invite you to call Justice Adams (phone number) about Ed * * *.

"The facts are that Ed Carnes drafted legislation to increase money paid to attorneys to represent indigent capital defendants; he wrote an official advisory opinion of the Attorney General which doubled the amount of money to be paid for out-of-court work in such cases; and he succeeded in having the Legislature appropriate thousands of dollars for use in paying litigation expenses of indigent defendants under capital sentences. Ed Carnes has done more than virtually any other attorney in Alabama to increase state funding for indigent capital defendants.

"Steve ignores the fact that, in case after case, Ed Carnes has been fair to defendants even when doing so angered district attorneys. In one case Ed went into the appellate courts and argued that a death sentence was unconstitutional and should be reversed, while the district attorney argued to the contrary. In another case Ed argued to the Alabama Supreme Court that trial judges should have authority to order district attorneys to open their files to capital defendants. The entire Alabama District Attorneys Association argued against Ed's position, but he won. As a result, Alabama has one of the most liberal discovery rules in capital cases of any state in this country.

"Steve also chooses to ignore the fact that Ed Carnes has exposed attempts of district attorneys to hide evidence favorable to capital defendants. In at least two cases involving African Americans under sentence of death, Ed discovered and disclosed evidence favorable to them that the prosecutors had not divulged at trial. As a result of Ed's efforts, and his integrity and sense of fairness, both those African American defendants won new trials.* * *

"The SCLC should not oppose this nomination. For once, we have a nominee who is not a country club lawyer who has served corporate interests. For once, we have a nominee who has fought the Klan and who has fought racist judges. For once, we have at nominee with a strong record of fairness.

"Sincerely,

"MORRIS DEES.

"cc: Stephen Bright."

In making up my mind to support Mr. Carnes, I gave much more credence and weight to the opinions of Morris Dees, Richard Cohen, John Carroll, and other criminal defense attorneys who have been in court with Ed Carnes far more times than Mr. Bright. I am also persuaded by fair-minded jurists who have observed the abilities, ethics, and integrity of Mr. Carnes in court on far more numerous occasions than Mr. Bright.

It appears that the second paragraph of Morris Dees' letter to Joseph Lowery sums up this issue in a succinct manner:

"First let me say that I sympathize with Steve for opposing anyone for a judgeship who favors capital punishment. Steve is a one-issue person because of the work he does. I also oppose the death penalty, but view a potential judge on a much broader range of issues that are important to civil and human rights."

I have reviewed the evidence for and against Ed Carnes with care. One must realize the emotional atmosphere that capital cases bring to a courtroom. They are messy * * * passions are aroused * * * frequently lawyers explode at each other. If a lawyer loses at the appellate level he usually blames the opposing counsel or the judge. It is remarkable how many loosing lawyers never-

theless praise the fairness and ethical conduct of Ed Carnes. The entire record supports the conclusion that Ed Carnes' conduct has been fair, ethical and within the bounds of existing law.

I am convinced that Mr. Carnes' background, intelligence, integrity, and record qualify him for a position on the U.S. Court of Appeals, Eleventh Circuit. I urge his confirmation.

BRIEF ON EDWARD CARNES

A. Actions taken by Carnes to end discrimination in jury selection

1. Long before the U.S. Supreme Court (Batson vs. Kentucky) provided a way to prevent prosecutors from using peremptory strikes in a racially discriminatory way (i.e. remove blacks from juries because of their race), Carnes urged Alabama district attorneys not to strike blacks from juries for racial reasons.

"At least as early as the early to mid-1980s, Mr. Carnes, in talking with district attorneys, including me, spoke out against the use of peremptory strikes in a racially discriminatory way * * * it was before the 1986 Batson case."—David Barber, Alabama District Attorney.

"Long before the Batson vs. Kentucky decision ever came down, Mr. Carnes urged Alabama district attorneys, including me, not to strike blacks off juries unless there were race neutral reasons to do so. He told us not to strike a black juror unless we would strike a white juror in the same situation * * * Carnes admonished us not to use such strikes in a racially discriminatory manner, and he felt it was wrong."—Robert L. Rumsey, Alabama District Attorney.

2. Carnes drafted legislation to extend the prohibition against racial discrimination in jury selection that applies to prosecutors to defense counsel as well.

"The purpose of this legislation was to ensure that neither side removed black citizens from jury service because of race. Mr. Carnes' bill, which was supported by the Alabama Black Legislative Caucus, did not pass the Alabama Legislature."—David Barber, Alabama District Attorney.

3. Carnes also initiated litigation in three separate cases to prohibit criminal defense attorneys from using peremptory challenges in a racially discriminatory manner (Alabama vs. Cox and Hays; Alabama vs. Hanvey; Alabama vs. Pilot).

In all three cases, counsel for white defendants in murder cases involving crimes against blacks struck black jurors from the juries. In the Hanvey case, as a result of a brief that Carnes wrote, the judge restored six black jurors that the defense had struck. The trial ended with the jury deadlocked at 9–3 for conviction. On a subsequent trial, 12 white jurors voted to acquit. In the Pilot case, Carnes convinced the Alabama appellate courts to establish as law a rule prohibiting defense counsel from discriminating against jurors based on race.

Mr. Carnes did succeed in getting the Alabama appellate courts to adopt the rule of law that criminal defense attorneys, like prosecutors, could not strike black jurors because of their race. That success came only after Mr. Carnes had raised and argued the issue on a number of different occasions. Once he took the issue all the way to the Supreme Court in a case involving the Ku Klux Klan lynching of a black man. . . . The Rodney King case, and its aftermath, shows the wisdom of Mr. Carnes' years of efforts to ensure that white defendants accused of crimes against blacks are not permitted to arrange an all-white jury."—David Barber, Alabama district Attorney.

"Mr. Carnes is known to be a fierce foe of racial discrimination. In a case in my court, he argued passionately for an innovative holding that would have prohibited some white defendants, who were accused of violent crimes against a black man, from using their peremptory strikes against black jury veniremembers. . . . Even though I ruled against Mr. Carnes on that point, I was very impressed with his argument and with the obvious feeling he had against racial discrimination in any form or context."—Michael E. Zoughby, Alabama Trial Court Judge.

4. Carnes drafted the Alabama law to require appellate review to ensure the absence of prejudice in all capital cases.

"Carnes is responsible for writing into law a provision requiring Alabama appellate courts to review a death sentence to insure that it is not tainted by 'passion, prejudice or other arbitrary factor.'"—Joan Byers, Associate Attorney General, North Carolina.

5. Carnes recommended moving a trial of a black defendant to a venue where more black people would be on the jury.

"Ed advised the Alabama Attorney General to move the trial of a black defendant to a venue where it was more likely that black persons would serve on the jury—precisely the reverse of what occurred in the Rodney King case."—Morris Dees.

"While I was Alabama Attorney General, my office was considering the retrial of a case involving a black defendant charged with the brutal murder of a white victim. The two prior trials of the defendant, which produced convictions, had been before all white juries * * * Mr. Carnes told me he thought it was essential to fairness * * * that any retrial should be before a jury which contained a substantial number of black citizens. He also advised me that if there was retrial we should seek a change of venue to a county with a higher black population * * *"—Don Siegelman, Former Alabama Attorney General.

B. Other actions taken by Carnes to fight racism

1. Carnes successfully prosecuted two judges for engaging in racist conduct and got both of them removed from the bench.

"An Alabama judge, Wilson Hayes, tried a divorce case involving a black husband who asked to be awarded the homestead he had brought into the marriage. The husband had fathered a number of children, some of them illegitimate. Judge Hayes offered to award him the property if the man would undergo a vasectomy * * * Carnes prosecuted charges against the judge that led to his removal from office. In another case, a judge publicly used a racial epithet. After an investigation, Carnes had him removed also."—James J. Kilpatrick, Columnist.

2. He successfully fought against the appeal of a white man convicted of murder in the 1963 bombing of 16th Street Baptist Church in Birmingham in which four black girls were killed.

"* * * (in 1977) after we obtained conviction * * * for the bombing of the church back in 1963, where the four little girls were tragically killed * * * I wanted (the case) assigned to my brightest person, and I assigned the appeal of that case to Ed Carnes * * * and he got that conviction upheld. It was a difficult case to get upheld because, frankly, we had a lot of hurdles to overcome."—Bill Baxley, Former Alabama Attorney General.

3. Carnes represented a black sheriff and his three black deputies who were sued by white plaintiffs.

"'In 1976, it was noteworthy,' said Carnes, putting the matter mildly, 'to find two white lawyers employed by Alabama to defend four black citizens.' Noteworthy? In my day, it would have been unheard of."—James J. Kilpatrick, Columnist.

4. Carnes successfully worked to ban the importation of South African coal mined by black indentured labor under penal sanction.

This action in the 1970s resulted in the South African Parliament changing its laws to remove the penal sanction for breach of indentured servitude contracts.

"When the decision was made on the South African case, I asked Bill Stevens * * * and Ed Carnes to do the work on that. That was not something that was met with a great amount of public acceptance in Alabama and other parts of the country, but it resulted in South African laws being changed * * *"—Bill Baxley, Former Alabama Attorney General.

5. Carnes protested denigrating racial comments appearing in a high school newspaper.

"When Carnes learned that a racially insensitive remark had appeared in the student newspaper at his daughter's school, he immediately wrote the principal and expressed his outrage in this way: 'Racial discrimination is wrong. Racially hostile and denigrating comments are wrong. Publishing or condoning such remarks is wrong.'"—Morris Dees.

6. Carnes has never belonged to any club or organization that discriminated against minorities.

C. Actions taken by Ed Carnes to protect the rights of capital murder defendants

1. Carnes successfully stopped the execution of a 15-year-old sentenced to death. (Flowers vs. Alabama).

A 15-year old was convicted of murder and was sentenced to die in Alabama's electric chair. Ed Carnes successfully argued that legal error was committed in imposing the death penalty. Carnes' view ultimately prevailed.

"In 1990 * * * a district attorney convinced a judge to sentence to death a defendant who was only 15 years of age at the time of the murder. The murder was especially brutal and depraved, but Ed (Carnes) was adamant that a Supreme Court decision precluded the death penalty for anyone who was 15 years old at the time (of the crime). The case generated a great amount of publicity * * * and there was some public pressure for the Attorney General's office to argue on appeal that the death sentence should be upheld. Ed refused * * * (arguing) that it would be unethical to argue that the Alabama appellate courts should ignore the law of the land. Representing the State of Alabama on appeal, Ed confessed that there was error in the judgement * * * The district attorney argued to the contrary, but he lost. The court reduced the sentence to life imprisonment."—Don Siegelman, Former Alabama Attorney General

2. During an appeal, Carnes uncovered, then voluntarily and immediately disclosed to defense counsel and the court, exculpatory evidence that the prosecution had not disclosed at trial. Defense counsel used this evidence to ask for a new trial, and the court granted one (Raines vs. Smith).

Two defendants were charged with capital robbery-murder crimes and separate trials were held. Chastine Lee Raines was the non-trigger man in the case. The trigger man in the case was Darryl Watkins. Raines was tried before Watkins. During the direct appeal of Watkins' case, Mr. Carnes discovered a police investigation report with exculpatory evidence that had not been disclosed by the district attorney prosecuting the Raines case.

"Mr. Carnes immediately informed me of the existence of the police report * * * Mr.

Raines' petition for Habeas Corpus relief was granted by the * * * court as the direct result of information provided to me by Mr. Carnes."—Joseph Fawal, Defense Counsel for Chastine Raines.

3. Carnes provided to defense counsel information beneficial to the convicted capital murder defendant. (Coulter vs. Smith; Coulter vs. Thigpen).

"In the more recent (capital murder) case of David Lee Coulter * * * during my representation of Mr. Coulter, there were numerous instances when Mr. Carnes cooperated in obtaining information and facts beneficial to Mr. Coulter."—Joseph Fawal, Defense Counsel for David Coulter.

4. Carnes interceded on behalf of defense counsel in a capital murder case to stay the execution of a defendant. Later, Carnes found exculpatory evidence and disclosed it to defense counsel. That evidence resulted in a new trial.

William "Chick" Bush was convicted of capital murder and sentenced to die. Defense counsel unsuccessfully appealed the conviction to the Alabama Supreme Court. The court affirmed the conviction and sentence and set a December 30 execution date.

Rick Harris was retained to handle further appeals for Bush. He applied to the courts for a stay of execution. The state court judge scheduled the hearing for the appeal on Saturday, December 24th. Here is Harris' account of what happened:

"I will never forget that day. I was all alone (in representing Mr. Bush). The judge was extremely upset with me because my application for writ of error and application for stay of execution was filed at such a late date (eight days before the execution). Ed Carnes was opposing counsel. He did not try to take advantage of the judge's anger nor did he inflame the situation. Instead, he very calmly explained to the judge that I was entitled to * * * collateral remedy hearings in federal court, that I would almost certainly receive a prompt stay of execution from a federal court judge * * * that it was necessary for me to have the stay denied by a state court judge before going to federal court, that the judge should simply deny my state court application so that the case could proceed to federal court where we all agreed it belonged, and that I was merely doing my job.

"The following Monday, I filed a habeas court petition and an application for stay of execution in federal court. The execution was still scheduled for 12:01 am Friday, December 30. Mr. Carnes * * * and I held repeated telephone conversations with the judge during the week. That judge repeatedly expressed reluctance to grant the stay to my growing consternation. Mr. Carnes again ad again told the judge that he should grant the stay. Finally at noon on Thursday, December 29th, twelve hours before the execution, the judge issued a stay which stopped execution.

"The largest radio station in Montgomery broadcast an editorial that night criticizing the judge's decision and castigating me by name. Mr. Carnes again did not make any inappropriate or inflammatory comments. I am sure that he had ample opportunity to do so.

"In March, I received a phone call from Ed Carnes. While preparing his case, he had discovered a document in the district attorney's file (that was) plainly exculpatory evidence that had not been elicited by the defense at trial. Ed told me that * * * the defendant was entitled to a new trial and he intended to let the judge know that.

"If Ed Carnes had not confessed error in that case, there is no way that we possibly could have discovered the exculpatory evidence on our own. Chick Bush would not be alive toady * * * What Ed Carnes did * * * was fundamentally honest and courageous * * * If he could be a fair and impartial prosecutor in the Bush case in 1983, then I would have no doubt that he will easily do the same as a federal judge * * * I wholeheartedly support his nomination."—Rick Harris, Defense Counsel for Chick Bush.

5. Carnes successfully argued that Alabama state judges trying death penalty cases should order prosecuting attorneys to open their files to the defense even through the Constitution does not require it. As a result, Alabama has one of the nation's most liberal discovery procedures in capital cases (Ex parte Monk).

Based upon advice Ed Carnes had given to all state judges, Alabama Trial Judge Samuel Monk in a capital murder case ordered the district attorney to maintain an open file (i.e. allow defense attorneys to see all evidence the state had in the case). The district attorney filed an appeal of the Judge's order. The Alabama Supreme Court upheld the judge's order.

"I am the trial judge after whom the Alabama Supreme Court case of Ex Parte Monk derives its name * * * I entered the discovery order under review in Ex Parte Monk after attending a judicial seminar * * * at which Mr. Carnes asked the assembled judges to consider such orders in capital cases. He told us about some capital cases in which he had discovered and disclosed exculpatory evidence that the prosecutor had kept hidden in his files. While he discussed the practical benefits of maintaining an open file policy for all those involved in the criminal justice system, the principal thrust of Mr. Carnes remarks' was that fairness dictated such a policy * * *.

"While he was under no legal obligation to do so, Mr. Carnes * * * represented me (after the district attorney challenged my order). The Alabama Supreme Court, primarily due to Mr. Carnes' efforts, overturned the intermediate appellate court and held that my order was not an abuse of discretion because of the exceptional circumstances encompassed in capital litigation * * * Were it not for Mr. Carnes, the more limited discovery provisions of our rules governing criminal procedure would prevail in Alabama."—Judge Samuel H. Monk II, Alabama Trial Judge.

"He has consistently refused to knuckle under to political pressure from state prosecutors bent on upholding death sentences at any cost. He has argued against the prosecution position taken by district attorneys in capital cases. Ed also has promptly disclosed exculpatory material he has found, (resulting) in convicted murderers being given new trials. He has embarrassed local prosecutors and incurred their wrath in an effort to ensure fair trials."—Morris Dees, Executive Director, Southern Poverty Law Center, and attorney in 50 death penalty cases.

"(Carnes) is the only assistant attorney general in the history of Alabama to have taken a position in court opposed to that of a district attorney."—Rosa Davis, Chief, Criminal Appeals Division, Alabama Attorney General's Office.

"I'm pretty critical of other lawyers—generally very skeptical of prosecutors. But the genuine sense of fairness (Carnes) exudes, I found to be refreshing."—Bill Dawson, Defense Counsel.

"Ed Carnes would not have been fairer. In my 19 years since law school, no opponent has been fairer to me. None has been more willing to signal in advance what he was sending my way next. None has been more willing to help."—David Bagwell, Defense Counsel in two capital cases.

"I think he's absolutely principled. I don't think he ever misleads the counsel or the court."—Steve Glassroth, Defense Counsel in five capital cases.

6. Carnes has repeatedly worked to increase funds available for defense of indigent capital defendants in Alabama.

Carnes co-authored, with the Chairperson of the Alabama State Bar's Indigent Defense Committee, legislation to increase funds for capital defense. The legislation would have raised the cap on payments for out-of-court work in defending capital cases; and would have provided substantially more payment to attorneys representing capital defendants in post-conviction proceedings. In 1990, Carnes wrote and signed an advisory opinion to a circuit judge which resulted in the doubling of the amount of payment to appointed attorneys for out-of-court work in capital cases.

After the direct appeal of a death sentence has been decided, Alabama law does not authorize reimbursement for expenses incurred in representing an indigent defendant, even a capital defendant, in a state court collateral proceeding. For the past three years, Carnes helped secure enactment of appropriations to reimburse expenses incurred in representation of indigent capital defendants in state court collateral proceedings (another stage of appeals.

"Carnes actually was singlehandedly responsible for doubling the compensation available to appointed counsel in capital cases * * *. He also drafted legislation to increase compensation for appointed counsel in capital cases at trial and in state collateral proceedings * * * and he pushed through a provision that appropriated funds to pay litigation expenses for capital post-conviction proceedings. In explaining Carnes' role in encouraging judges to authorize more funds for indigent capital defense, the presiding criminal court judge in Alabama's largest circuit told the Judiciary Committee that 'Carnes has preached for years (about the need) to treat indigent defendants as first class citizens.' "—Morris Dees

"Because of Ed Carnes' counsel we trial judges have learned to authorize expenditures of state monies in appointed cases that place Alabama in a class of enlightened jurisdictions in the manner that our indigent defendants are represented.

7. Carnes helped establish the Alabama Capital Representation Resource Center designed to recruit attorneys to represent indigent defendants in post conviction death penalty cases.

"Mr. Carnes participated actively in the establishment of the Resource Center * * * he demonstrated his commitment to the principle of adequate and effective representation for these defendants."-Albert P. Brewer, Chairman, Alabama State Bar Association Task Force on Representation in Post-Conviction Capital Cases.

II. ED CARNES ADVOCACY ON BEHALF OF THE PEOPLE AND STATE OF ALABAMA

Ed Carnes is Assistant Alabama Attorney General and is the Chief of the state's appellate capital punishment division. Alabama state law provides the death penalty in aggravated murder cases. This constitutionality of capital punishment is part of the law of the land.

Ed Carnes' client is the people and the State of Alabama. The Attorney General who has the authority to set the policy and to direct his assistants has determined that his office will seek to have convictions

upheld by the courts if there is any legal basis to do so. According to the American Bar Association's Code of Professional Ethics, "The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law * * * the professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws not of men, each member of our Society is entitled to have his conduct judged and regulated in accordance with the law, to seek any lawful objective through legally permissible means and to present for adjudication any lawful claim, issue or defense."

In carrying out the policy of his client to have courts uphold death penalty convictions where there is a legal basis for doing so, Carnes has properly and ethically defended his client's interests.

"As African-American attorneys (in the Alabama Attorney General's Office) * * * we have heard that a few people are contending that Mr. Carnes has condoned racial discrimination because as an attorney assigned to advocate the State's position in post-conviction proceedings he has argued, where there is a legal basis for doing so, that a conviction should be affirmed even though the defendant raises a Batson claim on appeal. That contention is absurd, and it is offensive to those African-American attorneys who as advocates have argued the same positions Ed Carnes has.

"It is the ethical duty of every government attorney to raise * * * any and all available arguments on behalf of sustaining a conviction. That duty is a necessary part of our adversary system. Some of us * * * represent the State in post-conviction proceedings, have argued that convictions should be upheld even where Batson claims are raised, if there is any legal basis for doing so. We are not condoning racism when we do that, nor is Mr. Carnes

"To say that a government attorney who carries out his ethical duty to advocate in favor of sustaining convictions is condoning racism is like saying that criminal defense attorneys who advocate on behalf of their clients are condoning crime."—Gerrilyn V. Grant, Tori Adams-Burks, Robert Ward, James Prude, Fred Bell, Courtney W. Tarver, Alabama Attorney General's Office.

"As a black man who has worked in the criminal justice system as a prosecutor for almost 20 years * * * it appears that (Carnes') penchant for doing a good job has caused some to question whether his zealousness is a result of genuine work ethic or the result of the latent racism which protects vestiges of our legal system which often inure to the detriment of minorities. I have read with interest Mr. Carnes' background as well as the comments made by individuals whom I trust concerning their support for Mr. Carnes. I have been impressed by the wide array of individuals who have come to his defense and we both know the sense of morality and justice that many of them have brought to this system * * * No one should be penalized for doing their job and doing it to the best of their ability. This is what Mr. Carnes has done and I would heartily encourage you to support his nomination."—Norman Early, Denver District Attorney and Founder, National Black Prosecutors Association.

"In addition to being the present Attorney General, for eighteen years before assuming my present position * * * I worked very closely with three previous Attorneys General.

"It is and always has been the policy of this office to vigorously represent the interests of the people of this in sustaining court convictions. Toward that end, we do not forgo appeals. But do not confess error and we do not waive procedural bars. The only exception is where I am absolutely convinced that no colorable argument at all can be made in favor of sustaining the judgement of the state court that convicted and sentenced the criminal defendant. Both the district attorney who prosecuted the case and I have to be convinced of that. No assistant attorney general, including Ed Carnes, has the authority to vary my policies in respect to all-out defense of state court judgments.

"This has been my policy, and the policy of my predecessors in this Office, because we are elected to represent the people of this state as vigorously as we can. That is our authority and duty."—James H. Evans, Alabama Attorney General.

Ed Carnes has testified before Congress that the death penalty "ought to be reserved for only the most terrible crimes." He added "* * * capital punishment should be reserved for those kinds of aggravated murder which constitute a brutal afront to humanity, which endanger innocent life the most, and which are heinous, atrocious, and cruel in the ordinary sense of those words. In short, a death sentence ought to be imposed and carried out in those types of * * * cases exemplified by the cases which have resulted in Alabama's * * * executions."

The facts in each of the nine capital cases where the death sentence was carried out show defendants participated in brutal crimes. In all nine cases—even in cases where the defendant confessed the crime and asked to be executed—defendants had their cases heard in at least one trial court, by two appellate courts on direct appeal, by at least three levels of courts in state collateral review proceedings (if requested) and in at least two and as many as four federal habeas review proceedings through all three levels of the federal judiciary. The average length of time that transpired between the crime being committed to the date of execution was nine and a half years, three months longer than the national average.

The following briefly summarizes the facts of each case:

The Richardson Case. Richardson was angry because a woman refused to continue dating him after she discovered that he was married. He built an anti-personnel bomb and left it on the porch of the family's house which was full of adults and children. An eleven-year-old niece of the woman Richardson had been dating picked up the bomb. The bomb exploded, killing the girl. Parts of her body were found more than 100 feet from the explosion.

Before Richardson's sentence was carried out, the mother of the young black girl he had murdered said: "So long as he's alive there's a chance he may get out and get the rest of us. I can't rest until he gets the chair." She also pointed out that instead of saying that he was sorry that he had killed the little girl, Richardson said he was sorry he didn't kill the whole family.

It took twelve years after the murder before Richardson's death sentence was carried out. After Richardson's trial, he had one direct appeal; three entire state collateral review proceedings and appeals; and four federal habeas corpus review proceedings and appeal.

The Julius Case. Julius was serving a life sentence for a prior murder he had committed. He was in a work release program and received an eight-hour pass for free time. Julius used his free time to go to his cousin's house and rape, sodomize and murder her. As the Court of Criminal Appeals said, the facts showed "acts of grotesque sexual abuse. Her home was made a shambles by her futile attempts to escape."

The five-year-old daughter who discovered her mother's brutalized and dead body was 17 years old when Julius was executed for the crime. Her only complaint was that it had taken twelve years to carry out the sentence. She said that she would have pulled the switch herself.

Before the death sentence was finally carried out, Julius had his sentence and conviction reviewed on direct appeal, in two separate state collateral review proceedings and appeals, and in four federal habeas review proceedings and appeals. This litigation took 12 years to complete.

The Dunkins Case. Dunkins and his co-defendant forced their way into the victim's house, pushed her onto the couch, and raped her while her three children were in the house. A gloved pot holder which Dunkins had brought from his house was stuffed into the victim's mouth to stifle her screams. Then, with her hands bound, and while she was trying to plead for her life, the young woman was stabbed with a kitchen knife. She was stabbed 66 times. At trial, the pathologist testified that the victim was alive when the sixty-sixth stab wound was inflicted, but she bled to death thereafter. When her husband came home from work he found his wife's naked and lifeless body with her hands still bound behind her back and around a tree out in the woods.

Dunkins' conviction and death sentence were upheld on direct appeal, through two separate state collateral proceedings and appeals, and through two federal habeas corpus proceedings and appeals.

The Heath Case. Heath, a married man whose wife was nine months pregnant, was secretly engaged to marry another woman. He wanted to get out of his marriage so he hired some men to kill his wife. To get the funds to have his wife killed, Heath took out a "home improvement" loan which he duped his wife into co-signing.

Heath took his young son along with his girlfriend to point out the house where the hit men lived that he had hired to kill his wife. They abducted and murdered her. Heath never denied his guilt. From the very beginning he confessed. Nonetheless, it still took over ten years to have the sentence carried out.

The Thomas Case. The victim was a college coed. Five days before Christmas in 1976, she was abducted outside a convenience store by Thomas and two co-defendants. They raped her, took her to an isolated spot, abused her, then shot her with a small caliber pistol. She did not die immediately. Though it was an extremely cold night, she tried to crawl to safety. She died from exposure and loss of blood. After shooting the victim, Thomas and his co-defendants stole Christmas gifts from her car.

When Thomas was arrested while committing another robbery, he had in his possession the pistol which he had used to murder his victim. Some of the property stolen from the victim was traced to Thomas.

The victim's family was forced to go through seven separate trials involving Thomas and his two co-defendants. Following his retrial and resentencing, Thomas' conviction and death sentence were upheld on direct appeal and in multiple state and federal collateral review proceedings.

The mother of the victim in the Thomas case stated publicly that only after Thomas was executed did she feel that she could

truly put her daughter to rest. A memorial service for her daughter was held on the day of the execution.

The Evans Case. Evans was a parolee from a robbery sentence who, along with his co-defendant, went on a cross-country crime spree during which he committed approximately 30 armed robberies and nine kidnappings.

One crime Evans committed was the murder of a small businessman whom he shot in the back while the man was down on his hands and knees. The murder occurred in full view of the victim's two young daughters who were in the room. Evans bragged about the crime and boasted that he wanted to be executed. During his trial he took the stand and testified against himself and demanded that he be convicted and sentenced to death. Nonetheless, it took more than six years to have the sentence carried out. During that six years, Evans received the benefit of a direct appeal and three federal habeas corpus proceedings and appeals.

The Ritter Case. Ritter was the co-defendant of Evans, whose case has been described above. Although Ritter did not actually pull the trigger during the murder, Ritter testified that if Evans had not shot the victim, he would have.

Like Evans, Ritter also boasted about his guilt and demanded to be executed. During the trial Ritter took the stand and told the jury that if they did not sentence him to death that he would eventually get out of prison and come back and harm the jurors.

Notwithstanding all that, the case still involved a direct appeal and multiple federal court habeas review proceedings and appeals. Only after ten-and-one-half years of appeals and review was the State of Alabama permitted to carry out the death sentence which Ritter himself had demanded at his trial.

The Jones Case. Jones had a long string of violent felonies on his record before he committed two capital murders. As a result of convictions for burglary, assault, arson, and murder, Jones has received a life sentence, but was paroled after ten years. Thereafter, he returned to robbery and murder.

Jones received two death sentences for two entirely separate robbery-murders he committed (in different counties). The death sentence that was actually carried out was in the case in which Jones murdered a seventy-one year old cab driver.

Jones' conviction and death sentence were upheld on direct appeal, in two state collateral review proceedings and appeals, and in two federal habeas corpus proceedings and appeals.

The Lindsey Case. Lindsey broke into the home of an elderly widow and savagely beat and stabbed her to death. He stole some of her personal belongings.

Lindsey was tried, convicted, and sentenced to death twice. The second conviction and death sentence were upheld on direct appeal, in three separate state collateral review proceedings and appeals, and in four federal habeas corpus review proceedings and appeals.

III. ENDORSEMENTS OF THE CARNES NOMINATION

"I have been active in opposing the death penalty. As the Chief Trial Counsel for the Southern Poverty Law Center, I have represented approximately 50 criminal defendants in capital cases.

"Given my background, I can assure you that I would not be actively supporting Ed Carnes—a Bush nominee who has represented the state in death penalty prosecutions—unless I was convinced he was an exceptional candidate. Ed is one of the few judicial nominees that I can support without reservation. In both his personal and professional life, Mr. Carnes has a strong record against discrimination."—Morris Dees.

"We are the Attorneys General of the three states of the Eleventh Circuit, and we are writing to wholeheartedly urge the Senate to confirm the nomination of Ed Carnes. * * * Mr. Carnes is of the highest character, and he has a reputation for ethical propriety that is unsurpassed."—James H. Evans, Alabama Attorney General; Robert A. Butterworth, Florida Attorney General; Michael J. Bowers, Georgia Attorney General.

"We the undersigned attorneys in the Alabama Attorney General's office are writing to express our support for Ed Carnes * * * As African-Americans, we regret that there has been an attempt at racial polarization by a handful of people whose opposition to this nomination is motivated by their opposition to capital punishment. Some of us are strongly opposed to capital punishment. Some of us support it, and some of us have ambivalent feelings about it. But we all recognize that Ed Carnes is an excellent lawyer, he is fair and he is opposed to racial discrimination. * * * Far from supporting racial discrimination, Ed Carnes has a strong record of achievement in the area of minority rights."—Gerrilyn V. Grant, Tori Adams-Burks, Robert Ward, James Prude, Fred Bell, Courtney W. Tarver—Alabama Attorney General's Office.

"(Carnes) has an unsurpassed reputation for integrity * * *"—Charles Price, Alabama State Circuit Court Judge (The first black judge elected in Montgomery County in modern times).

"Mr. Carnes has a strong civil rights record. Indeed he is supported by a number of civil rights leaders and African-American attorneys, myself included."—W. James Ellison, Professor, Cumberland Law School.

"This letter comes to highly recommend Mr. Carnes * * * I have known Mr. Carnes for many years and have known him to be fair and impartial toward all citizens without regard to race or color. As Chairman of the Affirmative Action Committee of the Black Legislative Caucus, one of my responsibilities is to observe public officials and others in their actions toward minorities in the state of Alabama and I have found nothing that is negative in regards to Mr. Carnes' record in this matter."—Alvin Holmes, Alabama State Representative.

"Carnes is an honest and bright legal scholar who has spent most of his legal career helping victims instead of criminals."—The Birmingham News.

"(Carnes) has the reputation of being a brilliant attorney and has demonstrated integrity and compassion during his 16 years in the Attorney General's office."—The Decatur Daily.

"Carnes has been widely praised, even by those who have opposed him in the courtroom, for his fairness, integrity, skills, intelligence and hard work."—The Mobile Press.

"Mr. Carnes does not appear to have been the sort of mad-dog prosecutor that opponents seek to portray. Indeed on several occasions he has gone to court to correct errors made by local prosecutors which harmed the cases of defendants. Surely that indicates a commitment to having cases decided on the basis of the law properly applied."—The Alabama Journal.

"Mr. Carnes' career in the law is distinguished by fairness. He has urged courts to reduce death sentences when wrongly imposed, and he has disclosed material favorable to the defense secreted away in prosecutors' files."—The Washington Times.

"* * * Morris Dees, director of the Southern Poverty Law Center and founder of the Klanwatch civil rights group, says Mr. Carnes 'is a person of integrity, competence, and outstanding character. He will make a fine judge.' The attorney general of the three states of the circuit * * * have put in writing their view that Mr. Carnes is 'one of the finest attorneys in the 11th circuit.'"—The Wall Street Journal.

"What Mr. Carnes has been doing in his dozen years as Assistant Attorney General of Alabama is carry out the law of his state."—The Wall Street Journal.

"* * * He is an excellent choice."—Oklahoman & Times.

"The Senate Judiciary Committee was right on target Thursday when it gave Ed Carnes' nomination to the 11th Circuit Court of Appeals in Atlanta its strong endorsement. Senator Howell Heflin did a good job of keeping the Committee focused on Carnes' qualification, not petty politics."—The Birmingham News.

"The Senate Judiciary Committee showed uncommon good sense the other day in voting to confirm Alabama Assistant Attorney General Ed Carnes for the Federal appeals seat held by retiring Judge Frank M. Johnson."—Mobile Register.

"* * * Despite extensive investigations of Carnes' background, no critic was able to produce anything to harm the nomination, other than his strong record as a defender of the public rights * * *"—The Selma Times-Journal.

"Carnes is likely to make his mark as a judge in areas of law other than capital punishment."—Birmingham Post-Herald.

"The world goes round and round. In the 1930s, as a teenager, I would have scoffed at the notion that Alabama ever would have black mayors, black sheriffs, black judges. Today Ed Carnes numbers among his supporters Justice Oscar Adams, who sits on the Alabama Supreme Court, and Judge Charles Price, who sits on the circuit bench in Montgomery."—James Kilpatrick.

"Civil rights lobbyists have not done their homework in opposing Ed Carnes' nomination to the 11th U.S. Circuit Court of Appeals * * * Mr. Carnes has been an active foe of the Ku Klux Klan. He has opposed the routine striking of black jurors from jury lists because of their race. He represented black defendants who were being sued by whites when it wasn't politically correct."—The Decatur Daily.

"* * * Carnes has worked to ban the importation of South African coal mined by indentured labor, represented black public officials sued by whites and got two judges removed from the bench for engaging in racist behavior."—Mobile Press Register.

"Basically, groups strongly opposed to the death penalty are opposed to Carnes regardless of his ability. And that's wrong. Consideration of a judicial nomination isn't the place for a debate on the death penalty."—The Birmingham News.

"Among Carnes supporters are a number of Alabamians who have worked with him in the judicial process and know him as a man of integrity, even when displaying integrity doesn't help his court case. There are people like Morris Dees, director of the Southern Poverty Law Center in Montgomery, and state civil rights leaders. These people know Carnes."—The Birmingham News.

"* * * nobody else has done more to stop white criminal defendants from excluding blacks from juries. In a case in my hometown, some Ku Klux Klansmen were charged with lynching a young black man. Mr. Carnes went all the way to the Supreme Court to stop those klansmen from striking blacks from the jury. He was joined in that effort by the Southern Christian Leadership

Conference and the Southern Poverty Law Center."—David Bagwell, Letter to the Editor, New York Times.

Others supporting Ed Carnes Nomination: Attorneys General in 31 states; Robert Macy, President, National District Attorneys Association; Norman S. Early, Denver District Attorney and President, National Black Prosecutor's Association; District Attorneys for Tuscon, Savannah, and Prince William, Mecklenburg, Norfolk, and Virginia Beach counties in Virginia.

Alabama (Judges, Lawyers, Officials and Civil Rights Activists)

Alabama State Bar Board of Commissioners; Alabama District Attorneys Association; Alabama Sheriffs Association; James H. Evans, Alabama Attorney General; Miriam Shehane, President, Victims of Crime and Leniency; Morris Dees, Executive Director, Southern Poverty Law Center; Richard Cohen, Legal Director, Southern Poverty Law Center; Justice Oscar Adams; Justice Kenneth F. Ingram; Judge H. Ward McMillan, Jr.; Judge Sam W. Taylor; Judge Mark Montiel; Judge James H. Hard; Judge Michael E. Zoghby; Judge William C. Sullivan; Judge Samuel H. Monk, II; Judge Herman Thomas; State Representative Alvin Holmes, Chairman, Affirmative Action Committee of the Alabama Black Legislative Caucus. William B. Blount, Chairman, Alabama Democratic Party; James E. Folsom, Jr., Lieutenant Governor; George C. Wallace, Jr., State Treasurer; Billy Joe Camp, Secretary of State; Tom Bevill, Democratic Member of Congress; Ben Erdreich, Democratic Member of Congress; Glen Browder, Democratic Member of Congress; Bud Cramer, Democratic Member of Congress; Claude Harris, Jr., Democratic Member of Congress; Jimmy Clark, Speaker of the Alabama House of Representatives; Ryan deGraffenreid, President Pro-Tem of the Alabama Senate; Frank McDaniel, Chairman, Small Business Committee of the Alabama House of Representatives; James M. Campbell, Speaker Pro-Tem of the Alabama House of Representatives; Hinton Mitchem, Chairman, Business and Labor Committee of the Alabama Senate; State Senator Doug Ghee; Professor Albert P. Brewer; Professor W. James Ellison; William J. Baxley, Former Alabama Attorney General; Don Siegelman, Former Alabama Attorney General; Gerrilyn V. Grant, Tori Adams-Burks, Fred Bell, Robert Ward, Courtney W. Tarver, James Prude, Alabama Assistant Attorney Generals; Joseph A. Fawal, William M. Dawson, Rick Harris, Robert S. Vance, Jr., David A. Bagwell, J. Don Foster, Francis H. Hare, Jr., Lee E. Baines, Jr., Private Sector Attorneys.

Mr. HEFLIN. Mr. President, much has been said about the qualifications of Mr. Edward Carnes, who has been nominated for a seat on the U.S. Court of Appeals for the Eleventh Circuit, but less attention has perhaps been focused on his background as a graduate of Harvard Law School and the beginnings of his legal career in the State attorney general's office.

At the start of the early seventies, Alabama was emerging from a long decade of racial tension and division, and a young attorney general, Bill Baxley of Dothan, AL, was elected to office where he served two terms, from 1971 to 1979.

Attorney General Baxley's tenure may be fairly characterized as perhaps the most progressive tenure of any attorney general as to racial justice who had held that office up until that time. He was the first attorney general to hire black lawyers, and the first to hire significant numbers of women lawyers. His chief assistant attorney general was Walter Turner, a former law clerk to Judge Frank Johnson. He hired Yale law school graduate Myron Thompson, whom I had the privilege of recommending to President Jimmy Carter for a seat on the U.S. District Court for the Middle District of Alabama. He hired Harvard law graduate Henry Caddell and Yale law graduate Frederick Middleton to serve in his environmental division. He hired Virginia law graduate Thomas Zieman to serve in his antitrust section.

Attorney General Baxley hired former Alabama Supreme Court law clerks Rosa Hamlett Davis and Carol Jean Smith to be a part of his team, as well as Sally Greenhaw, who now serves as State district court judge, and Vanzetta Penn McPherson, who now serves as a U.S. magistrate judge.

He hired black attorneys Milton Davis, now a distinguished practicing attorney in Tuskegee, Charles Price, now a State circuit judge and Winston Lelt, who serves ably as chief counsel for the Subcommittee on Courts and Administrative Practice here in the Senate. The list could go on and on, but these names are illustrative of the bright, young, diverse talent that Attorney General Baxley brought to his staff. They reflected credit upon his leadership and administration in a State that desperately needed a beacon of hope, optimism, and courage.

And, Attorney General Baxley hired Edward Carnes. He, too, was motivated by the young attorney general's desire to see change in the State, to see a brighter future for its citizens, old and young, rural and urban, black and white. Quite obviously as a graduate of one of this Nation's leading law schools, Mr. Carnes could have taken the easier route—and undoubtedly more lucrative route—by practicing with a large law firm in Birmingham, Montgomery, Mobile, Huntsville, or most any other city in America. But he did not.

Attorney General Baxley testified before the Senate Judiciary Committee at his former employee's confirmation hearing and he stated, "Most importantly, I know that (Ed Carnes) doesn't have an ounce of prejudice or bigotry in his body." In his hiring interview with the young law student, Attorney General Baxley related to the Judiciary Committee how impressed he was with regard to Mr. Carnes' vision of how to build a better Alabama, an Alabama free of racial division and prejudice, and free from narrow thinking which had held the State back for so long.

All of the assistants that Attorney General Baxley hired had tough and controversial cases. I know because I was chief justice of the Alabama Supreme Court. Mr. Carnes had his fair share of such cases including handling the appellate work on behalf of the State's prosecution of Robert Chambliss for the murder of four young black girls in the infamous 1963 bombing of the 16th Street Baptist Church. Mr. Carnes also handled a lawsuit banning the importation into the United States of South African coal which was mined by indentured labor. He defended a black sheriff and three of his black deputies in a Federal court civil law suit brought by two white men against these black officials. Mr. Carnes attends an integrated church and socializes with black friends in his time off from the pressures of work. This is hardly the stuff of which bigots or those who are racially prejudiced are made.

These were exciting times in Alabama during the 1970's and none of those who served on the staff of Attorney General Baxley considered themselves a bigot or racist. Quite to the contrary, they were in the vanguard of change which was beginning to sweep the State. They remember the passion with which they embarked on their budding legal careers, and they also remember a quote from Dante which hung on the wall over the attorney general's desk: "The hottest places in Hell are reserved for those, who in times of great crisis, maintain their neutrality." Edward Carnes embarked on such a promising legal career and has displayed great courage in helping to bring about a new attitude among young lawyers seeking to enter public service. He will, in my judgment, continue a distinguished career of public service when he is confirmed to the U.S. Court of Appeals.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I yield the remainder of my time to the distinguished Republican leader, Senator DOLE.

Mr. DOLE. Mr. President, I understand we are supposed to adjourn at 12:50?

The PRESIDING OFFICER. The order is when all the time has expired.

Mr. DOLE. Mr. President, shortly before we adjourned last August, I spoke on this floor and criticized a Senator from my side of the aisle for standing in the way of confirmation of a number of judicial nominees.

My point was simple: Why should the most qualified men and women consent to be nominated to a Federal judgeship or any position requiring Senate confirmation, if they know that nomination means they will become political pawns, and that their lives will be put on hold for month after month?

Far more disturbing than simply delaying the nomination process, however, is a practice that some of my friends on the other side of the aisle have become quite expert in over the

years: The practice of turning the confirmation process into character assassination.

And that is what we have in the case of Ed Carnes.

There can be no doubt that Ed Carnes is eminently qualified to serve on the Eleventh Circuit Court of Appeals.

After graduating from Harvard law school, Ed has served for 16 years as an assistant attorney general for the State of Alabama. And he has done an outstanding job.

All four attorneys general under which he served—all, Democrats—support his nomination.

All the attorneys general in the eleventh circuit—most of them Democrats—support his nomination.

Senators HEFLIN and SHELBY—both Democrats—strongly support his nomination.

Morris Dees, one of America's preeminent civil rights leaders, and director of the Southern Poverty Law Center, says Mr. Carnes is "a person of integrity, competence, and outstanding character. He will make a fine judge."

So, what is the problem? Why the month after month of endless delay? Why are we here today?

We are here because Mr. Carnes does his job too well.

Part of his responsibilities have been to argue death penalty cases for the State of Alabama. He also helped to rewrite Alabama's death penalty statute, to ensure that it was constitutional.

Despite the fact that the overwhelming majority of Americans favor the death penalty and despite the fact that the Supreme Court has ruled the death penalty is constitutional, there are those in the Senate who think that Mr. Carnes should be disqualified for this reason.

But opponents of the death penalty know they could not defeat Mr. Carnes on that reason alone. So they had to find another reason.

They searched in every corner, and under every rock.

And they discovered that sometimes—as was his job as a lawyer for the State of Alabama—Mr. Carnes argued against those who wanted their convictions overturned on the grounds that the local prosecutor used preemptory challenges to remove minorities from the jury.

And it did not take long for some of my friends to use this to make the most poisonous of charges—that Mr. Carnes is racially prejudiced.

And the liberal special interest groups—who were in need of a new fundraising cause—quickly picked up the refrain.

And for the past months, Mr. Carnes has had to listen to this disgusting charge from those who do not know him, and who do not know the facts.

And the fact is that Mr. Carnes led the fight to establish a rule that would prevent a white defendant from excluding blacks in order to obtain an all-white jury.

The fact is that Mr. Carnes personally defended black public officials sued by whites.

The fact is that he personally prosecuted two judges for racist conduct, which resulted in their removal from the bench.

And the fact is that Mr. Carnes successfully represented the State on appeal against a Klansman convicted of killing four young black girls in a Birmingham church in 1963.

Mr. President, it is time to put an end to this character assassination.

But even if Mr. Carnes is deservedly confirmed, the liberal special interest groups will have won a victory.

They have justified their existence and their salaries, by proving they can still rattle their sabers, and raise their money.

And they have proven that they can engage in the most reprehensible type of character assassination without facing any real responsibility for their actions.

And the sad fact is that the real loser in this process is the American people, who will see outstanding men and women turn down the chance to serve the public, because they have seen what happened to Ed Carnes.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Does the Senator from Delaware have 1 minute remaining?

The PRESIDING OFFICER. The Senator has 40 seconds.

Mr. BIDEN. I yield the remainder of my time to myself at this moment.

Mr. President, while the minority leader is here, let me just say, to the best of my knowledge, I have heard of no one assassinating the character of Mr. Carnes. To the best of my knowledge, not a word has been raised about his personal behavior, his inclinations, his likes and dislikes. This is a simple but severe disagreement about whether or not he fully understands and is fully sensitive to how to deal with the prejudice that takes place in the courtroom today; particularly in the case of the Senator from Delaware and others, in the way in which he has appealed death cases when it has been clear on the record that the prosecutors have used peremptory challenges to keep blacks off of juries, which is unconstitutional. I thank the Chair.

Mr. CRANSTON. Mr. President, today we debate the nomination of Ed Carnes for the Eleventh Circuit Court of Appeals. If confirmed, Mr. Carnes would receive a lifetime appointment and participate in hundreds of life and death decisions involving the citizens of Alabama, Florida, and Georgia. For the past 12 years he has headed the Alabama Capital Litigation Division of the Attorney General's office, and serious questions have been raised regarding his handling of death penalty appeals.

It is my opinion that we should reject this nominee because in doing so we will affirm our vigilance toward ensuring basic decency in our criminal justice system.

I believe that Prof. Michael Radelet is correct in stating that—

> [P]eople are sentenced to death not so much for what they do but for who they are. And who they are becomes a function of social distance between jurors in terms of whether or not the defendant is a local or an outsider, in terms of appearance, and in terms of whether or not you look right and look like one of their kids. In most cases if a juror thinks that the defendant is like them, he or she won't vote for death. If the defendant has killed people who are not like them, poor people or black people, the defendant won't be sentenced to death. But if he kills people who could easily have been the juror's friends or neighbors, the defendant is in big trouble.

For me, this confirmation debate regarding Mr. Ed Carnes is not about whether he favors the death penalty. Clearly, he does. But this debate is about whether, in his official capacity, Mr. Carnes has been more concerned with shuttling defendants toward the electric chair rather than defending the integrity of due process.

The U.S. Supreme Court, in the Batson case, made it clear that a State "denies a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded." Fair selection of a jury is at the heart of our belief that, while a jury need not exclusively reflect the particular characteristics of the defendant, jurors should not be excluded solely because they share certain characteristics with the defendant.

Yet Mr. Carnes has sought to uphold convictions where black jurors were excluded from trials purely because of their race.

There are several examples illustrating this point, but I will briefly discuss only one. In this case, the prosecutor used 26 strikes to remove all black jurors in three trials involving the same defendant. The prosecutor arranged jury lists under the categories of strong, medium, weak, and black. Though these lists were illegal, Mr. Carnes responded to the defendant's appeal by vigorously arguing—not for a remedy—but that the court should not even review the appeal.

Mr. President, I do not know of any other area of American life today—housing, employment, entitlements, for example—where we would tolerate a government official who divided people into classifications and eliminated all black Americans from consideration. Nor would we accept a subordinate's excuse that he or she was merely following orders in creating such a list.

Mr. Carnes has never refused to pursue a case where discriminatory strikes were at issue. Before the Judiciary Committee, though given more than adequate opportunity, he refused to say that cases involving discriminatory strikes should not be pursued on appeal. He never said that if he were in

charge a different policy would be pursued. Mr. Carnes seeks refuge in the position that he is simply performing the role of a zealous advocate. We should remember, Mr. President, that if the appeal is in favor of the defendant the State merely faces the inconvenience of repeating the trial and ensuring that it is conducted fairly. The defendant still faces the possibility of death.

Perhaps Mr. Carnes does not challenge the policy and practice of his office because he does not believe capital punishment is applied in a racially discriminatory manner in Alabama or in the Nation, and he believes that capital defendants do receive excellent legal representation.

I find it difficult to accept that Mr. Carnes could make these statements given the numerous studies which have confirmed the presence of racial bias and lack of adequate representation at the trial level. No one can deny the historical link between the death penalty, race, and class. Those with the means to secure competent representation very rarely receive the death penalty while the not-so-fortunate are judged with State-sanctioned righteousness. These imperfections in our system, these imperfections in ourselves, make adherence to due process all the more compelling.

No one doubts the intelligence of the nominee before us, but some of our Nation's most outrageous and insensitive court decisions have been rendered by very intelligent and accomplished jurists. All judges bring their values to interpreting the Constitution and the law. Mr. Carnes has failed to convince me that he values fairness over procedure. For that reason, Mr. President, I oppose the nomination of Mr. Ed Carnes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BIDEN. 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. THURMOND. Mr. President, as I understand it the time is up and that completes debate on this nomination, does it?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. THURMOND. I yield that back, Mr. President, so it is now complete.

The PRESIDING OFFICER. All time has been yielded back.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 1:20 p.m., recessed until the hour of 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer Mr. KOHL.

PRODUCT LIABILITY FAIRNESS ACT

MOTION TO PROCEED

The PRESIDING OFFICER. The Senate will return to legislative session.

The pending question is the motion to proceed to S. 640.

Mr. MITCHELL. 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, is the leader time reserved?

The PRESIDING OFFICER. Yes, leader time is reserved.

TRUST, CONFIDENCE, AND CREDIBILITY

Mr. DOLE. Mr. President, there are 8 weeks left before Americans go to the voting booths to decide who will be their President for the next 4 years.

For the next 8 weeks Americans will begin tuning in to the messages coming from the campaign trail, trying to determine who indeed is the best man to sit in the Oval Office as America's Commander in Chief and the leader of the free world.

The stakes could not be any higher, which is why the campaign boils down to a few critical words—trust, confidence and credibility: which candidate can you trust, which candidate will earn your confidence, and which candidate has the kind of credibility it takes to be the President of the United States.

That is why the continuing confusion and inconsistencies surrounding candidate Bill Clinton's draft history is an issue he just cannot duck anymore. Despite the candidate's declaration that he has "spoken the truth" and has "nothing further to say," the American people deserve better—they deserve the truth.

Now, let me be clear: the fact that Bill Clinton avoided military service and did not go to Vietnam are not the issues here. The real issues now are trust, confidence, and credibility—and on these critical standards Bill Clinton is flunking the test.

If anyone has any doubts, just review the candidate's own statements—they do not add up. In fact, they continue to raise more and more questions—questions the candidate is apparently unwilling to answer. The harder he tries to put this issue behind him, the harder he tries to talk around it, the deeper and deeper he sinks into a campaign tar pit. And the harder he tries to suppress the questions about his credibility, more questions are raised. And if the candidate doesn't like the fact that the American people are not buying his tall tales, and that they continue to insist on the truth, then he has no one to blame but himself.

That is why I am introducing into the RECORD today, and releasing to the media, a document prepared by the Bush/Quayle campaign compiling direct quotes from Bill Clinton on his draft status, along with press reports about his zig-zagging on the draft issue, reports that include conflicting testimony from some of the people who know exactly what happened, and what did not happen in 1968.

For example, in 1978, Bill Clinton said he was never "deferred". Then, 14 years later, he said he "gave up a deferment." In 1991, Bill Clinton said he was never called up, and that not getting called was "a fluke". One year later, he told us he "received a draft notice; it was delayed."

Those are his quotes not my quotes.

Two months ago, Bill Clinton said he never was opposed to the draft. In 1969, he called it illegitimate and that he opposed it.

In February of this year, Bill Clinton told a press conference that "I certainly had no leverage to get special treatment from the draft board." But then there are listed in this comprehensive document direct quotes from several persons who dispute the Clinton spin, persons—friends—who went all out to get Bill Clinton out.

There is plenty more, including the latest chapter in the Bill Clinton draft saga, a report from the Boston Globe this weekend revealing that Bill Clinton actually received two draft notices. Two. Remember, this is about a man who claimed never to have received a single draft notice. Now we know better.

Let us not forget, 5 months ago Bill Clinton promised "to share" information with us. And he added, "I have asked for more records because I don't want to be in a position of where somebody says, you didn't give us all of it."

That is his quote, not mine. His quote.

Well, Governor, where is it? Where are the documents? Where is all the information—the records, the letters, the notices, the files, the memos? Prior to your appearance before the American Legion convention, you teased the press and the American people that full information was coming. We are still waiting.

Oh, yes, you have had your own staff review some of the official documents. But why not the media? Why not come clean by releasing every shred of evidence related to your draft history? If you truly want to speak the truth about your draft status, release the information, and do it now.

But if you continue to reject this kind of openness, this kind of truth in campaigning, then you leave the American voter no choice.

That is why I urge the voters, I urge the media, to closely examine the document I am releasing today. It is made up entirely of Bill Clinton's own statements and media reports, not mine. It is all public information.

So, I have some advice for Governor Clinton: Tell the truth. Release the information—even if it hurts. It is all about trust, confidence, and credibility. If, in this time of personal political crisis, it amounts to making your own "Checkers Speech," so be it. And if it means holding a no-holds-barred news conference, so be it.

If you will not come clean about your draft status, the American people will have no choice but to judge for themselves. And based on the information we have, Governor, you will not like what they decide.

Mr. President, I ask unanimous consent to have printed in the RECORD various compilations.

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

ISSUES REGARDING CLINTON DRAFT STATUS

Issue	Compare	With
1. The Second Draft Notice	Clinton: "In 1969 while studying at Oxford on a Rhodes Scholarship, I received a draft notice which arrived late." (American Legion Speech, 8/25/92). Clinton: "I received a draft notice; it was delayed." (NBC, "Brokaw Report: 58 Days," 9/6/92)..	"Jackson said he asked aides to Arkansas' Republican governor, Winthrop Rockefeller, to help Clinton avoid a second draft notice, which Jackson said gave him a July 28 induction date. . . . The lobbying in early summer 1969, Jackson said, was to relieve Clinton of the second draft order." (Boston Globe, 9/6/92).
2. Deferment	"Clinton said the agreement [with ROTC] was never sent to Washington and he was not deferred." (The Arkansas Gazette, 10/28/78). "[Clinton] says that, because of his willingness to be drafted, he never enjoyed a ROTC deferment." (Pine Bluff Commercial, 10/29/78).	Clinton: "[My deferment was withdrawn in October, I was put back in the draft pool." (Nightline, 2/12/92). Clinton: "I gave up a deferment and put myself back into the draft." (Nightline, 2/12/92).
3. Induction Notice	"Question: 'How was it you didn't get called? Clinton: "[A]s it happened, I told the [draft board] I expected to be called while I was over there [in England] the first year, but they never did." (Washington Post, 4/16/92) quoting interview from December 1991). "When asked why he was never called up for service after being eligible for the draft for more than a year, Clinton said [in February 1992], 'It was simply a fluke I wasn't called and there are no facts to the contrary.'" (Los Angeles Times, 4/5/92)	"Bill Clinton, friend and Rhodes [Scholar] from Hot Springs, Ark., received an induction notice last week." (Cliff Jackson in May 1969 letter, as quoted in Los Angeles Times, 4/5/82). Clinton: "In 1969 while studying at Oxford on a Rhodes Scholarship, I received a draft notice which arrived late." (Speech to American Legion, 8/25/92). Clinton: "I received a draft notice; it wad delayed." (NBC, "Brokaw Report: 58 Days," 9/6/92).
4. Opposition to the Draft	"Clinton said that he never was opposed to the draft." (The Arkansas Democrat, 6/8/82).	"From my work [at Georgetown] I came to believe that the draft system itself is illegitimate." (Clinton letter to Holmes, 12/3/69). ". . . my opposition to the draft. . . ." (Clinton letter to Holmes, 12/3/69).
5. Unusual or Favorable Treatment	Clinton: "[I] never received any unusual or favorable treatment." (Los Angeles Times, 9/2/92). "[Clinton] told a press conference [in February 1992]: 'I certainly had no leverage to get special treatment from the draft board.'" (Los Angeles Times, 9/2/92)	Opal Ellis (Executive Secretary of the Hot Springs Draft Board): "[Clinton] went in and told me he was too well educated to go [and] he was going to fix my wagon and pull every string he could think of." (Wall St. J., 2/6/92). "I have had several of my friends in influential positions try to pull strings on Bill's behalf. . . ." (Cliff Jackson letter dated 7/1/69, quoted in Los Angeles Times, 4/5/92). Cliff Jackson: "I aided Bill Clinton in implementing a plan, concocted by him to avoid the draft notice issued to him. . . . I was the critical cog in his scheme." (AP, 9/7/92). "The Times found that the future Arkansas Governor was the only man of his prime-draft age whose preinduction physical was put off for 10 and 1/2 months . . . more than twice as long as anyone else and more than five times more than most men of comparable eligibility." (Los Angeles Times, 9/2/92).
6. Uncle Raymond	"Yesterday, Gov. Clinton said he had been unaware of any maneuvering by his uncle [Raymond] . . ." (Wall St. J., 9/3/92).	"Of course Billy knew about it." (Henry M. Britt, Raymond Clinton's attorney, quoted by Los Angeles Times, 9/2/92).
7. Naval Reserve Billet	Clinton: "It's all news to me . . . [Stories about the Naval Reserve billet are] absolutely untrue." (Washington Times, 9/4/92).	"Bill Cinton today confirmed a newspaper report that he had known for months that his late uncle tried to get him a Navy Reserve assignment during the Vietnam war . . . 'I did not know of any efforts to secure a Naval Reserve assignment before Mr. Ellis mentioned it to me in Hot Springs.'" (AP, 9/4/92).
8. Relinquishment of Deferment	"Clinton said he decided to back out of the ROTC arrangement before he knew the Selective Service System was to be changed dramatically in December 1969, with implementation of the draft lottery." (Spectrum Weekly, 12/4–10/91).	"[Retired Army Lt. Col. Clinton Jones, a former Arkansas ROTC official] said that Clinton didn't withdraw from the ROTC until Dec. 3—after he got a 'safe' number of 311 in the lottery, which was held Dec. 1. . . . Clinton was protected from the draft until his official Dec. 3 withdrawal from the ROTC—even though his draft board had re-classified him 1–A in October, Jones told The Post. 'We could have stopped any drafting of him up til we released him from [ROTC] after the Dc. 3 letter,' Jones said." (N.Y. Post, 4/6/92).
9. Other Options	"Mr. Clinton says he decided to go, in his words, 'look around' for another option. . . . He took the Air Force officer's exam, but failed because of a vision defect. He also took the Naval officer's test, but failed because of a hearing problem." (Wall St. J., 2/6/92).	Clinton: "I've told you the only military options that I considered or was offered was the one I had reported to you." (Los Angeles Times, 9/2/92).
10. Discussion With Lt. Col. Clinton Jones	"Stephanopolous said Clinton told him he had never interviewed with [Lt. Col. Clinton] Jones." (Los Angeles Times, Orange County Edition, 4/6/92).	"Had Clinton disclosed the fact that he had already received a draft notice, Jones said, he would have urged rejection of his application for ROTC at the University of Arkansas Law School. Jones said he first learned about Clinton's induction letter while watching television Sunday morning." (Los Angeles, Orange County Edition, 4/6/92). Retired Army Lt. Col. Clinton Jones: "If Bill Clinton said he did not talk to me, that's a flat lie. . . ." (Wall St. J., 4/6/92).
11. Willingness to Serve	Clinton: "If my number had been 3 or if that high number had been called, I would have served and would have gone to Vietnam if I had been so ordered." (American Legion speech, 8/25/92).	Opal Ellis, Executive Secretary of Hot Springs Draft Board: "He was trying to get into everything rather than have me send him [a letter] of induction. . . . He just thought he was too good to go." (Washington Post, 4/6/92). "I . . . would have been at Arkansas Law School because there is nothing else I can do." (Clinton letter to Holmes, 12/3/92).
12. Disclosure of Personal Files	Clinton: "I have found some things that I want to share with you. . . . But I have asked for some more records because I don't want to be in a position of where somebody says, you didn't give us everything you had." (AP, 4/17/92).	"On Saturday, [Betsey Wright of Clinton-Gore] released correspondence between the campaign and public agencies in an attempt to show Clinton came up empty-handed in his effort to confirm his account of the events in 1969. She did not release any documents found in his search of personal records, and refused Tuesday to comment about what Clinton found, if anything." (AP, 9/2/92). Betsey Wright: "I've read five years worth of letters and papers . . . searching for things throughout the draft and there were a couple of mentions. . . . One, I remember, about having met Cliff Jackson and maybe one other mention of having visited him. . . ." (Boston Globe, 9/6/92). "[Clinton] will not say whether he still has the notice that would confirm the dates in his account." (AP, 9/7/92).
13. Senator Fulbright	"Clinton was emphatic when asked if he'd ever written a letter asking Fulbright or his staff for help to avoid the draft. 'I am positive I never did that,' he said. 'I am positive that I never asked anyone for that. No. Never, never.'" (Spectrum Weekly, 12/4–10/92).	Randall B. Woods (researching a book on Senator Fulbright): "I did run across . . . correspondence between Clinton and one of Fulbright's aides. It dated from the summer of 1969. Clinton, in his letter, restated his opposition to the Vietnam war and then went on to ask for help in finding a job on 'the Hill' upon his return from Oxford that fall. [A report that the letter was 'lost' was] a euphemism for my not being willing to give it to [reporters]." (Washington Post, 2/16/92).

Speech by Gov. Bill Clinton to American Legion, August 25, 1992	Statements before 1992	Clinton statements in 1992 campaign	Contemporaneous documentation	Recollection of witnesses	Unanswered questions
Although I have discussed my conduct during the Vietnam era in great detail, I feel out of respect to you I owe you one final statement to set the record straight.	"[So] many fine people have come to find themselves still loving their country but loathing the military. . . ." (Clinton letter to Holmes, 12/3/69).				"I have found some things that I want to share with you . . . But I have asked for some more records because I don't want to be in a position of where somebody says, you didn't give us everything you had." (Clinton as quoted by AP, 4/17/92). "On Saturday, [Betsey Wright of Clinton-Gore] released correspondence between the campaign and public agencies in an attempt to show Clinton came up empty-handed in his effort to confirm his account of the events in 1969. She did not release any documents found in his search of personal records, and refused Tuesday to comment about what Clinton found, if anything." (AP, 9/2/92). "(Clinton) will not say whether he still has the [induction] notice that would confirm the dates in his account." (AP, 9/7/92). Betsey Wright: "I've read five years worth of letters and papers . . . searching for things throughout the draft and there were a couple of mentions. . . One, I remember, about having met Cliff Jackson and maybe one other mention of having visited him, but certainly never any integral part of the ramblings about draft options." (Boston Globe, 9/6/92).
[March 1968 through April 1969].			On March 20, 1968, Clinton "was reclassified 1–A, ready for induction." "Customarily, men classified 1–A at that time were called for a pre-induction physical within 45 to 60 days. . . . Almost six months after getting his 1–A classification, Clinton left for Oxford. In February 1969, he passed his pre-induction physical examination at a military base in England. In April he was notified he was to be inducted." (Los Angeles Times 9/2/92, based on Selective Service records). "The Times found that the future Arkansas governor was the only man of his prime draft age classified 1–A by that board in 1968 whose pre-induction physical was put off for 10½ months—more than twice as long as anyone else and more than five times longer than most men of comparable eligibility." (Los Angeles Times, 9/2/92).		
		Uncle Raymond: "(I) never received any unusual or favorable treatment." (Clinton, as quoted in Los Angeles Times, 9/2/92). "When he graduated from Georgetown University in the spring of 1968, Clinton said his draft board in Arkansas told him he could attend Oxford University for the first year of a two-year Rhodes scholarship and then report for service." (National Journal, 1/18/92). "Yesterday, Governor Clinton said he had been unaware of any maneuvering by his uncle, although Mr. Britt contends he had." (Wall Street Journal, 9/3/92). Clinton: "I've known the guy [Britt] for 30 years. He's never said anything about it to me, ever." (AP, 9/2/92).		"Raymond [Clinton] went to [the chairman of the draft board] and said 'why don't you give the boy a chance to get in the Navy. . . . 'And that's why [Bill Clinton] never was called for his physical' during the summer of 1968, [Henry M. Britt, Raymond Clinton's attorney] said." (Los Angeles Times, 9/2/9). "According to [Henry M. Britt, Raymond Clinton's attorney], Raymond Clinton also personally lobbied Armstrong, the head of Hot Springs Draft Board #26, and Lt. Cmdr. Trice Ellis, Jr., commanding officer of the local Navy reserve unit . . . Ellis confirmed in a recent interview that he persuaded officials of the Eighth Naval District in New Orleans to create a billet, or enlistment slot, especially for Bill Clinton." (Los Angeles Times, 9/2/92). "Of course Billy knew about it [his uncle's lobbying efforts to prevent him from being drafted]". (Henry M. Britt, Raymond Clinton's attorney quoted by Los Angeles Times, 9/2/92). "Asked if Bill Clinton was aware of the maneuvering, Britt said 'You know whether you are going to get drafted or not.'" (Boston Globe, 9/6/92).	
		Lt. Commander Ellis:			

Speech by Gov. Bill Clinton to American Legion, August 25, 1992	Statements before 1992	Clinton statements in 1992 campaign	Contemporaneous documentation	Recollection of witnesses	Unanswered questions
		Clinton: "It's all news to me . . . [stories about the Naval Reserve billet are] absolutely untrue." (Washington Times, 9/4/92). "Bill Clinton today confirmed a newspaper report that he had known for months that his late uncle tried to get him a Navy Reserve assignment during the Vietnam War . . . Clinton acknowledged that Ellis had told him about his uncle's efforts. The Democrat said that does not contradict his statement earlier this week that the lobbying effort was 'all news to me.' He said the statement was meant to convey that he had not been aware of the lobbying effort campaign at the time it occurred. 'I think it was just a misunderstanding,' Clinton said. 'I did not know of any efforts to secure a naval reserve assignment before Mr. Ellis mentioned it to me in Hot Springs.'" (AP, 9/4/92, 1:30 pm). Clinton: This is a story that was made up by the press. The press described the Los Angeles Times story to me in a totally different way. They never mentioned this issue. I said the story you're telling is news to me. They did not tell me that was in the story. Later, the people who read the story said something entirely different. So that is just not true." (NBC, "Brokaw Report: 58 Days," 9/6/92).		Trice Ellis: "[In a March 20, 1992 conversation with Clinton] I said, "I thought you were going Navy. I was surprised you didn't show up for your Navy exams," Ellis said he told Clinton, 'He looked at me and said, "What do you mean?" and I told him the story. I told him, "Your uncle Raymond called me and told me you wanted in the Navy. I called up to see if there was a billet . . ." He said, "That was the first time I had heard the story." He told me it was news to him." (AP, 9/2/92).	
In 1969 while studying at Oxford on a Rhodes Scholarship, I received a draft notice which arrived late.	"Clinton said he knew in the summer of 1969 that he was likely to be drafted and agreed in July to go into Army ROTC after he finished his Rhodes Scholarship studies at Oxford University, England." (Pine Bluff Commercial, 10/29/78). Clinton: "[I was] prepared to leave" Oxford if called. (Arkansas Gazette, 8/25/88). "During dozens of interviews on the [draft] toplo for state races and the presidential campaign, the induction notice was never mentioned by Clinton until February of this year." (AP, 9/2/92). "Clinton routinely said he was on a four-year deferment, made himself available for the draft, got a high lottery number and was never called." (Los Angeles Times, 9/2/92).	Clinton: "[T]he draft was the law and if I'd been called, I was ready to go and do the best I could." (Weekly Spectrum, 12/4–10/91). "Question: 'How was it you didn't get called? "Clinton: . . . [A]s it happened, I told the [draft board] I expected to be called while I was over there [in England] the first year, but they never did." (Washington Post, 4/16/92, quoting interview from December 1991). Clinton: "It was simply a fluke that I wasn't called. And there are no facts to the contrary." (Witchita Eagle, 2/7/92). "When asked why he was never called up for service after being eligible for the draft for more than a year, Clinton said [in February 1992]. 'It was simply a fluke I wasn't called and there are no facts to the contrary.'" (Los Angeles Times, 4/5/92). "Faced with disclosure of the [Jackson] letters, the Clinton campaign acknowledged late Saturday that Clinton received a draft induction notice in 1969 before he joined the ROTC program at the University of Arkansas." (Los Angeles Times, 4/5/92). "'They sent me something that made it clear that I would be called into the service soon, Clinton said." (AP 4/7/92). Clinton: "I received a draft notice; it was delayed." (NBC, "Brokaw Report: 58 Days" 9/6/92). "The board said, 'You'll probably be called in the fall, September or October [of 1969].'" (Wall Street Journal 2/6/92).	"Bill Clinton, friend and Rhodes [scholar] from Hot Springs, Ark., received an induction notice last week." (Cliff Jackson in May 1969 letter, as quoted in Los Angeles Times, 4/5/82). Opal Ellis: "I know damn good and well he didn't get one [a draft-induction notice]." (AP, 4/7/92). Second Draft Notice: "Jackson said he asked aides to Arkansas' Republican governor, Winthrop Rockefeller, to help Clinton avoid a second draft notice, which Jackson said gave him a July 28 induction date. Jackson said others sought assistance from the staff of Democratic Sen. J. William Fulbright, for whom Clinton had worked on Capitol Hill." (Boston Globe, 9/6/92).		

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My draft board postponed my induction date to give me time to finish my first year of study.		[Clinton] says the board told him [in 1969] that he wouldn't be drafted until the fall of 1969, a year and a half after being designated 1–A. (Wall Street Journal, 2/6/92). "Returning home in the summer of 1969, Clinton said, 'I took an Air Force officer's test, which I couldn't pass because I don't have fusion vision. . . . Clinton said that he took a Navy physical, 'and my hearing wasn't good enough.' After that, Clinton said he decided to sign up for Army ROTC." (National Journal, 1/18/92). "Mr. Clinton says he decided to go, in his words, 'look around' for another option . . . He took the Air Force officer's exam, but failed because of a vision defect. He also took the naval officer's test, but failed because of a hearing problem." (Wall Street Journal, 2/6/92). Clinton: "I've told you the only military options that I considered or was offered was the one I had reported to you." (Los Angeles Time, 9/2/92). Clinton: "The only military option I was offered and considered was the ROTC." (AP, 9/4/92).		Opal Ellis (Executive Secretary of the draft board): "[Clinton] went in and told me he was too well educated to go [and] he was going to fix my wagon and pull every string he could think of." (Wall Street Journal, 2/6/92).	
		No unusual or favorable treatment: "(I) never received any unusual or favorable treatment." (Clinton, as quoted in L.A. Times, 9/2/92). "(Clinton) told a press conference (in February 1992): 'I certainly had no leverage to get special treatment from the draft board.'" (Los Angeles Times 9/2/92). "(Betsey) Wright said she 'wouldn't be surprised' if Clinton had asked Jackson for help." (Boston Globe, 9/6/92).	"I have had several of my friends in influential positions trying to pull strings on Bill's behalf. . . ." (Cliff Jackson letter of 7/11/69, quoted in Los Angeles Times, 4/5/92).	Cliff Jackson: "I aided Bill Clinton in implementing a plan, concocted by him to avoid the draft notice issued to him . . . was the critical cog in the scheme." (AP 9/7/92). "Jackson said he asked aides to Arkansas' Republican governor, Winthrop Rockefeller, to help Clinton avoid a second draft notice, which Jackson said gave him a July 28 induction date. Jackson said others sought assistance from the staff of Democratic Sen. J. William Fulbright, for whom Clinton had worked on Capitol Hill." (Boston Globe, 9/6/92).	
		Senator Fulbright: "Clinton was emphatic when asked if he'd ever written a letter asking Fulbright or his staff for help to avoid the draft. 'I am positive I never did that,' he said, 'I am positive I never asked anyone for that. No. Never, never.'" (Spectrum Weekly, 12/4–10/92). "'I didn't do that. . . .'" (Clinton quoted by Washington Post, 1/18/92).	Memo on Senate stationery by Lee Williams, an aide to Senator Fulbright, listing Clinton's telephone number, indicating Clinton "must have first year ROTC (deferment)," and stating "(Colonel Eugene) Holmes to call me Wed. (July) 16th (1969)" (New York Post, Mar. 6, 1992).	Randall Woods recalled a letter from Clinton to Lee Williams of Senator Fulbright's staff "attempt(ing) . . . to see if he could find a government job that might protect him from the draft." (Spectrum Weekly, 12/9–10/92). Randall P. Woods: "I did run across . . . correspondence between Clinton and one of Fulbright's aides. It dated from the summer of 1969. Clinton, in his letter, restated his opposition to the Vietnam War and then went on to ask for help in finding a job on 'the Hill' upon his return from Oxford that fall. (A report that the letter was 'lost' was) a euphemism for my not being willing to give it to (reporters)." (Washington Post, 2/16/92). "Among those approached for help by Raymond Clinton while the Navy reserve request was pending, according to (Henry M. Britt, Raymond Clinton's attorney), was (Sen.) Fulbright." (Los Angeles Times, 9/2/92). "(Robert Corrado, the only surviving member of the Hot Springs draft board) also complained that he was called by an aide to then-Sen. Fulbright urging him and his fellow board members to 'give every consideration to keep Clinton out of the draft so he could attend Oxford." (Los Angeles Times, 9/2/92).	

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That summer I agreed to join an ROTC program and attend the University of Arkansas School of Law.	"Clinton said the agreement [with ROTC] was never sent to Washington and he was not deferred." (The Arkansas Gazette, 10/28/78). "[Clinton] says that, because of his willingness to be drafted, he never enjoyed a ROTC deferment." (Pine Bluff Commercial, 10/29/78). "Clinton . . . said later that the accusation was baseless because he never received a draft deferment." (Arkansas Gazette, 10/28/78). "Clinton said that during his postgraduate studies, he did have a modified or reduced student deferment that meant 'you didn't have a deferment, but if you were called, you got to complete the term you were in.'" (Arkansas Gazette 8/25/88). "[Clinton] also explained that his Rhodes Scholarship in 1969 exempted him for a time from serving in Vietnam." (Pine Bluff Commercial, 10/7/91).	"Mr. Clinton says he decided to go, in his words, 'look around' for another option . . . He took the Air Force officer's exam, but failed because of a vision defect. He also took the naval officer's test, but failed because of a hearing problem." (Wall Street Journal, 2/6/92). "Returning home in the summer of 1969, Clinton said, 'I took an Air Force officer's test, which I couldn't pass because I don't have fusion vision. . . . Clinton said that he took a Navy physical, 'and my hearing wasn't good enough. After that, Clinton said he decided to sign up for Army ROTC." (National Journal, 1/1/92). Clinton: "I've told you the only military options that I considered or was offered was the one I had reported to you." (Los Angeles Times, 9/2/92). "The only military option I was offered and considered was the ROTC." (Clinton statement quoted by AP, 9/4/92). Clinton: "I entered the ROTC." (NBC, "Brokaw Report: 58 Days" 9/6/92).	"[Bill Clinton] is feverishly trying to find a way to avoid entering the Army as a drafted private." (Cliff Jackson letter dated July 11, 1969, quoted in Los Angeles Times, 4/5/92). "ROTC was the one way left in which I could possibly, but not positively, avoid both Vietnam and resistance." (Clinton letter to Holmes, 12/3/69). "[A]fter we had made our agreement [regarding the ROTC program] and you had sent my 1–A deferment letter to my draft board. . . ." (Clinton letter to Holmes, 12/3/69).	Virginia Kelly (Clinton's mother): "'That's very strange. . . . I was under the impression when he came home from Oxford that he was going to go to Yale.'" (Wall Street Journal, 2/6/92). "A spokesman for the Selective Service System in Washington said last week [that Clinton] received a deferment later in the year through the ROTC program at the University of Arkansas law school." (Los Angeles Times, 4/5/92). "[R]ecords show [Clinton's deferment] was granted Aug. 7, 1969. The deferment put him out of the reach of the draft during the following two months, when officials say his age would have made him a likely subject to be called for military service." (Los Angeles Times, 4/5/92).	
		Discussion with Col. Jones:	"[T]here is a law prohibiting a draftee from enlisting in [the Army Reserve or the National Guard]." (Cliff Jackson letter dated 7/11/69, quoted in Los Angeles Times, 4/5/92).	"Retired Army Lt. Col. Clinton Jones, a former Arkansas ROTC official, said the Arkansas Governor 'did not tell us' that he already had received a draft induction when he applied to join the ROTC." (New York Post 4/6/92). "Had Clinton disclosed the fact that he had already received a draft notice, Jones said, he would have urged rejection of his application for ROTC at the University of Arkansas Law School, Jones said he first learned about Clinton's induction letter, while watching television Sunday morning." (Los Angeles Times, Orange County edition, 4/6/92).	
		"Stephanopoulous said Clinton told him he had never interviewed with [Lt. Col. Clinton] Jones" (Los Angeles Times, Orange County edition, 4/6/92).		Retired Army Lt. Col. Clinton Jones: "If Bill Clinton said he did not talk to me, that's a flat lie. . . ." (Los Angeles Times, Orange County edition, 4/6/92).	
But a few weeks later I changed my mind and decided I should take my chances by submitting myself to the draft.			Representations to Col. Holmes: "[Bill Clinton] is feverishly trying to find a way to avoid entering the Army as a drafted private." (Cliff Jackson letter dated July 11, 1969, quoted in Los Angeles Times, 4/5/92). "Going on with my education . . . played no part in my decision to join ROTC." (Clinton letter to Holmes, 12/3/69). "I began to think I had deceived you . . . by failing to tell you all the things I'm writing now." (Clinton letter to Holmes, 12/3/69). May 13, 1969: Nixon proposes draft lottery bill in which only 19 year olds would be eligible; Clinton was 22. (New York Times, 5/14/69). August 7, 1969: Clinton receives ROTC deferment. September 19, 1969: Nixon suspends the draft for November and December 1969, and says if Congress does not pass lottery quickly he will implement by Executive Order. (New York Times, 9/20/69). October 1, 1969: Nixon declares that graduate students can complete their year in progress. (New York Times, 10/2/69). October 30, 1969: Clinton reclassified 1-A. (Los Angeles Times, 9/2/92). November 1–December 31, 1969: No new draft calls. November 26, 1969: Congress passes lottery bill. (Wall Street Journal, 2/6/92). December 1, 1969: First draft lottery: Clinton draws 311. December 2, 1969: Clinton applies to Yale Law School for fall 1970 term. December 3, 1969: Clinton writes to Col. Holmes.	Col. Holmes: "'I thought he was going to finish a month or two in England and then come back to the University of Arkansas . . . I couldn't have done it [the 1-D deferment] for a year. That wouldn't have been ethical . . . Bill Clinton was able to manipulate things so that he didn't have to go in.'" (Wall Street Journal, 2/6/92).	
		Termination of deferment:			

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	A relative of Clinton's talked to Holmes [shortly after he obtained the ROTC deferment] and was told the agreement would be cancelled, Clinton said." (Arkansas Gazette, 10/28/78). "Before January [1970], though he wrote a letter telling the Army ROTC program that he would rather remain subject to the draft, Clinton said, but adding that he would honor the contract if the ROTC wanted him to." (Pine Bluff Commercial, 10/29/78). Clinton: "[I was] prepared to leave" Oxford if called. (Arkansas Gazette, 8/25/88).	Clinton: "I gave back an ROTC student deferment and placed myself in the draft." (Statement, 2/12/92). Clinton: "I gave up my deferment before the lottery came in." (Nightline, 2/12/92). Clinton: "I gave up the deferment." (Nightline, 2/12/92). Clinton: "I had lost my draft deferment several weeks before [Dec. 3, 1969]." (Nightline, 2/12/92). Clinton: "[M]y deferment was withdrawn in October, I was put back in the draft pool." (Nightline, 2/12/92). Clinton: "I gave up a deferment and put myself back into the draft." (Nightline, 2/12/92). Clinton: "I decided to put myself back in the draft." (NBC, "Brokaw Report: 58 Days" 9/6/92). Clinton: "[I]n late September or early October, sometime about that time—I think it was September—I had talked to my stepfather, asked him to talk to the draft board and to Colonel Holmes, asked that I be put back into the draft." (Nightline, 2/12/92). Clinton: "I asked to be put back into the draft because I did not think I should have a four-year deferment." (ABC This Week with David Brinkley, 2/26/92).	"I decided to accept the draft in spite of my beliefs for one reason: to maintain my political visibility." (Clinton letter to Holmes, 12/3/69). Finally, on September 12, [1969] I stayed up all night writing a letter to the Chairman of my draft board . . . stating that I couldn't do the ROTC after all and would he please draft me as soon as possible. I never mailed the letter. . . ." (Clinton letter to Holmes, 12/3/69).	"[Retired Army Lt. Col. Clinton Jones, a former Arkansas ROTC official] said that Clinton didn't withdraw from the ROTC until Dec. 3—two days after he got a 'safe' number of 311 in the lottery, which was held Dec. 1. . . . Clinton was protected from the draft until his official Dec. 3 withdrawal from the ROTC—even though his draft board had re-classified him 1–A in October, Jones told the Post. 'We could have stopped any drafting of him up until we released him [from ROTC] after the Dec. 3 letter," Jones said." (New York Post, 4/6/92).	"It is not clear, however, whether [the deferment lapse] occurred at Clinton's urging or whether his failure to enroll at the University of Arkansas automatically cancelled his 1–D deferment." (Los Angeles Times 9/2/92).
Not long after that the lottery was initiated. My number came up, 311.	"Clinton said he decided to back out of the ROTC arrangement before he knew the Selective Service System was to be changed dramatically in Dec. 1969, with implementation of the draft lottery." (Weekly Spectrum, 12/4—10/91). "Clinton said that he then [after the lottery] checked with his draft board, which told him, 'stay one more term, then come home. We'll see you in May.' But by that time, President Nixon was deescalating the war. Clinton's number was never called." (National Journal, 1/18/92).	"[Koppel]: You initially told reporters that you weren't aware that you had a high number in the lottery [on December 3, 1992]. Then later you told my colleague, Jim Wooten, that you probably did know. Which was it?" [Clinton]: "I honestly don't remember . . ." (Nightline, 2/12/92). Clinton: "I had lost my draft deferment several weeks before." (Nightline, 2/12/92). "[Clinton's] escape from service, he added, 'was a fluke'," (Washington Post, 1/18/92).	September/October 1969: Nixon announces that Draft would be suspended for November and December 1969, and that graduate students would be allowed to complete current year (New York Times, 9/20/69 & 10/2/69).		
If my number had been three or if that high number had been called, I would have served and would have gone to Vietnam if I had been so ordered.			Opal Ellis: "'He was trying to get into everything rather than have me send him [a letter] of induction. . . . 'He just thought he was too good to go.'" (Washington Post, 4/6/92). Dec. 1, 1969: Draft Lottery. Dec. 2, 1969: Clinton applies to Yale Law School for Fall 1970 term. Dec. 3, 1969: Clinton writes to Col. Holmes of Hot Springs, Ark. Draft Board. "I . . . would have been at Arkansas Law School because there is nothing else I can do." (Clinton letter to Holmes, 12/3/92).		
But I have to tell you the truth.		Clinton: "I think this letter [to Col. Holmes] clearly proves . . . that what I have been saying all along is true." (Clinton Statement, 2/12/92). Clinton: "[The letter to Col. Holmes] is consistent with everything I've been saying for the past 13 years, since I was first asked about this in late 1978." (Nightline, 2/12/92). Clinton: "I have never intentionally misled anybody about this." (Washington Post, 4/6/92). Clinton: "I tried to disclose it as fully as I could." (New York Post, 4/6/92). Clinton: "I've told you the only military options that I considered or was offered was the one I had reported to you." (Los Angeles Times, 9/2/92).			

Speech by Gov. Bill Clinton to American Legion, August 25, 1992	Statements before 1992	Clinton statements in 1992 campaign	Contemporaneous documentation	Recollection of witnesses	Unanswered questions
		Clinton: "I have told the truth about my draft status." (Los Angeles Times, 9/2/92). "I think he [Clinton] has been very forthright." (Betsey Wright, quoted by AP, 9/2/92). Clinton: "I have spoken the truth about my draft status." (Wall Street Journal 9/3/92). Clinton: "The truth is that I have told the same story all along." (NBC, "Brokaw Report: 58 Days" 9/6/92).			
I was relieved that year when I saw that my number was 311, not because I didn't want to serve my country, but because I believed so strongly that our policy in Vietnam was wrong. But I know many of you then and many of you today disagree with me, and I respect that. If any of you here choose to vote against me because of what happened 23 years ago, that is your right as an American citizen and I respect it.	"Clinton said that he never was opposed to the draft." (The Arkansas Democrat, 6/8/82).		"From my work [at Georgetown] I came to believe that the draft system itself is illegitimate." (Clinton letter to Holmes, 12/3/79). ". . . my opposition to the draft and the war . . ." (Clinton letter to Holmes, 12/3/69).	Clinton: "I was not seeking to avoid military service by this." (Wichita Eagle, 2/7/92). "I've always been interested in and supportive of the military." [Clinton] said; "You know, in some ways I wish I'd been part of it." (Washington Post, 1/18/92).	

Note.—"I have nothing further to say." (Bill Clinton, quoted in Washington Post 9/3/92.) "You've got to get them to stop." (Bill Clinton to press aide, USA Today 9/4/92.)

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

Mr. WIRTH. Mr. President, I ask unanimous consent to be recognized for 7 minutes.

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

DIVERSION

Mr. WIRTH. Mr. President, here we go again. We are in the midst of a process of enormous diversion from a party that is deeply threatened, from an administration that is about to lose and cannot talk positively about the future of the country.

We have just had but another example though, Mr. President from this administration. The Senate came into session this morning at 9 o'clock. It has been 5 hours, 5½ hours, and here we go again. This is a major diversion, a major diversion, Mr. President.

Governor Clinton has spoken over and over and over again about his position, what happened, all the events made absolutely clear, and Republicans keep bringing it up again and again and again, a diversion from what the country ought to be talking about.

We have just been through one of the greatest natural disasters, if not the greatest natural disaster in the history of the country, badly handled, mauled in fact by the enormous incompetence of this administration, from FEMA. This agency, for example, Mr. President, this agency that has one political appointee for every 300 employees, it is a bastion of lousy politics compared to the normal ratio of more than 10 times that growth of political appointees anywhere in the Government. All these people presumably are taking care of what is going on in Florida.

In Los Angeles we continue to read of frustration after frustration after frustration, of an administration that cannot respond to what went on in one of the worst disasters we had in inner-city America, which is going to happen again because of neglect and the fact the people are diverted entirely from the job that ought to be done.

There are 107,000 jobs lost in the automobile industry, and the distinguished occupant of the Chair is aware of that. It is in his neck of the woods as well. And the administration hides behind CAFE as if trying to increase the efficiency of automobiles is a way to hide behind their disastrous policy related to industries in the United States. They cannot divert their ear. Diversion, diversion, diversion.

We read in the last week of white-collar crime, white-collar jobs being lost. It is a crime. It is lost employment. We know unemployment declined ever so slightly. That is only because of a bump-up in temporary summer employment. Unemployment lines in the country continue to snake across the landscape and now it is hitting into those groups of people that never thought it would happen to them either, white-collar individuals, people who played it by all the rules; went on to college, did all the right things, took out a loan and they are unemployed as well.

These people are diverting us away from attention to what is going on truthfully in our society. All of this from an administration, Mr. President, that has no policy; it has no answer; it has no approach for the American people. And as our good colleague, Senator GORE, said, it truly is time for them to go.

All of this from a President, a President who, in fact, seems to me has absolutely lost his own soul in the desire, the craving desire to get reelected only, who I cannot believe grew up in an environment that sanctioned the kind of vicious rhetoric that we saw, the diversionary rhetoric that we saw in Houston. I cannot believe that came out of George Bush as he originally was, hardly at all, a George Bush who sacrificed all of that kind of upbringing for the express purpose of getting elected and toadying to what we heard in Houston, who said he was the environmental President and probably, initially, had very good instincts. But then, in fact, he turned around and diverted his own direction entirely to take care of a few interest groups that were crawling. He is one who we heeded on the choice issue, who was once, you know, with the mainstream of America, but sacrificed that as well to his craven desire only to get elected.

Mr. President, we are going to get into these things on the floor. We can get into these things on the floor. We can listen to this continual diversionary tactic that is going to come up again and again. Attack, attack, attack.

I am reminded of what is going to happen as we go down the line and watch what the people are doing. Are we going to have a war, you know, like in medieval days with crossbows, pikes, and lances? And as the sides get closer and closer, they use what weapons they have out there; large catapults and buckets filled with this kind of mud, and throw over there. It is complete diversion.

Let us get back and talk about the issues that the American people want to talk about, ought to be talking about, and that Bill Clinton and AL GORE have been talking about. Those are the long-term future of the country, where we are going, what kind of opportunity we are giving our children, how do we make sure that festering of Los Angeles does not continue to occur? How do we give those kids hope? How do we give those people who played by the rules year after year after year some kind of hope while they are standing in those unemployment lines, people who have a feeling, in fact, of a new world order that is now going to be defined in a different way, not by this kind of old thing?

Mr. President, it is appropriate that we go on here in the Senate and get on to the very serious business we are

fashioning. We have an enormous amount of work to do during the next 5 weeks. I would hope we can avoid this kind of diversion and get on to the real work the Senate has to do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

LET US GET THE RECORD STRAIGHT

Mr. DOLE. Mr. President, I think I have about 3 minutes left.

First, I have no quarrel with the Senator from Colorado. In fact, I tried to make it clear I am putting in the RECORD quotes from Mr. Clinton—nothing that I have said. I notice Mr. Clinton, himself, yesterday was still talking about Iran-Contra. We spent about $33 million of taxpayers' money on that. But that is not diversionary, that is statesmanship, I assume, when that is raised by anybody on the other side.

So I would just say this is more out of sorrow, certainly not anger. Let us get the record straight. Let us release all these records, every shred of evidence. Let us get it out there so the American people can make a judgment. It is not going to go away.

We can talk about all these big problems, but now it is a problem of trust and confidence and credibility of who is going to be the Commander in Chief, who is going to be the President of the United States. And that is pretty important to the American people too, very important to the American people.

It is not a question of whether you were in the service or not in the service. That is over the dam. The question now is whether you are telling the truth. Not everybody could serve. There were a lot of people in the National Guard and Reserves, but they did it with credibility.

So I just think it is time now for Mr. Clinton to come forward. And I think if anybody reads the information I am putting in the RECORD—the statements that he has made time after time after time after time after time; statements, corrections; statements, corrections; statements, corrections—then I think if the Senator from Colorado has time to read through this, I think he will agree to put it out there. The American people are fair. They will make a judgment. But, first, they have to see the evidence.

Mr. President, I yield the floor and yield back the remainder of my time.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

MAKE THE RECORDS PUBLIC

Mr. PRESSLER. Mr. President, I would like to say I do not hold it against anyone for what they did during the Vietnam war. Each individual case is different and I would not want to cast aspersions on anyone. But I do think that if someone is running for the Presidency of the United States, we must make the record complete.

I know that this matter has been raised regarding the Democratic Presidential nominee. I do not condemn him on these grounds because I do not have all the facts. But I do agree with the Republican leader that all the facts should be laid out.

I was a Rhodes scholar at Oxford University at that time. I did not agree with the war in all aspects. Nevertheless, I had to leave Oxford early due to draft-related uncertainty. Subsequently, I served as a lieutenant in the U.S. Army in Vietnam. In fact, I ended up serving two tours of duty. I have never expected any special recognition for this. Oddly enough, in my first campaign for Congress, someone was critical of me for allegedly not having completed my course of study at Oxford, which I subsequently did complete. In fact, in that first campaign the warden of Rhodes House, Sir Edgar Williams, wrote a fine letter to the editor that was published in my State that said I indeed had left Oxford for draft-related uncertainties, that I had subsequently completed my course and that I was a Rhodes scholar in good standing. At the time I thought it was somewhat odd for being criticized for serving my country or at least responding to that call, but it all came out in a very positive way after the warden of Rhodes House got a letter to the editor published.

The point of telling my story is that a lot of young people struggled hard in deciding how to deal with the draft. At that point in American history, the draft law was so bad that if one had the ability to go on to graduate school, they could avoid serving in the U.S. military. Because the draft at that time had so many loopholes in it, there were so many avenues to do something else, the person who was a Rhodes scholar at Oxford could usually figure out some alternative if he so wished.

Let me say I have never condemned anyone who chose other alternatives. But I do think it is very important that we all be very honest now about the way we conducted ourselves at that time. If someone went to Canada to avoid the draft, that was up to them. I do not condemn them, but I would want them to say so honestly now.

It is very important that all of us be honest about the record and lay that record out for people who would like to know about it. Those were difficult times. Some people generally disagreed with some aspects of the war, as I did, and went ahead and served anyway. Others disagreed with the war and just did not want to serve. But that does not make any difference now—that was a person's own decision. I just think that they should honestly say what they did. The truth is that every time someone from the elite class or someone who could go on to graduate school was able to avoid going to Vietnam, while a person of lesser ability or lesser wealth had to go in their place.

Let me conclude by saying I am not condemning anyone in this speech, but I do think we should be very honest about our decisions at that time, especially if we are running for high public office. I join in the request of the leader that all the relevant records that could possibly be found be made public.

Mr. President, I ask unanimous consent to insert into the RECORD at this point a letter that was published in the Watertown, SD, Public Opinion in November 1974 from the warden of Rhodes House, Sir Edgar Williams.

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

DEAR MR. PRESSLER. This is a copy of my letter to you of 25th October. Yes, I remember your arrival as the Rhodes Scholar from South Dakota in October, 1964. It was decided, I recall, that you should begin here on a course which could be completed in a year because of the uncertainties in those days of how long American Rhodes Scholars would be able to stay in Oxford because of the draft.

Accordingly, you completed the diploma in public and social administration in the following spring from Stedmund Hall and while waiting for call-up, began at Harvard. Then came two years in the Army before you got back to Harvard in 1968.

I remember you well as a Rhodes Scholar in good standing and it is good to hear from you again.

Sir EDGAR WILLIAMS,
Rhodes Trust Oxford.

Mr. FORD addressed the Chair.

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

Mr. FORD. Mr. President, may I proceed for 1 minute as if in morning business.

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

LET US COME CLEAN

Mr. FORD. Mr. President, we hear a lot about coming clean. The things that I find in campaigning in my State is the economy—taxes, those sorts of things. We hear our President running around the country saying he is going to cut the taxes by 10 percent, going to cut the budget by 10 percent, but "don't bother with me now telling you what I am going to do. When I get in office, I will tell you what I am going to cut and who I am going to cut."

You talk about coming clean. Let us come clean about taxes. Let us not worry about these other things. Let us talk about the future and the economy and the employment and the well-being of the American people. If you are going to cut the budgets, going to cut taxes, who is going to get the benefit and who is going to be hurt? Let us come clean with that.

Mr. MACK addressed the Chair.

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

Mr. MACK. I ask unanimous consent to address the Senate as if in morning business for not to exceed 5 minutes.

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

HURRICANE ANDREW

Mr. MACK. Mr. President, I rise this afternoon to make some comments to my colleagues, both on the floor and those who might be listening or watching in their offices, with respect to Hurricane Andrew and its impact upon south Florida and what we in the Congress will be doing to relieve the incredible pressure that has been placed on the people of south Florida as a result of that storm.

This morning the President submitted to the Congress an emergency supplemental appropriations bill which would allocate approximately $7.6 billion in budgetary resources to aid in that relief.

I would ask my colleagues, especially in light of the discussions that have already taken place this afternoon, that we move quickly on this legislation because it is important to the people who are going through experiences that you and I in our wildest imaginations cannot possibly imagine. It is important that we move rapidly, and it is important that we move without political partisanship.

If there was one image I would want to relay to my colleagues about my experiences of the past 2 weeks, it would be that the human spirit of survival to overcome adversity is the overriding image that I have of the people of Dade County.

Regardless of the people with whom I spoke, regardless of their economic well-being, regardless of where they lived in that area, from south of Miami to the northern Keys, the desire to overcome adversity was paramount.

I remember talking to a family at a public housing community in Goulds, FL, where the mother, with her 7-month-old daughter and three other children under the age of 6, huddled together for protection for 5 hours in a closet, a closet no bigger than 3 by 3. The roof had been ripped off by the hurricane, the walls had come down, the rain was pouring in, and the wind was whistling through their home. The only walls that protected them shook and shuddered. They did not know from one second to the next whether that little closet was going to survive, let alone themselves. But they did survive. They are heroes.

I also remember talking to the commander of Homestead Air Force Base, Col. Steve Plummer, an F-16 pilot, who served in the Persian Gulf, and was fired at by missiles. He said that in the few hours, during the worst of Hurricane Andrew, he had never experienced the fear for his life as he did during those hours.

There are lots of heroes, individuals from all over the country.

And, I might say to my good friend from South Carolina, one of the first groups of people that we heard from were the people that survived Hurricane Hugo who came down to Florida to give us assistance. The next day they were on the ground helping in every way.

And it is an example, and only one of many, many stories, of people all over this great Nation who, in one way or another, found a way to provide help and comfort to the people of south Florida. And the people of south Florida will remember that for years and years to come.

And I say I thank you, and I thank those in your State who were so willing to come down and provide assistance to us.

Mr. HOLLINGS. Will the Senator yield on my time? I ask unanimous consent for 2 minutes.

Mr. MACK. I am delighted to yield.

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

Mr. HOLLINGS. Mr. President, I say to the distinguished Senator from Florida, I appreciate the kind expression of gratitude. You had the Charleston City policemen making arrests at Homestead for looting, reinforcing the 95 percent of the police officers of Homestead who had lost their homes.

Our team in Florida got in touch with me because they said FEMA was doing the same thing that they had done in Hugo—doing surveys, calling for studies, going back and forth trying to get private contractors.

On the basis of these reports, I called to enlist the military because, 3 years ago, after Hugo, over the FEMA objection, we called in the Marines, the Coast Guard, the Corps of Engineers, and so on. After Andrew, I got on the phone to Major General Heldstab who was located at Fort Bragg with the 18th Airborne and ready to come down in an hour's time, midday Tuesday, right after the hurricane.

I then got in touch with the Governor's office and talked with Senator GRAHAM. And by dark, since nothing had moved, I talked to Jim Baker at the White House. And I said Jim, you have the same problem that we had in Hugo. And we worked it out. Let us get past FEMA and get help down there. They need water, food, shelter, generators, the whole gamut. And the military is eager, ready, willing, and able to do it. So they finally galvanized when they sent Andy Card, Secretary of Transportation. He worked with officials in Florida and they got past FEMA and I am delighted they got the help.

I also admonished Mr. Baker and said, wait a minute, do not give them this 75-25 ratio of Federal to State responsibility for the reconstruction costs. When you give them 25 percent to be paid locally, the mayors freeze in their tracks. They say, "Wait a minute. All this help coming in, tent sites, food, everything else; but later next year when I have to pick up 25 percent of the cost I will have to raise taxes and will be out of business."

Three years ago, after Hugo, we stood on the floor of this Senate, and with the help of Senators on both sides of the aisle, including Senator SIMPSON and others on the Republican side, day 9, day 10, day 11—it was day 15, 2 weeks before we got that 100-percent Federal reimbursement declaration. So I am glad we got it, at least in a week's time, down there in Florida and Louisiana. So we could get past that because that is what the statute calls for. And, anyway, we South Carolinians continue to help—we cannot ever thank the people of Florida enough for their assistance 3 years ago.

Mr. MACK. I appreciate the Senator's assistance in all those different matters he mentioned. It made a difference, not only getting the military assistance but also in helping to get the 100-percent participation at the Federal level.

Let me just conclude my remarks, Mr. President, by just expressing one additional story.

I remember a Black Hawk helicopter—this was probably day 3 or day 4 following the hurricane—heading down toward Homestead, south of Miami, with netting below it holding supplies. When it landed in Homestead, it was charged from all directions by people who had not eaten, who did not have water to drink. The National Guard had to hold those people back with guns held high in order for them to set up a distribution system for that food and that water.

Never would I have dreamed that would have happened in our country. But, again, I thank God that the people of this Nation are willing to outpour their help to provide their fellow man with those basic needs of food and shelter and medical supplies.

This country should be proud of what it has done so far to help the people of south Florida. Again, I ask my colleagues as we work through these next weeks to keep in mind the importance of getting assistance down to south Florida as rapidly as possible. We literally have 250,000 people who have lost their homes; 90,000 homes that have been destroyed. It is going to take a great effort to rebuild south Florida. And your help, your concern, and your compassion will be needed by the families who were left devastated by Hurricane Andrew.

PRODUCT LIABILITY FAIRNESS ACT

MOTION TO PROCEED

The Senate continued with the consideration of the motion to proceed.

Mr. HOLLINGS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The motion to proceed to S. 640 is the pending business.

Mr. HOLLINGS. There is a time agreement, I believe, with the distinguished Senator from West Virginia controlling lead time and I to control the opposition to the motion; is that correct?

The PRESIDING OFFICER. There is no time agreement at this moment.

Mr. HOLLINGS. I thought it was an hour per side. Is there not an hour?

The PRESIDING OFFICER. The Senator from Wisconsin?

Mr. KASTEN. Parliamentary inquiry; I believe the agreement was the Senator from South Carolina, the chairman of the committee, would control part of the time and the Senator from Missouri [Mr. DANFORTH] would be in control of the other part of the time. I think that is the way it was originally set up and it is my understanding that I would be the designee Senator from Missouri and we obviously want the Senator from West Virginia and others to participate in this debate.

Mr. HOLLINGS. Is it 2 hours divided equally? An hour per side?

The PRESIDING OFFICER. The agreement did not provide an allocation of time.

Mr. KASTEN. At a point in time we would want to come to some kind of agreement like that. I think that would work.

I see the Senator from West Virginia is here. I would like to speak for maybe 5 or 10 minutes. Would the Senator like to speak for 5 or 10 minutes first? And then I could? If not, I will proceed.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, today we arrive at what we hope is the end of the long road toward product liability reform. The case for reform is clear—and the problem would be effectively addressed by the bill I and the several cosponsors are advocating today.

Today's product liability system hurts U.S. competitiveness. It hurts consumers. It inhibits job creation. It is a severe drain on the U.S. economy, costing anywhere from $120 to $300 billion a year.

All of this ground has been covered again—and again—and again, in our 12-year odyssey toward product liability reform. But so far, we have not been able to change the system. The status quo continues to prevail.

And the question I think we need to address at the outset of this legislation is: Why? Why do we continue to let the status quo prevail?

Product liability reform is essential to the U.S. economy. The advocates of reform have spent hundreds of hours over the last decade laying out our case in detail. But we have not been successful.

So the question to ask about the status quo is: Who benefits? Let us identify the forces that are resistant to change—the people who are blocking—the forces that are preventing this necessary reform in the face of the clearly established National interest.

In every product liability lawsuit, there are winners and losers. Sometimes the plaintiff, sometimes the defendant. But there is one class of individuals who gain every time a claim is filed, every time a judge has to address a case. Every time an award is made one group wins.

That group is the trial lawyers of America. They are the single class that benefits from today's product liability system. Win or lose, they still win. And if the clear and compelling public interest threatens to deprive them of this massive cash cow, they will do everything in their power to prevent the necessary change.

The trial lawyers—who have become the financial backbone of the organized consumer groups—are treating America to a festival of falsehoods against product liability reform. It is a carnival of lies—an impressive and colorful show that amounts to a disguise for an agenda that is seriously harmful to our national interest.

Before we let Ralph Nader and these so-called consumer groups stampede America into believing their propaganda, we ought to get the truth out about who is really behind this frantic campaign against our product liability reform bill. Robert Joost, the former chief counsel of the Senate Commerce Committee, explains it in detail. He says that in a typical $100,000 court award, $40,000 of the award goes to the injured party's lawyer. The lawyer sends on $5,000 to the national political action committee of the American Trial Lawyers Association, known as ATLA. He or she sends another $5,000 to the ATLA organization in the state. And yet another $5,000 to one of the countless Ralph Nader front groups.

And this money is not wasted. Every single dollar of it goes to support the massive effort to block product liability reform, and other tort reforms. When plaintiffs' lawyers earn $10 billion every year on personal injury suits—that is the estimate of Lester Brickman of the Cardozo School of Law—they can well afford a few dollars to protect their interests.

On our side are the small businesses of America. Represented by groups like the National Federation of Independent Business, Small Business United, the Independent Business Association of Wisconsin, the Small Business Legislative Council, millions of small businesses are clamoring for these reforms.

Product liability reform was designated the number one legislative priority by the White House Conference on Small Business, and 4 of their top 10 priorities are related to product liability reform.

It is a battle between America's small businesses—the entrepreneurs who create jobs—on one side, and 70,000 overpaid trial attorneys on the other.

Ralph Nader is wrong when he calls our bill a cruel and brutish attempt by big business to change the law in its own interest. He is creating a smoke screen to disguise the real interests at stake.

We are trying to enact a more proplaintiff statute of limitations to make it easier to get judgments in cases where they are warranted. Current law in some States allows plaintiffs to sue only in the first 2 years after the harm occurs—we want to allow them 2 years after the harm and its cause are discovered. That is only one part of the pro consumer efforts that we are in the process of making through this legislation.

The others are wrong when they say that our bill is "a go signal * * * to negligent promoters of industrial violence." The exact opposite is true.

It has been said there is no evidence about how the current product liability system raises the cost of insurance. Well, look, just stop. No evidence?

A Department of Commerce study discovered that our foreign competitors often have insurance costs 20 to 50 times lower than ours. To anybody interested in the facts instead of propaganda, that is evidence: Costs between 20 and 50 times lower than ours. No matter what our opponents say, the estimated cost of product liability suits is equal to the combined profits of America's 200 biggest corporations, and that is a lot of money.

The huge costs of product liability suits has led 15 percent of American companies to lay off workers, and 8 percent of American companies to, in fact, close plants. Again, do not expect the trial lawyers to show any sympathy for the laid-off workers on the unemployment line. When Ralph Nader visited the Soviet Union, he said the Russians liked to stand in long lines because it made them philosophical. He also has the gall to charge that our reform effort is "greased from political action committee money."

But it is his effort that is being greased by the second largest PAC in America, the ATLA PAC. In 1987–88, they disbursed $3.9 million to congressional candidates. So it is easy to understand why we have this gridlock, why we have this situation, why we have one small group of lawyers in America who are, in effect, defending the status quo.

The current system is so costly and incoherent that defendants are encouraged to avoid litigation at all costs, even when they may not be liable. And that is the reason for the huge hidden expense made evidence in a number of surveys today.

What we have going on here basically is a job boon for lawyers. In the two decades between 1970 and 1990, the number of lawyers grew by 96 percent, at a time when the total number of American jobs grew by 56 percent. Today, with 5 percent of the world's population, America is supporting 70 percent of the world's lawyers—5 per-

cent of the population; 70 percent of the world's lawyers.

We have 26 times the number of lawyers per capita that Japan has. We have 24 times the number of lawyers per capita that Germany has. And who is our major worldwide competition? Where is it coming from? Who are our major worldwide competitors? The Germans and the Japanese.

Mr. President, this explosion of litigators does not make America richer. Our national interest is being harmed as the special interest of the lawyers is being helped.

I and my fellow cosponsors of S. 640 are saying it is time to tilt the balance away from the special interest of a small group of 70,000 trial lawyers toward the public interest—the public interest of workers, the public interest of consumers, and the public interest in a productive economy in the United States.

We have been working to establish these reforms for years. We now have a truly bipartisan coalition, ranging from liberal Democrats to conservative Republicans and everyone in between. We are united in pursuit of product liability justice and fairness, and the hysterical and dishonest tone of the organized opposition makes me optimistic that we are heading toward victory.

I thank my colleagues, especially Senators ROCKEFELLER, DANFORTH, DODD, and LIEBERMAN, for helping bring this issue to this point. America needs us to vote for the reasonable and moderate reforms of the Product Liability Fairness Act. The time has come for us to pass this legislation.

Mr. President, I yield whatever time he may desire to the Senator from West Virginia, Senator ROCKEFELLER, who has been a key colleague, and has been of great help in our overall effort, a real leader on the product liability reform issue.

The PRESIDING OFFICER. The Chair recognizes Senator ROCKEFELLER.

Mr. ROCKEFELLER. I thank the Chair and I thank my colleague from Wisconsin.

Mr. President, after 13 years, the Senate finally has the opportunity to consider product liability reform legislation this week. Over the last decade, this has become a highly charged debate—on both sides. The result has been a flood of misrepresentations about the motivations of the opposing sides and, more importantly, about the contents of this bill.

I hope my colleagues will listen carefully to the debate because I think it is important to understand what this bill, S.640, the Product Liability Fairness Act, does and what it does not do—and because I am absolutely certain that this legislation is important for the economic strength of our Nation and the personal safety of the American people.

Product liability first became an issue in the mid-1970's when there was a dramatic increase in the number of product liability suits over previous years. Prior to that time, the legal rules governing when a person injured by a product could win a lawsuit were so tough that there were few lawsuits at all. A person who graduated from law school as late as 1970 would have had precious few cases to read—and no law school in the United States offered a course in product liability law.

All of that changed in the early 1970's. All of a sudden manufacturers were being held liable for products that injured people, even if the manufacturers were not negligent. The reason for this was because the doctrine of strict liability had swept the Nation. Under this doctrine, for the first time, a manufacturer of a product could be found liable even if the manufacturer had used all reasonable care. The basis for the change—and many other subsequent changes favoring victims—was a judgment that manufacturers were in a better position to absorb the loss than victims. They could pass it along to the other purchasers of their products.

The first reaction of the business community was to push for changes in State law. However, those changes can do only so much in light of the fact that 70 percent of all manufactured products are used or consumed outside the State where they were manufactured. The business community next came to Congress to try to roll back the law.

Because I opposed those proposals, I am a latecomer to the cause of uniform product liability reform. In fact, in my first year in the Senate, as a member of the Commerce Committee, in 1985, I voted against the bill in its version then because I thought it unfairly favored manufacturers.

At the same time, I recognized the legitimacy of the complaints that manufacturers, particularly small manufacturers, had and still have about our patchwork product liability system. I was and am concerned about that system's role in stifling innovation by U.S. companies. The loss of innovation means both the loss of the development of products to save U.S. lives—and it means the loss of competitiveness with other countries whose businesses develop those products American manufacturers are afraid to develop.

Moreover, as Senator DODD has argued effectively for years, the system does not even work well for victims. Its big deficiencies include the inability of many victims to recover anything for their loss; the disparity between the size of a victim's loss and his or her recovery; the length of time it takes for victims who do prevail to be compensated; and the gross inefficiency of the liability and insurance system, which pays more to lawyers and insurance companies than to victims.

Every study of people injured by products shows that a high percentage of victims go without any compensation whatsoever. The largest of such studies, a closed claims survey of 24,452 claims by the insurance services office [ISO] in 1977, showed that fully one-third of all claims were closed with no payment whatsoever.

More recently, a 1989 GAO review of 305 product liability cases resolved through trials between 1983 and 1985 in five States—Arizona, Massachusetts, Missouri, North Dakota, and South Carolina—found that plaintiffs were awarded compensatory damages in only 45 percent of the cases studied.

Second, every study of the liability system shows that it grossly overpays people with the smallest losses and miserably underpays those with the most serious losses. The ISO study found that claimants with economic losses of between $1 and $1,000 recovered, on the average, almost five times their economic losses. In striking, contrast, people with economic losses in excess of $1 million recovered a mere 6 percent of those losses. A 1986 Alliance of American Insurers and American Insurance Association study of large product liability claims found a net recovery of only 39 percent where economic losses exceeded $1 million.

While the GAO study found that the size of compensatory awards * * * is strongly associated with injury severity and the amount of the underlying economic loss, this merely means that victims recover more for more serious injuries. In short, a disabling back injury generally will result in greater compensation than a broken leg. That's comforting to verify.

This statement is not the same as saying that seriously injured people recover a higher percentage of their losses. As the next sentence in the GAO report clearly states:

> Previous studies have also shown that the total amount awarded is frequently insufficient to cover just the economic losses when these losses are large.

Third, even successful claimants must wait an unconscionably long time to recover. The ISO study found that it takes 5 years to pay the claim with the average dollar amount of loss and that larger claims tend to take much longer to close than smaller ones. Similarly, the GAO study found that it took an average of 2½ years to move from filing to trial verdicts.

Of course, in product liability cases, there are not interim payments. Victims are at the mercy of the adequacy—or inadequancy—of their own insurance to cover losses. Not only do the lengthy delays encourage seriously injured victims to accept insufficient settlements, but studies have found that delayed rehabilitation produces a lesser degree of recovery.

Fourth, the liability system is remarkably inefficient. The ISO study found that attorneys for both sides receive only slightly less than the victims, before considering insurance overhead costs. Further, a 1986 Rand

Institute for Civil Justice study showed that the annual overall transaction costs of the U.S. tort system exceed compensation to plaintiffs; in 1 year alone, while net compensation amounted to between $14 and $15 billion, the transaction costs—largely attorneys fees for both parties—added up to an even greater amount, between a total of $15 billion and $19 billion.

In essence, the system is working for the lawyers. I say it's long past time for the lawyers to work for a more effective, fairer system.

Given the gross and obvious inadequacies of the liability system in compensating victims, one would expect to see the consumer groups and the plaintiffs' attorneys—those who are supposed to look out for the welfare of the victims—clamoring for civil justice reform.

Unfortunately, such is still not the case. In May of this year, I met with Roxanne Conlin, president-elect of the Association of Trial Lawyers of America to seek common ground on this matter. In late May, I wrote to urge her to work with me and others in pursuing a compromise. I heard back in early July. In a long letter, Ms. Conlin concluded "There is no demonstration that S. 640 is needed" and expressed a concern about compromising principles.

Two weeks ago, I tried again, saying in a new letter to Ms. Conlin that I was still fervently interested in exploring "not a compromise of principles, but an agreement on changes in existing law that would make the product liability system better for all participants, plaintiffs and defendants alike."

Unfortunately, I've heard no response, and seen no sign of interest in such an effort.

Now, Mr. President, I want to discuss in more detail the criticisms of the bill that have been voiced, with a lot of passion, by consumer groups.

Obviously, if I believed that the bill would take away the ability of victims to obtain fair compensation, I wouldn't get near this bill with a 10-foot pool. But I'm here, arguing for the bill, partly because of the benefits that it will achieve for victims and for the general public interest.

First, I'm amazed that the consumer groups don't seem to be willing to even acknowledge the problems in the current product liability legal system. I've just tried to spell them out as factually and objectively as possible. A key point is that business is not the only one being hurt. The current system hurts consumers generally; and as I have detailed, it is often unfair and unresponsive to individual victims.

In a briefing book on S. 640 distributed by the main consumer groups, a list of 10 recommendations is included to deal with what they cite as "the tremendous hurdles faced by consumers who are injured by defective products and seek compensation through the civil justice system."

Their proposals include ideas I strongly support—such as the need for a national health insurance system and making Federal regulatory agencies more effective. But not a single reform of the civil justice system is on their list of 10.

Now, on the eve of the vote, consumer groups are trying to kill the bill by painting a worse-case scenarios—by imagining situations in which an injured person could end up worse off under S. 640. My response is, yes, of course, it's possible that some number of injured people will come out differently under the changes we are proposing. But it's also a guarantee that some other number of injured people will do better.

For example, this bill would establish a uniform statute of limitation for claimants, giving them 2 years to file a suit—2 years from the time they should have discovered the harm and it cause. We view this as an essential step to catch up with the modern world, now that so many people can be hurt by chemicals and not have the symptoms appear until years later.

Just this provision of S. 640 alone will put injured people in at least 20 States at a greater advantage than present law. That's because in four of those States, the clock begins to tick for victims as soon as the injury occurs. In another 16, the statute of limitations runs out for injured people before he or she can determine what caused their disease. We're saying that is unfair to victims, and that it's time to establish a uniform standard that enables people, no matter where they live, to be compensated once they know they've been harmed and know the cause of their illness.

I would think consumer groups would lead the fight for this provision of S. 640. Another point I want to make about the use of these worst-case scenarios is the way it totally distorts the debate we should be having. I wonder how the consumer groups would feel if that were the way we were to debate reform of our health care system.

With health care, here is another example where the current system is broken, and changes are desperately needed. I admire and respect the country's consumer groups for plunging neck deep into this issue, and pushing hard for major changes. They generally favor the so-called singlepayer system, modeled after Canada's approach. Obviously, the proponents of this approach can spell out the many benefits and positive changes that will be achieved for the American people—universal coverage, prenatal care for more pregnant women and less infant mortality, cost savings, and so on. But let's face it, some people will come out worse.

The consumers who now get their health care for free from their employers who will have to pay higher taxes for a national system of health care. The consumers who now have generous private health insurance policies can easily be admitted right away to the hospital for nonessential surgery. Under a Canada-like system, they might have to wait months for that surgery. I could go on, painting hypothetical cases in which individual people will have to make some concession or may lose something for the sake of the overall good being proposed by the consumer groups.

In other words, the consumer groups have made a judgment that the overall benefits of singlepayer system to consumers as a whole far outweigh and justify what some consumer might lose.

That's exactly how I believe we should look at the current product liability system, and the changes we are proposing. We are arguing that the bill will reduce legal costs, remove some of the barriers to innovation and the production of safer products, increase the incentives for safety in the workplace; and enable more victims to get fair settlements, and get them faster.

There are two other areas of the bill that are specifically designed to improve the system for victims—those encouraging expedited settlements and the use of State alternative dispute resolution mechanisms. These provisions were not designed for manufacturers. Let me assure my colleagues, business wouldn't lose sleep if these provisions were stricken from the bill. These provisions were put in the bill to help shorten the scandalously long time it takes victims to recover, particularly in serious injury cases. Moreover, if they work to truly shorten the settlement process, they will reduce defendants' attorneys' fees, which should enable manufacturers to make more generous offers to victims—strictly on a cost-benefit basis.

In this area, I really find the arguments in opposition to be disingenuous at best. Let me first explain the provisions and then describe the consumer groups' reaction.

Title II of S. 640 seeks to encourage settlements in product liability cases before the full force—and cost—of the liability system are brought to bear.

It contains two provisions designed to short-circuit the legal system. First, it includes an expedited product liability settlement system, building on existing law—rule 68 of the Federal Rules of Civil Procedure. The goal of both the existing system for cases tried in Federal courts, and the goal of the provision in S. 640 is to settle cases as early and as fairly as possible, before either side has run up substantial legal fees. A successful expedited settlement process will mean faster payments for injured people—giving them money when they need it the most—and reduced transaction costs.

Under this system, either a claimant or a defendant may make an offer of settlement for a specific dollar amount. If the claimant makes an offer

and the defendant turns it down, a subsequent jury award of an amount equal to or greater than the claimant's offer would subject the defendant to a penalty of paying—in addition to the amount of the verdict—an amount equal to the claimant's reasonable attorney's fees.

What happens if the defendant makes an offer but the plaintiff turns it down? The result is similar, but with one dramatic difference. In such a situation, if the plaintiff subsequently recovers an amount equal to or less than the amount offered by the defendant, the plaintiff is liable for a penalty equal to court costs and the defendant's reasonable attorney's fees.

However, and this is a critical point, the plaintiff's penalty may not exceed the amount the plaintiff has received or will receive from collateral sources.

Now, I'm not an attorney. When I first read this provision, I thought it meant that the plaintiff could be liable for GM's attorney's fees, subject only to a limitation of reasonableness. However, that's wrong. Frankly, it would be clearer if the provision never mentioned attorney's fees because the penalty really has nothing to do with them. The penalty is simply the plaintiff's collateral sources that pay for the same injury. For most Americans, this means their health insurance.

I think I can clear up any confusion by using an example. Let's say a person suffers a broken leg in an auto accident when a tire blows out and the car hits a tree. The person is charged $5,000 by the hospital and doctors to set the leg. In addition, the person cannot perform his job for 2 weeks, costing him another $5,000.

However, the person has Blue Cross health insurance which pays for $3,000 of the $5,000 medical bill.

Now the injured person sues Goodyear, the tire manufacturer, alleging that the accident was caused by a defective tire. The person seeks a recovery of $40,000, alleging—in addition to $10,000 of economic loss—an additional $30,000 for pain and suffering.

The manufacturer, using the expedited settlement process, offers to settle the case for $30,000. The injured person turns down the settlement offer and proceeds to trial. Then let's say, in the court case, the injured person recovers $25,000—less than Goodyear's offer. The injured person gets to keep the $25,000 verdict but it has to pay a penalty for failing to accept an offer that had been greater than the recovery he won in court.

The penalty is not Goodyear's attorney's fees, which could easily be another $20,000. Instead, the person has to forfeit the $3,000 he received from Blue Cross; an amount that duplicates part of the award from the court.

Thus, a victim's penalty for recovering equal to or less than an offer is to lose the benefit of double payment for the same injury that otherwise would arise because a damages award duplicates what the plaintiff has already recovered from his or her own insurance.

A poor person—a plaintiff with no private insurance—would face no penalty whatsoever if the court awarded less than the defendant offered.

Similarly, if the plaintiff loses the case, it does not have to pay any portion of the defendant's attorney's fees.

In sum, a plaintiff has no downside unless he or she turns down an offer that is higher than the actual amount awarded by the court and, even then, the penalty is simply to eliminate double recovery for his or her losses.

This result is quite different than the result when a manufacturer turns down a plaintiff's offer. There, the manufacturer may be liable for all of the plaintiff's attorney's fees, with no cap whatsoever—other than a limit of a reasonable fee.

As I indicated earlier, this provision is based on existing law for cases in the Federal courts. But keep in mind, existing law has a penalty of only court costs, which are minimal. Unfortunately, that penalty has not turned out to be a sufficient incentive for the parties to settle many cases that should be settled and stay out of the courts—and should be settled early.

Therefore, this provision attempts to fine tune a good idea by increasing the incentive for settlement. The heavier penalty in this bill—the reasonable attorney's fees for a losing defendant—reflect a change recommended by an advisory committee on the Federal rules. That committee acknowledged that the current rule's failure to include reasonable attorney's fees was a principal factor in its ineffectiveness.

Under the circumstances, I would think the consumer groups would work for these changes, which are designed to favor victims and significantly reduce legal costs.

Instead, here's the consumer groups' characterization of this provision in their July 31, 1992, testimony before the House Subcommittee on Technology and Competitiveness:

> The plaintiff would be forced to pay the defendant's attorney's fees and costs. In essence, this provision blackmails consumers into accepting a company's settlement offer and has a chilling effect on the exercise of the claimant's right to a trial by jury under the seventh amendment.

In addition, they stated that:

> An injured consumer, often without resources, can hardly risk the possibility that he or she may end up having to pay the legal fees of a corporate defendant in order to have his or her case heard by a jury.

Nothing could be further from the truth. This statement totally misrepresents section 201 of S. 640. As I said, this section would not require a injured person to pay the defendant's attorney's fees, except to the extent that he or she has other funds available from private insurers to pay for the same economic or noneconomic losses. Moreover, an injured consumer without resources—the hypothetical posed in the consumer testimony—would have no downside. If the consumer has no collateral sources, then there is so penalty for losing a case.

On the other hand, if the injured consumer makes an offer, then the manufacturer would be in a quandary—pay the victim in a timely fashion, not the 5 years that the liability system normally takes, or risk paying the plaintiff's attorney's fees if it loses the case.

Now, let's examine section 202, the alternative dispute resolution procedures. These provisions are designed to encourage the use of existing State procedures to avoid lawsuits.

Under section 202, either party may offer to proceed under any voluntary alternative dispute resolution procedure established under the law of the State where the case is brought. However, if the other party refuses to proceed under these ADR procedures and the court determines such refusal was unreasonable and not in good faith, the court shall assess reasonable attorney's fees and costs against the offeree. If a verdict is rendered in favor of the offeror, then a rebuttable presumption is created that the refusal by the offeree to proceed through the ADR mechanisms was unreasonable.

Now let's hear from the consumer groups' testimony again. It says:

> The real effect of the provision would be to discourage parties from exercising their constitutional right to a trial by jury and encourage defendants to offer inadequate amounts.

Once again, that statement is simply not true. The provision in no way impinges on a plaintiff's right to a jury trial. If a defendant offers to use a State's ADR mechanism, and the plaintiff agrees, the plaintiff would face no penalty whatsoever if he or she chose to ignore the result of the ADR system. As long as the plaintiff agrees to go through ADR, he or she may refuse to accept any recommendations in that process and seek a jury trial. Win or lose thereafter, the plaintiff would not be liable for the defendant's attorney's fees and costs.

Frankly, Mr. President, I am offended by the mischaracterization of these provisions. They do not meet the test of fair public debate. They are misrepresentations designed to inflame public passions.

What else is contained in this bill? What goodies are in it for the business community?

First, let me remind my colleagues of what is not in this bill. There are no caps on damages. There are no limits on attorneys' fees. And there is no return to the law of negligence.

What this bill does include are incentives to increase safety, provisions to eliminate some of the unfairness and arbitrariness in the law, and provisions to reduce unnecessary legal costs.

The provisions do not preempt State law regarding the basic elements of a case—what the victim must show in

order to recover and what defenses a manufacturer may invoke. Instead, it provides uniform rules in a few areas of law to achieve the goals I have just named.

With respect to incentives for safety, the bill includes a workers' compensation offset provision, a bar against punitive damages where the FDA or the FAA has approved a product, and a provision that denies recovery to people whose use of alcohol or illegal drugs is the predominant cause of their injury.

The workers' compensation offset provision really involves an intramural issue between manufacturers and employers when there is a workplace accident. The bill would not affect the injured person's recovery in a suit against the manufacturer. What it would do is allocate the costs of that suit more fairly on the person responsible for the injury. To the extent that costs are shifted to the employer when its conduct is responsible for the injury, the provision will increase incentives for workplace safety. The best victim in a workplace accident is the person who never becomes a victim in the first place because the employer is encouraged to provide safer working conditions.

The FDA provision is a matter of some controversy. Its goal is to encourage manufacturers to provide all the information they have about drugs and medical devices to the FDA because, if they do so, they will be protected from a claim for punitive damages in a lawsuit.

The premise of this provision is that a drug manufacturer that spends $200 million and 12 years developing a drug and getting it approved—including 2 years of FDA review of its test results—lacks the requisite intention of conscious, flagrant indifference to the safety of those who might be harmed by a product to warrant the imposition of punitive damages.

It is important to note that a drug manufacturer would still be liable for any economic and noneconomic damages. Surely the potential of paying many such judgments would be adequate to deter a manufacturer from reckless conduct. In fact, a manufacturer that withheld information from FDA—either in its preapproval process or after the fact—would lose the protection of this provision.

And what would the public get in return? For a quick answer, one needs to go no further than the April and July issues of Science magazine. They cite several examples of companies postponing AIDS trials—or abandoning the field entirely—for fear of potential lawsuits. And what they fear is not compensatory damages; it is punitive damages.

These stories go to the heart of this bill. No level of tort damages can make our society risk free. People are occasionally going to be hurt by products, particularly in the drug area where we are dealing with toxic products that will harm some people. One good example is the DTP vaccine which has saved hundreds of thousands of lives. Sadly and tragically, every once in a while a child will have an adverse reaction to the vaccine and suffer lifelong damage. Clearly we must care for such children—and we adopted a vaccine compensation law in 1986 to provide for these children—but we must not forget the huge number of lives the vaccine saves.

If we stifle innovation in an effort to strive toward an elusive, risk-free society, we will lose many people who could have been saved by the introduction of beneficial new products. We cannot guarantee a perfectly safe society, but we can devise balanced incentives to encourage the introduction of useful new products while at the same time minimizing injuries from defective products. That is what I believe this provision and this bill is all about.

There is one final provision in the area of incentives for safety. It would deny recovery to people whose use of alcohol or illegal drugs is the predominant cause of their injury. It will encourage the responsible use of products, which should help reduce accidents.

The second category of provisions are ones designed to eliminate some of the unfairness and arbitrariness in the law. At the top of this list in my mind is the 2-year statute of limitations, which permits victims to bring suits for up to 2 years after the injured person discovers both the harm and its cause. This provision is provictim, plain and simple.

A second provision would establish uniform standards for punitive damages. It would require a plaintiff to prove by clear and convincing evidence that the harm resulted from the manufacturer's conscious, flagrant indifference to the safety of those who might be harmed by a product.

Twenty-two States use the clear and convincing evidence standard, in recognition of the quasi-criminal nature of punitive damages. It is also supported by the American Bar Association and the American College of Trial Lawyers.

The standard of conscious, flagrant indifference to safety is one that comports with the Supreme Court's 1991 decision on punitive damages. In the Haslip case, the Court found that the specific punitive award did not violate the due process provision of the Constitution but indicated for the first time that some laws would. Since that time, the highest courts in three States and two Federal appellate courts have overturned State punitive damages laws. Had those laws met the standard in this bill, successful plaintiffs almost surely would have had their verdicts upheld.

Third, the bill restricts application of joint liability to economic damages only, while apportioning liability on the basis of fault for noneconomic damages. This provision is a compromise. While one can make a good argument that a manufacturer should be liable only for the damages it inflicts, the bill seeks to assure that the victim will always be made economically whole. On the other hand, in order not to impose an unfair burden on manufacturers—particularly where no proof of negligence is required—the bill limits manufacturer liability for noneconomic damages to the manufacturer's proportionate share.

This provision is well within the mainstream of laws on this subject; 11 States have abolished joint liability entirely and another 23 have modified it, often by abolishing it for defendants who are less that 50 percent at fault. Moreover, the European Community directive on product liability restricts joint and several liability to economic damages only; it does not permit proportionate liability for noneconomic damages, as S. 640 does.

Fourth, the product seller provision restricts sellers' liability to their own negligence, unless the plaintiff cannot recover from the manufacturer. This provision is also a compromise. It will prevent the seller from routinely being dragged into every lawsuit—a high injustice when they are not at fault in roughly 95 percent of the cases—but put the seller in the manufacturer's shoes when the manufacturer cannot be brought to justice. Once again, this provision will assure that victims are made whole.

A third major category of provisions are those designed to reduce unnecessary legal costs. The product seller provision and the expedited settlement and alternative dispute resolution provisions both fit into this category. They will make a modest start at reducing unnecessary transactions costs.

Mr. President, in closing, let me state clearly that I believe this legislation, which in one form or another has been before the Senate for 13 years, has evolved into a balanced bill—not one that is probusiness or proconsumer, but one that will produce a fairer and more certain system of rules for people injured by defective products. I opposed earlier versions of the bill because I did not think they met this test. After 13 years, isn't it time that we entered into a serious and honest debate over the provisions of this bill? Surely the liability system is not so perfect, from either a manufacturer's or victim's standpoint, that it cannot stand improvement. If there are honest disagreements over its provisions, then let us try to work out reasonable compromises so that we improve the system for all its participants.

This is a targeted bill to produce a fairer, more certain, and uniform system of rules involving product injuries. Moreover, the system we propose should strengthen the incentives for

accident prevention, and reduce unnecessary legal costs.

As a strong proponent of this bill, I am not arguing that these changes alone will spur the innovation, the economic growth, the competitiveness that everyone in this body is looking for. But I am asking my colleagues to recognize the role that this bill can play in helping to achieve these vital goals for the country and our people. The diverse support for the bill is proof of its balanced nature. I hope that it will win the votes it deserves on Thursday, and that we can finally move forward to make responsible reforms in the interests of the American people and business.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina, Senator HOLLINGS.

Mr. HOLLINGS. Mr. President, this is not a fair or compromisable issue at all. I will get right into it.

Since the distinguished Senator from West Virginia qualified his statements with personal considerations, and stated how he at one time voted against this bill, and how he studied it, and how his zeal now is for compromise, and I certainly do not doubt his sincerity. But his pleadings on behalf of injured parties is much like Colonel Sanders' concern for the chicken.

Why do we have some 60 organizations opposing this measure? The distinguished Senator from Wisconsin, who has been pushing for this bill for 10 years, paints a picture of organizations crying out, clamoring for this so-called reform.

Yet, it was supposedly just a small group of lawyers plus Ralph Nader who were holding it up. So let me just stop right there and tell the listening audience, for heaven's sake, here are just some of the 60 organizations that have consistently opposed this bill over the years:

The Alliance for Justice; the American Association of Retired Persons; the American Bar Association; the public interest research groups from the various States; Citizens' Action; Consumers Federation of America; Consumers Union; the Disabilities Rights and Education Fund; Environmental Action; Friends of the Earth; National Association for Public Health Policy; National Campaign Against Toxic Hazards; the National Conference of State Legislatures; the National Consumers League; the National Insurance Consumers Organization; the National Women's Health Network; Public Citizen; Sierra Club. I could go on and on.

I know the distinguished leader is trying to move past this particular debate to other matters today, so I ask unanimous consent to have printed in the RECORD the list of organizations and individuals opposed to Federal product liability legislation.

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

LIST OF ORGANIZATIONS AND INDIVIDUALS OPPOSED TO FEDERAL PRODUCT LIABILITY LEGISLATION

AFL–CIO.
Alliance of Justice.
American Association of Retired Persons.
American Bar Association.
American Council of the Blind.
Americal Lung Association.
American Public Health Association.
Americans for Democratic Action.
Asbestos Victims' Education and Information.
Asbestos Victims of America.
Brown Lung Association.
California PIRG.
Citizens Action.
Colorado PIRG.
Conference of Chief Justices.
Connecticut PIRG.
Consumer Federation of America.
Consumers Union.
Dalkon Shield Claimants's Committee.
DES Action USA.
Disability Rights and Education Fund.
Environmental Action.
Florida PIRG.
Friends of the Earth.
Illinois PIRG.
Maryland PIRG.
Massachusetts PIRG.
Michigan Citizens Lobby.
Minnesota PIRG.
National Association for Public Health Policy.
National Campaign Against Toxic Hazards.
National Coalition Against the Misuse of Pesticides.
National Conference of State Legislatures.
National Consumers League.
National Insurance Consumers Organization.
National Spinal Cord Injury Association.
National Women's Health Network.
New Jersey Citizen Action.
New Jersey PIRG.
New Mexico PIRG.
Oregon State PIRG.
Pennsylvania PIRG.
PIRG in Michigan.
Public Citizen.
Public Voice for Food and Health Policy.
Ralph Nader.
Service Employees International Union, Local 82.
Sierra Club.
Trauma Foundation.
United Auto Workers.
United States Public Interest Research Group.
United Steel Workers.
Vermont PIRG.
Washington PIRG.
White Lung Association.
Wisconsin PIRG.
Command Trust Network.
81 Law Professors.
Boston Women's Health Book Collective.
United Mine Workers.
Women's Law Center.

Mr. HOLLINGS. Mr. President, it is not just a small group of lawyers. It is not the plaintiffs or the trial lawyers who are trying to politicize now. And in that light, since they have now written me up in the Wall Street Journal as someone bought and sold by trial lawyers, let me tell you the truth about what the defendants' bar has done for me.

I represented the South Carolina Electric & Gas Co. for their suits on bus accidents. That is the municipal transit system in South Carolina. I had sued them before and made a lot of money. I always practice enough plaintiffs law to make a living and enough defendants law to be respected. I told a lawyer on the other side, who was a good friend, "Now, you just have a lazy bunch. They will not try the cases." I said, "Every time, when Thanksgiving rolls around, nobody gets on the bus unless they get their arm caught in the door, slip down and fall in the aisle, and then those defendants' lawyers have a veritable Christmas club and settle cases out of court." In those days, we did not have billable hours. We really had to try some cases and they would settle them out for $1,500, $2,500, or $1,700 for medical and something for lost time and a little bit for pain and suffering.

I took over that account and saved millions of dollars because I made them all come to court and try every one of the cases just to prove that point. I have organized many a small business, particularly in the automobile business, and otherwise. So I had a good time representing small businesses, even all the way to the Supreme Court in an antitrust suit with a wholesale grocer that had over 100 outlets in the little State of South Carolina. We took that through every court in the land defending against an antitrust suit and showed that we were not selling a loss leader, as they say, and that we were competing properly under the Sherman Antitrust Act and the other price controls at the Federal level.

So I have done a lot on both sides of the aisle, plaintiffs and defendants, and I know the difficulty that you have as a plaintiff's attorney. I say in all candor, when you get the plaintiff's case you have to go into court and get all 12 jurors. I remember with defendants all I had to do was study that panel pretty closely and find some interest, some, perhaps you might say, little prejudice in one of those jurors, and, boy, you think I did not dwell on that part of the argument? All I knew is, as a defendant's lawyer, all I had to do is get one of these jurors. But when you are a plaintiff's lawyer, you have to prove by the greater weight of the evidence—the preponderance of the evidence—to all 12 jurors. There are no runaway juries in South Carolina.

The truth of the matter is the trial judge can say, "All right, I do not believe"—and this happened just a few months back. The city of Greenville sued W.R. Grace Co. in an asbestos case for a building W.R. Grace was said to own. They got a little over $8 million, and the trial judge, who used to be one of the trial lawyers, said, "You only proved $4 million." He cut it. He said, "If you do not want to take the cut, you have to get a new trial." The trial judge in South Carolina can remove punitive damages at his own volition.

In South Carolina, we did not wait on the distinguished Senators from Wisconsin and West Virginia and now the White House with their political move against lawyers to do something. On the contrary, 4 years ago my State and

now 43 States of the 50, have passed their own product liability reform. Under South Carolina law, for example, you have to prove for punitive damages, clear and convincing, not by the greater weight, but clear and convincing evidence of willfulness and a willful disregard. We don't have frivolous suits. We have a statute of limitation of 3 years.

Why should I take this bill's 2 years? Why should the national legislature decide for my State legislature? That is my interest in this bill. If you want tort reform, let us go to where perhaps you might need it in malpractice or automobile accident cases. Those are the predominant tort cases. We have 15 percent of the civil actions being brought in tort in this country, and less than 2 percent of those are product liability cases.

So there is no product liability system clamoring for reform. The truth of the matter is that right during this most recent recess, I toured industry after industry, and I always ask everywhere I go—for example, T&M Brass that ships over 40 percent of their brass works overseas—I always ask whether there are product liability cases there. I go to NCR, and NCR has the 3071 laptop computer. They sell over 40 percent of that to the European market. And down in Lexington at the main frame NCR, they export—producing in South Carolina—not only to Europe but to Australia and, yes, to Tokyo. You ought to see the little desks there and the keyboards that they have with the Japanese figures rather than the alphabet for the computers being sold. We produce them in South Carolina.

Talk about competitiveness. This crowd around here never tried a law case before, never ran a business, and never knew what competitiveness is. I guess I so said and identified as much having served now for some 40 years in public service and having worked as hard as I could in attracting industry. I was the first Governor in South Carolina to go to Europe and to Germany. We now have 100 German industries. Everybody is enthused about BMW. I have never had one of those industries ask me about product liability in the United States. We have 45 Japanese industries in my State. Not a one asked me about product liability in the United States. I go into Norte, which makes rubber gloves, not just the gardening variety but protective lining for guarding against 10,000, 20,000, 40,000 volts, and you see in the inspection and the care which they devote, you see the good that product liability does for safety and for lives and for health.

They said no, we have not lost an electric lineman since 1948. I said you lost one. They said no, that is when we organized, Senator. We have not had one of those cases.

(Mr. BINGAMAN assumed the chair.)

Mr. HOLLINGS. I go to Bosch, which makes all of the antilock brake systems for General Motors cars. You ought to come and look at it. You would think you were going into a film plant. You put covering over your shoes. You put a white smock on. You go into a place that is Simon-pure, totally sanitized.

I said wait a minute, all these antilock brakes you are making, how many product liability suits? Not one. They said, Senator, we have a figure on these products, the serial number on every one we make. You see the care we use. And if we had one, we would know where to go and what went wrong and how to correct it.

Bosch is proud of its safety record. I am going to ask later on in this debate to include the history of product liability because it is an innovation that came into the American system of jurisprudence, and it was not until 1966 that some of the States came in under it. But we have a much safer society in the United States of America because of the product liability system.

Now, my distinguished friend from West Virginia says he is offended. Well, I am going to read him the English language. I have counseled many a client, and when you read section 202(b) of S. 640 it says:

> 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.

Then following that, section (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.

Now, where is that 68 to 70 percent. We have had our own testimony. From having practiced law, I know that in the 70 percent of the cases you lose, you eat those costs and you eat those lawyer's fees. That is the contingency contract arrangement that we have with our clients.

I know, as is attested by none other than James A. Henderson, who is Frank Ingersol professor of law at Cornell University and Mr. Theodore Eisenberg. They studied some 2,500 product liability cases and found a distinct pro-defendant's trend. I confess it surprised me a little bit.

Professor Henderson testified:

> The upper curve represents the published opinion data that I gathered. In 1979, 55 percent of the decisions I canvassed favored plaintiffs and in 1988 it was down to 37 percent.
>
> The lower curve represents the district court data that Ted Eisenberg tracked. It was 40 percent favoring plaintiffs (we call it a plaintiff's success rate) in 1979, down to 32 percent in 1988.

So he concluded that the need for sweeping reform has been reduced. But if I am in the law business and I am trying to pay the family bills and be fair to all the other lawyers working with me and the staff, we have to pay our bills. So when the client comes in under this rebuttable presumption, presumption against him, I say look, my contingency has always been on the basis that you do not have to worry; the worry is mine. We will do our best. And if we win the case, then the fee is 25 percent, or a third if that was our contract at that particular time. And we took care of all the court costs, all the witness fees, and everything else of that kind. If we lost the case, we had to pay it all.

I have left a lot of money around on the table in a lot of courtrooms, and I would like to go back to certain verdicts I received and still move against the parties that have gone bankrupt or otherwise. You cannot get the money from them. But the point is while I might suffer that under the contingency system, this bill changes the basic relationship, Mr. President, distinguished lawyer that you are.

What happens under the provisions of this bill is the client walks in. I say wait a minute, this whole picture has changed to billable hours. And that defendants' crowd, the insurance lawyers, like to sit around up on their 25th floor with a wonderful library and the leather cushioned chairs and have amanuenses running to and fro with the coffee and the coke. And I will sit and study and I know I made another $100 or another $200 an hour. And I can tell you they will put not one lawyer on it. If we lose this case, they will have said they had five lawyers on it and they all consulted and worried about it. And I can guarantee you it is going to be $10,000, $20,000, and you are going to have to get up $10,000 to $20,000 for me to take this case, and we will set it aside in escrow. I still have my contract with you and you do not have to take any risks with me, but I cannot guarantee the case, particularly while we are losing about 68 to 70 percent of them.

Now, that fundamentally changes the attorney-client relationship, and the right to a trial by jury, and they know it. We tried to get it out of the Commerce Committee. They did not want any amendments. You cannot amend by statute the Constitution of the United States.

And the Senator says he is offended. I am going to give him the offensive language. Amendment 7 to the Bill of Rights, U.S. Constitution:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

This constitutional right is not conditioned on alternative dispute resolution.

That is what they want. They want to stultify the plaintiff because it does not apply, Mr. President, to the manufacturer, the manufacturer in this statute they have before us now. The bill

to become a statute exempts manufacturers from those provisions.

They tell me they are offended. I am offended at their offense, and I am still offended at the idea of trying to take away Americans' trial by jury. In fact, Newsweek—and I will give you the quote—had a cover article on this whole subject of tort reform and wrote that product liability was nothing but a camouflage for an assault on the American system of trial by jury. That is the conclusion of writers who reviewed all these so-called tort claims.

Now, they use the word "reform." I do not think I am going to win my personal case here, and I do not think I am going to win Ralph Nader's case, but I hope I can win the case for the citizens of the United States of America under this particular Constitution because for 200 years that has worked extremely well with no presumptions of bad faith, good faith, we have to adopt this or to do that. We can read. I know exactly what snuck in here very clearly, and they keep on doing it, and how they have worked on it 10 years. Now they have seen the light, now they have the feel of compromise, oh, so reasonable, oozing and oiling all their reasonableness.

That is hooey, Mr. President.

They are ready to gut the tort system that has proven itself for two centuries and ensured our safety. They want everybody harmed by the Dalkon Shield, they want everybody burned up in a Pinto, and they want everybody with a breast implant from Dow to have no cause of action and a presumption.

Let us examine the arguments made on behalf of this bill. We have been considering it for 10 years. The first time they said one could not get insurance. There was a crisis that one could not buy insurance. Well, the insurance industry last year made $19 billion in profits. Look at it and see. They are making money. I have not been able to get the record in the U.S. Congress as chairman of the Commerce, Science, and Transportation Committee. We in the committee have what insurance matters there are referred to us, and we tried to obtain accurate data regarding the insurance industry.

In fact, the distinguished Senator from West Virginia tried to get such information, and put in an amendment regarding the issue at one time. We still do not have the information. That is what is leading to Federal regulation of the insurance industry itself, where they have bills on the House and Senate side for the Federal savings because the insurance companies will not furnish that information. But the fact is now we have answered this issue. You can indeed get insurance.

Mr. HEFLIN. Mr. President, will the distinguished Senator from South Carolina yield for a question?

Mr. HOLLINGS. Yes.

Mr. HEFLIN. According to my information, in the Commerce Committee, the American Insurance Association, representing the largest insurance companies in the United States, testified in 1990 before the Commerce Committee that this bill is not likely to reduce insurance claims cost or improve the insurance market.

Did that occur in that committee?

Mr. HOLLINGS. That did occur in our committee. I will dwell on that point because I have that noted down here. They told us that 10 years ago the State of Florida enacted the so-called reforms essentially provided for in this bill. Insurance companies immediately raised the rates down in Florida after the State legislature had done what the insurance industry is now asking the Federal Government to do. Yes. The largest representative of the largest insurance companies in the United States came before the Commerce Committee and said, wait a minute. If you are going to pass this, it will not reduce insurance rates, forget it. That is not going to happen.

In fact, on that point, about the multiplicity of suits and lawyer costs that we heard the distinguished Senator from West Virginia talk about—the fact of the matter is that they do not in this bill give you a Federal cause of action. We usually come to the Congress and the Congress makes a finding on behalf of the public.

There is a public finding here that this now has become a national matter of concern and as a result we may have to preempt the States, and we have to make that finding. And when we make it, then we take over Federal jurisdiction.

The proponents of this bill do not do that. Oh, no. They just set down guidelines for the 50 States' jurisdictions to interpret words of art, burdens of proof, and rules of procedure. When those 50 States do it through their supreme courts, and they can appeal from that circuit or trial court up to their own supreme court, then they can come all the way back to the U.S. Supreme Court, all under the guise and in the name of saving money, reducing rates, and saving lawyers cost. In truth, this bill is a lawyer's bonanza here.

The proponents of this bill claim that if they had a Federal jurisdiction, you would go right in the Federal court. Then we would all know where to go, and it would simplify matters it would make some uniformity. In truth, they have guaranteed confusion rather than uniformity. I can tell you that right now, and they are not going to eliminate the cost.

Let us jump then to the alleged litigation explosion that they claim.

The distinguished Senator from Wisconsin, the principal sponsor, said there was a litigation explosion. But there is a professor here that testified—Mark Galanter, the director of the Institute for Legal Studies, University of Wisconsin Law School—that the total of nonasbestos product liability filings has been shrinking steadily from 8,268 in 1985 to 4,992 in 1990. That is a 40 percent decrease.

So there had not been a litigation explosion. On the contrary, the amount of product liability litigation is going down. It just nonpulses this particular Senator when the other one says he is offended. I am just amazed what happens. A moment ago I said the majority of the cases were in business contract cases. You go right to the point of the business contract cases. Eighty percent of civil actions are business contract cases. Since 1987, large jury verdicts in cases of businesses suing businesses amount to over $5 billion. This is more than all of the product liability verdicts in the last 10 years in the United States of America.

Then you go further. That does not include Pennzoil versus Texaco which had a verdict of $11.1 billion. This one case involved more damages than all the damages in all the product liability cases in the history of product liability.

Where is the clamor? Where is the need? Where is the congressional acknowledgment of a national problem? Oh, heavens, torts. They want to bring up, they tell me—they put me on the Federalism Commission. I was appointed by President Reagan—the idea was to get rid of the different departments. We opposed that. They wanted to get rid of the Department of Energy, get rid of the Department of Education, and everything else when they came to town 12 years ago but they said let us delegate those functions back to the States. They preached that the best government is that closet to the people. They were for Thomas Jefferson.

Now they jumped over to Harry Truman. But 10 years ago they were Jeffersonians. They wanted to, by gosh, dismantle the Federal Government, get it back to the cities, get it back to the counties, get it back to the States. Yet now this same crowd wants to federalize tort law.

The proponents of this bill are listening to the National Association of Manufacturers. This is why they want it. So let us make sure that those lazy lawyers got plenty of time to play golf and not try cases, and all they have to do is get one juror. If you want the life of luxury, get into those billable hours except, of course, Mr. President, if you are one of these Washington lawyers.

Let me touch on competitiveness, because I mentioned the National Association of Manufacturers.

The National Association of Manufacturers on August 21, 1992 put out a study focusing on the facts about modern manufacturing, and how manufacturing helps America grow. The study finds that American manufacturers are globally competitive. You can see how competitive manufacturing is in the United States. Yet I challenge you to

find in the NAM study the claim that product liability is hindering our Nation's competitive ability. Find that claim in this thing here. I do now know how many pages it is. They have charts, they have everything else. They discuss how our exports are up, how wonderful it is, the very crowd that crows on the floor of the Senate that we have a national litigation problem that is sending our jobs to Europe. The NAM report says we are competitive in manufacturing, we are as competitive as can be, does not mention product liability as a serious problem.

In fact, I would submit that the European Community is going to do what is the American system of product liability, replacing the European way, where they do not have the guaranteed trial by jury and the other presumptions that we have.

And then we have the competitiveness study by the conference board. They had 232 risk managers. They never did like the results of the study. In fact, they asked for a restudy.

But we put it in the RECORD because the conference report got 232 of the risk managers of the largest corporations in the United States, and they said product liability was less than 1 percent of the cost of their products. They said it was not a problem at all. In fact, they wondered why they were being surveyed. So I will go right to the lawyers, because that is where, in a way, you have to personally defend yourself now, if you are a lawyer in our society.

When the Republican administration came to town in 1981, for 8 years they blamed Jimmy Carter, that everything wrong was caused by President Carter. They never mentioned the Congress. Then, of course, we had the riot in Los Angeles, and they blamed Lyndon Johnson. And something else occurred and they went back to George McGovern and blamed him. And then the next thing you know, the President arrived at the convention in Houston and the President blamed his Cabinet, said he was going to get himself a new Cabinet. Then in his acceptance speech he talked about lawyers.

The President said, and I was embarrassed for the President:

> I see something happening in our towns and neighborhoods. Sharp lawyers are running wild, doctors are afraid to practice medicine, and some moms and pops will not even coach little league anymore.

Mr. President, those are not product liability cases. One is malpractice and the other has to do with voluntarism.

He goes on and says:

> After all, my opponent's campaign is being backed by practically every trial lawyer that ever wore a tassled loafer. He is in the ring with them.

Compare this to other Presidents in historic moments. "Ask not what your country can do for you," said President John F. Kennedy. Roosevelt said, "The only thing we have to fear is fear itself." Yet this President goes before his strongest supporters at the convention and says the trial lawyers stink. What kind of nonsense is that when you are looking at national problems? I was embarrassed for him because he really was trying, along with DANNY QUAYLE, to find a scapegoat, and that shows the depravity of the political system. For 20 years, I never saw a political poll. You did a good job and you got promoted up in public service.

For the last 20 years, everybody gets out the opinion polls and finds out the 5 or 10 issues and identifies with the issues, and as a result, polls govern up here, and that does not offer a solution for anything.

All they want to do is identify vaguely with hot button issues. So they take a poll, and sure enough they will find unpopular professions—journalists, doctors, and they will find lawyers. But rather than this demagoguery, consider this: The fella who wrote the Declaration of Independence was a lawyer. The fella who wrote the Constitution, James Madison, was a lawyer. Most of the first 16 Presidents, going from the beginning of the Union up until the Civil War—Abraham Lincoln—these Presidents were lawyers. The gentleman who wrote the Emancipation Proclamation was a lawyer. The fella who took us out of the dark depths of depression and enunciated and fulfilled equal justice under the law, Franklin Roosevelt, was a lawyer. And we have just proclaimed the wonderful work done by former Justice Thurgood Marshall in the field of civil rights. You can go down the line and cite the contributions of lawyers to our American system of government.

If they want to criticize lawyers, there is one group of them that has never seen a courtroom in this town. It is an embarrassment. This is the crowd—the RTC lawyers, $500 an hour; $500 an hour for Resolution Trust Corporation lawyers. Look at the fees that are paid out for all of the studies, lawyers, and consultants. That is all they do down in this city. If they want to take on the lawyers, the President should realize he is in the ring with the wrong crowd of lawyers. If he got in the ring with trial lawyers, he would know there is an adversary proceeding and he had to prove his case to all 12 on that jury. With this crowd of lawyers they have up in Washington, all you have to do is identify with a particular problem. That is all they do, as they run around and try to politically fix this, introduce that and everything else. They have never tried law cases. That is the crowd that is an embarrassment to me.

Well, they had one fella who had never been in the courtroom, worked on the White House staff, and an Arab country offered him a retainer of $600,000. He was so embarrassed after the press reported it—thank heavens for the free press—he gave the $600,000 back. He has since retired to anonymity, which he so richly deserves, and had before he got his 600 grand.

That is what you have going on, according to Pat Choate, documented in his book "Agents of Influence."

This is where this Senator from South Carolina says, look, you special trade representative, under the code of ethics and professional conduct of the American bar, you are not supposed to involve yourself with the parties of a case that you have handled for 5 years, and I am putting into the special trade representative appropriation, which I have in my subcommittee, that they shall not be involved for 5 years.

What do they do? We pass it in the Senate, and they kill it the second time over in the House. And we will try it again. That is the crowd that Pat Choate writes about in "Agents of Influence," all these special trade representatives—Eberly, Brook, Strauss. Go down the list. Carla Hills before. And now, she will go back and represent these different countries on the other side.

It is as if Schwarzkopf retired and then went to Baghdad to represent Saddam Hussein.

The national economy of this country is as important as is the national defense. We have some columnists claiming there are lawyers running around wild, making money, intimidating folks. You do not find trial lawyers doing that. You find the Washington lawyer crowd. Choate writes there are 100 law firms paid $113 million to represent Japan alone. Well, take the 535 of us in the Congress and multiply that by the salary of $129,000—I think it will go up next year—you get $69 million. The country of Japan, by the measure of influence and ability, which is a dollar mark in this town, the country of Japan is better represented than the people of America. That is the lawyer crowd that is writing these silly talks for the President of the United States.

The advocates of this bill talk about how reasonable they have become. Not at all, not at all. This is the worst demonstration of the depravity of our politics that I have ever seen. We have real problems. We have an American plan for Russia, we have an American plan for the Middle East, we have an American plan for the Kurds in the north and Shiites in the south of Iraq. We have an American plan for Bangladesh, the Philippines, for the defense of Japan and Korea. We have an American plan of most favored nation for Communist China. We have an American plan for Ethiopia, Somalia, El Salvador, Panama, and now they want an American plan for fast track for what jobs are left to Mexico.

Why can we not get an American plan for America and get real, and not talk about trial lawyers, but about our real national problems? One of the characters in a Shakespeare play, I think it was Dick the Butcher, who said, "The first thing we do is kill all

the lawyers," because you cannot subjugate human rights until you first silence the lawyers. Tyranny shall never prevail where there are lawyers.

Hitler knew otherwise. Here is what he said. "I shall not rest until every German sees it is a shameful thing to be a lawyer." That is the theme we see here. We, who are protecting the rights of parties here in the National Government, they are going to give me that line, and they are going to have a fine time here. They do away with cloture, get a bill, and then bring the pressure on and give substance to the gridlock.

Let me tell you who is locking the grid. Right over here, 43 of them, on the other side of the aisle. You cannot get anything up. They do not anything without a filibuster. The majority leader is worn to the point of exhaustion, trying to get legislation up. You have to debate to even call it up. I correct the RECORD while I am doing this, because the distinguished Republican leaders was going to talk about getting the truth, getting the facts. The President of the United States said he was cornered, or under the gun, in agreeing to the 1990 budget deal. He says he was cornered, and therefore went along with the Democratic increase in taxes in return for the tougher spending limits.

False; absolutely false. The President, with his 31 vetoes, is not cornered. He has yet to disapprove of even $1 in spending. Every dollar of spending in his 4 years had his name; not the name Hollings behind it, but his name. And he has worked his way over here and said what he is going to do and what he is going to veto, and he is not cornered. He is solely in charge, assisted by this strong group on the other side of the aisle.

And when he calls it a Democratic tax increase, yes; a majority of the Democrats in the U.S. Senate voted for that. But a majority of the Republicans in the U.S. Senate also voted for that tax increase, breaking the pledge: "Read my lips." The Senator from South Carolina did not. And, the President said he went along with the tax in return for the toughest spending limits. Yet in round figures the deficit was a little over $200 billion in 1990, and has gone up almost to $400 billion this year.

If that is tougher spending limits, Heaven forbid, Lord help us. The toughest spending limits were imposed by Gramm-Rudman-Hollings, that cut spending right across the board. Those Gramm-Rudman-Hollings limits were repealed in that summit agreement. So it was not in return for tougher spending limits. It was in return for repealing the toughest of spending limits.

I am glad that I have time here on the floor of the U.S. Congress to straighten out the facts. If that is what they want to talk about—the truth on these things—we have plenty of time, and we will get into this thing in depth. The truth of the matter is that they are trying their best to corner the actual bringing of suits for the injured party.

As I went around my State, I was told by one of the manufacturers, who is in international production and trade, he said, "Well—" and he was an executive with the company, running it. He said, "Senator, the truth is that our insurance lawyers called when they heard you were going to visit. They said, 'Get on him about product liability.'"

I said, "Do not ever go to the National Government on product liability unless you want to jump from the frying pan into the fire—and I do not think there is a frying pan; I think this is a reasonable approach the States are now using. But if you want to get into a fire, where do you get the idea that the Congress is more conservative than the Legislature of South Carolina?"

He looked at me and smiled, and said, "Enough said. I have done my duty. Go on. We are glad to have you go on through the plant."

We talked sense to our voters. We are proud of our businesses. We are proud of our production and our competitiveness. We are proud of our lawyers, and we are proud of our judges, and I have systematically asked Federal judges and State judges if product liability was a problem in my State. They said absolutely not. They said: We do not hear all of that. That is just a political issue that the National Association of Manufacturers, the conference board and chamber of commerce got out.

I was NAM's darling when we had labor law reform, this Senator from South Carolina. We had seven cloture votes, and we blocked labor law reform. I saw them all dressed up, but no place to go. So they went and jumped on Davis and Bacon until they learned that Davis and Bacon were both Republicans, and Republican President Hoover had signed it into law and we had gotten rid of inflation. They said it was causing inflation; now they are taking credit for getting rid of it. And they have not repealed Davis-Bacon.

Then NAM took up the issue of product liability. They said, "Let us get on them; run the lawyers out. Take a poll and ask them about lawyers."

Look at what the poll showed: That is not a national problem. That is not even a national concern. It at best is a problem for the individual. And it is particularly of national concern that we do not try to repeal the Bill of Rights here, that guarantee of trial by jury.

I see my distinguished friends here waiting to take the floor. I will hold back and get into the rest of this debate in just a little while.

thank the distinguished Chair, and I yield.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I will be brief.

Mr. President, I rise in opposition to S. 640, the Product Liability Fairness Act. I have expressed opposition to this legislation on the floor a few months ago because I believed then, as I do now, that the bill is an unnecessary infringement upon the rights of the States. In addition, product manufacturers and sellers would have an unfair advantage relative to the rights of individuals.

No one can deny the current complexity of product liability law or some variation in the standards of the different States. However, the diversity represented by the State doctrines can be considered a strength rather than a weakness. The development of these State doctrines has been a cautious, deliberative process, a gradual adaptation of the law to changing concepts of social responsibility and justice. Such a careful structure should not be destroyed for a seemingly more uniform system. When discussing the practical problems of federalizing State tort law, Professor Eisenberg of Cornell Law School said:

> The changing nature of product liability law makes me cautious about wishing for Congress to implement a single rule. For the rule Congress adopts had better be a good one, since it may preempt further experimentation and change by the States. I see no basis for believing that the rules embodied in the legislation are superior to the collection of rules embodied in various State laws into the ability of the States to adopt the best rules of their sister States, as those rules evolve over time. The one thing we do know is that State product liability law does change. I worry that Congress may freeze the law with the wrong set of rules at a time when there is no clear reason to do so.

Clearly, the process of righting product wrongs can best be achieved through local entities, which allow careful experimentation in dealing with the needs of consumers. A system of Federal regulation would hinder this process of development of common law, resulting in confusion on the part of the consumer, who has no alternative but to try to bring a claim despite the complexities of such rules.

Although the proponents of S. 640 claim it is a simplification of the maze of State product liability laws, in fact it is nothing more than an obstacle course designed to thwart the fair compensation by the States to injured consumers and workers.

Let me give you an example of how S. 640 would fail to achieve uniformity and would actually cause more confusion. Under the bill, the standard of proof for punitive damages would be raised to clear and convincing evidence and the conduct meriting an award of punitive damages would be conscious, flagrant indifference. In contrast, look at the number of terms to encompass conduct warranting punitive damages developed under State law—malicious, wanton, reckless, grossly negligent, willful, extreme, exceptional, fraudulent, and oppressive.

Injecting the new terms of S. 640 will only increase the uncertainty of the law as those terms are given meaning within the laws of each of the States. Suppose part of a complaint that seeks punitive damages is a nonproduct claim and another part is a product claim. In such a case, the trier of fact would have to assess the damages based upon two separate standards. Obviously, greater uncertainty, not lesser uncertainty, is likely.

Moreover, Federal product liability legislation opens the door to substantially greater Federal intrusions on the States. As Andrew F. Popper, a professor at the College of Law of the American University testified:

Although the bill is watered down from prior efforts to undermine federally the State court system, it produces a classical "camels nose." Bring this bill to the floor of the Senate, and amendments will be put forward, probably before the first serious vote is taken, to provide more benefits to manufacturers. Pass this bill, and in future quiet sessions attracting nowhere near this level of attention, the federalization of tort law and the disassembly of consumer protection will become an annual function of this and other committees in our Congress.

A recent report by the Rand Institute for Civil Justice found that 23.4 million people every year need to seek compensation for losses related to injuries they receive. These injuries are of concern to all of us because they cost society $175.9 billion annually, an amount equal to 4 percent of the GNP. However, despite the claims that our tort system is out of control, only 10 percent of those people who have such injuries receive compensation through the liability system, and of their total recoveries, only 7 percent come from liability payments.

Moreover, these injured individuals recover only about 60 percent of the economic losses from any source—the rest is paid by the injured individuals themselves. Permanently injured individuals only recover 20 percent of their losses. Despite these figures, we stand here today considering a bill that would severely restrict the rights of individuals to obtain even that small amount of tort liability compensation.

This legislation is grossly unfair and contrary to basic principles of decency and individual rights. For example, S. 640 would prevent Americans from suing makers of defective workplace products that are more than 25 years old. Thus, an individual who is injured by a product that was 24 years old could be compensated, but a person who was injured by the same product that was 26 years old would not be compensated regardless as to how strong the worker's claim. Does that make sense? I do not think so, especially when many workplace products are designed to last more than 25 years.

In another provision, we would protect manufacturers of Government-approved or certified aircraft, drugs, and medical devices from punitive damages unless fraud was involved. I believe this provision is absolutely unjustified and unjustifiable. Basically, this rule would make Government approval, which often represents a minimum standard of safety, a license to recklessly market an unsafe or defective product.

Time and again, we have seen products that were approved by the FDA such as IUD's, anesthesia machines, heart values, and others, without fraud involved, resulting in devastating injuries because of the reckless activities of the manufacturers. Let me read to you from a recent report in the Wall Street Journal on the regulation of medical devices by the FDA:

Of 60,000 devices on the market today, from breast implants to lasers, the vast majority receive the same cursory review as the innocuous tongue depressor, according to government auditors. Last year, an advisory panel, headed by former FDA Commissioner Charles Edwards, took a look at the devices centers' operations and warned that "a crisis is surely impending."

Critics contend the agency's tilt toward accommodating industry has taken too much of a toll. A 1989 Congressional audit found that of 53,000 reports on adverse incidents filed with the FDA by device manufacturers, 55 percent involved serious injuries to patients and others; 3 percent involved deaths.

Malfunctioning devices were to blame for 42 percent of the cases. Alarm failures on infant breathing monitors resulted in the deaths of four babies. One device alone—the fracture-prone Bjork-Shirley heart valve—is blamed for more than 300 deaths. Three cancer patients died from overdoses of radiation because of glitches in linear accelerators, according to a 1991 FDA inspection report. Despite the deaths, the FDA's regulatory response has been slow and largely ineffectual.

Based upon such evidence, I cannot believe we would even consider the FDA provision found in S. 640.

Moreover, the legislation would eliminate joint and several liability for noneconomic damages. The joint and several liability doctrine applies to situations where wrongdoers act in concert to cause an injury to a victim, and the injury cannot be divided among them in a logical fashion. If multiple parties are jointly and severally liable, the victim may recover in full from any of the wrongdoers. This doctrine helps to insure that victims injured by more than one wrongdoer receive full and fair compensation.

S. 640 would restrict the rights of individuals to obtain perfectly legitimate damages by shifting to the victim the risk of undercompensation. The elimination of joint and several liability for noneconomic damages such as pain and suffering would result in individuals receiving less than their full damages whenever wrongdoers are immune from suit, insolvent, uninsured, underinsured, or not subject to a court's jurisdiction.

I could talk a very long time about the problems with S. 640, but I will not. However, I do want to reaffirm the position I took a few months ago regarding this legislation, that to advocate passage of this bill is to ignore almost 200 years of tort law, without any real demonstration of need. Few aspects of our legal system are as traditionally consigned to State court jurisdiction as tort law. Although the system may not work perfectly, it works effectively, and we should not begin to tamper with it. There simply is no reason for change. I urge my colleagues to defeat this legislation.

Mr. HOLLINGS. Will the Senator yield for me to make a unanimous-consent request?

Mr. SHELBY. I yield.

PRIVILEGE OF THE FLOOR—H.R. 5679

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate allow Ms. Gwen Williams, a Legis fellow on the staff of the distinguished Senator from New Mexico, and working with him on the bill H.R. 5679, the Department of Veterans Affairs and Housing and Urban Development and independent agencies appropriations, floor privileges when that is under consideration.

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

Mr. HOLLINGS. I thank my colleague.

Mr. SHELBY. Mr. President, as I said, I will be brief now, after my statement has been entered into the RECORD. But I have listened to this debate not only this afternoon, but on several occasions when I was in the House and since I have been in the Senate. But as I view this bill, we can talk about lawyers; but I believe the central thing we need to think about in this bill is people. The working people of America, the poor people of America, making up about 90 percent of our population, would be barred, basically, from courts in the United States on these kinds of cases, products liability, if this legislation were to become law.

First of all, it is not going to become law. It is a bad piece of proposed legislation. It is bad timing here in this late part of the Congress. But I oppose it because it would basically close the door to the working people of America.

People compare us to Europe. They say, well, Germany has this, and France has this. But one thing we have had in America, and which the distinguished Senator from South Carolina has so ably demonstrated, we have had a right to a jury trial.

We have had a jurisprudence system in 50 States. We are a Nation of 50 States. We have never federalized our tort system. The tort system that we have, that has served us for a long time and will serve us in the future, has evolved over many, many years. And for us to come up here all at once, in a late session of Congress, and say this is going to be the law of the land, I think it would be a travesty of justice. It would say again to the working people of America: You are not going to have

your day in court. You are not going to have your right to a jury trial. You are going to be excluded if you do not have money to buy your way into this system.

I think overall, our jurisprudence system works. We could refine it, but let us not do a butcher job on it. This would be a butcher job.

I oppose Senate bill 640. It is a bad piece of legislation. It is antipeople; it is antiworking America.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I rise in opposition to S. 640, the so-called Product Liability Fairness Act. You can pick words any way you want to, but that word "fairness" is the biggest misnomer that I have seen labeling this legislation in many a day.

I think this bill would bring about an unwise and unnecessary infringement upon the rights of the States and an unwarranted trampling of the rights of individuals seeking compensation for injuries incurred from defective products. Over the last two centuries, the States have developed effective product liability laws which balance the interest of the manufacturers which make products and against the interest of consumers who use those products.

The ostensible purpose of this proposed legislation is to bring uniformity and predictability to State product liability systems. However, in the years of hearings on this bill before both the Commerce and the Judiciary Committees, law professors and jurists have consistently and repeatedly warned that the legislation will not and cannot achieve this purpose. S. 640 will act as an overlay on the 55 State and territorial court systems as well as the Federal system under diversity jurisdiction.

What it does is federally preempt certain phases of the State tort law systems, puts them into force and effect and then leaves certain other aspects of State law in place. Now, that brings about a conglomeration and, you might say, a Heinz 57 variety of a dog is created. The new rules will be applied in many different contexts and will inevitably be construed and applied differently. With each State and territory construing the rules, even the uniformity that has been achieved to date over a long period of time will be destroyed and the long process of unraveling new concepts will begin.

Let me give you an example of how S. 640 would fail to achieve uniformity and would cause more confusion. Under this bill, the standard of proof of punitive damages would be raised to clear and convincing evidence and the conduct meriting such an award would be conscious, flagrant indifference.

In contrast, the number of terms in many States encompassing conduct that justifies punitive damages refer to standards such as "willful and wanton," "malicious," "wanton," "reckless," "gross negligence," "willful," "extreme," "exceptional," and "oppressive." Injecting new terms will only mean increased uncertainty and lack of uniformity, as those terms are given meanings within the laws of each of the States.

Let us look further at this example. Suppose part of a complaint that seeks punitive damages is a nonproduct claim and another part of the complaint is a product liability claim. In such case, the trier of facts, most likely a jury, would have to assess the damages based upon two separate standards. Clearly, greater uncertainty and confusion will result.

Let me give you an example of what would happen. We all know about the Pinto automobile and the fact that this automobile was designed negligently with the knowledge that it could cause tremendous damage if its gas tank exploded if it were hit by a car. Numerous cases arose in which the Pinto automobile was hit in the back and the gasoline tank exploded. Under these sets of facts, you would have one set of facts if an injured victim sued the man that hit him or her from the rear, and you would have another set of facts and a set of laws to be construed and to be used relative to the manufacture of the automobile where the gas tank was involved.

Now, how is a court going to interpret that certain standard? And there are other issues regarding the lack of uniformity—not just the punitive damage question. You would have a situation on joint and several liability against the driver of the car that ran into the back of the Pinto, whether he would, under the law of joint and several liability of his State, be responsible along with other defendants pertaining to the issue of noneconomic damages. And then on economic damages, there would be a new set of rules that could be applied.

Talk about confusion. Talk about the need for certainty and predictability. This piece of legislation will bring about greater confusion and absence of uniformity, and it will result in really a nightmare.

The State of Alabama may decide the laws under this in one manner; the State of Mississippi may decide the laws under a different set of interpretations.

So the concept of the way this all arose was that the proponents wanted uniformity. Well, what they are going to get is a brier patch of nonuniformity.

This law, in my judgment, also—and I am not going to tell them how, but the insurance industry better get wise,—is going to do away with diversity jurisdiction pertaining to product liability. I will let you figure it out. I am not going to tell you, but the insurance industry is going to find out that under this basis it does away with diversity jurisdictions in the Federal courts.

Now, let me discuss with you another troubling aspect of the issue of uniformity. Some States have, by court decisions and statutes, abolished the right to obtain punitive damages. This matter pertaining to punitive damages makes no attempt in regards to the issue where punitive damages have hit the headlines, such as Senator HOLLINGS brought out pertaining to the issue of the case of Penzoil versus Texaco. S. 640 exempts business lawsuits.

A Senator told me that he had a small financial interest in a bank, and certain plaintiffs sued the bank, and they were awarded punitive damages. My friend said the plaintiffs were outlandish. He said, "That is why I am going to support a Federal product liability bill." Well, if he reads S. 640 or gets his lawyer to do so, he will find that S. 640 does not do him any good. The issue of where most of the punitive damages have arisen is more in commercial and business litigation, and S. 640 does not address that issue. Why? Because manufactures want to reserve to themselves the special protections of this bill.

So I say to you that this legislation is going to end up having many, many more problems dealing with the issue of uniformity, and it is not going to bring about more uniformity.

In a recent hearing which the judiciary Committee conducted, testimony was heard by Mr. Mark Galanter, a distinguished professor of law at the University of Wisconsin Law School and a nationally recognized expert in the field of studying patterns of litigation in America. Professor Galanter testified there is no evidence of a litigation explosion of product liability cases in recent years.

In recent years, in product liability cases under diversity jurisdiction filings of nonasbestos product liability cases, we have seen them fall from 8,268 in 1985 to 5,273 in 1991, a decrease of 36 percent. This is not evidence to me of a litigation explosion.

Chief Justice Carrico, who is of Virginia, testified on behalf of the conference of State Chief Justices that a study conducted by the Court Statistics Project of the National Center for State Courts revealed that in 1990, approximately 18,000 of the 100 million filings in State courts were civil cases—only 18 percent. Approximately 10 percent, 1.8 million filings, were tort cases and significantly, only about 2 percent of the tort filings were product liability cases.

This, my colleagues, does not suggest a litigation explosion in product liability cases. The National Center for State Courts project shows the most dramatic increase in civil filings tend to be for real property and contract cases, not tort cases, much less product liability cases, which are a subset of tort cases.

There is other evidence that the decline in product liability findings suggests that the world of product liability is contracting, not expanding. In 1991, a Rand Corp. study found that approximately one out of every ten Americans who are injured, seek compensation from the tort system. The Rand study also found that only 7 percent of all compensation is paid through the tort system.

The workers compensation program is the biggest source of compensation, not product liability which is based upon common law or statutory law.

While I am on this subject, you know when you start federalizing matters you can get into a lot of different fields. When I came to the Senate, 14 years ago, there was great danger of federalizing the various State workmen's compensation systems. There were people who were making an effort to have uniform workmen's compensation laws throughout the entire United States, but those efforts were not successful.

But, if the door is slightly opened, then I believe we will see greater efforts toward Federal preemption at the expense of the abilities of the various States and territories to manage their product liability laws.

I asked a business friend of mine if he had ever known a Federal cure that did not turn out to be a Federal plague? He thought a while, and he said, well, I believe you are right.

A study by Professors Rustad and Koenig given in testimony before the Senate Commerce Committee shows that punitive damages in nonasbestos product liability cases decreased by 34 percent in the last half of the 1980's. In 1991, a General Accounting Office report shows that not only are there fewer product liability lawsuits and fewer awards, but fewer claims for insurance were filed.

These examples from studies run counter to the assertion that there is a litigation explosion with regards to product liability lawsuits. There is a litigation explosion, but it is not in the field of personal injury. It is in the field of businesses suing businesses; not injured victims suing for compensation.

Let me turn, now, to one additional aspect of S. 640, which is of great concern to me, and that is the issue of consumer safety.

Our worthy opponents suggest that the current tort system stifles innovation and keeps beneficial products from the market.

On the other side of this argument there is the contention that tougher laws force manufacturers to consider product safety and make products that are of such quality that they will be competitive in the worldwide marketplace.

In 1987, a report by the Conference Board supports my conclusion. The Conference Board is a nonprofit business information service whose support comes largely from business concerns. Let me read to you some of the key conclusions of this report:

1. Where product liability has had a notable impact has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures improved, and labels and use instructions more explicit.

2. Two-thirds of the firms responding—and these are firms with $100 million in annual sales—said that only 1 percent of the final price of their product could be attributed to the cost of liability insurance. Eleven percent of the firms estimated the cost to be 2 to 3 percent of the final price.

I asked Senator HOLLINGS—let me quote again the statement which formed the basis for the question.

For years the proponents of this legislation have asserted that insurance costs for business were too high; insurance is too hard to obtain, and therefore Federal product liability relief if needed.

The American Insurance Association, representing the largest insurance companies in the United States testified in 1990 before the Commerce Committee that this bill is not likely to reduce insurance claims costs or improve the insurance market.

Robert Hunter, the president of the National Consumer Insurance organization testified, "Make no mistake about it. If insurance costs and availability are not improved, competitiveness is not affected."

When we get to the aspect of looking at this issue, we see that there is no real litigation explosion and the proposed legislation is not going to end up saving business any money. The matter of all of the handling of product liability is done through insurance and where the insurance industry itself comes and testifies that it is not likely to reduce insurance claims costs or improve the insurance market, I think that testimony ought to raise a question as to the real validity and need for this legislation.

One other troubling aspect of this bill relates to the abolishment of punitive damages when drugs or medical services have received premarket approval from the Food and Drug Administration, unless fraud is shown. There is little doubt that the FDA was never intended to be the first line of defense against product safety. Its regulatory authority provides a minimum standard of safety. The FDA lacks subpoena power, does not independently test, and is not funded as well as it should be.

The defense that this provision establishes ignores the fact that important evidence regarding drug safety may not surface until after FDA approval. A recent GAO study contained alarming statistics. It said that, of the 198 drugs approved by the FDA between 1976 and 1985, 102 drugs, or approximately 52 percent, had serious postmarket problems including label changes or withdrawal from the market.

This provision in S. 640 thumbs its nose in the face of the American public who, in my judgment, should be outraged. And I only need to remind my colleagues of the recent breast implant controversy as illustrating FDA's inability to adequately police drug and medical device safety.

The proponents of S. 640 talk about how fair this bill really is. Let us look at this aspect for a moment.

The bill would eliminate joint and several liability for noneconomic damages. The doctrine of joint and several liability applies to situations where multiple wrongdoers act in concert, to cause an injury to a victim.

They cause an injury that cannot be divided among themselves in a logical manner. If multiple parties are jointly and severally liable, the innocent victim may recover in full from any of the wrongdoers. This doctrine was designed to help ensure that victims should receive full and fair compensation.

Eliminating joint and several liability for noneconomic damages such as pain and suffering would result in victims receiving less than their full damages whenever wrongdoers are immune from suit, insolvent, uninsured, underinsured, or not subject to the court's jurisdiction.

One of the most interesting witnesses who testified before the Judiciary Committee was Ms. Luicinda Finley, a professor of law at the State University of New York in Buffalo.

Professor Finley testified that this provision tends to have an adverse impact on women, the elderly, children, and the less economically advantaged in our society. Why? Loss of income is the major aspect of economic damages. Those who earn more receive greater amounts of economic damages, and those who earn less receive lesser amounts of economic damages.

As Professor Finley testified, the amounts that a jury may award for noneconomic damages can help bring the total recoveries for the elderly person, the clerical worker, or the less well-paid worker closer to that of the executive.

Mr. President, I have many other problems with S. 640. But the issues I have outlined above should give the Senate the basic thrust of why I feel S. 640 is fatally flawed. It is based on erroneous data, unwarranted assumptions, and it is unfair, nonuniform, and does violence to the concepts of federalism.

I urge my colleagues to vote against cloture on the motion to proceed.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Minnesota.

Mr. WELLSTONE. I thank the Senator from Alabama for his fine statement.

Mr. President, I rise today to oppose S. 640. I strongly support efforts to ensure American businesses are competitive in the changing world markets, and I particularly advocate support for small businesses. I recognize that product liability lawsuits are expensive and may not be the most efficient way to

provide compensation to persons injured by products, especially for those victims that lack adequate health care. But S. 640 would not provide adequate solutions to problems with the current product liability system. I do not believe the overhaul of our current product liability system in the manner envisioned by S. 640, is justified. I do not view this as a step forward, I view it as a great leap backward.

S. 640 would federalize an area of law historically, and, at his time, best left to the States. Our traditional system of product liability law has served an invaluable role in our society as each State establishes procedures it considers best suited to meet the needs of its citizens. By federalizing certain aspects of product liability law, for example, in the area of punitive damages, joint and several liability, liability of sellers, and products approved by FDA and the FAA, S. 640 would preempt parts of State laws in a way that limits or eliminates a victim's right to financial recovery; but does not undo other aspects of State laws that restrict victims' rights. Thus, S. 640 would fail to establish real uniformity except, I fear, the kind of uniformity that is detrimental towards victim's rights. In my own State, S. 640 would preempt rights enjoyed by Minnesotans under Minnesota law without any corresponding benefit.

I am concerned that in the debate and rhetoric surrounding the product liability bill, the issue has been approached as a battle against lawyers. I am not here to defend lawyers, either plaintiff or defense lawyers. But I am afraid that we are overlooking the critical fact that product liability lawsuits are filed on behalf of people—people injured or killed by allegedly defective products. Last year, there were 28 million injuries and 21,000 deaths associated with consumer products; not near that many lawsuits.

It is the parents of children crushed by defective garage doors when the door fails to reverse that file lawsuits; it is persons horribly disfigured by explosions of LP-gas water heaters that have defective control valves that file lawsuits; it is women ravaged by injuries caused by silicon gel breast implants that file lawsuits; it is the parents of toddlers who drown in 5-gallon buckets who file lawsuits; it is the estate of people killed in a house fire caused by a defective space heater who file law suites. And the list goes on and on.

And let's not fool ourselves Mr. President, into thinking defective products are not being manufactured and sold as we speak and debate on the floor of the Senate tonight. Nearly every day, the Consumer Product Safety Commission, the National Highway Traffic Safety Administration, FDA, or some other Government agency announces the recall or issues a warning on defective or dangerous products such as strollers, space heaters, coffee makers, garage door openers, weed trimmers, reproductive devices, drugs, and infant car seats, to name a few. I ask unanimous consent to print in the RECORD some news releases recently issued by the CPSC and National Highway Traffic and Safety Administration announcing recalls of hazardous products, and an article from Pediatrics on the drowning hazard presented by 5-gallon buckets. These are just a sampling of the defective products responsible for thousands of injuries and deaths each year.

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

1,000 GERRY STROLLERS RECALLED FOR POTENTIAL BRAKE FAILURE

WASHINGTON, DC.—Gerry Baby Products Company, Denver, CO, in cooperation with the U.S. Consumer Product Safety Commission (CPSC), is voluntarily recalling approximately 1,000 of its portable, umbrella-style strollers. The strollers' brakes, when locked, may not hold on an incline which could allow the strollers to roll and potentially result in an injury to a baby in the stroller. Gerry has not received any reports of injury related to this problem.

The model numbers involved are: 127, 136, 166, 195, and 196. The model number and "May 1991" are located on the metal lock between the rear stroller legs. Consumers who still have the box can also identify affected strollers by the following date codes printed on the box: 1128, 1129, 1130, 1131, 1133, 1134, 1135, 1136, or 1137. No other Gerry strollers are affected by this recall.

Consumers who have a Gerry stroller with both a model number listed above and "May 1991" on the metal lock should call Gerry at 1-800-525-2472 for information on how to obtain a free replacement stroller. Consumers may also call this number for assistance in identifying affected strollers.

The affected strollers were sold during May and June 1991 for approximately $25 to $55 each. The strollers were sold nationwide through J.C. Penny, Pace, and Child World retail stores, and by the following companies in the areas listed: Dillard's, Gilbert, AZ; Hambilton & Carr, Tonawanda, NY; Everything Baby, Brooklyn, NY; Lechmere, Northeastern U.S.; For the Traveler, Kissimmee, FL; Nordstrom, Ontario, CA; Kiddie World, San Jose, CA; and Marines, Los Angeles, CA.

The U.S. Consumer Product Safety Commission is announcing this recall as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The Commission's objective is to help reduce the estimated 28.5 million injuries and 21,600 deaths that are associated each year with the 15,000 different types of consumer products under CPSC's jurisdiction.

NOTE.—To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

DELONGHI VOLUNTARILY TO REPLACE CONTROL PANELS ON OIL-FILLED ELECTRIC HEATERS

WASHINGTON, DC.—DeLonghi is providing free replacement control panels for oil-filled radiator-type electric heaters manufactured by DeLonghi S.p.A. from 1980 through 1988. DeLonghi is taking this action to correct what the U.S. Consumer Product Safety Commission (CPSC) considers to be potential fire hazards in some of the electric controls.

This replacement program by DeLonghi is being undertaken in cooperation with the CPSC after reports of electrical failures within some control panels which the Commission believes could cause fires. The manufacturer does not believe any safety hazard exists with these products.

DeLonghi is offering, at no cost to owners of the units, the upgraded control panels, which incorporate improved components and design. The heaters are beige or tan and look like small radiators. These electric heaters bear a silver sticker on the underside of the metal box holding the controls. Stickers beginning with the digits "80" through "88" identify units whose control panels are being upgraded.

A small number of heaters were sold under the Sears and Welbilt brand names. These heaters bear the code number of "816F" next to the Underwriters' Laboratories (UL) label on the side of the metal control box.

The new control panel brings even the oldest DeLonghi heaters up to the most recent UL standards, and upgrades all heaters to current levels of quality and safety. DeLonghi states that the replacement will extend the life of the heater.

The CPSC urges all owners of the heaters manufactured from 1980 through 1988 to participate in the program as soon as possible by calling 1-800-874-0981 to arrange for replacement of the control panel.

The U.S. Consumer Product Safety Commission is announcing this program as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The Commission's objective is to help reduce the estimated 28.5 million injuries and 21,600 deaths that occur each year with the 15,000 different types of consumer products within CPSC's jurisdiction.

NOTE.—To report an unsafe consumer product or a product-related injury consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

STANLEY GARAGE DOOR OPENERS RECALLED DUE TO ENTRAPMENT HAZARD

WASHINGTON, DC.—In cooperation with the U.S. Consumer Product Safety Commission (CPSC), the Stanley Electronics Division of The Stanley Works, located in Novi, MI, today announced the recall of several models of circuit boards used in the manufacture of Stanley and Fimbel Garage Door Openers.

The company believes, due to a problem with printed circuit boards used in affected garage door openers, the door may open or close without warning. This condition renders the automatic reversal safety feature inoperable. As a result, when the door closes, it will not reverse as intended upon striking a person or object. This poses a risk of injury or death if entrapment occurs. The company reported this problem to the CPSC as soon as it became apparent. The company is not aware of any injuries.

The automatic garage door openers were sold nationwide between January 14, 1991 and April 11, 1991, under the names Stanley and Fimbel (under the brands of Power Lift, and EZ Lift). The openers were sold by retail stores and garage door opener installers and dealers across the United States. While the majority of affected units were stopped in inventory, some 5,000 defective openers may be in consumers' possession.

Brand names, model designations and date codes are as follows:

Stanley units affected have date codes 91-04-1 through 91-15-5.

The date code is designated on a date plate located on the end panel at the back of the power unit.

Power Lift and EZ Lift units are both models 91R. The date codes affected are 01-21-91 through 04-11-91. The date code is found on the back panel in the lower right hand corner of the power unit.

Consumers who purchased any of the openers should look on the power unit mounted on the garage ceiling for the date code. Owners of recalled openers should unplug and disconnect the opener immediately and call Stanley toll-free at 1-800-323-2013 to arrange for a free replacement. Until a replacement is installed, consumers should disconnect the opener from the door as instructed in the owners manual, and manually open and close the door.

Continued use of affected doors in any but the manual mode of operation could result in serious injury or death. Failure to unplug the unit may result in electrical fire.

The CPSC's mission is to protect the public from unreasonable risks of injury and death associated with consumer products. The CPSC is the federal agency responsible for consumer product safety. Some 15,000 different types of consumer products fall within the Commission's jurisdiction and each year these products are involved in an estimated 29 million injuries and 22,000 deaths.

NOTE.—To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

GENERAL ELECTRIC VOLUNTARILY RECALLS CERTAIN DRIP COFFEEMAKERS THAT MAY POSE A FIRE HAZARD

WASHINGTON, DC.—The General Electric Company (GE) in cooperation with the U.S. Consumer Protection Safety Commission (CPSC), today announced the voluntary recall of certain GE grand and Universal brand drip coffeemakers manufactured before April 28, 1984 which present a potential fire hazard.

The company believes that a fire hazard may occur when a purchased thermal fuse in the coffeemaker fails to function as intended. About nine million drip coffeemakers bearing the GE or Universal brand name were manufactured between 1976 and 1984.

GE has received approximately 400 reports of coffeemakers overheating. It has been alleged recently that one fire caused by a fuse failure resulted in two fatalities and serious personal injury to eight other people. GE has received claims that fuse failures also may have been responsible for fires that resulted in one additional death and 15 personal injuries. Approximately 375 of the claims involve property damage ranging in value from $300 to $1.3 million. As an incentive, GE is offering owners $10 for each recalled unit returned. A $10 check will be mailed when a unit is received by GE. GE will give consumers with recalled coffeemakers pre-paid mailing cartons. In the carton will be instructions that will tell consumers how to arrange for convenient pick-up. This new method of recall is aimed at reducing consumer effort and increasing the rate of return.

No units made on or after April 28, 1984 are involved in this recall. To determine the date of manufacture, check the date code number stamped on the outside metal blade of the electric plug. If the number is 418 through 600, the coffeemaker is not involved in this recall. Other GE brand and Universal brand drip coffeemakers which are not involved in the recall are:

Space Maker Drip Coffeemakers (catalog numbers that include the designations SDC1, SDC2, and SDC3)

Percolators

Owners of a GE brand or Universal brand drip coffeemaker are asked to read both the catalog number on the bottom of the unit and the date code stamped on the outside of the metal blades of the electric plug. If the coffeemaker is a recalled unit, consumers should call toll-free 1-800-443-9000.

The recalled coffeemakers are not repairable, and owners should unplug the unit and stop using it immediately. Consumers are being asked to check the automatic drip coffeemakers at their home and place of work.

The CPSC is issuing this joint warning as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The CPSC is the Federal agency responsible for consumer product safety.

For TV reporters/assignment editors; videotape on this release will be available, call Dan Rumelt at 301-492-6580.

GE contacts: Ogden Morse, Margaret Durante, and Mary-Mike Simons may be reached at 212-614-4005.

NOTE.—To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

A list of model numbers being recalled and a step, by step, identification sheet is an attachment to this press release.

PETRUS UMBRELLA STROLLER MODIFICATION PROGRAM

WASINGTON, DC.—Petrus Imports, Inc. of Framingham, MA today announced it is voluntarily making available to consumers a free modification kit for approximately 100,000 late model Petrus umbrella strollers.

Undertaken in cooperation with the U.S. Consumer Product Safety Commission (CPSC), the modification program involves Petrus stroller models 1000, 1100 and 1101 sold nationally by Service Merchandise, Caldor's Zayre's and Ames. Model numbers are found on the instruction sheet and on a label on the stroller's rear legs. On some model 1101 strollers, the label on the stroller is partly handwritten and reads "1101/PTR."

The model 1100 strollers were distributed between November 1987 and December 1988, while the model 1101 strollers were distributed between May 1988 and August 1989. The model 1000 strollers were distributed between November 1987 and June 1988.

The seat belts on these models may not restrain properly, and the tube end plugs may come off on strollers manufactured in Taiwan. (See "Date of Manufacture" label for country of origin.) When a toddler strapped into the stroller leans too far forward, the child may fall forward and possibly strike his head on the ground or on the front of the stroller.

The Commission and the firm are aware of six consumer complaints associated with the restraint system, including three minor injuries to young children. One other complaint concerned a loose tube end plug found in a stroller box which could pose a choking hazard to a young child who places the plug in the mouth. No choking incidents have been reported.

Consumers should call Petrus Imports, Inc. toll-free at 1-800-752-7740 Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. (Eastern Time) for a free modification kit. Consumers may also write Petrus Imports, Inc., P.O. Box 967, Framingham, MA 01701, Attn: Ms Stamos.

The CPSC is announcing this modification program as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The CPSC is the Federal agency responsible for product safety. Some 15,000 types of products fall within the Commission's jurisdiction and each year these products are involved in an estimated 30 million injuries and 22,000 deaths.

NHTSA ALERTS PARENTS ABOUT RECALL OF GUARDIAN CHILD SAFETY SEATS

The National Highway Traffic Safety Administration (NHTSA) today urged owners of certain Guardian child safety seats to contact the manufacturer for a free repair kit because the seat is involved in a safety recall campaign.

NHTSA said the seats failed to meet a federal safety standard that requires a force of at least nine pounds to depress a push-button that releases the buckle on the seat's belt assembly. The provision is intended to deter children from releasing the buckle.

According to NHTSA, the safety recall involves 26,000 Guardian child safety seats manufactured by Takata-Gerico (Gerry) between Jan. 31 and May 3, 1990. The date of manufacture is stamped in ink on a label on the side of the seat.

Owners who call the manufacturer for a repair kit will receive a new buckle, plus tools and instruction for installing it. Owners should call Gerry toll-free at (800) 845-8813 to obtain the kit.

The safety agency strongly urged parents to continue using these Guardian seats while waiting for the replacement kit. Properly restrained children are much less likely to suffer crash injuries, NHTSA said.

Consumers who have questions about this or any safety recall campaign should call NHTSA's toll-free Auto Safety Hotline at (800) 424-9393.

NHTSA ALERTS PARENTS ABOUT RECALLS OF COSCO AND CENTURY CHILD SAFETY SEATS.

The National Highway Traffic Safety Administration (NHTSA) today urged owners of certain Cosco and Century child safety seats involved in a current recall campaign to contact the manufacturers for free replacement parts.

NHTSA said that the first recall involves 5,041 Cosco Commuter Model No. 02-086 seats manufactured between Nov. 1, 1987, and Feb. 10, 1988.

Faulty assembly left some foam padding in these seats exposed, creating a risk that children might put the foam in their mouths and choke, NHTSA said.

Owners will receive a free replacement seat shell cover by calling toll-free (800) 544-1108 or by writing to Cosco, Inc., 2525 State Street, Columbus, Ohio 47201.

The Century seat recall involves 727,343 Model STE seats numbered 4158, 4163, 4180, 4253, 4261, 5263, 4265, 4266, 4865, 4866, 5367, 4368, 4369, 4380, 4381, 4460, 4470, 4475, 4476, 4480, and 4990. They were manufactured between December 1990 and October 1991.

NHTSA said the instruction label for Spanish-speaking owners may be confusing and a new label is available. Owners should contact Century by calling toll-free (800) 937-4766, or by writing to 9600 Valley View Road, Macedonia, Ohio 44056. The new labels can be placed over the originals.

Both manufacturers will ask owners to provide the model number and the date of manufacture to determine whether a specific safety seat is among those recalled. This information is on a label on the side or back of the safety seat.

Consumers who have questions about these or any safety recall campaign should call NHTSA's toll-free Auto Safety Hotline at (800) 424-9393.

NHTSA ANNOUNCES TWO SAFETY SEAT RECALLS

The National Highway Traffic Safety Administration (NHTSA) today provided details of two child safety seat recalls and advised owners to take advantage of the free remedies offered by the manufacturers.

NHTSA said Century Products recalled 644,313 seats with potential shoulder strap problems, and Evenflo Juvenile Furniture Co. recalled 162,967 seats with plastic push-pins that children can remove and swallow.

The Century recall includes model numbers 4580, 4581, 4583 and 4585 of the Century 580 safety seats manufactured between July 1986 and December 1989. Evenflo seats recalled are Seven-Year safety seat models 458 and 459, and booster seat models 470 and 471, manufactured between Feb. 13, 1987, and Aug. 31, 1988.

NHTSA said that incorrectly adjusting or relocating the Century seat shoulder straps may lead to improper threading, which later allows the straps or slide assembly to pull free, leaving the child's shoulders unrestrained. Cloth or vinyl pads in the Evenflo seats are held in place by plastic push-pins, which can be worked free and ingested by a child, presenting a potential choking hazard.

Century offers a new pictorial diagram of the strap-threading process prepared as a label to be placed on the safety seat. Owners may contact Century at 1 (800) 892-3600 to request the label. Redesigned push-pins which are more child-resistant, yet easily installed, are available from Evenflo by calling 1 (800) 837-8926.

In both cases the companies will require model numbers to determine if seats are subject to recall. The safety agency emphasized that both the phone call to request the replacement parts and the parts themselves are free of charge.

NHTSA ALERTS PUBLIC TO RECALL OF KOLCRAFT CHILD SAFETY SEATS

The National Highway Traffic Safety Administration (NHTSA) today advised owners of "Perfect Fitt" child safety seats that free replacement seat covers are available to substitute for covers which have been recalled.

The Kolcraft Enterprises action includes all model 180-200 Perfect Fitt seats Owners can identify seats subject to recall by a white model number label on the seat back.

NHTSA's independent laboratory tests found that existing seats covers brought in contact with an open flame burned at a faster rate than prescribed by federal standard.

Free replacement seat covers which meet the federal requirement can be obtained from Kolcraft by calling its toll-free number, 1 (800) 453-7673, or by writing the company at: Kolcraft Enterprises, Inc., 3455 West 31st Place, Chicago, Ill. 60623.

The safety agency strongly urged parents to continue using the Perfect Fitt seats while awaiting the replacement cover. Properly restrained children are much less likely to suffer crash injuries. The existing cover does not limit the safety seat effectiveness in a collision where no fire occurs, NHTSA said.

[American Academy of Pediatrics, June 1992]

BUCKET-RELATED DROWNINGS IN THE UNITED STATES, 1984 THROUGH 1990

(By N. Clay Mann, MS*; Susan C. Weller, PhD*; and Renae Rauchschwalbe, MS‡)

Abstract. The purpose of the study is to document the incidence of bucket-related drowning in the United States and to identify factors associated with this type of submersion injury. Analysis of Consumer Product Safety Commission data revealed 160 bucket-related drownings for the years 1984 through 1989, representing a mortality rate of 0.367 per 100,000 persons (younger than 2 years old) per year in the United States. Eighty-eight percent of bucket drownings occurred in toddlers aged 7 to 15 months old. Black children were six times more likely to drown in a bucket than white children of similar age ($P < .0001$). Male toddlers were at significantly greater risk than females ($P < .01$). A seasonal trend present in the data indicated that infants are more likely to drown in warmer than in colder months ($P < .01$). States with the highest rates of bucket drowning were Vermont (2.1/100,000), Arizona (1.5/100,000), and Illinois (1.0/1000,000). Through passive and active educational strategies, perhaps this fatal home injury can be prevented. *Pediatrics* 1992;89:1068-1071; *home accidents, drowning, infant, preschool child, death certificates.*

Traumatic injuries have become an important determinant of childhood mortality, accounting for 46 percent of all deaths of children 1 to 4 years of age.[1] Drowning is second only to motor vehicle injuries as the leading cause of death among children in this age group, with almost 5 children per 100,000 drowning each year in the United States.[2-4] Public swimming pools and fresh-water lakes or rivers are the major locations of "away-from-home" infant drowning while residential swimming pools, bathtubs, canals, and ditches are the most frequent sites of "in-or-around-home" infant drowning.[5-9]

Recently, Jumbelic, and Chambliss[10] identified 5-gallon industrial buckets as an additional source of accidental drowning for infants and toddlers in or around the home. They indicated that 24 percent of all toddler drownings in Cook County, IL, over a 4-year period were due to toddlers falling into industrial buckets that were being used as mop buckets or diaper pails. Two studies in Cape Town, South Africa, also reported large proportions of bucket-related toddler drownings.[11,13] The sturdy construction and design of 5-gallon industrial buckets is thought to increase the likelihood of serious sequelae following an unintentional submersion.[10,13]

Other studies of drowning performed in the United States report that all types of pails and buckets, including 5-gallon buckets, play an important but less significant role in childhood drowning than the findings cited above.[14-16] Some studies do not identify buckets as a contributing factor at all.[17,19]

From the *Department of Preventive Medicine and Community Health. The University of Texas Medical Branch, Galveston; and ‡US Consumer Product Safety Commission, Washington, DC.

Received for publication Sep 30, 1991; accepted Nov 26, 1991.

The contribution made to this article by Renae Rauchschwalbe, a Senior Compliance Officer for the CPSC, was performed in her private capacity. It is not intended nor should it be inferred that opinions expressed herein represent the official position of the Consumer Product Safety Commission. Reprint requests to (N.C.M.) Dept of Preventive Medicine and Community Health, 1.128 Ewing Hall, J-53, The University of Texas Medical Branch, Galveston, TX 77550.

Footnotes at end of article.

One reason for the conflicting results in previous research may be that the incidence of bucket drowning varies by geographic region.[20,21] Knowing which states or subpopulations are at increased risks would allow interventions to be focused where the need is the greatest. The purpose of this study is to document the incidence of bucket-related drowning in the United States and identify risk factors that may be important in developing strategies for preventing this fatal home injury.

METHODS

Mortality data for unintentional bucket-related drownings in the United States from January 1984 through December 1990 were obtained from the National Injury Information Clearinghouse at the US Consumer Product Safety Commission (CPSC). Bucket-related drownings were collected from three different data banks maintained by the CPSC: (1) CPSC Death Certificate File: (2) CPSC Reported Incidence File; and (3) CPSC Accident Investigation File. The CPSC Death Certificate File includes death certificates in which consumer products are likely to be involved. The death certificates are sent to the CPSC by the departments of health in all 50 states and two municipal health jurisdictions [the District of Columbia and New York City]. The CPSC Reported Incidence File is a computerized data bank with product-related consumer complaints, newspaper accounts of product-related incidents, and reports of product-related death from participants in the CPSC's Medical Examiners and Coroners Alert Program. The CPSC Accident Investigation File includes investigational abstracts of product-related injury and mortality inquires conducted or sponsored by the CPSC. To obtain the total number of bucket-related drownings the United States by state, deaths identified in the CPSC death certificate file as drownings (rubric E910.9-8, E984.0)[22] were cross-referenced with CPSC incidence and investigation file data for relevant product codes (CPSC codes: 0459, manual cleaning equipment; 1528, diaper pails; 0954, general purpose household cleaners; and 0694, beds, not specified).

Risk factors were recorded from CPSC abstracts contained in the accident investigation file and the reported incidence file. The following environmental risk factors were coded: (1) type and size of the bucket; (2) location of the bucket at the time of the injury; (3) use of contents of the bucket; and (4) the caretaker of the toddler at the time of injury. Month of death, gender, age, and ethnicity of cases (coded as black, white, and Hispanic) were assigned by the CPSC on the basis of information contained on individual death certificates and/or investigational abstracts.

To provide mortality rates, population estimates for state reporting drownings were based on an average of yearly national and state populations, compiled by the Bureau of the Census.[23,24] Estimates were based on the years 1984 through 1989 or 1984 through 1990 depending on the completeness of CPSC data. The total number of children 2 years of age or younger was estimated using two fifths (40%) of the total number of children reported by the Bureau of the Census to be younger than the age of 5, nationally and by state. Population sizes were estimated for boys, girls, blacks, whites, and Hispanics.

To assess the reliability of the CPSC data, the total number of bucket-related drownings included in the three CPSC data files was compared with the number reported in other independent sources matched by state, county, and time period. A X^2 test was used to test for differences in the number of

drownings by season, gender, ethnicity, and age.

RESULTS

The 1984 through 1989 CPSC data contain complete reporting for all states and health jurisdictions except for Maryland, which did not report data for 1989. The three CPSC files contained 188 deaths for the period 1984 through 1990. The death certificate file included 147 reported deaths related to buckets. Forty-one additional deaths were abstracted from the CPSC Accident Investigation File (n=25) and the CPSC Reported Incident File (n=16).

According to the CPSC, 23 toddlers drowned in buckets or pails in 1984, 24 in 1985, 26 in 1986, 29 in 1987, 27 in 1988, and 31 in 1989. The 1990 data contain complete data for only 23 states. (AL, AR, AZ, CA, DE, FL, IA, KY, MO, MS, NC, ND, NH, NJ, OH, OK, OR, SC, SD, TN, UT, VA, WV, and the District of Columbia had reported for 1990 at the time data were collected. Other states had partially or not reported at all.) To date (November 1991), 28 deaths have been reported in 1990. Because the 1990 data are incomplete, the analyses of season, age, gender, and ethnic differences are based on CPSC data from January 1984 through December 1989 (160 deaths). National and state drowning rates are based on the total number of years each state reported.

The reliability of the CPSC files was estimated by comparing the total number of bucket drownings reported from available sources, Florida[25] (n=2) and Illinois[10] (n=12), to matched cases contained in the combined CPSC files (n=2 and n=9, respectively). In addition, all accidental drowning deaths that occurred among children in Harris County, TX, from March 1984 through March 1990 were abstracted from Harris County death certificates (n=2) and compared to CPSC files (n=1). The results of this analysis (12 deaths reported in CPSC data sources and 16 documented deaths) showed that the CPSC files underestimated these deaths by 25%.

The total number of bucket drownings from 1984 through 1989 represent a mortality rate of 0.367 per 100,000 persons (younger than 2 years old) per year in the United States (95% confidence interval=0.310, 0.424). Two states had rates higher than Illinois (1.0/100,000): Vermont (2.1/100,000) and Arizona (1.5/100,000). Washington, DC (0.85) and 13 additional states had rates higher than the national average: Colorado (0.79), Florida (0.77), Kentucky (0.67), New Mexico (0.61), Alabama (0.60), Oregon (0.55), Maryland (0.54), Louisiana (0.53), Georgia (0.44), Texas (0.43), Virginia (0.43), South Carolina (0.42), and Ohio (0.41).

Girls accounted for 37% of the deaths for 1984 through 1989. Assuming equal numbers of male and female toddlers, there was a significant difference between genders in the numbers of cases (χ^2 [1]=10.57, $P < .01$; n=159). The mortality rate for boys was 1.69 times higher than that for girls.

Of cases reporting the ethnicity of the child, whites accounted for 43%, blacks for 46%, and Hispanics for 8% of the total number of deaths. The distribution of ethnicity is significantly different (χ^2 [2]=140.21, $P < .0001$; n=140) from that in the United States (ie, 81% white, 14% black, and 5% Hispanic).[24] Furthermore, black toddlers are at greater risk of drowning than white toddlers (χ^2 [1]=141.12, $P < .0001$; n=129). The mortality rate for blacks was 6.21 times higher than the rate for white children of similar age. This difference remains significant even when all missing cases (n=15) are assigned as "white" ($P < .0001$). Because of the small number of Hispanic cases, no comparisons were made.

Gender, ethnicity, and age-specific mortality rates for 1984 through 1989 are presented in the Figure. Children between the ages of 7 months and 15 months accounted for 113 (88%) of the deaths, with very few toddlers younger than 7 months (6%) or older than 15 months (6%) drowning in buckets or pails.

The greatest percentage of drownings occurred in October (15.6%), and February had the smallest percentage of deaths (3.1%). Assuming a homogeneous distribution of bucket-related deaths through the months, a seasonal trend was present in the data (χ^2 [11]=30.12, $P < .01$; n=160).

The CPSC data files contained investigatory abstracts or injury-related information on 178 deaths. Of cases reporting the size of the bucket (n=99), 88% reportedly took place in 5-gallon, industrial (straight-sided) buckets, 9% in 1- to 3-gallon buckets or pails, and 3% in a 6- to 10-gallon bucket.

Abstracts containing descriptions of the location of the bucket (n=83) indicated that drowning took place inside the home (92%), in the yard (7%), or while fishing (1%). Most of the drownings occurred in the kitchen (24%), bathroom (17%), bedroom (17%), or on the porch (13%). In 10 cases, drowning occurred because a sleeping infant rolled off an adult bed, couch, or out of a crib into a liquid-filled bucket.

Most of the buckets (88%) contained fresh water or water and some type of household cleaner, including detergent (12%), pine cleaner or disinfectant (10%), bleach (7%), wallpaper stripper (1%), or some combination of these substances (10%). One of the buckets contained urine. The content of 21 buckets was not indicated.

Eighteen of the abstracts reported objects in the water that may have attracted the attention or heightened the curiosity of the unsuspecting toddler, including toys (22%), clothing (16%), a dog leash (11%), fish (11%), diapers (11%), a mop (5%), a baby bottle (5%), bread (5%), orange peels (5%), and toilet paper (5%). Buckets used for household cleaning also may have contained bubbles. Of the abstracts identifying the care giver at the time of the drowning (n=77), a third (38%) of infants were in the care of a babysitter.

DISCUSSION

The average number of young children who drowned in bucket-related injuries, 27 per year, is considerably less than the number of drownings attributed to bathtubs for this age group.[10,26,27] Nevertheless, it is higher than estimates of drowning due to other in-home water sources (e.g., toilets or basins).[10,28] On average, one child drowned in a bucket-related incident every 13 days. It is important to point out that these findings represent minimal estimates of the number of bucket drownings that occur, thus, the 'true' number may be higher.

Mortality rates for states indicate that the risk of bucket drowning in Vermont and Arizona may be greater than that reported by Jumbelic and Chambliss[10] for Illinois. Note, however, that estimates of risk for individual states lack precision because of the small numbers of reported drownings. In particular, the mortality rates for Vermont and Washington, DC, are notably unstable because of the small population of toddlers (VT, 16,000; DC, 18,400) and the small number of bucket drownings reported in these areas (VT, 2; DC, 1). Nevertheless, it does appear that many of the states that are at high risk for other forms of fatal injuries[1,20,21,29] also report high rates of bucket-related drowning.

The risk factors associated with bucket drowning are similar to those reported for other submersion injuries. The difference in the rates of bucket-related drownings between boys and girls is similar to that reported for other sources of childhood drowning, which indicate that boys are generally at higher risk.[14,18,28,30] In this study, black toddlers were found to be at greater risk than white toddlers of similar age. An increased risk of drowning among black toddlers has not been described in studies that report rates that combine all sources of drowning.[3,7,12,31,32] Bucket-related drownings are similar to other sources of drowning in that most deaths occur during warmer months,[7,26] although bucket drownings peak in October. The greatest risk occurs in the age range at which youngsters can stand momentarily, walk holding onto furniture, stand alone, and walk well.[33]

There are several limitations in the data, the most serious of which is the likelihood of underreporting bucket-related drownings. Our estimate (based on mortality rates for two states and one county) indicates that CPSC data underestimated bucket-related mortality by 25%. Based on a multiple recapture model, the CPSC indicates that the number of deaths (from 1985 through 1989) may be underestimated by as much as 52%.[34] These estimates emphasize that the results of this study should be viewed as minimal estimates of risk that may be biased. Errors due to misclassification of cause of death as drowning on death certificates are also possible, but unlikely in that most of the victims underwent either postmortem examination and/or a state or federal accident investigation. Far more likely is the possibility that a toddler drowning was not identified as a bucket-related drowning.

An additional source of error may be coding bias. Certain ethnic groups (eg., blacks) may be more likely to be recorded on death certificates.[35] In this study, however, the ethnicity analyses remained significant with all missing cases coded as "white." Intentional bucket drownings may also bias these results, although the direction of the bias is unclear. Studies indicate that potential abuse may cause underrecording[36] or overrecording[37] of deaths as homicides.

Lastly, the process used to calculate age distributions is based on the assumption of equal numbers of children in each age stratum. This assumption could cause the rates for the youngest group (0 through 6 months) to be overestimated and the rates for the oldest group (16 through 24 months) to be underestimated. However, the general pattern presented in the Figure for toddlers aged 7 to 15 months would probably remain the same.

Infants appear to be at particular risk of drowning in 5-gallon industrial buckets because of the large capacity and stability of this type of bucket.[38] These containers are about 14 inches high, about half the height of the typical "top-heavy" toddler, with the rim just below the child's upright center of gravity. In addition, containers weigh more than most 8- to 12-month-old infants when filled with just a few gallons of liquid.[13] Although this research provides no data dealing with survival after near-drowning episodes, bucket-related injuries may be particularly dangerous because of the toxic material that is often in the buckets at the time of injury.

Measures can be taken to lessen mortality due to drownings in buckets or pails. An information and education campaign initiated by the CPSC and the Coalition for Container Safety provides brochures, posters, and self-adhesive labels that can be placed on buckets by manufacturers, fillers, or consumers. (The Coalition for Container Safety may be contacted by dialing 1-800-BUCKET-5.) The Gyp-

sum Industry and Procter and Gamble, which respectively fill about 8% and 2% of all 5-gallon industrail buckets manufactured, are the only business presently printing permanent warning labels on new buckets before they are shipped for commercial use. To our knowledge, none of the 5-gallon industrial buckets available in retail stores include either-adhesive or permanent warning labels. Perhaps the offer of a refund for recycling buckets would reduce their home use.

Anticipatory guidance to parents may also reduce the incidence of bucket-related drowning. During a 6-month well-baby checkup, pediatricians could instruct parents to never leave the toddler alone with any large container of liquid, empty the container immediately after use, and store the container out of the toddler's reach until the toddler is 20 months old.

In conclusion, large-capacity buckets are potentially dangerous to young children. Because bucket-related drownings occur suddenly, in a presumably safe environment, the psychological effect of an injury may be more traumatic than deaths from some other causes.[39,40] By focusing on specific etiologic and epidemiologic patterns associated with bucket-related drownings, interventional efforts can be concentrated in states and among ethnic groups where the incidence of this type of drowning is the greatest.

ACKNOWLEDGMENTS

We are indebted to the National Injury Information Clearinghouse and the Directorate for Epidemiology of the U.S. Consumer Product Safety Commission for providing the data for this article. In addition, we thank Drs. G. Wilkinson, T. Miller, D. Jenkins, and D. McCormick for comments on an earlier draft.

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Mr. WELLSTONE. Mr. President, let me also point out it is in part because of the inadequate health care system in this country, victims injured by defective products must seek compensation for their injuries through product liability lawsuits so they can pay their medical bills, and recover lost wages. And yes, in those situations where a manufacturer has consciously or recklessly marketed a defective product, victims seek punitive damages as well.

There are certainly some lawsuits that should not be filed, some lawsuits that are frivolous, and some jury awards that may be excessive, but this does not justify revamping the entire product liability system in this country, especially at the Federal level.

While it is desirable that product liability litigation be conducted fairly, expeditiously, and inexpensively, I am not willing to support legislation that I believe unfairly restricts the rights of victims to file lawsuits or that limits their ability to receive fair compensation for their injuries. It is simply not fair to stack the deck as S. 640 does so that in certain cases businesses are immune from suit or limited in their liability for placing defective products in the marketplace.

I am concerned that S. 640 is based in large part on arguments that are mostly myths and misinterpretations of anecdotal information. For example, rather than an explosion of product liability suits, recent studies show that over the last 5 years, the number of such suits is actually declining. The only explosion appears to be in the number of businesses suing each other. There are relatively few punitive damage awards made each year and even where punitive damages are assessed, the unfortunate victim rarely receives the full amount awarded.

The concern over product liability suits, rather than stifling innovation, should be viewed as an opportunity to develop safer products and to be more innovative. Not too many years ago, lawnmower manufacturers claimed accidents involving contact with the rotating mower blade were the fault of careless consumers and not defective products. It was not until the Consumer Product Safety Commission mandated performance requirements that manufacturers redesigned their mowers to address the tragedy of hand and feet amputations. Since the mandatory standard took effect, injuries due to blade contact have dropped nearly 40 percent, from approximately 42,000 in 1983 to 26,000 in 1989. I ask unanimous consent to print in the RECORD a news release from the CPSC discussing this decrease in injuries.

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

POWER LAWNMOWER INJURIES DECLINE

WASHINGTON, DC.—Americans are using walk-behind rotary lawnmowers with fewer injuries today than at anytime before 1982.

According to the U.S. Consumer Product Safety Commission (CPSC), walk-behind mower injuries have declined from about 41,900 in 1983 to about 25,800 emergency room treated injuries in 1989, a reduction of 38 percent. Among the injuries prevented were amputations, fractures and severe lacerations of fingers, hands and feet. Blade contact injuries account for 64 percent of all emergency room treatments.

CPSC said the decline in injuries was largely due to industry-wide compliance with the 1982 Federal standard which established blade control requirements for walk-behind mowers.

To combat injuries when users accidentally inserted their hands or feet into the path of the moving blade of these mowers, the standard calls for the rotary blade to stop within three seconds after the consumer leaves the operator position at the rear of the mower.

CPSC estimated that some 80,000 walk-behind mower injuries have been prevented during the seven-year tenure of the standard,

with medical and other cost savings of some $680 million. Because of the standard, the agency forecasts that consumers will avoid some 23,000 injuries annually at cost savings of $195 million each year.

While walk-behind mower injuries have declined, riding mower injuries over the same period of time have remained steady. Emergency room treated injuries last year for riding mowers totaled an estimated 19,600.

Several improvements to the voluntary standard for riding mowers became effective in 1987; however, CPSC said it is too soon to be able to measure the impact of these safety features on injury reductions. CPSC staff is currently working to develop recommendations for additional improvements to reduce riding mower deaths and injuries. CPSC staff also meets frequently with the Outdoor Power Equipment Institute (OPEI) to discuss government and industry work related to improving riding mower safety.

NOTE.—To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

Mr. WELLSTONE. Mr. President, there are other examples where, because of product liability lawsuits, manufacturers improved the safety of their products. The Ford Pinto is the classic oft-cited example. But there are many others, ranging from coffeemaker manufacturers adding a second thermal cutoff device to prevent overheating and fires to LP gas valve manufacturers redesigning their control valves to prevent gas leaks.

Finally, there is no objective evidence that product liability suits have hindered the competitiveness of American businesses. Indeed, the safety of American products can and should be used as a competitive tool in international markets.

Arguments have been made that the loser pay provision of the bill, the provision intended to encourage settlement of lawsuits by allowing a manufacturer that makes a settlement offer to collect attorneys' fees from the victim if the judgment is the same or less than the settlement offer, is fair to victims. I don't agree. As far as I am concerned, this provision victimizes persons injured by defective products, persons least able to withstand the onslaught of a battery of high-powered defense lawyers. Even though the amount of attorneys' fees the victim might have to pay has some limitations, this provision, nonetheless, coerces victims to settle claims for less than adequate compensation to avoid the risk of having to give up part of an award or collateral benefits to pay the fees of high-priced defense lawyers.

I find it truly amazing that the proponents of the bill suggest the high cost of litigation is due to attorneys representing injured persons. Someone is representing the powerful corporations whose products cause the injuries. Is it not possible some of those attorneys engage in delaying strategies that run up the costs of litigation, and place injured victims faced with increasing medical bills in the position of being forced to accept low settlement offers so they can pay some of their bills?

S. 640 increases the standard for obtaining punitive damages to such a high level that even if a company's actions were reckless, or it failed to exercise reasonable care, it would not be subject to punitive damages. Supporters justify this limitation on the ground there is an explosion in punitive damage awards. The facts simply don't support this. In the most definitive study conducted, it was found there have been only 355 punitive damage awards since 1965. And many of these were overturned or modified on appeal.

The bill further restricts a victim's ability to obtain punitive damages where the injury results from a drug approved by FDA or an airplane certified by FAA. It seems ironic that an administration that touts deregulation, and that has slashed the budgets and personnel of regulatory agencies, now argues that if a firm meets minimal Federal safety standards for drugs and aircraft, they should be relieved of liability for dangerous products. What this means in human terms is that women ravaged by the hazards of DES, or Bjork-Shiley heart valves approved by FDA, for example, might not even have a claim for punitive damages. This is simply unjust.

I support real tort reform, reform that will expedite the process of determining whether a victim of an injury is entitled to compensation, and if so, providing fair compensation quickly. I am not convinced, however, that such reform is necessary at the Federal level. I do know that S. 640 is not the answer.

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

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

(Mr. WELLSTONE assumed the chair.)

Mr. METZENBAUM. Mr. President, I rise in opposition to invoking cloture on the motion to proceed to S. 640. The Senate should not move forward with this legislation. It does not meet the challenge of the problems facing this Nation today. The legislation is opposed by every major consumer organization in the country as well as by groups representing senior citizens, working families, the environment, and victims of defective products. Many State judges and State officials oppose the bill because it is a massive intrusion upon an area of traditional State authority.

This bill is being driven by myths and anecdotes and a new-found fondness for lawyer bashing. Indeed, the President and the Vice President have decided that they can score political points by blaming the Nation's problems on lawyers.

Mr. President, I want to tell you something. The Nation understands why we have problems in this country. It is not due to trial lawyers. It is due to the failure of leadership on your part in the last 3 years and 8 months. That is the reason so many people are unemployed and that is the reason so many people who are employed are making far less than they made when you took office. It is not the problem of lawyers. The problem has to do with more basic issues to which you have failed to address yourself.

The President has decided that bashing lawyers is worth a few points in the polls. Two months ago he bashed single mothers. Last month he bashed gays. Now lawyers are this month's target.

Frankly, I do not really understand this craven lawyer bashing. Some of the most well heeled lawyers in this country are the very people who are providing the wherewithal to support the President's campaign and providing him with financial support. The Vice President himself is a lawyer and goes around bashing lawyers. Who are you kidding? What kind of phoniness is this, to be a lawyer yourself and spend all your time going around bashing lawyers.

The serious problems facing this country are not related to the conduct of the lawyers. Many Members of this body are lawyers. Most of the White House staff are lawyers. The heavy hitting lobbyists who come from downtown to lobby the White House and make fancy deals with respect to savings and loans that the White House goes along with are lawyers. Those are the lawyers who are making so much money, not the lawyers who are representing injured workers and injured consumers who are harmed by products that we buy.

Pollsters have now told the spin doctors to tell their politicians to trash lawyers. It makes no difference that many of the politicians who are trashing lawyers are themselves members of the profession. We should not allow this cynical din of blame mongering to divert us from the truth. The truth is that enactment of S. 640 will do great damage.

I am not here to argue that outrageous and frivolous lawsuits are never filed. I know better. They are. Nor am I here to argue that all lawsuits that are filed have merit. But I am here to try to protect an America concerned about consumers and injured victims. If there is a problem with respect to the lawyers, then let us deal with that separately. Let us sit down and reason together and figure out how that issue should be handled. But many lawyers help injured victims who have lost their legs and their arms and their eyes and their loved ones obtain fair compensation.

We hear much talk about how this bill is a fight between productive man-

ufacturers and greedy trial lawyers. That is just hokum. The reality is this bill represents an effort by manufacturers to reduce further liability exposure when their products injure consumers. It is consumers about whom I am concerned, not about trial lawyers. I am concerned about the American consumer who constantly gets the short end from this Congress but more particularly from the President of the United States. This Congress has time and again attempted to stand up and speak out for the consumer and too often the White House has opposed that.

The current product liability system is not perfect. Studies show that many people who are injured by products never seek legal redress for their injury because of obstacles within the system. We are all familiar with anecdotes in which a large portion of a victim's damage award is eaten up by legal fees and court costs. I have indicated to the legal profession and to the industry groups backing the bill that they should be thinking harder about how to make the tort system more responsive to the needs of consumers and victims. But this bill does not help consumers and victims. It hurts them.

I agree with Linda Lipsen, the legislative director of Consumers Union, who told the Judiciary Committee that "while there is much room to improve the present system, S. 640 takes off at high speed in the wrong direction."

What is the rationale for this bill? Why are Senators, including many who traditionally defend States rights and victims' rights, supporting a bill which drastically intrudes upon the authority of the States and diminishes protections accorded to victims?

A few years ago, the principal justification for this bill was that it was necessary to forestall an insurance crisis and to prevent an alarming increase in insurance costs.

That was the argument being made at that time. But that argument has faded because the insurance industry has publicly testified that the bill "is not likely to reduce insurance claim costs or improve the insurance market."

The new rationale for this bill is that it is necessary to improve our economic competitiveness.

Mr. President, I have heard more talk about proposals that are supposed to improve our economic competitiveness at the very time that the same President is sending a trade bill to remove jobs from America and send them out of this country. I do not see how relaxing product safety laws will make us more competitive.

A number of studies, including research conducted by the conference board and the Rand Corp., have shown that there is no sound basis for concluding that the present product liability system hurts our ability to match foreign competition. Indeed, every foreign competitor who sells a product in this country is subject to our product liability laws. Foreign companies have no advantage over American companies, nor vice versa. The competitiveness issue is a red herring.

S. 640 is just one more industry-backed proposal that shrinks the rights of ordinary citizens which is justified and claimed needed on the basis of competitiveness. To hear the industry lobbyists tell it, if we could just weaken antitrust laws, environment laws, worker safety and consumer protection laws, and now product liability laws, America's dominance of the global marketplace would be restored. I say that just is not reality. That is not the way it is. That is not in accord with the facts. That is just a specious argument.

So if this bill will not significantly improve our competitiveness or reduce our insurance costs, what will it do? S. 640 will curtail a number of legal rights which consumers and injured victims currently enjoy in most States around this country.

Now, what do consumers get in return for these restrictions on their rights? Absolutely nothing. A big zero. You only need to glance at this bill to see that it is fatally tilted in favor of industry and against consumers. The bill's proponents claim that S. 640 will promote uniformity. It will not accomplish that objective. S. 640 fosters one-way uniformity. State law provisions that help injured victims get full recovery for their losses are preempted. State law provisions that manufacturers like, such as damage caps and restrictions on punitive damages, are retained.

Look at the much touted expedited settlement and alternative dispute resolution provisions. The bill's supporters actually believe these provisions are proconsumer. Under S. 640, a plaintiff could be ordered to pay some of a manufacturer's legal fees if the plaintiff rejects a defendant's settlement offer and then recovers the same amount or less at trial.

This provision is unfair to plaintiffs, consumers, and injured people. But even worse, the bill provides that if a victim refuses a product maker's offer to arbitrate the dispute and then loses at trial, the victim is presumed to be liable for the product maker's attorney's fees.

Are we at a point in our law that we do not think an individual has a right to go to court? Or are we saying to the individual, "You go to court, you lose, you pay for the other guy's fees?" Start that procedure in the laws of this country and, in my opinion, there will be no end, and the real end will be that individuals who are injured, individuals who are hurt by consumer products, will never have an opportunity to have their day in court.

These provisions are heavily tilted against consumers. In most product liability cases victims cannot even afford to pay their own attorney, but under this legislation, they could be ordered to pay the legal costs of the defendant's attorney. Under this bill, if a victim refuses a product-maker's offer to arbitrate the dispute and then loses the trail, then the victim is presumed to be liable for the product maker's attorneys fees.

The reason cases are taken on a contingency basis by lawyers is because the plaintiffs do not have the money to hire lawyers. The defendants have the money. They are large corporations, and they have plenty of money to pay for their lawyers, but the plaintiffs do not. So they hire lawyers on a contingency basis that the lawyer will receive a share of the proceeds.

The argument is made that they receive too much, that the lawyers get too much. There may be some merit to that. That may be a subject worth discussing. Maybe that is the case. I am not sure. I am not saying it is the fact or it is not the fact. But those who are proposing this legislation seem to believe, that all legal fees in all cases are too high. I do not believe that an injured person should have to pay the defendant's legal fees as well as his or her own.

The provisions that are in this bill could discourage or delay victims who wish to exercise their right to a jury trial. I say to my colleagues, that is not right, and you know it. The individual, under the laws of this country, for over 200 years has been entitled to a jury trial. Under this legislation we would discourage, and perhaps even chill, the exercise of that right by victims.

For example, let me give you some examples on this subject. A man by the name of James Hoscheit lost both of his arms because of a defect in a piece of farm equipment—no arms. After more than 6 years of legal battles, the manufacturer agreed to settle the case for $1.5 million, which is not a great sum considering the severity of Mr. Hoscheit's injuries. Mr. Hoscheit opposes S. 640 because he believes that "people will be afraid to sue if there is any chance that they might have to pay the other side's attorney's fees and expenses if they were to lose. In my case, that would have been more than half a million dollars, and it would have left me financially destitute for the rest of my life." He goes on to say that "manufacturers know that this provision will eliminate product liability lawsuits and that is why they want it so badly."

Is there anyone in this body who would really argue that an individual who has lost both of his arms and who wants to take his case to court, should be forced into choosing between going to arbitration or risking whatever little assets he or she may have left, such as a small bank account? Is that what we want to do in the law? Unfortu-

nately the settlement provisions look this way from the perspective of an injured victim.

Some may argue, well, it does not quite that way. Well, put yourself in the position of the injured victim. He or she does not know that. He or she does not understand the complications and the legalese that is in this situation. So he or she may back off from going to trial.

These provisions will have a particularly chilling effect on consumers whose recovery may depend upon a novel legal theory of whose injuries were caused by a product whose harm had not been previously recognized. Imagine if these provisions were in effect when asbestos cases or DES cases were first brought. Arthur Burris is an asbestos victims who settled for what he termed "a modest amount" after a 4-year legal dispute. Mr. Burris stated:

If I had faced the possibility of paying the other side's legal fees, as I might have if S. 640 had been law, I would have had to settle for even less. I never would have even thought of taking that to trial with that fear hanging over my head.

Tammy Callas, a silicon breast implant victim, states that S. 640 "pressures victims like myself into settling out of court if we are unable to correctly guess the award we will receive." Just think about it. Under this bill, if it were to become law, the individual might have to guess and say,

They offered me an arbitration proceeding and I rejected it. Now they are offering me $300,000 or $400,000, $600,000, whatever the number may be. Am I going to lose at trial? Maybe I had better take it because, if I don't take it and I lose, they could hold me liable for the fees of those corporate lawyers that are representing them, and I cannot afford that. I don't have any money now. I am injured. I cannot work. It would mean the meager savings I have, the little amount of money I have to send my daughter or son to college would be destroyed. I cannot afford to go to court.

This provision could work great injustice. It could discourage an individual from exercising his or her right to go to court. You say it is fair. I say, read it. I say, ask the individual who has been injured.

Aside from discouraging individuals from exercising their right to a jury trial, there are other aspects of this bill which will hurt injured victims. S. 640 preempts State law in joint and several liability by abolishing joint liability for noneconomic damage such as pain and suffering, loss of limbs, and damage to a woman's reproductive system. Joint liability provides that if one defendant is 70 percent at fault for a victim's injury and another defendant is 30 percent at fault, the injured victim should be able to recover fully from either party. This ensures that, in the event that one wrongdoer is insolvent, innocent victims will still recover the full measure of their damages from any other parties who were wrongdoers.

The change proposed in S. 640 shifts the focus from making the victim whole to ensuring that wrongdoers only pay their proportionate share of the harm. Moreover, the devaluation of noneconomic damages has a disproportionate impact on women, according to the National Women's Health Network, which opposes this bill.

Noneconomic damages are often the largest component of the compensation women receive, particularly in cases where their reproductive systems have been injured, or where a drug or medical device has caused disfigurement. If this provision had been in effect, women who were injured by products such as the Dalkon shield and DES might have faced additional obstacles in obtaining the full measure of their compensation.

I ask unanimous consent that letters in opposition to S. 640 from the Women's Health Network, the Women's Law Center, and the Command Trust Network, an organization assisting breast implant victims, be printed at the conclusion of my remarks in the RECORD.

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

(See exhibit 1.)

Mr. METZENBAUM. Mr. President, S. 640 would shield drug companies from punitive damages whenever the FDA has approved or has recognized as safe a drug or medical device which injures a consumer.

Mr. President, this provision reflects almost total ignorance about the way adverse drug reactions come to light. Many hazards associated with a drug or medical device do not become apparent until after the product has been approved by the FDA and gone on the market. Heart valves, contraceptive devices, drugs, and other products have been approved by the FDA, and have subsequently been shown to be hazardous to consumers.

The possibility of punitive damages provides drug companies with a strong incentive to continue postapproval monitoring of the safety of their products. But S. 640 will enable companies who fail to investigate information suggesting possible safety hazards to hide behind the badge of FDA approval. That is not enough, Mr. President. Just ask the families of victims who were injured or killed as a result of McNeil's Zomax, or Pfizer's heart valve, among others.

Richard Barbee's wife, Carol, was killed as a result of Pfizer's defective heart valve. Mr. Barbee filed a wrongful death suit, which was settled out of court. He has written a letter opposing S. 640, stating that:

There is nothing about FDA approval of my wife's heart valve, or any other medical product, that should magically absolve the manufacturer from punitive damages when the manufacturer engages in willful and wanton disregard for human life.

Mr. President, this bill does nothing but restrict the legal rights of victims who were injured by defective products. The industry groups pushing this bill are not interested in a balanced reform of our product liability system; they want to make it harder for consumers to be compensated for their injuries.

The Senate should not move forward on this bill. If cloture is invoked, I expect there will be a substantial number of amendments offered that are designed to provide injured victims—particularly women, children, and the elderly—a measure of protection against the most egregious aspects of this bill. This Senator may offer some amendments which are designed to substitute for safety incentives which would be eliminated by this bill.

But even if some strengthening amendments are adopted, this bill will remain fatally flawed. There is nothing in it for consumers but a restriction on their legal rights and an erosion of safeguards which promote product safety.

I urge my colleagues to oppose cloture.

EXHIBIT 1

THE WOMEN'S LAW CENTER, INC.,
Baltimore, MD, September 1, 1992.

Re S. 640—Kasten products liability bill.

U.S. SENATE,
Washington, DC.

DEAR SENATOR. The Women's Law Center urges you to vote against S. 640, the Kasten Products Liability Bill. The Women's Law Center is comprised of lawyers from a wide variety of backgrounds and practice areas. However, after discussion and consideration of the Kasten Products Liability Bill, we are united in opposition to the bill because we are united in our concern for American women who are time and again victimized by unsafe and defective products. As our nation's leading advocate for women's health concerns we hope you will consider our concerns and meet with members of the Women's Law Center as well as other women attorneys and women injured by defective or unsafe products before you vote on the bill.

Tens of thousands of women injured by the Dalkon Shield intrauterine device in the 1970's are still engaged in struggles for compensation for injuries that occurred twenty years ago. Mothers and daughters continue to discover permanent injuries to their reproductive organs wrought by ingestion of DES and continue to battle manufacturers for compensation. And now thousands and thousands of women with breast implants find themselves wearing untested medical "time bombs" with no reliable medical data nor doctors or manufacturers they can trust for information critical to their health. The facts on these defective and dangerous products were only exposed in product liability lawsuits brought by injured women.

The civil justice system is critically important to American consumers because it compensates the injured, deters conduct that results in unsafe products, and leads to the disclosure of outrageous corporate practices. While harmful to all consumers, S. 640 would have a disproportionate impact on women, children and the elderly. This is because the bill restricts injured consumers' ability to receive compensation for pain and suffering and other so-called "non-economic" damages. Since women, children and senior citizens tend to earn less money than middle-aged men, if they earn a salary at all, "non-economic" damages often make up the largest component of the compensation they receive. Furthermore, in the past, many defective products have resulted in damage to, or

in the past, women's reproductive capacity. Without compensation for intangible losses, these women would be denied recovery for this most devastating harm.

Because the Women's Law Center is so concerned about the victimization of women in the medical and legal arenas, we are hosting a winter conference entitled "The Medical Gender Gap—Crisis in Women's Health Care: The Medical, Legal and Political Issues." Among the topics we will be addressing is the role women can play through civil litigation to correct insufficient product testing and other corporate wrongdoing. We will also be addressing issues on which you have worked so hard, including funding for research on women's health concerns and discriminatory research protocol practices.

We look forward to hearing from your office and meeting with you as soon as possible.

Sincerely,

SUSAN ELGIN, *Esq.*,
CHRISTYNE NEFF, *Esq.*,
Co-Chairs, Legislative Committee, Women's Law Center.

COMMAND TRUST NETWORK,
BREAST IMPLANT INFORMATION NETWORK,
Covington, KY, August 17, 1992.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: Command Trust Network, a national, nonprofit breast implant information network serving over 14,000 women, would like to register its strong opposition to the misnamed "Product Liability Fairness Act," or S. 640, which the Senate will consider September 8, 1992. While this legislation is characterized by manufacturers as "moderate," the thousands of damaged women with breast implant complications ranging from deformities to scleroderma, thyroiditis and other disabling and life-shortening diseases, and their families would not agree.

As you may know, silicone breast implants were diligently marketed to millions of unsuspecting American women without proof of their safety. Despite FDA's long search for safety data on the silicone breast implant, consumers have the much maligned tort system to thank for opening the agency's eyes to the health hazards of these devices and to the fact that the manufacturers were withholding information on the dangers of silicone from consumers and from FDA. Though the FDA held several hearings during a ten-year period on the safety and efficacy of silicone breast implants, it took a product liability case to alert the agency that implants may be causing crippling autoimmune and connective tissue diseases.

Studies are underway which may show that children born to women with breast implants are also at risk. Recently, three out of three young children in this study tested positive for scleroderma, a severe, crippling disease linked with breast implants, which is sometimes fatal and for which there is no cure and no treatment.

The environment for women and children who have incurred tragic complications arising from breast implants is particularly grim and S. 640 makes matters much worse. Insurance companies are denying claims for explanation. Some go so far as to cancel policies, and many are changing the wording of policies to avoid paying claims. Many women are now uninsurable, and others are on social security disability as a direct result of their breast implants. Thus, a product liability lawsuit may be the only avenue many women have for obtaining compensation for the serious and sometimes life-threatening conditions caused by ruptured or otherwise defective breast implants.

S. 640 would add further obstacles for women seeking to be compensated for breast implant injuries. The bill unbelievably would require a woman seeking compensation through the civil justice system to pay the legal fees of such corporate giants as Dow Corning Wright, if she refuses to accept a meager offer from the company, proceeds to a jury trial and receives a jury verdict of either the same amount or less. In cases involving breast implants, where defense documents may still nct be available to consumers due to secrecy agreements and where the issues are complex, women could simply not afford to risk personal bankruptcy in order to exercise their Constitutional rights. Thus, this bill would create a chilling effect on most breast implant cases to the benefit of the companies who placed untested products in the bodies of American women.

This legislation offers nothing of value to breast implant victims in return for virtually eliminating one of the few avenues available for compensation.

Additionally, the bill would severely undercompensate those whose injuries were caused by more than one defendant. S. 640 would eliminate joint and several liability for "non-economic" damages. Thus, a breast implant victim's medical bills for scraping silicone out of her body would be compensated, but pain and suffering arising from gross deformities caused by silicone ruptures and anguish caused by multiple mutilating surgeries would not be compensated. This provision obviously misunderstands the fact that non-economic damages constitute real and profound losses. For women whose lives and whose children's lives have been shattered due to defective breast implants, much of the damage is so called "non economic," but is devastating nonetheless.

Finally, S. 640 establishes a defense to punitive damages for products that were approved by the FDA or were generally recognized as safe. While breast implants were never approved by FDA, these products were generally recognized as safe for nearly thirty years. At the very least, the bill creates another issue to be litigated.

The tort system and federal safety regulatory agencies perform complementary functions. Consumers need both an effective tort and regulatory system to assure adequate protection from product hazards. Health and safety agencies like FDA do not conduct independent research and investigations, but due to inherent budgetary and resource limitations, must rely on information provided by the very manufacturer who is seeking approval of its product. Additionally, regulatory agencies are not immune to the force and temperature of political winds.

Please show women and their children who have experienced severe complications from breast implants that you hear them by voting against this legislation.

Sincerely,

COMMAND TRUST NETWORK,
BREAST IMPLANT
INFORMATION NETWORK.

NATIONAL WOMEN'S
HEALTH NETWORK,
Washington, DC, August 13, 1992.

U.S. SENATE,
Washington, DC.

DEAR SENATOR. On behalf of the National Women's Health Network, I wish to register our opposition to S. 640, the misnamed "Product Liability Fairness Act," which the Senate will consider September 8, 1992. This legislation has a particularly devastating impact on women who through no fault of their own have suffered injuries resulting from defective and dangerous products.

Daily news reports about serious injuries resulting from such products as silicone breast implants, DES, super absorbent tampons, Copper 7 and Dalkon Shield IUD's, ritodrine (a product designed to halt early onset of labor) and many others should remind Congress that the marketplace can be a treacherous place for women. Instead of passing legislation like S. 640 which would only make it more difficult for women to receive compensation through the civil justice system, Congress should be helping to protect women and their offspring from product dangers.

While harmful to all consumers, S. 640 would have a disproportionate impact on women. This is because the bill restricts injured consumer's ability to receive compensation for pain and suffering and other so-called "non-economic" damages. Since women tend to earn less money than men, "non-economic" damages often make up the largest component of the compensation they receive. Furthermore, where products damage the reproductive system like DES or cause disfiguring conditions like ruptured silicone breast implants, the damage is not reflected in medical bills or lost wages. The bill oddly treats these profound injuries as less worthy of compensation.

Women already have a tough time pursuing their remedies through civil litigation when they are injured by dangerous products. Please do not make the situation worse. Vote against S. 640.

Sincerely,

CINDY PEARSON,
Program Director.

Mr. MITCHELL. Mr. President, I now ask unanimous consent that Senator HOLLINGS be recognized to address the Senate for 5 minutes, and that upon the completion of his remarks, the Senate proceed to consideration of Calendar No. 588, H.R. 5679, the Veterans Affairs-HUD appropriations bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from South Carolina is recognized.

Mr. HOLLINGS. I thank the distinguished leader and my colleagues in support on both sides of the aisle. I will be even more brief than the 5 minutes.

Mr. President, the distinguished President was in my State on Saturday, and he announced that he agreed with the Germans that we had the most productive and skilled workers in South Carolina. And he was remarking upon this. And he is associated already with the BMW plant coming from Germany to South Carolina, which was done earlier this year, at the economic summit. That is not what he told us the year before last, when he vetoed our textile bill and said—admonishing us in the veto message—that we had to be more productive.

The fact is, Mr. President, if you go to the economic statistics section of the United Nations or the Department of Labor Statistics, you will find that the most productive industrial worker in the world is in the United States. Japan is not No. 1. Yet we heard in the

argument on the floor here on this bill that the trouble with America is we have too many lawyers, that Japan has fewer lawyers.

The truth of the matter is—and I will include this in the RECORD—from an article in the ABA Journal, entitled "Mythical Kingdom of Lawyers," America does not have 70 percent of the Earth's lawyers. Rather, the article shows the difference between American lawyers, United States lawyers, and Japanese lawyers. Japanese attorneys do not perform the same role as American lawyers. They are more like the British barristers or French advocates.

The truth is that Japan has 387,206 lawyers, translating into a ratio in Japan of 31.71 lawyers per 10,000; whereas, in the United States, we have 28.45. They are not out there practicing law. They go into business. And more of their lawyers are in business than ours. But they have a lot of lawyers. And the administration actually is complaining about that.

It is a very interesting thing, because—this appears in the Pacific rim, in article of May 1992—it is ironic:

American firms have Japanese lawyers working for them in New York, London, and Hong Kong, but they can't bring them to Tokyo. A survey done by ABA found that more than 90 percent of the work done by U.S. lawyers in Japan is not for U.S. clients, but rather for Japanese clients who want to do business in the United States.

Now, it says here, restrictions on foreign lawyers, which range from bans against the use of established firm names to prohibitions against entering into partnerships with Japanese lawyers, known as Bengoshi, are issues that frustrated American lawyers and the United States Government for years. But now these barriers are receiving renewed attention as part of the Bush administration's vociferous battle with Japan over trade. "From the U.S. Government's perspective, the reason we continue to press this issue is because of the role that lawyers can play in facilitating trade," says Merritt Janal, Assistant Trade Representative for Japan and China. We need lawyers to be trade facilitators, particularly in Japan, which is a very difficult and complicated business environment.

President Bush secured a promise from the Government that it would redouble its efforts—this is back when they had the summit meeting in Tokyo. President Bush, in his travels to Tokyo, the President received a promise from the government that it would redouble its efforts to resolve the issues relating to foreign lawyers.

Now we get to the Houston convention, and the President is denigrating trial lawyers. But for his own kind of lawyer, either the lobbyist group or the RTC, at $500 an hour, or the business lawyers in Japan, the administration is all for them. But the poor plaintiff lawyer, representing the injured client, he is a scourge to American society. And if we can get rid of him, it would solve America's national problem at this particular hour. This is a gross misrepresentation.

I just wanted to point that out, because the Senator from Wisconsin has cited the numbers of lawyers here and the multiplicity of suits. Yet the Resolution Trust Corporation alone was filed 195 suits against bank directors, accountants, law firms; all we have to do is stop the Government from the multiplicity of suits.

We oppose this bill and ask that we not invoke cloture on it, because it does not promote uniformity, does not reduce cost, removes the trial by jury in an impartial manner whereby it does not apply to the manufacturer, and removes from the States the control of the tort system that the States use to resolve their problems. It is a nonproblem nationally and everybody will tell you that and it could ultimately lead to federalization of insurance. That is why we should vote against cloture on this bill.

I thank the Chair and yield back the remainder of our time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1993

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 5679.

The legislative clerk read as follows:

A bill (H.R. 5679) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry, independent agencies, boards, commissions, corporations, and office for the fiscal year ending September 30, 1993, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 5679

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes, namely:

TITLE I
DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS
(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans as authorized by law (38 U.S.C. 107, chapters 11, 13, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $16,494,239,000, to remain available until expended: *Provided,* That not less than $8,357,000 of the foregoing amount shall be **[transferred]** *reimbursed* to "General operating expenses" for necessary expenses in implementing those savings provisions authorized in the Omnibus Budget Reconciliation Act of 1990, the funding source for which is specifically provided as the "Compensation and pensions" appropriation.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 35, 36, 39, 51, 53, 55, and 61), **[$729,000,000]** *$814,010,000,* to remain available until expended: *Provided,* That funds shall be available to pay any court order, court award or any compromise settlement arising from litigation involving the vocational training program authorized by section 18 of Public Law 98–77, as amended.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by law (38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487), $22,730,000, to remain available until expended.

GUARANTY AND INDEMNITY PROGRAM ACCOUNT
(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the purpose of the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, **[$40,524,000]** *$42,500,000,* which may be transferred to and merged with the appropriation for "General operating expenses".

LOAN GUARANTY PROGRAM ACCOUNT
(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the purpose of the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, **[$87,869,000]** *$89,870,000,* to be transferred to and merged with the appropriation for "General operating expenses".

DIRECT LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, such sums as may be necessary to carry out the purpose of the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That during 1993, within the resources available, not to exceed $1,000,000 in gross obligations for direct loans are authorized for specially adapted housing loans (38 U.S.C. chapter 37).

In addition, for administrative expenses to carry out the direct loan program, **[$1,393,000]** *$1,469,000*, which may be transferred to and merged with the appropriation for "General operating expenses".

EDUCATION LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $1,000, as authorized by 38 U.S.C. 3698, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $11,000.

In addition, for administrative expenses necessary to carry out the direct loan program, $305,000, to be transferred to and merged with the appropriation for "General operating expenses".

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $51,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $1,760,000.

In addition, for administrative expenses necessary to carry out the direct loan program, **[$962,000]** *$1,040,000* to be transferred to and merged with the appropriation for "General operating expenses".

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost, as defined in section 13201 of the Budget Enforcement Act of 1990, including the cost of modifying loans, of direct loans authorized by Native American Veterans' Home Loan Equity Act of 1992 (S. 2528, 102d Congress, as reported by the Senate Committee on Veterans' Affairs), $4,500,000, to remain available until expended: Provided, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $58,400,000.

In addition, for administrative expenses to carry out the direct loan program, $500,000, which may be transferred to and merged with the appropriation for "General operating expenses" to cover the common overhead expenses associated with implementing the Federal Credit Reform Act of 1990.

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs, including care and treatment in facilities not under the jurisdiction of the Department of Veterans Affairs, and furnishing recreational facilities, supplies, and equipment; funeral, burial, and other expenses incidental thereto for beneficiaries receiving care in Department of Veterans Affairs facilities; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the Department of Veterans Affairs, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); aid to State homes as authorized by law (38 U.S.C. 1741); and not to exceed $2,000,000 to fund cost comparison studies as referred to in 38 U.S.C. 8110(a)(5); **[$14,631,920,000]** *$14,668,920,000 (of which $582,650,000 is available as a result of the cost savings and collection provisions of the subsequent paragraphs under this heading)*, plus reimbursements: *Provided*, **[**That of the sum appropriated, $9,440,000,000 is available only for expenses in the personnel compensation and benefits object classifications: *Provided further,***]** *That of the funds made available under this heading, not to exceed $2,000,000 shall be available for transfer to the Medical Administration and Miscellaneous Operating Expenses Appropriation for quality assurance activities: Provided further*, That of the funds made available under this heading, $476,860,000 is for the equipment and land and structures object classifications only, which amount shall not become available for obligation until August 1, 1993, and shall remain available for obligation until September 30, 1994: *Provided further*, That *after September 30, 1992*, none of the funds appropriated to the Department of Veterans Affairs in this Act or any other Act shall be available to implement or fund Veterans Health Administration Directive 10-92-013, dated January 24, 1992 (Medical Research Service Career Development Program Funding).

In addition, the following amendments are made to title 38, United States Code:

(1) Section 1710(a)(1)(E) is amended to read: "(E) to any veteran who has a service-connected disability rated less than 50 percent, for any nonservice connected disability, subject to the provisions of subsection (f) of this section;".

(2) Section 1710(f) is amended by inserting "subsection (a)(1)(E) or" before "subsection (a)(2)" in paragraph (1) and by adding a new paragraph (6) to read: "(6) Effective on January 1 of each year, the copayment amounts to effect under paragraph (2)(B) of this subsection and section 1722A of this title, shall be increased by the percentage by which the maximum rates of pension were increased under section 5312(a) of this title during the preceding calendar year.".

(3) Section 1712(a)(2)(A) is amended by inserting, "subject to subsection (f) of this section" after "40 percent".

(4) Section 1712(f)(1) is amended by inserting "1710(a)(1)(E) or" after "section" the third time it appears.

(5) Section 1722A(c) is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1993".

(6) Section 5317(g) is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1993".

(7) Section 5503(f)(6) is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1993":

Provided further, That notwithstanding the provisions of 38 U.S.C. 3732(c)(1)(C) or any other law, with respect to any loan guaranteed under 38 U.S.C. 3710 closed before October 1, 1993, the term "net value" for purposes of paragraphs (4) through (10) of 38 U.S.C. 3732 shall mean "the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Secretary estimates the Secretary would incur (if the Secretary were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale (including losses sustained on the resale of the property), and other costs resulting from the acquisition and disposition of the property, excluding any amount attributed to the cost of the Government of borrowing funds": Provided further, That section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1993": Provided further, That section 6103(1)(7(D) of the Internal Revenue Code of 1986 is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1993".

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by law (38 U.S.C. chapter 73), to remain available until September 30, 1994, **[$242,000,000]** *$232,000,000*, plus reimbursements.

HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

For payment of health professional scholarship program grants, as authorized by law, to students who agree to a service obligation with the Department of Veterans Affairs at one of its medical facilities, $10,113,000.

HEALTH PROFESSIONAL EDUCATION LOAN PAYMENT PROGRAM

For payment of outstanding tuition loans to Department of Veterans Affairs health care professional employees (excluding physicians and dentists) who agree to remain in service for one year or more, $5,000,000, to remain available until September 30, 1994: Provided, That the Secretary, in order to recruit and retain such employees, may make such payments, not to exceed $3,000 during any calendar year, or $12,000 in total, to any such employee who has an outstanding tuition loan from an educational institution approved by the Secretary that has led to a degree in the health care occupation in which such individual is employed: Provided further, That no payment shall be made in advance: Provided further, That regulations shall be promulgated by the Secretary to implement this program.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law, **[$42,359,000]** *$44,000,000*, plus reimbursements: *Provided, That of the funds made available under this heading, $25,000,000 may be available for transfer to the Medical and Prosthetic Research Appropriation for the Career Development Program.*

GRANTS TO THE REPUBLIC OF THE PHILIPPINES

For payment to the Republic of the Philippines of grants, as authorized by law (38 U.S.C. 1732), for assisting in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the Veterans Memorial Medical Center, $500,000, to remain available until September 30, 1994.

TRANSITIONAL HOUSING LOAN PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, **[$4,000]** *$7,000*, as authorized by Public Law 102-54, section 8: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget

Act of 1974: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed [$35,000] *$70,000*. In addition, for administrative expenses to carry out the direct loan program, [$25,000] *$50,000*, which may be transferred to and merged with the "General Post Fund", as authorized by Public Law 102–54, section 8.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including uniforms or allowances therefor, as authorized by law; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail; [$808,882,000] *$826,765,000*, of which $20,000,000 for the acquisition of automated data processing equipment and services to support the modernization program in the Veterans Benefits Administration shall not become available for obligation until September 1, 1993, and shall remain available for obligation until September 30, 1994.

NATIONAL CEMETERY SYSTEM

For necessary operating expenses of the National Cemetery System not otherwise provided for, including uniforms or allowances therefor, as authorized by law; cemeterial expenses as authorized by law; purchase of ten passenger motor vehicles, for use in cemeterial operations; and hire of passenger motor vehicles, [$67,894,000] *$73,441,000*.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$30,719,000] *$31,646,000*.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, *services of claims analysts*, and site acquisition, where the estimated cost of a project is $3,000,000 or more or where funds for a project were made available in a previous major project appropriation, [$533,974,000] *$213,274,000*, to remain available until expended: *Provided*, That except for advance planning of projects funded through the advance planning fund and the design of projects funded through the design fund, none of these funds shall be used for any project which has not been considered and approved by the Congress in the budgetary process: *Provided further*, That funds provided in this appropriation for fiscal year 1993, for each approved project shall be obligated (1) by the awarding of a construction documents contract by September 30, 1993, and (2) by the awarding of a construction contract by September 30, 1994: *Provided further*, That the Secretary shall promptly report in writing to the Comptroller General and to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above; and the Comptroller General shall review the report in accordance with the procedures established by section 1015 of the Impoundment Control Act of 1974 (title X of Public Law 93–344): *Provided further*, That no funds from any other account except the "Parking garage revolving fund", may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until one year after substantial completion and beneficial occupancy by the Department of Veterans Affairs of the project or any part thereof with respect to that part only [: *Provided further*, That prior to the issuance of a bidding document for any construction contract for a project approved under this heading (excluding completion items), the director of the affected Department of Veterans Affairs medical facility must certify that the design of such project is acceptable from a patient care standpoint].

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, *services of claims analysts*, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110 and 8122 of title 38, United States Code, where the estimated cost of a project is less than $3,000,000, $190,701,000, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is less than $3,000,000: *Provided*, That not more than [$41,176,000] *$43,676,000* shall be available for expenses of the Office of Facilities, including research and development in building construction technology: *Provided further*, That funds in this account shall be available for (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Department of Veterans Affairs which are necessary because of loss or damage caused by any natural disaster or catastrophe, and (2) temporary measures necessary to prevent or to minimize further loss by such causes: *Provided further, That $1,000,000 of previously appropriated funds for the construction of a pedestrian bridge to connect the John L. McClellan Veterans Affairs Medical Center with the University of Arkansas for Medical Sciences Clinical Building shall be awarded within 90 days of enactment of this Act to a responsive and qualified construction bid offeror: Provided further, That the Secretary of Veterans Affairs shall transmit to the Committees on Appropriations of the House and Senate a report providing a full and detailed explanation should an award not be made within the 90-day period and which sets forth a revised schedule to proceed with this project; said report shall be transmitted not less than 30 days following the expiration of the 90-day period.*

PARKING GARAGE REVOLVING FUND

For the parking garage revolving fund as authorized by law (38 U.S.C. 8109), [$9,917,000] *$1,317,000*, together with income from fees collected, to remain available until expended. Resources of this fund shall be available for all expenses authorized by 38 U.S.C. 8109 except operations and maintenance costs which will be funded from "Medical care".

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist the several States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by law (38 U.S.C. 8131–8137), [$40,000,000] *$80,000,000*, to remain available until September 30, 1995.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veteran cemeteries as authorized by law (38 U.S.C. 2408), $5,104,000, to remain available until September 30, 1995.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

Any appropriation for 1993 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations.

Appropriations available to the Department of Veterans Affairs for 1993 for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

No part of the appropriations in this Act for the Department of Veterans Affairs (except the appropriations for "Construction, major projects", "Construction, minor projects" and the "Parking garage revolving fund") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

No part of the foregoing appropriations shall be available for hospitalization or examination of any persons except beneficiaries entitled under the laws bestowing such benefits to veterans, unless reimbursement of cost is made to the appropriation at such rates as may be fixed by the Secretary of Veterans Affairs.

Appropriations available to the Department of Veterans Affairs for fiscal year 1993 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" shall be available for payment of prior year accrued obligations required to be recorded by law against the aforementioned accounts within the last quarter of fiscal year 1992.

Appropriations accounts available to the Department of Veterans Affairs for fiscal year 1993 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, 1987, except that if such obligations are from trust fund accounts they shall be payable from "Compensation and pensions".

During fiscal year 1993, the Secretary may waive the provision in 38 U.S.C. 8135 that limits the amount of a State home grant which a State may request to 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of a State home facility. During this period, the Secretary may award State home grants for amounts in excess of 65 percent of the estimated cost of the project.

Section 8122 of title 38, United States Code, is amended by adding a new subparagraph (e), as follows:

"(e) For the purpose of drug and biological procurements by the Department of Veterans Affairs, and notwithstanding any other provision of law, the following definitions shall apply—

"(1) DEPOT.—The term 'depot' means a storage system operated by an agency of the Federal Government, or by an entity with which such an agency contracts, through which drugs and biologicals from various manufacturers are received, stored, and held for distribution to multiple health-care facilities of an agency of the

Federal Government. The term includes any warehousing and distribution arrangement whether Government owned and operated, Government owned and privately operated, or privately owned and operated.

"(2) SINGLE AWARD CONTRACT.—The term 'single award contract' means a contract awarded to a single entity to supply an agency or agencies of the Federal Government a drug or biological that is available from multiple sources.

TITLE II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

HOMEOWNERSHIP AND OPPORTUNITY FOR PEOPLE EVERYWHERE GRANTS (HOPE GRANTS)

[For the HOPE for Public and Indian Housing Homeownership Program as authorized under title III of the United States Housing Act of 1937 (42 U.S.C. 1437aaa et seq.) and subtitle A of title IV of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), $161,000,000; for the HOPE for Homeownership of Multifamily Units Program as authorized under subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), $95,000,000; for the HOPE for Homeownership of Single Family Homes Program as authorized under subtitle C of title IV of the Cranston-Gonzalez National Affordable Housing Act, $95,000,000; and for the HOPE for Elderly Independence demonstration program as authorized under section 803(k) of the Cranston-Gonzalez National Affordable Housing Act, $10,000,000: *Provided*, That all amounts shall remain available until expended.]

For the HOPE for Public and Indian Housing Homeownership Program as authorized under title III of the United States Housing Act of 1937, as amended ("the Act" herein) (42 U.S.C. 1437aaa et seq.), $175,000,000; for the HOPE for Homeownership of Multifamily Units Program as authorized under subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), $130,000,000; for the HOPE for Homeownership of Single Family Homes Program as authorized under subtitle C of title IV of the Cranston-Gonzalez National Affordable Housing Act, $125,000,000; for the HOPE for Elderly Independence demonstration program as authorized under section 803(k) of the Cranston-Gonzales National Affordable Housing Act, $60,000,000; and for the HOPE for Youth Program as set forth in section 403 of S. 3031 as reported to the Senate, $25,000,000: Provided, That of the amounts provided for the HOPE for Homeownership of Multifamily Units Program, $10,000,000 shall be available for assistance to mutual housing associations, to the extent that such association submit approvable grant applications under such program: Provided further, That all amounts provided under this head shall be available until expended: Provided further, That of the funds made available under this paragraph, $79,000,000 shall be derived by transfer from amounts made available for nonincremental use under the heading "Annual contributions for assisted housing" in prior fiscal years which remain unreserved at the end of fiscal year 1992, following the application of such funds as provided in the paragraph under said heading in this Act.

Furthermore, $500,000,000 shall be for grants to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects, to be administered by local public housing agencies: Provided, That such funding shall be made available to up to 15 cities selected from either the 40 most populous United States cities or, from any city whose housing authority was considered to have been on the Department's troubled housing authorities list as of March 31, 1992: Provided further, That no more than $50,000,000 shall be provided to each participating municipality: Provided further, That no more than 500 units shall be funded for each participating city and such units shall be located in up to 3 separately defined areas containing the community's most severely distressed projects, including family high-rise projects: Provided further, That at least 80 per centum of the funding provided to each participating public housing agency shall be used for the capital costs of major reconstruction, rehabilitation and other physical improvements, for the capital costs of replacement units and for certificates under section 8(b) used for replacement and for management improvements for the reconstructed project and for planning and technical assistance purposes and not more than 20 per centum shall be used for community service programs (as defined by the Commission on National and Community Service) and for supportive services, including, but not limited to, literacy training, job training, day care, youth activities, administrative expenses, and the permissive and mandatory services authorized under the Gateway Program established in the Family Support Centers demonstration program, provided for in 42 U.S.C. 11485e-f: Provided further, That each participating city shall make contributions for supportive services in an amount equal to 15 per centum of the funding provided for supportive services pursuant to the immediately preceding proviso: Provided further, That all such contributions from participating jurisdictions for supportive services shall be derived from non-Federal sources: Provided further, That each participating community shall submit a plan for program implementation which is consistent with the local comprehensive housing affordability strategy prepared pursuant to section 105 of the Cranston—Gonzalez National Affordable Housing Act and which has the approval of the local governing body: Provided further, That each plan shall include a community services component, but no funds are to be disbursed pursuant to this paragraph until such community services program has been approved by the Commission on National and Community Service: Provided further, That funds made available pursuant to this paragraph may be used in conjunction with, but not in lieu of, funding provided under the head "Modernization of Low-Income Housing Projects" for the modernization of existing public housing projects pursuant to section 14 of the Act (42 U.S.C. 1437l); for construction or major reconstruction of obsolete public housing, other than for Indian families; for the replacement of public housing units pursuant to section 18 of the Act; and for the HOPE for Public and Indian Housing Homeownership program as authorized under title III of the Act: Provided further, That notwithstanding the provisions of section 18(b)(3) of the Act, units demolished, disposed of or otherwise eliminated under this demonstration may be replaced as follows: one-third by certificates under section 8(b) and the balance by any combination of conventional public housing and units acquired or otherwise provided for homeownership under section 5(h) of the Act, housing made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as those established pursuant to sections 603-607 of the Housing and Community Development Act of 1987 (Public Law 100-242), or under the HOPE II or III programs, as establish under sections 421 and 441 of the Cranston—Gonzalez National Affordable Housing Act; persons displaced by the reconstruction activities provided for herein shall be eligible for these replacement units: Provided further, That, in order to be eligible for funding under this paragraph, applications for funding must be received within 180 days from the date the Notice of Funds Availability is published in the Federal Register: Provided further, That the Secretary of the Department of Housing and Urban Development shall issue a notice of funds availability within 90 days of enactment of this paragraph: Provided further, That the Secretary shall determine which cities have been selected to participate in the program within 90 days of the timely receipt of the last eligible application: Provided further, That housing authorities, in submitting their application for funds under this paragraph, shall identify all severely distressed public housing developments, using the criteria set forth by the National Commission on Severely Distressed Public Housing: Provided further, That nothing in this paragraph shall prohibit the Secretary from conforming the program standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: Provided further, That the authority in the immediately preceding proviso shall not apply to any legislation that excludes or otherwise limits self-sufficiency or community service activities set forth in this paragraph, or authorize reallocation of amounts available for obligation which are included in this paragraph: Provided further, That any troubled housing authority that applies for funds under this paragraph, shall not be eligible if the Secretary certifies to the Congress that they are not making substantial progress to eliminate their troubled status in accordance with section 6(j) of the Housing Act of 1937, as amended: Provided further, That in the event that communities applying for funding under this paragraph also request funding under any other HOPE program authorized under title III or title IV of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall process such applications concurrently and in an expeditious manner: Provided further, That, in the event that any application received from the cities initially selected to participate in this program is determined to be unacceptable, the Secretary shall select another city from the 40 most populous United States cities to receive funding under this paragraph: Provided further, That, in the event that communities selected to receive funding do not proceed in a manner consistent with the plan approved for that community, the Secretary may withdraw any unobligated balances of funding made available pursuant to this paragraph and distribute such funds to other eligible communities.

[HOME INVESTMENT PARTNERSHIPS PROGRAM

[For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), as amended, $600,000,000, to remain available until expended: *Provided*, That in order to allocate the total amount provided, the Act shall be construed as follows: in section 216(3)(A), "$750,000" both places it appears shall be "$375,000"; in section 217(b)(2)(A), "$3,000,000" both places it appears shall be "$750,000"; in section 217(b)(2)(B), "$500,000" both places it appears shall be "$250,000"; and in section 217(b)(3), "$500,000" shall be "$250,000".

[Hereafter, for purposes of amounts appropriated under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102-139; 105 Stat. 736, 744), the per-unit cost limits established by the Secretary of Housing and Urban Development under section 212(d) of the HOME Investment Partnerships Act (42 U.S.C. 12742(d)) shall reflect the actual development costs in each area in a manner that ensures compliance with the matching con-

tributions waiver provided under such heading in such Appropriations Act.

[Section 217(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(a)) is amended—

[(1) in the first sentence of paragraph (1), by inserting "and after reserving amounts for the insular areas under paragraph (3)" before the first comma; and

[(2) by adding at the end the following new paragraph:

["(3) INSULAR AREAS.—For each fiscal year, of any amounts approved in appropriations Acts to carry out this title, the Secretary shall reserve for grants to the insular areas the greater of (A) $750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.".]

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

(INCLUDING TRANSFERS AND RESCISSION OF FUNDS)

For assistance under the United States Housing Act of 1937, as amended ("the Act" herein) (42 U.S.C. 1437), not otherwise provided for, [$10,000,000,000] *$3,231,000,000*, to remain available until expended: *Provided*, That to be added to and merged with the foregoing amounts, there shall be up to [$287,234,000] *$563,234,000*, consisting of up to [$24,000,000 of budget authority previously made available under the "Flexible subsidy fund" which remains unreserved at the end of fiscal year 1992] *$300,000,000 of budget authority previously made available under this head for nonincremental activities which remains unreserved at the end of fiscal year 1992*; $18,934,000 of budget authority previously made available for the Nehemiah Housing Opportunity Fund which remains unreserved at the end of fiscal year 1992; and up to $244,300,000 of amounts of budget authority (and contract authority) reserved or obligated in prior years for the development or acquisition costs of public housing (including public housing for Indian families), for modernization of existing public housing projects (including such projects for Indian families), and, except as herein provided, for programs under section 8 of the Act (42 U.S.C. 1437f), which are recaptured during fiscal year 1993: *Provided further*, That, from the foregoing total of [$10,287,234,000] *$3,794,234,000*, $257,320,000 shall be for the development or acquisition cost of public housing for Indian families, including amounts for housing under the mutual help homeownership opportunity program under section 202 of the Act (42 U.S.C. 1437bb); [$609,000,000] *$250,000,000* shall be for the development or acquisition cost of public housing [,-of which not less than 5 per centum shall be committed by the Secretary for developing or acquiring new projects designed or designated to meet the special needs of handicapped persons or persons with disabilities: *Provided further*, That, notwithstanding the 20 per centum limitation under section 5(j)(2) of the Act, $200,000,000 of the $609,000,000 for the development or acquisition of public housing shall be awarded competitively for major reconstruction of obsolete public housing projects, other than for Indian families: *Provided further*, That of the $200,000,000 specified in the immediately preceding proviso for major reconstruction of obsolete public housing projects, the Secretary shall commit for use not less than 5 per centum to assist public housing agencies in reconfiguring portions of projects which are not designated for elderly persons into dwelling units of less than two bedrooms, as necessary to provide increased housing options for non-elderly handicapped persons or persons with disabilities: *Provided further*, That of the $10,287,234,000 total under this head, $3,000,000,000 shall be for modernization of existing public housing projects pursuant to section 14 of the Act (42 U.S.C. 1437l), including $4,750,000 for technical assistance and training under section 20 of the Act (42 U.S.C. 1437(r)) and $10,500,000 for the inspection of modernization units and the provision of management and technical assistance for troubled Public Housing Authorities and Indian Housing Authorities: *Provided further*, That of the $10,287,234,000 total under this head, $30,000,000 shall be competitively awarded in grants to public housing agencies for the purpose of providing service coordinators for public housing residents who are elderly, disabled or handicapped and for funding up to 15 per centum of the cost of supportive services to such residents: *Provided further*, That of the $10,287,234,000 total under this head, $25,000,000 shall be for public housing family investment centers as authorized in section 22 of the Act: *Provided further*, That of the $10,287,234,000 total under this head, $851,500,000 shall be for the section 8 existing housing certificate program (42 U.S.C. 1437f)]: *Provided further*, That of the [$10,287,234,000] *$3,794,234,000* total provided under this head, [$100,000,000] *$75,000,000* shall be for the foster child care program authorized under section 8(x) of the Act: *Provided further*, That of the [$10,287,234,000] *$3,794,234,000* total provided under this head, [$813,500,000] *$250,000,000* shall be for the housing voucher program under section 8(o) of the Act (42 U.S.C. 1437f(o)); [$1,616,304,000 shall be for amendments to section 8 contracts other than contracts for projects developed under section 202 of the Housing Act of 1959, as amended, including $70,000,000 which shall be for rental adjustments resulting from the application of an annual adjustment factor in accordance with section 801 of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235); $1,000,000,000] *$600,000,000* shall be for assistance for State or local units of government, tenant and nonprofit organizations to purchase projects where owners have indicated an intent to prepay mortgages and for assistance to be used as an incentive to prevent prepayment or for vouchers to aid eligible tenants adversely affected by mortgage prepayment, as authorized in the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and of the [$1,000,000,000] *$600,000,000* made available for such assistance, up to $25,000,000 shall be for use by nonprofit [organizations, pursuant to the Emergency Low Income Housing Preservation Act of 1987, as amended by the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and for tenant and community-based nonprofit education, training and capacity building and the development of State and local preservation strategies] *housing development and resident management organizations for technical assistance and capacity building as set forth in section 602(g) of S. 3031 (102nd Congress, 2nd Session) as reported to the Senate (S. Rept. 102-332); $50,000,000 for assistance to families with children to move out of areas with high concentrations of persons living in poverty;* $93,032,000 shall be for section 8 assistance for property disposition; and $202,000,000 shall be for loan management: *Provided further*, That any amounts of budget authority provided herein that are used for loan management activities under section 8(b)(1) (42 U.S.C. 1437f(b)(1)) shall be obligated for a contract term that is no less than five years: *Provided further*, That those portions of the fees for the costs incurred in administering incremental units assisted in the certificate and housing voucher programs under sections 8(b) and 8(o), respectively, shall be established or increased in accordance with the authorization for such fees in section 8(q) of the Act: *Provided further*, That 50 per centum of the amounts of budget authority, or in lieu thereof 50 per centum of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628, 102 Stat. 3224, 3268) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured in 1993 and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or a local government or local housing agency financed project approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section: *Provided further*, That of the [$10,287,234,000] *$3,794,234,000* total, [$100,000,000] *$75,000,000* shall be for housing opportunities for persons with AIDS under title VIII, subtitle D of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) and [$100,000,000] *$127,350,000* shall be for grants to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately-owned rental units, of which $2,000,000 shall be for lead-based paint abatement grants for technical assistance and evaluation studies: *Provided further*, That such grant funds shall be available only for projects conducted by contractors certified and workers trained through a federally- or State-accredited program: *Provided further*, That, to be eligible for such grants, States and units of general local government must demonstrate the capability to identify significant-hazard housing units, to oversee the safe and effective conduct of the abatement, and to assure the future availability of abated units to low- and moderate-income persons: *Provided further, That notwithstanding the language preceding the first provision of this paragraph, $126,275,000 shall be used for special purpose grants in accordance with the committee report (S. Rept. 102-356) accompanying H.R. 5679.*

[With the funds appropriated hereunder for tenant-based section 8 assistance and distributed to each public housing agency, together with any previously-appropriated tenant-based section 8 funds currently available to the agency, the agency may set-aside any units of less than two bedrooms for providing assistance to handicapped persons or persons with disabilities. Such setaside funds may be utilized by the agency to assist either new applicants for housing assistance, or persons presently residing in elderly public housing projects who wish to move to private housing, or any mix thereof in the agency's discretion.]

Of the [$10,287,234,000] *$3,794,234,000* total under this head, [$1,315,488,000] *$1,298,308,000* shall be for capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and *for project rental assistance, and amendments to contracts for project rental as-*

sistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended: Provided further, That any unreserved balances provided under this head in prior years for such purposes shall be merged with amounts provided herein: Provided further, That $15,438,000 shall be for service coordinators pursuant to section 202(q) of the Housing Act of 1959, as amended.

Of the $3,794,234,000 total under this head, $221,347,000 shall be for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) [, respectively]; and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for [the elderly under section 202(c)(2) of the Housing Act of 1959, as amended, and for] persons with disabilities as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act [, respectively; and for service coordinators pursuant to section 202(g) of the Housing Act of 1959, as amended].

AMENDMENTS TO SECTION 8 SUBSIDY CONTRACTS

(INCLUDING TRANSFERS)

For assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437), not otherwise provided for, for amendments to section 8 contracts other than contracts for projects developed under section 202 of the Housing Act of 1959, $1,300,000,000, to remain available until expended, including $70,000,000 for rental adjustments resulting from the application of an annual adjustment factor, including such adjustments made in accordance with section 801 of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235): Provided, That to the extent amounts provided in this Act under the head "Assistance for the Renewal of Expiring Section 8 Subsidy Contracts" are insufficient, up to $100,000,000 of the amount provided herein may be transferred to and merged with funding provided under that head.

ASSISTANCE FOR THE RENEWAL OF EXPIRING SECTION 8 SUBSIDY CONTRACTS

For assistance under the United States Housing Act of 1937 (42 U.S.C. 1437) not otherwise provided for, for use in connection with expiring section 8 subsidy contracts, $6,346,135,000, to remain available until expended: *Provided*, That funds provided under this paragraph may not be obligated for a contract term that is less than five years: *Provided further*, That the Secretary may maintain consolidated accounting data for funds disbursed at the Public Housing Agency or Indian Housing Authority or project level for subsidy assistance regardless of the source of the disbursement so as to minimize the administrative burden of multiple accounts.

Further, for the foregoing purposes, $450,000,000, to become available for obligation on October 1, 1993, and to remain available for obligation until expended.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (12 U.S.C. 1715z-1) is reduced in fiscal year 1993 by not more than $2,000,000 in uncommitted balances of authorizations provided for this purpose in appropriations Acts: *Provided*, That up to $283,000,000 of recaptured loan management or section 236 budget authority resulting from the prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z-1) shall be rescinded in fiscal year 1993: *Provided further*, That to the extent that the recaptures and rescission during fiscal year 1993 are less than $283,000,000, the total funding provided under the head "Annual contributions for assisted housing" and the budget authority provided in the tenth proviso under that head for assistance in connection with mortgage prepayments shall be reduced accordingly.

CONGREGATE SERVICES

[For contracts with and payments to public housing agencies and non-profit corporations for congregate services programs in accordance with the provisions of the Congregate Housing Services Act of 1978, as amended, $7,500,000, to remain available until September 30, 1994.]

For contracts with payments to public housing agencies and non-profit corporations for congregate services programs, $27,000,000, to remain available until expended, of which up to $10,800,000 shall be for entities operating such programs in accordance with the provisions of the Congregate Services Act of 1978, as amended, and the balance shall be for such programs under section 802 of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625).

MODERNIZATION OF LOW-INCOME HOUSING PROJECTS

For assistance under section 14 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437l), for modernization of existing public housing (including public housing for Indian families), not otherwise provided for, $3,550,000,000, to remain available until expended: Provided, That funds previously appropriated under the "Annual Contributions for Assisted Housing" head and earmarked for modernization of existing public housing projects, including those for Indian families, that remain unreserved as of October 1, 1992, shall be added to and merged with funds appropriated under this head: Provided further, That of the amounts made available under this heading, $100,000,000 may be made available for the choice in management initiative, to be obligated only upon the enactment of authorization legislation.

PAYMENTS FOR OPERATION OF LOW-INCOME HOUSING PROJECTS

For payments to public housing agencies and Indian housing authorities for operating subsidies for low-income housing projects as authorized by section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), [$2,282,436,000] *$2,450,000,000: Provided, That these funds shall be available for obligation without regard to section 9(d) of the United States Housing Act of 1937, as amended.*

HOUSING COUNSELING ASSISTANCE

For contracts, grants, and other assistance, not otherwise provided for, for providing counseling and advice to tenants and homeowners—both current and prospective—with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and meeting the responsibilities of tenancy or homeownership, including provisions for training and for support of voluntary agencies and services as authorized by section 106(a)(1)(iii), section 106(a)(2), section 106(c), and section 106(d) of the Housing and Urban Development Act of 1968, as amended, [$6,025,000] *$3,515,000.*

FLEXIBLE SUBSIDY FUND

For assistance to owners of eligible multifamily housing projects insured, or formerly insured, and under the National Housing Act, as amended, or which are otherwise eligible for assistance under section 201(c) of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1715z-1a), in the program of assistance for troubled multifamily housing projects under the Housing and Community Development Amendments of 1978, as amended, all uncommitted balances of excess rental charges as of September 30, 1992, and any collections and other amounts in the fund authorized under section 201(j) of the Housing and Community Development Amendments of 1978, as amended, during fiscal year 1993, to remain available until expended: *Provided*, That assistance to an owner of a multifamily housing project assisted, but not insured, under the National Housing Act may be made if the project owner and the mortgagee have provided or agreed to provide assistance to the project in a manner as determined by the Secretary of Housing and Urban Development.

FHA—MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 1993, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing Act, as amended, shall not exceed a loan principal of $57,146,000,000: *Provided, That for fiscal year 1993 the first sentence of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended to read as follows: "Involve a principal obligation in an amount (A) not to exceed the lesser of (i) in the case of a 1-family residence 95 percent of the median 1-family price in the area (as determined by the Secretary); in the case of a 2-family residence, 107 percent of such median price; in the case of a 3-family residence, 130 percent of such median price; or in the case of a 4-family residence, 150 percent of such median price; or (ii) 75 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as adjusted annually under such section) for a residence of applicable size; except that the applicable dollar amount limitation in effect for any area under this subparagraph (A) may not be less than the dollar amount limitation in effect under this section for the area on May 12, 1992; and (B) except as otherwise provided in this paragraph (2), not to exceed an amount equal to the sum of (i) 97 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance; (ii) 95 percent of such value in excess of $25,000 but not in excess of $125,000; and (iii) 90 percent of such value in excess of $125,000.": Provided further, That for fiscal year 1993 the second sentence of section 2(b)(2) of the National Housing Act (12 U.S.C. 1703(b)(2)) is amended by striking "but not" and all that follows through "203(b)(2)" and inserting "but in no case may such limits, as so increased, exceed the lesser of (A) 185 percent of the dollar amount specified, or (B) the dollar amount specified as increased by the same percentage by which 95 percent of the median 1-family house price in the area (as determined by the Secretary) exceeds $67,500": Provided further, That for fiscal year 1993 section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking "for a 1-family residence" and inserting "for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located": Provided further, That for fiscal year 1993 section 40(p)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(4)) is amended by striking subparagraph (B) and inserting the following new subparagraph: "(B) that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section*

203(b)(2) of the National Housing Act as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).": Provided further, That for fiscal year 1993 section 40(p)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(5)) is amended by striking subparagraph (B) and inserting the following new subparagraph: "(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).": Provided further, That for fiscal year 1993 section 40(p)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(7)) is amended by striking subparagraph (B) and inserting the following new subparagraph: "(B) that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2)".

For administrative expenses necessary to carry out the guaranteed loan program, [$257,021,000] *$255,645,000*, to be derived from the FHA-Mutual Mortgage Insurance Guaranteed Loans Receipt account, of which not to exceed [$251,011,000] *$249,542,000* shall be transferred to the appropriations for salaries and expenses; and of which not to exceed [$6,010,000] *$6,103,000* shall be transferred to the appropriation for the Office of Inspector General.

FHA—GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, $183,652,000, as authorized by the National Housing Act, as amended (12 U.S.C. 1715z-3(b) and 1735c(f)): *Provided*, That such costs, including the cost of modifying such loans, shall be defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal any part of which is to be guaranteed of not to exceed $9,038,980,000: *Provided further, That the Secretary shall carry out the Multifamily Finance Demonstration program set forth in section 312 of S. 3031 (102nd Congress, 2nd Session), as reported to the Senate (S. Rpt. 102-332), which shall be deemed enacted as of the enactment of this Appropriations Act, with six qualified State housing finance agencies: Provided further, That not to exceed $79,000,000 of the amount provided herein for the cost of guaranteed loans, and not to exceed $21,000,000 of the $187,000,000 provided in the paragraph following this paragraph for administrative expenses necessary to carry out the guaranteed loan program shall be for the foregoing Multifamily Finance Demonstration program.*

In addition, for administrative expenses necessary to carry out the guaranteed loan programs, $187,000,000, of which $182,955,000 shall be transferred to the appropriations for salaries and expenses; and of which $4,045,000 shall be transferred to the appropriation for the Office of Inspector General.

DRUG ELIMINATION GRANTS FOR LOW-INCOME HOUSING

For grants to public housing agencies for use in eliminating drug-related crime in public housing projects authorized by 42 U.S.C. 11901-11908, and for drug information clearinghouse services authorized by 42 U.S.C. 11921-11925, [$165,000,000] *$175,000,000*, to remain available until expended: *Provided*, That $5,225,000 of the foregoing amount shall be available for grants, contracts, or other assistance for technical assistance and training for or on behalf of public housing agencies and resident organizations (including the costs of necessary travel for participants in such training)[:*Provided further*, That $5,000,000 of the foregoing amount shall be made available for grants for a youth violence prevention in low-income housing program modeled on a program developed by the National Association of Neighborhoods]: *Provided further*, That $10,000,000 of the foregoing amount shall be made available for grants for federally assisted, low-income housing.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDES TRANSFER OF FUNDS)

During fiscal year 1993, new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g), shall not exceed $77,700,000,000. For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, [$6,680,000] *$6,936,000*, to be derived from the GNMA—Guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed [$6,680,000] *$6,936,000* shall be transferred to the appropriation for salaries and expenses.

HOMELESS ASSISTANCE

EMERGENCY SHELTER GRANTS PROGRAM

For the emergency shelter grants program, as authorized under subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), as amended, $17,450,000, to remain available until expended.

TRANSITIONAL AND SUPPORTIVE HOUSING DEMONSTRATION PROGRAM

For the transitional and supportive housing demonstration program, as authorized under subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), as amended, $150,000,000, to remain available until expended.

SECTION 8 MODERATE REHABILITATION SINGLE ROOM OCCUPANCY

For assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), for the section 8 moderate rehabilitation program, to be used to assist homeless individuals pursuant to section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), [$103,926,000] *$105,000,000*, to remain available until expended.

SHELTER PLUS CARE

For the Shelter Plus Care program, as authorized by subtitle F of title IV of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), as amended, [$265,902,000] *$266,550,000*, to remain available until expended.

The unexpended balances of the "Shelter Plus Care: Section 8 Moderate Rehabilitation, Single Room Occupancy" and "Shelter Plus Care: Section 202 Rental Assistance" programs, available from the appropriations enacted in Public Law 102-139, shall be added to and merged with the amount available under this heading.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT GRANTS

For grants to States and units of general local government and for related expenses, not otherwise provided for, necessary for carrying out a community development grants program as authorized by title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), [$4,000,000,000] *$4,100,000,000*, to remain available until September 30, 1995: *Provided*, That [$39,950,000] *$41,000,000* shall be available for grants to Indian tribes pursuant to section 106(a)(1) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), and $14,500,000 shall be available for "special purpose grants" pursuant to section 107 of such Act[,-and $500,000 shall be available for a grant to demonstrate the feasibility of developing an integrated database system and computer mapping tool for compliance, programming, and evaluation of community development block grants pursuant to section 901 of the Cranston-Gonzalez National Affordable Housing Act of 1990]: *Provided further*, That not to exceed 20 per centum of any grant made with funds appropriated herein (other than a grant using funds under section 107(b)(3) of such Act[or funds set aside in the following proviso]) shall be expended for "Planning and Management Development" and "Administration" as defined in regulations promulgated by the Department of Housing and Urban Development [:*Provided further*, That $5,000,000 shall be made available from the total amount provided to carry out an early childhood development program under section 222 of the Housing and Urban-Rural Recovery Act of 1983, as amended (12 U.S.C. 1701z-6 note)]: *Provided further, That after September 30, 1992, notwithstanding section 909 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), no funds provided in this appropriations Act shall be used to establish or supplement a revolving fund under section 104(h) of the Housing and Community Development Act of 1974, as amended.*

During fiscal year 1993, total commitments to guarantee loans, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), shall not exceed [$300,000,000] *$140,000,000* of contingent liability for loan principal.

HOME INVESTMENT PARTNERSHIPS PROGRAM

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), as amended, $1,200,000,000, to remain available until expended.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z-1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, $25,000,000, to remain available until September 30, 1994: *Provided*, That of the foregoing amount [(1) $1,000,000 shall be available for innovative building technologies research with the Research Center of the National Association of Home Builders, (2) $1,000,000 shall be available for the National Commission on Manufactured Housing, and (3)] *(1)* at least $500,000

shall be for lead-based paint abatement research and studies *including an evaluation of XRF technologies, and (2) $1,000,000 shall be for a study by the National Academy of Public Administration on HUD staffing and human resource management and requirements.*

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, [$13,350,000] *$21,000,000*, to remain available until September 30, 1994: *Provided*, That not less than [$8,600,000] *$16,250,000* shall be available to carry out activities pursuant to section 561 of the Housing and Community Development Act of 1987.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary administrative and nonadministrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including not to exceed $7,000 for official reception and representation expenses, [$698,027,000] *$910,942,000*, of which [$393,575,000] *$432,497,000* shall be provided from the various funds of the Federal Housing Administration, and [$6,680,000] *$6,936,000* shall be provided from funds of the Government National Mortgage Association: *Provided*, That of the total [amount] *amount*, $2,000,000 shall be available for the Housing Assistance Council and $500,000 shall be available for the National American Indian Housing Council: [*Provided further*, That the Secretary may transfer any funds in other accounts for headquarters offices for personal services and travel to the account under this head for field staffing and administrative expenses] *Provided further, That of the total amount, $1,000,000 and 20 staff years shall be for the Office of Lead Based Abatement and Poisoning Prevention, which shall be located within the Office of the Secretary.*

[PERSONAL SERVICES AND TRAVEL, OFFICE OF HOUSING

[(INCLUDING TRANSFER OF FUNDS)

[For personnel compensation and benefits for the headquarters Office of Housing, $55,580,000, of which $37,637,000 shall be provided from the various funds of the Federal Housing Administration: *Provided*, That not to exceed $1,276,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, OFFICE OF PUBLIC AND INDIAN HOUSING

[For personnel compensation and benefits for the headquarters Office of Public and Indian Housing, $12,788,000: *Provided*, That not to exceed $491,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

[For personnel compensation and benefits for the headquarters Office of Community Planning and Development, $17,872,000: *Provided*, That not to exceed $439,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, OFFICE OF POLICY DEVELOPMENT AND RESEARCH

[For personnel compensation and benefits for the headquarters Office of Policy Development and Research, $8,717,000: *Provided*, That not to exceed $141,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

[For personnel compensation and benefits for the headquarters Office of Fair Housing and Equal Opportunity, $10,516,000: *Provided*, That not to exceed $377,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, DEPARTMENTAL MANAGEMENT

[For personnel compensation and benefits for the headquarters budget activity of Departmental Management, $8,793,000: *Provided*, That not to exceed $673,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, OFFICE OF GENERAL COUNSEL

[(INCLUDING TRANSFER OF FUNDS)

[For personnel compensation and benefits for the headquarters Office of General Counsel, $14,609,000, of which $2,754,000 shall be provided from the various funds of the Federal Housing Administration: *Provided*, That not to exceed $259,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.

[PERSONAL SERVICES AND TRAVEL, ADMINISTRATION

[For personnel compensation and benefits for the headquarters administration and staff services, the Office of Lead-Based Paint Abatement and Poisoning Prevention, and the Chief Financial Officer, $45,801,000: *Provided*, That not to exceed $3,009,000 of the amount herein provided shall be available for travel expenses: *Provided further*, That the amounts herein shall not be consolidated into a single administrative expenses fund account, notwithstanding section 502(c)(3) of the Housing Act of 1948.]

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$45,773,000] *$46,548,000*, of which [$10,055,000] *$10,148,000* shall be transferred from the various funds of the Federal Housing Administration.

ADMINISTRATIVE PROVISIONS

[For payment to Milton Residences for the Elderly, Inc., for development costs incurred in connection with the site for HUD Project No. 023-EH273 (Milton, MA) prohibited under Public Law 100-202 (101 Stat. 1329-190), $226,000.

[Notwithstanding section 17(d)(4)(G) of the United States Housing Act of 1937, the City of Springfield, in the State of Massachusetts, shall not be required to return, and the Secretary of Housing and Urban Development may not recapture, any housing development grants awarded under section 17(d) of such Act to the city for use in connection with the Symphony Apartments housing development project (Project No. MA002HG701), if before October 1, 1993, the city (or any subgrantee) commences construction or substantial rehabilitation activities for which such amounts were made available.

[The Oklahoma Department of Commerce is authorized to take all steps necessary to close out an agreement originally entered into by the Department and the City of Commerce, Oklahoma (Contract No. 4511 CDBG ED 89) for the purpose of providing a loan through the Miami Area Economic Development Services, Inc., for Sac and Fox Industries to retain and create jobs for low- and moderate-income persons. Notwithstanding any other provision of law or other Department of Housing and Urban Development regulations and requirements, $490,700 of funds appropriated for community development block grants and allocated to the State of Oklahoma or other funds available to the Secretary of Housing and Urban Development shall be used to close out said agreement. Furthermore, the Miami Area Economic Development Services, Inc., the City of Commerce, Oklahoma, and the Oklahoma Department of Commerce are relieved of all liability to the government for the outstanding balance, any amount of accrued interest, and any other fees and charges payable in connection with this transaction.

[The provisions of title I, section 104(g)(2) of the Housing and Urban Development Act of 1974, as amended, are hereby waived for the following urban development action grant projects in the City of Youngstown, Ohio:

[(1) H. L. Libby parking deck—project #: B-87-AA-39-0319;

[(2) The Bitonte Medical Center—project #: B-86-AA-39-0321; and

[(3) The Erie Terminal Development Office Complex—project #: B-87-AA-39-0329.

[During fiscal year 1993, notwithstanding any other provision of law, the number of individuals employed by the Department of Housing and Urban Development in other than "career appointee" positions in the Senior Executive Service shall not exceed 15.

[Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall cancel the indebtedness of the Sunbright Utility District in Morgan County, Tennessee, relating to loan number TENN-PFL-43, and the Administrator of the Economic Development Administration shall cancel the indebtedness of the Sunbright Utility District in Morgan County, Tennessee, relating to loans numbered 040100-342-1 and 040100-342-2. The Sunbright Utility District in Morgan County, Tennessee, is relieved of all liability to the Government for the outstanding principal balance on such loans, for the amount of accrued interest on such loans, and for any other fees and charges payable in connection with such loans.

[Of the budget authority made available to comply with section 213(e) of the Housing and Community Development Act of 1974, notwithstanding that provision of law, the

Secretary of Housing and Urban Development shall make such budget authority available for assistance payments under section 8(b) of the United States Housing Act of 1937 to the Housing Authority of the City of Galveston, Galveston, Texas, for 18 units, to the Housing Authority for the City of Rockwall, Rockwall, Texas, for 36 units, with respect to the balance of such budget authority to the Port Arthur Housing Authority, Port Arthur, Texas.

[The first sentence of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended to read as follows: "Involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount—

["(A) not to exceed the lesser of—

["(i) in the case of the 1-family residence, 95 percent of the median 1-family house price in the area (as determined by the Secretary; in the case of a 2-family residence, 107 percent of such median price; in the case of a 3-family residence, 130 percent of such median price; or in the case of a 4-family residence, 150 percent of such median price; or

["(ii) 75 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as adjusted annually under such section) for a residence of the applicable size; [except that the applicable dollar amount limitation in effect for any area under this subparagraph (A) may not be less than the dollar amount limitation in effect under this section for the area on May 12, 1992; and

["(B) except as otherwise provided in this paragraph (2), not to exceed an amount equal to the sum of—

["(i) 97 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance;

["(ii) 95 percent of such value in excess of $25,000 but not in excess of $125,000; and

["(iii) 90 percent of such value in excess of $125,000.".

[The second sentence of section 2(b)(2) of the National Housing Act (12 U.S.C. 1703(b)(2)) is amended by striking "but not" and all that follows through "203(b)(2)" and inserting "but in no case may such limits, as so increased, exceed the lesser of (A) 185 percent of the dollar amount specified, or (B) the dollar amount specified as increased by the same percentage by which 95 percent of the median one-family house price in the area (as determined by the Secretary) exceeds $67,500".

[Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking "for a 1-family residence" and inserting "for 1-family residences in the area in which the dwelling subject to the mortgage under this section is located".

[FEDERAL DEPOSIT INSURANCE CORPORATION.—

[(1) ELIGIBLE CONDOMINIUM PROPERTY.—Section 40(p)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(4)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

["(B) that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).".

[(2) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—Section 40(p)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(5)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

["(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).".

[(3) ELIGIBLE SINGLE FAMILY PROJECT.—Section 40(p)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)(7)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

["(B) that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).".

[Section 2(b)(1) of the National Housing Act (12 U.S.C. 1703(b)(1)) is amended by striking subparagraphs (C), (D), and (E) and inserting the following new subparagraphs:

["(C) 70 percent of the median 1-family house price in the area, as determined by the Secretary under section 203(b)(2), if made for the purpose of financing the purchase of a manufactured home;

["(D) 80 percent of the median 1-family house price in the area, as determined by the Secretary under section 203(b)(2), if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home;

["(E) the greater of (i) 20 percent of the median 1-family house price in the area, as determined by the Secretary under section 203(b)(2), or (ii) $13,500, if made for the purpose of financing the purchase, by an owner of a manufactured home which is the principal residence of the owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that the owner will place the manufactured home on the lost acquired with such loan within 6 months after the date of such loan;

[Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by inserting after the period at the end the following new sections: "Notwithstanding the authority of the Secretary to establish the terms of insurance under this section and approve the initial service charges, appraisal, inspection, and other fees (and subject to any other limitations under this section on the amount of a principal obligation), the Secretary may not (by regulation or otherwise) limit the percentage or amount of any such approved charges and fees that may be included in the principal obligation of a mortgage."]

Notwithstanding any other provision of this or any other Act with respect to any fiscal year, the Office of Lead Based Paint Abatement and Poisoning Prevention shall be contained within the Office of the Secretary, and said Office shall have ultimate responsibility within the Department of Housing and Urban Development, except for the Secretary, for all matters related to the abatement of lead in housing, and research related to lead abatement, consistent with the responsibilities outlined for the Office in Senate Report 102-107.

The Secretary shall apply performance standards similar to the PHMAP system to public housing managed by resident management corporations.

Following the third "Hereafter" under the head "Administrative Provisions", Public Law 102-139, 105 Stat. 758, strike out "that such entities" and all that follows through the period at the end of the sentence and insert in lieu thereof "that such entities are duly constituted and operating according to the laws of the various States in which they operate and meet such other standards as the Secretary deems appropriate."

Notwithstanding section 571(b) of the National Affordable Housing Act of 1990, the Department shall revise its fiscal year 1992 notice of fund availability for public housing development/major reconstruction of obsolete projects (Federal Register, June 18, 1992, 27330 et seq.) so that there contains no limitation on the amount of these funds available for public housing replacement activities.

The fair market rentals for the Salt Lake City—Ogden, Utah, metropolitan statistical area that took effect as of October 1, 1991 (56 Fed. Reg. 49024, 49072, September 26, 1991) shall remain in effect until October 1, 1993, notwithstanding the requirements of section 8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f) or any publication in the Federal Register in implementation of such section.

Section 213(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(e)) is amended by striking "the Park Central New Community Project or in adjacent areas that are recognized by the unit of general local government in which such Project is located as being included within the Park Central New Town in Town Project." and inserting "Jefferson County, Texas.".

TITLE III

INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries, when required by law of such countries; $19,318,000, to remain available until expended: *Provided*, That where station allowance has been authorized by the Department of the Army for officers of the Army serving the Army at certain foreign stations, the same allowance shall be authorized for officers of the Armed Forces assigned to the Commission while serving at the same foreign stations, and this appropriation is hereby made available for the payment of such allowance: *Provided further*, That when traveling on business of the Commission, officers of the Armed Forces serving as members or as Secretary of the Commission may be reimbursed for expenses as provided for civilian members of the Commission: *Provided further*, That the Commission shall reimburse other Government agencies, including the Armed Forces, for salary, pay, and allowances of personnel assigned to it: *Provided further*, That section 509 of the general provisions carried in title V of this Act shall not apply to the funds provided under this heading: *Provided further*, That not more than $125,000 of the private contributions to the Korean War Memorial Fund may be used for administrative support of the Korean War

Veterans Memorial Advisory Board including travel by members of the board authorized by the Commission, travel allowances to conform to those provided by Federal Travel regulations.

[CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

[SALARIES AND EXPENSES

[For necessary expenses, in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, including hire of passenger motor vehicles, and for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem equivalent to the rate for GS-18, $2,500,000.]

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

SALARIES AND EXPENSES

For necessary salaries and expenses of the Commission on National and Community Service under subtitle G of title I of the National and Community Service Act of 1990 (Public Law 101-610), [$2,000,000] *$3,000,000: Provided, That the Executive Director may, at the discretion of the Board, appoint 17 staff to administer the Commission, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 (5 U.S.C. sections 5101 et seq.) and subchapter III of chapter 53 (5 U.S.C. sections 5331 et seq.) of such title relating to classification and General Schedule pay rates.*

PROGRAMS AND ACTIVITIES

For use in carrying out the programs, activities and initiatives under subtitles B through F of title I of the National and Community Service Act of 1990 (Public Law 101-610), [$35,000,000] *$100,000,000.*

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $42,100,000: *Provided,* [That not more than $450,000 of these funds shall be available for personnel compensation and benefits for the Commissioners of the Consumer Product Safety Commission] *That funds shall not be available for the personnel compensation and benefits of more than three Commissioners of the Consumer Product Safety Commission.*

COURT OF VETERANS APPEALS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Veterans Appeals as authorized by 38 U.S.C. sections 7251-7292, [$8,630,000] *$8,330,000: Provided,* That such sum shall be available without regard to section 509 of this Act.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of three passenger motor vehicles for replacement only, and not to exceed $1,000 for official reception and representation expenses; $13,033,000, to remain available until expended.

ENVIRONMENTAL PROTECTION AGENCY

RESEARCH AND DEVELOPMENT

For research and development activities, including procurement of laboratory equipment, supplies, and other operating expenses in support of research and development, [$338,500,000] *$323,000,000,* to remain available until September 30, 1994: *Provided,* That not more than $48,067,000 of these funds shall be available for procurement of laboratory equipment, supplies, and other operating expenses in support of research and development; and construction, alteration, repair, rehabilitation and renovation of facilities, not to exceed $75,000 per project.

ABATEMENT, CONTROL, AND COMPLIANCE

For abatement, control, and compliance activities, [including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; and not to exceed $6,000 for official reception and representation expenses; $1,331,055,000] *$1,116,860,000,* to remain available until September 30, 1994: *Provided,* [That not more than $304,000,000 of these funds shall be available for administrative expenses: *Provided further,*] That none of the funds appropriated under this head shall be available to the National Oceanic and Atmospheric Administration pursuant to section 118(h)(3) of the Federal Water Pollution Control Act, as amended: *Provided further,* That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913), or for support to State, regional, local, and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4008(a)(2) or 4009 (42 U.S.C. 6948, 6949).

[ABATEMENT, CONTROL, AND COMPLIANCE PROGRAM LOAN ACCOUNT]

ABATEMENT, CONTROL, AND COMPLIANCE LOAN PROGRAM ACCOUNT

For the cost, as defined in section 13201 of the Budget Enforcement Act of 1990, including the cost of modifying loans, of direct loans under the Asbestos School Hazard Abatement Act, as amended, $30,225,000: *Provided,* That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $70,500,000.

In addition, for administrative expenses necessary to carry out the implementation of the Asbestos School Hazard Abatement Act, [$1,000,000] *$2,000,000.*

[PROGRAM AND RESEARCH OPERATIONS

[For necessary expenses, not otherwise provided for, for personnel compensation and benefit costs and for travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; $848,214,000: *Provided,* That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).]

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; and not to exceed $6,000 for official reception and representation expenses, $1,063,000,000: Provided, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, *and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project,* [$42,240,000] *$43,358,000,* of which [$16,428,000] *$15,770,000* shall be derived from the Hazardous Substance Superfund trust fund and [$636,000] *$610,000* shall be derived from the Leaking Underground Storage Tank Trust Fund[:- *Provided,* That, notwithstanding any other provision in this Act, not less than $27,970,000 of the sum appropriated shall be available only for expenses in the personnel compensation and benefits object classifications].

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment for facilities of, or use by, the Environmental Protection Agency, [$134,300,000] *$38,000,000,* to remain available until expended: *Provided,* [That $10,000,000 of the foregoing amount shall be made available as a grant to Columbia University for construction of a facility to be used for environmental health science research, such facility to be constructed and owned by Columbia University] *That $12,500,000 shall be available as a grant to the Christopher Columbus Center Development, Inc. for planning, design and construction of the Christopher Columbus Center of Marine Research and Exploration in Baltimore, Maryland: Provided further, That notwithstanding any other provision of law, the Environmental Protection Agency is authorized to begin preliminary planning required for the establishment of a consolidated laboratory facility to replace and house the Central Regional Laboratory, Annapolis, Maryland, and the Analytical Chemistry and Microbiology Laboratory, Beltsville, Maryland, including the authority to accept, by permit or no-cost transfer from Federal entities, or by donation from State and local entities, available real property: Provided further, That $1,000,000 of the amount provided herein shall be for a grant to the University of Maine for the constuction of the Maine Quaternary Studies Institute: Provided further, That $5,000,000 of the amount provided herein shall be for a grant to the University of Utah for the design, construction, and equipping of an intermountain regional network and scientific computation center.*

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, [$18,434,000] *$23,340,000,* to be derived from the Oil Spill Liability Trust Fund, and to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), *and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project;* [$1,416,228,000] *$1,616,228,000, consisting of $1,366,228,000 as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended by Public Law 101-508, and $250,000,000 as a payment from general revenues to the Hazardous Substance Superfund as authorized by section 517(b) of SARA, as amended by Public Law 101-508, plus sums recovered on behalf of the Hazardous Substance Superfund in excess of $201,120,000 during fiscal year 1992, with all of such funds,* to remain available until expended [and to be derived from the Hazardous Substance Superfund, plus sums recovered on behalf of the Hazardous Substance Superfund in excess of $201,120,000]: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That notwithstanding section 111(m) of CERCLA or any other provision of law, not to exceed [$51,036,000] *$60,036,000* of the funds appropriated under this heading shall be available to the Agency for Toxic Substances and Disease Registry to carry out activities described in sections 104(i), 111(c)(4), and 111(c)(14) of CERCLA and section 118(f) of the Superfund Amendments and Reauthorization Act of 1986: *Provided further*, That none of the funds appropriated under this heading shall be available for the Agency for Toxic Substances and Disease Registry to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 1993: *Provided further*, That no more than [$264,000,000] *$256,000,000* of these funds shall be available for administrative expenses of the Environmental Protection Agency.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, *and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project*, $75,000,000, to remain available until expended: *Provided*, That no more than [$7,400,000] *$7,000,000* shall be available for administrative expenses.

STATE REVOLVING FUNDS/CONSTRUCTION GRANTS

For necessary expenses to carry out the purposes of the Federal Water Pollution Control Act, as amended, and the Water Quality Act of 1987, [$2,400,000,000] *$2,650,000,000*, to remain available until expended, of which [$1,834,000,000] *$2,563,500,000* shall be for title VI of the Federal Water Pollution Control Act, as amended[, and five per centum of this amount shall not be obligated for capitalization grants to states, but shall be held in reserve, until October 1, 1993]; $16,500,000 shall be for making grants authorized under section 104(b)(3) of the Federal Water Pollution Control Act, as amended; [$63,500,000 shall be for making grants authorized under section 319 of the Federal Water Pollution Control Act, as amended; $32,500,000 shall be for section 510 of the Water Quality Act of 1987 and none of the funds appropriated in this or any other Act to the Environmental Protection Agency may be used for making grants authorized under such section that exceed a total of $239,400,000, and the Administrator of the Environmental Protection Agency shall take no action to obligate any funds under such section if the impact on the total program cost to the Environmental Protection Agency of such action would exceed $239,400,000; $305,500,000 shall be for making grants under title II of the Federal Water Pollution Control Act, as amended, to the appropriate instrumentality for the purpose of constructing secondary sewage treatment facilities to serve the following localities, and in the amounts indicated: Boston, Massachusetts, $100,000,000; New York, New York, $70,000,000; Los Angeles, California, $55,000,000; San Diego, California, $45,500,000; and Seattle, Washington, $35,000,000; and notwithstanding any other provision of law, $82,000,000 shall be available for Rouge River National Wet Weather Demonstration Project grants, not to exceed 85 per centum of total project costs, to be awarded by the Administrator, who is authorized to make such grants to Wayne County, Michigan, such grants to be for the construction of sanitary sewers and retention basins, for the repair and maintenance of wastewater treatment plants and collection systems, and for the investigation of commercial and industrial facilities and storm sewer connections to implement the Rouge River National Demonstration Project for Wet Weather Flows; and notwithstanding any other provision of law, $40,000,000 shall be for making grants under title II of the Federal Water Pollution Control Act, as amended, to the appropriate instrumentality for the purpose of constructing advanced sewage treatment facilities to serve Baltimore, Maryland, in furtherance of the objectives of the Chesapeake Bay Agreement; and notwithstanding any other provision of law, $19,000,000 shall be for making a grant under title II of the Federal Water Pollution Control Act, as amended, to the Ocean County Utilities Authority, in the State of New Jersey for necessary modifications and replacements to the Carver-Greenfield sewage treatment plant; and notwithstanding any other provision of law, $7,000,000 shall be for making a grant under title II of the Federal Water Pollution Control Act, as amended, to the appropriate instrumentality for necessary work to remove and reroute the existing sewer lines at the Centennial Olympic Stadium site in the City of Atlanta, Georgia]; *$50,000,000 shall be for grants to the State of Texas, which is to be matched by an equal amount of State funds from State sources, for the purpose of improving wastewater treatment in colonias in that State, including $2,000,000 for planning and design; $10,000,000 shall be for a grant to the State of New Mexico for the purpose of improving wastewater treatment in colonias in that State; and $10,000,000 shall be for a grant to the State of Arizona for an interceptor/collection system in the city of Avondale, Arizona;* and notwithstanding any other provision of law, from sums previously appropriated under this heading for grants under title II of the Federal Water Pollution Control Act, as amended, and reserved by the South Dakota Department of Environment and Natural Resources, the Administrator shall make a grant, not to exceed 55 per centum of total project costs, to the Town of Pollock, South Dakota for necessary reconstruction of Pollock's wastewater treatment facility, consistent with the approved facility plan of October 1990; and sums heretofore, herein or hereafter appropriated under this heading for the District of Columbia, either allotted for title VI capitalization grants and pursuant to Public Law 101-144 as amended by Public Law 101-302 authorized to be used for title II construction grants, or title II construction grants, may be used for title II construction grants for any activities eligible under title VI, and *the limitations contained in* sections 201(g)(1) and 204(a)(5) of the Federal Water Pollution Control Act, as amended, do not apply to these grants: *Provided, That of the funds appropriated for the State Revolving Fund under title VI of the Federal Water Pollution Control Act, as amended, up to one-half of one percent may be made available by the Administrator for direct grants to Indian tribes for construction of wastewater treatment facilities for fiscal year 1993 and thereafter*[:-*Provided*, That, notwithstanding any other provision of law, from sums appropriated under this paragraph and allotted to, under title VI, the State of Texas under section 205 of the Federal Water Pollution Control Act, as amended, the State of Texas is authorized to set aside, at the discretion of the Governor, up to $50,000,000 for grants or for deposit in the special revolving fund authorized by Public Law 101-144 for loans for the purpose of improving wastewater treatment in colonias in that State, such funds to be matched in accordance with section 602(b)(3) of the Federal Water Pollution Control Act, as amended: *Provided further*, That, notwithstanding any other provision of law, from sums appropriated under this paragraph and allotted to, under title VI, the State of California under section 205 of the Federal Water Pollution Control Act, as amended, the State of California is authorized to set aside, at the discretion of the Governor, up to $10,000,000 to make loans or grants for projects in the vicinity of New River, California and from sums appropriated under this paragraph and allotted to, under title VI, the State of Arizona under section 205 of the Federal Water Pollution Control Act, as amended, the State of Arizona is authorized to set aside, at the discretion of the Governor, up to $5,000,000 to make loans or grants for projects in the vicinity of Nogales, Arizona, such funds shall be available only for architectural, engineering, and design and related activities in connection with sewage facilities, whose purpose is to control municipal sewage from Mexico, shall become available only upon the successful conclusion of an appropriate minute of the International Boundary and Water Commission, and shall be matched in accordance with section 602(b)(3) of the Federal Water Pollution Control Act, as amended.

[Notwithstanding any other provision of the Federal Water Pollution Control Act, as amended, $80,000,000 of fiscal year 1992 and 1993 funds for San Diego allocation for coastal cities shall be available only for the construction of the San Diego wastewater treatment facilities included in the consent decree lodged in the *United States and California v. City of San Diego*, Civil Action #88-1101 (S.D. Cal.). The Federal share for construction of these projects will be 55 per centum. Nothing in this provision shall be interpreted or is intended to modify the commitments made by the city of San Diego in the above referenced consent decree.

[Notwithstanding section 307(b)(1) of the Federal Water Pollution Control Act, the following limitation to the Gulf Coast Waste Disposal Authority on applicability of pretreatment standards shall apply:

[(a) If the conditions of subsection (b) are met, the pretreatment standards promulgated pursuant to section 307(b)(1) of the Federal Water Pollution Control Act shall not apply with respect to any treatment works operated by Gulf Coast Waste Disposal

Authority and industrial users of such works.

[(b) Subsection (a) shall only be in effect with respect to a treatment works if—

[(1) the mass removal of pollutants by such works is equivalent to the removal which would be achieved if the industrial users of such works discharged such pollutants into waters of the United States other than through a publicly owned treatment works and such discharges complied with applicable effluent limitations; and

[(2) The Gulf Coast Waste Disposal Authority has, and is in compliance with, a permit issued under section 402 of the Federal Water Pollution Control Act containing sludge quality numerical limitations for each of the pollutants for which such limitations are established and which would otherwise be required to be treated under the pretreatment standards established under section 307(b) of such Act (or where numerical limitations are not available, a design, equipment, management practice, operational standard, or combination thereof for each such pollutant) developed in accordance with the applicable requirements of section 405(d) of such Act.

[Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of up to $2,500,000 from funds deobligated and recovered under section 205 of the Act from the State of Florida's allotments to Dixie County, Florida, for a 100 percent grant for the construction of a publicly owned treatment works for the community of Suwannee, Florida.]

DMINISTRATIVE PROVISIONS

The Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6))), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

During fiscal year 1993, notwithstanding any other provision of law, average employment in the headquarter's offices of the Environmental Protection Agency shall not exceed: (1) 56 workyears for the Immediate Office of the Administrator; (2) 45 workyears for the Office of Congressional and Legislative Affairs; (3) 78 workyears for the Office of Communications, Education, and Public Affairs; (4) 192 workyears for the Office of General Counsel; (5) 1,477 workyears for the Office of Administration and Resources Management; and (6) 263 workyears for the Office of Policy, Planning, and Evaluation.

[The Administrator of the Environmental Protection Agency shall conduct a multimedia risk assessment study of radon consistent with the January 29, 1992 recommendations of the Science Advisory Board of the Environmental Protection Agency (EPA-SAB-RAC-COM-92-003): *Provided*, That such study shall neither modify nor be the basis for an extension of any statutory or court-ordered deadline for the promulgation of any national primary drinking water regulation for radionuclides under the Safe Drinking Water Act.]

LEAD ABATEMENT TRAINING AND CERTIFICATION

Not later than 12 months after the date of enactment of this Act, the Administrator of EPA shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health) promulgate final regulations governing lead-based paint abatement activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that laboratories engaged in testing for substances that may contain lead-based paint are certified.

The Administrator is authorized in accordance with the procedures set forth in 5 U.S.C. 553 of the Administrative Procedures Act for notice and comment rulemaking to promulgate the final regulations described in the first paragraph. In promulgating such regulations, the Administrator need not make the findings required by section 6 of the Toxic Substances Control Act, including a finding that abatement of lead-based paint by noncertified workers will present an unreasonable risk of injury to health or the environment.

It shall be a prohibited act under section 15 of the Toxic Substances Control Act for any person to fail or refuse to comply with any regulation promulgated or order issued under the first two paragraphs above.

The Administrator may enforce any such regulation or order pursuant to the inspection, penalty and specific enforcement provisions of sections 11, 16, and 17 of TSCA.

Such regulations are judicially reviewable pursuant to section 701 et seq. of the Administrative Procedures Act.

MARINE SCIENCE CENTER

The United States of America, acting through the Environmental Protection Agency, will donate its library facility located on the Marine Science Center, Oregon State University, Newport, Oregon to the University. Notwithstanding any other provision of law, within 60 days after the effective date of this legislation and without any further action by either party or future liability on the part of the Government, EPA will quitclaim the foresaid library together with the underlying land and related real and personal property to the University. No other portion of Government property is to be included in this donation.

POLLUTION PREVENTION ACT IMPLEMENTATION

Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070-0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101-508) and section 313 of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) until such time as revisions are promulgated pursuant to law.

GUAM POWER AUTHORITY

Notwithstanding any other provision of law, the Guam Power Authority and the United States Navy shall apply to the Administrator of the United States Environmental Protection Agency for the approval under part C of subchapter I of the Clean Air Act to construct any such additional electric generating facilities to meet the territory's current and projected power needs if such facilities constitute a major stationary source or major modification under 40 C.F.R 52.21(b): Provided, That any additional facilities shall not be subject to the requirements of part D of subchapter I of the Clean Air Act: Provided further, That the Administrator of the Environmental Protection Agency shall complete his or her review of any (complete) permit application within 12 months of its submission: Provided further, That nothing in this paragraph shall affect the Prevention of Significant Deterioration standards applied by the Administrator in reviewing any permit application under the Clean Air Act.

PESTICIDE REGISTRATION FUND

Notwithstanding section 4(i)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a), effective October 1, 1992, the Administrator is authorized to assess, in the current fiscal year and thereafter, fees from applicants for registration and amendments to registration under section 3 and experimental use permits under section 5 pursuant to regulations previously published and codified at 40 CFR Part 152 (and as those regulations may hereafter be amended by the Administrator). Such fees shall be reasonably calculated to cover costs (or some portion of the costs) associated with the review of such applications, and shall be paid at the time of application, unless otherwise specified by the Administrator. If any fee is not paid by the time prescribed, the Administrator may, by order and without a hearing, deny the application: Provided, That the Administrator may reduce or waive any fee that would otherwise be assessed (1) in connection with an application for an active ingredient that is contained only in pesticides for which registration is sought solely for agricultural or nonagricultural minor use, and (2) in such other circumstances as the Administrator determines to be in the public interest. Fees collected under this provision shall be deposited in a special fund in the United States Treasury, which thereafter shall be available for appropriation, to carry out the Agency's activities in the issuing of registrations under sections 3 and 5 of FIFRA for which the fees were paid.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190), the Environmental Quality Improvement Act of 1970 (Public Law 91-224), and Reorganization Plan No. 1 of 1977, including not to exceed $875 for official reception and representation expenses, and hire of passenger motor vehicles, $2,560,000: *Provided, That the Council on Environmental Quality and Office of Environmental Quality shall reimburse other agencies for not less than three-fourths of the personnel compensation costs of individuals detailed to it.*

NATIONAL SPACE COUNCIL

SALARIES AND EXPENSES

For necessary expenses of the National Space Council, including services as authorized by 5 U.S.C. 3109; $1,591,000, of which not to exceed $1,000 may be for official reception and representation expenses: Provided, That the National Space Council shall reimburse other agencies for not less than three-fourths of the personnel compensation costs of individuals detailed to it.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, [$4,446,000] *$4,000,000: Provided, That the Office of Science and Technology Policy shall reimburse other agencies for not less than three-fourths of the personnel compensation costs of individuals detailed to it.*

THE POINTS OF LIGHT FOUNDATION

For necessary expenses for carrying out title III of the National and Community Service Act of 1990 (Public Law 101-610), relating to the Points of Light Foundation's promotion of social problem-solving through voluntary community service, $5,000,000.

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in carrying out the functions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $292,095,000, of which not to exceed $95,000 may be transferred to the disaster assistance direct loan program account for administrative expenses and subsidies for direct loans provided under section 319 of such Act, to remain available until expended. *In addition, for emergency disaster relief, $200,000,000, to remain available until expended: Provided, That these funds, or any portion thereof, shall be available beginning in fiscal year 1993 only (1) to the extent that the President notifies the Congress of his designation of any or all of these amounts as emergency requirements under the Budget Enforcement Act of 1990; and (2) if the amounts annually appropriated under this heading, but not designated as emergency requirements pursuant to section 251(b)(2)(D) of the Budget Enforcement Act, have been at least equal to the most recent ten-year historical average, less any enacted cost saving program reforms: Provided further, That Congress hereby designates these amounts as emergency requirements pursuant to section 251(b)(2)(D).*

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

Funds provided to this account are available to subsidize gross obligations for the principal amount of direct loans not to exceed $40,000,000.

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire and purchase of motor vehicles (31 U.S.C. 1343); uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness; transportation in connection with the continuity of Government programs to the same extent and in the same manner as permitted the Secretary of a Military Department under 10 U.S.C. 2632; and not to exceed $2,500 for official reception and representation expenses, [$156,409,000] *$160,277,000.*

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$2,974,000] *$3,000,000.*

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

For necessary expenses, not otherwise provided for, to carry out activities under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.), the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 et seq.), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), section 103 of the National Security Act (50 U.S.C. 404), and Reorganization Plan No. 3 of 1978, [$255,543,000] *$257,743,000.*

EMERGENCY FOOD AND SHELTER PROGRAM

There is hereby appropriated [$109,000,000] *$134,000,000* to the Federal Emergency Management Agency to carry out an emergency food and shelter program pursuant to title III of Public Law 100-77, as amended: *Provided,* That total administrative costs shall not exceed three and one-half per centum of the total appropriation.

NATIONAL FLOOD INSURANCE FUND

(TRANSFERS OF FUNDS)

Of the funds available from the National Flood Insurance Fund for activities under the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973, $13,978,000 shall be transferred as needed to the "Salaries and expenses" appropriation for administrative costs of the insurance and flood plain management programs and $48,092,000 shall be transferred as needed to the "Emergency management planning and assistance" appropriation for flood plain management activities, including $4,720,000 for expenses under section 1362 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4103, 4127), which amount shall be available until September 30, 1994. In fiscal year 1993, no funds in excess of (1) $32,000,000 for operating expenses, (2) $221,000,000 for agents' commissions and taxes, and (3) $3,500,000 for interest on Treasury borrowings shall be available from the National Flood Insurance Fund without prior notice to the Committees on Appropriations.

ADMINISTRATIVE PROVISIONS

The Director of the Federal Emergency Management Agency shall promulgate through rulemaking a schedule of fees applicable to persons subject to the Federal Emergency Management Agency's Radiological Emergency Preparedness regulations. The aggregate charges assessed pursuant to this section during fiscal year 1993 shall approximate, but not be less than, 100 per centum of the amounts anticipated by the Federal Emergency Management Agency to be obligated for its Radiological Emergency Preparedness program. The schedule of fees shall be fair and equitable, and shall reflect the full amount of direct and indirect costs incurred through the provision of regulatory services. Such fees will be assessed in a manner that reflects the use of Agency resources for classes of regulated persons and the administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the general fund of the Treasury as offsetting receipts. Assessment and collection of such fees are only authorized during fiscal year 1993.

[The Federal Emergency Management Agency may store, stockpile, or access stocks of Meals, Ready-to-Eat (MREs) declared surplus by the Department of Defense, or otherwise made available, for the purpose of providing assistance in situations of disaster or emergency. In addition, the Federal Emergency Management Agency may make available, at the discretion of the Director, MRE stocks to the Interagency Council on the Homeless for purposes of domestic, civilian assistance.]

Notwithstanding any other provision of law, no funds provided in this Act or in any other Act for the Federal Emergency Management Agency may be used for the purpose of chauffeuring employees.

[During] *By the end of* fiscal year 1993, notwithstanding any other provision of law, the number of individuals employed by the Federal Emergency Management Agency in other than "career appointee" positions shall not exceed [20] *27.*

During fiscal year 1993, notwithstanding any other provision of law, average employment in the headquarter's offices of the Federal Emergency Management Agency shall not exceed: [(1) 6 workyears for the Office of the Director, (2) 20 workyears for the Office of General Counsel,] *(1) 5 workyears for the Office of the Director, (2) 24 workyears for the Office of General Counsel,* (3) 192 workyears for the Office of the Executive Director, (4) 90 workyears for Financial Management, (5) 25 workyears for Information Services, (6) 5 workyears for Regional Liaison, (7) 105 workyears for Regional Executive Direction, and (8) 20 workyears for External Affairs.

Notwithstanding any other law, nonsupervisory employees of the National Preparedness Directorate of the Federal Emergency Management Agency may not be excluded from coverage under chapter 71 of title 5, and such employees shall be eligible to participate in collective bargaining under such chapter.

Unless otherwise provided for in this Act, no part of any appropriation for the Federal Emergency Management Agency contained in this Act shall be available for any activity in excess of amounts set forth in the budget estimates submitted for the appropriations.

Funds of the Federal Emergency Management Agency shall be used in accordance with the directives, set asides, tabular materials, and reporting requirements included on pages 73 through 80 of House Report 102-710, as modified and added to by the directives, set asides tabular material and reporting requirements included on pages 124 through 135 of Senate Report 102-356 accompanying this Act, which requirements shall have the force of law, to be modified and added to only by any directives, set asides, tabular materials, and report requirements included in the Joint Explanatory Statement of the Committee on Conference for H.R. 5679.

Notwithstanding any other provision of this or any other Act with respect to any fiscal year, the Office of Technological Hazards, and all funds and staff years provided to it by this Act, shall be transferred from the State and Local Programs and Support Directorate to the United States Fire Administration within 90 days of the enactment of this Act.

Notwithstanding any other provision of this or any other Act with respect to any fiscal year, the National Preparedness Directorate shall be disestablished within 90 days of the enactment of this Act, and all funds, staff years, and responsibilities provided to it by this Act, shall be transferred to, and merged with, the State and Local Programs and Support Directorate within the Federal Emergency Management Agency.

Notwithstanding any other provision of law, no funds provided through this appropriation Act or any other appropriation Act may be used to support the activities of the Office of the Deputy Director.

GENERAL SERVICES ADMINISTRATION

CONSUMER INFORMATION CENTER

For necessary expenses of the Consumer Information Center, including services authorized by 5 U.S.C. 3109, $2,026,000, to be deposited into the Consumer Information Center Fund: *Provided,* That the appropriations, revenues and collections deposited into the fund shall be available for necessary expenses of Consumer Information Center activities in the aggregate amount of $6,500,000. Administrative expenses of the Consumer Information Center in fiscal year 1993 shall not

exceed $2,367,000. Appropriations, revenues, and collections accruing to this fund during fiscal year 1993 in excess of $6,500,000 shall remain in the fund and shall not be available for expenditure except as authorized in appropriations Acts.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF CONSUMER AFFAIRS

For necessary expenses of the Office of Consumer Affairs, including services authorized by 5 U.S.C. 3109, $2,159,000: *Provided*, That notwithstanding any other provision of law, that Office may solicit, accept and deposit to this account, during fiscal year 1993, gifts for the purpose of defraying its costs of printing, publishing, and distributing consumer information and educational materials; may expend up to $1,100,000 of those gifts for those purposes, in addition to amounts otherwise appropriated; and the balance shall remain available for expenditure for such purposes to the extent authorized in subsequent appropriations Acts.

[INTERAGENCY COUNCIL ON THE HOMELESS

SALARIES AND EXPENSES

[For necessary expenses of the Interagency Council on the Homeless, not otherwise provided for, as authorized by title II of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11311–11319), $1,300,000, to remain available until September 30, 1994: *Provided*, That the Council shall carry out its duties in the 10 standard Federal regions under section 203(a)(4) of such Act only through detail, on a non-reimbursable basis, of employees of the departments and agencies represented on the Council pursuant to section 202(a) of such Act.]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

RESEARCH AND DEVELOPMENT

(INCLUDING RESCISSION OF FUNDS)

For necessary expenses, not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property; purchase, lease, charter, maintenance, and operation of mission and administrative aircraft, necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration; not to exceed $35,000 for official reception and representation expenses; and purchase (not to exceed thirty-three for replacement only) and hire of passenger motor vehicles; [$6,670,650,000 *$7,117,100,000*, to remain available until September 30, 1994: [*Provided further*, That none of the funds made available in this Act may be used to award, implement, or administer any contract for a High Speed Processor—3 for the Numerical Aerodynamic Simulator as defined in RFP 2–33570 (RCO).] *Provided, That $2,100,000,000 shall be made available for implementing the restructured Space Station Freedom program without substantive deviation from the on-orbit assembly sequence outlined by NASA in March 1990, endorsed by the National Space Council, and confirmed by the Committees on Appropriations in House Report 102–226: Provided further, That $391,000,000 shall be made available for the development of the Earth Observing System (EOS) and EOS Data Information System (EOSDIS): Provided further, That NASA shall take no future action to restructure these critical elements of the Mission to Planet Earth in any manner which would reduce the estimated total budget authority for development, exclusive of construction of facilities, tracking operations, and launch services, through fiscal year 2000 below $8,000,000,000.*

Of the amounts made available under this heading in Public Law 102–139, $14,300,000 for the Climsat mission are rescinded.

SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS

For necessary expenses, not otherwise provided for, in support of space flight, spacecraft control and communications activities of the National Aeronautics and Space Administration, including operations, production, services, minor construction, maintenance, repair, rehabilitation, and modification of real and personal property; tracking and data relay satellite services as authorized by law; purchase, lease, charter, maintenance and operation of mission and administrative aircraft; [$4,961,500,000] *$5,086,000,000*, to remain available until September 30, 1994.

CONSTRUCTION OF FACILITIES

For construction, repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and for facility planning and design not otherwise provided, for the National Aeronautics and Space Administration, and for the acquisition or condemnation of real property, as authorized by law, [$525,000,000] *$319,200,000*, to remain available until September 30, 1995: *Provided*, That, notwithstanding the limitation on the availability of funds appropriated under this heading by this appropriations Act, when any activity has been initiated by the incurrence of obligations therefor, the amount available for such activity shall remain available until expended, except that this provision shall not apply to the amounts appropriated pursuant to the authorization for repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and facility planning and design: *Provided further, That no amount appropriated pursuant to this or any other Act may be used for the lease or construction of a new contractor-funded facility for exclusive use in support of a contract or contracts with the National Aeronautics and Space Administration under which the Administration would be required to substantially amortize through payment or reimbursement such contractor investment, unless an appropriations Act specifies the lease or contract pursuant to which such facilities are to be constructed or leased or such facility is otherwise identified in such Act: Provided further, That the Administrator may authorize such facility lease or construction, if he determines, in consultation with the Committees on Appropriations, that deferral of such action until the enactment of the next appropriations Act would be inconsistent with the interest of the Nation in aeronautical and space activities.*

RESEARCH AND PROGRAM MANAGEMENT

For necessary expenses for personnel and related costs, including uniforms or allowances therefore, as authorized by law (5 U.S.C. 5901–5902) and travel expenses, [$1,600,027,000] *$1,630,000,000*: *Provided*, That contracts may be entered into under this appropriation for training, investigations, costs associated with personnel relocation, and for other services, to be provided during the next fiscal year.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$14,925,000] *$15,200,000*.

ADMINISTRATIVE PROVISIONS

[Notwithstanding any other provision of law, the National Aeronautics and Space Administration shall establish user fees for its exercise facilities. The fees shall be comparable to those charged by the Department of Housing and Urban Development at its headquarters location.]

The NASA Administrator shall, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6))), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

Title 10, United States Code, is amended by adding the following to the end of section 2305:

(e)(1) The Administrator of the National Aeronautics and Space Administration is authorized to establish a program, the purpose of which is to test an innovative procurement procedure for the evaluation of prices offered in competitive proposals. The test program may include any procurement expected to exceed $100,000. Under this program, the lowest evaluated price of an offer shall be that which is expected to yield the lowest net cost to the Government. The net cost to the Government is determined by deducting from the evaluated price—

(A) the projected income taxes to be withheld or paid on wages paid to the offeror's employees for work on performance of the contract;

(B) the projected corporate income taxes to be paid by the offeror to the Government on any profits made on the contract; and

(C) any other rebate, refunds, assessments, or other receipts which are likely to accrue to the Government as a consequence of the offeror's performance of the contract.

For procurements conducted under this program, offerors shall be required to submit the necessary data to enable the Government to determine the net cost of their proposals.

(2) This program shall have a duration of one year commencing on October 1, 1992, and ending on September 30, 1993, during which solicitations may be issued incorporating the net cost evaluation procedure.

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

SALARIES AND EXPENSES

For necessary expenses of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, in carrying out their functions under title VI of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101–235, 103 Stat. 1987, 2052) $500,000, to remain available until expended.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 1993, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions as authorized by the National Credit Union Central Liquidity Facility Act (12 U.S.C. 1795) shall not exceed $600,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 1993 shall not exceed $964,000.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as au-

thorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; [$1,879,000,000] *$1,859,000,000*, to remain available until September 30, 1994: *Provided*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further, That notwithstanding section 104 of the National Science Foundation Authorization Act of 1988 (Public Law 100-570), no funds appropriated to the National Science Foundation under this Act may be transferred among appropriations accounts: Provided further, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: Provided further, That no funds in this Act or any other Act shall be used to lease or purchase an arctic research vessel built by a shipyard located in a foreign country if such a vessel of United States origin can be obtained at a cost no more than 50 per centum above that of the least expensive technically acceptable foreign vessel bid: Provided further, That, in determining the cost of such a vessel, such cost shall be increased by the amount of any subsidies or financing provided by a foreign government (or instrumentality thereof) to such vessel's construction: Provided further, That the vessel contracted for pursuant to the foregoing shall be of United States registry.*

ACADEMIC RESEARCH FACILITIES AND INSTRUMENTATION

For necessary expenses in carrying out an academic research facilities and instrumentation program pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including services as authorized by 5 U.S.C. 3109 and rental of conference rooms in the District of Columbia, [$33,000,000] *$50,000,000*, to remain available until September 30, 1994.

UNITED STATES ANTARCTIC RESEARCH ACTIVITIES

For necessary expenses in carrying out the research and operational support and for reimbursement to other Federal agencies for logistical and other related activities for the United States Antarctic Program pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); maintenance and operation of aircraft and purchase of flight services for research and operations support; improvement of environmental practices and enhancements of safety; services as authorized by 5 U.S.C. 3109; maintenance and operation of research ships and charter or lease of ships for research and operations support; hire of passenger motor vehicles; not to exceed $2,500 for official reception and representation expenses; [$163,000,000] *$143,000,000*, to remain available until expended: *Provided*, That receipts for support services and materials provided for non-Federal activities may be credited to this appropriation: *Provided further*, That no funds in this account shall be used for the purchase of aircraft other than ones transferred from other Federal agencies.

[UNITED STATES ANTARCTIC LOGISTICAL SUPPORT ACTIVITIES

[For necessary expenses in reimbursing Federal agencies for logistical and other related activities for the United States Antarctic Program pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); acquisition, maintenance, and operation of aircraft for research and operations support; improvement of environmental practices and enhancements of safety; $63,360,000, to remain available until expended: *Provided*, That receipts for support services and materials provided for non-Federal activities may be credited to this appropriation.]

EDUCATION AND HUMAN RESOURCES ACTIVITIES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including services as authorized by 5 U.S.C. 3109 and rental of conference rooms in the District of Columbia, [$465,000,000] *$510,000,000*, to remain available until September 30, 1994: *Provided, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.*

DEFENSE CONVERSION ENGINEERING TRAINEESHIP ACTIVITIES

For necessary expenses in carrying out a defense conversion engineering traineeship program pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), $55,000,000, to remain available until September 30, 1994: Provided, That no funds in this account may be used unless expenditures for this program have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

CRITICAL TECHNOLOGIES INSTITUTE

For necessary expenses for support of the Critical Technologies Institute as authorized by section 822 of the National Defense Authorization Act for Fiscal Year 1991, as amended (42 U.S.C. 6686), $1,000,000, to remain available until expended.

SALARIES AND EXPENSES

For necessary salaries and expenses in carrying out the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $6,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); rental of conference rooms in the District of Columbia; reimbursement of the General Services Administration for security guard services, [$115,500,000] *$111,000,000*: *Provided*, That contracts may be entered into under salaries and expenses in fiscal year 1993 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$3,625,000] *$3,750,000*.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101-8107), [$29,476,000] *$27,976,000*.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by law (5 U.S.C. 4101-4118) for civilian employees; and not to exceed $1,000 for official reception and representation expenses; $28,616,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever he deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States: *Provided further*, That notwithstanding the provisions of 50 U.S.C. App. 460(g), none of the funds appropriated by this Act may be obligated in connection with the preparation of more than one report each year to the Congress covering the operation of the Selective Service System [: *Provided further*, That the aforementioned funds shall not be obligated at a rate in excess of the current rate for the period October 1, 1992 through March 31, 1993:]

TITLE IV

CORPORATIONS

Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Act as may be necessary in carrying out the programs set forth in the budget for 1993 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

FEDERAL DEPOSIT INSURANCE CORPORATION

FSLIC RESOLUTION FUND

For payment of expenditures, in fiscal year 1993, of the FSLIC Resolution Fund, for which other funds available to the FSLIC Resolution Fund as authorized by Public Law 101-73 are insufficient, $2,622,000,000.

[FDIC AFFORDABLE HOUSING PROGRAM

[For the affordable housing program of the Federal Deposit Insurance Corporation under section 40 of the Federal Deposit Insurance Act (12 U.S.C. 1831q), $10,000,000 to pay for any losses resulting from the sale of properties under the program, and for all administrative and holding costs associated with operating the program.

[Notwithstanding any provisions of section 40 of the Federal Deposit Insurance Act or any other provision of law, the Federal Deposit Insurance Corporation shall be deemed in compliance with such section if, in its sole discretion, the Corporation at any time

modifies, amends or waives any provisions of such section in order to maximize the efficient use of the available appropriated funds. The Corporation shall not be subject to suit for its failure to comply with the requirements of this provision or section 40 of the Federal Deposit Insurance Act.

[BANK ENTERPRISE PROGRAM

[For necessary expenses of issuing minimum requirements and guidelines under sections 232(a) and 233(a) of the Bank Enterprise Act of 1991, except for section 233(a)(1)(B) (12 U.S.C. 1834(a) and 1834a(a)), and in estimating the cost of allowing reduced assessment rates and assessment credits pursuant to such Act in future fiscal years, $1,000,000.

[The appropriation herein provided shall not constitute authority for implementation of assessment needs or reduced assessments pursuant to the Bank Enterprise Act.]

RESOLUTION TRUST CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, [$33,510,000] *$37,328,000.*

ADMINISTRATION PROVISION

The President of the Resolution Trust Corporation shall, to the fullest extent possible, ensure that at least 8 per centum of funding for prime and subcontracts awarded in support of authorized programs, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6))), including historically black colleges and universities. For the purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

TITLE V

GENERAL PROVISIONS

SECTION 501. Where appropriations in titles I, II, and III of this Act are expendable for travel expenses and no specific limitation has been placed thereon, the expenditures for such travel expenses may not exceed the amounts set forth therefor in the budget estimates submitted for the appropriations: *Provided*, That this section shall not apply to travel performed by uncompensated officials of local boards and appeal boards of the Selective Service System; to travel performed directly in connection with care and treatment of medical beneficiaries of the Department of Veterans Affairs; to travel performed in connection with major disasters or emergencies declared or determined by the President under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; to travel performed by the Offices of Inspector General in connection with audits and investigations; or to payments to interagency motor pools where separately set forth in the budget schedules: *Provided further*, That if appropriations in titles I, II, and III exceed the amounts set forth in budget estimates initially submitted for such appropriations, the expenditures for travel may correspondingly exceed the amounts therefor set forth in the estimates in the same proportion.

SEC. 502. Appropriations and funds available for the administration expenses of the Department of Housing and Urban Development and the Selective Service System shall be available in the current fiscal year for purchase of uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902); hire of passenger motor vehicles; and services as authorized by 5 U.S.C. 3109.

SEC. 503. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Resolution Trust Corporation, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1831).

SEC. 504. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 505. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made, or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

SEC. 506. None of the funds provided in this Act to any department or agency may be expended for the transportation of any officer or employee of such department or agency between his domicile and his place of employment, with the exception of any officer or employee authorized such transportation under title 31, United States Code, section 1344.

SEC. 507. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 508. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the maximum rate paid for GS–18, unless specifically authorized by law.

SEC. 509. No part of any appropriation contained in this Act for personnel compensation and benefits shall be available for other object classifications set forth in the budget estimates submitted for the appropriations: *Provided*, That this section shall not apply to any part of the appropriations contained in this Act for Offices of Inspector General personnel compensation and benefits.

SEC. 510. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 511. Except as otherwise provided under existing law or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within twenty-four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 512. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) for a contract for services unless such executive agency (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder, and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared, and (B) the contractor who prepared the report pursuant to such contract.

SEC. 513. Except as otherwise provided in section 506, none of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 514. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

SEC. 515. Such sums as may be necessary for fiscal year 1993 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 516. None of the funds appropriated in title I of this Act shall be used to enter into any new lease of real property if the estimated annual rental is more than $300,000, unless the Secretary submits, in writing, a report to the Committees on Appropriations of the Congress and a period of 30 days has expired following the date on which the report is received by the Committees on Appropriations.

SEC. 517. (a) The Resolution Trust Corporation ("Corporation") shall report to the Congress at least once a month on the status of the review required by section 21A(b)(11)(B) of the Federal Home Loan Bank Act and the actions taken with respect to the agreements described in such section. The report shall describe, for each such agreement, the review that has been conducted and the action that has been taken, if any, to rescind or to restructure, modify, or renegotiate the agreement. In describing the action taken, the Corporation is not required to provide detailed information regarding an ongoing investigation or negotiation. The Corporation shall exercise any and all legal rights to restructure, modify, renegotiate or rescind such agreement, notwithstanding any other provision of law, where the savings would be realized.

(b) To expend any appropriated funds for the purpose of restructuring, modifying, or

renegotiating the agreements described in subsection (a), the Corporation shall certify to the Congress, for each such agreement, the following:

(1) the Corporation has completed its review of the agreement, as required by section 21A(b)(11)(B) of the Federal Home Loan Bank Act;

(2)(A) at the time of certification, in the opinion of the Corporation and based upon the information available to it, there is insufficient evidence or other indication of fraud, misrepresentation, failure to disclose a material fact, failure to perform under the terms of the agreement, improprieties in the bidding process, failure to comply with any law, rule or regulation regarding the validity of the agreement, or any other legal basis sufficient for the rescission of the agreement; or

(B) at the time of certification, the Corporation finds that there may be sufficient evidence to provide a legal basis for the rescission of the assistance agreement, but the Corporation determines that it may be in the best interest of the Government to restructure, modify or renegotiate the assistance agreement; and

(3) the Corporation has or will promptly exercise any and all legal rights to modify, renegotiate, or restructure the agreement where savings would be realized by such actions.

[SEC. 518. Notwithstanding any provision in this Act or any other provision of law, obligations in fiscal year 1993 for personnel compensation and benefits, travel, and the other object classifications of expense for all headquarters' offices for the Department of Veterans Affairs, the Department of Housing and Urban Development, the Environmental Protection Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, and the National Science Foundation shall not exceed the dollar amounts obligated for such activities in fiscal year 1992.

[SEC. 519. Hereafter, for purposes of chapter 75 of title 31, United States Code (relating to requirements for single audits), the City of Walnut Creek, California, shall be permitted to conduct audits biennially.

[SEC. 520. No Federal agency may plan, finance, construct, or permit a stadium complex at the Potomac Yard in Alexandria, Virginia, or any public improvement serving such stadium complex, until an environmental impact statement has been prepared by the Administrator of the Environmental Protection Agency (or another Federal agency designated by such Administrator) with respect to such proposed stadium complex in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). This section shall not apply to any action by the Environmental Protection Agency with respect to the cleanup of hazardous wastes and other pollutants at the Potomac Yard.

[SEC. 521. COMPLIANCE WITH BUY AMERICAN ACT.

[No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act").

[SEC. 522. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.

[(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

[(b) NOTICE TO RECEIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Under Secretary of Commerce for Oceans and Atmosphere shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.

[SEC. 523. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available by this Act that is not required to be appropriated or otherwise made available by a provision of law is reduced by 1 percent, except for the provisions regarding Department of Veterans Affairs programs.]

This Act may be cited as the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993".

The PRESIDING OFFICER. Pursuant to the previous order, the committee reported amendments are adopted as original text for the consideration of further amendments.

The Chair advises the Senate the time for debate on the bill is limited to 30 minutes equally divided and controlled between the Senator from Maryland [Ms. MIKULSKI] and the Senator from Utah [Mr. GARN].

Ms. MIKULSKI. I thank the Presiding Officer. I ask unanimous consent that Sarah Linstead and Peter Saundry be granted unlimited floor privileges during the consideration of H.R. 5679.

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

INTRODUCTION AND OVERVIEW

Ms. MIKULSKI. Mr. President, I am pleased to present to the Senate, H.R. 5679, the 1993 VA, HUD, and independent agencies appropriations bill.

This legislation appropriates $87.8 billion for Federal investments in a host of key areas that include: veterans, housing, the environment, America's space program, basic scientific research and education, and Federal disaster relief. The bill as reported is within the 602(b) allocation for the VA-HUD Subcommittee and is nearly $3.7 billion below the amount requested by the President for the bill as a whole.

In my 4 years as chairman of the VA-HUD Subcommittee, this year has been by far the most difficult. There were more than 1,100 requests from Senators, totalling $44 billion, for items in the bill. And yet, we had no peace dividend with which to work to accommodate these requests because the firewall between defense and domestic spending remained intact.

As a result, our 602(b) allocation, the total pot from which the subcommittee can work, was nearly $1.4 billion in outlays below the amount requested by the President. That has forced the Appropriations Committee to make hard choices this year in this bill.

To live within these severe limits, we placed items requested into 3 categories: "must do"; "should do"; and "would like to do". Our funding limits forced the committee to provide for only those items on the must do list, and some on the should do list.

Given these severe limits, I would like to highlight some of the major accomplishments in this legislation.

VETERANS

First, for America's 27 million veterans. The bill provides $34.5 billion, including $18 billion for mandatory benefits like pensions, readjustment benefits, and housing loans. Our goal, despite severe funding constraints, is to maintain our commitments to the VA health care system, provide funds to eliminate backlog in VA cemeteries, and improve the delivery of veterans' benefits by the Department of Veterans Affairs.

HEALTH CARE

The bill provides $14.7 billion for veterans medical care, an increase of almost $1.2 billion over the current budget and $37 million over both the President's request and the amount provided by the House.

These funds will enable the VA to hire additional nurses, ensure quality of care through activities like hospital inspections, provide additional homeless assistance, and expand post-traumatic stress disorder treatment.

These additional funds mean VA will be able to treat 1.1 million veterans in VA hospitals, community nursing homes, and State-run nursing homes for veterans. They will also pay for 24 million outpatient visits at VA hospitals and clinics throughout the United States.

For homeless veterans, the VA will have the funds to help more than 16,000 former men and women of our Armed Forces who have lost their way in life. Included in these efforts are funds for programs which help get these veterans back on their feet and into jobs.

For veterans suffering post-traumatic stress disorder, $45 million is provided, which will make counseling available for approximately 20,000 veterans, including those who served in Desert Storm.

Also included in the medical care budget are funds to continue quality assurance activities, which were initiated last year, including hospital inspections, ensuring all physicians' have proper credentials, and establishing programs to ensure that VA's budget is spent in the most effective manner possible.

I want to be absolutely sure that there isn't another VA hospital making headline news because of scandalous events such as deaths due to misdiagnoses or inappropriate treatments, missing patients, or patients being given blood contaminated with the AIDS virus.

I am proud of the fact that, despite a budget allocation which was $1.4 billion below the President's request in outlays, the committee was able to boost VA medical care above the amount requested by the President.

SERVICE DELIVERY

VA's general operating expenses would also receive an increase of over the President's request. The Veterans Benefits Administration would receive an additional $17 million in order to reduce the backlog of claims, which averages 500,000 each month.

VETERANS CEMETERIES

The bill also provides more than $73 million for the National Cemetery System, an increase of $6.4 million over the current budget, which will enable VA to eliminate the backlog of equipment needs. These basic items include tractors, mowers, and backhoes, simple items which VA must have to maintain these hallowed grounds in a dignified manner, befitting those who served their country.

HOUSING

For housing, the bill includes $25.4 billion for the Department of Housing and Urban Development. This is an increase of $2.3 billion above the 1992 level and $1.7 billion above the budget request.

The committee reported bill emphasizes maintaining and retaining the existing stock, and those programs which provide State and local governments with the maximum flexibility to address their housing and community development needs.

Included is more than $10 billion for section 8 housing. The vast majority of these funds are for the renewal of expiring section 8 contracts. The committee's emphasis on section 8 renewals is based on the weak and deficient management with which HUD has run this program. Poor data management of section 8 has been the most serious and persistent problem that the committee has faced in tackling the Nation's housing problems. And our emphasis again on this subject this year indicates that the section 8 situation is far from being corrected.

In other areas, the committee has included a record $4.1 billion for community development block grants, $539 million for homeless programs, more than $3.5 billion for public housing modernization, $175 million for drug elimination grants and $1.2 billion for the HOME Program.

Finally, there is over $1 billion for the HOPE Program, including funds for a new empowerment initiative, designed to bring adequate shelter, self-sufficiency services, and community sweat equity in the most distressed areas of America's cities.

ENVIRONMENTAL PROTECTION AGENCY

For EPA, the bill provides almost $7 billion, $345 million above the House amount and $336 million above the current budget.

Operating programs would get $2.6 billion, an increase of $70 million above the current budget, which would sustain most programs at current levels, including grants to control stormwater runoff and for eliminating asbestos in schools. Also included is the President's request of almost $60 million for public water supply supervision grants, to ensure a safe drinking water supply.

Sewage treatment construction funding would be a record $2.65 billion, $250 million above the House level and the current budget, in order to reduce the $80 billion unmet need for sewage treatment construction nationwide. The amount of funding provided will generate 150,000 construction jobs.

The Superfund Program would get $1.616 billion, the same as the current level of funding and $200 million above the budget, in order to sustain the current level of activity in the Toxic Waste Cleanup Program.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The bill includes $14.15 billion for NASA, a cut of $840 million below the budget request, $163 million below the enacted budget, and $382 million above the House.

Despite reducing the total amount for NASA below the 1992 level, we have provided full funding, or nearly full funding, for the space station, the Earth observing system, the advanced x-ray astrophysics facility, and the Cassini planetary mission to Saturn.

So to my colleagues who have suggested that we cannot afford investments in space, and the space station in particular, this bill proves that argument to be false.

NATIONAL SCIENCE FOUNDATION

This bill also provides $2.7 billion in funding for the National Science Foundation. Despite the severe budget constraints, the bill recommends an increase of $162 million, or 6 percent, for the Foundation. This level would mean an overall increase of $809 million, or 42 percent, on the level of funding given to the NSF in 1989 when I become chair of this Appropriations Subcommittee. Our commitment to the Nation's research base is strong and long term.

The Foundation has been very successful during its 40-year history in maintaining American leadership in basic research and providing the Nation with a rich resource of knowledge. However, we all recognize that America is not using the resource in an effective manner. Other nations which, quite frankly, have inferior research bases, have captured much of the high technology markets of the world. This bill recognizes that weakness and does something about it.

First, the bill maintains strong support for basic research in the Nation's universities within the confine of this year's budget constraints. Second, it strengthens the Foundation's efforts to open up the Nation's academic research infrastructure to those endeavoring to build America's technology base and improve U.S. competitiveness. Finally, the bill continues to build up the Foundation's math and science education programs which are so vital to providing America with a work force ready for the 21st century.

This bill reaffirms a strong commitment to basic research with no apparent utility to the lay person such as mathematics research. However, the Federal Government should not simply support a research community isolated in an ivory tower away from the rest of society. The taxpayers of America have maintained a strong commitment to funding research because of a deep belief that the knowledge gained would be of great utility in the near-term or in the long-term. A totally isolated research community is inconsistent with maximizing the utility of knowledge generated by that community.

Therefore, the bill provides strongest support to those areas of research likely to be of greatest relevance to societal needs such as telecommunications, computing, and advancing manufacturing technologies; and to those programs seeking to bring the academic and industrial communities closer together.

It is important to recognize that the role of the Federal Government in support of science will change in the new world order. Indeed, recent actions by the National Science Board and the Director of the NSF show that there is strong concurrence with the subcommittee on this. I hope that a newly formed commission on the future of the NSF will provide a clear and decisive vision of the NSF's role in putting raw knowledge to work for the well being of the Nation.

Included in the bill is $510 million for education programs, $24.5 million for EPSCoR, $105 million for manufacturing, $43 million for LIGO, and $143 million for the Antarctic Research Program.

The bill also includes a new defense conversion engineering traineeship program, funded at $55 million, to convert the skills and specialities of defense engineers leaving that industry to the civilian job market, in order to enhance the Nation's future economic growth.

FEMA

This bill also includes $1 billion for the Federal Emergency Management Agency, including $500 million for disaster relief to help victims of Hurricane Andrew and other disasters which have left lives in shambles.

While we know the cost of Hurricane Andrew will far exceed the amount in this bill, there will be a supplemental appropriation moving this week which will include funds needed for Andrew. I am committed to ensuring that the funds necessary to put lives back together in south Florida and Louisiana will be made available in a quick-paced fashion, unlike the pace at which FEMA responded in the first days to the disaster wrought by Hurricane Andrew.

I must tell my colleagues, that when it comes to disasters, FEMA is a disaster itself. FEMA just isn't fit for duty when it comes to major disasters—when you need FEMA the most.

I am so troubled by the fact that the victims of Hurricane Andrew were victimized twice—once by Hurricane Andrew, and then by their own government headed by a slow-moving bureaucracy which just wasn't prepared.

While most people realize that the cold war is over, FEMA is planning for nuclear war rather than natural disasters. The fact is, people are more likely to be hit by a hurricane or earthquake than by nuclear war. That's why I've been asking FEMA for the past several years to develop a strategy based on real risk and flexible response.

Unfortunately, FEMA has refused to do this. FEMA has shown it hasn't learned its lesson from disasters like Hurricane Hugo and the San Francisco earthquake.

So last week I asked the General Accounting Office to launch a major review of the Federal response plan, to ensure that the Federal Government is fit for duty when disaster strikes and hits the ground running immediately so that the real needs of people—food, water, clothing, and medical care—are met.

We don't know where the next accident will come from, but we should know we can rely on the Federal Government's response.

CONCLUSION

This appropriations bill does not meet all of our wishes or needs.

Given the limited funds we had to work with, however, I believe it is fair and responsible, and deserves the support of the Senate.

Not everyone with an interest in this legislation will be satisfied with its results. But it does represent a reasonable compromise, that looking at the limitations we faced due to our 602(b) allocation, I think most will agree that it is the best that could have been done given those circumstances.

Mr. President, today I am pleased to present to the Senate H.R. 5679, which is the 1993 appropriations bill that will fund VA, HUD, the space program, EPA, and the National Science Foundation, as well as the Federal Emergency Management Agency. In addition to that this bill also includes 22 other independent agencies.

This legislation calls for an appropriation of $87.8 billion for Federal investments in a host of key areas that include: veterans housing, the environment, basic scientific research and education, and the Federal disaster relief. The bill as reported is within the 602(b) allocation for the VA-HUD Subcommittee and is nearly $3.7 billion below the amount requested by the President for the bill as a whole.

In my 4 years of chairing this subcommittee, this year has been by far the most difficult. There were more than 1,100 requests from Senators totaling $44 billion, for individual items in the bill, most of which were meritorious. And yet we had no peace dividends with which to work to accommodate these requests because the firewall between defense and domestic spending remained intact. We could not pursue that.

As a result, our 602(b) allocation, the total pot from which the subcommittee can work, was nearly $1.4 billion in outlays below the amount requested by the President. This forced this Appropriation Committee to make hard choices this year in this bill.

Given the severe limits, I would like to highlight some of the major accomplishments of this legislation.

First, for America's 27 million veterans. This bill will provide $34.5 billion including $18 billion for mandatory benefits like pensions, readjustment benefits and housing loans. Our goal, despite severe funding constraints, is to maintain our commitments to the VA health care system, provide funds to eliminate backlogs in VA cemeteries, and improve the delivery of veterans benefits.

We feel no veteran should have to stand in line for a prolonged period when he has applied particularly for disability benefits. In the medical budget our funds are to continue quality assurance activities initiated last year, hospital inspections, also to ensure that all physicians have proper credentials, and many other issues.

I want to be sure that there is not another VA hospital making headline news because of scandalous events such as deaths due to inappropriate treatment and so on.

In addition to that we asked the Secretary of the veterans agency to pay special attention to women veterans and their needs which have often been ignored, and particularly the specialized needs of women as indicated in Desert Storm where they faced a variety of illnesses and some actual sexual assault and battery.

In the area of housing, this bill includes $25.4 billion for Department of Housing and Urban Development. This is an increase of $2.3 billion above the 1992 level.

The committee report emphasizes maintaining and retaining the existing housing stock, and those programs which provide State and local governments with maximum flexibility to address their housing and community development needs.

We have tried to provide housing, ensure empowerment of local communities and jurisdictions and the residents themselves, and at the same time provide a framework that will be sustainable.

For EPA, this bill provides almost $7 billion, $345 million above the House and $336 million above the current request.

Included in this amendment are grants to control storm water runoff and for eliminating asbestos in the schools.

Sewage treatment construction funding would be a record $2.65 billion, $250 million above the House and a variety of other things.

The National Space Agency. This bill includes $14.15 billion for NASA, a cut of $840 million below the budget request, $163 million below the enacted budget and $382 million above the House.

Despite reducing the total amount for NASA below the 1992 level, we have provided full funding, or nearly full funding, for the space station, the Earth Observing System, otherwise known as Mission Planet Earth, the Advanced X-ray Astrophysics Facility, and the Cassini planetary mission to Saturn.

So to my colleagues who have suggested that we cannot afford investments in space, the space station in particular, this bill provides that argument to be false.

The National Science Foundation. This bill provides $2.7 billion in funding for the National Science Foundation. Despite the severe budget constraints, this bill recommends an increase of $162 million, or 6 percent, for the Foundation.

The bill maintains strong support for basic research in the Nation's universities and strengthens the Foundations efforts to improve the United States' competitiveness. And the bill continues to build up the Foundation's math and science education programs which are so vital to providing America with the work force ready for the 21st Century.

We come to the Federal Emergency Management Agency.

This bill includes $1 billion for the Federal Emergency Management Agency, including $500 million for disaster relief to help victims of Hurricane Andrew and other disasters which have left lives in shambles.

Later on this week, or beginning next week, we will take up an urgent supplemental to deal only with the needs of Hurricane Andrew.

While we know the costs of Hurricane Andrew far exceed the amount in this bill, there will be that supplemental appropriation. I am committed to ensuring that the funds necessary are there, working with the administration, to put lives, families, and communities back together in south Florida and Louisiana.

I must tell my colleagues, though, when it comes to disasters, FEMA itself leaves a lot to be desired. FEMA was not ready when it comes to major disasters of significant magnitude.

I am so troubled by the fact of this that I have now asked the GAO to launch a major review of the Federal response plan to ensure that the Federal Government is fit for duty when disaster strikes and hits the ground. We need to make sure that we are ready to provide food, water, clothing, and medical care for quick response and then a sustainable recovery program.

I have discussed this with Mr. Andrew Card, the President's point person on Hurricane Andrew, and he assures me that he will cooperate to develop a new legislative framework so that whoever is President in 1993 we can move this agency out of the cold war mentality, where it is more concerned with us being attacked by nuclear war than developing a risk-based strategy for which Americans are most vulnerable and for which we need to have the most quick response.

This appropriations does not meet all of our needs, given the limited funds we had to set priorities.

Being a chair of an Appropriations Committee is not about making speeches. It is about making choices. And I believe that we did provide this in a fair and responsible way that deserves the support of the Senate.

Not everyone with an interest in this legislation will be satisfied with its results. But it does represent a reasonable compromise and, looking at the limitations that we face due to our 602(b) allocation, I think that most will agree that it is the best that we could have done under these circumstances.

Mr. President, I know that now my ranking minority Member will be speaking. And I just want to make a special comment to say that we could not have moved this legislation without the very able help of Senator JAKE GARN. This will be his last appropriations bill and it is with, indeed, great regret.

Senator GARN, who himself has traveled in space, has devoted his life to improving the space agency and the space framework for this country. He is concerned about American children in math and science. He has been a mayor and concerned about our cities' needs and the needs of housing. He has, indeed, been a wonderful Senator. He has played a major role in shaping this bill. I thank him for his courtesy, for his cooperation. I am going to have more to say about Senator GARN, but I now yield the floor.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Utah is recognized.

Mr. GARN. Thank you Mr. President.

The only comfort that I can find while enmeshed in yet another budget cycle and forced to contend with all the difficult and painful choices this subcommittee must confront, is that although next year may be even worse, at least I won't be here and have to try to adequately fund critical activities within these truly impossible budgetary limitations.

Unless we are willing to address the runaway growth in entitlement programs, there simply isn't enough money to do what we must do, and should do, as a national government.

Having said that, let me compliment Senator MIKULSKI in her energetic efforts to fairly balance the pain of our funding shortfall. The measure before us represents a major improvement over the bill which passed the House, and despite the difficult and problematic issues confronting us, I believe it represents a meaningful step forward in addressing activities under our jurisdiction.

The bill before us appropriates $87.8 billion in new budget authority from programs under our jurisdiction. Of this amount, $65.9 billion is for discretionary activities, directly under the spending jurisdiction of the Committee on Appropriations. This bill is the largest appropriations bill in terms of domestic discretionary spending. Given our budgetary constraints and the difficult choices we are forced to make in moving a bill under these circumstances, we simply cannot avoid conflicting opinions and judgments. For example, I personally am very troubled that both NASA and the NSF research accounts have been cut from their current nominal budget levels. Similarly, because of budgetary constraints, we were forced to recommend user fee legislation, and other program changes simply because it was the only way to sustain existing program levels for activities like VA medical care and HUD housing and community development assistance.

Perhaps more troubling is the failure of Congress to consider and dispose of many substantive issues before us. For example, two of the most difficult issues we expect to be raised on this bill involve environmental regulation which should be debated in the context of legislation reported by the Environment and Public Works Committee. Unfortunately, sponsors of these amendments, including members in leadership positions on that committee, are seeking legislation in this measure. Burdening this appropriations bill with such substantive issues can only make expeditious action all the more difficult.

Mr. President, I am pleased that we have an unanimous consent agreement which limits amendments to this bill and provides for some limitations on debate. The start of the new fiscal year is less than 4 weeks away, and we must expedite consideration of this bill.

Mr. President, we have limited time and that was deliberate, only 30 minutes on the bill, equally divided, and so I will simply say that in my 18th year in the Senate, I have not been involved in such a difficult budgeting year. Of those 18 years, 16 years I have served on the Appropriations Committee and 6 of those years I was chairman of this subcommittee, and most of the other years ranking member to Senator MIKULSKI and also to Senator Bill Proxmire. And I would simply say that this is without a doubt the most difficult budget we have ever had to put together.

I would say in all sincerity that in the 6 years that I was chairman, my counterpart on the House side, Edward Bolin from Massachusetts, and I had a much easier task than has been faced by Chairman MIKULSKI. We did not have all of the budget constraints and it was much easier to make decisions.

And so I would like to compliment the Senator from Maryland, because she has truly done a great job under extremely difficult circumstances to make the choices she talked about rather than speeches, again much more difficult than the choices that I had to make. And I would say that she has shared the pain about as fairly as it is possible to do.

It has been my pleasure to work with her on the last three or four budget cycles. She came in as a new chairperson, not familiar with the budget, but it did not take her very long until she had a complete and thorough knowledge of it. And I have really been impressed with her ability to take over this subcommittee and do such a commendable job these last few years under very difficult circumstances.

So with that, Mr. President, I would like to get on with the bill. Because we do have such limited time, only 30 minutes equally divided on the bill, I ask unanimous consent that a quorum call not be taken from the manager's time on the bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GARN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2952

(Purpose: Managers' amendment)

Ms. MIKULSKI. Mr. President, I now would like to move to the series of amendments known as the managers' amendments. I send a series of amendments to the desk, offered on the part of Senator GARN and myself, and ask unanimous consent that they be considered en bloc. Mr. President, I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for herself and Mr. GARN, proposes an amendment numbered 2952.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 4, line 17, strike the word "to" where it first appears, and insert in lieu thereof "which may".

On page 5, line 19, strike the word "to" and insert in lieu thereof "which may".

On page 6, line 7, strike the word "to" where it first appears and insert in lieu thereof "which may".

On page 8, line 18, before the period, insert the following new proviso: ": *Provided further*, That, upon the enactment of legislation authorizing the furnishing by contract of counseling and other care for eligible veterans for the after effects of sexual trauma, of the amount appropriated herein, $4,000,000 shall be available for such contracts".

On page 10, line 3, strike "under 38 U.S.C. 3710" and insert in lieu thereof "for any purpose specified in 38 U.S.C. 3710 which was".

On page 16, line 2, before the period, insert the following new proviso: ": *Provided further*, That, of the funds appropriated under this heading, $11,000,000 shall be available for the Northern California medical center replacement (Martinez) project".

On page 20, strike the matter on line 3 through line 10, inclusive.

On page 23, line 11, strike "$500,000,000" and insert in lieu thereof "$350,000,000".

On page 30, line 6, strike "$3,231,000,000" and insert in lieu thereof "$3,581,000,000".

In the matter under the heading "Annual Contributions for Assisted Housing" beginning on page 30, line 1 through page 37, line 22, strike the figure "$3,794,234,000" where ever it appears and insert in lieu thereof "$4,144,234,000".

On page 32, line 22, before the colon, insert the following new proviso: ": *Provided further*, That of the $4,144,234,000 total under this head, $350,000,000 shall be for the section 8 existing housing certificate program (42 U.S.C. 1437f)".

On page 33, line 3 strike "$250,000,000" and insert in lieu thereof "$350,000,000".

On page 35, strike all on line 5 down through "project" on line 7, and insert in lieu thereof: "and not rescinded or remitted to the Treasury shall be used by State housing finance agencies of local governments or local housing agencies with projects".

On page 36, line 10, insert the following new proviso before the period: ": *Provided further*, That in fiscal year 1993 the Secretary shall continue to work with the Department of Agriculture to use section 8 vouchers in serving low-income families in rural areas who are unable to afford existing housing".

On page 38, line 7, strike "$1,300,000,000" and insert in lieu thereof "$981,200,000".

On page 40, line 24, strike "$3,550,000,000" and insert in lieu thereof "$3,350,000,000".

On page 46, line 13, strike "$183,652,000" and insert in lieu thereof "$146,152,000".

On page 46, line 20, strike "$9,038,980,000" and insert in lieu thereof "$8,864,230,000".

On page 47, line 1, strike "$79,000,000" and insert in lieu thereof "$41,500,000".

On page 47, line 3, strike "$21,000,000" and insert in lieu thereof "$11,000,000".

On page 49, line 1, strike "$17,450,000" and insert in lieu thereof "$67,450,000".

On page 51, strike line 22, and insert in lieu thereof "$2,000,000,000" of continent liability for loan principal: *Provided*, That $1,700,000,000 of said amount shall become available only upon enactment into law of authorizing legislation.".

On page 52, line 2, strike "$1,200,000,000" and insert in lieu thereof "$1,500,000,000".

On page 66, strike the matter beginning on line 22, through line 8 on page 67.

On page 68, after line 5, insert the following new paragraph: "With respect to two projects of the United Cerebral Palsy of New Jersey, Inc., which are located in Newark and Teaneck, New Jersey, and are to be assisted under section 811 (project numbers 031-EH244/NJ39-T881-001 and 031-EH231), the Secretary of Housing and Urban Development shall extend the fund reservations for a reasonable period sufficient to permit final closing to take place and shall increase the reservation of project rental assistance to an amount sufficient to cover the reasonable operating expenses of these projects.".

On page 68, line 5, insert the following new paragraph: "Rehabilitation activities undertaken by the Committee for Dignity and Fairness for the Homeless Housing Development, Inc. in connection with 46 dwelling units that were renovated for permanent housing for the homeless and that are located in Philadelphia, Pennsylvania, shall be deemed to have been conducted pursuant to an agreement with the Secretary of Housing and Urban Development under clause (ii) of the third sentence of section 8(d)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)(A)).".

On page 71, line 5, strike "$42,100,000" and insert in lieu thereof "$48,400,000".

On page 71, line 11, before the period, insert the following new proviso: ": *Provided further*, That of the funds provided under this heading, $6,300,000 shall be for the relocation of the headquarters staff of the Commission and shall be available until expended".

On page 73, line 15, before the period, insert the following new proviso: ": *Provided further*, That not less than $2,900,000 of such funds shall be made available to the Office of the Director of the National Acid Precipitation Assessment Program".

On page 73, line 15, before the period, insert the following new proviso: ": *Provided further*, That from funds appropriated under this heading, but contingent upon authorization for such grants being enacted into law, the Administrator may make grants to Federally recognized Indian governments for the development of multimedia environmental programs".

On page 75, line 8, before the period, insert the following new proviso: ": *Provided further*, That if the agency determines that it would be more cost effective and less disruptive of accomplishing the agency's mission than issuing a new research support contract, after the agency has notified and received the approval of the appropriate committees of the Congress, not more than $10,000,000 of the amount appropriated herein may be made available for personnel compensation and benefits and travel of additional personnel (on a temporary or permanent basis) needed to replace contract services at the agency's environmental research laboratories".

On page 76, lines 14 and 15, strike "begin preliminary planning required for the establishment of" and insert in lieu thereof: "plan, design, and acquire land to establish".

On page 82, line 24, after "therefore" insert the following: ": *Provided further*, That notwithstanding any other provision of law, from sums appropriated under this paragraph and allotted under title of the Federal Water Pollution Control Act to a State, the State may make a loan to the International Boundary and Water Commission for the purpose of carrying out construction activities to upgrade an international wastewater treatment works identified by the Administrator of the Environmental Protection Agency in that Integrated Environmental Plan for the Mexico-United States Border, issued in February 1992: *Provided further*, That for the purposes of subsection (c) of section 603 the Federal Water Pollution Control Act, each international wastewater treatment works referred to in the preceding proviso shall be deemed a project eligible for assistance under such subsection, and repayment of a loan for construction activities at the international wastewater treatment works shall be made in the same manner as is required for any other project eligible for assistance under such subsection, except that the term of the loan may exceed the term prescribed in section 603(d)(1)(A) of such Act and the International Boundary and Water Commission shall not be subject to any time limitation with respect to the expenditure of the loan for the purpose of the loan: *Provided further*, That notwithstanding any other provision of law, 100 percent of the amount of the loan referred to in the preceding proviso shall be made from funds provided to the State by the Federal Government, and the requirement under section 602(b)(3) of the Federal Water Pollution Control Act that the State enter into a binding commitment to provide 120 percent of the amount of each grant payment under section 601 of such Act shall not apply to that portion of the grant payment used to fund a loan for an international wastewater treatment works: *Provided further*, That for each quarter, the amount that the State is required to deposit into the State water pollution control revolving fund pursuant to section 602(b)(2) of the Federal Water Pollution Control Act shall be reduced by an amount equal to 20 percent of the amount of any loan to the International Boundary and Water Commission".

On page 90, strike line 1 through 19, inclusive.

On page 91, after line 21, insert the following new paragraph:

REFORMULATED GASOLINE

It is the sense of the Senate that the "simple model" contained in the Supplemental Notice of Proposed Rulemaking for reformulated gasoline published at 57 Federal Register 13416 (April 16, 1992) is not in compliance with the requirements of section 211(k) of the Clean Air Act.

On page 91, after line 21, insert the following new paragraph:

FUNDING OF CERTAIN RESEARCH CENTERS

For fiscal year 1994, and thereafter, a competitive process shall be carried out by the Administrator of the Environmental Protection Agency in funding research centers that are operated by non-Federal entities.

On page 91, after line 21, insert the following new paragraph:

SOLID WASTE DISPOSAL ACT

No funds appropriated to the Environmental Protection Agency for fiscal year 1993 may be expended for the promulgation, implementation, or enforcement of any regulation under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) concerning process wastewater from phosphoric acid production. The preceding sentence shall not apply to the regulation of those wastes under sections 3007, 3013, and 7003 of that Act (42 U.S.C. 6927, 6934, and 6973, respectively).

On page 99, line 9, strike "of the National Preparedness Directorate".

Ms. MIKULSKI. Senator GARN and I are proposing a number of changes to the bill that have been agreed to on both sides, consistent with the terms of the unanimous-consent agreement that had been made prior to the August break. They make a number of modest changes in title I of the bill, related to veterans, at the request of the Veterans Affairs authorizing committee. They also make a number of changes in housing, including restoring $50 million for the emergency shelter grant program. Finally, there is a series of miscellaneous amendments, mostly related to EPA, which are noncontroversial

and consistent with the unanimous-consent agreement.

These changes do not add to the bill's cost and would not force the bill pending before the Senate to exceed its 602(b) allocation.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, we have cleared these changes and I support Senator MIKULSKI in this amendment.

Ms. MIKULSKI. Mr. President, I urge the adoption of these amendments.

NAPAP FUNDING AMENDMENT

Mr. MOYNIHAN. Mr. President, the amendment I rise to offer today provides $2.9 million for the Office of the Director of the National Acid Precipitation Assessment Program. Despite enactment of the landmark 1990 Clean Air Act, funding the vital research and oversight activities of NAPAP has been an uphill battle. I am, however, extremely pleased that the managers of the bill will accept this amendment, and I hope that they will endeavor to see that these funds are preserved in conference.

The current mission of the National Acid Precipitation Assessment Program is to monitor the effectiveness of the sulfur dioxide controls required by the Clean Air Act Amendments of 1990. The funds provided by this amendment will ensure effective coordination of the acid deposition control, monitoring, and research activities currently being carried out by no fewer than six Federal departments and agencies. Additionally, funds provided by this amendment will enable NAPAP to fund research directly and to keep the scientific community abreast of these activities. The funding level was recommended by the NAPAP Oversight Review Board as appropriate to carry out these essential activities.

Again, Mr. President, I thank the managers of the bill for their willingness to accept this amendment, and I urge its adoption.

Mr. CHAFEE. Mr. President, the amendment offered by the distinguished Republican leader prohibits the use of funds by the Environmental Protection Agency [EPA] to regulate process wastewater or phosphogypsum waste from the production of phosphoric acid under the Resource Conservation and Recovery Act during fiscal year 1993. Phosphoric acid, a primary ingredient in farm fertilizers, is an important commodity to our Nation's farmers.

In a 1991 final rulemaking, the EPA found that process wastewater from phosphoric acid production is hazardous in almost all cases. It also found that the current management practices appear to pose substantial risks of environmental contamination and impacts through groundwater and surface water pathways.

There are 20 facilities currently engaged in phosphoric acid production. Of those 20 facilities, 16 have monitoring data available. Unfortunately, EPA has found groundwater contamination at 15 of these 16 facilities.

Despite EPA's findings, the Agency determined that it would regulate these wastes under the Toxic Substances Control Act [TSCA] as opposed to regulating them under the Resource Conservation and Recovery Act [RCRA].

While only 20 facilities produce phosphoric acid, these facilities generate huge volumes of waste. Worried that regulation of this waste under RCRA might bankrupt the fertilizer industry, EPA decided to attempt regulation of the waste under the more flexible authorities of TSCA. It is important to note, however, that EPA explicitly retained its authority to regulate this waste under subtitle C of RCRA—the hazardous waste subtitle—should the Agency find it necessary to do so.

Under the authority of TSCA, EPA is currently in the process of putting together a task force composed of representatives from the fertilizer industry, the environmental community, and other interested parties. Their task is to devise a regulatory scheme that is protective of our health and environment and, at the same time, is responsive to the financial realities of this industry.

I am hopeful and would welcome the development of a protective, yet cost-effective, regulatory scheme under TSCA to address the dangers posed by this industry's current waste management practices. As long as the EPA, the fertilizer industry, and other interested parties work together to fashion such a solution in a timely manner, EPA may never need to resort to its authority under RCRA subtitle C. The amendment offered by the Senator from Kansas will provide these parties with an entire fiscal year to achieve this goal free from the threat of regulation under RCRA.

Should these efforts fail, however, resulting in the worsening of existing ground water contamination, it would certainly be advisable for EPA to exercise its authority and responsibility under RCRA to ensure that human health and the environment are protected.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2952) was agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR—H.R. 5679

Mr. GARN. Mr. President, I ask unanimous consent the privilege of the floor be granted the following members of my staff, Susan Adams and Louis Whitsett, during the pendency of this bill.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

FUNDING FOR THE EMERGENCY SHELTER GRANTS PROGRAM

Mr. WELLSTONE. Mr. President, I want to take just a few minutes to thank Senator MIKULSKI for this amendment, which will restore most of the funding to the Emergency Shelter Grants Program for fiscal year 1993. I realize that Senator MIKULSKI, and the entire Appropriations Committee, has had to work very hard to find ways to fund almost every part of this bill and I commend them on their job. Their work, and the help of a few other Senators, means that millions of Americans who find themselves out on the streets will still be helped, to find food and shelter, in the coming year.

The logic behind the original cuts to this program comes, I admit, from what seems on the surface to be an admirable proposition. The Bush administration believes that we need to spend more money to provide permanent solutions to homelessness in this country. I couldn't agree more with this idea. Indeed, more community development funds, more funding for programs like HOME and CDBG and, indeed, more funding for programs that specifically target homeless people would be very welcome. This bill reflects some of those priorities. This is how we will address our urban problems. And homelessness is one of the most important of those problems.

But the Bush administration has limited ability with math. They believe that every dollar we spend on emergency shelter is one dollar less that we will spend on more permanent solutions. They seem to believe that there will be no new homeless people in the coming years, so we can stop addressing the needs of those people. This is simplistic.

First, homelessness is not about to go away. The U.S. Conference of Mayors report on "Hunger and Homelessness in America's Cities," which came out last December, reported that in most U.S. cities the ability to meet the emergency needs of the homeless has been strained by the recession. With rising unemployment and lower wages, more people are showing up in emergency shelters and more people are turning to food shelves. This program is the primary source of funding for those services. I don't think we can afford to not meet these needs now. Most of the cities surveyed expect the demand for emergency shelter to increase in the next few years.

In Minnesota, I should point out, this program is not only used for emergency shelter and food. It also provides funding for homelessness prevention and transitional housing. According to the Minnesota Department of Jobs and Training, 56 percent of the Minnesota Shelter Grant Program funding is used to pay the operational service costs of transitional housing programs. These are some of the most flexible funds the State, cities, and counties have available to address a wide variety of problems. Last year, the State of Minnesota used ESG money to fund six different programs for battered women, improving their shelters and providing counseling. It used this money for four different programs for runaway youth. ESG funded hotel vouchers for homeless migrant workers in rural parts of the State, where there are no homeless shelters. This money was used to improve the energy efficiency of homeless shelters. And I am very proud to note that ESG funds were instrumental in helping to set up the American Indian Housing Corporation, which is the first program in the Nation to specifically address the problems of homeless urban Indians. Mr. President, emergency shelter grants have been put to good use in my State. These are not resources that we can afford to lose in Minnesota; they address real needs.

We do need to address the permanent needs of our communities. We do need to find permanent solutions to the problems of homelessness in America. But we cannot do this at the expense of programs that help people out in emergencies. We have seen all too well what the costs can be of not being prepared to meet emergencies. Each individual or family that ends up out on the streets during this recession may not be a massive national emergency, but that does not mean we should not be ready to help them out. Indeed, it took far too long to mobilize for our current, sudden, disaster in Florida. But we have been faced with the national disaster of homelessness for years now and we know that we cannot yet demobilize our emergency responses to it. I commend Senator MIKULSKI, and the committee, for finding the means to make sure we will be ready to face this emergency this year.

Mr. President, I wanted to thank both the Senator from Maryland and the Senator from Utah for their support. As the Senator from Maryland knows, I was especially concerned—and I know other Senators were as well. I would also like to include my wife Sheila, who is not a Senator, but who has been concerned with some of the cuts in emergency shelters. I really appreciate this restoration. I think it is terribly important, and not only for emergency housing. But I want the Senator from Maryland to know, because of her superb work—my wife does a lot of work with women and battered women's shelters—this restores the funding for six of these shelters in Minnesota. I just want the Senator from Maryland to know that these statistics mean a lot in human terms.

The Senator talked about these very painful decisions she had to make. I think she is more aware of the tradeoffs than probably anybody in this Chamber. But this is a real big thing to me, that we had success with this amendment. I am so pleased that my colleagues were willing to work with me and that they accepted it. It is the kind of thing that makes us feel like it is a victory. It makes us feel like this is why we are here in the Senate.

I also would like to thank the Senator from Maryland and the Senator from Utah for their support for some of the work we are now doing with the EPA as well in the city of Duluth. I really thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Ms. MIKULSKI. Mr. President, I wish to certify the following amendments that were included in the managers' amendment, No. 2952, and I ask unanimous consent that they be stricken from the consent agreement.

The amendments that I wish stricken from the unanimous-consent agreement are: Jeffords, to prohibit the funding of EPA research centers; Moynihan, relevant to national acid precipitation; Dole, fertilizer; Durenberger, ethanol; Sasser, homeless funding, which we have been able to take care of; Dixon, relating to the financial adjustment factor for low-income housing; and McCain, related to border environment.

I ask unanimous consent that they be stricken from the consent agreement.

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

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado [Mr. WIRTH] is recognized.

AMENDMENT NO. 2953

(Purpose: To extend the statute of limitations for certain actions in tort brought by the Resolution Trust Corporation in its capacity as a conservator or receiver of a failed savings association)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Colorado [Mr. WIRTH] proposes an amendment numbered 2953.

Mr. WIRTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . CIVIL STATUTE OF LIMITATIONS FOR TORT ACTIONS BROUGHT BY THE RTC.

(a) RESOLUTION TRUST CORPORATION. Section 11(d)(14) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)) is amended—

(1) in subparagraph (A)(ii), by inserting "except as provided in subparagraph (B)," before "in the case of";

(2) by redesignating subparagraph (B) as subparagraph (C);

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) TORT ACTIONS BROUGHT BY THE RESOLUTION TRUST CORPORATION.—The applicable statute of limitations with regard to any action in tort brought by the Resolution Trust Corporation in its capacity as conservator or receiver of a failed savings association shall be the longer of—

"(i) the 5-year period beginning on the date the claim accrues; or

"(ii) the period applicable under State law."; and

(4) in subparagraph (C), as redesignated—

(A) by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)"; and

(B) by striking "such subparagraph" and inserting "such subparagraphs".

(b) EFFECTIVE DATE; TERMINATION; FDIC AS SUCCESSOR.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall be construed to have the same effective date as section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) TERMINATION.—The amendments made by subsection (a) shall remain in effect only until the termination of the Resolution Trust Corporation.

(3) FDIC AS SUCCESSOR TO THE RTC.—The Federal Deposit Insurance Corporation, as successor to the Resolution Trust Corporation, shall have the right to pursue any tort action that was properly brought by the Resolution Trust Corporation prior to the termination of the Resolution Trust Corporation.

Mr. WIRTH. Mr. President, I thank the distinguished chair of the subcommittee for her help on this very important amendment.

Mr. President, this amendment will come as no surprise to many of my colleagues. The amendment relates to an extension of the statute of limitations for professional liability claims at the RTC.

This amendment has been adopted before by the Senate. It was adopted once as part of the RTC funding package which the other body has failed to pass, and it is part of the Government-sponsored enterprise legislation, which is currently locked up in conference. So it is not at all clear to this Senator if the statute of limitations extension will become law if we do not put it on this legislation.

I have worked with the distinguished chair of the subcommittee and she is—as most of our colleagues are, I believe—supportive of this amendment.

When the GAO, Mr. President, looked at the RTC, at the failures of thrifts around the country, the GAO concluded that in 80 percent of those fail-

ures wrongdoing was suspected. That is a remarkable statistic, Mr. President, that in 80 percent of these failures there was some type of wrongdoing.

Mr. President, the taxpayers of this country have paid an enormous amount of money to try to clean up the S&L crisis, and the taxpayers have a right to expect that those directors or those auditors or those officers of S&L's, if they have ill-gotten gain, disgorge that ill-gotten gain. I think we would all agree that that is an appropriate goal for us to be pursuing. Those who have committed violations in this S&L crisis ought to be required to disgorge that which they have wrongfully accumulated.

Why do we need this extension? The S&L crisis has been a mammoth undertaking. The RTC had to get organized. It took it a good period of time to put this brand new organization together, which became ultimately the largest real estate outfit in the world. The RTC had to get this together. It had to put together a whole staff; it had to put together the PLS section at the RTC.

The statute of limitations is only 3 years long and, unfortunately, in many of the suits that the RTC was trying to bring against S&L directors, against officers, against accounting firms, and against others, they only have this 3-year period of time in which to do it.

In many of these cases, this overwhelmed the RTC. So they have had to, in some situations, jam all of their activities much too late in the process.

The simple purpose of the Wirth amendment is to extend the statute of limitations from 3 years to 5 years.

Mr. President, the amounts of money involved here can literally be billions of dollars, and every dollar that we can collect, every dollar that the RTC can go out and collect, is a dollar that is saved for the taxpayers. So by this very simple amendment on this particular piece of legislation, which legislation is going to pass, we have the opportunity of saving the taxpayers billions of dollars.

And also, I think, we have the opportunity to say to the country that we are really serious about policing and trying to collect all of the money that the taxpayer is due in this terrible crisis that has been the worst financial crisis, I think, that the country has ever seen; or certainly the greatest scandal that the country has ever seen.

I asked Secretary Brady, during a hearing of the Banking Committee, if the administration supported this extension. His answer was "yes." I asked Mr. Casey, the head of the RTC, if the RTC, the regulators, supported this amendment, and his answer was "yes."

So I think it would be a great mistake for us to forego this opportunity. This is going to be one of the last opportunities that we have. This is the relevant and germane piece of legislation. Because the funding for 1988 S&L RTC deals is appropriated in their legislation, the amendment is absolutely germane. There is also other language in here that is directly relevant to the amendment.

Mr. President, I hope that we will follow the lead of the Treasury Department and the RTC, and adopt this amendment.

WHAT THE AMENDMENT DOES

Many people affiliated with S&L's took advantage of the opportunity created by the combination of deregulation and desupervision to enrich themselves and their associates. Some engaged in outright fraud and theft or were negligent in their professional responsibilities, overlooking others' fraudulent activities. Bank and thrift regulators are able to file civil lawsuits against the officers, management, and board of directors of financial institutions, as well as outside professionals—such as lawyers or accountants—who advised a failed institution. Those suits can lead to recovery of losses caused by fraud or negligence.

Today, Mr. President, I am offering an amendment that will allow the Resolution Trust Corporation [RTC] to recover greater sums for the taxpayer. In 1989, Congress established a 3-year statute of limitations for these professional liability claims except where State law authorizes a longer period. This provision of FIRREA overrode the shorter timeframes permitted in some States. My amendment increases the minimum statute of limitations from 3 to 5 years for civil liability claims filed by the RTC. Any longer period established by State law will remain in effect after the legislation is enacted. Identical provisions have passed the Senate as part of the RTC funding package and the Government-Sponsored Enterprises [GSE]

PROFESSIONAL LIABILITY SUITS ARE COST-EFFECTIVE

Regulators can recover a portion of the cost of the S&L crisis through civil liability lawsuits. The FDIC has recovered $641 million from claims arising out of thrifts that failed before the RTC existed. The RTC has recovered $97.6 million since its creation. The RTC totals are likely to increase significantly as pending cases are resolved. The RTC has filed more than three times as many cases this year as in 1990 and 1991 combined. The RTC had 170 cases pending involving $4.5 billion in claims.

These efforts have been cost-effective. In 1991, GAO figures indicate that the FDIC and RTC together spent $110 million on professional liability outside counsel and recovered $350 million. If we give the RTC the time it needs to fully pursue claims, we can increase recoveries for the taxpayers who are footing the bill for the S&L crisis.

THE RTC NEEDS MORE TIME TO PREPARE AND FILE SUITS

These are complex cases. The FDIC has testified that they are among the most complex matters we investigate. It takes a great deal of time for regulators to work their way through the tangled books and records of a failed institution and determine if there is reason to sue any party associated with the failure. It then takes additional time to judge if the suit is cost-effective.

When we look at individual cases, a 3-year statute of limitations may seem reasonable. However, we have to look at regulators' overall workload as well. A very large number of thrifts were closed in 1989 and FIRREA's statute of limitations expires for 318 S&L failures this year alone. The clock has already run out for suits in 274 of these thrift failures this year. The RTC faces deadlines for the remaining failures almost every week for the rest of the year.

The workload has led to greater delays before suits are filed. At the end of 1991, the RTC had filed 33 director and officer liability suits involving 32 institutions. The average length of time between failure and filing was 13 months, well below the 3-year statute of limitations. This year, however, most suits have been filed just before the deadline, often on the very last day. According to the General Accounting Office, about 60 percent of this year's claims were filed within 1 week of the expiration date.

According to the GAO, RTC officials suspect wrongdoing in more than 80 percent of thrift failures. Over the next 3 years, regulators will have to examine the potential for lawsuits related to more than 400 additional thrifts that have already been taken over by the RTC. Hundreds more thrifts may yet fail and be closed. These failures will need to be examined for potential liability suits. The enormous volume of this workload limits the Federal Government's ability to pursue all of the cases that should be pursued.

RTC officials recognize the need for a longer statute of limitations. At a March 11 Banking Committee hearing, Bill Roelle—the RTC's chief financial officer—testified "I sure do" when I asked him if he supported my legislation. Albert Casey, the chief executive officer of the RTC, has also testified that he supports the provision and written to me to express his support. On August 5, 1992, Treasury Secretary Brady testified that the administration supports the statute of limitation extension as well.

PROBLEMS WITH RTC PROFESSIONAL LIABILITY PROGRAM

The GAO has testified before the Banking Committee that more could be done to pursue potential claims. For example, poor asset identification procedures make it difficult for the RTC to determine if wrongdoers have enough assets to make a suit cost-effective. The GAO has also noted that the RTC has experienced professional liability attorney shortages and the Corporation has fewer professional li-

ability section [PLS] attorneys than its former general counsel reported were needed.

Recent events have made the extension even more urgent. A reorganization of the RTC's legal division and consolidation of the RTC have each significantly disrupted the PLS. These changes took place just as statutes of limitation began to expire for the earliest cases under the RTC's jurisdiction and they raise questions about the Corporation's ability to pursue liability suits in the future. The GAO has testified that, in the wake of the organizational changes, about 40 percent of the RTC's professional liability attorneys either left the RTC or have been reassigned within the RTC or to the FDIC.

Although some of the reassignments are on hold or have been rescinded, significant disruption took place and affected cases that were underway at the time. Some of the new attorneys assigned to the program do not have the same level of experience and knowledge of professional liability claims. Agency officials have estimated that the learning curve for new attorneys is 9 to 18 months, depending on the attorney's experience level. In addition, RTC attorneys have charged that political interference worked to alter or delete professional liability charges or to settle or modify suits against prominent individuals. These charges are very disturbing and deserve our examination and attention.

Giving the RTC more time to file claims will ensure that the possible political interference, disruption to the professional liability program, and need to train attorneys will not stop the RTC from recovering funds for the taxpayer. In addition, to the extent that staffing shortages have hampered past efforts, or that the RTC has missed or failed to file claims for other reasons, the additional time will allow the Corporation to pursue claims that may have been missed and for which the statute of limitations had expired. The extension does reach back to allow claims that are now excluded by the 3-year statute of limitations to be revived within the new 5-year period.

There have been charges that some senior RTC officials have intentionally sought to reduce professional liability suits and avoid pursuing those who contributed to the S&L crisis. If this is the case, an extended statute of limitations will allow suits later if we get new officials in place at the RTC who are willing to give this effort the priority it deserves.

CONCLUSION

We shouldn't allow individuals or businesses that contributed to a bank or thrift failure to escape a lawsuit simply because there was not enough time to develop and pursue a strong case. On the other hand, individuals who were once affiliated with a failed institution should not have to worry indefinitely that they may someday be named in a lawsuit. Five years strikes me as a reasonable balance given the high volume of failures that the RTC must examine today.

In 1989, when we enacted FIRREA, Congress promised the American taxpayer that we would aggressively pursue fraud and criminal activity in the S&L industry both through criminal and civil action. In 1990, Congress provided investigators and regulators with additional resources and tools through the Wirth-Heinz amendment that became law as part of that year's crime bill.

The 1990 legislation provided regulators, investigators and prosecutors additional tools and resources to promote civil recoveries. However, that legislation did not become law until November 29, 1990. FIRREA's statute of limitations clock had already wound halfway down for 218 thrifts by the time we provided those tools. It would be a mistake if we were to give the RTC the tools and resources it needs to do the job but not give them enough time. That's why the 2 additional years the amendment would provide are so important.

We will see many more suits filed this year and in the next few years as the RTC rushes to act before the current statutes of limitations expire. We shouldn't force the RTC to rush when we can give the Corporation the time to more carefully examine each institution. A longer statute of limitations will help the RTC use its limited resources more efficiently and carefully and increase the recovery to taxpayers from civil suits related to financial institution failures.

Mr. President, when Representative Jim Leach of Iowa introduced similar legislation in July, he thought the need was clear enough and urgent enough for Congress to act within the week. Yet, we have not yet enacted the measure, 6 months after I initially introduced S. 2334. I urge my colleagues to support the amendment and join me in working to enact an extension of the statute of limitations into law as soon as possible.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair would like to inquire: Under the consent agreement, as I understand it, the time is 30 minutes equally divided. The Chair is not sufficiently informed as to whether or not there is opposition to this amendment from the managers.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. The Senator from Utah claims the time in opposition.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GARN. Mr. President I hate to rise in opposition to this amendment because, as the Senator from Colorado well knows, I have worked with him on this amendment and it has passed the Senate before. I would state at the outset I do not have objection to extending the statute of limitations. I think the Senator has outlined it correctly. RTC took some time in getting geared up after the 1989 bill. There are cases pending out there that will not go to prosecution as a result of the end of the statute of limitations, I think it is in the interest of the American taxpayers that statute be extended, so that is not the difficulty I have. The Senator from Colorado and I have discussed this before.

I do have trouble with the definition of negligence. Let me just outline briefly the problem that this causes. In cases where you have enforcement actions against directors and officers of financial institutions, if it comes from the RTC, FDIC, and the regulatory agencies, insurance commonly known as directors and officers insurance does not apply. People can argue, well, it should not; if they have been guilty of some offense, they should have to pay it personally or it eases the pain too much. I do not disagree with that either.

What I do disagree with, in many of these smaller institutions where you have had outside directors, particularly in small institutions and small communities where it is very difficult to get directors to serve—this is not normally a problem of the big institutions because of the amount of pay involved and the prestige, and so on, that goes with it. But in small communities, normally what an institution will do is say, "Why not get the prominent doctor in town to serve on the board of directors. Maybe we can get the biggest automobile dealer in town and he can add some prestige to this."

So in these small communities you get people asked to serve who are the movers and shakers of the community, and they certainly are not involved in any of the criminal conspiracies that have gone on in some institutions. They are more or less passive directors, and maybe they should not have been. But I am trying to describe the situation where this occurs. And then they find themselves being sued for enormous amounts of money which affects their automobile business, their medical practice. They were not professionals in the field. On the other side of this coin, some people are not being prosecuted and that is the reason the statute of limitations needs to be extended. You are catching innocent people who were trying to be of public service. Some of these institutions paid nothing for directors, some of them $4,000 or $5,000 a year, not big amounts.

Again, I do not want to be misunderstood. With the size of the S&L crisis, we ought to try to recover as much for the taxpayers as we possibly can, and we certainly ought to prosecute and send to jail and fine those who are guilty of gross negligence in their behavior or criminal behavior, as the case may be.

I do not want to put us in a situation in this country where, particularly in the smaller institutions, it is simply impossible to recruit directors who would be willing to serve, to get the quality of people whom you would like.

The Senator from Colorado knows of my problem. We have discussed this before. I wish there were some way that we could work out that definition of negligence so that we had a better compromise while still extending the statute of limitations. Although it is not politically popular to vote against this and I wish I did not have to, I will because of the difficulties it causes in the situations I have described unless there is some way we could work out a compromise on that definition of negligence.

I yield the floor.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Ms. MIKULSKI. I yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado controls 9 minutes and 7 seconds.

Mr. WIRTH. I thank the Chair. I thank the distinguished Senator.

Mr. President, the Senator from Utah is correct in saying that we have discussed this at some length. The whole issue here is whether we ought to be effectively weakening the standard for the additional 2 years that would be applied in this legislation to go from 3 to 5 years No one disagrees that we ought to extend from 3 to 5. I think everybody has agreed upon that. The remaining question, as raised by the distinguished Senator from Utah, is whether or not we should weaken the standard for the remaining 2 years, that there be a different standard—a weaker standard—for the fourth and fifth years.

We attempted to work this out, and I came to the conclusion not to change the Wirth amendment after we discussed this with the RTC itself. We asked the RTC—and I think the Senator from Utah is aware of this or his staff is because we have worked with his staff—we asked the RTC if they were for such a change in the negligence standard, and they said "no" they were not; that if they had to change the standard in the fourth and fifth year, they would be right back where they are today, they would have to do everything in the first 3 years; that the extension of the statute for the fourth and fifth year really would not do any good.

Further, the amendment does not affect banks and credit unions.

The good point that the distinguished Senator from Utah has made that banks and credit unions are having a difficult time in many cases attracting directors because people are really concerned about this, this amendment does not apply to banks and credit unions. It only applies to S&L's taken into the RTC.

Now, S&L's are having a difficult time in some cases, because of all the problems of the last 5 years in the industry they are having a difficult time anyway, and the response we received was that they were having a difficult time in any case in many of these S&L's and that this amendment would not significantly change the situation that S&L's are already running into.

Finally, the argument was made that if we did not extend the statute to 4 or 5 years, it would be more difficult for the RTC to do its job. What they are trying to do is to jam it into too short a period of time with too few people. The Senator is aware of all of the accusations that were made of political influence in the hiring of lawyers and the reorganization of the PLS section. We had testimony on that, which ended up in stories on the front page of the Washington Post and the front page of the business section of the New York Times, very significant and serious allegations made by some of the lawyers in the PLS section. They were saying they were being reorganized for political reasons, they were being taken off some of these cases. If we do not extend the statute of limitations, this will further compound the problems that the RTC is facing.

So I understand the argument made by the distinguished Senator from Utah. However, we checked this out. We have been talking about this for a long time. This is not a new issue. The Senator and I have been back and forth now for a year on this and related issues, and I just want to say as an aside I thank him very much for his cooperation. The Senator from Utah has been incredibly open and forthcoming in attempting to work all of these out. I understand his point of view. We checked it out. We talked to the RTC. Their opposition convinced me that we ought to stick with the initial language and not make this change.

I thank the Senator from Utah for his very constructive approach to this.

Again the issue here is not whether we ought to extend the statute of limitations from 3 to 5 years. I think almost everybody is in agreement that we should.

The only remaining issue is should there be a weaker standard for the final fourth and fifth year? The RTC is opposed to weakening that standard. So I think we ought to stay with the initial amendment as offered.

I yield the floor.

Mr. GARN. Mr. President, I yield myself such time as may be necessary.

Once again, I disagree with very little of what the Senator from Colorado said. He is correct in saying the RTC decided not to suggest any changes in this standard. I want to say this carefully as well. The RTC has been pressured by Congress to retrieve as much money as possible, as they should.

I do not disagree with that. But they are skittish. They are very worried about suggesting anything that gives the appearance of weakening.

But I submit in closing that my argument, again, on this point is the very fact that I think one of the reasons the RTC has not done as good a job as they should is because of the negligence standard in there. They have used a shotgun approach.

I happen to believe if we had initially a gross negligence standard and they had used their resources and the Justice Department to pursue the egregious cases where lots of money was taken and could be retrieved, we would have gained a lot more money. I am not going to take the time. Senator DOMENICI could come to the floor and talk about the cases in New Mexico. There are just literally dozens and dozens of stories about the so-called innocent director who is being harassed.

So I think if we could concentrate on those where they really have been involved in gross negligence, have ripped off the taxpayers, we would achieve more than this shotgun approach. That is all I have attempted to achieve over the last couple of years. Let us extend the statute of limitations, let us get the bad guys and quit wasting so much taxpayers' money in the RTC going after guys that are not bad guys. That is the best way I can sum up my position.

I yield the floor.

Mr. WIRTH. Mr. President, I yield myself 1 minute.

Perhaps the distinguished Senator from Utah and I might be able to work out report language on this that says that we are interested in making sure that the RTC pursue the very significant individuals. We are not after the innocent community director, as the Senator and I have discussed.

We don't want that sort of thing to happen, particularly in small communities. We are all on advisory groups and so on. That is not the intent of what we want the RTC or the PLS section to be doing, going after those individuals who are really innocent.

I think we might be able to fashion some kind of language in the report. I will ask my staff to work with the staff of the distinguished Senator from Utah to see if we might do that. I think we all understand what we are trying to do in a general sense.

Mr. GARN. Mr. President, I know of no one else who wishes to speak on my side of the aisle. If the Senator from Colorado is willing, I would be willing to yield back our time on this side and ask for the yeas and nays.

Mr. WIRTH. I yield back the remainder of my time. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GARN. Mr. President, we have one problem. I am informed by both sides of the aisle that they need a few

minutes to hotline this so people can get back here for a vote. So as I understand it, we have yielded the time and the yeas and nays were ordered. With the concurrence of the distinguished Chairperson, I would suggest the absence of a quorum so the hotlines can be run.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, since the yeas and nays have been ordered, I call for the vote.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2953 by the Senator from Colorado [Mr. WIRTH].

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], and the Senator from Arkansas [Mr. PRYOR], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Wisconsin [Mr. KASTEN], the Senator from Arkansas [Mr. MURKOWSKI], the Senator from Delaware [Mr. ROTH], the Senator from California [Mr. SEYMOUR], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

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

The result was announced—yeas 78, nays 10, as follows:

[Rollcall vote No. 190 Leg.]

YEAS—78

Adams	Domenici	Metzenbaum
Akaka	Durenberger	Mikulski
Baucus	Exon	Mitchell
Bentsen	Ford	Moynihan
Biden	Fowler	Nickles
Bingaman	Glenn	Nunn
Bond	Gorton	Packwood
Boren	Graham	Pell
Bradley	Grassley	Pressler
Breaux	Harkin	Reid
Brown	Hatfield	Riegle
Bryan	Heflin	Robb
Bumpers	Hollings	Rockefeller
Burns	Jeffords	Rudman
Byrd	Johnston	Sanford
Chafee	Kennedy	Sarbanes
Coats	Kerrey	Sasser
Cohen	Kerry	Shelby
Conrad	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Smith
Daschle	Levin	Thurmond
DeConcini	Lieberman	Warner
Dixon	Lott	Wellstone
Dodd	Lugar	Wirth
Dole	McCain	Wofford

NAYS—10

Cochran	Hatch	McConnell
Craig	Helms	Stevens
Garn	Kassebaum	
Gramm	Mack	

NOT VOTING—11

Cranston	Murkowski	Specter
Gore	Pryor	Symms
Inouye	Roth	Wallop
Kasten	Seymour	

So the amendment (No. 2953) was agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, there is not order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Ms. MIKULSKI. There is not order in the Senate. There are many Senators who have asked the chair of the subcommittee what is anticipated this evening. And if there were order, Senators could find out.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, it is the intention of the subcommittee to proceed as follows: Senator GRAHAM of Florida intends to offer some amendments related to administrative expenses that we expect to have disposed of within an hour, and a vote is expected on at least one of them.

Then, upon the disposal of the Graham amendments, we then anticipate going on for debate on the space station, with the conclusion of the debate the first order of the subcommittee's business tomorrow, with a vote on the space station tomorrow, and then continuing on the bill.

So tonight, we anticipate at least one vote on the Graham amendments, and possibly a few more, but all being disposed of within the hour.

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Ms. MIKULSKI. I am happy to yield.

Mr. BUMPERS. Are you talking about more than one amendment by the Senator from Florida?

Ms. MIKULSKI. Will the Senator from Florida respond to the Senator from Arkansas?

Mr. BUMPERS. Will the Senator from Florida tell us, are there one or two amendments, and do you expect rollcalls on one or both?

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I am offering a series of amendments which are the same amendments that I have offered on previous appropriations bills, which relate to the overhead budgets and freezing them at the 1992 level. There are two amendments that relate to Department of Housing and Urban Development, one amendment for the Veterans Administration, and a fourth amendment for NASA—all of which do the same thing relative to overhead.

Mr. BUMPERS. Mr. President, I am not going to object, and no unanimous-consent request has been propounded. But I am just curious as to how many of these amendments the distinguished Senator is planning to take up tonight?

Ms. MIKULSKI. The Senator from Florida has not advised me, and that is why I wanted him to answer the Senator directly on what amendments he intends to ask a vote. I do not know what is in the mind of the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. It is not my intention to ask for a vote on any of these amendments. They are all the same amendments we have voted on on previous agencies. They freeze the overhead accounts at the previous year's levels. I think the Senate has essentially voted before on the principle of doing this, and I would not ask for a vote on them.

Ms. MIKULSKI. Mr. President, I could not hear. So the Senator is not going to ask for rollcall votes?

Mr. GRAHAM. It is not my intention to ask for rollcall votes.

Mr. BUMPERS. Mr. President, if the Senator from Florida will yield for a question, is it his intention not to ask for a rollcall vote and will take a voice vote on this and be satisfied with the results?

Mr. GRAHAM. That is correct.

Mr. BUMPERS. In that case, Mr. President, I would like the floor in my own right.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. The Senator from Maryland has not seen the amendments of the Senator from Florida. He says it is like any other amendment. I do not doubt the Senator's word. But he has an intricate approach here to accounts which could gut what we are trying to do. I might ask for a rollcall. That is why we are trying to see these amendments.

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

It was my understanding that the Senator from Florida would try to finish whatever amendments he is going to offer tonight by 8. At 8 o'clock I would lay down the space station amendment and we would proceed for an hour to an hour and a half tonight and then finish it tomorrow.

I just wondered if that understanding is satisfactory to the Senator from Florida?

Ms. MIKULSKI. I think, if we could proceed and dispose of the first Graham amendment, we could accommodate what the Senator anticipates. The more we have debated the process—we are now passing the 8 o'clock hour.

Mr. BUMPERS. I wonder if the Senator from Florida can tell us approxi-

mately how much time he intends to use on whatever amendments he intends to offer.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I could make my statement on this in less than 5 minutes because it is going to be essentially the same statement that I made in response to my colleague's question. I could go over the numbers of how the specific freezing to the 1992 level of overhead was arrived at. That would complete my explanation.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, would it be appropriate, with the majority leader in presence, to ask for a unanimous-consent request that the Senator from Florida be allowed to proceed with whatever amendment or amendments he wishes to offer, and, conditioned on final action being taken on his amendments by 8 o'clock, that we proceed for a period of at least 1 hour, say 1 hour, on the space station amendment with the time equally divided, get rid of that hour tonight and then finish the amendment tomorrow? I make that as a unanimous-consent request.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, if I might say to my colleague, I think we would have been nearly finished with the first Graham amendment if he had offered the amendment after the last vote and we could have proceeded. Might I suggest the Senate do so and then I think the matter will resolve itself.

Since the Senator is only going to debate his amendment this evening, I do not know if it is critical that the debate begin at 8, or 8:03 or 8:06. It is my hope we will complete action.

I just want to say to the Senator from Arkansas and the Members of the Senate this is the first day back from 5 weeks off. I have been here 1 day and I have already had a minimum of 25 Senators ask me are we certain we are going to be adjourning by October 3?

Now we learn today of the tragic death of our colleague, Senator BURDICK, so there will be no session on Friday. The longer we take to resolve these matters—in talking about how we are going to discuss them—the longer it takes to actually discuss them.

Mr. BUMPERS. Will the majority leader yield? I withdraw my unanimous-consent request. Why do we not just start grinding away and see where we end up.

Mr. DOLE. If the Senator will yield, as I understand it the Senator from Florida, Senator GRAHAM, would indicate he would accept a voice vote whatever the outcome. If that is correct I am wondering, if there is no request for a rollcall vote, is it necessary, to accommodate the majority leader and others who want to be out October 3, for the rest of our colleagues to stay here? Because after that I understand the Senator from Arkansas will offer his amendment and start the debate.

Ms. MIKULSKI. The Senator from Kansas is right. However we are just seeing these amendments, one of which is cutting the funds from the IG's office at HUD.

As the Senator from Kansas knows, we have worked on a bipartisan basis with the Secretary to reform HUD. The HUD scandal was discovered by the IG. I would oppose vigorously cutting the IG. In addition we are talking about a NASA amendment that has never been offered before. We are yielding to the expertise of the Senator from Utah to tell us if he would want a rollcall on that.

Mr. STEVENS. May I get into this for just a minute, Mr. President? May I ask the majority leader, is it the majority leader's understanding, if there is to be a request for a rollcall vote that would not be completed by 8 o'clock on Senator GRAHAM'S amendment, that it would not take place tonight? Have I misread this?

Mr. MITCHELL. Mr. President, if I still have the floor——

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. The unanimous-consent request to that effect was withdrawn.

Mr. President, I suggest we proceed and have the amendment, debate, and the vote, and hopefully by then the matter will resolve itself in a manner that is compatible with the interests of all Senators. But I just say to my colleagues we have a lot of legislation to accomplish.

Not a day goes by that 1, 2, 7, 12 Senators, on the floor of the Senate, say here is a bill we must take up, here is something we should act on, here is something we should complete action on. Just a few minutes later the same Senators are saying down here in the well, when can we leave?

We do not have any more votes this evening, no votes on Friday, no votes on Saturday—can we get out by October 3? The best way to accomplish it is to do it. I think everyone's interests will be accommodated if we simply proceed with the amendments.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 2954

(Purpose: To reduce the appropriation for salaries and expenses of the Department of Housing and Urban Development)

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

Ms. MIKULSKI. Will the Senator withhold? It would be the intention of the Chair, having consulted with the ranking minority member, to ask for voice votes on all of the Graham amendment except the amendment on the HUD IG, on which we would want a rollcall vote.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 2954.

On page 53, line 20, strike out "$910,942,000" and insert in lieu thereof "$906,246,000".

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, over the past several weeks, on each of the appropriations bills where there had been a recommendation of an increase in the central office overhead account, amendments have been offered to freeze those accounts at the 1992 level.

The amendments which I am offering this evening would accomplish that same objective as it relates to the Department of Housing and Urban Development, to the Veterans Administration, and to NASA.

As it relates to the Department of Housing and Urban Development, in order to do this—and I might say that our staff has worked closely with the Staff of the Department in order to arrive at these numbers. That is not a statement that they as a matter of policy approve. But I believe that as a matter of technical correctness, that these amendments do accomplish the intended objective.

The current budget for the Department of Housing and Urban Development recommended for its salaried expense account, general office, under departmental management, is $1,039,000 above the 1992 level.

For the office of general counsel, $2,067,000 over the 1992 level.

For the office of administration and staff services, $1,590,000, for a total of $4,696,000.

The purpose of the amendment which I have offered is to roll the recommended level of funding for the central office back by $4,696,000 in order to accomplish the objective of freezing it at the 1992 level.

Mr. President, I would be pleased to answer any questions. That is the purpose of the amendment.

Ms. MIKULSKI. Mr. President, I oppose the Graham amendment. I understand the thinking that goes into it. No one likes bureaucracy, no one likes bloated bureaucracy. But, Mr. President, we are giving HUD more and more responsibility, whether it is the Fair Accommodations Act, whether it is getting lead out of public housing, whether it is to try to do a weed and seed program.

One of the reasons we have had such a fiasco at HUD is because of inadequate staffing. This Senator is not someone who wants a big bureaucracy, but I think to cut the HUD bureaucracy right now at headquarters, just when we are making reforms that are necessary, would be penny wise and pound foolish.

Mr. GRAHAM. Mr. President, it was my privilege and responsibility to

chair the Select Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, which had the responsibility of looking at HUD and the series of problems which HUD experienced during the decade of the 1980's, and they were serious. We made a number of recommendations, many of which have been adopted.

I do not believe, however Mr. President, that those excesses of the past decade justify a deviation from a policy that this Senate has set thus far for every other agency in the Federal Government, save one, the central office of the Rural Electrification Authority, and that is that their central office overhead accounts should be frozen at the 1992 level.

My own belief is that what we are doing here is giving a very light haircut to agencies that are going to have to experience major amputation as we get serious about the budget deficit. These cuts of $4.6 million in a multibillion-dollar agency, in my opinion, is a statement of policy by the Congress relative to restraining overhead cost and a very small first payment toward the kinds of cuts that we are in going to be called upon to make as we begin to rein in these budgets for purposes of achieving a balanced budget.

I believe that this is exactly the kind of cuts that almost every State and local government has had to make during these severe periods of budget constraint. It is appropriate for the Federal Government to start its efforts at this point as well.

Mr. President, I do not believe that there is much left to say on this. If the chairperson is going to suggest that we have a rollcall vote on one of these items, is this the item she wishes to have a rollcall vote on?

Ms. MIKULSKI. I do not wish to have a rollcall on anything. Whatever is the decision of the body by voice vote on this, this chair accepts. When you move to the one on the IG, to which I absolutely am adamantly opposed, if you want it on voice, I will move to a rollcall.

Mr. GRAHAM. What concerns me is that it is not only this matter, but we have adopted a consistent pattern on these overhead accounts.

Ms. MIKULSKI. Is the Senator going to call for a vote on all of his amendments? Can we come to closure on his amendment?

Mr. GRAHAM. Mr. President, it was not my desire to have a rollcall, frankly, because I did not think it would be necessary.

Ms. MIKULSKI. Just call for a voice vote on this.

Mr. GRAHAM. That would be acceptable. I would be more comfortable with that request if the Chair and the ranking member were to indicate that they would be agreeable to this kind of an approach.

Ms. MIKULSKI. I think we should let the vote happen the way it happens. I am not going to take this amendment.

Mr. GRAHAM. In that event, I might be called upon to ask for a rollcall vote, in which case I suggest we might have an arrangement——

Ms. MIKULSKI. I would just like to bring to the Senator's attention, we are eager to move with this bill in such an expeditious way because of the Federal Emergency Management money that deals with Hurricane Andrew. This chair is trying to move heaven and Earth to get to Andrew. Any way the Senator wants to do it, fine, but just know that each hour we spend is an hour less than we can move to come to closure on the overall bill and the Federal Emergency Management money.

The PRESIDING OFFICER. The time of the Senator from Florida has expired. The Senator from Maryland has 4 minutes.

Ms. MIKULSKI. I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask for a rollcall vote.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Delaware [Mr. BIDEN], the Senator from California [Mr. CRANSTON], the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], the Senator from Georgia [Mr. NUNN], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER], the Senator from North Carolina [Mr. HELMS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Delaware [Mr. ROTH], the Senator from California [Mr. SEYMOUR], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

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

The result was announced—yeas 37, nays 47, as follows:

[Rollcall Vote No. 191 Leg.]

YEAS—37

Bond	Exon	Levin
Bradley	Fowler	Lugar
Brown	Glenn	Mack
Bryan	Graham	McCain
Bumpers	Grassley	McConnell
Burns	Harkin	Metzenbaum
Cohen	Jeffords	Nickles
Conrad	Kerrey	Pressler
Craig	Kohl	Reid
Dodd	Lautenberg	Robb
Sanford	Thurmond	Wofford
Simon	Wallop	
Smith	Warner	

NAYS—47

Akaka	Domenici	Mikulski
Baucus	Ford	Mitchell
Bentsen	Garn	Moynihan
Bingaman	Gorton	Packwood
Boren	Gramm	Pell
Breaux	Hatch	Riegle
Byrd	Hatfield	Rockefeller
Chafee	Heflin	Rudman
Coats	Hollings	Sarbanes
Cochran	Johnston	Sasser
D'Amato	Kassebaum	Shelby
Danforth	Kennedy	Simpson
Daschle	Kerry	Stevens
DeConcini	Leahy	Wellstone
Dixon	Lieberman	Wirth
Dole	Lott	

NOT VOTING—15

Adams	Helms	Pryor
Biden	Inouye	Roth
Cranston	Kasten	Seymour
Durenberger	Murkowski	Specter
Gore	Nunn	Symms

So the amendment (No. 2954) was rejected.

Mr. GARN. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, may I, through the Chair, inquire of the Senator from Florida whether he has made any decision with respect to his other amendments?

Mr. GRAHAM. Mr. President, in response to the request of the majority leader, I accept the vote that we have just had as the expression of the body on these amendments. And since the other amendments all would have accomplished the same objective in various agencies, it is not my intention to offer those amendments.

Mr. MITCHELL. Mr. President, I thank the Senator very much for his cooperation.

Accordingly, there will be no further rollcall votes this evening. It is my understanding that the managers and the distinguished Senator from Arkansas are now prepared to proceed to that amendment, with debate on the amendment to occur both this evening and first thing in the morning, with a vote to follow during the morning on that amendment. Am I correct?

Ms. MIKULSKI. The Senator is correct.

Mr. MITCHELL. Mr. President, I thank my colleagues.

Senators should be aware that a vote will occur, then, tomorrow morning on the vote on the amendment of the Senator from Arkansas, which will be debated this evening and also in the morning.

Might I inquire of the Senator from Arkansas whether it is possible to complete approximately 90 minutes of debate on this amendment this evening?

Mr. BUMPERS. Mr. President, as the Senator knows, the original agreement was an hour and a half on this side and 30 minutes on that side. And at some

point, Senator GLENN carved out an hour for himself.

I think the floor mangers are willing to change that agreement. It would be of great help to me if we could add 30 minutes to the hour and a half that I originally agreed to.

Ms. MIKULSKI. We agree.

Mr. MITCHELL. Mr. President, I understand the managers are agreeable to that.

Mr. President, I therefore make that in the form of a unanimous-consent request.

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

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 2955

(Purpose: To provide States with additional time to comment on proposed changes to certain hazardous waste rules)

Mr. GARN. Mr. President, before we start debate, I have an amendment that has been agreed to by both sides, and I offer this amendment on behalf of Senator CHAFEE. It is a hazardous waste amendment that was not listed among those in the unanimous-consent agreement, with 30 minutes on a side.

So I send that amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Mr. CHAFEE, (for himself, Mr. BAUCUS and Mr. DURENBERGER) proposes an amendment numbered 2955.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 89, following line 25 insert the following:

EXTENDING COMMENT PERIOD FOR REVISIONS TO CERTAIN HAZARDOUS WASTE RULES

Funds appropriated or transferred to EPA may be used to develop revisions to 40 C.F.R. 261.3, as reissued on March 3, 1992, published at 57 Fed. Reg 7628 et seq. EPA shall promulgate revisions to paragraphs (a)(2)(iv) and (c)(2)(i) of 40 CFR 261.3, as reissued on March 3, 1992, by October 1, 1994, but any revisions to such paragraphs shall not be promulgated or become effective prior to October 1, 1993. Notwithstanding paragraph (e) of 40 C.F.R. 262.3, as reissued on March 3, 1992, paragraphs (a)(2)(iv) and (c)(2)(i) of such regulations shall

PROVIDING FOR A STUDY OF METALS RECOVERY

Funds appropriated or transferred to the Environmental Protection Agency shall be used in part to conduct a study on the effect of existing regulations on efforts to recover metals from the Nation's wastes, how such metals recovery can be best encouraged, and how the materials should be regulated in order to protect human health and the Environment and to effectuate the resource conservation and recovery goals of the Resource Conservation and Recovery Act. In doing so, EPA shall consult with the Secretary of Commerce, the Secretary of the Interior, the metals recovery industry, and other interested parties.

The Administrator shall complete the study not later than April 28, 1993. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study and any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

Mr. GARN. Mr. President, I would like to enter into a colloquy with the Senator from Rhode Island, Senator CHAFEE, the distinguished ranking minority member of the Environment and Public Works Committee.

Some people have suggested that the language of the Senator's amendment actually ratifies the interim mixture and derived from rules. Is that the effect of the Senator's amendment?

Mr. CHAFEE. The amendment is only intended to ensure that EPA takes an adequate amount of time to consider and adopt appropriate changes to this complex regulatory scheme, and that a potentially disruptive regulatory vacuum is not created as a result of the sunset provision.

Mr. GARN. I thank the Senator. I am satisfied that this amendment does not ratify or approve the mixture and derived from rules, and I merely ask the Senator to confirm that the conference report will reflect this colloquy.

Mr. CHAFEE. That is my intention.

Mr. President, my amendment, cosponsored by Senators BAUCUS and DURENBERGER, provides States with additional time to comment on proposed changes to two critical parts of EPA's hazardous waste control program under the Resource Conservation and Recovery Act [RCRA]. The amendment will eliminate the April 28, 1993, sunset for the so-called mixture and derived-from rules and it will extend the comment period on proposed revisions until the end of the next fiscal year, October 1, 1993.

The need for this legislation came about because of the Shell Oil decision—a December 6, 1991, decision by the D.C. Court of Appeals to vacate the mixture and derived-from rules on procedural grounds. These rules have been in existence for more than a decade, and it is fair to say that the appeals court decision sent shock waves through the regulated community, the EPA, and State regulatory agencies.

In the time since they were first promulgated in 1980, these two rules have come to form the critical underpinnings of the Federal hazardous waste program as well as many State programs. Without these rules, hundreds of thousands of tons of hazardous waste would be removed from regulation as a hazardous waste.

Instead of going to specially designed hazardous waste facilities, these dangerous wastes could end up in local municipal landfills or other ill-equipped disposal units where toxic constituents could contaminate drinking water supplies, destroy ecosystems, and endanger public health. The gains which we have worked so hard to achieve since the days of Love Canal, could be lost.

In vacating these rules, the court recognized the significance of its decision and the potentially far reaching and dangerous consequences that would result if the rules were allowed to lapse. For that reason, the court suggested that EPA reinstate the rules on an interim final basis.

In March 1992, the EPA took the court's advice and reissued the mixture and derived-from rules. At the insistence of OMB, however, these reissued rules will automatically expire on April 28, 1993, even if EPA has failed to promulgate new, revised rules.

In an attempt to have new rules in place before the current rules lapse, the agency issued a proposed rule with two options to revise the mixture and derived-from rules. Unfortunately, both of EPA's proposed options are seriously flawed.

Representatives from over 35 State regulatory agencies, the environmental community and the waste treatment industry have all raised serious concerns regarding EPA's proposal. Among their concerns, these experts found that the proposed rules would fail to ensure protection of human health and the environment. Many officials also found that the proposal would be prohibitively difficult and expensive to enforce.

In fact, the proposal is so flawed that my State will refuse to adopt EPA's proposed rules should they become final.

As I said, over 35 other State environmental agencies submitted negative comments to EPA, including representatives from the States of Maryland, Pennsylvania, Utah, Wyoming, Texas, Oregon, Oklahoma, New Mexico, Nevada, Montana, Missouri, Michigan, Louisiana, Kentucky, Kansas, Idaho, Florida, Delaware, California, Alabama—the list goes on. Thirty-five States have taken the time to submit comments that blast the current proposal. Not a single State has written in support of EPA's proposal.

And that's not all. The environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club have submitted comments strenuously criticizing the agency's proposal for failing to protect health and the environment and for being unenforceable.

As if this tidal wave of opposition to EPA's proposal was not enough, the attorneys general from 40 States have joined in support of a letter circulated by the National Association of Attorneys General in opposition to EPA's proposal on the grounds that it is unenforceable.

While recognizing the need to revise the mixture and derived-from rules, the attorneys general made the following suggestion to EPA in their letter:

* * * Because of the serious flaws * * * in EPA's proposed response to this issue, we

urge the Environmental Protection Agency to withdraw the proposed hazardous waste identification rule, extend the current mixture and derived from rules, and immediately initiate discussions with States to develop a more acceptable resolution to the problems with the current RCRA hazardous waste identification rules.

Mr. President, there are literally thousands of pages of comments in opposition to EPA's proposal. I would like to ask unanimous consent that a small sample of these comments be included in the RECORD following my statement, including the letter from the attorneys general and from my own State of Rhode Island Department of Environmental Management.

Now, it is clear from the reactions of these experts, that EPA's proposal raises significant policy questions having broad ramifications—especially for the States. To a large extent, State officials carry out and enforce our hazardous waste laws. These officials are on the front lines—struggling to effectively and fairly implement these complicated hazardous waste regulations and facing the tough questions from their citizenry when something goes wrong.

Despite the critically important role played by our State hazardous waste officials, however, EPA provided only 64 days for public comment on this massive and far-reaching proposal. Obviously, based on the comments received to date, EPA has a lot more work to do on this proposal to ensure that proposed revisions do not compromise human health or the environment.

It is this Senator's opinion that EPA will be unable to make the substantial revisions needed to its current proposal by April 1993—the date on which the interim rules will lapse as a result of an artificially short sunset provision that was included at the insistence of OMB.

This proposal is a modest measure. The amendment maintains the status quo until October 1, 1993—the end of the fiscal year—and it provides EPA with additional time—at least 5 months—to continue its efforts to revise the mixture and derived-from rules. Hopefully EPA will use this time to confer with the States, the Congress and other interested parties to produce a consensus proposal which is protective of health and the environment.

The amendment lifts the so-called sunset provision that was added at OMB's insistence when EPA accepted the court's suggestion to publish interim final rules. Without this amendment, the mixture and derived-from rules will cease to exist by April 1993, even if EPA fails to issue a revised final rule.

I urge my colleagues to support this modest proposal to maintain the status quo and allow the States, the Congress and the other interested parties to have a meaningful opportunity to comment on the many significant policy decisions that are involved with revision of these critical rules.

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Mr. President, I ask unanimous consent to have printed in the RECORD material pertaining to this matter.

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

STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT,
Baltimore, MD, July 28, 1992.

Re: Docket number F-92-HWEP-FFFFF.
U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC.

DEAR SIRS: On May 20, 1992, the U.S. Environmental Protection Agency (EPA) proposed a rule on Identification and Listing or Hazardous Waste (*57* FR 21450). The Maryland Department of the Environment, the agency authorized by the EPA to implement the Resource Conservation and Recovery Act (RCRA) in Maryland in lieu of the federal government, has concerns about the EPA proposal. Although we acknowledge that there are problems with the current regulatory scheme in that certain low-hazard wastes, such as residues from the treatment of hazardous waste, can be subjected to overregulation, the EPA proposal appears to be a weakening of current regulations. Our concerns are summarized below.

The initial impetus for action by EPA was the fact that the courts have ruled that EPA did not follow the proper procedures when it promulgated the "mixture" and "derived from" rules. However, the proposal that is the subject of these comments goes beyond what was needed to address the problems caused by the procedural errors made in the earlier promulgation. As a general concern, we note that EPA has imposed upon itself an arbitrary deadline of April 28, 1993 for revising the regulations governing the definition of hazardous waste. If EPA does not meet this self-imposed constraint, they will let lapse the "mixture" and "derived from" rules, overturning the current regulatory program for hazardous waste. We believe that EPA has chosen an unnecessarily broad scope for this rulemaking, and should narrow its focus.

In its proposal, the EPA did not describe a single alternative, but instead solicited comments on a range of options, with each option itself having major variations. In light of the complexity of the scheme EPA has outlined, and the short time available for public comment, we cannot provide a detailed review of each variant EPA has offered for comment. We are thus limiting our comments to fundamental concerns with the approach EPA has described. EPA has attempted to structure criteria for defining hazardous waste in this proposal based on health risks that would occur if the waste were mismanaged. While in principle this approach is reasonable, EPA's execution of it is problematic. The EPA proposal assumes that exposure to contaminated groundwater is the primary pathway of exposure to be considered. This ignores other exposure routes that may be relevant if a waste is not managed in a hazardous waste facility, such as direct contact threats or exposure to emissions from inadequately controlled incinerators. The risk calculations also base the measure of health risks on multiples of the Maximum Contaminant Levels (MCLs) for compounds in drinking water that have been set by EPA under the Clean Water Act. However, this is an inappropriate use of the MCLs. MCLs are not based solely on health risks, but include other factors as well, such as the costs of treatment. If risk analysis is to be used to assess threats to human health, a measure of risk based on health effects alone should be the basis for the calculation.

In performing its risk analysis, EPA also looks only at existing patterns of groundwater use. The measure of acceptability is the number of drinking water wells currently in use that would become contaminated. This gives no weight to sources of groundwater that, although they are not currently being used, may be used in the future.

The EPA analysis also looks at hazardous constituents in isolation. This ignores additive and synergistic effects. A waste could contain several hazardous constituents, none of which individually is present at a concentration above a "health based" number, yet the cumulative risk from all the constituents could pose an unacceptable hazard.

The mismanagement scenario that EPA uses in evaluating risks, disposal in a permitted solid waste (Subtitle D) landfill, is too narrow. Risks from sending waste to other types of facilities should also be considered. The EPA's scenario also fails to take into account the risks of storing wastes before disposal—for example, a waste that is not subject to hazardous waste (Subtitle C) regulatory controls might be temporarily stored in an unlined waste pile prior to its final disposal, creating additional risks to human health than if it were managed in accordance with Subtitle C standards. Also, without the stringent Subtitle C controls, it is not unreasonable to assume that generators will avoid sending a significant amount of waste even to facilities regulated under Subtitle D. Some analysis of the consequences of such mismanagement should be performed.

Although risks to human health are of fundamental concern, they should not be the sole concern. The EPA should structure its proposal to include some analysis of ecological impacts of easing the regulatory controls on hazardous waste.

In addition to these concerns over the way in which EPA has set acceptable levels for contaminants, we also have concerns over the process by which the new regulatory scheme would be implemented. It has been designed by EPA to be largely self-implementing, with generators themselves certifying that their waste is no longer regulated as hazardous, with minimal opportunity for agency or public review. This creates a significant potential for abuse, and will preclude adequate enforcement without a large expansion in the number of agency enforcement personnel, an unlikely event in light of the budgetary problems many states are facing. Even if enough personnel could be hired, enforcing the regulation would be extremely difficult. The waste sampling methods employed by the generator would be crucial in the determination of whether a waste is regulated as hazardous. The proposal makes no provision for agency review of sampling plans, so generators could produce spurious data by skewing the collection of samples. Even if provision for agency review and approval of sampling plans and analytical results were made, agencies would be overwhelmed by requests for review because of the fact that any waste from any generator would be a eligible for a self-declared exemption from regulation as hazardous.

An additional problem is the high cost of analysis. With states facing steady declines in financial resources, they will lack the capability to do independent analyses to provide a check of data collected by generators.

EPA has also solicited comment on a "contingent management" scheme, under which the regulatory status of a waste would depend upon how it is ultimately managed. We view this as unworkable.

The potential for fraud is high, with generators able to avoid proper management

merely by claiming that they intend to send a waste to the type of facility that causes the waste to become exempt. Exemptions from manifesting requirements would mean that waste could not be tracked to determine if it was managed in the fashion claimed. A contingent management exemption might be appropriate for certain wastes on a limited basis (such as the current exemption granted to used oil being recycled), but not as a generally available exemption.

We have further concerns over the impact of the proposed regulation on the nonhazardous waste management system. Releasing a large quantity of waste from regulation as hazardous waste will severely strain nonhazardous waste treatment and disposal capacity. It will also encourage shipment of waste from states that choose not to adopt the proposed regulation to states that do, because disposal cost of the waste will be much lower in the state in which the waste is not regulated as hazardous. This will disproportionately affect nonhazardous waste management capacity in the states, and could also exacerbate interstate tensions over the issue of waste transfer.

The proposal also works at cross purposes to one of the major goals of RCRA, namely waste minimization. Explicit requirements under the hazardous waste regulations for generators to reduce the volume and toxicity of their waste stream will no longer apply to a sizable proportion of waste currently regulated as hazardous. Generators will also lose the economic incentives to reduce the amount of waste they generate because they will no longer face the high costs of hazardous waste treatment and disposal.

In conclusion, we recommend that EPA remove the artificial sunset date for the "mixture" and "derived from" rules to maintain continuity in the requirements for hazardous waste management. We also recommend that EPA, following a more careful review and analysis, repropose regulatory changes to deal with problems of overregulation of low hazard waste and impediments to site remediation caused by the current regulations.

Sincerely,

RICHARD COLLINS,
Director, Hazardous and Solid Waste Management Administration.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
Providence, RI, June 8, 1992.

Re: Docket Number F-92-HWEP-FFFFF. Comments on *Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule* published in the May 20, 1992 Federal Register.

EPA RCRA Docket (S-212) (OS-305)
Washington, DC.

DEAR SIRS: This letter will present the official comments of the Rhode Island Department of Environmental Management (RIDEM) on the Environmental Protection Agency (EPA)'s proposed changes to the identification and listing of hazardous waste. As an authorized state that has been implementing its own hazardous waste regulatory program since 1978, we believe we are in a position to judge this proposal on its merits and faults. Further, as most of the proposal would have to be considered a *narrowing in scope* of the federal regulations, states would be permitted to maintain more stringent requirements if they chose not to adopt the final federal regulations. This would lead to an even more confusing universe of regulatory programs than the current one. We would hope, therefore, that the EPA places great weight on the comments of the states, and the various joint associations which they have formed.

After reviewing the proposal and discussing it in detail with RIDEM staff members, as well as members of the Northeast Waste Management Official's Association (NEWMOA) workgroup, we believe that neither the Concentration Based Exemption Criteria (CBEC) nor the Expanded Characteristic Option (ECHO) is the most appropriate mechanism for dealing with dilute waste streams. In fact, we have decided that the best mechanism is the existing one; that is, the delisting process. Its only problems are operational; while these may be considerable, they are not insurmountable. This scheme could be seen as the CBEC approach, but with prior agency approval required. The analysis that follows will illustrate the thought process that leads us to this conclusion.

The concept of listed hazardous wastes was first proposed, and subsequently adopted, because it was felt that potential generators needed a simple, straightforward method of determining whether their wastes were subject to Subtitle C regulation. We still believe that the vast majority of generators do not possess either the level of interest or the degree of sophistication, to understand the science behind the decision to consider a waste hazardous; e.g., toxicology, environmental fate analysis, epidemiology, ecology, hydrogeology, industrial hygiene, etc. Viewed in this light, ECHO could be seen as fundamentally flawed; it may be impossible to construct a set of characteristics, or concentrations of even an exhaustive list of constituents, which would replace a thoughtful decision by regulators as to whether a particular waste may present a hazard. Assuming, for argument's sake, that this would be possible, it would be prohibitively expensive to conduct these analyses. By allowing a generator to use their knowledge of the waste stream in making these decisions, you must assume that they understand that waste stream, as well as the characteristic test methods. The enforcement effort to police such a self-implementing scheme would be enormous.

While the CBEC strategy does not eliminate the current listing system for defining a hazardous waste, the self-implementing nature of its exit criteria places too much weight on the selection of these parameters. The statutory and regulatory definitions of a hazardous waste should have a subjective element, as there will always be more waste streams, management options, and site-specific criteria than can possibly be anticipated and represented by a single numeric value. The only valid means of accomplishing this goal would be to set that value conservatively low, which would not be appropriate for the majority of situations.

Further, by specifying the sampling and analysis requirements so precisely, an enforcement agency becomes, in effect, a participant in the decision as to whether a particular waste is hazardous. This would relieve the suitably heavy burden of determining whether his wastes are hazardous, which currently rests with the generator, to the enforcement agency. Given the strict liability standard attached to the Superfund law, this shifting of presumption is contradictory. It would make successful prosecution of all enforcement cases more problematic, and considerably more expensive, as we would be placed in the position of doing more and better sampling and analysis than the generator, and proving this to the trier of fact. We also question whether any Subtitle D landfills would assume the liability of accepting wastes which a generator had decided, without agency participation, was below the exit criteria; if subsequent enforcement action demonstrated that the generator was in error, whether intentionally or not, the receiving landfill would be in the position of having accepted hazardous waste without a RCRA permit, and would be liable for CERCLA cleanup costs.

Both CBEC and ECHO as proposed only consider one pathway of exposure for exit from Subtitle C regulation, while the statute calls for a more comprehensive consideration of all impacts on human health and the environment. The method for determining safe levels even assuming the single pathway of groundwater contamination from a solid waste landfill is flawed; this Department specifically rejected the use of multipliers as overly simplistic when we established concentrations of air-borne toxics.

We conclude, therefore, that the best system for providing for an exit from the hazardous waste listings is the existing one; i.e., an examination of whether a particular waste no longer satisfies the rationale for listing it in the first place by enforcement agency personnel. However, the current delisting process is extremely slow, and only EPA headquarters can process the applications. Thus, we would suggest that the proposed approaches in the subject Federal Register constitute throwing the baby out with the bath water. It makes far more sense to fix the existing system.

The most effective means of accomplishing this would be to immediately authorize the Regions to process delisting petitions. We would further suggest that Regional personnel be expanded and reallocated to provide for a speedy and efficient review of these requests. We believe that it would be an additional advantage to assign personnel with past enforcement experience to this program, after they have received any necessary additional training. Such personnel might be specifically drawn from groups currently duplicating state enforcement efforts. We also believe that the issue of whether delisting constitutes a rule-making, and therefore public notice and opportunity for comment, should be carefully re-examined. Public in put on the regulation itself is necessary and appropriate, as well as permit issuance decisions. We would contend that public input in the delisting process, however, is unnecessary. We do believe that the enforcement agency in the state which is proposed to receive the delisted waste should be informed, however, and have an opportunity to comment on the petition.

This Department believes that contingent management exemptions should only be allowed for specific well-understood waste streams which present the same disposal problems nationally; e.g., resource recovery facility ash and automobile shredder residue. General provisions for such exemptions are confusing and difficult to implement.

It is critical that any new rule specifically state that it is not retroactive, and will have no impact on existing enforcement cases. This is especially important in situations where agencies are seeking to recover costs.

Finally, we would take exception to the language in the preamble that states that the original hazardous waste definitions were based on the assumption that wastes would be mismanaged, and implied that twelve years of experience in enforcing the regulations has somehow shown this to be an invalid assumption. Our experience has demonstrated that hazardous wastes continue to be mismanaged.

We intend to continue to work with NEWMOA, the Association of State and Ter-

ritorial Solid Waste Management Officials, the Northeast Environmental Enforcement Project, and our Congressional delegation in order to make certain that our viewpoint on these critical changes is well understood. Thank you for this opportunity to comment on the Federal Register notice.

Sincerely,

LOUISE DURFEE,
Director,
Rhode Island Department of Environmental Management.

STATE OF MINNESOTA,
OFFICE OF THE ATTORNEY GENERAL,
St. Paul, MN, July 14, 1992.

Re: Docket No. F-92-HWEP-FFFFF.
EPA RCRA Docket (S-212)(OS-305)
Washington, DC.

The undersigned Attorneys General recognize that changes should be made to the "mixture and derived from" rule promulgated under the Resource Conservation and Recovery Act. However, because of the serious flaws that are discussed below in EPA's proposed response to this issue, we urge the Environmental Protection Agency to withdraw the proposed Hazardous Waste Identification Rule, extend the current mixture and derived from rule, and immediately initiate discussions with states to develop a more acceptable resolution to the problems with the current RCRA hazardous waste identification rules.

1. Despite the fact that state hazardous waste regulatory programs are closely tied to the RCRA rules, EPA provided little opportunity for states to be involved in the development of the dramatic changes to RCRA (especially the ECHO option) proposed in the Hazardous Waste Identification Rule (HWIR). Since the new rule likely will have significant effect on state resources and on state programs, it should have been proposed only after extensive consultation with the states. The current comment period does not even provide sufficient time to fully understand all of the implications of the proposed changes.

2. The proposed rule will likely result in a patchwork of rules regulating hazardous waste throughout the country. Several states may find the proposed new HWIR unacceptably lax, especially if the ECHO option is adopted. These states likely will seek to retain their existing rules. Other states have statutes which will result in the new rules automatically going into effect in these states. The result will be that wastes that are considered hazardous in one state will not be hazardous in another state. Three serious problems follow from this situation. First, it will be more difficult for businesses involved in interstate transactions to deal with hazardous waste issues. Second, states that adopt the federal program may become the dumping grounds for wastes from states with more stringent regulations. Third, some states may, once again, be encouraged to compete for new businesses on the basis of having weaker hazardous waste laws. All of these problems could be avoided by developing in close consultation with states, a rule change that is widely accepted by state officials.

3. The proposed options raise serious enforcement problems. The principal focus of these concerns is the increased reliance on the self-implementing aspects of the rule that would allow a generator to unilaterally remove waste from regulation and would rely on generator knowledge in determining whether a waste is hazardous. These and other provisions likely will make enforcement more difficult, more labor intensive and more costly. While we agree that some changes to RCRA are probably needed, the enforcement implications of any changes should be thoroughly discussed with states prior to proposing rules of this magnitude.

4. The issue of dilution of waste is critical and has not received adequate attention prior to proposing the HWIR. The implications for the waste management system based on the proposed rule are potentially dramatic, particularly under the ECHO option. The proposed rule is likely to seriously weaken pollution prevention and waste minimization efforts. Pollution prevention and waste minimization efforts have removed hundreds of tons of pollutants from the environment, stimulated the development of new technology and, in many cases, saved industry money. These efforts will be seriously undercut if a substantial percentage of wastes are rapidly removed from RCRA. In fact, the ability to dilute waste, especially under the ECHO option, may provide a strong incentive to maximize waste to avoid regulation rather than to minimize waste. The significant effect on pollution prevention efforts is yet another reason why a gradual modification of the RCRA system, developed with a full understanding of the implications on pollution prevention, is a better approach.

5. Removal of so many wastes that have been previously considered hazardous may add to the serious difficulties faced by the country's waste management facilities. There are several reasons this may occur.

First, the changes are likely to make siting of new facilities more difficult. Citizens who already oppose the siting of many new solid waste facilities will increase their opposition if they feel "hazardous" waste will be accepted at the facility. The fact that the EPA has redefined a waste that once was hazardous as non-hazardous will not prevent this reaction. Second, liability concerns likely will prevent many solid waste facilities from accepting waste that once was designated "hazardous." Finally, the proposed deregulation of so much waste may contribute to capacity problems at some landfills. These problems at least could be ameliorated by a more gradual change in rules that were developed after in-depth consultation with all of the interested parties.

6. The proposal to remove mixed hazardous and radioactive wastes from RCRA regulation if they are managed under the Atomic Energy Act would replace independent state or EPA oversight of the Department of Energy's waste management practices with DOE self-regulation. DOE's (lack of) self-regulation over the last 40 years has created a nightmarish legacy of radioactive and hazardous waste contamination that may cost hundreds of billions of dollars to remedy. Moreover, even if DOE managed mixed wastes in accordance with the proper radiation practices, these practices do not address the chemical hazards posed by the hazardous component of mixed wastes.

7. Certain options under the proposed rule are based on the premise that 15% of all domestic drinking water wells surrounding Subtitle D landfills will become contaminated as a result of the rule's promulgation. This is an unacceptable outcome which directly conflicts with federal and state groundwater protection programs.

8. The rule purportedly is based on sound risk science. However, ecological risks were not factored into the risk analysis. In addition, exposure pathways other than the contamination of drinking water via landfill leachate were not considered. The cross-media impacts of the proposed rule on all environmental programs including the air, surface and groundwater programs must be carefully evaluated before any rule can be implemented.

9. Finally, the proposed rule could, based on EPA's own estimates, result in the creation of hundreds of new Superfund sites, most of which likely will be handled under state Superfund programs. The burden of cleaning up existing Superfund sites is already overwhelming. Any proposal that could add to this burden on states should not proceed until the full implications of the proposal are understood and accepted by the states that will be affected.

There are a number of other technical concerns with the HWIR that could be addressed. These issues, however, are raised by comments of individual states and are not repeated here.

We believe that changes should be made to RCRA to improve the program. However, such changes should be made in a phased manner and only after extensive consultation with all affected state officials. Because serious problems are raised by the proposed rule which could undermine the ability of state officials to protect the health and safety of their citizens, we urge EPA to withdraw the proposed rule and work closely with states to develop a new rule that better addresses the problems that exist with the RCRA rules. While this process goes forward, it is essential that EPA retain the current mixture and derived from rule to ensure that hazardous waste does not escape from regulation until an appropriate substitute for the rule can be developed.

Sincerely,

Hubert H. Humphrey, III, Attorney General of Minnesota; John P. Arnold, Attorney General of New Hampshire; Rosalie Simmonds Ballentine, Attorney General of the Virgin Islands; Richard Blumenthal, Attorney General of Connecticut; Michael J. Bowers, Attorney General of Georgia; Winston Bryant, Attorney General of Arkansas; Charles W. Burson, Attorney General of Tennessee; Roland W. Burris, Attorney General of Illinois; J. Joseph Curran, Jr., Attorney General of Maryland; Bonnie J. Campbell, Attorney General of Iowa; Charles S. Crookham, Attorney General of Oregon; Frankie Sue Del Papa, Attorney General of Nevada; and Robert J. Del Tufo, Attorney General of New Jersey.

James E. Doyle, Attorney General of Wisconsin; Larry EchoHawk, Attorney General of Idaho; Ken Eikenberry, Attorney General of Washington; Lee Fisher, Attorney General of Ohio; Chris Gorman, Kentucky Attorney General; Scott Harshbarger, Attorney General of Massachusetts; Richard P. Ieyoub, Attorney General of Louisiana; Frank J. Kelley, Attorney General of Michigan; Susan Loving, Attorney General of Oklahoma; Daniel E. Lungren, Attorney General of California; Joseph B. Meyer, Attorney General of Wyoming; Mike Moore, Attorney General of Mississippi; Dan Morales, Attorney General of Texas; Charles M. Oberly, III, Attorney General of Delaware; Linley E. Pearson, Attorney General of Indiana; Warren Price, III, Attorney General of Hawaii; Marc Racicot, Attorney General of Montana; Robert T. Stephan, Attorney General of Kansas; Nicholas J. Spaeth, Attorney General of North Dakota; Lacy H. Thornburg, Attorney General of North Carolina; Tom Udall, Attorney General; Paul

Van Dam, Attorney General of Utah; William L. Webster, Attorney General of Missouri; Grant Woods, Attorney General of Arizona.

NORTHEAST WASTE MANAGEMENT OFFICIALS' ASSOCIATION,
South Portland, ME, July 16, 1992.

Re: docket No. F-92-HWEP-FFFFF.
EPA RCRA Docket (S-212) (OS-305),
Washington, DC.

DEAR SIR/MADAM: The Northeast Waste Management Officials' Association (NEWMOA) is hereby submitting comments on the proposed Hazardous Waste Identification Rule. We agree that over-regulation of some wastes occurs under the present system and should be corrected, e.g., media contaminated by unintentional releases of waste. We feel that the present rules have sometimes caused delays and unwarranted costs when applied in such cleanup situations. Nonetheless, we firmly believe that both the ECHO and CBEC proposals would alter the RCRA regulatory concept in such a way as to impair seriously our ability to protect human health and the environment from the consequences of improperly managed wastes.

The following is a summary list of our concerns with these proposals:

The waste "listing" concept would be abandoned under ECHO and undermined by the self-implementation feature under CBEC; thus, both the ECHO and CBEC proposals would eliminate the straightforward, enforceable regulatory framework provided by listings;

Both ECHO and CBEC as proposed could encourage dilution of wastes while also making detection by regulators virtually impossible; they would also reduce incentives to develop and implement pollution prevention and toxics used reduction measures;

Under both proposals the basis for exiting regulation under Subtitle C is focused solely on land disposal and drinking water contamination threats; incineration and other management techniques are not addressed, and other pathways of exposure and ecological threats are not considered;

Inconsistency among states in adopting CBEC or ECHO would present formidable enforcement, waste flow and other problems for generators, regulators and the waste management industry; and

Many generators and Subtitle D facilities would demand government assurances about CERCLA and RCRA liability which could not be provided.

Because of these concerns, the NEWMOA state directors believe that our member states are unlikely to adopt any of the options now presented by EPA in the Federal Register notice. This presents a major problem, assuming that many other states probably have similar views. Nonetheless, with these proposals EPA has succeeded in stimulating a great deal of thinking by state regulators, interest groups and the regulated community. We are certain that you will be receiving many worthwhile comments about options that may be feasible improvements to the present regulatory approach. In this spirit of constructive and optimistic participation, NEWMOA has outlined several of these options for consideration by EPA and other interested parties and urges EPA to publish a more specific proposal that deals with our concerns.

NEWMOA'S QUALIFICATIONS AND PERSPECTIVE

NEWMOA is comprised of the state waste program directors in the New England states, New Jersey and New York (hazardous waste only). Generally, the NEWMOA directors responsible for regulating solid and hazardous waste as well as those managing waste site cleanup activities in their respective states (where these are different persons) have participated in this review. All of these programs would be significantly affected by the proposals. Based on our long standing experience as regulators in these programs, we have attempted to anticipate the response of the regulated community and other results of EPA's proposals as realistically as possible.

THE WASTE LISTING CONCEPT AND SELF CERTIFICATION

In our view, the practical waste generation and management considerations that led to the creation of the "listed wastes" regulatory concept remain valid. For example, many waste streams are listed because even "diligent" efforts by generators to ensure that contaminants are kept within characteristic levels may be inadequate due to variables in the production process. ECHO eliminates the listing concept. While CBEC retains the listing concept, self exemption would seriously dilute its regulatory effectiveness. The states' regulatory experience with other self-implementing RCRA features demonstrates that mistakes, as well as intentional abuses, are very common. Furthermore, the ECHO proposal would openly encourage dilution, and the CBEC proposal would make proving that dilution is taking place very difficult for regulators. Clearly, the dilution of contaminants to enable less secure disposal is not an acceptable long-term environmental protection strategy.

SINGLE MEDIA EXIT CRITERIA

With regard to their potential for environmental impacts, both proposals for exiting regulation under Subtitle C are focused solely on land disposal concerns; they do not consider other management methods, pathways of exposure or ecological impacts. We believe that pathways other than drinking water contamination must also be addressed by any new approach of defining exits from the hazardous waste management regime. Incineration, for example, is a major Subtitle D waste management method in the NEWMOA states. Certainly a defensible exit program in this region would need to address the possibility of dermal absorption, inhalation and ingestion of contaminants, the fate of contaminants when incinerated, or otherwise treated, and the potential for ecological damage.

CONTINGENT MANAGEMENT AND LIABILITY

The proposals for contingent management also concern us. As recognized in the proposals, tremendous variations exist in the location, design and construction of Subtitle D landfill facilities. In addition, we believe that contingent management considerations, as part of any workable system, should be extended to other management techniques including incineration, reuse or recycling and treatment with consideration to worker safety at these facilities.

We also seriously question the extent to which Subtitle D facilities would be willing to accept wastes that had been de-listed solely by a generator's determination. Our experience has shown that generators and facility owners and operators would insist on some form of government assurance to diminish their concern about CERCLA and RCRA liability. A self certifying program, such as CBEC or ECHO, would also greatly increase citizen concerns about the operation of Subtitle D facilities.

INCONSISTENCY AMONG THE STATES

The NEWMOA directors believe that inconsistency among the states would be a major problem with these proposals. The effects on generators, the waste management industry and regulators if one of these proposals were promulgated and some, but not all, states chose to implement these less stringent standards are hard to imagine. The complexity of the current waste management system could be exponentially increased by such a mixture of state and federal standards.

POLLUTION PREVENTION

Both proposals could significantly reduce incentives for the regulated community to develop and implement pollution prevention and toxics use reduction measures. We believe that such a result contradicts current EPA and state efforts to encourage pollution prevention and toxics use reduction by all means possible. This leads us to conclude that the pollution prevention aspects of any new waste identification approach must be given thoughtful consideration. To do less could cause us to miss an important opportunity to promote pollution and, at the worst, could lead to an outcome that would discourage pollution prevention.

Both the listing and de-listing or waste exit processes should be viewed as an opportunity to encourage pollution prevention and toxics use reduction. The procedures likely to be used with such activities should, inherently, assist in identiying pollution prevention opportunities such as we described later in the auto shredder residue example. In addition, the prospect of a listing, as well as the potential benefit to a de-listing, or exit from regulation as a hazardous waste could greatly encourage the regulated community to search for pollution prevention opportunities.

A HOLISTIC APPROACH TO DE-LISTING HAZARDOUS WASTES

The NEWMOA states believe that approaches other than CBEC and ECHO are feasible. We recommend that EPA pursue a streamlined de-listing procedure and would like to explore possibilities beyond streamlining the existing process. We believe that an alternate approach to de-listing could incorporate a number of features that would enable over-regulated wastes to exit Subtitle C without the major uncertainties and weaknesses of self certification under CBEC and ECHO. For example, criteria specifying conditions or operating procedures that must be met to ensure safely reduced contaminant levels could be established for certain waste streams. If generators could certify that they met the criteria, their waste stream could be conditionally de-listed through a much abbreviated review and approval process. An example criterion would be the operation by the generator of a pollution prevention plan to eliminate or reduce specified contaminants in the listed waste stream. The criteria could also specify the use of particular waste management methods as conditions for exiting regulation as a hazardous waste. For example, some wastes may be suitable for reduction by incineration, but not for land disposal. Other wastes could be subject to contingent management criteria. In any event, certification as to compliance with specific criteria or conditions would appear to provide a more enforceable framework for conditional de-listings. Presumably, criteria would be developed first for waste streams or situations where overregulation is known to exist and where appropriate controls appear most feasible.

An illustration of this concept may be found in the approach which Massachusetts and New Jersey are using to control lead and other contaminants in auto shredder fluff. Through enforcement negotiations (and reg-

ulatory development in New Jersey), and after extensive testing of shredder fluff and continued monitoring, state waste officials have become satisfied that the lead content of shredder residue can be kept well below hazardous waste limits provided that metal recyclers conduct a comprehensive (but straightforward) program to remove lead from incoming vehicles. Included in this program are: extensive notification to customers that batteries, radios, radiators, gas tanks, and wheel weights must be removed from incoming vehicles; spot checks of incoming vehicles to determine compliance and rejection of vehicles from non-complying customers; periodic sampling to monitor lead content in shredder residue; ongoing investigation of other processes to reduce lead content further, including separation of shredder fines that have a relatively high lead content; assurance that shredded residue will be brought to a state approved Subtitle D landfill that is lined and has leachate collection; and test burns at Subtitle D waste incinerators (to determine the effects of shredder residue on ash, air emissions, energy recovery, and waste processing capacity) that have lead to state and local authorizations to incinerate the shredder residue with energy recovery.

Compliance with these criteria for conditional exiting (from Subtitle C regulation) is fairly easy to monitor, and the responsibility for continued testing and efforts to improve performance continually are placed with the metal recyclers. NEWMOA believes that this approach could apply to de-listing RCRA wastes as well.

WASTE LISTINGS AND CHARACTERISTIC CRITERIA

NEWMOA directors believe that EPA should continue to examine waste streams to determine if they merit listing, as well as expand toxicity characteristic criteria, as new health based data and analytical techniques become available. As in the past, knowledge of waste generation processes and management practices should be considered in listing decisions. We believe that waste listings and de-listings should become a dynamic process, which EPA pursues proactively, considering information from state regulators and the regulated community concerning listing and de-listing priorities. This process may also provide a mechanism through which economics and environmental risk can be balanced better than under the present approach. For example, priorities for listing new waste streams could be based on newly developed quantitative and qualitative evidence of risk to health and the environment, while priorities for developing exit criteria could consider the degree of overregulation and the resulting cost to the regulated community. However, the actual exit of wastes should be based on health protection, not economics.

WASTE SITE CLEANUP (ON-SITE)

We would like to see waste site cleanup activities treated differently from ongoing waste generation. Non-NPL cleanups should be governed by the CERCLA type programs that many states are operating and should not be subject to RCRA permitting as well. These programs consider actual levels of contaminants, multiple pathways of exposure, land use, and the ecological impacts of on-site remedial actions. They also provide opportunities for public participation.

CONTAMINATED MEDIA (OFF-SITE MANAGEMENT)

A new approach may also be justified for the off-site management of cleanup waste. The listing concept is more appropriate to the dynamic situation of waste generation than to the static situation of waste site cleanup. EPA should examine the possibility of allowing cleanup wastes to be managed off-site based on characteristics alone where such an approach is authorized by a state. Adequate, enforceable disincentives to intentional disposal, however, must be assured. In proposing this approach, NEWMOA recognizes that it raises many issues that may be beyond the scope of EPA's present rulemaking proposal.

LARGE VOLUME WASTES

NEWMOA believes that there should be definitive management guidelines and criteria under Subtitle D for large volume (unlisted) waste streams that may sometimes exhibit hazardous characteristics but which cannot be practically managed within the Subtitle C regulatory framework. The most common examples of these wastes are: incinerator ash, auto shredder residue, demolition debris, lead contaminated soils, and preservative treated wood. NEWMOA envisions a role for contingent management criteria in managing such wastes where characteristics are well understood. The guidelines and criteria should reflect the considerations we have mentioned in connection with de-listing; i.e., design the process to foster pollution prevention and continued efforts to improve performance.

In closing, NEWMOA urges EPA to re-propose this rule and intends to continue participating with the National Governor's Association and the Association of State and Territorial Solid Waste Management Officials as they work to represent state views concerning this rulemaking. We would welcome the opportunity to expand on any of the ideas and recommendations that are presented in these comments as the rulemaking process progresses.

Sincerely,

PATRICIA DEESE STANTON,
NEWMOA Chair.

ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS,
Washington, DC, July 23, 1992.

Re: RCRA Docket No. F-92-HWEP-FFFFF.

U.S. Environmental Protection Agency,
Washington, DC.

DEAR SIR/MADAM: The purpose of this letter is to forward docket comments of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to the U.S. Environmental Protection Agency for consideration by the Agency in its revision of the proposed Hazardous Waste Identification Rule (HWIR) as published in the Federal Register on May 20, 1992 (57 FR 21450).

In our judgement, the Enhanced Characteristic Option (ECHO) presented in the May 20 proposal is fatally flawed as it does not consider human health or ecological risks, and would be extremely difficult for State regulatory agencies to implement and enforce. Further, we consider the HWIR, as proposed, unworkable without major revision. The HWIR has fundamental defects regarding the protection of public health and the environment, and as a result we believe that many States would choose not to adopt and implement this rule and instead substitute their own different or more stringent approaches. This would inevitably lead to a patchwork quilt of differing State regulations nationwide which will serve no one's interests.

The ASTSWMO Board of Directors wishes to endorse the very comprehensive and thorough docket comments submitted to EPA on July 17, 1992 by the Association's Definition of Waste Task Force (copy enclosed). We believe that this task force, comprised of State waste program experts from several regions of the country, has precisely identified the many pitfalls and shortcomings of the May 20th proposal, and has offered a constructive, positive alternative which the Environmental Protection Agency should adopt as the basis of its rulemaking effort.

Let me be clear in stating that, as implementers, we know the current mixture and derived from rules are seriously flawed, as is the delisting process. We recognize and support the need for significant procedural changes to these rules, if they are to work. However, the May 20 proposal does not meet those needs. There is merit in gradually moving to a characteristic-based classification system for hazardous waste, but only one based on good science and adequate procedural controls. USEPA should strive to develop a sound, effective rule that will be uniformly adopted by States. This can be achieved without sacrificing environmental protection if USEPA were to devote the time necessary to develop a realistic existing rule, and leave adequate regulatory controls in place during this development period.

For this reason we recommend that USEPA adopt a phased approach, extending the expiration of the current mixture and derived from interim rule as necessary to maintain a protective regime, but seek areas of common interest. We believe the most promising area for resolution is contaminated media from cleanups. The Agency should attempt to craft rule elements from consensus issues like contaminated media, and place them in effect by the April 1993 deadline. Those elements which prove to be more controversial or unsupported by data should be phased for later resolution. We believe that our ASTSWMO Task Force comments provide significant insights into ways to address contaminated media in the near-term, and that their suggestions for an alternative human health and ecological risk evaluation provide direction for the longer term regulatory needs.

We cannot overemphasize our strong recommendation that EPA find ways to involve State waste managers directly in the continuation of this important rulemaking process in order to ensure the development of a sound, implementable and enforceable rule, protective of both human health and the environment. We believe such a consultative process is vital to ensure that State programs will adopt the final rule as an adequate substitute for the often problematic mixture and derived from rules (although those should not be allowed to expire without an adequate alternative rule in place).

We note many States are submitting detailed comments on the May 20 proposal, and we encourage EPA to take special note of these State inputs. RCRA is a regulatory program implemented by States, and it is our view that the comments of State hazardous waste regulators should have special significance to EPA's reviewers. States have identified a number of key issues in these individual comments, some directly related to these proposals, and some (such as an encouragement to simplify and streamline the delisting process) which will have great impact on the implementation of these approaches to residuals.

EPA must take these State views into account in finalizing its Agency approach, as they represent the only genuinely empirical inputs to such a regulatory decision process. No matter how well intentioned, industry and other interest groups cannot replicate the regulatory advice of other government

regulators who actually implement these programs. While all have an absolute right to be heard, all comments simply cannot be given the same weight of credibility, and we enjoin EPA to remember this fact during its comment review.

Sincerely,

DANIEL E. COOPER, P.E.,
President, ASTSWMO.

RCRA DOCKET NO. F-92-HWEP-FFFFF

DEAR SIRS: The purpose of this letter is to forward the docket comments of the Definition of Waste Task Force of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to the U.S. Environmental Protection Agency for consideration by the Agency in its revision of the proposed Hazardous Waste Identification Rule (HWIR) as published in the Federal Register on May 20, 1992 (57 FR 21450). These docket comments were developed by ASTSWMO's Definition of Waste Task Force, which is comprised of State waste program experts representing cross-program perspectives from several regions of the country. However, these comments have not yet been reviewed or adopted by ASTSWMO's Board of Directors. Individual State waste managers will submit their separate comments which will note any differences of approach and address issues of special significance to that State's waste program.

As a prelude to our comments, we have reviewed the ECHO option in great detail and have found it to be fatally flawed because it does not consider human health or ecological risks, and would be extremely difficult for State regulatory agencies to implement and enforce. Therefore, the Task Force has chosen to focus on the other options presented in HWIR.

The Task Force has reviewed the proposal and believes that HWIR, as proposed, will be unworkable without major revision. The rule has fundamental defects regarding the protection of public health and the environment, and as a result we believe that many States would choose not to adopt and implement this rule and instead substitute their own different or more stringent approaches. This would lead to a patchwork quilt of regulations nationwide which will have adverse consequences to our national hazardous waste management program.

Because this rule will be so central to the national hazardous waste management program, it is our belief that the revision should provide for implementation by phases and those elements should be reproposed as they are individually developed. We are aware of the difficulties in developing such a significant revision and of the time constraints of the existing interim final mixture and derived-from rule, but we must note that the deadline of April 28, 1993 is self-imposed by the Agency. Consequently, we urge USEPA to take the necessary time for development of a basic revision, complete with supporting data gained from this proposal, and to extend the expiration date of the mixture and derived-from rule to a realistic, achievable date.

The self-imposed time constraint must not drive the premature promulgation of an inadequate rule. Alternatively, USEPA must not allow hazardous waste to escape from regulation until an appropriate substitute for the mixture and derived-from rule is in place. Consequently, for the long term, we strongly recommend USEPA revise and narrow the scope of this proposal and then reissue that revised proposal for additional comment by affected parties.

Additionally, we think that some issues of common concern, such as contaminated media from cleanups, are emerging which will lend themselves to early resolution. If possible, the Agency should attempt to craft early rule elements from these consensus issues and place them in effect at an early date, phasing some of those elements which prove to be more controversial and/or unsupported by data, for later resolution in rule. These are very difficult issues, and there is a great deal to be gained from a deliberate, well crafted incremental approach to final rulewriting.

The Task Force recognizes that there are considerable problems with RCRA, one of which has been dealing with contaminated media. Currently, such cleanups are costly and take several years to complete. Also, the delisting process for "as generated wastes" is time consuming and onerous, usually taking several years to complete, if at all. Finally, the mixture and derived-from rules do not always promote waste minimization and recycling; for example, many wastes, such as solvent contaminated rags, are over-regulated.

Based on our extensive review, the Task Force has prepared detailed comments for your consideration which are enclosed herein. We would like to highlight several key problems identified by the Task Force with the current HWIR proposal, although there are many other elements which impede State implementation:

—Based on USEPA's Preliminary Economic Assessment of Proposed Hazardous Waste Identification Rule, (Office of Solid Waste, April 20, 1992), 374 million tons of hazardous wastes would be diverted to municipal landfills, incinerators, publicly-owned wastewater treatment works, and other facilities unprepared to deal with the volumes and toxicity of the deregulated hazardous wastes.

—The proposed rule presumes that at least 15% of all domestic drinking water wells surrounding Subtitle D landfills will become contaminated as a result of the rule's promulgation. This is an unacceptable risk which could result in the creation of more State and federal Superfund sites—an illogical and very costly outcome. In addition, promulgation of the rule would be diametrically opposed to our federal and State ground water protection programs.

—The rule is purported to be based on sound risk science. However, our review reveals that ecological risks were not factored into the risk analysis. Furthermore, the exiting criteria are based on Maximum Contaminant Levels (MCLs) for Safe Drinking Water standards. These exiting criteria would account for only one exposure pathway, contamination of safe drinking water via landfill leachate. They would have no bearing on assessment of risk for other exposure pathways.

—The self-implementing feature of the proposed rule may result in the unchecked mishandling of hazardous wastes. USEPA has estimated that 90 percent of the targeted listed hazardous waste currently regulated will exit Subtitle C control. This correlates to potentially deregulating 374 million tons of hazardous wastes. Considering the potential environmental consequences of this action, self-implementation is inappropriate. Eliminating any State/public oversight could lead to environmental degradation via failure to recognize true consequences of exiting by the generator or by outright abuse.

—The proposed rule jeopardizes the waste minimization/pollution prevention efforts which are espoused by USEPA and which are being implemented by the State programs, as it only focuses on the redefinition of existing wastes rather than on toxics reduction. For instance, there may be circumstances where "end-of-pipe" generation of hazardous wastes as espoused in the HWIR proposal could remove incentives for developing innovative source reduction technologies.

—The cross-media impacts of HWIR on all environmental programs including the air, surface and groundwater programs will be tremendous, causing human and financial resource burdens on State programs already operating under severe resource constraints.

In addition, in its own background documents, EPA readily admits that it did not have enough time to do a proper analysis of the impact of HWIR: "This preliminary EA [Economic Assessment] was prepared under severe time constraints. As a result, the analysis is rough and incorporates only the most readily available data. In addition, the EA does not quantify the human health and environmental impacts of the proposal." Such admissions cast doubt on the validity and viability of the rule.

This rule presented many difficult challenges to the Task Force as we attempted to review and analyze it. HWIR's complexities, and in particular the number of options being proposed, suggests that other interested stake-holders will have the same difficulty as we did understanding the rule and its consequences. We strongly recommend USEPA refine HWIR and re-propose a revised rule, and extend the self-imposed April 1993 deadline to allow sufficient time to develop an adequate rule.

Finally, in refining HWIR, the Task Force is submitting for your consideration a hazard evaluation protocol which is designed to allow wastes to exit Subtitle C control provided the human health and ecological impacts are considered. Task Force representatives will be available to discuss the protocol with USEPA officials in greater detail.

Sincerely,

PATRICK MATUSESKI,
Task Force Co-Chair.
PHILLIP RETALLICK,
Task Force Co-Chair.

ASTSWMO DEFINITION OF WASTE TASK FORCE—COMMENTS ON PROPOSED HAZARDOUS WASTE IDENTIFICATION RULE [HWIR]

INTRODUCTION

The ASTSWMO Definition of Waste Task Force, which is comprised of solid and hazardous waste experts from across the country, spent considerable time reviewing HWIR in detail. We have determined that the HWIR proposal is not protective of human health and the environment and in particular the ECHO option is fatally flawed in this regard. Our review also targeted issues such as self implementation, cross media impacts, enforceability concerns, resource burdens, etc. These concerns suggest that USEPA has not provided enough time for review or coordination with the States to craft a rule that would be acceptable to the regulated community and regulators alike. Thus, we suggest that USEPA narrow the scope, and revise the rule for reproposal and comment. Our detailed comments follow.

PROPOSED RULE COMPLEXITY

The proposed rule contains an unwieldy number of options and permutations which do not lend themselves to effective review and comment by interested and affected parties. For this reason, ASTSWMO's Definition of Waste Task Force requests that USEPA narrow the scope of the proposal to a single rule and reissue the new rule proposal for review and comment prior to promulgation.

Due to USEPA's own acknowledgement in the background documents of the incomplete nature of the initial rule proposal, USEPA must remove the artificially imposed April 1993 sunset provision time constraint to allow a complete and comprehensive evaluation of the environmental, economic and regulatory impacts the rule will impose.

Since the States will be responsible for implementation of this rule, we expect to be fully involved in the development of the final rule proposal. To begin this process, the alternatives addressed herein are those which we feel USEPA must incorporate into the HWIR final rule in order to make the rule acceptable for implementation in the States. We further offer to actively participate in the development of the final rule.

RISK ANALYSIS

USEPA must not use MCLs as the HWIR basis for protecting human health and the environment. MCLs are not designed for environmental protection and provide differential human health protection due to the fact that during their historical development, a variety of assumptions have been applied. For this reason, the Task Force requests that USEPA utilize reference doses (RfDs) and cancer potency factors (CPFs) as well as other toxicological data from IRIS-2 to provide a consistent level of protection to human health.

Additionally, for the HWIR, USEPA must develop standardized methodologies and procedures to account for human, plant and animal exposures via routes other than ingestion of groundwater.

USEPA does not provide appropriate environmental health criteria in the HWIR proposal; thus we recommend the use of bioassays (such as those developed in the NPDES program, etc.) as appropriate environmental hazard evaluations. Our proposed hazard evaluation procedures (see attachment) are modifications of existing USEPA protocol and therefore should be widely accepted as valid assessments of ecological risk and readily implementable by the States.

CONTAMINATED MEDIA

The Task Force has identified several existing problems regarding the cleanup and management of contaminated media which are defined as RCRA hazardous wastes. First, currently all cleanups except on-site CERCLA action are subject to the RCRA permitting requirements when treatment, storage or disposal of hazardous waste occurs. This can result in substantial delays in getting the actual cleanup initiated. In addition, cleanups being performed under State oversight serves as the functional equivalent of obtaining a Part B permit and therefore additional regulatory scrutiny is not warranted.

Secondly, on-site CERCLA actions can also be exempted from complying with the Land Disposal Restrictions (LDRs) through the issuance of a treatability variance. This will result in more on-site treatment remedies being implemented instead of remedies that are chosen simply to avoid the LDRs.

The Task Force supports the establishment of an exemption for cleanup actions conducted under State authority which is consistent with the exemption currently in place for on-site CERCLA actions. This should not include cleanups where no other substantive authorities can be implemented (i.e., federal facilities). The Task Force also supports clarification of the "contained in" policy, in particular for soil which has been contaminated with listed hazardous waste.

SELF IMPLEMENTATION

The self implementing feature of the rule proposal eliminates all State and public oversight of the decisionmaking processes which will allow listed wastes to escape Subtitle C control. The potential for significant environmental harm and dangers to human health are tremendous given the complexity of the proposed exiting criteria, the significant potential for abuses inherent in self implementing programs, and the large volume of wastes which will likely be deregulated under this proposal (90 percent of all targeted listed wastes, which equals 374 million tons per year, according to USEPA's own estimate).

STATE IMPLEMENTATION

Because the HWIR is so fundamentally flawed, many State regulatory authorities will either refuse to adopt the rule or adopt it with major State-specific alterations. This will potentially result in as many as 50 different regulatory schemes across the country. Such a fragmented system is opposed by nearly all parties involved and does little to ensure adequate environmental protection. USEPA should strive to develop a rule that will be uniformly adopted by most States. Consistent application of the waste management regulatory structure is essential to create a "level playing field" for industry competitiveness. This can be achieved without sacrificing environmental protection if USEPA were to devote the time necessary (i.e., remove April 1993 sunset provision) to develop a realistic exiting rule.

CROSS MEDIA CONCERNS

The rule proposal falsely assumes that all exited wastes will be disposed of in Subtitle D landfills. The potential exists for significant quantities of exited wastes finding their way to alternative facilities, some of which may be completely unregulated (e.g., incinerators/boilers and other burners, POTW's, compost facilities, other recycling outlets, discharged under NPDES, or other uses as waste derived products, etc.). USEPA must consider those other potential waste management options and their associated exposure pathways and the corresponding ecological and human health impacts each exposure pathway presents.

Considering the inconsistencies between the listing criteria at 40 CFR 261.11 and the proposed exiting criteria which are based on a single exposure pathway (i.e., consumption of contaminated drinking water) and the likely exposure pathways which the variable management options present, USEPA must consider the need for additional testing requirements and risk assessments for wastes managed in non-Subtitle C options. For example, the potential risks posed by incineration of exited waste is inappropriately characterized by TCLP analysis, in view of potential air emissions and ash quality concerns. These issues would be more appropriately addressed by a "totals" analysis and air toxics risk assessment approach.

SUBTITLE D CONCERNS

Due to liability concerns and the lack of information and data regarding the toxicity of a vastly increased industrial waste stream, owners/operators of municipal Subtitle D facilities are unlikely to accept exited hazardous waste, effectively leaving these wastes in limbo. One conceivable option may drive disposal of these deregulated Subtitle C wastes into Subtitle D *industrial* waste facilities. Industrial waste disposal does not allow for the assumed 20% dilution by municipal wastes in the TCLP model. Additionally, the potential exists for more aggressive leaching environments in industrial waste landfills. These concerns invalidate the use of the TCLP as the methodology to predict the concentration of leachate contaminating ground water under some industrial waste disposal scenarios.

It is extremely difficult to site solid waste landfills and other solid waste management facilities due to severe public opposition. This fact leads to increased demands on dwindling State capacity. The HWIR proposal will significantly compound these pressures on siting and capacity. Additionally, the current problems regarding interstate transport of solid waste are likely to be exacerbated by the HWIR proposal.

USEPA must require all facilities which accept contingently deregulated hazardous waste to comply with all criteria of Part 258 Subparts A–G or equivalent requirements, as opposed to just the design criteria. USEPA must also require notification by generators to the owners/operators of Subtitle D facilities receiving their wastes for all exited hazardous wastes.

RESOURCES

The proposed rule will place significant financial burdens on State environmental protection programs as they struggle to implement HWIR—financial burdens that were not factored into USEPA's economic analysis for HWIR. For instance, industry representatives have reported in a recent roundtable meeting hosted by USEPA that analytical costs to show compliance with HWIR for one waste stream could be $10,000–$15,000 per sample. State and local governments would have to bear this cost if they want to prove whether a generator is in compliance with the rule.

In addition, the States and in some cases local government will bear increased costs associated with monitoring drinking water wells around Subtitle D landfills and ambient air around municipal waste incinerators as a result of these facilities receiving HWIR wastes. These increased costs come at a time when government at all levels are struggling to fund *existing* environmental protection programs. Thus, the resources necessary to adequately enforce and implement the HWIR proposal will likely not be available.

ENFORCEMENT

The self-implementation feature of the HWIR will shift the burden of proof away from the regulated community to the regulatory agencies. This shift will impose a monetary and staffing burden on the regulatory agencies as they try to track compliance with HWIR. Deregulation of hazardous wastes through the proposed HWIR also shifts the regulatory oversight of these wastes to other environmental programs which may not have cross media enforcement authority. A lack of oversight activities opens the door to abuses of the self-implementing system. Abusive activity will not be identified until after the fact, thus minimizing the ability to take effective "timely and appropriate" enforcement actions. In addition, the complexity of enforcement will increase and the ability to prove criminal intent may be impossible.

The scope and frequency of compliance monitoring by the States will be drastically increased due to the need to carry out mandates to protect human health and the environment. Given the history of the regulated community making accurate waste management decisions and the "incentives" to exit the Subtitle C system, blanket acceptance by the States of the validity of exiting decisions without review is not sound environmental protection practice. The manpower and resource demands are staggering in view of the need for States to conduct extensive sampling and analysis at the number of sites

predicted by USEPA to verify the exemptions claimed within the three (3) years proposed for record retention.

WASTE MINIMIZATION CONCERNS

The proposed rule jeopardizes the waste minimization/pollution prevention/toxics use reduction philosophy and efforts which have been espoused and implemented by USEPA and the States' hazardous waste programs. The proposed rule focuses on the redefinition of existing wastes, rather than on toxics reduction. Exiting criteria should provide incentives for generators to seek the kinds of innovative technologies which reduce the concentrations of chemicals of concern in the waste. This will lead to decreased environmental loading which should be a goal of the HWIR proposal. The HWIR must not provide incentives for generators to deregulate wastes through dilution via "innovative" plumbing design which an "end-of-pipe" waste generation determination would promote.

PUBLIC PARTICIPATION

The self implementing features of the proposed rule present an unacceptable lack of public notice requirements to all potentially affected parties. For example, the proposed rule does not require notice in the receiving facility's community (if different than the generating location) or the regulatory agency (if disposed of in another State than the generating State).

Additionally, the proposed rule provides limited access by the public to data developed by the generator in support of the exemption claimed. This is due to lack of guaranteed access to such information via FOIA requirements.

Finally, the rule does not allow for any public recourse when obvious problems/concerns are discovered by the public in the notification materials. This is an essential element if the HWIR is to be viewed as a viable rule in the public's eye.

ASTSWMO's Definition of Waste Task Force appreciates the opportunity to provide USEPA with comments on the proposed Hazardous Waste Identification Rule (HWIR). We stand ready to assist USEPA in recrafting a rule that will be technically defensible, implementable, and enforceable by the States.

ASTSWMO DEFINITION OF WASTE TASK FORCE—HWIR RISK ANALYSIS RECOMMENDATIONS

HUMAN HEALTH AND ECOLOGICAL HAZARD EVALUATION

ASTSWMO's Definition of Waste Task Force has developed a scientifically credible process to determine whether a waste is hazardous or not based on uniform human health-based criteria and ecological criteria. Figure 1 presents proposed simplified conceptual methodologies for characterizing listed hazardous wastes.

As presented in Figure 1, wastes can potentially exit from Subtitle C control if the waste has "passed" both the human health and ecological hazard evaluations. If the waste "fails" either evaluation, it remains under Subtitle C control.

For human health hazard evaluations (Figure 1), a representative sample of waste is taken, subjected to TCLP and/or other appropriate tests (dependent on the specific management method of the waste to be used), and the chemical concentrations are compared to factors that the Task Force chooses to call Uniform Risk Based Concentrations (URBCs). An URBC is a concentration (mg/L, etc.) expression of a uniform human health exposure risk assessment (risk assessment) which is a dose/response-specific number (mg/kg, etc.). These risk assessments are established by setting Reference Doses (RfD) and Carcinogenic Potency Factors (CPF) at a consistent level of protection for human health (e.g., 10^{-5} or 10^{-6} for human health). Before applying these URBCs, they are further modified by a dilution and attention factor (DAF), resulting in a DAF-adjusted URBC (see "Modifying the Current DAF Process" below). After analysis, the concentrations of the waste's hazardous constituents (concentrations) are compared to the DAF-adjusted URBCs and the best demonstrated available technology (BDAT) concentrations, established for the land disposal restrictions. If the concentrations do not exceed the DAF-adjusted URBCs or the BDAT concentrations (whichever is lower), the waste is deemed to have "passed" the human health evaluation. If the concentrations exceed the DAF-adjusted URBCs or BDAT concentrations, the generator may either treat the waste and reevaluate the treatment-derived waste concentrations; or the generator may choose to define higher concentration DAF-adjusted URBCs by conducting rigorous waste-specific/site-specific DAF modeling for the URBCs. If the treated waste exceeds the DAF-adjusted URBCs, the waste is deemed to have "failed" the human health hazard evaluation.

For ecological hazard evaluations (Figure 1), a representative sample of waste is taken, subjected to TCLP and/or other appropriate tests, which take into account the ultimate management method of waste to be used, and the leachate, etc., is tested in one or more bioassays such as those used for the NPDES program. If significant toxicity is not seen in any of the bioassays, the waste is deemed to have "passed" the ecological hazard evaluation. If significant toxicity is seen in at least one bioassay, the waste can be retreated and reevaluated. If the treated waste does not cause significant toxicity in any of the bioassays, the treated waste is deemed to have "passed" the ecological hazard evaluation. If the treated waste causes significant toxicity in one or more bioassays, the waste is deemed to have "failed" the ecological hazard evaluation.

MODIFYING THE CURRENT DAF PROCESS

The Task Force finds that the current DAF approach as proposed in the HWIR is inadequate and unacceptable. Currently, USEPA can select a generic DAF which does not consider waste-specific or site-specific characteristics.

The Task Force's proposed method differs from USEPA's in that the Task Force's method begins with the use of a Default DAF of 1 bounded by BDAT. This Default DAF of 1, when multiplied by a Uniform Risk Based Concentration (URBC), yields a DAF-adjusted URBC. Waste exists Subtitle C regulations when neither a TCLP extract nor other appropriate screening criteria exceeds a single chemical DAF-adjusted URBC or, for mixtures, a multiple chemical Hazard Index (HI). The HI approach follows the principles expressed in USEPA's chemical mixtures guidelines. In this case, the numerator would be the chemical-specific concentrations found in the waste and the denominator would be the DAF-adjusted URBC.

For a waste that exceeds the DAF-adjusted URBC (or HI), a regulated party under the Task Force proposed method can present a rigorous quantitative and qualitative evaluation of the data they would utilize to raise the Final DAF above 1. For example, a regulated party uses a mathematical model to generate an Alternate DAF of 100. Alternate DAFs are done on a site-specific basis. The regulated party performs a qualitative review and evaluation of the Alternate DAF model, the quality of each of the variable inputs into the model, and other non-model parameters that could influence the confidence in the DAF (e.g. fate and transport, toxicology, metabolism, bioaccumulation and interactive effects data).

Alternate DAFs, once generated, are then screened to determine scientific validity and viability. If the qualitative evaluation of these various model and non-model parameters results in a determination of high quality data and high confidence in the toxicology and environmental fate databases for the specific constituents of the waste, the regulated party would be allowed to use the Alternate DAF. If the data quality and confidence in the data is less than high, the regulated party and confidence in the data is less than high, the regulated party would be allowed to employ a value somewhat below the calculated Alternate DAF. If data quality and confidence is low, the regulated party would only be allowed to use the Default DAF of 1.

RECOMMENDATIONS BY THE ASTSWMO DEFINITION OF WASTE TASK FORCE

DEVELOPMENT OF AN ALTERNATIVE HUMAN HEALTH AND ECOLOGICAL RISK EVALUATION

1. For the HWIR, USEPA should use ecological hazard assessment methods to determine whether wastes are potentially hazardous to biota other than man. The Task Force suggests using bioassay batteries as shown in figure 1 as part of an ecological hazard evaluation protocol.

2. For the HWIR, USEPA should use human hazard evaluation methods to determine whether wastes are potentially hazardous to humans. The Task Force suggests using RfD and CPF derived concentrations as shown in Figure 1 as part of the human health hazard evaluation protocol.

3. USEPA should not use MCLs as the HWIR basis for protecting human health and the environment. MCLs are not designed for environmental protection and vary widely in the degree of human health protection they provide.

4. For the HWIR, USEPA should develop methods to account for human and biota exposures via routes other than ingestion of groundwater.

5. For the HWIR, USEPA should use a Hazard Quotient/Hazard Index approach for the human health hazard assessment approach presented in Figure 1. The HQ/HI methods are found in USEPA's 1986 guidance document on risk assessment of chemcial mixtures.

6. For the HWIR, when the human health hazard evaluation and/or ecological hazard evaluation methods are presented in Figure 1 indicate that a mixture is hazardous, the mixture will be deemed a hazardous waste unless further treatment and evaluation shows that the mixture is no longer hazardous.

7. For the generation of an alternate and final DAF, the Task Force suggests that USEPA establish a list of factors that should be considered for the qualitative evaluation as shown in Table 1. For the list of factors to be qualitatively evaluated to generate a final multiple, USEPA should develop a list of criteria that will be used to score each factor. Both the list of factors and criteria should be developed in concert with State agencies.

STATE OF MAINE,
Augusta, ME, July 20, 1992.

Re: Docket No. F-92-HWEP-FFFFF.

DAVID BUSSARD,
U.S. Environmental Protection Agency, RCRA Docket (S-212) (OS-035), Washington, DC.

DEAR MR. BUSSARD: Please accept these comments on EPA's proposed Hazardous Waste Identification Rule ("HWIR") per the Notice set forth at 57 Fed. Reg. 21450 (May 20, 1992).

As a starting point for these comments, it is useful to remember that Congress, in enacting the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901-6987 (1988), recognized that hazardous waste poses hazards to the public and the environment "when improperly treated, stored, transported, or disposed of, or otherwise managed." RCRA, Section 1004(5). Accordingly, in Subtitle C of RCRA, Congress created a "cradle-to-grave" regulatory system for tracking (by manifests) and safe handling of hazardous wastes from generation through transportation to treatment, storage or disposal. Since, pursuant to this law, only hazardous wastes are subject to RCRA's comprehensive system of controls, the definition of hazardous waste is key to the scope of EPA's RCRA program, as well as to RCRA programs of authorized states like Maine. *American Mining Congress* v. *EPA*, 824 F.2d 1177, 1179 (D.C. Cir. 1987).

In 1980, EPA adopted a two-part definition of hazardous wastes. This definition includes several lists of specific chemicals, and chemicals which are the byproducts of certain industrial processes ("listed wastes"), 40 C.F.R. §261, Subpart D. The definition also includes four characteristics by which unlisted wastes can be identified as hazardous wastes: ignitibility, corrosivity, reactivity and extraction procedure toxicity, 40 C.F.R. §261.20-.24. *American Petroleum Institute* v. *EPA*, 906 F.2d 729 (D.C. Cir. 1990). Any solid waste exhibiting one or more of these characteristics is automatically deemed to be a "hazardous waste" subject to Subtitle C regulation even if not "listed." *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270, 271 (D.C. Cir. 1988). EPA's 1980 hazardous waste rules further include as hazardous wastes all wastes resulting from mixing hazardous with other wastes, as well as all wastes derived from any handling, treatment, storage or disposal of hazardous wastes. These latter rules are described as EPA's "mixture" and "derived-from" rules.

In *Shell Oil Company* v. *EPA*, 950 F.2d 741, 745 (D.C. Cir. 1991), the Circuit Court of Appeals for the District of Columbia vacated and remanded EPA's "mixture" and "derived-from" rules, for purely procedural reasons. *Id.* Even while invalidating the "mixture" and "derived-from" rules, the D.C. Circuit recognized the importance of maintaining these rules by explicitly inviting EPA to continue them in effect on an emergency basis while providing a renewed opportunity for public comment.

Instead of republishing its time-tested 1980 rules—rules now adopted by Maine and most of the other states and known and implemented throughout industry—EPA has taken the opportunity created by the *Shell Oil* decision to propose a drastic narrowing of the scope and focus of its RCRA program. On May 20, 1992, EPA published the proposed Hazardous Waste Identification Rule ("HWIR"), which, according to EPA's own projections, could remove from the definition of hazardous wastes and therefore from all cradle-to-grave RCRA requirements, approximately 90% of wastes presently listed as hazardous. Under the HWIR, wastes can be removed from regulation by the unilateral action of the regulated entity without notice to the public, and without prior approval by either EPA or the affected state.

The proposed HWIR suggests two major options: concentration-based exemption criteria ("CBEC") and enhanced characteristic options ("ECHO"). Under the CBEC option, the present system for defining hazardous wastes would remain in place, including the present "mixture" and "derived-from" rules. However, once a regulated company asserted that a listed hazardous waste or product derived from such a listed waste contained no contaminants above a certain concentration, i.e., the exemption criteria, and submitted chemical analysis to EPA to support this claim, the waste would exit from the hazardous waste regulatory system. Thereafter, this waste could be handled or transported by anyone, anywhere, and disposed of in any manner without violating Subtitle C of the RCRA rules. EPA's Subtitle D or solid waste rules might still apply, but these rules, by EPA's own statement, would permit the dumping of solid waste, formerly designated as hazardous, in unlined municipal landfills. Indeed, this is just where EPA believes that exempted waste would be dumped, according to the May 20, 1992 Notice.

A. EPA Has Failed to Consider Relevant Pathways in Assessing the Toxicity of Wastes to Humans and Has Totally Failed to Consider Environmental Impacts.

In establishing the concentrations of chemical contamination below which a waste is no longer considered to be hazardous, i.e., the CBEC exemption levels, EPA has ignored all pathways whereby human populations could be affected by a waste's toxicity, except for the drinking of groundwater which has become contaminated with chemicals leaching from an unlined municipal waste landfill into which hazardous waste has been discharged. EPA acknowledges that its CBEC levels are not based upon and do not protect against the possibility that contaminated soils or surface wastes could be directly ingested by children, or such other potential human exposure routes of concern as dermal absorption, inhalation of particulates and volatile compounds, runoff of surface waters, adult soil ingestion, and uptake of contaminants by food crops and grazing animals used in food and daily products. 57 Fed. Reg. 21460-61. Plainly, rules which do not protect against all reasonable pathways of exposure do not comport with the criteria established by Congress to guide EPA in promulgating RCRA rules. EPA is required to promulgate RCRA regulations which "protect human health and the environment." RCRA, 42 U.S.C. §§6922-6924; *Shell Oil*, 950 F.2d at 745. The proposed HWIR also fails to meet the quoted statutory standard in that it is not protective of the environment. In fact, EPA's lengthy *Federal Register* Notice does not even attempt to justify the HWIR with regard to environmental impacts.

B. EPA's Leachate Model Underpredicts the Impact of Leachate from Under-controlled Wastes on Receptor Wells.

Even if it is appropriate to consider only the effect of leachate from formerly hazardous wastes in landfills in determining whether wastes are hazardous to humans, EPA's focus is still too narrow. The mathematical model used by EPA in predicting how many drinking water wells would be likely to be contaminated as a result of given CBEC exemption levels assumes that hazardous waste will be intermixed with and diluted by 20 times with non-hazardous solid waste in the municipal landfill where it has been deposited. There is no basis for this assumption. Moreover, it is well known that prior to the enforcement of the RCRA rules, many generators of hazardous wastes did not take such wastes to municipal landfills. Instead, they simply dumped solid and semi-solid hazardous wastes outside their operating facilities or at most covered them with a thin layer of native materials. This may still be permissible under subtitle D of RCRA.

Furthermore, liquid hazardous wastes were often discharged by generators into surface impoundments located on the generator's premises. Neither Maine's Solid Waste Rules nor Subtitle D of RCRA prohibits the discharge of liquid wastes into unlined lagoons. Thus, nothing would prevent generators in this State from dumping exempted liquid wastes at the site of generation if and when the HWIR is adopted. The effect on receptor wells of liquid hazardous wastes discharged into unlined lagoons, and not diluted with municipal wastes, should have been, but has not been, considered by EPA's model, as the agency, to its credit, acknowledges. 57 Fed. Reg. 21479. Again, the HWIR falls short of the statutory standard.

Moreover, the model used by EPA is based on a national average relating to precipitation. The more precipitation a particular area is subjected to, the more likely that leachate will build up in an unlined site and pass to a receptor well. In states such as Maine, which receive considerably more than the national average precipitation, the EPA model is underpredictive in terms of the likely percentage of wells contaminated. Site specific conditions of soils, geology, hydrogeology and the effect of other sources are also not considered in EPA's model and could cause the model to grossly underpredict the pollutional impact. For example, in Maine, many older municipal landfills are located in sand pits over aquifers. Leachate formed in such aquifers has a clear path to receptor wells. Finally, on this issue, EPA's model predicts the impact on private water wells only, but many public supply wells, as well as surface aquifers used as water supplies and hydrologically connected to contaminated groundwater, may be located within one mile of a contaminated source. EPA's model does not predict the impact on such nearby receptors and thus fails to adequately assess the impact of the HWIR on human health.

C. EPA's Leachate Model Predicts that One Out of Seven Wells Within a Mile from a Newly Uncontrolled Waste Site Will be Polluted Above Drinking Water Standards.

Even if EPA's model was entirely accurate in predicting the percentage of water supply wells which would be contaminated by a given hazardous waste source, the agency's proposal to set a dilution and attenuation factor ("DAF") at 100, based upon this model, displays a shocking disregard for the public health and safety. EPA proposes to use the DAF as a multiplier against health based standards, such as the maximum concentration limits (MCLs) developed under EPA's drinking water system. EPA acknowledges that: "if the exemption criteria are set at 100 times the health based numbers, the agency estimates that 10 to 15 percent of the population using private wells [one in seven] within one mile downgradient from Subtitle D landfills receiving exempted wastes could be exposed to contamination above the health based number if the wastes were all contaminated to the extent allowable * * *." 57 Fed.Reg. 21457 and 21479. Even if the multiplier of 10 is used instead of 100 for the DAF, EPA admits that an estimated five percent [one in 20] of the wells within a mile from unlined municipal landfills will experience

concentrations of leachate above health based numbers. 57 Fed.Reg. 21457.

D. Using a DAF of 100 or Even 10 Will Create New Superfund Sites.

Chemicals which have been listed by EPA as hazardous wastes are also likely to be considered "hazardous substances" under Maine's Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§1361, *et seq.* (1989), as well as "hazardous substances," "pollutants," and "contaminants," as those terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), 42 U.S.C. §§9601, *et seq.* Removing these chemicals from the hazardous waste list does not *ipso facto* remove them from the hazardous substance list. 57 Fed.Reg. 21498. Under Maine law, uncontrolled hazardous substance sites are defined as any area or location at which hazardous substances are handled or otherwise came to be located. 38 M.R.S.A. §1362. Thus, areas where wastes exempted under the CBEC option have been deposited probably would become uncontrolled hazardous substance sites. Uncontrolled hazardous substance sites which attain a certain score on EPA's hazardous ranking system list also become so-called Superfund sites under CERCLA.

In general, neither Superfund sites nor uncontrolled hazardous substance sites are considered to be fully remediated until all wells affected by leachate from such sites have been restored to drinking water quality and the groundwater under the site has been restored to background levels of purity. By permitting the deposit of wastes at sites which discharge leachate, causing drinking water standards to be exceeded in receptor wells, the HWIR permits the creation of new Superfund/uncontrolled sites which require clean ups. In Maine, this will mean a clean-up of groundwater to drinking water standards because background groundwater in Maine is usually of drinking water quality. Maine's water quality statutes also command such a clean-up. *See* 38 M.R.S.A. §§465-C and 470 (groundwater must be of drinking water quality). It follows that the ultimate result of permitting regulated parties to remove their wastes from treatment as hazardous wastes under RCRA may be to impose enormous clean-up costs in the future.

Permitting the creation of new uncontrolled hazardous substance sites also increases the workload of State agencies responsible to clean up hazardous substance sites and pursue responsible parties. This is a resource intensive, burdensome task under the best of circumstances. However, at the present time, the State can often trace hazardous wastes back to the generator through the use of RCRA required manifests. The HWIR would deprive us of the ability to trace responsible parties through the manifest system since regulated parties would stop filling out manifests when they decided that wastes were not hazardous. Permitting the creation of new Superfund sites is a giant step *backwards* in the protection of public health and the environment.

E. HWIR Would Hamstring Maine's Efforts to Enforce its RCRA Rules.

EPA has assigned to the states the duty to ensure that generators of hazardous wastes do not cheat when they self-exempt their wastes. The proposed HWIR would seriously compromise Maine's efforts to monitor compliance by the generators.

Under the HWIR, in order to seek clean up of hazardous wastes self-exempted by industry, the State would have to prove: (1) that the wastes came from the generator (in the absence of the manifest system, this showing alone would require impossibly extensive discovery), (2) that the area of the landfill sampled was representative of the generator's wastes, i.e., that the generator's waste was not mixed with wastes from other sources and could not have come from any other source, and (3) that the concentration of the hazardous chemicals in the generator's waste had not changed since the time of proposal.

Clearly, the HWIR, while shifting to the states that burden of policing the generator-implemented exemption from regulation, at the same time deprives the states of the tools to do this job.

F. The ECHO Option, Which Permits Dilution and Uses a DAF of 100, is Even Worse Than the CBEC Option.

While the above comments have focused on the CBEC exemption levels, much of this discussion applies as well to the ECHO option, since this option too provides exemption levels subject to a so-called default DAF of 100. The setting of specific DAFs for other chemicals which EPA proposed is also subject to the modeling problems described above and has been done for few of the listed hazardous wastes, i.e., the default DAF is likely to be the actual working DAF under ECHO for most hazardous wastes. Even worse, the ECHO option permits a regulatee to dilute its wastes before its analyzes these wastes to determine the concentration of toxic constituents in the waste.

G. Contingent Management as Described in the HWIR Compounds Rather Than Cures the Defects in the CBEC or ECHO Options.

EPA suggests, in its Federal Register Notice, that a contingent management system could be used with either the CBEC and/or the ECHO option to provide additional protection. Under contingent management, wastes which would otherwise avoid exiting from the regulatory system, pursuant to CBEC or ECHO concentration in landfills conforming to EPA's new municipal waste landfill standards or conforming to State-mandated equivalents. However, contingent management protections would not apply to chemicals already exempted under the CBEC or ECHO options. Contingent management, including the lining of landfills, does not address the DAF issue discussed above. Thus, the problems with the ECHO and CBEC options as described above would still remain.

While, as a legal matter, states such as Maine are not prohibited from maintaining more stringent definitions of hazardous waste than the EPA version, this is a very difficult task to go alone for a small state and ignores the need for national standards. In fact, recently, the Maine Department of Environmental Protection received a rule-making petition requiring that it engage in downgrading of its Hazardous Waste Rules to a level no more stringent than those promulgated by EPA. Further, EPA promises to "strongly encourage" states to reduce the stringency of their hazardous waste rules so as to continue equivalency with the EPA program. 57 Fed.Reg. 21498.

Obviously, there are those who would dismantle the RCRA regulatory system which, while far from perfect, has served the nation well for 12 years. However, the pressures of a soft economy and election year politics must not be permitted to cause EPA to unravel the protections provided by its RCRA rules. If we have learned anything about the environment, it is that burying or spilling hazardous materials out of sight does not solve, but merely creates, a larger problem and shifts the financial burden for this problem to taxpayers and the legal burden to state and local prosecutors.

While a revisiting of EPA's hazardous waste rules may be in order, the exemption levels proposed in the HWIR are far too high. Moreover, the self-executing nature of the HWIR, which does away with the public input and regulatory control provided by EPA's present process for delisting hazardous wastes, is simply not protective of the public health, safety and welfare. By failing to protect the environment, the HWIR falls short of the statutory standard set forth in RCRA. For the reasons set forth above and many others, both the CBEC and ECHO options, and the entire HWIR, represent extremely poor public policy judgments based upon bad or non-existent science and a disregard for public health and the environment.

These comments are not intended as an exhaustive response to the many options presented in the Federal Register Notice of May 20, 1992. We join in and incorporate by reference the comments of the Maine Department of Environment Protection, the States of Minnesota and Montana, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Northeast Waste Management Officials' Association (NEWMOA), the Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC).

Sincerely,

MICHAEL E. CARPENTER,
Attorney General.

Mr. BAUCUS. Mr. President, this is a very straightforward amendment and I urge my colleagues to support it. It gives States additional time to comment on proposed changes to two fundamental parts of the Federal hazardous waste program, that form the basis of many State programs, namely the mixture and derived from rules.

This amendment responds to an emergency. Last December, the U.S. Court of Appeals for the District of Columbia struck down the mixture and derived from rules, on procedural grounds.

These rules which had been in effect since 1980, prohibit generators of hazardous waste from evading regulations by mixing or diluting their hazardous waste. Without these rules, hazardous waste could legally be disposed of in nonhazardous waste dumps, even municipal landfills.

In overturning the rules, however, the court recognized the dangers of vacating these rules. So it suggested that EPA reissue the rules on an interim basis, under the good cause exemption of the Administrative Procedures Act.

As a result, last March EPA reissued the rules. But at the insistence of the Office of Management and Budget, the reissued rules will expire on April 28, 1993, the date by which EPA hopes to issue new rules.

Unfortunately, the draft rules that EPA hopes to issue by then is so flawed that 40 attorney's generals, and officials from 39 States, oppose it including comments from Montana. Some have even urged EPA to withdraw it and start from square one.

One of the biggest criticisms with the new rule is that EPA gave the States,

industry, and others only 60 days to comment on the rule.

Just 60 days to comment on what is arguably the foundation of Federal and State RCRA hazardous waste programs.

It seems to me that a rule with such dramatic consequences deserves more than 60 days of comment from those who must implement it.

Mr. President, that is what this amendment is all about. It gives States what they deserve, an opportunity to work with EPA so that their concerns can be heard and considered.

I know those who oppose this amendment believe that it does more than give States additional time. They believe that it makes substantive changes to the mixture and derived from rule, and it takes the pressure off EPA to issue new rules.

Let me be very clear about what this amendment does and what it does not do.

First, this amendment does not take a position on EPA's new rules.

It does not change any RCRA policy. Nor does it signal congressional approval or ratification of the current mixture and derived from rules.

It simply allows the reissued rules to remain in force until the end of the next fiscal year, or until EPA promulgates a new rule.

Without this amendment, the mixture and derived from rules will lapse on April 28, 1993, severely disrupting the Federal RCRA program and many State programs.

Second, this amendment does not take the pressure off EPA to issue new rules. In fact, it requires EPA to promulgate new rules by October 1, 1994.

Moreover, EPA is under court order to repromulgate the mixture and derived from rules. If EPA fails to comply with the Court order and tries to rely on the reissued interim rule indefinitely, then anyone may ask the court for relief.

Mr. President, because the mixture and derived from rules are so critical to the entire hazardous waste program, we must give States sufficient time to evaluate the new rule. And we must give EPA sufficient time to consider all comments and promulgate sensible regulations. EPA should not be put in the position of having to issue bad rules simply to meet OMB's April 1993 deadline.

For these reasons, I urge my colleagues to support this very simple amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Department of Health and Environmental Sciences of Montana to the EPA, dated July 16, 1992.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES,
Helena, MT, July 16, 1992.

Docket Number F-92-HWEP-FFFFF.
EPA RCRA Docket (S-212) (OS-305),
Washington, DC.

DEAR EPA: Enclosed are comments from the Montana Department of Health and Environmental Sciences, Solid & Hazardous Waste Bureau (MSHWB), pertaining to the Hazardous Waste Identification Rule (HWIR). In summary, while the MSHWB acknowledges the regulatory difficulties surrounding the mixture and derived from rules, the Bureau urges the EPA to withdraw these proposed rules and invite discussions with the states regarding the amendment of the mixture and derived from rules. The HWIR, as proposed, is a retreat from the successes the EPA and the States have made in the management of hazardous wastes that are truly protective of human health and the environment. Additionally, the HWIR is technically flawed and will add to, rather than alleviate, future hazardous waste disposal problems.

1. The MSHWB agrees that certain wastes may be overregulated, especially those related to contaminated media. However, in our opinion, the EPA's proposal goes too far in underregulating actual exposures to human health and the environment. The MSHWB would prefer to see a system where de minimis wastes are exempted and contaminated media are regulated to a lesser degree. In our opinion, overhauling the entire system, given the lack of scientific evidence, is not warranted.

2. There are at least two unique factors that may impact Montana more so than some other states. First, Montana hazardous waste rules cannot be more stringent than the federal EPA except where specifically authorized by the legislature. Second, the relatively dry climate in Montana may make for more sites where the contingent management approach could be applied. These two factors could serve to make Montana a "magnet" for exempted wastes.

If these rules are adopted as written, the MSHWB may seek legislative support to amend state statute authorizing the adoption of rules more stringent than federal regulations.

3. If one of the options presented by EPA must be accepted, then the SHWB is of the opinion that Options #1 or #2 (CBEC) would be preferred. Our primary concerns with the options rest with not knowing whether the Subtitle C exit levels selected by EPA are the "right" levels. For instance, we think that ecological impacts should be addressed. We think that the risk based levels should include other routes of exposure. It appears that the "minimized risk" mandated within the LDR program may not be fulfilled unless all routes of exposure are considered. We are concerned that the "wrong" levels may ultimately create additional Superfund sites at Subtitle D landfills.

With respect to the ECHO approach, the SHWB feels that the proposed rules do not meet the goals of the RCRA program. The prohibition of dilution has not been specifically addressed. With this, generators will be misled in that dilution will be an acceptable means of treatment prior to disposal.

4. At this time, many of Montana solid waste landfills do not meet Subtitle D criteria. If the proposed rules are adopted as written, without scientific data, additional Superfund sites will be created. The SHWB feels that this is inevitable since the Subtitle D standards were developed for the management of municipal solid waste and not for those wastes previously regulated as Subtitle C wastes.

5. The enforcement personnel within the RCRA programs for the State of Montana, and all other states, will have additional burdens in trying to establish mismanagement of hazardous waste. This is due to both the volumes of exempted waste created by these options and the generator "self-implementation" aspects of the rule.

Since the rule does not require generators to submit sampling and analysis data, the lack of information supplied to the regulatory program will invoke cumbersome tasks upon the regulatory agency to verify that wastes meet the exemption criteria. This will in turn require the state, or federal program, to conduct analyses at their expense. In addition, if the wastes have been disposed prior to regulatory agencies obtaining a sample, then the evidence(i.e. wastes) will not be available for sampling.

6. The lack of public participation in the exemption certification and contingent management process is a concern to the MSHWB. The primary goal of regulatory agencies is the protection of human health and the environment. It would seem logical that those citizens directly impacted by the decisions made at the State and Federal levels should be given an opportunity to voice their concerns on these issues. In the current delisting procedure, public participation is a key element in obtaining additional information which may serve to be substantial in the delisting process. It has been our experience and observations that environmental issues are based highly on emotions due, in part, to a lack of agencies providing information to the public. The distancing of environmental agencies from the public appears to set the stage for further distrust of government. We feel that the lack of public involvement, in the case of contingent management, will serve to be counterproductive by inducing unnecessary fear in citizens, and by allowing once regulated hazardous waste to be disposed of in solid waste landfills without public participation.

7. The MSHWB is concerned that the TCLP test may not always be appropriate due to the possibility of underestimating contaminants contained in oily wastes. Therefore, the SHWB suggests that the need for a percent oil based criteria (as discussed on page 21473 of the May 20th Federal Register) is warranted. Due to the analytical difficulties that oily wastes pose to laboratories, the threat of underestimating the leachability of a constituent from an oily matrix is high. If a percent oil criteria is established as a part of the exemption criteria, the possibility of mismanaging wastes with "hidden" constituents will be reduced.

8. The MSHWB is concerned about the effect the HWIR would have on waste minimization. The proposal may result in the States losing a tool for waste minimization programs since the Land Disposal Restrictions created economic incentives for generators to reduce the volume or toxicity of their wastes.

These comments represent a sampling of the concerns that the SHWB has regarding the HWIR. We ask that the EPA consider these comments as well as those received from other State programs in order to reach a consensus on the revision of the mixture and derived from rule.

If additional information regarding these or other issues is required do not hesitate to contact us.

Sincerely,

DUANE ROBERTSON,
Chief, Solid and Hazardous Waste Bureau.

Mr. GARN. Mr. President, I yield back the remainder of the time on the amendment.

Ms. MIKULSKI. We yield back the time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 2955) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 2956

(Purpose: To reduce the appropriation for the implementation of the space station *Freedom* program by $1,600,000,000 for the purposes of reducing the deficit in the Federal budget and increasing the appropriations for certain health-care related activities carried out by the Department of Veterans Affairs)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 2956.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 103, strike lines 12 through 17 and insert in lieu thereof the following: "That $500,000,000 shall be made available for termination of contracts relating to Space Station Freedom; that $200,000,000 shall be made available for Veterans Health Administration Medical Care in addition to sums otherwise appropriated; that $62,000,000 shall be made available to Veterans Health Administration Medical and Prosthetic Research in addition to sums otherwise appropriated: Provided fur-".

Mr. BUMPERS. Mr. President, this is the space station amendment, with which I believe every Member of this body is familiar. Precisely, the amendment provides $500 million to terminate the space station and cuts the remaining $1.6 billion. And that is my objective, to terminate the space station.

The committee bill provides for $2.1 billion in 1993. My amendment leaves $500 million to terminate the project, and transfers $200 million to veterans' health care, and $62 million to veterans' medical research.

And it leaves about $1.338 billion, I believe it is, for deficit reduction.

Mr. President, if we were just going to save a billion dollars, the way we operate around here, this may not be a big deal. But that is not the purpose of the amendment. The purpose of the amendment is to stop the annual expenditure for the next 30 years.

This $2.1 billion for 1993, incidentally, is a 5-percent increase over 1992. Many other agencies in the country would love to have a 5-percent increase.

What is the true cost of the space station? Mr. President, I am going to break this debate down. First, the costs; then the purpose of it; and third, just a general, overall discussion of how everybody talks about change, but we do business as usual.

I have no delusions about succeeding. I offered this amendment last year and got 35 votes. I will be lucky to get that many this year.

Mr. President, at the risk of sounding arrogant, if I were offering this amendment to a jury of 12 men and women, good and true, as we lawyers love to say—jurors—they would not take 30 minutes—not 30 minutes—to return a verdict.

They would not take 30 minutes to return a verdict on the supercollider. They would not have taken 30 minutes to return a verdict on the mining bill. They would not take 30 minutes to return a verdict on SDI. And so far, that is the only one I have won. Senator SASSER and I won that one on SDI, and that one is not over yet. As you know, the defense bill has been pulled down because we were successful.

But, Mr. President, if it were just the $2.1 billion for 1993, this would be a piece of cake. You know what the General Accounting Office says this will cost over the next 28 years? $118 billion. Do you know what an internal study over on the House side says the space station will cost over the next 28 years? $200 billion. It is not just that little $2.1 billion for 1993.

You are going to have people coming in here making the argument, oh, it is just a fraction of the budget. I can hear it now, one-tenth of 1 percent of the deficit. But what nobody says is, if you assumed that the House study is correct and that the space station is going to cost $200 billion over the next 30 years, would you like to know what that is in compounded interest, because we are going to borrow every last dime of it? Do you know what that $200 billion translates into over the next 30 years when you add interest compounded? $600 billion.

Mr. President, do you know what we get for the first $200 billion on the space station? Nothing. Nothing. And I will cite all the researchers in this country in just a moment. And do you know what we get for the $400 billion in interest we are going to pay to finance this thing over the next 30 years? Nothing. Nothing—$400 billion in interest and $200 billion for a project that cannot be justified under any scenario.

It is maddening, Mr. President, to stand here and fight this battle knowing that I will be lucky to get the same 35 votes I got last year.

Would you like to know, Mr. President, what this is going to cost, for example, the State of West Virginia? Do you know what the taxpayers of West Virginia are going to be called upon to pay for this? $848 million. In my State of Arkansas, this space station will cost us $1.111 billion. And I am using figures of $118 billion, I am not using the $200 billion. I am using GAO's $118 billion.

Since this whole thing was first conjured up in 1984 at a cost of $8 billion, the cost has gone up 64 percent. In 8 years, the cost has escalated 64 percent.

Is there a living soul in the U.S. Senate that has the slightest doubt that we could build this thing and throw it into space in approximately the year 2000 at today's projected cost? Well, if we do it, it will be the first time in history it has ever been done. Of course, it is going to cost more than $118 billion; probably going to cost more than $200 billion.

But to separate it out, Mr. President, the cost of building this station and throwing it into space is $40 billion, counting the payload. Now, that is what started out at $8 billion. The $8 billion is now $30 billion. The payload is now $10 billion. So it is $40 billion, not for anything scientific, just a mechanical engineering masterpiece where you throw a giant piece of hardware into space.

We have already done it once. We had a space lab up there. The Russians have the MIR space station. They have had it up there for about 5 years. Do you know what they have gotten out of it so far? Nothing. Nothing. And, as I say, that is precisely what we are going to get out of ours.

Mr. President, if you just want to do research in space, why do we not just buy or rent the Russian space station? You could probably get it for a year's supply of TV dinners. Why do we have to embark on a $200 billion expenditure when we can jointly cooperate with the Russians and do any kind of research we want to on theirs? No, no. Because Texas and Florida and California have got billions.

Mr. President, the people who are going to come over here and support the space station—I do not have the figures, I will try to have them tomorrow. The last time I debated this, not one Senator from the bottom 35 States who would benefit from the contracts on this. And, incidentally, NASA has caught onto what the Pentagon does. Put a little dab in every State. But they do not put very much in the bottom 35 States. And last year, not 1 single Senator from the 35 bottom States who had very little to gain from it came over and spoke for it.

Mr. President, $1.111 billion would almost run my State for a year. And when you consider the fact that we are not going to get anything out of it, that is a lot of money for a small State.

We originally had eight missions for the space station. Seven of them have

been discarded. We are not going to Mars anymore, Mr. President. If we ever decide to do that, add another $500 billion. But we have discarded seven of the original eight missions for this. And we are down to one: life sciences. Now put that in the back of your mind, life sciences, because I am going to come back to it.

What we are going to spend between now and the turn of the century will be more than we will spend on research and development of all aircraft factories in this Nation.

No. 2, what is the purpose of the space station? Well, you are going to hear a lot of comments here about the purpose of the space station is to do research. Now, what kind of research?

I am not a scientist and any time I do not know anything about a subject I turn to the experts. Mr. President, if I were to ask you, or my colleagues, if I were to ask them which researchers do you respect most, my guess is that when it comes to medicine, you would say the National Institutes of Health.

Dr. Bernadine Healy is Director of the National Institutes of Health.

Recently there was a big story in the paper that said NASA and NIH have joined to do research on the space station. That turns out to be utterly false. So Dr. Healy sends a letter to Daniel Golden, who is head of NASA, and here is what she said.

DEAR MR. GOLDEN, I am concerned that recent newspaper articles have presented a distorted view of the essential nature of the recent memoranda of understanding that were signed by NIH and the National Aeronautics and Space Administration. I am particularly disturbed by the implication that NIH views future space experiments as critical to the overall success of the biomedical research enterprise.

Moreover, your draft letter of July 22nd, intended to go to Members of Congress, might be further misconstrued to reinforce this mission.

Immediately after the big press conference, Mr. Golden sends out a letter to all the Members of Congress saying, look here, we have signed a memorandum of understanding with the National Institutes of Health and we are going to do all this wonderful research to cure cancer. Dr. Healy goes on to say.

The NIH position on this question remains as stated in my October 1991 testimony before the Subcommittee on Space of the Committee on Science, Space and Technology in the House of Representatives, at which time I said if we can understand and treat diseases like osteoporosis, people, especially women, will be able to age healthily rather than age with illness. This would present an opportunity for us to empty our nursing homes, which would have a profound effect on health care in this country.

And now listen to this.

I think that when we say, "Is that going to be done on Earth or in space?" In all fairness it must be said that it will be done on Earth.

Mr. President, do you know what the GAO report said? That there is no research plan for the space station that cannot be done with the shuttle, for example. Or unmanned flights.

Why do we want to build a space station and man it at a cost of $200 billion when the GAO says it would be the height of folly? About a month and a half ago I stood here and debated the superconducting super collider for Texas, the biggest slab of pork ever slashed off for one state; a welfare program for Texas. And I made the argument that this Nation cannot afford the $20 to $30 billion that it is going to cost to satisfy the curiosity of a few American physicists.

The Senator from Louisiana, the Senators from Texas, all said, but look what all these Nobel laureate physicists say. They are curious about the origin of matter and this is the only way they can find out the origin of matter.

I would expect those same Senators to quote those Nobel laureates on this one. Because, you know what they all say? This is absolutely, utterly, ridiculous.

The American Physical Society is 40,000 physicists, almost all the physicists in this country. And here is what they say, the same people that were relied on to get the superconducting super collider built in Texas. I want to hear those same Senators rely on those same people on the space station, because here is what they say about the space station.

Scientists have been reminded of their responsibility to assist government in establishing priorities for our limited research funds. In the case of the space station program, scientists on three continents have now obliged, and the message could not be clearer. There is little or no scientific justification for a permanently inhabited space station.

The consensus is overwhelming—their words, Mr. President, not mine.

It goes on to say that this is a product of the cold war; has no scientific justification. And then they close out by saying:

However, in our judgment the space station is a multibillion dollar project of little scientific or technical matter that threatens valuable space-related projects and drains the scientific vitality of participating nations. International cooperation should instead be directed toward projects with scientific value, or cost-effective technical potential.

Mr. President, here is a quote from Dr. Lee Wattenberg, president of the American Association for Cancer Research, a letter to Senator BUMPERS:

Therefore, on behalf of the 8,000 members of the American Association for Cancer Research, we would like to take this opportunity to provide you with the expert opinions of highly qualified scientists on the possible relevance of NASA's proposed space station to progress in cancer research.

It goes on to say:

This organization strongly supports peer review, biomedical and cancer research that holds promise for progress toward diagnosis, treatment and prevention. We are concerned that dedicating $30 billion to construct a space station over the next several years will not only yield few and incrementally minor new results at very high costs, but will preclude adequate funding for cancer research during that period in existing laboratories around the country.

It goes on to say:

They are largely peripheral to scientific issues important to the development of new findings about human diseases and are not likely to yield results having near-term application to cancer etiology, treatment, prevention and control.

Here is the American Society of Clinical Oncology.

We understand, Senator Bumpers, that proponents of an expanded space program have argued that the space station will significantly advance our knowledge about cancer treatment. As a national specialty organization, representing 9,000 physicians engaged in clinical research and treatment, we take issue with this assertion. No longer are we able to invest in all meritorious scientific ideas. We do not believe the space station initiative can credibly be justified based on its hypothetical role in cancer research.

Mr. President, finally, the National Academy of Sciences, the premiere, prestige association of scientists in this Nation—here is what they said last year. I have no reason to believe they changed their minds.

In the judgment of the board, space station Freedom at the present stage of design does not meet the basic research requirements of the two principal scientific disciplines for which it is intended, life sciences and microgravity research.

What are they saying here? They are saying you cannot even justify this on the basis of what the proponents say they want to do, experiment with life sciences and microgravity.

In 1970 we funded about 70 percent of all applications to NIH for medical research. Do you know what it is today? Twenty-five percent. You can argue we are spending more, and we are. But I can tell you that what we are spending could be a lot more, if we were not squandering it on things like the space station. They testify before our Appropriations Committee every year, every year, and they say these are meritorious claims. Mr. President, look at this chart. From 1979 to 1990, the percentage of NIH competing research applications which were funded declined from 52 to 24 percent. There is the chart. In 1979 we were funding 52 percent. Here we are down here to 24 percent.

Look at this, this is the percentage of VA research projects. They have gone, in 1985, Mr. President,From 1979 to 1990, the percentage of NIH competing research applications which were funded declined from 52 to 24 percent. There is the chart. In 1979 we were funding 52 percent. Here we are down here tore to cancer, the kind of research that might find a cure to AIDS, arthritis, muscular dystrophy, multiple sclerosis. And here we are about to embark on this unbelievable expenditure under the guise of doing that kind of research. And I just read you letters from the most credible scientists in America saying this is absolutely unwarranted and unjustified.

Mr. President, how does the public feel about this kind of research? When

you ask the public, what kind of research do they want, 59 percent say they want research to improve health care and find cures. No. 2, 25 percent say they want environmental research to reduce pollution. There it is. And where do you find research to advance our space exploration program? A pitiful 4 percent.

Mr. President, no Senator should vote for this thinking he is honoring the request of his constituents. You are talking about four percent of the people in this country who could care less about space exploration.

Every doctor will tell you that you could put this thing up there and you could probably figure out the effects of long-term space flight on the human anatomy. We have been doing that anyway, but every one of these doctors, when you read the full letters, say that is all you are going to get out of it.

Mr. President, I ask unanimous consent that all of the letters I read excerpts from a moment ago be printed in the RECORD.

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

PUBLIC HEALTH SERVICE,
NATIONAL INSTITUTES OF HEALTH,
Bethesda, MD, July 28, 1992.

Mr. DANIEL S. GOLDIN,
Administrator, National Aeronautics and Space Administration, Washington, DC.

DEAR MR. GOLDIN: I am concerned that recent newspaper articles have presented a distorted view of the essential nature of the recent Memorandum of Understanding (MOU) that was signed by the National Institutes of Health (NIH) and the National Aeronautics and Space Administration (NASA). I am particularly disturbed by the implication that NIH views future space experiments as critical to the overall success of the biomedical research enterprise. Moreover, your draft letter of July 22 intended to go to members of Congress might be further misconstrued to reinforce this notion.

The NIH position of this question remains as stated in my October 1991 testimony before the Subcommittee on Space of the Committee on Science, Space, and Technology, U.S. House of Representatives. At that time I remarked, "If we can understand and treat diseases like osteoporosis, people, especially women, will able to age healthfully rather than age with illness. This would present an opportunity for us to empty our nursing homes which would have a profound affect on health care in this country. I think that when we say, is that going to be done on earth or in space, in all fairness, it must be said that it will be done on earth."

In my response to questions from the Subcommittee following the hearing, I summarized the NIH view on the potential contribution of biomedical research conducted in space by stating, "It is not as clear precisely how the unique space environment might be used as an experimental tool to advance research on conventional health problems." We are, in fact, continuing our attempts to determine ways in which the space environment might be exploited to best advantage in biomedical research.

This has been the NIH position since the signing of the initial MOU with NASA in 1988. Indeed, we view the recent MOU as essentially a renewal of that original agreement. And we continue to believe that it is too early to determine the true value of space research in contributing to the solution of conventional health problems encountered on Earth.

I would urge NASA to make every effort to convey a balance assessment of the future role of space research in the national biomedical research system in order to avoid a serious disservice that will result through the creation of unrealistic expectations and overpromise.

I look forward to working with you to strengthen the research enterprise in this country.

Sincerely yours,
BERNADINE HEALY, M.D.,
Director.

INTERNATIONAL OPPOSITION TO SPACE STATION FREEDOM

In an unprecedented action, scientists from three continents have questioned the scientific value of a permanently inhabited space station. Japan, Europe and Canada are "partners" with the United States in Space Station Freedom.

A group of major scientific societies today sent members of the United States Congress a statement on the international Space Station Freedom program. It was accompanied by the translation of a statement adopted by the German Physical Society. The German statement has been endorsed by The European Physical Society and by Presidents of The Canadian Association of Physicists, The Physical Society of Japan and The American Physical Society. Both statements urge a strong international space effort to address serious global problems that confront humanity and to advance human knowledge. A manned space station, the statements argue, would make little contribution to such an effort and would, on the contrary, divert resources from more substantial research.

Scientists have been reminded of their responsibility to assist government in establishing priorities for limited research funds. In the case of the space station program, scientists on three continents have now obliged, and the message could not be clearer: there is little or no scientific justification for a permanently inhabited space station. The consensus is overwhelming.

No astronomical or earth observations are contemplated; a manned space station is too unstable. Microgravity research, which is of little importance in any case, is better done on unmanned platforms. The principal scientific mission of the station is to study the effects on humans of prolonged exposure to a space environment; medical researchers scoff at claims that these studies might lead to cures for disease on Earth. In terms of competitiveness, it is sufficient to note that Japan has no space station. The Soviet Union had one for five years and went belly up.

The space station program was initiated during the height of the Cold War. It was intended to demonstrate the determination of the free world to meet any challenge of the Soviet Union in space. Freed of the urgent demands of the Cold War, energies can now be redirected to the unmet needs of society and the advance of human knowledge. The excessive emphasis on human space flight has become an expensive and time-consuming distraction.

JOINT SOCIETY STATEMENT OPPOSING SPACE STATION FREEDOM

We, the undersigned Presidents of national and international professional societies, support a vigorous space program but share concern over continued funding of Space Station Freedom. Our societies represent over 255,000 experts in a broad spectrum of the scientific and technical communities throughout the world. As evidenced by the enclosed statement, our judgement is shared by colleagues in countries participating in the space station project.

Urgent international problems confront mankind today, ranging from the destruction of the ozone layer and global climate change to the control of AIDS. Such matters call for international cooperation in science and technology programs, including space research. A balanced program of international cooperation in space research would also contribute to the advance of human knowledge.

However, in our judgement, the space station is a multi-billion dollar project of little scientific or technical merit that threatens valuable space-related projects and drains the scientific vitality of participating nations. International cooperation should instead be directed toward projects with scientific value or cost-effective technical potential.

Donald D. Brown, President, American Society of Cell Biology.
Ralph J. Cicerone, President, American Geophysical Union.
John H. Litchfield, President, Institute of Food Technologists.
Charles Schmid, President, The Acoustical Society of America.
David B. Wake, President, American Society of Zoologists.
Ernest Henley, President, American Physical Society.
Joseph Goddard, President, The Society of Rheology.
Joseph W. Goodman, President, Optical Society of America.
Howard Ris, Executive Director, Union of Concerned Scientists.
Michiji Konuma, President, The Physical Society of Japan.

AMERICAN ASSOCIATION
FOR CANCER RESEARCH, INC.,
Minneapolis, MN, July 22, 1992.

Hon. DALE BUMPERS,
U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR BUMPERS: We are certainly aware of the fiscal constraints which exist at this time as well as the short- and long-term funding priorities that you and your colleagues are presently considering. Therefore, on behalf of the 8,000 members of the American Association for Cancer Research (AACR), we would like to take this opportunity to provide you with the expert opinions of highly qualified scientists on the possible relevance of NASA's proposed space station to progress in cancer research.

Space-based research has historically been an area of American science in which we have advanced the frontier of knowledge. As you know, this laudable objective has received considerable popular support. However, proponents of the space station have stated without definitive evidence that life sciences research conducted in space will have a profound impact on furthering cancer research. We are compelled to rebut this contention.

The AACR strongly supports peer-reviewed biomedical and cancer research that holds promise for progress towards diagnosis, treatment, and prevention of cancer. However, we are extremely concerned that dedicating $30 billion to construct the proposed space station over the next several years will not only yield few and incrementally minor new results at very high cost, but will also preclude adequate funding for cancer research during that period in existing laboratories around the country.

Research in space should be funded based on its own merits and must not be justified by misleading claims about its contributions to progress in cancer research. Experiments conducted in space are most likely to yield result of importance to space medicine, i.e., the understanding of physiological changes in the space environment. They are largely peripheral to scientific issues of importance to the development of new findings about human diseases and are not likely to yield results having near-term application to cancer etiology, treatment, prevention, and control.

Various claims have been made in Congress concerning the impact of space-based cancer-related research in the areas of crystallography, drug development, and white blood cell behavior. Expert scientists among the AACR membership disagree with the contention that such space-based research will have immediate value. Specifically, we offer you the following information:

The utility of crystallography in space to improve drug development is open to serious question. The design of anti-cancer and other drugs from the knowledge of crystal structure is a concept in its infancy of development in numerous industrial and academic settings. Although crystallography is certainly an exciting field which should receive additional resources, the validity, applicability, and overall success of this approach to anti-cancer drug design and development have not yet been established. In theory, at zero gravity it should be possible to grow protein crystals of important drug targets that are difficult to acquire using standard techniques; in practice, however, getting useful crystals of reverse transcriptase (RT) from HIV virus, for example, has been exceeding difficult and expensive. NASA has included several research missions relevant to diagramming the RT enzyme crystal, however, and it was group of scientists in this country who are not associated with apze-based research which has made dramatic progress and reported the three-dimensional structure of this important target. At present, scientists in research universities and pharmaceutical companies throughout the country are developing and refining this technology further. We feel strongly that the potential of this field of research must be better demonstrated before a gross investment on the scale of the space station is made.

Experts in the field of vaccine development have indicated that the technology currently available for protein purification is perfectly adequate and that therefore nothing can be gained by moving this research to space. The use of electrophoresis at zero gravity might achieve some economy for preparation of large amounts of some proteins; this economy more than disappears, however, in light of the enormous cost of doing this work in space.

Proponents of the medical research potentially conducted on the space station have also claimed that space-based research will enable substantial progress in the area of white blood cell research, which has the potential to lead to improved understanding of hematologic cancers such as leukemia. Although there is always the possibility of an unexpected and surprising discovery in this area, there is no indication that such experiments conducted in a Life Sciences Laboratory in space would be more fruitful than relevant research being conducted in laboratories around the country.

In addition to crystallography, numerous non-space approaches to drug design and vaccine development for cancer, including molecular biology and recombinant technologies, natural product development, and novel drug design using computerization are currently underway. Neither crystallography nor protein purification has been pinpointed as a stumbling block to advances in drug development research. What has been clearly demonstrated is that there is a serious shortage of resources to allow us to realize any of these approaches to their fullest potential or to translate rapidly the laboratory progress in these exciting research areas into clincal evaluation and patient care. It is this overall lack of funding, rather than the need to conduct space-based experiments, that severely impedes our pace in finding new effective drugs to treat the more than 100 diseases that are collectively called cancer.

AACR urges Congress to support progress in the war against cancer by funding cancer research at the full level of the By-Pass Budget. There is a wealth of scientific talent in laboratories across the country. These scientists have tremendous potential and a proven track record in cancer research, but they lack the necessary resources to conduct their work so as to realize that potential. Unfortunately, the political will of the Administration, the Congress, and the American public has not enabled full funding of our National Cancer Program for well over a decade. This year, the Administration's proposal for funding fell $764 million short of the By-Pass Budget recommendation prepared by a Presidentially appointed panel of experts.

If you and your colleagues wish to accelerate the pace of our efforts to eradicate cancer, we urge you to fund the By-Pass Budget and not to jepoardize future funding for ongoing research projects in order to support "big science" initiatives such as the space station. The American public, policymakers, and cancer victims should not be misled by unsupported claims that answers to the cancer problem lie within the realm of space exploration.

If I or any member of the AACR can be of assistance to you in your deliberations, please feel free to contact me. Thank you for your attention and for your ongoing support of cancer research.

Sincerely,

LEE W. WATTENBERG, M.D.,
President.

AMERICAN SOCIETY
OF CLINICAL ONCOLOGY,
Orlando, FL, August 4, 1992.

Hon. DALE BUMPERS,
U.S. Senate
Washington, DC.

DEAR SENATOR BUMPERS: The current economic climate demands we set priorities for our national research effort. The American Society of Clinical Oncology (ASCO) strongly believes resources invested in biomedical research will advance science and improve our citizens' health and well-being. We are particularly distressed that tightening budgets at the National Cancer Institute have severely restricted clinical studies that help translate bench research to improved care for cancer patients.

We understand that proponents of an expanded space program have argued that the space station will significantly advance our knowledge about cancer treatment. As a national medical specialty organization representing some 9,000 physicians engaged in clinical research and treatment, ASCO must take issue with this assertion.

We are not opposed to the space program nor are we expert enough to evaluate fully its merits. We do not wholly dismiss the possibility that the microgravity environment of space offers a promising setting in which we may attempt to address some of the challenging problems facing biomedical science today. However, we firmly believe we must first take advantage of the numerous unmet opportunities for biomedical research that may be pursued here on Earth.

We have carefully reviewed some of the public statements made with respect to the potential of the space station for cancer research. In our opinion, the benefits of this research are quite speculative. We are not confident this approach justifies the expenditure. Ground-based biomedical researchers have already demonstrated the capacity to tackle many of the research goals cited by space station supporters. Furthermore, any promise that does exist for space research could be investigated within the context of currently operating missions.

One example often provided in support of space research is the development of immunotherapy against brain tumors. While this may be an interesting hypothesis, there is scant evidence to support such a theory.

Space research proponents have also looked to the role of microgravity in improving our ability to develop perfect crystals of protein molecules. The logic of conducting crystallography research in the space environment is reasonable and testable speculation. However, researchers have already shown groundbased laboratories and ongoing manned missions to be viable settings for this type of research.

No longer are we able to invest in all meritorious scientific ideas; it is imperative we scrutinize the scientific strategies we use to determine which offer the best likelihood of answering our questions. We do not believe the space station initiative can be credibly justified based on its hypothetical role in cancer research.

We thank you for your serious consideration of this matter. Should you have questions regarding our position, please do not hesitate to contact Stacey Beckhardt, ASCO's Director of Government Relations, at 202-778-2396.

Sincerely,

HARMON EYRE, M.D.
Chair, Public Issues Committee.

NATIONAL ACADEMY OF SCIENCES
NATIONAL RESEARCH COUNCIL SPACE STUDIES BOARD POSITION ON PROPOSED REDESIGN OF SPACE STATION FREEDOM 1991

SUMMARY

The United States has contemplated for many years the construction of a space station that would further a variety of national goals, one of which is space science and applications. The recent report of the presidentially appointed Advisory Committee on the Future of the U.S. Space Program, chaired by Norman Augustine, recommended that the development of a U.S. space station with research facilities must give top priority to life sciences research, with microgravity research assuming a significant but secondary role. The Board notes that this recommendation is fully consistent with the 1983 Space Studies Board position on the space station, as well as with the 1988 National Academy of Sciences/National Academy of Engineering report to then newly-elected President Bush. In the judgment of the Board, Space Station Freedom, at the present stage of redesign, does not meet the basic research requirements of the two principal scientific disciplines for which it is intended: (1) life sciences research necessary to support the national objective of long-term human exploration of space, and (2) micro-

gravity research and applications. This conclusion as to the station's research capabilities is based upon an assessment of its redesign as of March 1991. Attachments 1 and 2 summarize the research requirements for space biology and medicine and for microgravity research and their relationship to the redesigned space station.

The Space Studies Board's membership is not constituted such that it can provide an engineering judgment on the feasibility of the redesign, and therefore has not done so.

RESEARCH RETURN ON TAXPAYER INVESTMENT

The Space Studies Board considered the quantity and quality of research that might be conducted on the proposed redesigned space station in the context of the level of the investment that will be required to bring it to completion. The Board believes that neither the quantity nor the quality of research that can be conducted on the proposed station merits the projected investment. As redesigned, a maximum of $2.6 billion per year would be expended on the station to achieve an initial crew-tended capability by the mid-1990s, not including associated Space Transportation System and user costs. Additional funding at a comparable rate of expenditure would be require to achieve a permanently occupied capability late in the decade. In the initial, crew-tended configuration, the redesigned station would be develop primarily to microgravity research. Life sciences research unique to the space station would not begin until the end of the decade, when the permanently occupied configuration would be established. For comparison, the 1991 NASA budget allocates roughly $102 million to microgravity research. In other words, during each of the next five years, the amount of funding devoted to space station construction for microgravity research would be approximately 20 times the level of the current research program for this discipline. In addition, the monthly cost of constructing the redesigned station would approach the annual total funding devoted to both NASA's life sciences and microgravity science and applications divisions during the current fiscal year.

SPACE RESEARCH REQUIREMENTS, OPPORTUNITIES, AND ALTERNATIVES

Life sciences research

The Augustine Committee recently concluded that the primary objective of a space station should be life research. The Space Studies Board strongly endorses the position that a space-based laboratory is required to study the physiological consequences of long-term flight. The Board notes that many of the fundamental problems in life sciences research involve a long period of time for their pursuit and solution. In its present form, the redesigned space station does not provide the facilities required for such research. (See Attachment 1.)

Microgravity research

In the judgment of the Board, the limited microgravity research that could be conducted on the redesigned space station as currently proposed does not merit the investment. If such funds were made available, the research community would likely choose to spend them in a very different way. (See Attachment 2.) The Board believes specifically that more research progress could be achieved in a shorter period of time and at a fraction of the cost through an expanded program of Spacelab missions and of free-flyer experiments.

NATIONAL GOALS AND THEIR ACHIEVEMENT

In conclusion, the SSB recognizes that there are national considerations for building a space station other than scientific research. Including these are the possibilities of enhancing international prestige, stimulating the nation's educational achievement, stimulating the U.S. technology base, and supporting a long-term human space exploration initiative.

In the judgment of the Board, the proposed redesign of Space Station Freedom does not meet the stated national goal of enabling the life sciences research necessary to support extended human space exploration, nor does it meet the stated needs of the microgravity research community—most of whose goals could be achieved in both a more timely and more cost-effective manner by alternative means. Continued development of Space Station Freedom, as currently redesigned, cannot be supported on scientific grounds. If the present station redesign is implemented, this major national investment must be justified on the basis of considerations other than research in these two disciplines.

Mr. BUMPERS. Mr. President, in the last 30 days—I am a candidate this year—I have been all over my State, flying all over my State. One of the pilots, and these pilots become very good friends, one of them is a very astute fellow, good friend, smart. He said:

Senator, I agree with you on the collider, and I agree with you on mining, and other things. I am troubled about the space station. I thought I favored it, but I am willing to keep an open mind.

I said:

Do that. If you ever watch C-SPAN, tune in, watch the debate and then make up your mind after you watch the debate.

He said:

You know, these new prosthetic devices that are so important to crippled people, I understand that material, which is a new material for prosthetic devices, was developed in the space program.

I said, "I think you are right," and that is not all. Last year, Senator HEFLIN put a list of about 75 engineering advances that had come from the space program.

Mr. President, those came from these manned flights. We did not have to have a space station to make those 75 advances. Do you know what is even more important, if we had spent just a fraction of what we spent on space going after those same things we could have probably achieved them for a fraction of what they cost.

You hear all the time about the spinoffs we get from the Defense Department, the research and development the Defense Department does. But Senator NUNN, who has been a pretty good friend of defense through the years, and is chairman of the Armed Services Committee, said on this floor, there is not any question that if you went after those specific things directly rather than as a spinoff of a weapons system, they could have been procured for a fraction of what they cost.

I just pointed out I have been crisscrossing my State. I made about 70 appearances down there in the last 30 days. It is a very healthy thing. It is a very healthy thing to go into the factory and talk to people making $4.50 an hour, $10 an hour, talk to real people, talk to farmers who have the best crops they ever had and going broke.

Talking to the real people, do you know what they say? They really do want change.

You know another change they want? And I talk about the space station, the collider, SDI, the intelligence budget, and the Trident II missile. All those things I have been offering up here trying to get this deficit under control. And yet they see and read and hear about debates like this and they know nothing really changes. The only thing that changes is the deficit, which keeps going up. In 1990, Mr. President, the deficit was $277 billion. In 1991, the deficit was $338 billion. In 1992, the year we are in right now as of the end of this month, the deficit will be $400 billion-plus. And people go home and they speak to the Rotary Club and the chamber of commerce and they say, "this is just terrible, isn't it? I believe in change. I believe we have to do something about the deficit."

I must tell you, I was mildly amused the other day when Ross Perot wrote an op-ed piece in the New York Times and listed 20 things we had to do. He said we have to do something about the budget deficit, we have to do something about the national debt. Third, we have to go back to our job base and put people to work. And you want to say, hold on a minute, Mr. Perot, can you be a little more specific, can you tell us precisely how you want to do this?

I tried to be as honest as I know how to be about the deficit and I can tell you that one way you get the deficit under control is to stop spending, and you especially stop spending money on things that have no justification. I cannot believe that we are looking at a $400 billion deficit this year, by far the biggest in the history of the country. Mr. President, in 1985, the Japanese were running a deficit comparable to ours as a percentage of their gross domestic product. And they stopped and looked around and said this is bad policy, bad economic policy, bad cultural policy, bad social policy. So do you know what they did? They stopped right there. They took away the indexation of taxation which was a form of raising taxes. They cut spending and froze the rest. Do you know what Japan has today? A nice big healthy surplus. They have a troubled economy and do you know what they have done? They are drawing on that big surplus to stimulate their economy.

We have big economic problems. Tell me, Mr. President, how do you draw on a $400 billion deficit to stimulate the economy?

I notice around here when people want something they say it is only a fraction. The space station is $2.1 billion for next year, and as I said it is not just that, it is where we are headed. But I can hear these arguments now

that the $2.1 billion next year is really only five-tenths of 1 percent of the deficit. It is only twelve one-hundredths of 1 percent of the total budget. But, Mr. President, if my computations are right and that the cost of this thing over the next 30 years, plus compounded interest is $600 billion, you are embarking on an expenditure of almost 50 percent of this year's total budget, and you are saying to your children and your grandchildren, we are going to dump this off on you. What is $1 billion in a $1.45 trillion budget? I will tell you what it is, it is a bad attitude on the part of this place that we cannot cut it because it is only $1 billion. It is that mentality that has brought us to this sorry day.

What could we do with that to solve the health problems of this country in which the Presiding Officer has been so deeply involved? People in this body are sitting around waiting for a silver bullet that will solve all the health care problems of this Nation, provide health care and cost nothing and everybody will be happy. That is not in the cards.

What if we get this thing built at a cost of $40 billion and a fleck of little paint hits it? Do you know what the impact of a 1-inch square fleck of paint would be on the space station? That is equivalent of a 400-pound safe hitting it at 80 miles per hour, enough to give you a bad headache. GAO says it is enough to knock out a major component part of the space station. But nobody really wants to redesign it because that would be an admission that the thing is still not on track.

I invite anybody here to read the current issue of Space News and find out just how much confusion there is about the design of the space station.

Mr. President, I think of the fights I have waged here and in committee for immunizations for our children. Mr. President, we have a vaccine now for hepatitis B which causes 25 percent of all the liver cancer cases in America. We have vaccine to give to our children that would prevent that, but we cannot get it because we do not have the money.

We now have a vaccine for hepatitis A which is the customary kind of hepatitis that is so dangerous. We cannot give that because we do not have the money. We have perfected a vaccine for hemophilus influenza. I believe that is a B strain, too. It would prevent encephalitis. A very wonderful woman in Arkansas who is a schoolteacher lies comatose because she got it, and we have vaccines to prevent it but we do not have the money to get it. And you are talking about maybe an additional $100 million. Here you are talking about embarking on a $200 billion expenditure that computes out to $600 million.

When I go home, I always go to the senior citizens centers, and if you want to be appreciated go to one of those. Those people love you. I have learned when they hold my hand, do not try to get away until they tell you what wonderful successes their children are. Just stand and hold their hand and listen because they are not going to turn loose until they tell you how important their son is at that plant in California or how their daughter is teaching at Columbia University.

A fellow told me one time, after I told him I did not enjoy being Governor, "I expect you ran because you were born." I said, "Well, there is some merit to that."

"But," he said, "You know the worst disease of all?" I said, "What?" "Loneliness." That is what senior citizens centers do. They break that unbearable loneliness of our elderly, and yet we do not have the money to really fund those things.

We have 10 million people in the country without jobs. We are now 14th of all the nations on Earth in wages. We have the lowest economic growth rate since the Great Depression. The dollar is the lowest it has been since the end of World War II. Twenty-five percent of our children live in poverty. We are the crime capital of the world having overtaken Colombia. We have a higher percentage of our people in prison, even higher than China, South Africa, or the Soviet Union. We are dead last in education, college education becoming absolutely hopelessly impossible for the middle class of the country. The National Institutes of Health can only fund 24 percent of the kind of medical applications the people of this country want them to fund. And this body tomorrow will vote to act like there is no tomorrow, spend this kind of money when those needs I just mentioned are so desperate to the future economic and social and cultural fabric of this Nation.

It is going to be too late soon if we do not change our ways, and I use the word "change" advisedly. We are going to have to change the way we finance campaigns. Politicians cannot satisfy 20,000 separate interest groups, finance Senate and House Members out of their tin cup every 2 to 6 years.

And it is soon going to be too late if you do not have somebody in the White House who will say to the American people in great candor, and obvious truthfulness, "Folks, we are in a heap of trouble." If the President did that, he would not dash people's hopes. He would raise people's hopes. The thought of a President facing up to what the American people know all too well would be one of the most refreshing things ever to happen in the history of this country.

In the 1980's, we elected people who said there is no such thing as a free lunch. Everybody applauded. That is a great line. There is not any such thing as a free lunch, is there? And then those people came to Congress and said not only is there a free lunch, there is a free dinner, everything is free. We do not have to be responsible. We were just kidding about that free lunch business. Everything is free. And people say, Is it too late?

Well, it is if NASA can co-opt the Senate by putting contracts in all the 50 States and embarking upon this massive expenditure of absolutely no value. Every veterans organization in this country favors this.

I will circulate a letter tomorrow from the American Legion, maybe a couple of others, saying they are hot for this. We have a VA hospital in Little Rock with 100 beds shut down and a long list of veterans in that region trying to get in. And do you know why the hundred beds are shut down, Mr. President? Of course, you know. Lack of money.

I used to be Governor and I balanced the budget. Governor Clinton has announced that he balanced the budget. It is true, we had to; the constitution required it. It is quite different than here.

But I will tell you something, we balanced our budget and I might also say that for a failed Governor of a small State, which seems to be the way some people describe my Governor, I would like to say the unemployment rate in Arkansas last Friday dropped 10 times as a percentage more than the national level did.

And the Sierra Club, the most prestigious environmental organization in America, endorsed my Governor—only the second time in 100 years they have ever endorsed anybody. And even though we are poor and we cannot spend as much money on education as some States, our SAT scores are above the national average, Mr. President.

And so when people say to me, as some people said in Houston, how would you like the rest of the country to be like Arkansas, I say I would like it a lot.

You are going to hear about all these wonderful things the space station will do. I have tried to tell you what the space station will not do. And I cannot be ominous enough, I cannot get my voice somber enough, Mr. President, to talk about what is going to happen to this country unless the people's demand for change actually begins to occur.

You cannot go home and tell the chamber of commerce and the Rotary Club and the Labor Day picnics how committed you are to the deficit and come back up here and thumb your nose at the same people you just made that commitment to. Here is an opportunity to begin.

I am making a list, Mr. President, I am going to put a chart up back here not very long from now on all my efforts on the super collider, the mining reform bill, SDI, the space station, the

Trident II missile, and some others I am going to offer. And beside it I am going to put what the vote is, and the American people will be able to see how committed this place is to change.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I rise, obviously, in opposition to the amendment of my distinguished colleague, the former Governor of Arkansas. I suppose I have become a little bit weary of this debate. I want this body to know that anything I say is not a reflection on Senator BUMPERS. He and I are members of the class of 1974, and I consider him a very close personal friend, and I mean that sincerely. But we have had this debate for several years.

So I grow a little bit weary of it because I find that Congress seems to be able to afford things that are spent with the money spent prior to the election. But we have a very hard time looking down the road, 10, 12 or 15 or 20 years.

So as I listen to these cost estimates, I would suggest that no one knows at this point exactly what the space station will cost. If anybody had told this Senator when I arrived 18 years ago what the cost of Congress would increase to in 18 years, I would have been appalled. We talk about being the taxpayers' friends. Where we could start is right here in this body cutting down dramatically the cost of the operation of this body.

I have the same number of staff total that I did 18 years ago when I arrived. We function just fine. I have served my State well. But I do not even remember whether it is an increase of six or seven times since I came here in the number of staff. There are a lot of places we could save money if this body had the courage to do so.

I would start at home. I think the American people would approve of that. But also we always hear the life cycle cost of programs like the space station. That is not fair unless we do that with every program. We heard about these costs over 30 or 40 years. I am not here to dispute them one way or another. But I would suggest as we look at that, look at the cost of food stamps.

I am not here to argue against food stamps. They provide a very good service in this country to a lot of needy people. But the food stamp budget is more than $8 billion more per year than the entire NASA budget. Forget the space station.

I think we ought to put these costs in perspective. But do we ever deal about food stamp costs or any other social program in terms of life cycle costs? No. We deal with them in 1 year, and multiply approximately $20 billion times 40 years. It is a lot of money. Talk about the interest on that.

So the comparisons of my friend from Arkansas we can compare to any governmental program. What is the cost of Congress going to be 30 or 40 years down the road and compound interest on that?

Let us compare all Government programs and not just single one out to make it appear far more costly than others.

We would hardly make a dent if we eliminated the space station, if we eliminated NASA. If we just say we do not want a space program anymore, no manned flights, no unmanned flights, no space program, we would eliminate 1 percent of the total budget this year.

So let us keep this in perspective. And also recognize when we talk about Congress having the courage to do something about the budget deficit that approximately two-thirds of the entire budget now are entitlement programs that we members of the Appropriations Committee have no control over. We now appropriate only for about one-third of the total budget. That is defense, that is nondefense discretionary, including NASA, NIH, and other very valuable programs, most of the educational programs that are not entitlements, interest on the national debt, and that pie will shrink.

If we continue at the present pace, you cannot cut defense enough, you cannot cut NASA enough, you cannot cut any of these programs enough to even slow the budget growth until this body and the House of Representatives have the courage to do something about the automatically indexed programs, however politically painful that may be.

You do not have to be too bright. You do not have to go to college and take college algebra to figure out that two-thirds of the budget is growing uncontrolled, no matter how rhetorical speeches that are made like tonight about fiscal year economy, that the budget deficit will only grow larger. Eliminate super collider, eliminate NASA, eliminate things that Government ought to be doing or at least traditionally we ought to be doing, water, sewer treatment plants, highways, all of the things we expect Government to do, national defense, and you are not going to solve this problem.

Get an old green eyeshade accountant with a black arm band, an eyeshade, and he has never heard of Republicans, Democrats, and liberals and conservatives, and ask him to analyze the Federal budget, and he is going to tell you the same thing. Two-thirds is uncontrollable; you cannot raise taxes enough to solve it. But we are going to pick on the space station. And pick on the space station here. There are no benefits.

Well, I cannot tell you what the benefits exactly are going to be 10 or 15 years down the road because when I was in college, when I was a senior in college, if anybody had even come up to me and said JAKE GARN, you will have the opportunity to fly in space in a reusable spacecraft, I would have said, oh, sure, because nothing had flown in space in 1955, not sputnik, nor our first 2½ pound satellite, not JOHN GLENN. Nothing had been in space. But I was able to watch JOHN GLENN, one of my great heroes on this Earth, being the first American to orbit the Earth, and even then, when that happened, little did I think I would have the opportunity to fly in space. But I did.

So how could I possible argue with the Senator from Arkansas about what the benefits will be 10, 15, or 20 years down the road. He does not know and I do not know. But I do know that from our space investment we have a $8 or $9 return to the private sector for every $1 we have spent. I defy the Senator from Arkansas or anybody else to find a Government program that you can make that statement about, 8 or 9 bucks back in the private sector for every taxpayer dollar spent. There is not one. There is not another one.

Forget dollar return. I do not know how you place a value on a human life. I do not know how you place a value on tens of thousands of people who are alive because of a heart pacemaker, or people like my daughter that are diabetics that there are insulin pumps available for. And maybe they could have been developed outside of that, but the fact is they were not. They were spinoffs. Whether we would have gone that direction or not, I do not know. But this Senator cannot place a value on a human life.

So the intangible benefits go on and on.

Said why do we not buy a Mir? I happen to have been in Moscow with General Alexi Leonov in November, who was the commander of the Soyuz part of the Apollo-Soyuz mission back in 1975. He took me on a tour of Star City. I spent considerable time in the Mir space station simulator. I am no expert. But they are not doing any serious science on Mir. Our space lab was bigger, more roomy, and was doing more serious science than they have done on Mir. Primarily, the benefit of that has been long-term physiological effects on their cosmonauts. But they have not done any serious science.

So if they gave it to us for nothing, you cannot compare space station *Freedom* with Mir. We had a better one up there, in terms of skylab. That just is an argument that does not wash at all.

There are a lot of things we can learn from the Soviets and, interestingly enough, another intangible that we do not talk about, men and women being in space. Two weeks ago I was here in Washington at the Association of Space Explorers. All you have to do to belong to that organization is have

flown in space. So there are not too many to us. But even during the height of the cold war—I am sure JOHN GLENN, who is on the floor, would say the same things—it did not matter what country you were from, or what language we spoke or what the color of your skin; there is a bond among people who have flown in space that is highly unusual.

When we were at the most bitter part of the cold war, Alexi Leonov and other Russians would come up and give us hugs. We did not know a cold war was going on. We were astronauts traveling together on space ship Earth at a very high rate of speed. How do you place a price tag on that?

I am still convinced that I could even take a Hitler, a Stalin, a Saddam Hussein, and if they could look back at this planet from space, they might have an entirely different perspective on what they are doing. How do you place a price tag on that? How do you place a price tag on space station *Freedom* and an international consortium getting together—obviously we paying most of the price, but astronauts, cosmonauts, astronauts from other countries getting together for the scientific exploration and the bonding that occurs from having had that experience?

I cannot compete with the rhetoric of the Senator from Arkansas. I wish I could describe to you what only two of us in this body can, JOHN GLENN and I, what this Earth looks like from space, how peaceful it looks, how beautiful it is, how magnificent it is, and wonder why we argue and fight, and why there are any problems on this Earth. It is impossible to understand what is going on in Yugoslavia at this time from that perspective.

My point is, yes, there is $8 or $9 back in the private sector for every dollar spent. But there are intangible benefits that nobody in this body can place a price tag on, some human values of this planet, and our place in the universe, and how we ought to behave. I think this is a very good expenditure, 1 percent of our total national budget each year for NASA.

Well, I listened to the scientists and heard my colleague talk about them and how they are against it. I could parade a list of letters from scientists on the other side of the problem. With most of the scientists, if they could design the space station, they would be for it. But if it is not in their image, they are against it. I have heard that over and over again: We are against it, but if you would change this.

One of the reasons for the cost overruns is that it has been changed over and over again. A couple of years ago, the Appropriations Subcommittee of the House of Representatives said: If you will downsize it and cut the cost, you will have stable funding.

How many times has NASA been told that? If you do it the way we tell you to do it, you will have stable funding.

I fight this battle year after year. It never ends. Part of the reason for those big cost overruns, a major part, is the fact that we simply have not been willing to fund it year after year. The good old stretchouts, cutback.

We are going to do that again this year. We are defending a budget that is well under what the President asked for. We have done that every year. And we blame NASA when we do not meet deadlines, when we underfund them. I think it is time to be realistic about this, and make certain that these scientists see their own selfishness.

A scientist in Park City, UT, last winter told me—we happened to run into each other on the chairlift while skiing. He said how much he loved Park City. He wanted to tell me he was against the space station; it was a waste of money. We could do it all with robots. Men and women were of no value.

And then he said, "I wish I could live in Park City." I said, "Why do you not?" He said, "My lab is in Boston." I said, "Run it with robots. Stay here in Park City and ski, and use your telephone and tell the robots what to do back there." He said, "That is impossible. I need to be in my lab." I said, "How in the heck have you got the guts to tell me that you cannot run your lab in Boston, but we can run one in space with robots?"

He has not spoken to me since. He did not like that answer. It had not occurred to him.

The other argument I heard was that we are going to do it in the shuttle. Having been on a 7-day shuttle mission, working on electrophoresis, processing pharmaceuticals in space—a lot more efficient; much more pure are the medicines you get out of that—we had the first unplanned EVA in the history of the space program. We had to shut it down.

What scientists will tell you they can complete their experiments in 7 days? Sure, you can do limited things. You need that permanent space station so experiments can go on weeks, months, and years, like they do here on Earth.

I am not going to take the time to talk about zero or microgravity and the benefits. Maybe overnight I will drum up the letters and statements from the scientists who talked about the wonderful benefits they have had even from limited experiments in 5-, 7-, 8-, 9-, and 10-day missions on the shuttle.

The other issue brought up was if we will just cut the space station and NASA, we will have a lot more money for other science. The budget does not work that way. The chairperson and I know that we get a 602(b) allocation. When NASA is cut, does it go to other science? No. It stays within that allocation. It goes to EPA, Superfund—those are worthwhile projects—and it goes to veterans and army cemeteries abroad. It stays within that pocket.

So you can go ahead and cut NASA and cut the space station. A scientist is not going to get an extra grant from someplace else. That is not the way it happens. That is not an opinion; that is a fact.

I hoped that in this debate we could really debate the merits of the space station and science, rather than election year "I am a great fiscal conservative, because I am voting to cut big projects." I just repeat that two-thirds of the budget are entitlements, and until we do something about that, the rest of it from both sides are rhetorical games that do not mean anything. Structurally, this budget is out of control, and we are not going to solve it by picking on the future or by eating our seed corn.

It reminds me of a cartoon I saw a few years ago that showed a Conestoga wagon with nobody on the backboard, and the caption said: "Well, we are going to send unmanned vehicles to the West, because it is too dangerous out there." Well, those of us who live in the Western United States are glad they sent manned vehicles, rather than unguarded, unguided Conestoga wagons out there to report back what they saw.

I just wish this body would get a vision of the future. I will be leaving the Senate in 4 months, after 18 years here. And my biggest disappointment is the shortsightedness of this Congress, the willingness to vote for things that give immediate political benefit, but the unwillingness to vote for something that may not bear fruit for 10, 12, 15, 20 years down the road.

I am one who happens to believe that there will be medical breakthroughs because of the research done in microgravity. Again, I cannot place a price tag on that. But I think we will solve a lot of health problems on this Earth by space research and development.

If you also want to solve a lot of environmental problems, look at mission the planet earth. There are a lot of environmental issues, from global warming to the ozone holes, and all of that, that we will not learn solutions to here on Earth; but we will from being in space.

The theme of this year's Association of Space Explorers convention was: Tomorrows Together. Well, that was a very interesting experience, to be with astronauts from a number of countries and talk about going not as Americans or Russians or Hungarians or Brits or Canadians, but to go together, as residents of planet Earth. That feeling was uniform from all of us.

Again, I repeat that I think there are a lot of intangible benefits that a dollar price tag cannot be placed on, of men and women, without regard to their color, nationality, national boundaries, without regard to what language; and that we recognize we are citizens of planet Earth, and start rec-

ognizing what we can achieve together. In space, I happen to sincerely believe we can provide a solution to a lot of those problems.

Let us not be shortsighted and play with 1 percent—that is the entire national budget—because it is a Presidential election year.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. MIKULSKI. I yield to the Senator from Ohio. The time will be charged to the Senator's time under the unanimous-consent agreement.

Mr. GLENN. Mr. President, I rise in opposition to the amendment to cut funding for the space station. I guess that would come as no surprise. But whether or not I have ever had any experience in this field is quite beside the point. I do not want to dwell on that at all.

I would like to begin by going back to the founding days of this country and examining the type nation that has developed here. If you challenge audiences, as I have done on occasion, and ask them to pick two elements, two things that developed in this Nation of ours that caused us to develop so successfully compared to other nations, if you challenge them and say, "Well, what two things caused this Nation to jump into first place in this world, in competition with every other nation, in a tiny little notch in history."

And you will have someone in the audience respond and say we had great resources in this country, and we did. No one could deny that. We sing about these things, the amber waves of grain and purple mountain majesties and rivers flowing to the sea, and they were true resources that were enormous in this country.

But there were other places in the world that had resources also and they did not develop the way we did. So I would submit that the first element was education. Education here not just for the kids from the castle, the rich kids, the politically connected; it was for everybody. Out of that came the best educated country in the whole world, at least until the last few years, and now we are under increasing competition from around the world. But I will not dwell on that. We have to do something in that area. We are all talking during the campaign year about what must be done in education. And no one supports education proposals more than I have during my a total tenure here in the U.S. Senate.

But apropos to our discussion this evening there is another factor that developed this country in addition to education: basic, fundamental, breakthrough research, Nobel laureate in quality, or just common curiosity about how can I make a better handle for the screen door? How can I do something that is better that common people have invented themselves or businesses have developed or we have developed in our national laboratories? And out of this component of all of this questioning, curious American spirit has come the new information that, when put together with that educated citizenry, has just led America to leapfrogging over other nations around this world in a short timeframe. It is what provided the basic information that lets U.S. capitalism work. Basic research is the building block of knowledge that reaches a critical mass, and all at once someone says, hey, I can take that idea and make a business, I can sell whatever it is. And out of that curious, questioning American spirit and American action and in so many different areas, from our homes to our schools to our laboratories to our businesses, the Government laboratories, it is that combination of curiosity and wanting to know the new and being willing to experiment on the new that has really led this Nation into preeminence in this world.

Obviously, I feel that the space station fits in that mold of research and fits very, very well. The space station is not there just to give a few people an experience up there in space. Quite far from that. Even since my own days in the program I said, if the program was to be worthwhile, at each step of the way we must do the basic research at each step. And even in the very early days of the program on the one-man space craft, we had research on board. Even then, on the very, very first orbital flight there were a number of experiments to be done. We carried those out. We did some photometric experiments and a whole host of things. Even on the very, very first flight where we were truly, to be honest about it, were more concerned about survival than we were about research, even then we were trying to put forward the idea that research is the basis of the program. And the program will be sold and supported by the American people on this basis. We are not going to spend hundreds of billions of dollars up there in space just to give a few people an experience up there riding around in zero G, pleasant though that my be. We do this because it fits in this pattern of American research that is valuable for every single person here on Earth. And I would add that it is also here on Earth where every dollar is spent. There are no businesses up there in space where you go out and write a check and spend our money and have the check cashed out there in space. It all occurs right here.

Let me say a word about my distinguished colleague, Senator BUMPERS. Senator BUMPERS is one of the most compassionate people in this body. I have heard him talk with almost tears in his eyes about him and his wife Betty and the efforts to get vaccinations for our children, for the children in Arkansas. His wife Betty led that fight for so many years, and there are thousands upon thousands of healthy children in that particular State today because of the efforts of Betty Bumpers and DALE BUMPERS when he was Governor of Arkansas. They led that program, and to their everlasting credit, many, many children that might otherwise have had some disease and some difficulty in their life by some disease will not have it, because of their efforts. So I do not talk down on that basis one iota. I supported him. Every time he has gotten on the floor here and tried to make funding available for those projects, I have supported him. And I wish every Member of the Congress would support him, because the future is our children and the healthy children can be the basis for the future that this country deserves.

But you know when it comes to this, I see the space program, I see the manned space program, in fact, exactly in this same research mold. It is research into the future. It is research in so many different areas. And if we go back through history, we just see what has happened in the past through human curiosity, by being willing to take a new look at something, because we have now expanded our curiosity around the Earth and learned new things and it let us improve the human condition.

Are there limits to what we can spend on the space program? Of course, there are. And I would be the last person in this body to say that we should spend unlimited amounts of money on space. To me right now I must say the Mars program fits in that mold. I think someday people will go to Mars, and I hope that it happens while I am around here to see it. But the Mars program should come only as a natural progression after we have maximized research return at the proceeding step.

In the early days of the program we had the Mercury space program, went to Gemini, went to Apollo. We now have the shuttle. We have had landings on the Moon. That all added in their own way to our storehouse of human knowledge, and now with the space station, we are ready to make a step forward here where we can, instead of doing experiments that are limited to a week or 10 days, we can now do the experiments that can be done on a permanent basis and use the space shuttle for what it was originally designed to be, a vehicle to take people and equipment back and forth so we can do the longer term research.

Mr. President, there have always been those at each step in our American journey who have decried money spent on research. What good can it possibly be? What good can come from it? There were those who, I understand, derided or made fun of Sir Alexander Fleming back some 65 years ago in Scotland when he was curious about mold in a little Petri dish of bacteria

in a laboratory, and why there was a little ring around where the mold was. As a humorous aside, Sir Alexander Fleming's curiosity about that mold, something that other people had never even thought about, gives us fits in our American economy today. Do you know why? Sir Alexander Fleming, out of his experiments on why mold killed the bacteria in the Petri dish, led to the discovery of penicillin. Penicillin and antibiotics have allowed us to live longer lives, and this has contributed to our Social Security problem. I say that only in jest—I certainly am glad Sir Alexander Fleming was curious, was just plain curious, wanted to know why it happened. He was in Scotland, but that questioning, curious American spirit came to this country and started out in our geographical exploration, even back in those days.

I read a quote once. I think it was from Daniel Webster. Do not pin me to that, but I think he was the one who made the statement, when the Senate was debating whether to provide money for Lewis and Clark to make their expeditions to see what was out there beyond the Mississippi to the west coast and mountains and so on.

I think it was Daniel Webster, at least he is one I recall, who rose in the Senate and made a statement like the following: He said, "Mr. President, I will not vote one cent from the public Treasury to move the Pacific Ocean 1 inch nearer to Boston than it now is."

Now what a myopic view of exploration, of curiosity. And what if all the people in those days had taken that same attitude?

Well, every advance that has been made by mankind has been made by curiosity, by being willing to experiment, by being willing to look into the unknown and use the changed condition for experimenting and for research. And that has been the history since back over 2,000 years ago when Archimedes did some experiments with volume and weight. He came up with a new ship design that was a shape that could be hollow and filled with cargo. And Newton's experiments on gravity, and Luigi Galvani and electricity, and so many more on down through history. People were curious about whether things could be done differently. That has been the nature of all human progress.

Now we have been able to run some very minor experiments on the shuttle. Those can be expanded greatly in days ahead when we can go up and actually keep the experiments going for months and even years at a time.

Now we have had some examples of medical and biomedical research in the past that have come out of NASA. We have just a few of these that I wanted to mention this evening, and we can have these in some more detail during our continued debate tomorrow.

We have programmable implantable medication systems now that can miniturize fluid control systems. These were developed for metering nutrients in Martian soil samples collected by the *Viking* spacecraft. The earthly benefits allows millions of diabetics to avoid daily insulin shots. That was an unmanned vehicle, I will go along with the critics on that.

Space flights have produced hormonal changes in kidney stone formation. A joint United States-Russian study is providing comparative data on longer space flights for analyzing this for potential benefit.

Diagnostic profiling of patients and the therapies mentioned have been of assistance in preventing renal stone formations.

There are dozens of things like this that we are looking into that can benefit from the space station and its longer term missions.

Bone loss, osteoporosis, calcium loss in space is approximately 10 times that observed during bed rest. Therapeutic drug trials and microgravity can be accelerated by this same order of magnitude. On and on and on. I will not try and give these this evening. We will have a few more things to say about these tomorrow.

NASA scientists and engineers have not focused solely on biomedical research. I would like to give you just a few examples of technologies and other spinoffs which have come out of NASA's research. It can be vital and they can be of application in commerce and industry.

Development of miniature gas analyzer for use on the *Viking*-Mars landers. Practical application: Sensor development widely used to monitor work areas for gas leaks, chemical spills right here on Earth. All sorts of on-board monitoring devices out of the spacecraft that now have common, every-day applications here on Earth. Smoke, fire-detection systems and so on.

Practical applications: All kinds of practical applications right now. There are 25 or so here that I may put in the RECORD sometime tomorrow. But briefly let us go to research to be conducted on *Freedom*.

Potential benefits. I did not go through all the accomplishments of NASA up to date, but let us move to the future and address some of these things.

The goal of microgravity research on space stations is to evolve processes that exploit the unique characteristics of the microgravity environment of space to accomplish results that cannot be obtained on Earth.

In the field of biotechnology, NASA will test a new, cell growth system, known as the rotating wall bioreactor, to see if tissue can be grown better during long duration space flight than can be grown on Earth. This will allow scientists to see for the first time how tumors grow without Earth's gravitational effects, which cause flaws.

It should also be possible to grow semiconductor crystals aboard *Freedom* which are more pure than those on Earth. What does that mean. Well, it means that we should be able to provide data that will enhance semiconductor technology and expand its applications. Semiconductor crystals play a vital role in the manufacturer of electronic devices, such as the tiny chips in televisions, microwave ovens, remote controls, and other modern conveniences.

Space station *Freedom* provides for the first time, adequate resources to support on-orbit materials science experiments requiring high temperature, high power, and long duration. Studying the behavior of materials and fluids in the microgravity environment will provide a better understanding of the effects and limitations imposed on processes carried out on Earth.

Now the payload experiments that can be carried on by space station *Freedom*. You have a modular combustion facility. Now that gets into fire safety technology, improving fire prevention and detection by increasing our understanding of how fires ignite, smolder, and spread. And they have already done some very limited experiments in that area.

There will be a fluid physics facility. This enables researchers to study basic fluid dynamics and behavior of fluids in the absence of gravity.

What does this mean? What is the potential benefit from that? Well, it gains insights into atmospheric processes, ground water movement and the engineering properties of soils; new materials and process innovations in the chemical and materials industries.

It will have a furnace facility, which produces crystals of electronic and photonic materials and studies solidification process.

Potential Earth benefits of that. Advance technologies for high performance materials; gain knowledge of the dynamics of solidification that may allow novel materials to be produced.

Another one of particular interest. There will be an advanced protein crystal growth facility on board the spacecraft. Now the description, it grows protein crystals for high resolution analysis which are larger and more pure than those grown on Earth. Well, so what? The potential benefits right here on Earth further our understanding of protein crystalization, allows new insights into the function of proteins, and provides information for drug development and treatment of disease.

Now they have, you know—I might digress for just a moment before I go on to the next facility. But you recall a few missions back where they were rescuing the wayward satellite up there and had such beautiful pictures coming back to Earth. Everybody concentrated on that, as did I, but I had to

remind the press that on board that shuttle was something that might have far more impact on the world in general than just the rescue of that satellite. There was a protein growth experiment on board there and these protein crystals which could be grown with greater purity and size definition and have a greatly increased use in medicine, we are told that may even make tailor-made drugs for specific illnesses that are impossible to make right now.

Also manned observation techniques. Utilizing optical quality, Earth-oriented windows, station astronauts in direct communication with ground-based scientists will analyze and enhance the technologies for observations made by remote sensing devices. The present capability to view Earth from the space shuttle will be extended by the enhanced observation and communications technologies developed through this experiment.

The VLSI circuits, scale integrated circuits, are especially fabricated to permit accurate detection of circuit failures, will be exposed to environmental radiation with the space station. Those have very large scale adaptations here on Earth also.

Now the Battelle zeolite crystal growth facility will also be a part of this. It will be a multipurpose, multitemperature zeolite crystal grown furnace, which will be able to process up to 38 zeolite solution samples.

Now potential Earth benefits. They have several applications. As ion exchangers they are used to extract radioactive elements from waste. We are so concerned about radioactive waste these days, and I have been active here and took the lead in the Senate on the cleanup of our nuclear waste facilities all over this country, nuclear weapons waste from all the plants all over the country, This may benefit that cleanup.

The ion exchangers that zeolites have application to can be used to extract some of those radioactive elements from wastes. As adsorbers, they are used to remove sulphur dioxide gas from smoke stacks, natural gas from crude oil, to separate air into its individual elements, to separate ammonia from sewage effluents and to remove carbon dioxide from manned spacecraft and submarines. As catalysts these zeolite crystals are used to crack crude oil and to convert methanol to gasoline. As dessicants they are used to remove water from hydraulic systems, air, natural gas, cracked gas, refrigerants. They can also be used in medical and resin fields.

Aboard the space station *Freedom* there will be a vapor transport facility. As Earth-grown crystals form, gravitational forces cause defects and inhibit growth. In space, gravitational effects are virtually eliminated, allowing crystals to grow much larger and with fewer imperfections in their structure.

The quality of a crystal directly affects its strength and performance while its size determines its functional capability.

What is the potential benefit here on Earth? Larger and more perfect crystals grown in this facility, the VTF, vapor transport facility, would result in more useful infrared and ultraviolet detectors and semiconductors—listen to this—semiconductors which could be used to manufacture trillion-instructions-per-second processors. Optical materials make possible speed of light computing, optical memories and optical switches.

Could I guarantee all that will happen?

No, I wish I could. But I find it exciting when we get into research where people are curious, where we are going to find the new, the untried, the things that are the building blocks of the past. New information. We stand to gain so much information from research on space station *Freedom* that I think we will have a much greater return than anything we spend.

If there is one thing we learn, it seems to me from business experience, or as a nation, it is while we may not be able to see the final product at the outset, money spent on basic research normally has a way of paying off in the future beyond anything that we see at the outset.

Advanced sensor development obviously will be a major benefit from space. Advanced sensors looking at Earth or space, may give shorter turn around time here on Earth for testing, developing new sensors, enables quicker technical transfer for civil sensing applications.

There are many other things that will be used on the space station that have application here on Earth. A Bioregenerative water system: plants will produce potable water from waste water by condensation of water evaporated from plants' leaves, absorb carbon dioxide from the atmosphere, release oxygen into the atmosphere.

Potential Earth benefit? Well, it has the potential of possibly providing insights for more effective and economical ways to remove contaminants from industrial effluents and other waste streams—an enormous advantage.

Float zone crystal growth. This experiment studies elimination of the harmful role of gravity convection and sedimentation as well as the possibility of growing electronic crystals in space without contact with the glass walls of a vessel; much purer crystals.

Potential Earth benefit is, that when implemented into devices, these semiconductor materials will vastly improve integrated circuits, charged coupled devices and field effect transistors. The latter devices which are used in militarily radar and microwave telecommunications systems are expected to show dramatically improved performance.

There will be a gravitational biology facility also, which supports basic research to understand the effects of gravity on plants and animals; the effect on body functions applicable here on Earth; use microgravity to permit unique studies of developmental processes.

U.S. commercial electrophoresis system. That is a process that uses electrical forces to separate mixtures. In continuous flow electrophoresis, the contents take different trajectories and therefore form different streams which can be collected separately. Electrophoresis in microgravity allows for purer, more complete separation of materials.

The potential benefit here on Earth? U.S. companies could use space-based electrophoresis to purify existing or new products, such as growth hormone. That is important in the impaired growth of children and how we treat it. And, also, beta cells for diabetes and epidermal growth factors for wounds and burns, all come out of potentials in this area.

We have a gas grain simulation which simulates fundamental physical and chemical processes involving particles in the submicron to millimeter size range. Potential Earth benefit? Increased knowledge of very fundamental physical and chemical processes of small particles. Also, increased understanding of atmospheric processes, including climatic change.

Another one, the biotechnology facility. This will allow us to do biological research and allow growth of cell cultures without gravitational stress. The potential Earth benefits? Improved knowledge of tissue development and differentiation; increased knowledge of how normal and diseased tissues respond to therapies without endangering patients, enhanced knowledge of cell interaction in differentiation and growth, maturation and differentiation.

Mr. President, that will not be all that will be on the space station. We will also have what are called small and rapid response payloads which will be open for proposals from the educational, the academic and the university communities and there will be other racks on there, also, to take care of such things as space physiology, materials processing system, solution crystal growth, a module for integrated cell research in orbit, test module for plants and organics, an organic polymer facility—polymers, such tremendous capability for the future. And also very high speed integrated circuit fault tolerance tests.

Mr. President, the space station *Freedom* will continue to build on the past successful history of the space program by providing valuable applications for everybody's benefit.

I will not run through tonight all of the possibilities of the applications of

these experiments. We may get to some of these tomorrow. I mentioned a few of these here. There are lists of more specific benefits here that may occur.

Let me add one other thing that my distinguished colleague from Utah, Senator GARN, mentioned awhile ago. We could just call this the inspirational angle, education and the intangibles of space: The need to explore, the need to encourage people to be curious, to keep that questing American spirit that I talked about very briefly when I started my remarks here this evening.

I do not think we can ignore that. It is something that is very important. And if we go back to the early days of the space program, you know, during the 1960's when the space program first began to grow, the number of students entering science and engineering doctorate programs skyrocketed. Who can say how important a vibrant space program was in inspiring young people in those fields? I do not know the answer to that. But I think it was a very beneficial effect. Was it worth the money we will spend on space station *Freedom*? No, probably not by itself. But it is an additional benefit, if you will. It is an additional advantage of space station *Freedom* that I think we should take very seriously, along with all of the specifics of research that I have mentioned here only very briefly this evening.

So, we may call it flag waving or expensive propaganda, as some would say. I just call it common sense, trying to inspire our young people for the future in this country.

This program, I believe, will go a long way in supporting trade, competitiveness for the aerospace industry, for other scientific areas in our country. We will have some charts on this which we can present tomorrow. The space station is getting good support from Canada, from Europe, and Japan. They have all made the space station a critical element of their space policy plans and budget.

The political commitments to the program were made by Canada, Japan, nine European nations, and our own Government in the intergovernmental agreement that was signed in 1988. And Canada will contribute about $1 billion to that, the European Space Agency about $4.5 billion, Japan $2.2 billion, and Russia, the former Soviet Union—active efforts between the United States and the Soviet Union, or Russia, to develop a Soyuz vehicle for a space station as a life boat are underway now.

We will retain access to all of this information and research from *Freedom*.

I will not go into all the employment figures. But there are some 70,000 to 100,000 people, in sum, that are employed directly in some 37 States and the District of Columbia, in this effort.

Mr. President, we have many different other things that we could pursue with the space station here this evening but I know we are at a late hour here and I will save some additional remarks for tomorrow.

The issue of cost has been brought up and very effectively debated by my distinguished colleague from Arkansas. He is very concerned about the budget. I am, too, but I think even in tough times we are well advised to spend some of our money looking into the future and providing for the future and doing the research for the future of which space station *Freedom* will be such a noteworthy part.

Let me just say this, we will have a chart for tomorrow. The space station represents about 15 percent of NASA's total budget. But when viewed in proportion to all of our domestic discretionary spending, which is basically what we are talking about, it is fourtenths of 1 percent of that budget. Space station is only one-seven hundredths of the total fiscal 1993 budget.

So I think we must keep the cost of the program in perspective. I believe that we will get far more than that back in significant returns on this investment.

We hear comments about the growth of the program in the future and what may occur, and there will undoubtedly be growth in the program. I would be the last who would deny that. But the Augustine Commission, a distinguished blue ribbon committee composed of space experts, stated in 1990 that NASA should commit 20 percent of its budget to space science programs. And NASA has done this. We have a chart that will indicate that and we can get into that tomorrow.

I hate to argue against my distinguished colleague, Senator BUMPERS. He is one of the most respected Members of this body, but I feel as much as he wants to cut back that we would be making a big mistake, we would be in effect eating our seed corn for the future if we start cutting back on something like space station that has such a tremendous potential inherent in a microgravity research facility.

Can I say for sure that all of these research benefits will happen? No, I wish I could. But the nature of research is that you do not know what you are getting going in. You do not know what may occur, what serendipitous results there may be as you go into basic research, whether it is in the laboratory or in a university or a college or in a space station. But we do know from the past that money spent on research normally has a way of paying off far beyond anything we can see at the outset.

It is in that vein, Mr. President, that I support space station *Freedom*. I think it also embodies the American spirit of exploration and our hopes for the future. I think it fascinates young minds, it draws their attention to science and mathematics at a very young age, and while we do not spend all this money just to inspire the children, it certainly is a great spinoff of this program that I think is very, very worthwhile.

I reserve the remainder of my time.

Ms. MIKULSKI. Mr. President, I too rise in strong opposition to the Bumpers amendment. I know that the hour is late. But it is also late for the United States of America. We are running out of time, we are running out of money, and we are running out of technology. That is why I support space station *Freedom*. Tonight, I will not go into a long explanation about my advocacy for the space station, I am just going to say a few words and reserve the remainder of my remarks, along with the ranking minority member, for tomorrow.

But I will just bring to the attention of those people watching this debate that we have heard from two Senator astronauts: The distinguished Senator from Ohio who was the first American in space; the distinguished Senator from Utah, another space Senator. If they do not understand the space program, then I do not know who does understand the space program. But these Senators were not here arguing for days of glitz and glory and explanation. They were talking about the specific and practical applications that manned space flight will bring to planet Earth. They talked about scientific research, scientific advancement, and how, by pursuing the goal of space station *Freedom*, we are creating an environment in space that we can never create on the planet Earth.

The Senator from Arkansas spoke about his advocacy for child immunization and indeed he has been an advocate. He has talked about how we can perhaps find a cure for AIDS if we had more money, or other types of issues and illnesses facing the American people. That might be so. But I know right now already in some of the science projects we are doing, we are taking tremendous advances on what we will be able to do in terms of life science research and microgravity research.

This space station has had a lot of discussion. This is not a new issue. This is not a new idea. Every year we go through these same rituals and every year the results are the same. We continue to pursue the space station. But I will tell you something, Mr. President, we run the risk of losing our best and our brightest who are working on the space station because of a lack of sustained commitment, reliable commitment to space station *Freedom*, a lot of people are saying why should I stick with this? I do not know if it is going to be here today or gone tomorrow.

We need to hold our scientists together. We need to see this project through because I truly believe that in space station *Freedom* we are going to

generate jobs today and jobs tomorrow—jobs today in terms of the actual manufacturing of space station *Freedom*, but jobs tomorrow because of what we will learn because of space station *Freedom*.

I believe it is the job of a U.S. Senator to, of course, advocate the long-range interest of the United States of America. That is why I left the House. I loved the House, but I thought in the Senate with a 6-year term we can worry about those long-range interests and at the same time we are worrying about those long-range interests, we could worry about saving jobs, saving lives and saving neighborhoods.

Space station *Freedom* might seem like a technological program with no practical things, but I do believe it will save jobs and I believe it will save lives and I do believe it is in this development of technology that we will be able to develop other manufacturing products.

I will have more to say about this tomorrow, but that is essentially the reason I support space station *Freedom*. There are other reasons, like our obligations to our partners and so on, but we will have more to say about that tomorrow.

SPACE STATION *FREEDOM*

Mr. HOLLINGS. Mr. President, as chairman of the Committee on Commerce, Science, and Transportation, the authorizing committee for the U.S. space program, I have long been an avid supporter of NASA and its many important programs. I understand the value of space exploration, which has been a source of excitement and inspiration to millions of Americans. Our initiatives to explore outer space and the solar system are important to all human beings, as they reflect our innate desire to probe the unknown and to expand our reach beyond the current frontiers on Earth.

However, after listening to the space station debate, I have reached the conclusion that this country no longer can afford to continue the space station *Freedom* program. For that reason, Mr. President, I will support the amendment offered by the distinguished Senator from Arkansas, and I urge my colleagues to do the same.

Mr. President, according to the Congressional Budget Office, the Federal budget deficit for fiscal year 1992 now is expected to reach a record $314 billion. To illustrate how Federal spending his spiraled out of control in recent years, it was only 12 years ago, in 1980, that the accumulated debt for the Federal Government totaled $709 billion. The Nation has accumulated this sum through events such as the Civil War, World Wars I and II, and numerous other emergencies that occurred during the first 200 years of this Nation's existence. Yet, in the last 12 years of deficit spending, we have seen the accumulated Federal debt grow to a point where it presently is nearing $4 trillion.

In this fiscal environment, how can we realistically agree to build a space station expected to cost some $100 billion to build and operate?

Quite simply, our Government does not have the resources to fund a program as all-consuming as the space station, while attempting to support a vast array of smaller, but equally important space, science, and technology development programs. My fear is that, if we do not act to stop this program now, this space station *Freedom* will continue to soak up billions of scarce dollars—at a time, Mr. President, when Uncle Sam is already forced to borrow nearly $1 billion each and every day.

In no way am I advocating that we forsake the leadership position of the United States in space. Our Nation must enhance its efforts to gain access to space so that we can continue to explore our solar system. We also must pursue aggressively space science missions, including the Mission to Planet Earth, so that we can understand better our changing global environment. And our Nation must continue its investment in space and aeronautical research and technology development to preserve our preeminence in the international marketplace.

However, the Nation's resources are not limitless. Does anyone really think we will have the $25–$30 billion needed to complete the space station during the remainder of the decade? The Congressional Budget Office already has told us that if we take no action at all, the Federal deficit, after dipping slightly, is expected to grow to more than $500 billion in the year 2002. It is absolutely imperative that we do not attempt to accomplish in space that which we realistically cannot afford.

Some have argued that this kind of thinking reflects a failure to look beyond today's problems to the future. They claim that the debate on the space station is really a debate over investment in the future versus current consumption.

Mr. President, to that I only can respond that it makes no sense to spend billions of borrowed dollars on exploring space—purported to help future generations—when we leave our children, and our children's children, with the debt that we compile to get there. To this Senator, that seems to be nothing more than a plan to ensure the long-term economic failure of this Nation.

When first proposed in 1984, the space station was projected to cost $8 billion, and expected to be orbiting the Earth in 1992. NASA's plans now call for an expenditure of $30 billion through the remainder of this decade to build and launch the space station *Freedom*, with at least another $60 billion needed to operate the facility during its 30-year life expectancy. Others, most notably the General Accounting Office, question the accuracy of these figures. The Comptroller General has testified that the space station *Freedom* will cost at least $118 billion to build and operate over the next several decades. But who really knows? There has never been a detailed, comprehensive cost analysis done on this project.

Already, the space station program has gone through an array of redesigns, descopings, and modifications. In fact, of the eight original missions envisioned for the space station, the only surviving justification for its development is as a laboratory to conduct life science and microgravity materials science research. As a result, much of the money invested to date in this program has gone to little more than preparing new designs.

Having been stripped of all other mission responsibilities, the space station is now intended to serve as a research lab. The fact is, however, that the present design has received overwhelming criticism from the scientific community, which is expected someday to use this facility. Among others, the National Research Council continues to express concerns about the scientific capabilities of the space station, noting the reduced crew size, the lack of power, and the delay until after the year 2000 before meaningful life sciences research can be conducted.

No one disputes the importance of research in the areas of life science and materials science. There experts simply question whether the current design of the space station *Freedom* will enable effective research at a cost that can be supported within the realities of the Nation's Federal budget.

We must use common sense. Let us instead invest this $2 billion in other medical research, industrial technology, or space science programs, and perhaps most importantly, in deficit reduction.

Mr. President, as I have stated, I am a strong supporter of space exploration, just like I believe that we should aggressively pursue other programs, like the Mission to Planet Earth. I share the belief that someday in the future we will return to the Moon and send humans further into our solar system. I fully understand that, in order to do so, we must have more data on how human beings are affected by long-duration space flights.

However, there are other, far less costly, means of accomplishing these objectives. Remembering that the current space station design once was intended to accommodate eight separate missions, it would seem logical that to conduct life science research, a much smaller facility could be developed that fit within the expected availability of Federal funds. With respect to microgravity research, few people expect that this work effectively can be accomplished on the present space sta-

tion where humans will be located on a permanent basis. A more practical and affordable solution may be free-flying spacecraft designed solely for that purpose.

Specific alternatives using existing technology have been under consideration for years. Feasibility studies have been conducted by a major aerospace contractor on the possibility of flying two separate space shuttle orbiters into low-Earth orbit, mating them to create an orbiting lab capable of remaining in space for up to 90 days. Pursuing that same theme, NASA's former Deputy Administrator once promoted the possible use of the space shuttle in low-Earth orbit for as long as 9 months.

I fail to see why needed research work cannot be accomplished on the long-duration orbiting space shuttle or through other more cost-effective alternatives. I also fail to see the need for this space station, with its $100 billion price tag.

The time has come to face up to the realities of this program and our current fiscal environment. It makes no sense to borrow hundreds of billions of dollars for this project and burden future generations with additional debt without significant benefits. We should use commonsense today and vote to stop funding this costly space station.

SPACE STATION PROGRAM

Mr. DANFORTH. Mr. President, I rise in support of space station *Freedom*. Space station is a great source of national pride. We are the only Nation in the world with the experience, skill, and resources to undertake a project like space station. We may have lost some ground in many high-technology areas. However, the United States remains the world leader in civil space. In 1990, the United States suffered a $101-billion deficit, but the aerospace industry showed a healthy $27.3 billion surplus.

After a great many years of planning, NASA is now close to embarking on the assembly of space station. When assembled, the United States and its space station partners—Canada, Japan, and Western Europe—will have an orbiting laboratory in which to study long duration space flight and to do microgravity research.

NASA has already made considerable progress. We now have a detailed design for space station which will permit a crew to live there without dependence on the shuttle by the year 1999. This recent design reduced the earlier $38 billion cost estimate of the station by $8 billion. NASA has already constructed a space station processing facility at the Kennedy Space Center and a mission control facility at the Johnson Space Center to support the station effort.

Mr. President, with the decline in defense spending, space station is essential to maintaining our technological base and our skilled work force of scientists and engineers. Currently, tens of thousands of Americans in 37 States are employed in the space station program, trying to make it a reality. I am particularly proud that a company from my home State of Missouri will play a key role. McDonnell Douglas has the task of building the aluminum framework for the mammoth 353-foot, structure.

No one debates the need to spend more money to address pressing current problems such as poverty, homelessness, and disease. However, it is equally important to invest in our future. The future of our U.S. competitiveness and national security will depend on precisely the kind of scientific and technological breakthroughs that space station is expected to generate.

As with previous space missions, we cannot predict what benefits space station will generate. However, if the past is any indication, we can assume that space station will produce a stream of spinoffs that will stimulate our economy and improve the quality of our lives. Spinoffs from previous space missions have enhanced our lives in numerous ways that we now take for granted. Microcomputers, pacemakers, water filtration systems, communications satellites, and many other developments were all byproducts of our space program.

Aside from potential spinoffs, space station will teach us about humans' ability to live and work in space for extended periods of time. Recent shuttle missions have shown that space flights of only a week can cause considerable calcium loss and muscle reduction. The information and experience gained from space station will lay the critical groundwork for any future manned missions to the Moon and Mars. Space station will also help improve the quality of our lives here on Earth. As a microgravity laboratory, space station may develop drugs and materials that could not be developed on Earth.

Space station is an international science project. Japan, Canada, and Western Europe have all invested considerable time, money, and effort in working on their segments of the space station program. To date, they have spent billions of dollars on space station. As space projects become increasingly complex and expensive, this kind of partnership will be essential. Proceeding with space station will send an encouraging signal to other nations considering this type of joint venture with the United States.

Mr. President, there is yet another reason to continue space station and it concerns our young people. Space station promises to play an important role in stimulating interest among young people in careers in science, engineering, and other technical areas. Many of today's scientists and engineers chose their fields of endeavor after being inspired in their youth by the Apollo mission and other manned space missions. Unless we can direct more young people into math and science, our technological base, our competitiveness, and our national security could be severely compromised in the next generation. Space station will help expand our pool of scientific talent.

Mr. President, a vote for space station is a vote for civilian space, a vote for U.S. competitiveness, and a vote for our future generations. I urge my colleagues to join me in supporting continued space station funding.

WE CAN'T AFFORD SPACE STATION "*FREEDOM*"

Mr. ROCKEFELLER. Mr. President, I believe very strongly in NASA and the U.S. space program. America is the world's leader in space exploration and research, and we should maintain that role with pride and proper funding. I believe in the value of manned exploration of space, in the importance of capturing children's imaginations, and in the need to encourage them to study math and science.

As a member of the Science, Technology, and Space Subcommittee I have looked carefully at the current configuration of the proposed space station and its ever increasing cost projections. From that examination, last year I concluded that we have to put our resources in higher priorities with higher returns on our investment. With even more study of the proposal this year, as I considered this project's mammoth costs and the serious questions which have been raised about its scientific merit, I have become increasingly convinced that we should be spending taxpayers' dollars on more critical needs both in science and other areas, including deficit reduction.

Scientists and other authorities from across the spectrum are warning us about the space station's cost and lack of scientific, technological, and educational merit. Leaders from such organizations as the Space Studies Board of the National Research Council, the U.S. Council on Competitiveness, the American Physical Society, the National Science Foundation, the Federation of American Scientists, and many others believe the space station is a drain on more important science and technological undertakings.

A group of major scientific societies, with a membership of more than a quarter of a million experts from a broad range of scientific and technological communities, most succinctly stated their view on space station *Freedom* in a joint statement they sent to Members of Congress on July 24, 1992. Representing the views of scientists from the United States, Canada, Europe, and Japan, this is a very clear and very strong statement that deserves our attention. Let me quote part of it:

* * * in our judgment, the space station is a multi-billion-dollar project of little sci-

entific or technical merit that threatens valuable space-related projects and drains the scientific vitality of participating nations. International cooperation should instead be directed toward projects with scientific value or cost-effective technical potential.

Even the White House Office of Science and Technology Policy has asserted that one of the few areas of scientific research that has been used to justify building the station, materials science research, is not a valid reason. The OSTP concluded that materials science is "at most, incidental to the space station." In its study of the latest of the many space station restructuring plans, the National Research Council's Space Studies Board also determined that "the limited microgravity research that could be conducted * * * does not merit the investment."

Both the Office of Science and Technology Policy and the Space Studies Board have also questioned the station's ability to support the contemplated life sciences research, the only other research objective left from the original design. The Space Studies Board concluded, in fact, that the space station "will be inadequate to meet the requirements for space biology and medicine research."

Moreover, we have the views of the Director of the National Institutes of Health, Dr. Bernadine Healy, on the space station's role in biomedical research as she attempted to get NASA to stop presenting a distorted and misleading view to members of Congress. In a July 28, 1992 letter to the NASA Administrator, Dr. Healy wrote:

I am particularly disturbed by the implication that NIH views future space experiments as critical to the overall success of the biomedical research enterprise * * *. We continue to believe that it is too early to determine the true value of space research in contributing to the solution of conventional health problems encountered on Earth. I would urge NASA to make every effort to convey a balanced assessment of the future role of space research in the national biomedical research system in order to avoid a serious disservice that will result through the creation of unrealistic expectations and overpromise.

Mr. President, in a perfect world, with no deficit, with health care for everybody, a society free of drugs and crime, and a good education for all of our children, I might say, "Yes, maybe we can afford a space station, too." But, we live in the real world where we have to make choices and set priorities.

This is not how we should spend the taxpayers' money. The space station as it is now designed clearly should not be one of our priorities. With a projected cost of $120 billion to build and operate, it means crowding out much more promising research, not only space research but also scientific areas that we know will produce real, long-term economic benefits for Americans. It means crowding out much more urgent spending on health care, education, and other social programs. It also means adding to the budget deficit at a time when the CBO's recent update of its economic and budget outlook report indicates that we will have yet another record deficit, the fourth record deficit in 5 years.

Mr. President, I believe we should explore less expensive, more effective alternatives before we become irrevocably committed to this project. As a member of the Science, Technology, and Space Subcommittee, I am prepared to look at more efficient, more cost effective alternatives. Such alternatives, including both manned and unmanned space platforms which better meet the goals of the U.S. space program, have already been proposed and should be considered.

I recognize that my view may not be shared by a majority of my colleagues, but I know this is not the last time the Senate will consider this issue. As our examination progresses, I hope that the supporters and opponents of the current proposal will not get locked into preconceptions but will instead listen to each other when new information develops. For my part, I pledge to do a great deal of listening.

SPACE STATION *FREEDOM*

Mr. LEAHY. Mr. President, several weeks ago, the Senate was embroiled in a debate over an amendment to balance the budget. We heard long speeches about how Congress could not be trusted to manage Federal spending and make tough choices to cut programs. Proponents of the amendment were trying to make Congress the scapegoat for the failed Bush and Reagan economic policies of the past 12 years. Curiously enough, these proponents did not say much about the failure of these Presidents to present Congress with a single balanced budget.

Ironically, Mr. President, the leadership for making the tough cuts is coming from Congress—we who were criticized so frequently over the past several weeks. Today, we have an opportunity to make a tough fiscal decision: Cancel space station *Freedom*.

Every American swells with pride over the memories from our space program—Neil Armstrong taking that first step for mankind, the amazing images of the solar system from cosmic explorers and most recently the breathtaking rescue of the Intelsat satellite.

But our current fiscal crisis requires tough choices. We need to pay attention to problems right down here on Earth and temporarily put aside expensive space programs. We need to restore our economic health and take care of the millions of unemployed Americans before we spend $30 billion on an outpost for four astronauts.

Mr. President, my opposition to the space station is well known. The cost of the program is not worth the return on our investment. The goals and missions of this program have been a moving target since the initial proposal to Congress. As the enormous cost of the program became apparent, NASA has been forced to redesign the station several times—at the cost of many of the station's original objectives.

Hopes that the station would be a powerful astronomical observatory are gone. The dreams of dramatic materials processing are no longer possible. ironically, it turns out that microgravity research is more effectively carried out on unmanned platforms. Promises that the station would yield cures for cancer and other horrific diseases are unfair to the individuals battling these diseases. Dr. Bernadine Healy, Director of the National Institutes of Health, went so far as to warn NASA about, "the creation of unrealistic expectations and overpromise."

Perhaps the most damning criticism of the redesigned station came from a National Research Council panel in 1991 which stated, "The board believes that neither the quantity nor the quality of research that can be conducted on the proposed station merits the projected investment."

Proponents of the station are pulling out all the stops to save the program. One Member in the House went so far as to say that halting the station would eliminate 70,000 high-technology jobs. Well, Mr. President what good are these jobs if we cannot afford to educate Americans to fill these jobs.

The choice is clear: We cannot afford a $100 billion space program when we face economic stagnation caused by a strapping $300 billion deficit. I will be interested to see how many supporters of the balanced budget amendment vote to cut the space station. Here is one opportunity to bring fiscal responsibility to our Government.

Ms. MIKULSKI. Mr. President. I think really for this evening this wraps up the debate on VA/HUD.

I would like to thank all my colleagues who participated in it, and we want to now proceed to being clear about what our arrangement will be tomorrow and move to wrap-up.

I reserve the remainder of the time for the opponents to the Bumpers amendment.

To be sure what we agreed to earlier this evening, tomorrow after the vote on the nomination of Mr. Carnes, we will return to this bill. We will complete the discussion on the space station.

Senator BUMPERS has time, Senator GLENN has additional time, Senator GARN and I have time in which we also will be yielding to other Senators who wish to speak on it. Then we will move to a vote on the space station and then continue with other aspects of the bill.

Before I do wrap-up, does the distinguished ranking minority leader have any comments?

Mr. GARN. Only to say I agree completely as the Senator outlined the program tomorrow. So I am ready to do wrap-up.

PRODUCT LIABILITY FAIRNESS ACT

CLOTURE MOTION

Ms. MIKULSKI. Mr. President, I call for the regular order with respect to the motion to proceed to S. 640.

The PRESIDING OFFICER. The regular order is a motion to proceed to S. 640.

Ms. MIKULSKI. Mr. President, I send to the desk a cloture motion on the motion to proceed to S. 640.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 640, a bill to regulate interstate commerce by providing for a uniform product liability law:

Jay Rockefeller, Charles S. Robb, John Danforth, Bob Kasten, Lloyd Bentsen, Joseph Lieberman, John Glenn, Don Riegle, Conrad Burns, Trent Lott, Christopher J. Dodd, Dan Coats, Nancy Kassebaum, Claiborne Pell, Kit Bond, John McCain, Don Nickles, Slade Gorton.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the motion to proceed be withdrawn.

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

Ms. MIKULSKI. Mr. President, on behalf of the majority leader, I also ask unanimous consent that when the cloture vote on the motion to proceed to S. 640 occurs, the mandatory live quorum as required under rule XXII be waived.

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

MORNING BUSINESS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

TRIBUTE TO SENATOR QUENTIN BURDICK

Mr. KENNEDY. Mr. President, today, all of us were saddened to learn of the death of our colleague, QUENTIN BURDICK, and I join in offering my deepest condolences to his family.

The Senate and the country have lost not only an outstanding Senator, but also one of the great champions for both working people and the American farmer.

QUENTIN BURDICK has been a friend since I first came to the Senate. He was a Hubert Humphrey Democrat who believed very deeply that urban and rural America could find common ground for the benefit of both. Although he came from a State without a large urban population, he believed in a cooperative alliance between working families and family farmers. Throughout his career in the Senate, he worked effectively and with great insight for policies and programs which enhanced that great progressive tradition of our democracy.

He was a giant of the North Dakota earth. He was proud of his roots in that State, and he never stopped working for his constituents. To the generations of poor workers and farmers he served, he was the voice who spoke for them in the highest councils of government, and he never let them down.

I was privileged to serve with Senator BURDICK on the Judiciary Committee from 1963 to 1976. During his years on the committee, he was committed to defending civil rights and human rights, and his support never wavered. He knew that the promise of America will never be achieved unless we ensure equal rights for all our citizens.

After he became chairman of the Environment and Public Works Committee in 1987, he helped fashion major legislation that will help protect our land, our water, and our air for generations to come. In the next century, wherever citizens work, hike, fish, and hunt in North Dakota and in all other parts of America, QUENTIN BURDICK's contributions will be honored and remembered.

Our colleague was a humble, hardworking, and compassionate leader. When asked about his political philosophy, he once said, "I've tried to respond to the needs of the ordinary person." That unique quality is what made QUENTIN BURDICK such an extraordinary man and extraordinary Senator. We shall miss his leadership in the debates ahead, but most of all we shall miss his friendship.

IN MEMORY OF SENATOR QUENTIN BURDICK

Mr. DODD. Mr. President, it is with great sadness that I rise today to mourn the loss of a dear friend and colleague, QUENTIN BURDICK.

Like myself, QUENTIN followed the footsteps of his father to Congress. There he demonstrated integrity, honesty, and commitment to those he was elected to serve. As a public servant for over 30 years, he was dedicated to his constituents in North Dakota. He made great strides on their behalf and his accomplishments will long be remembered.

As the chairman of the Appropriations Subcommittee on Agriculture, QUENTIN was a leading advocate for rural Americans and fought many long and arduous battles for programs vital to the growth of farms in this country. Under his leadership as the chairman of the Committee on Environment and Public Works, we have witnessed the birth and passage of landmark legislation that preserves one of our most valuable and fragile resources—the environment.

Mr. President, I would like to offer my deepest sympathy to his wife, Jocelyn, and to his family. QUENTIN BURDICK symbolizes over three decades of hard work, diligence, and leadership. I feel quite fortunate to have had the opportunity to have known and worked with someone with such a distinguished and impressive career. I know he will be missed by myself and by all that knew him.

TRIBUTE TO R.C. RILEY, BENTON, KY

Mr. FORD. Mr. President, I rise today to pay tribute to Mr. R.C. Riley, who has just completed a term as president of the Independent Insurance Agents of America [IIAA]. Mr. Riley is a citizen of Benton, KY, and president of the Peel & Holland Insurance Agency.

Next week in New Orleans, when R.C. steps down from his elected post as leader of the Nation's largest insurance trade association, will mark the culmination of many years of distinguished service to this group and his profession. A service that began in 1978 when R.C. was elected as president of the Independent Insurance Agents of Kentucky. Before being elected to national office, he served on IIAA's national board as a representative of Kentucky.

In 1985, R.C. was elected to IIAA's executive committee and served with distinction for 6 years before rising to the presidency. During his long and distinguished association with this group, R.C. has had the opportunity to come to Washington and testify before a variety of regulatory and congressional committees. His thoughtful comments and insightful testimony on issues affecting the insurance industry and independent agents have always been helpful when we here in Washington needed the hard facts.

In addition to his dedication to his trade, R.C. has been active in his church and many local community organizations. A dedication which I am sure will continue for many years to come.

I am especially pleased to recognize R.C. Riley because he is not only a fellow citizen of Kentucky, but I was once a member of the Independent Insurance Agents of America, Like R.C.'s two sons, my son continues to serve his community by working as an independent insurance agent. I know R.C. and his wife Jane are very proud of this legacy.

I congratulate my friend, fellow Kentuckian, and fellow independent insurance agent for a job well done. I am confident his service to this association and to Benton, KY, will continue well into the future.

REMOVAL OF INJUNCTION OF SECRECY

Ms. MIKULSKI. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following two treaties transmitted to the Senate today by the President of the United States:

The United Nations Framework Convention on Climate Change (Treaty Document No. 102-38); and

The Income Tax Convention with the Russian Federation (Treaty Document No. 102-39).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

The President's messages are as follows:

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention between the United States of America and the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on June 17, 1992, together with a related Protocol. I also transmit the report of the Department of State.

The convention replaces, with respect to Russia, the 1973 income tax convention between the United States of America and the Union of Soviet Socialist Republics. It will modernize tax relations between the two countries and will facilitate greater private sector United States investment in Russia.

I recommend that the Senate give early and favorable consideration to the convention and related protocol and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *September 8, 1992.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the United Nations Framework Convention on Climate Change, adopted May 9, 1992, by the resumed fifth session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change ("Convention"), and signed by me on behalf of the United States at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro on June 12, 1992. The report of the Department of State is also enclosed for the information of the Senate.

The Convention, negotiated over a period of nearly 2 years, represents a delicate balance of many interests. It embodies a comprehensive approach embracing all greenhouse gases, their sources and sinks, and promotes action to modify net emissions trends of all greenhouse gases not controlled by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. It supports an action-oriented approach to net emissions reduction that takes into account specific national circumstances. It provides the basis for assessing the impacts and effectiveness of different national responses in light of existing scientific and economic information and new developments. The Convention encourages cooperative arrangements by providing for joint implementation between and among parties under mutually agreed terms.

The ultimate objective of the Convention is to stabilize greenhouse gas concentrations (not emissions) in the atmosphere at a level that would prevent dangerous human interference with the climate system. In accordance with this objective, the Convention calls on all parties to prepare national inventories of anthropogenic emissions, implement appropriate national and regional programs to mitigate and adapt to climate change, promote technology cooperation (including technology transfer), promote scientific research and monitoring, and promote and cooperate in the full and open exchange of information and in education, training, and public awareness programs. In light of such provisions, this Convention constitutes a major step in protecting the global environment from potential adverse effects of climate change.

The Convention will enter into force 90 days after the 50th instrument of ratification, acceptance, or approval has been deposited. Ratification by the United States is necessary for the effective implementation of the Convention. Early ratification by the United States is likely to encourage similar action by other countries whose participation is also essential. It should be noted that the Convention does not permit reservation.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *September 8, 1992.*

PRINTING OF SENATE DOCUMENT

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 337, a resolution authorizing the printing of 2,600 additional copies of Riddick's Senate Procedure, submitted earlier today by Senators MITCHELL and DOLE; that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 337) is as follows:

S. RES. 337

Resolved, That there are hereby authorized to be printed 2,600 additional copies of Riddick's Senate Procedure.

VETERANS HOUSING ASSISTANCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 595, Senate bill 2512, relating to the assistance for homeless veterans and that the committee substitute amendment be agreed to, and that the bill be read a third time.

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

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to support S. 2512, a bill to provide housing assistance to homeless veterans, as reported by the Committee on June 17, 1992.

Mr. President, I introduced S. 2512 with Senator DECONCINI, ROCKEFELLER, GRAHAM, AKAKA, and DASCHLE on April 1, 1992, to address the tremendous problem of homelessness among our Nation's veterans. Subsequently, the committee's ranking Republican member, Senator SPECTER, became a cosponsor. The bill as reported, which I will refer to as the committee bill, would enhance the Department of Veterans Affairs' ability to assist homeless veterans by expanding the authority of the Secretary to sell and lease VA-repossessed homes for use as housing for homeless veterans and to lease, for periods longer than currently allowed, VA properties made available to nonprofit organizations under the Stewart B. McKinney Homeless Assistance Act. In addition, the committee bill would extend for 2 years the Homeless Veterans Reintegration Projects [HVRP] Program administered by the Department of Labor pursuant to the McKinney Act and increase the authorized level of appropriations for that program.

For background on this legislation, I refer my colleagues to my statement on introducing S. 2512, which appears in the RECORD for April 1, 1992, beginning on page S 4655, and the committee report, (S. Rept. No. 102-361). I would simply note here that, as discussed in the committee report, homelessness among veterans is a national problem of great magnitude. Based on studies cited in the committee report, it seems reasonable to assume that, at any given time, there are between 200,000 and 330,000 veterans who are homeless.

I am deeply concerned by the numbers of veterans who are homeless and recognize that VA's traditional methods of serving veterans may not be effective to alleviate the hardships and misery that homeless veterans experience. In light of the profound debt and deep gratitude that the Nation owes its veterans, I believe that VA should di-

rect special attention to homeless veterans, who are in need of assistance to meet even their most basic human needs. Moreover, in proposing the establishment and improvement of programs specifically for homeless veterans, I believe that for some veterans, especially those who served the Nation in combat, their military experience and status as veterans constitute a major aspect of their self-image.

This may explain why some homeless veterans are more likely to respond to programs designed especially for and limited to veterans, which they perceive not as charity, but as a reflection of the Nation's gratitude to and concern for them as individuals who rendered invaluable service, sometimes at great risk to their lives.

SUMMARY OF PROVISIONS

Mr. President, S. 2512 as reported includes amendments to title 38 and the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77) which would:

First, amend VA's authority to sell at a discount VA-repossessed properties—also referred to as acquired properties—to nonprofit organizations and States for the purpose of providing shelter for homeless veterans and their families so as to authorize VA to finance the sales by extending credit to the buyer; in extending credit, modify or waive one or more of the credit underwriting standards that would otherwise apply to VA direct financing; and charge lower-than-market-rate interest.

Second, establish a new VA program under which 10 percent of VA's inventory of eligible repossessed properties would be made available by lease for a nominal fee to nonprofit organizations and States for the purpose of providing transitional housing for homeless veterans and their families.

Third, for the purposes of the new leasing program, define an eligible property as a property that is acquired by the Secretary as a result of a default on a loan made, insured, or guaranteed by VA; is vacant or has been listed for sale for not less than 60 days—or for such shorter period as the Secretary determines to be appropriate to carry out the program—and is not subject to a sale contract.

Fourth, require that an organization leasing a property under the new program be responsible for payment of taxes, utility bills, liability insurance, and maintenance costs; collect rent from the occupants of the property, but allow it to charge no more than what is necessary to cover the cost of operating and maintaining the property or 30 percent of each occupant's income, whichever is less; to the maximum extent practicable, utilize the services of homeless veterans in maintaining, operating, and renovating the property; and provide the occupants with referrals to and information about local services and assistance available to veterans and homeless individuals.

Fifth, authorize VA, with respect to VA properties made available under title V of the McKinney Act, to enter into leases in excess of 3 years if the organization approved to use the property agrees to use the property to provide services to homeless veterans and their families.

Sixth, authorize appropriations for fiscal years 1993 through 1995 for the Homeless Veterans Reintegration Projects administered by the Department of Labor pursuant to section 738 of the McKinney Act. The authorized appropriations would increase from the currently authorized fiscal year 1993 level of $2.2 million to $10 million for fiscal year 1993, $12 million for fiscal year 1994, and $14 million for fiscal year 1995.

FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS

Mr. President, section 1 of the Committee would amend section 3735 of title 38, which authorizes VA to sell acquired properties at a discount to nonprofit organizations and Government agencies that will use them to shelter or house homeless veterans and their families, so as to authorize VA to make loans directly to nonprofit organizations and State agencies for such purchases. VA would also be authorized to modify or waive one or more of the credit underwriting standards that would otherwise apply to such a loan and to charge the purchaser less than the market rate of interest on the loan. No loan fee would be charged.

I believe that these modifications would provide eligible nonprofit and Government entities a more realistic opportunity to purchase acquired properties under the discount-sale program, which has been very much underutilized since it was established in 1987 pursuant to section 9 of Public Law 100-198. To date fewer than 10 properties have been sold under this program.

I believe that financing sales of the properties by extending credit to the nonprofit organizations interested in purchasing a property could significantly improve participation in the acquired property sale program. Under the current program, an organization must finance a purchase either through its own cash reserves or by a conventional mortgage from a lending institution—options which are ill-suited for nonprofit organizations that put their resources into badly,000 needed services and thus seldom have substantial accumulations of cash on hand. By allowing VA to finance such sales directly, and by permitting the Secretary to waive the credit underwriting standards that would otherwise apply, this provision should allow many more nonprofit organizations to purchase acquired properties to provide housing for homeless veterans and their families. I note that VA currently makes direct loans to veterans under section 3711 of title 38, and I believe that VA has sufficient expertise and staffing to implement this program promptly and rapidly.

PROGRAM OF LEASING REPOSSESSED PROPERTIES FOR USE BY HOMELESS VETERANS

Mr. President, section 2 of the committee bill would establish a new VA program, under which, during each fiscal year, 10 percent of VA-acquired properties that are vacant and have remained unsold for 60 days would be made available by lease for a nominal fee to nonprofit organizations and State agencies for the purpose of providing housing for homeless veterans and their families. To lease a property under the program, an organization would be required to be approved by VA and to agree to use the property as housing for homeless veterans and their families. The organization would be responsible for payment of taxes utilities, and maintenance costs associated with the property and would be required to collect rent from homeless veterans and family members occupying the property. Rent would be limited to the lesser of one-third of the occupants' income or the cost of maintaining and operating the property. VA would be authorized to make the properties available by lease or by lease with an option to purchase at a discount.

I note that the program proposed in section 2 is modeled closely on HUD's successful Dollar-Per-Year-Lease Program, which was administratively established—without specific authorizing legislation—in 1990. Under the HUD program, over 2,000 properties have been leased to nonprofit organizations for use as transitional housing for homeless persons, and over 400 of the leased properties have been sold to nonprofit agencies for use to assist homeless persons. Although VA opposes section 2 of the committee bill, I believe strongly that, in light of the large number of homeless veterans and HUD's positive experiences over the past 2 years, VA should establish a similar program for homeless veterans with the properties in its inventory.

I am concerned by VA's apparent unwillingness to follow the model of an established an well-functioning Federal Government program. Following VA's testimony in opposition to section 2 at the committee's April 9 hearing, I asked VA's lead witness, in an April 10 letter, to consult with the director of the HUD program and provide comments as to whether the HUD model could be adopted to VA for the benefit of homeless veterans and how HUD is dealing with the administrative and legal burdens which VA testified would be placed on it as a landlord under the proposed program. Unfortunately, VA has not yet responded to my request. However, committee staff consulted with HUD officials in order to identify how the concerns raised by VA had been addressed in the HUD program,

and the committee bill contains certain technical modifications which reflect suggestions made by the HUD officials.

The program that would be established by section 2 of the committee bill, in conjunction with the direct financing authority that would be provided by section 1, would encourage the development of new housing opportunities for homeless veterans through collaborative ventures with nonprofit organizations. I believe that such collaboration should be incorporated to the maximum extent possible in all VA programs to assist homeless veterans.

Under the leasing program, as under the HUD program, the costs of maintaining these VA-owned properties would be borne by the nonprofit lessees. Thus, VA would save property-management costs that VA would otherwise bear with respect to the leased properties. In addition, because the properties would be occupied and maintained during the term of the lease, the potential for vandalism would be reduced and there would be increased potential for the properties to appreciate in value, which would ultimately benefit VA when the property is sold.

Mr. President, I note that, although VA opposed this proposal at the committee's April 9 hearing on the bases of cost and increased workload, VA officials had not discussed with HUD officials the actual costs and staffing needs required to carry out the HUD program. Without further substantiation of the bases for VA's opposition, I believe that the responsible VA officials, after consultation with HUD program officials, could implement this program promptly without any undue burden being placed upon VA's budget or workload.

AUTHORITY TO LEASE CERTAIN VA PROPERTY FOR EXTENDED LEASE TERMS

Section 3 of the committee bill would allow VA additional flexibility in leasing properties made available under title V of the McKinney Act if the leasing organization agrees to use the property to provide services for homeless veterans and their families. Under current law, section 8122 of title 38, VA is prohibited from leasing its properties for longer than a 3-year term, and this limitation can frustrate the efforts of nonprofit organizations wishing to use VA properties under the McKinney Act to provide services to homeless veterans.

Title V of the Stewart B. McKinney Homeless Assistance Act, first enacted in 1987 (Public Law 100–77) and subsequently amended in 1988 (Public Law 100–628) and 1990 (Public Law 101–645) is designed to make available for the purpose of assisting homeless persons Federal properties that are surplus, excess, or unutilized or underutilized.

Under the process established by the 1990 amendments, the Department of Housing and Urban Development is required to conduct quarterly surveys to determine which Federal public buildings and other properties are excess, surplus, unutilized, or underutilized under the standards of the Federal Property and Administrative Services Act. HUD then determines which of these properties are suitable for use to assist homeless persons. HUD has adopted a broad definition of suitability to allow homeless service providers maximum flexibility as to potential uses. For example, a property that cannot be used for human occupancy may be found suitable because it can be used as a food warehouse.

After HUD determines that a property is suitable, the Federal agency that has jurisdiction over it must inform HUD whether the property will be made available. If an agency determines that a property cannot be made available for use to assist homeless persons, it must provide HUD with a statement of the reasons. HUD then publishes in the Federal Register lists of properties that are suitable and available, and service providers may then apply to use them.

An organization desiring to use an available property must submit an application to the Department of Health and Human Services. Upon HHS approval of an application, the landholding agency must make the property available by lease or permit to the approved organization for a term of not less than one year. The specific terms of the lease agreement are negotiated between the applicant and the agency. Upon expiration of the lease or permit, the property is returned to the Federal Government. Excess and surplus properties may be conveyed by deed in some circumstances.

VA's efforts to assist homeless persons under title V of the McKinney Act can be hampered by the provision in section 8122 of title 38, United States Code, which prohibits VA from leasing VA-controlled property for more than a 3-year term. If the property requires substantial renovations to make it useable for providing services to homeless individuals, the prospect of only a 3-year lease term may allow so little return on the necessary investment in the property as to render the use of it highly cost-ineffective. I am aware of at least one situation in which the 3-year limitation has caused such a problem for an approved applicant seeking to use an unutilized VA building that is in need of extensive renovation.

Mr. President, I believe that existing VA programs for homeless veterans are currently much too small in scale to address the problems fully and that, in light of the limited resources likely to be available to VA in the foreseeable future, non-VA programs will always play a very substantial role in meeting homeless veterans' needs. Thus, a rule such as the 3-year limit on leases of VA properties that can impede VA's efforts to cooperate with or assist non-VA programs serving homeless veterans is counterproductive. By enabling VA to provide to an applicant under McKinney who desires to use an unneeded VA property to assist homeless veterans and possibly their families a lease for a term longer than 3 years, section 3 of the bill would enable VA in an appropriate way to provide greater assistance to others who are combatting homelessness among veterans.

AUTHORIZATION OF APPROPRIATION FOR HOMELESS VETERANS' REINTEGRATION PROJECTS

Mr. President, section 4 of the committee bill would extend the program authority, and increase the authorized levels of appropriations, for the Homeless Veterans Reintegration Projects [HVRP] Program administered by the Department of Labor pursuant to section 738 of the McKinney Act (Public Law 100–77). The HVRP program is a grant program under which grantees hire formerly homeless veterans to reach out to homeless veterans and provide supportive services, job training, job readiness skills, and job placement. I believe the focus of the program on the employment needs of homeless veterans is a necessary component to the overall Federal response to the problem and would complement the health care programs for homeless veterans currently offered by VA and the expanded housing opportunities that would be afforded by this bill.

I have received very favorable comments regarding the HVRP program from community service providers, the National Coalition for the Homeless, and individual veterans who have been assisted. Up to this point, however, it has been a very small-scale demonstration program—with only 18 projects in 15 cities. The program has shown more than sufficient promise to warrant a modest increase in its scope. Thus, section 4 of the bill would increase the authorized level of appropriations from the current fiscal year 1993 level of $2.2 million to $10 million for fiscal year 1993, $12 million for fiscal year 1994, and $14 million for fiscal year 1995.

CONCLUSION

Mr. President, the many thousands of veterans of the U.S. Armed Forces who are sleeping on the streets of our Nation is a national disgrace. These men and women are in desperate need of assistance to meet their most basic human needs and to rejoin the mainstream of American life. They answered the call to serve and defend their country, and I believe that we as a nation should respond to their individual and collective crises and assist them in their time of need. The bill would provide for housing and job training that will not otherwise exist, and I urge my colleagues to support this measure.

In closing, I thank our committee's ranking Republican member, Senator SPECTER, for his support of this legislation and all members of the committee for their cooperation and assistance re-

garding this measure. I would also like to note the valuable contributions made by Joan Alker of the National Coalition for the Homeless, the members of the National Coalition for Homeless Veterans, and the individual veterans—Stanley Jordan, William Sherman, and Raymond Tracey—who shared with the committee their personal experiences of homelessness and sought assistance for their fellow veterans.

I also express my gratitude for their work on this legislation to Committee minority staff members Yvonne Santa Anna, Tom Roberts, and majority staff members Virginia Rowthorn, Kimberly Morin, Thomas Tighe, Bill Brew, and Ed Scott.

Mr. President, I urge all of my colleagues to support this important legislation.

Mr. SPECTER. Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, and as a cosponsor, I am pleased to support passage of S. 2512.

This bill would assist our Nation's homeless veterans by enhancing the ability of the Department of Veterans Affairs [VA] and the Department of Labor [DOL] to address the housing and job training needs of homeless veterans. Generally, the bill would expand VA's authority to sell VA-repossesed homes at a discount for the use of homeless veterans, allow VA to lease properties for nominal consideration and for periods longer than 3 years to nonprofit organizations, and increase the authorized appropriation levels of and extend for 2 years DOL's Homeless Veterans Reintegration Projects [HVRP] Program.

We cannot, of course, know the exact number of homeless veterans. However, according to VA, out of an estimated homeless population on any given night of 350,000 to 700,000 about one-third of them—in other words, some 150,000 to 250,000—are veterans.

The Government, Mr. President, has made worthwhile efforts to deal with this problem. VA has worked as a team uniting its various elements to plan, implement, and deliver benefits and services to help homeless veterans. Eligible homeless veterans can receive education and training services, compensation and pension benefits, health care services, and housing assistance. The Department of Labor, as well, through HVRP, has made important advances in retraining these veterans. But more needs to be done.

The purpose of this bill, Mr. President, is to give VA and DOL the tools to do more. For example, one section of S. 2512 establishes a new VA program under which 10 percent of VA's inventory of hard-to-sell repossessed properties would be available by lease for a nominal fee to nonprofit organizations and States for use by homeless veterans. The organization which is leasing a property under this program would be required to use the services of homeless veterans in operating, maintaining, and renovating the property. Veterans would be expected to pay rent, but the organization leasing the property could not charge more than what is required to cover the cost of operating and maintaining the property. Another section authorizes VA to lease certain of its properties for longer than 3 years—the current statutory maximum—if the organization approved to use the property agrees to provide services to homeless veterans and their families. The bill would also extend and expand the HVRP Program, giving DOL the authority to provide job skills to break the cycle of homelessness.

Mr. President, I could not speak on the issue of homeless veterans without describing for my colleagues one successful and unique program for homeless veterans in my State of Pennsylvania. In 1987, the American Legion, VA's Pittsburgh Regional Office, and the VA Medical Center at Highland Drive in Pittsburgh joined together to establish the Cypress Street Homeless Veterans Project, a program to provide housing and case management services to homeless veterans.

Working together toward a common goal of housing homeless veterans, these exceptional organizations were able to locate four repossessed homes. These homes were purchased by the American Legion Housing Corp. from the VA regional office in Pittsburgh under the VA Loan Guarantee Program and Property Rehabilitation Act of 1987. In fact, Cypress Street was the first VA property purchased by a veterans service organization under that program.

With the purchase of the four-unit property under the direction of the American Legion Housing Corp., an appropriate housing alternative became available to veterans who had begun a rehabilitation process but still had no place to live. Through a memorandum of agreement between Highland Drive and the American Legion Housing Corp., the VA and American Legion work closely together to provide housing to homeless veterans.

Cypress Street was officially opened in November 1987. Thus far, more than 40 veterans have been able to live in a home with peer support and without the stress of high rent and utility costs. Typically, the veterans find employment, work for a period of time and then move on to a more independent living style. Thirty-one of those veterans have moved into independent housing or into family homes. That is the kind of success, Mr. President, that makes us proud of the work that can be accomplished through coalitions of government and private groups.

In closing, I would like to thank the staff who worked so hard to prepare this bill: Kim Morin, Thomas Tighe, and Ed Scott from the majority staff, and Carrie Gavora, Yvonne Santa Anna, and Tom Roberts from my staff.

Mr. President, I am genuinely committed to advancing the legislative agenda to assist our Nation's homeless veterans. This goal can be achieved with minimal Federal expenditures by encouraging and joining together the support of local and State organizations, private citizens, VA, and the veterans themselves. It has worked in Pennsylvania.

Because this bill takes important steps in that same direction, I urge my colleagues to support S. 2512.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 571, H.R. 5400; that all after the enacting clause be stricken and the text of S. 2512, as amended, be inserted in lieu thereof; that the bill be read a third time, passed, and the motion to reconsider be laid upon the table and any statements relative to the passage of these items be placed at the appropriate place in the RECORD.

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

The bill (H.R. 5400), as amended, is as follows:

Resolved, That the bill from the House of Representatives (H.R. 5400) entitled "An Act to establish in the Department of Veterans Affairs a program of comprehensive services for homeless veterans", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS.

(a) FINANCING.—Section 3735 of title 38, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection (b):

"(b)(1) Subject to paragraphs (2) and (3), the Secretary may make loans to organizations described in paragraph (1)(A) of subsection (a) to finance the purchase of property by such organizations under such subsection.

"(2)(A) In making a loan under this subsection, the Secretary—

"(i) may modify or waive one or more of the credit underwriting standards that would otherwise apply to the loan under section 3710(g)(2)(A) of this title;

"(ii) shall, in underwriting the loan, take into account the amount of equity in the property that a purchasing organization will have as a result of the purchase;

"(iii) may provide that the loan will bear interest at a rate below the rate that prevails for similar loans in the market in which the loan is made;

"(iv) may not collect a loan fee for the loan under section 3729 of this title; and

"(v) shall include such other terms and conditions with respect to the loan as the Secretary determines are necessary to facilitate the making of loans under this subsection and to protect the interests of homeless veterans and the Federal Government.

"(B) The Secretary shall, to the maximum extent practicable, ensure that the terms and conditions that the Secretary applies to loans under subparagraph (A)(v) are similar to the terms and conditions that the Secretary applies to loans made under section 3733 of this title.

"(3) The Secretary, in order to protect the interests of the Federal Government, may limit the

number of loans or the amount any loan that the Secretary makes to an organization under this subsection.".

(b) CONFORMING AMENDMENT.—Section 3729(a)(1) of title 38, United States Code, is amended by striking out "section," and inserting in lieu thereof "section or section 3735(b)(2)(A)(iv) of this title,".

SEC. 2. PROGRAM OF LEASING OF REPOSSESSED PROPERTIES FOR USE BY HOMELESS VETERANS.

(a) PROGRAM.—Subchapter III of chapter 37 of title 38, United States Code, is amended by adding at the end the following new section:

"§3736. Availability of properties for homeless veterans

"(a) The Secretary shall carry out a program to make the properties referred to in subsection (b) available to approved entities under subsection (c) for the purpose of permitting such entities to provide transitional housing for homeless veterans and their families.

"(b) The Secretary shall make available for use as transitional housing for homeless veterans and their families during each fiscal year a number of properties that is not less than 10 percent of the total number of eligible properties that are in the possession of the Secretary at the commencement of that fiscal year as a result of a default on a loan made, insured, or guaranteed under this chapter.

"(c)(1) The Secretary shall lease properties under this section to eligible entities—

"(A) that submit to the Secretary (under regulations prescribed by the Secretary) applications for the lease of such properties; and

"(B) whose applications are approved by the Secretary in accordance with such regulations.

"(2) For the purposes of this subsection, an eligible entity is any of the following entities that provide housing for homeless veterans and their families:

"(A) Non-profit organizations, with preference given to organizations named in or approved by the Secretary under section 5902(a)(1) of this title.

"(B) State or local governments.

"(d)(1) The Secretary shall make available properties to entities approved under subsection (c)(1) as follows:

"(A) By lease.

"(B) By lease, with an option to purchase under section 3735 of this title.

"(2) The term of any lease under this subsection may not exceed three years.

"(3) The Secretary shall collect from each approved entity that leases a property from the Secretary under this section a nominal rental charge for the property.

"(e)(1) An approved entity that leases a property from the Secretary under this section shall use that property solely to provide transitional housing for homeless veterans and their families.

"(2) An approved entity that leases a property from the Secretary under this section shall collect rent from veteran occupants of the property. The amount of rent that an approved entity may collect with respect to a property may not exceed the lesser of—

"(A) an amount equal to the costs of operating and maintaining the property, including the cost of any liability insurance premiums for the property; or

"(B) an amount equal to 30 percent of the occupants' income.

"(3) An approved entity that leases a property from the Secretary under this section shall be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges or similar charges that apply to the property.

"(f) An approved entity that leases a property from the Secretary under this section shall, to the maximum extent practicable—

"(1) utilize the services of homeless veterans in maintaining, operating, and renovating the property; and

"(2) provide to the homeless veterans who occupy the property—

"(i) appropriate information about the services and assistance available to the veterans and the homeless in the area of the property; and

"(ii) appropriate referrals to the entities that provide such services and assistance.

"(g) In this section, the term 'eligible property' means a property that—

"(1) is acquired by the Secretary as a result of a default on a loan made, insured, or guaranteed under this chapter;

"(2) is vacant;

"(3) has been listed for sale by the Secretary for not less than 60 days (or for such shorter period as the Secretary determines to be appropriate to carry out the purposes of this section); and

"(4) is not subject to a sale contract.

"(h) The Secretary may not make any properties available for acquisition under this section after September 30, 1997.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 37 of title 38, United States Code, is amended by adding after the item relating to section 3735 the following new item:

"3736. Availability of properties for homeless veterans.".

SEC. 3. AUTHORITY TO LEASE CERTAIN PROPERTY OF THE DEPARTMENT OF VETERANS AFFAIRS FOR EXTENDED LEASE TERMS.

(a) AUTHORITY.—Notwithstanding section 8122(a)(1) of title 38, United States Code, and subject to subsection (b), the Secretary of Veterans Affairs may lease to a representative of the homeless for a term in excess of three years any real property for which an application of the representative for the use of the property has been approved by the Secretary of Health and Human Services under section 501(e) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(e)). Any such lease shall be subject to the provisions of section 501(f) of such Act (42 U.S.C. 11411(f)).

(b) LIMITATION.—The Secretary may not lease real property under subsection (a) for a term in excess of three years to a representative of the homeless unless the representative agrees to use the property as a location for the provision of services to homeless veterans and the families of such veterans.

(c) DEFINITION.—In this section, the term "representative of the homeless" has the meaning given such term in section 501(g)(4) of such Act (42 U.S.C. 11411(g)(4)).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR HOMELESS VETERANS' REINTEGRATION PROJECTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 738 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11448) is amended by adding at the end the following new subsection:

"(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to carry out this section the following amounts:

"(A) $10,000,000 for fiscal year 1993.

"(B) $12,000,000 for fiscal year 1994.

"(C) $14,000,000 for fiscal year 1995.

"(2) Funds obligated for any fiscal year to carry out this section may be expended in that fiscal year and the succeeding fiscal year.".

(b) CONFORMING AMENDMENTS.—(1) Section 739 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449) is amended—

(A) in subsection (a)—

(i) by inserting "(1)" before "There are";

(ii) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(iii) by amending subparagraph (C), as so redesignated, to read as follows:

"(C) $14,800,000 for fiscal year 1993, to carry out programs under this subtitle other than the programs described in section 738(a).'"; and

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

"(2) Amounts appropriated in fiscal year 1993 pursuant to the authorization of appropriations described in paragraph (1)(C) shall be in addition to amounts appropriated in that fiscal year pursuant to the authorization of appropriations described subsection (e) of section 738 for the purposes carrying out the programs described in subsection (a) of such section 738.'"; and

(B) in subsection (b), by striking out "other than section 738 and for the program under section 738".

(2) Section 741 of such Act (42 U.S.C. 11451) is amended by inserting "738 and" before "740".

Ms. MIKULSKI. Mr. President, in behalf of Senator CRANSTON, I send a title amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Amend the title so as to read: "To amend title 38, United States Code, to establish a program to provide certain housing assistance to homeless veterans, to improve certain other programs that provide such assistance, and for other purposes."

The PRESIDING OFFICER. Without objection, the title amendment is agreed to.

Ms. MIKULSKI. I ask unanimous consent that S. 2512 be indefinitely postponed.

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

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 two treaties which were referred to the appropriate committees.

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

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on August 14, 1992, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1963. An act to amend section 992 of title 28, United States Code, to provide a member of the United States Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress;

S. 3001. An act to amend the Food Stamp Act of 1977 to prevent a reduction in the adjusted cost of the thrifty food plan during fiscal year 1993, and for other purposes;

S. 3163. An act to amend the Federal Food, Drug, and Cosmetic Act to coordinate Federal and State regulation of wholesale drug distribution, and for other purposes;

H.R. 2549. An act to make technical corrections to chapter 5 of title 5, United States Code;

H.R. 4312. An act to amend the Voting Rights Act of 1965 with respect to bilingual election requirements;

H.R. 5560. An act to extend for one year the National Commission on Time and Learning, and for other purposes;

H.R. 5623. An act to waive the period of congressional review for certain District of Columbia Acts;

H.R. 5688. An act to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges, and for other purposes;

H.J. Res. 411. Joint resolution to designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week"; and

H.J. Res. 507. Joint resolution to approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

Under the authority of the order of the Senate of January, 3, 1991, the enrolled bills and joint resolutions were signed on August 14, 1992, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on August 14, 1992, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 2607. An act to authorize activities under the Federal Railroad Safety Act of 1970 for fiscal years 1992 through 1994, and for other purposes; and

H.R. 5481. An Act to amend the Federal Aviation Act of 1958 relating to administrative assessment of civilian penalties.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills were signed on August 19, 1992, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on August 27, 1992, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 3033. An act to amend the Job Training Partnership Act to improve the delivery of services to hard-to-serve youth and adults, and for other purposes;

H.R. 4111. An act to amend the Small Business Act and related acts to provide loan assistance to small business concerns, to extend certain demonstration programs relating to small business participation in Federal procurement, to modify certain Small Business Administration programs, to assist small firms to adjust to reductions in Defense-related business, to improve the management of certain program activities of the Small Business Administration, to provide for the undertaking of certain studies, and for other purposes; and

H.J. Res. 492. Joint resolution designating September 1992 as "Childhood Cancer Month."

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills and joint resolution were signed on August 27, 1992, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 2782. An act to amend the Employee Retirement Income Security Act of 1974 to provide that such act does not preempt certain State laws.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on August 14, 1992, he had presented to the President of the United States the following enrolled bills:

S. 544. An act to protect animal enterprises;

S. 807. An act to permit Mount Olivet Cemetery Association of Salt Lake City, UT, to lease a certain tract of land for a period of not more than 70 years;

S. 1770. An act to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes;

S. 1963. An act to amend section 992 of title 28, United States Code, to provide a member of the United States Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress;

S. 2079. An act to establish the Marsh-Billings National Historical Park in the State of Vermont, and for other purposes;

S. 3001. An act to amend the Food Stamp Act of 1977 to prevent a reduction in the adjusted cost of the thrifty food plan during fiscal year 1993, and for other purposes;

S. 3112. An act to amend the Public Health Service Act to make certain technical corrections, and for other purposes; and

S. 3163. An act to amend the Federal Food, Drug, and Cosmetic Act to coordinate Federal and State regulation of wholesale drug distribution, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-3757. A communication from Acting General Sales Manager, Foreign Agricultural Service, Department of Agriculture, transmitting, pursuant to law, an amendment to the determination of the agricultural commodities and quantities available for programming under Public Law 480; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3758. A communication from the Chief Financial Officer of the Department of State, transmitting, pursuant to law, notice of a violation involving the overobligation of an approved appropriation; to the Committee on Appropriations.

EC-3759. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, notice of the President's intent to exempt all military personnel accounts from sequester in fiscal year 1993 if a sequester is necessary; pursuant to the order of January 30, 1975, as modified on April 11, 1986, referred jointly to the Committee on Appropriations, the Committee on the Budget, and the Committee on Armed Services.

EC-3760. A communication from the Chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, notice that the Navy intends to offer for sale certain vessels through the Director, Defense Security Assistance Agency; to the Committee on Armed Services.

EC-3761. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on direct spending or receipts legislation; to the Committee on Budget.

EC-3762. A communication from the Co-Chairmen of the National Commission on Severely Distressed Public Housing, transmitting, pursuant to law, the final report of the National Commission on Severely Distressed Public Housing, to the Committee on Banking, Housing and Urban Affairs.

EC-3763. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting a draft of proposed legislation to implement the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries; to the Committee on Commerce, Science and Transportation.

EC-3764. A communication from the Secretary, Federal Trade Commission, transmitting, pursuant to law, the Report to Congress for 1990 Pursuant to the Federal Cigarette Labeling and Advertising Act; to the Committee on Commerce, Science and Transportation.

EC-3765. A communication from the Administrator, Federal Aviation Administration, transmitting, pursuant to law, a report on the study on the security of mail and cargo; to the Committee on Commerce, Science, and Transportation.

EC-3766. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on administration of the DEEPWATER Port Act for fiscal year 1991; pursuant to 33 U.S.C. 1519, referred jointly to the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Environment and Public Works.

EC-3767. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3768. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on a project negotiated under

the Department of Energy's Clean Coal Technology Demonstration Program; to the Committee on Energy and Natural Resources.

EC-3769. A communication from the Acting Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report on abnormal occurrences at licensed nuclear facilities for the first calendar quarter of 1992; to the Committee on Environment and Public Works.

EC-3770. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the annual report required by Section 710 of the Water Resources Development Act of 1986; to the Committee on Environment and Public Works.

EC-3771. A communication from the Executive Director of the Federal Retirement Thrift Investment Board, transmitting, a draft of proposed legislation to provide the Thrift Savings Plan (TSP) for Federal employees with an extended deadline for implementing relevant sections of P.L. 102-318 (the Act); to the Committee on Finance.

EC-3772. A communication from the Acting Comptroller of the Department of Defense, transmitting, pursuant to law, the Quarterly Report on Program Activities for Facilitation of Weapons Destruction and Nonproliferation in the Former Soviet Union; to the Committee on Foreign Relations.

EC-3773. A communication from the Acting Director of United States Arms Control and Disarmament Agency, transmitting, pursuant to law, the Report to Congress on Arms Control and Disarmament Studies; to the Committee on Foreign Relations.

EC-3774. A communication from the Chairman, Merit Systems Protection Board, and Acting Director, Office of Personnel Management, jointly transmitting, pursuant to law, the final report of the Advisory Committee on Federal Workforce Quality Assessment; to the Committee on Governmental Affairs.

EC-3775. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to July 30, 1992; to the Committee on Foreign Relations.

EC-3776. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting a draft of proposed legislation to implement the Protocol on Environmental Protection to the Antarctic Treaty, with annexes, done at Madrid October 4, 1991, and an additional annex done at Bonn October 17, 1991, enact a prohibition against Antarctic Conservation Act of 1978, and repeal the Antartic Protection Act of 1990; to the Committee on Foreign Relations.

EC-3777. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the results of the GAO audit of the Army's Principal Statements for fiscal year 1991; to the Committee on Governmental Affairs.

EC-3778. A communication from Comptroller General of the United States, transmitting, pursuant to law, the results of the GAO review of the Department of the Army's financial management operations for fiscal year 1991; to the Committee on the Governmental Affairs.

EC-3779. A communication from the Assistant Secretary of the Interior, transmitting, for the information of the Senate, the comments of the Department, opposing the enactment of S.1752; to the Select Committee on Indian Affairs.

EC-3780. A communication from the Secretary of Education, transmitting, pursuant to law, Notice of Final Priority for Fiscal Year 1992—Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program; to the Committee on Labor and Human Resources.

EC-3781. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, proposed regulations governing the transfers of funds from state to federal campaigns; to the Committee on Rules and Administration.

EC-3782. A communication from the President of the United States, transmitting a draft of proposed legislation to remove inappropriate limitations on work requirements and to enhance waiver authority for welfare reform demonstration projects for the Food Stamp Program; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3783. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the status of budget authority reported as an unreported impoundment by the President of funds appropriated for the V-22 Osprey program; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-3784. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report on a violation of the Antideficiency Act; to the Committee on Appropriations.

EC-3785. A communication from the Under Secretary of Defense (Acquisition), transmitting, pursuant to law, the Selected Acquisition reports for the quarter ending June 30, 1992; to the Committee on Armed Services.

EC-3786. A communication from the Director of Defense Research and Engineering, Department of Defense, transmitting, pursuant to law, a report entitled "Department of Defense Master Plan for Science, Mathematics, and Engineering Education"; to the Committee on Armed Services.

EC-3787. A communication from the Deputy Assistant Secretary of Defense (Installations), transmitting, pursuant to law, the Base Structure Report for fiscal year 1993; to the Committee on Armed Services.

EC-3788. A communication from the Assistant Secretary of Defense (Health Affairs), transmitting, pursuant to law, the Medical Manpower Annex to the Fiscal Year 1993 Defense Manpower Requirements Report; to the Committee on Armed Service.

EC-3789. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on certain properties to be transferred to the Republic of Panama in accordance with the Panama Canal Treaty of 1977; to the Committee on Armed Services.

EC-3790. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the eighteenth report on United States Costs in the Persian Gulf Conflict and Foreign Contributions to Offset Such Costs; to the Committee on Armed Services.

EC-3791. A communication from the Secretary of Energy, transmitting, pursuant to law, the Hanford Site Tiger Team Assessment Action Plan; to the Committee on Armed Services.

EC-3792. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to Kuwait; to the Committee on Banking, Housing, and Urban Affairs.

EC-3793. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to the Peoples Republic of China; to the Committee on Banking, Housing, and Urban Affairs.

EC-3794. A communication from the President of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, a report on the status of certain financial institutions; to the Committee on Banking, Housing, and Urban Affairs.

EC-3795. A communication from the President of the United States, transmitting a draft of proposed legislation to amend certain program authorities of the Department of Housing and Urban Development for the purpose of promoting economic self-suffficiency for families residing in public housing and other families, and for other purposes; to the Committee on Banking, Housing, and Urban Development.

EC-3796. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation; to the Committee on the Budget.

EC-3797. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on pipeline safety activities for calendar year 1990; to the Committee on Commerce, Science, and Transportation.

EC-3798. A communication from the Administrator of General Services, transmitting, pursuant to law, the annual report of the General Services Administration for fiscal year 1991; to the Committee on Environment and Public Works.

EC-3799. A communication from the President of the United States, transmitting a draft of proposed legislation to amend the AFDC and JOBS programs under title IV of the Social Security Act to remove certain limitations on employment related programs, strengthen the requirement to cooperate in paternity establishment; to the Committee on Finance.

EC-3800. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice of the authorization of the use of funds from the United States Emergency Refugee and Migration Assistance Fund to meet the urgent refugee needs of Burmese refugees and displaced persons; to the Committee on Foreign Relations.

EC-3801. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to August 13, 1992; to the Committee on Foreign Relations.

EC-3802. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled "Managing Information Resources: Tenth Annual Report Under the Paperwork Reduction Act of 1980"; to the Committee on Governmental Affairs.

EC-3803. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report under the Government in the Sunshine Act for calendar year 1991; to the Committee on Governmental Affairs.

EC-3804. A communication from the Chairman of the Farm Credit Administration, transmitting, pursuant to law, the annual re-

port on competition advocacy for fiscal year 1991; to the Committee on Governmental Affairs.

EC-3805. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the annual report on credit management and debt collection for fiscal year 1991; to the Committee on Governmental Affairs.

EC-3806. A communication from the President of the United States, transmitting a draft of proposed legislation to authorize five local pilot projects for the development of community opportunity systems to demonstrate the potential for improving economic opportunity for low-income residents of the community through restructured programs providing services and benefits, and for meeting the identified priorities of the community and the needs of the individuals and families to be served; to the Committee on Labor and Human Resources.

EC-3807. A communication from the Secretary of Health and Human Resources, transmitting, pursuant to law, a report entitled "Nonpayment of Child Support in Maltreating Families"; to the Committee on Labor and Human Resources.

EC-3808. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the Drug Abuse Prevention Program for Runaway and Homeless Youth for fiscal year 1990; to the Committee on Labor and Human Resources.

EC-3809. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations—State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education; to the Committee on Labor and Human Resources.

EC-3810. A communication from the Acting Chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, notice that the Navy intends to offer for transfer, a vessel to the Government of Tunisia; to the Committee on Armed Services.

EC-3811. A communication from the Consumer Product Safety Commission, transmitting, pursuant to law, the Annual Report to Congress, Activities of the Cigarette Fire Safety Project, 1992, Under the Fire Safe Cigarette Act of 1990; to the Committee on Commerce, Science, and Transportation.

EC-3812. A communication from the President of the United States, transmitting, pursuant to law, notice that sanctions against Canada, Colombia, Malaysia, the Netherlands Antilles, Singapore, Spain, and the United Kingdom will not be imposed under the Fishermen's Protective Act of 1967, as amended; to the Committee on Commerce, Science, and Transportation.

EC-3813. A communication from the President of the United States, transmitting, pursuant to law, notice of his intent to add each of the former republics of the Socialist Federal Republic of Yugoslavia, other than Serbia and Montenegro, to the list of beneficiaries under the Generalized System of Preferences; to the Committee on Finance.

EC-3814. A communication from the Acting Assistant Secretary Legislative Affairs, Department of State, transmitting, pursuant to law, notice that the President has authorized the use of up to $14,000,000 from the U.S. Emergency Refugee and Migration Assistance Fund to meet the unexpected and urgent needs of Angolan refugees and returnees; to the Committee on Foreign Relations.

EC-3815. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements other than treaties entered into by the United States in the sixty day period prior to August 27, 1992; to the Committee on Foreign Relations.

EC-3816. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the fifth report on the assignment or detail of General Accounting Office employees to congressional committees as July 11, 1992; to the Committee on Governmental Affairs.

EC-3817. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of General Accounting Office reports from July 1992; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of August 3, 1992, the following reports of committees were submitted on August 27, 1992:

By Mr. INOUYE, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2481. A bill to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes (Rept. No. 392).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1893. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes (Rept. No. 102-390).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Report to accompany the bill (S. 2606) to further clarify authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands (Rept. No. 102-391).

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. BRADLEY (for himself and Mr. LAUTENBERG):

S. 3217. A bill to amend the Wild and Scenic Rivers Act to designate segments of the Great Egg Harbor and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THURMOND (by request):

S. 3218. A bill to amend section 3681 of title 18, United States Code (the Son of Sam statute), to include crimes involving pecuniary harm; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 337. A resolution authorizing the printing of additional copies of Senate Procedure; considered and agreed to.

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. ADAMS, Mr. AKAKA, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mr. BOREN, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BUMPERS, Mr. BURNS, Mr. BYRD, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. DURENBERGER, Mr. EXON, Mr. FORD, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GORTON, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. INOUYE, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KASTEN, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Mr. METZENBAUM, Mr. MIKULSKI, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROBB, Mr. ROCKEFELLER, Mr. ROTH, Mr. RUDMAN, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. SYMMS, Mr. THURMOND, Mr. WALLOP, Mr. WARNER, Mr. WELLSTONE, Mr. WIRTH, and Mr. WOFFORD):

S. Res. 338. A resolution relative to the death of the Honorable QUENTIN N. BURDICK, of North Dakota, considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 3217. A bill to amend the Wild and Scenic Rivers Act to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers Systems, and for other purposes; to the Committee on Energy and Natural Resources.

GREAT EGG HARBOR RIVER

• Mr. BRADLEY. Mr. President, it is my pleasure to send the following bill to the desk on behalf of myself and my distinguished colleague from New Jersey, Senator LAUTENBERG. The purpose of this legislation is to designate portions of the Great Egg Harbor River in southern New Jersey as a component of the National and Wild Scenic River System.

This legislation represents the final state in a process initiated long ago. The late Warren Fox spent many years of his long and productive life championing the unique qualities of the Great Egg. In 1986, Congress called for a Federal study of this river. Every community has played a role. Literally hundreds of citizens have taken part in public hearings and in the development of a river management plan which is crucial to this process. Each of the affected communities—Winslow, Corbin City, Hammonton, Buena Vista, Wey-

mouth, Estell Manor, Egg Harbor, Somers Point, Monroe, Folsom, and Hamilton Townships—cooperated fully.

Unlike many of the western rivers that make up the bulk of those in the National Wild and Scenic River Systems, the Great Egg River flows through no Federal land. Without a solid commitment to preservation by the grassroots, this effort would have been doomed. But such a commitment does exist. Those who live along the river deserve our highest compliments for their vision, their sense of history and their willingness to maintain the natural beauty that they've inherited for the generations to come.

Mr. President, the National Wild and Scenic River Act, passed in 1968, offered the first Federal protection for the Nation's rapidly disappearing network of free-flowing rivers and streams. This landmark law preserves selected rivers and river corridor landscapes which possess outstanding scenic, recreational, historic and cultural values.

The Great Egg Harbor River is located in a largely undeveloped area of southern New Jersey. A large portion of the river is within the Pinelands National Reserve. The main stem of the river is 60 miles in length. It rises in urbanized Camden County and flows through Gloucester and Atlantic Counties before it empties into the Atlantic Ocean behind the barrier island of Ocean City.

The slow moving water of the Great Egg Harbor River represents a typical Pine Barrens ecosystem where water is the most important resource. Freshwater is stored in the extensive Cohansey aquifer below the Pine Barrens surface. It is estimated that the Cohansey aquifer is the largest underground reservoir of fresh water in the world.

The unique plant and animal species found in the Great Egg Harbor watershed are peculiarly adapted to the limitations of this naturally highly acidic water. The wetlands support a large number of threatened and endangered species which are extremely sensitive to changes in water level and quality.

Most of the 39 species of mammals, 299 bird species, 59 reptile and amphibian species and 91 fish species common to the Pine Barrens exist in the Great Egg Harbor watershed. Beaver, otter, and muskrat are found in the wetlands along with 44 species of game birds, ospreys and nesting bald eagles. The endangered Pine Barrens treefrog, gray treefrog, and timber rattlesnake are also found in the area.

Mr. President, the Great Egg Harbor River is remarkably diverse. It represents an ecosystem so unique that the United Nations has proclaimed it and the rest of the New Jersey Pinelands National Reserve as an international biosphere. It is a truly remarkable combination of natural features that has been the focus of study by scientists of international reputation.

The Great Egg Harbor River is one of New Jersey's greatest and most beautiful natural resources. Those who live in southern New Jersey would like to ensure that the river's water quality and recreational opportunities are maintained through sound planning and management.

The Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Great Egg Harbor River is an ideal candidate for inclusion with these natural wonders.

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. 3217

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

SECTION 1. DESIGNATION.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following new paragraph:

"( ) GREAT EGG HARBOR, NEW JERSEY.—(A) the 39.5-mile segment of the main stem, to be administered by the Secretary of the Interior in the following classifications:

"(i) From the mouth of the Patcong Creek to the mouth of Perch Cove Run, approximately 10 miles, as a scenic river.

"(ii) From Perch Cove Run to the Mill Street Bridge, approximately 5.5 miles, as a recreational river.

"(iii) From Lake Lenape to the Atlantic City Expressway, approximately 21 miles, as a recreational river.

"(iv) From Williamstown-New Freedom Road to the Pennsylvania Railroad right-of-way, approximately 3 miles, as a recreational river.

"(B) The 89.5-mile segment of the following tributaries, to be administered by the Secretary of the Interior in the following classifications:

"(i) Squankum Branch from its confluence with Great Egg Harbor River to Malaga Road, approximately 4.5 miles, as a recreational river.

"(ii) Big Bridge Branch, from its confluence with Great Egg Harbor River to its headwaters, approximately 2.2 miles, as a recreational river.

"(iii) Penny Pot Stream Branch, from its confluence with Great Egg Harbor River to 14th Street, approximately 4.1 miles, as a recreational river.

"(iv) Deep Run, from its confluence with Great Egg Harbor River to Pancoast Mill Road, approximately 5.4 miles, as a recreational river.

"(v) Mare Run, from its confluence with Great Egg Harbor River to Weymouth Avenue, approximately 3 miles, as a recreational river.

"(vi) Babcock Creek, from its confluence with Great Egg Harbor River to its headwaters, approximately 7.5 miles, as a recreational river.

"(vii) Gravelly Run, from its confluence with Great Egg Harbor River to Pennsylvania Railroad right-of-way, approximately 2.7 miles, as a recreational river.

"(viii) Miry Run, from its confluence with Great Egg Harbor River to Asbury Road, approximately 1.7 miles, as a recreational river.

"(ix) South River from its confluence with Great Egg Harbor River to Main Avenue, approximately 13.5 miles, as a recreational river.

"(x) Stephen Creek, from its confluence with Great Egg Harbor River to New Jersey Route 50, approximately 2.3 miles, as a recreational river.

"(xi) Gibson Creek, from its confluence with Great Egg Harbor River to First Avenue, approximately 5.6 miles, as a recreational river.

"(xii) English Creek, from its confluence with Great Egg Harbor River to Zion Road, approximately 3.5 miles, as a recreational river.

"(xiii) Lakes Creek, from its confluence with Great Egg Harbor River to the dam, approximately 2.2 miles as a recreational river.

"(xiv) Middle River, from its confluence with Great Egg Harbor River to the levee, approximately 5.6 miles, as a scenic river.

"(xv) Patcong Creek, from its confluence with Great Egg Harbor River to Garden State Parkway, approximately 2.8 miles, as a recreational river.

"(xvi) Tuckahoe River (lower segment) from its confluence with Great Egg Harbor River to the Route 50 bridge, approximately 9 miles, as a scenic river.

"(xvii) Tuckahoe River, from the Route 50 Bridge to Route 49 Bridge, approximately 7.3 miles, as a recreational river.

"(xviii) Cedar Swamp Creek, from its confluence with Tuckahoe River to its headwaters approximately 6 miles, as a scenic river.

"(C)(i) The Secretary of the Interior (hereafter in this paragraph referred to as the 'Secretary') shall administer the segments designated under this paragraph in association with the political jurisdictions through which the Great Egg Harbor River and its tributaries pass and in accordance with local river management plans, except that publicly owned lands shall continue to be managed by the agency charged with the management of the lands. The local river management plans may be prepared and adopted by the political subdivisions of the State through which the river and its tributaries pass.

"(ii) The local river management plans referred to in clause (i) shall be reviewed by the Secretary, in consultation with an informal advisory group. The informal advisory group shall be comprised of representatives of political subdivisions of the State in the area of the Great Egg Harbor River and its tributaries, and representatives of the State. The informal advisory group shall ensure that the proper implementation of the local river management plan swill protect the values for which the river and its tributaries were designated under this paragraph.

"(iii) The Secretary is authorized to provide, on request, planning assistance to political subdivisions of the State. The Secretary is authorized to enter into a memorandum of understanding or a cooperative agreement with another Federal agency or with the State to ensure that Federal and State programs are carried out in a manner that is consistent with the local river management plans referred to in clause (i).

"(iv) The Secretary shall review, on a biennial basis, compliance with the local river management plans referred to in a clause (i) in effect at the time of the review. The Secretary shall report, on a timely basis, any deviation from the local river management plans that causes, or may result in, a diminution of the values for which the segment concerned was designated under this paragraph to the Committee on Energy and Natural Resources of the Senate and to the Com-

mittee on Interior and Insular Affairs of the House of Representatives.

"(v) If, after the review under clause (iv), issues related to river protection are not resolved by existing mechanisms of State government, the government of a political subdivision of the State, or the Federal Government, the Secretary shall submit a written report to the committees referred to in clause (iv) not later than 120 days after the date of the review. The report shall include alternatives to address the issues and to ensure protection of the segment concerned.

"(D) Subsections (b) and (c) and section 6 shall not apply to the river segments designated by this paragraph.

"(E) To carry out the planning assistance and biennial review and reporting for the segments designated under this paragraph, for each fiscal year, there are authorized to be appropriated to the Department of the Interior an amount not to exceed $70,000.".●

By Mr. THURMOND (by request):

S. 3218. A bill to amend section 3681 of title 18, United States Code (the Son of Sam statute), to include crimes involving pecuniary harm; to the Committee on the Judiciary.

AMENDMENT OF FEDERAL SON OF SAM STATUTE

Mr. THURMOND. Mr. President, I rise to introduce an important bill to amend to what is commonly referred to as the Federal Son of Sam statute. The Son of Sam law, embodied in section 3681 of title 18, requires that an accused or convicted criminal's income from works describing his crime be made available to the victims of the crime and the criminal's other creditors. Yet, in Simon & Schuster versus New York Crime Victims Board, the Supreme Court ruled that a similar New York State statute was an unconstitutional restriction of speech. The Court held that the statute was inconsistent with the first amendment because it singled out income from expressive activity. The law imposed a financial burden not placed on any other speech or income. Therefore, it is vitally important that we amend the Federal version of this law to conform to the Court's opinion and still preserve the protection afforded to victims under the Federal Son of Sam statute.

New York enacted its statute in 1977 following the apprehension of serial killer David Berkowitz, the so-called Son of Sam. The hunt for Berkowitz and his ultimate capture received a great deal of media publicity. By the time he was captured the rights to his story were worth a great deal of money to some publishers. Out of concern for the victims of Berkowitz and other victims of vicious killers, New York's legislature enacted its statute which prevented people like Berkowitz from profiting at their victim's expense. Instead of lining killers' pockets, the funds generated by criminals were to be made available to compensate victims of crimes.

In December 1991, the Supreme Court ruled that the New York Son of Sam statute was a violation of the first amendment because it singled out expressive activity. The Court found that the statute had drawn a distinction based simply on expressive activity which had nothing to do with the interest in compensating victims. The Court noted that there was no valid reason for limiting compensation of victims to proceeds solely derived from expressions about the crime. While the New York statute was not narrowly drawn to survive first amendment scrutiny, the Court did agree that States have a compelling interest in depriving criminals of profits derived from their crimes and in using those funds to compensate victims. The Court left the window open for the possible constitutionality of a law which forfeits all proceeds from crimes, including those obtained from expressions about the crime.

The Supreme Court's decision overturning the New York statute places the Federal Son of Sam statute in jeopardy because it too is directed at proceeds derived solely from works relating to depictions of the crime or expressions of thoughts about it. If tested, the law as it stands today might not survive first amendment scrutiny.

The bill I am introducing today is designed to cure the potential first amendment problem with section 3681 by broadening the statute to reach all proceeds derived by the criminal from the offense, not just the proceeds from expressive activity alone. As amended, section 3681 would operate as many other forfeiture laws to appropriate property of the criminal arising from the commission of a crime in order in order to assure that the criminal does not profit and that the victims are compensated. The bill would also expand the scope of the statute by adding offenses relating to espionage because it is clear that those who would spy against this great Nation must not be permitted to legally profit for such traitorous acts.

Finally, the amendments would enlarge the statute to cover crimes which result in pecuniary as well as physical harm to an individual. There is no reason that a person committing a white collar crime resulting in pecuniary losses should be immune from the forfeiture provisions, and including them will help the victims.

It is critical that this legislation be amended. We must ensure that criminals are not permitted to profit from their heinous crimes while leaving their victims uncompensated. The Son of Sam statutes enacted by the States and the U.S. Government are the principal means available to government which will prevent criminals from obtaining large sums of money for selling their heinous stories to the media. Forfeiture laws, however, are not so limited in scope. These laws require forfeiture of all spoils derived from unlawful acts. Amending the Son of Sam statute to include all criminal proceeds, not just those derived from expression, is the best way to guarantee the statute's constitutionality.

For these reasons, I urge my colleagues to closely study this measure and consider cosponsoring it. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 3218

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

SECTION 1. AMENDMENT OF FEDERAL "SON OF SAM" STATUTE.

(a) IN GENERAL.—Section 3681(a) of title 18, United States Code, is amended to read as follows:

"(a)(1) Upon the motion of the United States Attorney made at any time after a conviction of a defendant for an offense—

"(A) under section 793, 794, or 798 of this title;

"(B) under section 4(b) or 4(c) of the Subversive Activities Control Act (50 U.S.C. 783 (b) and (c)); or

"(C) for an offense against the United States resulting in physical or pecuniary harm to an individual,

the court shall, if the court determines that the interests of justice or an order of restitution under this title so requires, order such defendant to forfeit all or any part of proceeds received or to be received by that defendant, or a transferee of that defendant, as a result of that offense, including the proceeds from any contract and any other proceeds directly or indirectly traceable to the offense.

"(2) Notice shall be given to any interested party prior to the issuance of a court order under this subsection.

"(3) For purposes of this section—

"(A) convictions pursuant to United States military courts-martial for offenses comparable to violations of sections 793, 794, and 798 of this title or section 4 (b) or (c) of the Subversive Activities Control Act; or

"(B) convictions by foreign courts of United States nationals for offenses which, if committed within the United States, would constitute offenses under the sections referred to in subparagraph (A), shall be considered as convictions for which court orders may be issued under this subsection.".

(b) DEFINITION.—Section 3681(d) of title 18, United States Code, is amended by inserting "or pecuniarily" after "physically".

ADDITIONAL COSPONSORS

S. 1002

At the request of Mr. SHELBY, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1002, a bill to impose a criminal penalty for flight to avoid payment of arrearages in child support.

S. 1111

At the request of Mr. MITCHELL, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1111, a bill to protect the public from health risks from radiation exposure from low-level radioactive waste, and for other purposes.

S. 1451

At the request of Mr. BIDEN, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a co-

sponsor of S. 1451, a bill to provide for the minting of coins in commemoration of Benjamin Franklin and to enact a fire service bill of rights.

S. 1777

At the request of Mr. ADAMS, the names of the Senator from Iowa [Mr. GRASSLEY], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of S. 1777, a bill to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes.

S. 1842

At the request of Mr. DASCHLE, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1842, a bill to amend title XIX of the Social Security Act to provide for Medicaid coverage of all certified nurse practitioners and clinical nurse specialists services.

S. 1996

At the request of Mr. ROCKEFELLER, the names of the Senator from South Dakota [Mr. DASCHLE], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 1996, a bill to amend title XVIII of the Social Security Act to provide for uniform coverage of anticancer drugs under the Medicare Program, and for other purposes.

S. 2062

At the request of Mr. KENNEDY, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 2062, a bill to amend section 1977A of the Revised Statutes to equalize the remedies available to all victims of intentional employment discrimination, and for other purposes.

S. 2134

At the request of Mr. NUNN, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 2134, a bill to provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the U.S. Olympic Committee.

S. 2180

At the request of Mr. GRASSLEY, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2180, a bill to provide greater access to civil justice by reducing costs and delay and for other purposes.

S. 2181

At the request of Mr. BUMPERS, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 2181, a bill to improve the capacity of rural communities to respond to homelessness, to establish effective program delivery models for prevention and remediation of homelessness in rural areas, to collect data on the extent and characteristics of homelessness in rural areas, and for other purposes.

S. 2484

At the request of Mr. KASTEN, the names of the Senator from Maine [Mr. COHEN], the Senator from Vermont [Mr. LEAHY], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 2484, a bill to establish research, development, and dissemination programs to assist State and local agencies in preventing crime against the elderly, and for other purposes.

S. 2696

At the request of Mr. DOMENICI, the names of the Senator from Montana [Mr. BURNS] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2696, a bill to establish a comprehensive policy with respect to the provision of health care coverage and services to individuals with severe mental illnesses, and for other purposes.

S. 2789

At the request of Mr. GRAHAM, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 2789, a bill to encourage the growth and development of commercial space activities in the United States, and for other purposes.

S. 2889

At the request of Mr. BOREN, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Montana [Mr. BURNS], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 2889, a bill to repeal section 5505 of title 38, United States Code.

S. 2900

At the request of Mr. DOMENICI, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Wyoming [Mr. WALLOP], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2900, a bill to establish a moratorium on the promulgation and implementation of certain drinking water regulations promulgated under title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act) until certain studies and the reauthorization of the Act are carried out, and for other purposes.

S. 2904

At the request of Mr. MURKOWSKI, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 2904, a bill to amend the Internal Revenue Code of 1986 to permit rollovers into individual retirement accounts of separation pay from the Armed Forces.

S. 2914

At the request of Mr. DURENBERGER, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Hawaii [Mr. INOUYE], the Senator from South Dakota [Mr. PRESSLER], the Senator from Alabama [Mr. HEFLIN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 2914, a bill to direct the Secretary of Health and Human Services to make separate payment for interpretations of electrocardiograms.

S. 2958

At the request of Mr. AKAKA, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2958, a bill to amend chapter 37 of title 38, United States Code, to expand the housing loan program for veterans.

S. 2988

At the request of Mr. FOWLER, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 2988, a bill to amend the Public Health Service Act and title XIX of the Social Security Act to provide for the prevention, control, and elimination of tuberculosis, and for other purposes.

S. 3002

At the request of Mr. DURENBERGER, the names of the Senator from Connecticut [Mr. DODD] and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 3002, a bill to amend title XIX of the Social Security Act to provide for optional coverage under State medicaid plans of case-management services for individuals who sustain traumatic brain injuries, and for other purposes.

S. 3008

At the request of Mr. ADAMS, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 3008, a bill to amend the Older Americans Act of 1965 to authorize appropriations for fiscal years 1992 through 1995; to authorize a White House Conference on Aging; to amend the Native Americans Programs Act of 1974 to authorize appropriations for fiscal years 1992 through 1995; and for other purposes.

S. 3009

At the request of Mr. DOMENICI, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 3009, a bill to amend title 10, United States Code, to provide for the payment of an annuity or indemnity compensation to the spouse or former spouse of a member of the Armed Forces whose eligibility for retired or retainer pay is terminated on the basis of misconduct involving abuse of a dependent, and for other purposes.

S. 3088

At the request of Mr. KENNEDY, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 3088, a bill to amend the Public Health Service Act to establish a program to provide grants to improve the quality and availability of comprehensive education, health and social services for at-risk youth and their families, and for other purposes.

S. 3092

At the request of Mr. NUNN, the names of the Senator from Nevada [Mr. REID] and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 3092, a bill to amend the charter of the Group Hospitalization and Medical Services, Inc., to remove the partial exemption granted to the corporation from the insurance laws and regulations of the District of Columbia.

S. 3117

At the request of Mr. DOLE, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 3117, a bill to amend title XVIII of the Social Security Act to enhance certain payments made to medicare-dependent, small rural hospitals.

S. 3147

At the request of Mr. NUNN, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 3147, a bill to prohibit certain political activities of certain Federal officers in the Office of National Drug Control Policy.

S. 3148

At the request of Mr. PRYOR, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 3148, a bill to amend title XI of the Social Security Act to establish an Intergovernmental Task Force on Health Care Fraud and Abuse.

S. 3158

At the request of Mr. SMITH, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 3158, a bill to amend the Internal Revenue Code of 1986 to allow individuals to designate that up to 10 percent of their income tax liability be used to reduce the national debt, and to require spending reductions equal to the amounts so designated.

S. 3172

At the request of Mr. ROCKEFELLER, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 3172, a bill to amend section 337 of the Tariff Act of 1930 and title 28 of the United States Code to provide effective procedures to deal with unfair practices in import trade and to conform section 337 and title 28 to the General Agreement on Tariffs and Trade, and for other purposes.

S. 3177

At the request of Mr. SPECTER, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 3177, a bill to amend title 13, United States Code, to require the Secretary of Commerce to notify the Senate and House of Representatives about changes in the methodology for producing numbers used in any Federal funding formula.

S. 3178

At the request of Mr. SPECTER, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 3178, a bill to prohibit the use of appropriated funds to adjust the 1990 decennial census or any intercensal estimates by the Bureau of the Census.

SENATE JOINT RESOLUTION 278

At the request of Mr. DODD, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Arkansas [Mr. PRYOR], and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of Senate Joint Resolution 278, a joint resolution designating the week of January 3, 1993, through January 9, 1993, as "Braille Literacy Week."

SENATE JOINT RESOLUTION 319

At the request of Mrs. KASSEBAUM, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 319, a joint resolution to designate the second Sunday in October of 1992 as "National Children's Day."

SENATE JOINT RESOLUTION 321

At the request of Mr. KOHL, the names of the Senator from Texas [Mr. BENTSEN] and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 321, a joint resolution designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week."

SENATE JOINT RESOLUTION 330

At the request of Mr. KENNEDY, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from Colorado [Mr. BROWN], the Senator from California [Mr. SEYMOUR], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Joint Resolution 330, a joint resolution to designate March 1993 as "Irish-American Heritage Month."

SENATE JOINT RESOLUTION 334

At the request of Mr. MITCHELL, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 334, a joint resolution designating September 1992 as "Childhood Cancer Month."

SENATE CONCURRENT RESOLUTION 126

At the request of Mr. SHELBY, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of Senate Concurrent Resolution 126, a concurrent resolution expressing the sense of the Congress that equitable mental health care benefits must be included in any health care reform legislation passed by the Congress.

SENATE RESOLUTION 337—AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF SENATE PROCEDURE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 337

Resolved, That there are hereby authorized to be printed 2,600 additional copies of Riddick's Senate Procedure.

SENATE RESOLUTION 338—RELATIVE TO THE DEATH OF THE HONORABLE QUENTIN N. BURDICK OF NORTH DAKOTA

Mr. MITCHELL (for himself, Mr. DOLE, Mr. ADAMS, Mr. AKAKA, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mr. BOREN, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BUMPERS, Mr. BURNS, Mr. BYRD, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. DURENBERGER, Mr. EXON, Mr. FORD, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GORTON, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. INOUYE, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KASTEN, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROBB, Mr. ROCKEFELLER, Mr. ROTH, Mr. RUDMAN, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. SYMMS, Mr. THURMOND, Mr. WALLOP, Mr. WARNER, Mr. WELLSTONE, Mr. WIRTH, and Mr. WOFFORD) submitted the following concurrent resolution; which was considered and agreed to:

S. RES. 338

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Quentin N. Burdick, a Senator from the State of North Dakota.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased.

AMENDMENTS SUBMITTED

DEPARTMENT OF VETERANS AFFAIRS, HOUSING AND URBAN DEVELOPMENT, AND SUNDRY INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATIONS ACT, FISCAL YEAR 1993

MIKULSKI (AND GARN) AMENDMENT NO. 2952

Ms. MIKULSKI (for herself and Mr. GARN) proposed an amendment to the bill (H.R. 5679) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes, as follows:

On page 4, line 17, strike the word "to" where it first appears, and insert in lieu thereof "which may".

On page 5, line 19, strike the word "to" and insert in lieu thereof "which may".

On page 6, line 7, strike the word "to" where it first appears and insert in lieu thereof "which may".

On page 8, line 18, before the period, insert the following new proviso: ": *Provided further*, That, upon the enactment of legislation authorizing the furnishing by contract of counseling and other care for eligible veterans for the after effects of sexual trauma, of the amount appropriated herein, $4,000,000 shall be available for such contracts".

On page 10, line 3, strike "under 38 U.S.C. 3710" and insert in lieu thereof "for any purpose specified in 38 U.S.C. 3710 which was".

On page 16, line 2, before the period, insert the following new proviso: ": *Provided further*, That, of the funds appropriated under this heading, $11,000,000 shall be available for the Northern California medical center replacement (Martinez) project".

On page 20, strike the matter on line 3 through line 10, inclusive.

On page 23, line 11, strike "$500,000,000" and insert in lieu thereof "$350,000,000".

On page 30, line 6, strike "$3,231,000,000" and insert in lieu thereof "$3,581,000,000".

In the matter under the heading "Annual Contributions for Assisted Housing" beginning on page 30, line 1 through page 37, line 22, strike the figure "$3,794,234,000" where ever it appears and insert in lieu thereof "$4,144,234,000".

On page 32, line 22, before the colon, insert the following new proviso: ": *Provided further*, That of the $4,144,234,000 total under this head, $350,000,000 shall be for the section 8 existing housing certificate program (42 U.S.C. 1437f)".

On page 33, line 3 strike "$250,000,000" and insert in lieu thereof "$350,000,000".

On page 35, strike all on line 5 down through "project" on line 7, and insert in lieu thereof: "and not rescinded or remitted to the Treasury shall be used by State housing finance agencies of local governments or local housing agencies with projects".

On page 36, line 10, insert the following new proviso before the period: ": *Provided further*, That in fiscal year 1993 the Secretary shall continue to work with the Department of Agriculture to use section 8 vouchers in serving low-income families in rural areas who are unable to afford existing housing".

On page 38, line 7, strike "$1,300,000,000" and insert in lieu thereof "$981,200,000".

On page 40, line 24, strike "$3,550,000,000" and insert in lieu thereof "$3,350,000,000".

On page 46, line 13, strike "$183,652,000" and insert in lieu thereof "$146,152,000".

On page 46, line 20, strike "$9,038,980,000" and insert in lieu thereof "$8,864,230,000".

On page 47, line 1, strike "$79,000,000" and insert in lieu thereof "$41,500,000".

On page 47, line 3, strike "$21,000,000" and insert in lieu thereof "$11,000,000".

On page 49, line 1, strike "$17,450,000" and insert in lieu thereof "$67,450,000".

On page 51, strike line 22, and insert in lieu thereof "$2,000,000,000" of continent liability for loan principal: *Provided*, That $1,700,000,000 of said amount shall become available only upon enactment into law of authorizing legislation.".

On page 52, line 2, strike "$1,200,000,000" and insert in lieu thereof "$1,500,000,000".

On page 66, strike the matter beginning on line 22, through line 8 on page 67.

On page 68, after line 5, insert the following new paragraph: "With respect to two projects of the United Cerebral Palsy of New Jersey, Inc., which are located in Newark and Teaneck, New Jersey, and are to be assisted under section 811 (project numbers 031-EH244/NJ39-T881-001 and 031-EH231), the Secretary of Housing and Urban Development shall extend the fund reservations for a reasonable period sufficient to permit final closing to take place and shall increase the reservation of project rental assistance to an amount sufficient to cover the reasonable operating expenses of these projects.".

On page 68, line 5, insert the following new paragraph: "Rehabilitation activities undertaken by the Committee for Dignity and Fairness for the Homeless Housing Development, Inc. in connection with 46 dwelling units that were renovated for permanent housing for the homeless and that are located in Philadelphia, Pennsylvania, shall be deemed to have been conducted pursuant to an agreement with the Secretary of Housing and Urban Development under clause (ii) of the third sentence of section 8(d)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)(A)).".

On page 71, line 5, strike "$42,100,000" and insert in lieu thereof "$48,400,000".

On page 71, line 11, before the period, insert the following new proviso: ": *Provided further*, That of the funds provided under this heading, $6,300,000 shall be for the relocation of the headquarters staff of the Commission and shall be available until expended".

On page 73, line 15, before the period, insert the following new proviso: ": *Provided further*, That not less than $2,900,000 of such funds shall be made available to the Office of the Director of the National Acid Precipitation Assessment Program".

On page 73, line 15, before the period, insert the following new proviso: ": *Provided further*, That from funds appropriated under this heading, but contingent upon authorization for such grants being enacted into law, the Administrator may make grants to Federally recognized Indian governments for the development of multimedia environmental programs".

On page 75, line 8, before the period, insert the following new proviso: ": *Provided further*, That if the agency determines that it would be more cost effective and less disruptive of accomplishing the agency's mission than issuing a new research support contract, after the agency has notified and received the approval of the appropriate committees of the Congress, not more than $10,000,000 of the amount appropriated herein may be made available for personnel compensation and benefits and travel of additional personnel (on a temporary or permanent basis) needed to replace contract services at the agency's environmental research laboratories".

On page 76, lines 14 and 15, strike "begin preliminary planning required for the establishment of" and insert in lieu thereof: "plan, design, and acquire land to establish".

On page 82, line 24, after "therefore" insert the following: ": *Provided further*, That notwithstanding any other provision of law, from sums appropriated under this paragraph and allotted under title of the Federal Water Pollution Control Act to a State, the State may make a loan to the International Boundary and Water Commission for the purpose of carrying out construction activities to upgrade an international wastewater treatment works identified by the Administrator of the Environmental Protection Agency in that Integrated Environmental Plan for the Mexico-United States Border, issued in February 1992: *Provided further*, That for the purposes of subsection (c) of section 603 the Federal Water Pollution Control Act, each international wastewater treatment works referred to in the preceding proviso shall be deemed a project eligible for assistance under such subsection, and repayment of a loan for construction activities at the international wastewater treatment works shall be made in the same manner as is required for any other project eligible for assistance under such subsection, except that the term of the loan may exceed the term prescribed in section 603(d)(1)(A) of such Act and the International Boundary and Water Commission shall not be subject to any time limitation with respect to the expenditure of the loan for the purpose of the loan: *Provided further*, That notwithstanding any other provision of law, 100 percent of the amount of the loan referred to in the preceding proviso shall be made from funds provided to the State by the Federal Government, and the requirement under section 602(b)(3) of the Federal Water Pollution Control Act that the State enter into a binding commitment to provide 120 percent of the amount of each grant payment under section 601 of such Act shall not apply to that portion of the grant payment used to fund a loan for an international wastewater treatment works: *Provided further*, That for each quarter, the amount that the State is required to deposit into the State water pollution control revolving fund pursuant to section 602(b)(2) of the Federal Water Pollution Control Act shall be reduced by an amount equal to 20 percent of the amount of any loan to the International Boundary and Water Commission".

On page 90, strike line 1 through 19, inclusive.

On page 91, after line 21, insert the following new paragraph:

REFORMULATED GASOLINE

It is the sense of the Senate that the "simple model" contained in the Supplemental Notice of Proposed Rulemaking for reformulated gasoline published at 57 Federal Register 13416 (April 16, 1992) is not in compliance with the requirements of section 211(k) of the Clean Air Act.

On page 91, after line 21, insert the following new paragraph:

FUNDING OF CERTAIN RESEARCH CENTERS

For fiscal year 1994, and thereafter, a competitive process shall be carried out by the Administrator of the Environmental Protection Agency in funding research centers that are operated by non-Federal entities.

On page 91, after line 21, insert the following new paragraph:

SOLID WASTE DISPOSAL ACT

No funds appropriated to the Environmental Protection Agency for fiscal year 1993 may be expended for the promulgation, implementation, or enforcement of any regulation under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) concerning process wastewater from phosphoric acid production. The preceding sentence shall not apply to the regulation of those wastes under sections 3007, 3013, and 7003 of that Act (42 U.S.C. 6927, 6934, and 6973, respectively).

On page 99, line 9, strike "of the National Preparedness Directorate".

WIRTH AMENDMENT NO. 2953

Mr. WIRTH proposed an amendment to the bill H.R. 5679, supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . CIVIL STATUTE OF LIMITATIONS FOR TORT ACTIONS BROUGHT BY THE RTC.

(a) RESOLUTION TRUST CORPORATION.—Section 11(d)(14) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)) is amended—

(1) in subparagraph (A)(ii), by inserting "except as provided in subparagraph (B)," before "in the case of";

(2) by redesignating subparagraph (B) as subparagraph (C);

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) TORT ACTIONS BROUGHT BY THE RESOLUTION TRUST CORPORATION.—The applicable statute of limitations with regard to any action in tort brought by the Resolution Trust Corporation in its capacity as conservator or receiver of a failed savings association shall be the longer of—

"(i) the 5-year period beginning on the date the claim accrues; or

"(ii) the period applicable under State law."; and

(4) in subparagraph (C), as redesignated—

(A) by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)"; and

(B) by striking "such subparagraph" and inserting "such subparagraphs".

(b) EFFECTIVE DATE; TERMINATION; FDIC AS SUCCESSOR.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall be construed to have the same effective date as section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) TERMINATION.—The amendments made by subsection (a) shall remain in effect only until the termination of the Resolution Trust Corporation.

(3) FDIC AS SUCCESSOR TO THE RTC.—The Federal Deposit Insurance corporation, as successor to the Resolution Trust Corporation, shall have the right to pursue any tort action that was properly brought by the Resolution Trust Corporation prior to the termination of the Resolution Trust Corporation.

GRAHAM AMENDMENT NO. 2954

Mr. GRAHAM proposed an amendment to the bill H.R. 5679, supra, as follows:

On page 53, line 20, strike out "$910,942,000" and insert in lieu thereof "$906,246,000".

CHAFEE (AND OTHERS) AMENDMENT NO. 2955

Mr. BUMPERS (for Mr. CHAFEE for himself, Mr. BAUCUS, and Mr. DURENBERGER) proposed an amendment to the bill H.R. 5679, supra, as follows:

On page 89, following line 25 insert the following:

EXTENDING COMMENT PERIOD FOR REVISIONS TO CERTAIN HAZARDOUS WASTE RULES

Funds appropriated or transferred to EPA may be used to develop revisions to 40 C.F.R. 261.3, as reissued on March 3, 1992, published at 57 Fed. Reg. 7628 et seq., EPA shall promulgate revisions to paragraphs (a)(2)(iv) and (c)(2)(i) of 40 CFR 261.3, as reissued on March 3, 1992, by October 1, 1994, but any revisions to such paragraphs shall not be promulgated or become effective prior to October 1, 1993. Notwithstanding paragraph (e) of 40 C.F.R. 262.3, as reissued on March 3, 1992, paragraphs (a)(2)(iv) and (c)(2)(i) of such regulations shall not be terminated or withdrawn until revisions are promulgated and become effective in accordance with the preceding sentence. The deadline of October 1, 1994 shall be enforced under section 7002 of the Solid Waste Disposal Act.

PROVIDING FOR A STUDY OF METALS RECOVERY

Funds appropriated or transferred to the Environmental Protection Agency shall be used in part to conduct a study on the effect of existing regulations on efforts to recover metals from the Nation's wastes, how much metals recovery can be best encouraged, and how the materials should be regulated in order to protect human health and the environment and to effectuate the resource conservation and recovery goals of the Resource Conservation and Recovery Act. In doing so, EPA shall consult with the Secretary of Commerce, the Secretary of the Interior, the metals recovery industry, and other interested parties.

The Administrator shall complete the study not later than April 28, 1993. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study and any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

BUMPERS AMENDMENT NO. 2956

Mr. BUMPERS proposed an amendment to the bill H.R. 5679, supra, as follows:

On page 103, strike lines 12 through 17 and insert in lieu thereof the following: "That $500,000,000 shall be made available for termination of contracts relating to Space Station Freedom; that $200,000,000 shall be made available for Veterans Health Administration Medical Care in addition to sums otherwise appropriated; that $62,000,000 shall be made available to Veterans Health Administration Medical and Prosthetic Research in addition to sums otherwise appropriated: *Provided fur-*".

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that the Subcommittee on Public Lands, National Parks and Forests will consider two additional bills at the hearing previously announced for Tuesday, September 15, 1992. The additional measures to be heard are:

H.R. 2859, a bill to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, MA, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical resources, and

S. 3217, a bill to amend the Wild and Scenic Rivers Act to designate segments of the Great Egg River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, and for other purposes.

The hearing will begin at 2:30 p.m. in Room SD-366 of the Dirksen Office Building in Washington, DC.

For further information regarding the hearing, please contact David Brooks of the subcommittee staff at (202) 224-9863.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research and General Legislation will hold a hearing on the implementation of the Alternative Agriculture Research and Commercialization [AARC] Act of 1990. The hearing will focus on the activities of the AARC Board to date and discuss future activities with regard to establishment of regional AARC centers and the development of patent and licensing agreements. The hearing will be held on Tuesday, September 29, 1992 at 9:30 a.m. in SR-332. Senator TOM DASCHLE will preside.

For further information please contact Laura Lengnick at 224-2321.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on September 8, 1992, at 2:15 p.m. to hold a hearing on the North American Free-Trade Agreement.

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

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate Tuesday, September 8, 1992, at 10 a.m. to conduct a hearing on the competitiveness of the U.S. auto industry and its relationship to a healthy national economy.

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

ADDITIONAL STATEMENTS

MANDATORY USE OF FTS2000

• Mr. SHELBY. Mr. President, I would like to commend a letter to your attention that was sent to me by the Communications Workers of America [CWA]. The letter voices the CWA's support for the renewal of the Federal policy on mandatory use of FTS2000. The letter is succinct and well written and happens to reflect my views on this matter.

The letter follows:

COMMUNICATIONS WORKERS OF AMERICA,
Washington, DC, July 9, 1992.

Hon. DENNIS DECONCINI,
Chairman, Subcommittee on Treasury, Postal Service and General Government, Committee on Appropriations, Dirksen Office Building, Washington, DC.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, Dirksen Office Building, Washington, DC.

DEAR CHAIRMEN DECONCINI AND GLENN: As you know, the matter of the continuation of the Federal policy of "mandatory use" of FTS2000 by government agencies is once again before Congress. The Communications Workers of America wants to voice its support for the renewal of this important federal statute and to strongly urge your active support in the United States Senate.

FTS2000 is a program developed, procured and awarded in an environment of intense,

full and open competition. FTS2000 may have had more active Congressional oversight, even well before the competition has conducted, than any other government program. It is a multi-vendor program, by structure and design. It not only induces two major long distance carriers, but literally hundreds of small, minority and disadvantaged businesses. What may not have been properly stressed, however, is that FTS2000's Network A is staffed by members of the Communications Workers of America.

The policy of "mandatory use" is a basic principle of the FTS2000 program and underlies both the original competitive procurement and the contracts. According to the Congressional Record of July 1, 1992:

". . . the 'mandatory use' provision was conceived in the midst of this (FTS2000) competition when one of the competing contractor teams complained that the costs of preparing a bid and the risks inherent in the FTS2000 contracts (in which prices could only go down, not up) were too high, without some assurance . . . Accordingly, for that and other reasons, Congress enacted the 'mandatory use' statute. This statute represented Congress' commitment to the competing vendors that Federal agencies would make full use of the contracts through the life of the program. The 'best and final offers' of the vendors were formed on the basis of this commitment.

"Ironically, the vendor which had proposed the 'mandatory use' provision has become its chief opponent in the years since its enactment. The central argument raised by those opposing 'mandatory use' has been that 'choice in the competitive marketplace' should be the Government's strategy for meeting its telecommunications requirements . . . But the FTS2000 contracts were awarded after just such a competition. Without a doubt, there will be a spirited competition a few years down the road for the contracts that replace FTS2000 . . . Additionally, we note approximately 83% ($3.1 billion) of the Government's telecommunications requirements is not covered by FTS2000 and is subject to competition from all responsible vendors."

In sum, we believe that the fair outcome of the full and open competition which created FTS2000 should be upheld, lest the federal procurement process itself be damaged by the insistent demands of losing competitors who are disappointed in the outcome. There are fundamental public policy issues at stake when an accountable public process conducted under law, is replaced with an action to satisfy the disgruntled.

The suggestion that the Government does not need, or should not get, sophisticated communications capabilities to meet its specialized needs is remarkable in itself. Were the Government to simply rely on the commercial public networks, or a balkanized patchwork of disparate contract services, there would be a legitimate question about due diligence in meeting the Government's unique societal role. In times of communications crisis—whether a matter of national security, emergency preparedness or simple gridlock created by a public run on Springsteen tickets—the Government must not find itself unable to communicate with itself or our citizens. That is why the dedicated FTS system was originally created in the 1960s and why federal networks such as those provided under FTS2000 are legitimately in the public interest today. Government could not readily explain to the American people why it did away with ubiquitous federal communications systems either in the interest of getting what may purport to be the cheapest conceivable services or to satisfy losing bidders.

And yet, the economics of FTS2000 are an extraordinary success story. In just three years of operation, the Government (and taxpayer) has saved more than a half-billion dollars through FTS2000 (more than five times the original Government estimates). Indeed, these savings are attributable to the discounting across agencies and across FTS2000 services which are made possible by "mandatory use FTS2000." The policy has been described as "the economic engine" that drives and which, in combination with the periodic price recompetitions, will continue harvesting savings for the taxpayer. The first of those price recompetitions is already under way.

In sum, we believe the FTS2000 program and the "mandatory use" statute deserve your continued full support, as they have ours. We are keenly aware that your support over the last several years in the United States Senate has made this competitive success story possible. It has provided stable opportunity for American workers. Accordingly, we urge that this statute be renewed for FY93 and extended, as well, to provide assurance and stability for the remaining years of the program.

We hope we can count on your continued support.

Sincerely,

MORTON BAHR,
President.●

THE CENTURION ATTACK SUBMARINE

● Mr. D'AMATO. Mr. President, some things are worth waiting for. The Centurion milestone 0 acquisition decision memorandum [ADM] crafted by the Under Secretary of Defense for Acquisition, with the full support of the Navy, calls for an extraordinarily comprehensive exploration of submarine alternatives to fulfill the new attack submarine mission. The cost and operational effectiveness analysis that results should be the last word on submarines for years to come. I compliment the work of the Under Secretary's shop and commend this important document to my colleagues.

I ask that the full text of the Centurion ADM be inserted in the RECORD immediately after my remarks.

The text follows:

THE UNDER SECRETARY OF DEFENSE,
Washington, DC, August 28, 1992.

[Memorandum for Secretary of the Navy]

Subject: New Attack Submarine Capability—Acquisition Decision Memorandum.

The Defense Acquisition Board met on August 18, 1992, to consider the Navy request for approval of Milestone 0 for a new attack submarine capability. The Mission Need Statement was validated by the JROC by memorandum of October 23, 1991. The Chairman, Conventional Systems Committee, recommended approval of Milestone 0. I approve Milestone 0 and the initiation of the concept definition studies.

The Cost and Operational Effectiveness Analysis (COEA) activities should begin immediately, be prepared in accordance with DoD 5000.2M, and examine the alternatives shown on the attached chart. More detailed COEA guidance is also attached. The Navy will provide written quarterly CDEA progress reports to me and briefings to the OSD staff. No changes to COEA guidelines may be made without my approval. The new attack submarine performance attributes specified by the Chief of Naval Operations memoranda of January 3 and February 19, 1992, and the associated report forwarded to the Congress on June 22, 1992, as requested in Senate Appropriations Committee Report 102-154, are considered preliminary efforts pending COEA completion and concept definitions. The Navy will provide to me proposed measures of effectiveness for the new attack submarine in time to be included in the COEA. The COEA and industrial base studies will constitute important inputs to decisions on the timing of milestone reviews for future submarine acquisitions. My approval to initiate concept definition studies does not constitute approval for the start of a new attack submarine in the 1990's.

The ASD (P&L) and the Navy will complete the industrial base analysis by November 15, 1992. Upon completion of the analysis, the results will be factored into the ongoing COEA as appropriate. In addition, OUSD(A), with support by the Cost Analysis Improvement Group, will prepare industrial base alternatives, if needed, for consideration by the Deputy Secretary during the budget cycle.

Other new submarine related flexibility studies may proceed with a spending limit of $30M until completion of the submarine industrial base study.

DON YOAKEY.

NAVY ATTACK SUBMARINE MILESTONE I COEA GUIDANCE

This document provides guidance for the Cost and Operational Effectiveness Analysis (COEA) required for the Milestone I review of the new attack submarine.

In accordance with DoDI 5000.2, COEAs serve to evaluate the costs and benefits associated with alternative ways to address recognized defense needs. Milestone I COEAs typically are developed to facilitate program definition and, therefore, assess a broad range of alternative concepts.

ALTERNATIVES

The COEA should consider a broad range of submarine alternatives, avoid arbitrary restrictions in design characteristics, and incorporate emerging technology where appropriate. As a minimum, the analyses should include examination of the following alternatives:

(1) *SSN-21*: Assume continued production of Seawolf at a rate of one per year at one shipyard. Assume two different start dates: (A) FY-1996; (B) FY-1998. This alternative will serve as the cost and analysis baseline.

(2) *SSN-21(V)*: Assume at least two lower cost variants of the SSN-21 with displacements in the range of 10,000 tons.

(3) *SSN-6881*: Assume variations of the SSN-6881 class that incorporate all available technology. Examine two different start dates: (A) FY-1996; (B) FY-1998.

(4) *New nuclear-powered attack submarines*: Examine a range of alternative new nuclear attack submarines. Include alternatives with reduced capabilities relative to those of the SSN-21, and designs smaller than that of the SSN-6881. Examine designs smaller than 5,000 tons and options with reduced or deleted mission capabilities; e.g., power projection. These designs should be more affordable ($18), less than or equal cost of the SSN-6881. Examine three different start dates: (A) FY-1998; (B) FY-2002; (C) FY-2006.

(5) *Trident (V)*: Assume selected variations including differences in tube volume of the Trident design, including a conversion of existing units, with emphasis on power projection mission.

(6) *Conventional Submarines*: Examine a range of conventionally-powered submarines, including as a minimum the following technologies: Diesel; Closed Cyde Diesel; Air Independent Propulsion; Fuel Cell; Stirling Engine; a Hybrid Submarine using a small reactor to recharge its batteries (SSn); and Advanced Batteries. Display the effect of overseas basing on this alternative.

ANALYSIS PLAN

The Navy will develop an analysis plan describing the proposed analytic approach, models, measures of effectiveness, assumed threat, scenarios, and schedule for completing this COEA. This analysis plan should be presented to the Conventional Systems Committee within three months of the August 18, 1992, Milestone O DAB.

SCOPE OF ANALYSES

The COEA should provide information sufficient to understand the attack submarine characteristics that will be recommended for development in Phase I. The analysis will aid decision making by illuminating the advantages and disadvantages of the alternatives considered, and by specifying what scenario factors, assumptions, and system characteristics drive the results.

Analysis should be performed for each combat mission to which submarines are expected to contribute. A baseline should be established by assessing the capability of the planned 2006 (FYDP extended) U.S. combat forces to accomplish each such mission in the context of the DPG scenarios against the validated threat. The potential contribution of each of the submarine alternatives to meeting the combat mission deficiencies should then be assessed through suitable force-on-force analysis.

The analysis should aid in establishing the value of key performance parameters, including speed, payload, sensor performance, and quieting, for each assigned mission. The results should help identify the most cost-effective candidates to be considered by any ensuing Milestone I review. The key performance characteristics of this candidate should also be reflected in the final Operational Requirements Document and any Acquisition Program Baseline that would be prepared for a future formal acquisition program.

The start date for initial construction and procurement profiles for submarine alternatives should be derived from the analysis. These dates and profiles will depend upon assumptions and insights on service life and mothball configuration as well as effectiveness assessments and the results of the ongoing USD(A)/Navy submarine industrial base study. Results from the Defense Science Board study of submarine service life should also be considered in developing these assumed start dates.

SCENARIOS

The submarine missions examined in the COEA will be consistent with the scenarios in the Defense Planning Guidance (DPG). The details of the scenarios will be coordinated with the Joint Staff, the PA&E staff, and DIA.

EFFECTIVENESS

The analyses should show the relative effectiveness of each alternative using revised Top Level Warfighting Requirements (TLWRs) consistent with the new DPG scenarios and DIA-approved threats.

The measures of effectiveness (MOEs) will be defined to measure operational capabilities of the alternatives across the warfare areas identified in the Mission Need Statement. The COEA should show how the MOEs relate to winning the war of contingency, as reflected in a comprehensive set of TLWRs, revised reflect new threats and scenarios in the DPG.

The MOEs should be chosen taking into consideration the need to derive parameters and criteria that can be evaluated consistently throughout program development and testing.

COSTS

A variety of cost measures should be provided, including the present value (discounted) estimates of the life cycle costs, and cost profiles over time.

Estimates of acquisition and thirty-year operating and support costs for each alternative should be included in the COEA and coordinated with the Cost Analysis Improvement Group. This will require separate estimates of R&D, procurement, construction, manpower, and O&M costs, including decommissioning costs as well as costs associated with reconstituting and/or maintaining the nuclear industrial base. The analysis should include relevant cost impacts on the submarine construction industrial base for each of the alternatives considered.

The COEA will show the cost sensitivity to different production rates that may be required as a result of future decisions on the attack submarine force structure.

COMPARING COST AND EFFECTIVENESS

Cost and effectiveness comparisons are rarely useful when reduced to single measures or simple ratios, unless accompanied by supporting data. Summary comparisons of alternatives will include all relevant costs, capabilities, and effectiveness indicators.

To the extent known, the characteristics of each concept that drive effectiveness, performance, cost and uncertainty will be identified. Sensitivity of the results to changes in performance and schedule, uncertainties in the cost and effectiveness estimates, and possible cost and performance thresholds for each alternative will be documented in tradeoff analyses.

STUDY GUIDANCE

The Navy will provide periodic status reports and opportunities for consultation at least quarterly to OUSD(A), OUSD(P), OASD(PA&E), and ODOT&E. These periodic consultations with OSD will serve as the primary vehicle for ensuring that the COEA reflects the intent of the Milestone 0 acquisition decision memorandum. The Director, Naval Forces Division, OASD(PA&E), has been selected by the ASD(PA&E) to serve as a principal OSD advisor for this COEA.

SUBMARINE ONLY ALTERNATIVES: MULTI-MISSION CAPABILITY

I. SSN-21: Cost and analysis baseline; 1 per year at 1 yard; A) start in FY-96; B) start in FY-98.

II. SSN-21(V): Reduced cost SSN-21 10,000 ton class; minimum of 2 to be examined.

III. SSN-6881: Incorporate all available technology; A) start in FY-96; B) start in FY-98.

IV. NSSN: A) More affordable ($1B); B) $ less than or equal to $ for SSN 6881; C) 5,000 ton; D) Other; E) Delay start 2002, 2006.

V. Trident (V): (a) With and b) without tube volume).

VI. Conventional: Navy to select one from non-nuclear options, and to include SSn.

TRUBUTE TO ANDERSEN CORP. OF BAYPORT, MN

• Mr. DURENBERGER. Mr. President, I rise today to pay tribute to the spirit of American free enterprise. Sadly, we do not hear enough these days about businesses which have found a way to thrive in a down economy. But they are out there.

Andersen Corp., of Bayport, MN, is a case in point. This family-owned manufacturer has become, in the course of its 90-year history, the world's largest producer of windows and patio doors. The Bayport operation consists of about 3,700 workers in facilities that cover 63 acres, thus making it the State's largest single-site manufacturing operation.

In a recent column, Dave Beal of the Saint Paul Pioneer Press gave us a rare glimpse into the heart of this publicity shy, yet phenomenally successful family-run organization. Beal called Andersen Corp. "a company whose enduring social contract with its employees makes it a classic study in company loyalty."

His article captures the unique style of doing business that has made Andersen Corp. a model for the Nation:

In an era when workers hop from one job to another, big employers slash their payrolls and relations between bosses and troops are often strained, deep ties continue to bind the workers and managers at Andersen. A small-town, family atmosphere persists at the company, just a 30-minute drive from downtown St. Paul.

The arrangement has paid off where it counts, in productivity. Today, says Jerry Wulf, Andersen's new president, workers produce the equivalent of a rail car full of finished product in the time it took 12 or 13 to do the same thing a decade ago.

"The Andersen philosophy of long-term relationships is certainly what everybody is now seeking," says Roger O'Shaughnessy, CEO at Minnetonka-based Cardinal IG, the supplier that makes all of Andersen's glass at seven plants in Minnesota, Wisconsin, and Iowa.

Ray Mithun, who launched the Campbell-Mithun-Esty advertising agency 59 years ago with Andersen as one of his first three accounts, puts it more boldly. "There's no finer company in the whole cockeyed world than the Andersen company," he declares. "It's the kind of thing that you write about in story books."

Mr. Beal goes on to discuss innovations that through the years have kept the company strong by keeping its employees loyal. Andersen Corp. was the third U.S. company to offer profit sharing to its employees—way back in 1914. Two years later it offered health and life insurance coverage, and in 1920 it introduced a thrift bonus plan that encouraged employees to save a portion of their wages. In 1924, 2-week vacations were added to the list of extras for all production workers.

The list goes on to include incentive pay in 1925, and an employee suggestion program that annually gives workers $70,000 for their ideas on how to improve production. Programs that strengthen in the notion of the extended family are incentive pay and a profit-sharing program that netted, in 1987, an average salary of $60,000. Andersen also encourages long-time em-

ployment and recruits employee family members for new workers. And when an employee's age and years with the company total 94, the worker can retire with generous health care and pension benefits.

Mr. President, the strength of any organization is in its people. In recognizing the strength of its people, Andersen Corp. has shown that loyalty between companies and their workers is not only compassionate, it is profitable. Bayport, MN, is a long way from Washington, DC, but that would be a good lesson for those of us who work in this city and in this Government to learn as well.•

POLICE CHIEF ERNEST A. WILLIAMS

• Mr. LAUTENBERG. Mr. President, I rise today to congratulate Mr. Ernest Williams on his appointment as Trenton's police chief and thank him for his dedication to law enforcement in New Jersey.

A native of New Jersey, Chief Williams has made significant contributions to the community both as a public servant and as a role model for African-Americans.

In 1963, Chief Williams joined the Trenton Police Department and was assigned to the second precinct. After 3 years on foot patrol, Chief Williams was promoted to the rank of detective and then rose steadily through the ranks. In 1986, Chief Williams was sworn in as the deputy chief of the police department, the first African-American to hold that post. In 1990, he received another distinguished honor when Mayor Douglas Palmer appointed him the acting director of public safety. Then on April 1, 1992, Ernest Williams was sworn in as Trenton's chief of police. The city's first black chief of police, Mr. Williams supervises a force of 377 officers responsible for the safety and protection of New Jersey's capital city.

Mr. President, the men and women who devote their lives to law enforcement are the people on the front lines in the war against crime. They protect our families and homes and give us a sense of security. Chief Williams is an example of an extraordinary officer who has devoted his life to public safety. Because of his special commitment to Trenton and its people, I extend to him this special national recognition. He has my best wishes for continued success and my thanks for his contributions to the community.•

COMMENTARY BY PROF. HY BERMAN ON ETHNIC HATRED

• Mr. DURENBERGER. Mr. President, the collapse of communism has brought hope to millions of Eastern Europeans. Unfortunately communism's downfall has also awakened a long-domant form of human brutality.

In a column published August 11 in the St. Paul Pioneer Press, University of Minnesota history professor Hy Berman spells out for us the dangers we face here at home whenever human rights become secondary to, as Mr. Berman puts it, "the maladies of nationalist fragmentation."

I urge my colleagues to read and heed Professor Berman's solemn words of warning:

ETHNIC HATRED SEEN IN EASTERN EUROPE COULD PLAGUE UNITED STATES, TOO

With the collapse of communism in Eastern Europe, the once-repressed forces of nationalism have replaced the repression of the gulags as the concern of humanity.

Tribal and territorial battles are making victims of innocent civilians, solely because of the accident of their birth or residence. "Ethnic cleansing" is now the euphemism used to create a region free of "undesirables," whether they are of another religion or nationality or are otherwise seen as obstacles to national greatness.

We stand helpless as we see on our television news programs and read in our newspapers of the violence committed against innocent victims of nationalist strivings. We debate the desirability of intervention and the efficacy of United Nations mediation in the wake of bloody attacks and concentration camp atrocities in the name of ethnic purity.

It is perhaps fair to say that the relative inaction of the world in the face of these nationalist bloodlettings conjures up the memory of similar inaction in the fact of Nazi extermination policies in the 1940s.

Can we afford to celebrate the end of the Cold War and the collapse of communism by being indifferent to the suffering triggered by the fragmentation of the formerly communist world? Does our victory over communism mean that we are no longer concerned over events in East Central Europe? These are questions that demand consideration by our national leaders and by our opinion makers.

It is ironic that the year 1992, which promised to see the beginnings of European unity and integration, has turned into the year of nationalist purification and bloodletting.

Times of crisis are always periods of cutting-edge decision, and the tendency toward scapegoating and seeking convenient victims revives historic grievances and prevents rational solutions to national problems. This had been the course of events in the former Yugoslavia and explains the unrelenting warfare on civilians of different ethnicities by the competing contenders for national purity in the region. The world cannot afford to stand by and watch the slaughter of innocents with indifference.

There is a cautionary lesson for us in these tragic events. Although we pride ourselves on our tolerance and our policy of cultural pluralism and ethnic diversity, we can be subject to the same exclusionary pressure if—instead of stressing our unity in diversity—we stress our difference in pejorative ways.

The racial and ethnic conflicts in our major cities have not as yet resulted in the same degree of violence we see elsewhere, but it could happen here. Ethnic and racial pride should not be allowed to be transformed into ethnic and racial exclusivity.

The rising incidence of hate crimes suggest that we are not immune to the maladies of nationalist fragmentation and violence. It is necessary for us to condemn the violations of human rights in the name of ethnic purity occurring elsewhere and to take measures to assure that the epidemic of national hatred not be emulated in our society.•

LONG BEACH HOSPITAL HONORS BERNARD KENNEDY

• Mr. D'AMATO. Mr. President, I rise today to pay tribute to an outstanding individual, Bernard D. Kennedy, who is being honored by the Long Beach Memorial Hospital at its 70th anniversary ball on Sunday, September 13, 1992, at the Sands in Atlantic Beach, NY. This gala event is held each year to commemorate an anniversary of the hospital and to pay tribute to an outstanding honoree. This year's honoree is a vice president and trustee of Long Beach Memorial Hospital/Nursing Home.

Bernard Kennedy is president of King Kullen Grocery Co., Inc. He oversees the business interests of America's first supermarket and its 4,500 employees throughout Queens, Staten Island, Nassau, and Suffolk Counties. Mr. Kennedy has been a resident of Point Lookout for many years. He and his wife, Dottie, raised their five children in this fine community and enjoy the visits of eight grandchildren.

Mr. Kennedy holds Long Beach Memorial Hospital close to his heart. He sees the importance of the hospital, in terms of the stability and well-being of the entire community, as well as each of the individuals it serves. His wisdom and guidance, his support and generosity are part of the force that moves Memorial Hospital forward. The family spirit of Long Beach Memorial is personified in Bernard and Dottie Kennedy, who value their hospital as part of the quality of life in their community.

Long Beach Memorial Hospital was born in 1922 as an emergency first aid station near the beach. In 1927, a 35-bed hospital building opened on this site. That original building is part of the center wing of today's Long Beach Memorial Hospital. Dramatic growth and progress during the fifties, sixties, seventies, and eighties transformed Memorial Hospital into a comprehensive acute care 203-bed teaching hospital and 200-bed skilled care nursing home and a state-of-the-art 403-bed center of medical/surgical excellence and matchless nursing care.

For the great guy that he is and all that he has given to Long Beach Memorial Hospital, it is only right that Bernard Kennedy is being honored at their 70th anniversary ball. Bernard Kennedy, I congratulate you for this great honor and wish to thank you for your many contributions to the great State of New York. I wish you many more successes in all of your future endeavors.•

IN HONOR OF THE 300TH ANNIVERSARY OF GLASTONBURY, CT

• Mr. DODD. Mr. President, I rise today in recognition of the 300th anni-

versary of Glastonbury, CT. Beginning September 19, the residents of Glastonbury will celebrate the beauty and history of this traditional New England town.

Settled in 1639 as part of Wethersfield, the town was named after Glastonbury in Somerset, England. Incorporated into a separate town in 1690, it took its present name 2 years later and was spelled at that time "Glassenbury."

Gastonbury is well known for its abundance of architecture and colonial homes. One of its primary attractions is the Welles Shipman Ward House, that has been cited by the U.S. Department of the Interior as possessing "exceptional architectural interest." Built in the 18th century, its furnishings still reflect the style of the period. Glastonbury is also proud of it oldest house, built in 1649, that is still occupied today.

Glastonbury can confidently boast of its most valuable resource—its outstanding residents. Over the years they have contributed to the growth and productivity of the State, the independence of this Nation, and enhanced the overall beauty of the town.

As early as 1774, in a town meeting, the early settlers denounced the passage of the tea tax as "subversive of the rights and liberties of the British-Americans, unconstitutional, and oppressive." And when the Revolutionary War began, they were suppliers of troops, provisions, and ships to the Continental forces.

Throughout time, Gastonbury citizens have made a significant mark on history. The first alleged petition against slavery was drafted and signed by 40 Glastonbury women under the leadership of Mrs. Hannah Smith. She passed her legacy on to her five daughters, who fought adamantly on behalf of women's rights, refusing to pay taxes on property they owned because they were not allowed to vote.

Glastonbury is also the home to Gideon Welles, President Lincoln's Secretary of the Navy; J.B. Williams Soap Factory, which was the first commercial soap manufacturing company in the United States; and of J.H. Hale, whose orchards harvested the first strain of New England peaches.

Glastonbury is rightfully proud of the Meshomasic State Forest. Located along the banks of the Connecticut River, the forest offers an avenue for people of all ages—fishing, hiking, and picnicking.

Today, Glastonbury residents are still deeply involved within the community. A great deal of hard work, planning, and commitment has gone into the planning of this celebration.

I hope my colleagues will join me today in wishing Glastonbury and its residents well on the 300th anniversary of this beautiful Connecticut town.•

SENSE-OF-THE-SENATE RESOLUTION ON REFORMULATED GASOLINE

• Mr. DURENBERGER. Mr. President, the manager's amendment that was adopted to H.R. 5679 contains a sense-of-the-Senate resolution with respect to ethanol fuels and reformulated gasoline. It expresses the sense of the Senate to Clean Air Act regulations for reformulated gasoline published by the Environmental Protection Agency in April of this year. The resolution states that the regulations are not in compliance with the Clean Air Act.

I had originally intended to offer this amendment, but was pleased to agree to its inclusion in the managers amendment to save time during this hectic period at the end of the 102d Congress. There was a long list of cosponsors on my amendment including Senators GRASSLEY, DASCHLE, CONRAD, FORD, LUGAR, BOND, PRESSLER, WELLSTONE, HARKIN, SIMON, DANFORTH, KERREY, DOLE, COATS, and EXON.

INTRODUCTION

Mr. President, this amendment is necessary for two reasons. First, the rules for reformulated gasoline that have been proposed by EPA do not accomplish the environmental benefits that were mandated by the Congress. The rules fall short of the cleanup in gasoline fuels required by the Clean Air Act.

Second, EPA's proposed rules would exclude ethanol as an additive in the reformulated gasoline program. We want the rules changed so that ethanol can participate. But I want my colleagues to understand that this resolution will not in anyway tilt the Clean Air Act to favor ethanol or any other fuel component. The amendment does not waive or modify any provision of the Clean Air Act for ethanol.

It simply says that it is the sense of the Senate that the rules do not comply with the act. They do not. If we can force EPA to reopen the rulemaking process to correct the legal deficiencies in these rules, it is my hope that we can at the same time make the rules fair for all oxygen additives.

Requirements for reformulated gasoline applying to the nine cities with the worst summertime smog problem, that is ozone pollution, are among the most important provisions of the 1990 Clean Air Act Amendments. It is expected that as much as 60 percent of the gasoline marketed in the United States will eventually be reformulated according to the provisions of the Clean Air Act. That is because of the so-called opt-in provision that makes reformulated gasoline available to other cities with smog problems, as well.

The rules proposed by the Environmental Protection Agency do not comply with the law. The fundamental provision in the statute is that reformulated gasoline shall reduce by 15 percent the emissions of ozone-forming hydrocarbons from cars and trucks operating in the nine cities. That is the bottom line—a 15-percent reduction in smog-forming hydrocarbon emissions.

But the rules proposed by EPA will allow the production and sale of a gasoline that will not achieve the 15-percent reduction mandated by the Congress. Under the EPA proposal for reformulated gasoline, as much as one-half the fuel sold in these nine cities may fill the 15-percent reduction mandated by the act.

A second deficiency in these rules relates to nitrogen oxide emissions. The proposed rules would allow the sale of fuels that cause increased emissions of nitrogen oxides or NO_x, a pollutant that also contributes to smog formation. Congress clearly said that there are to be no NO_x increases from reformulated gasolines.

A third legal problem with these rules is that they include enforcement provisions with an averaging scheme that is contrary to congressional intent.

I could, Mr. President, cite a number of other provisions in the proposed rules that are clearly in conflict with the requirements of the 1990 Clean Air Act Amendments. I could do so because I helped to write, pass, and conference this section. But let me turn to the second issue that brought many of our colleagues into support of this amendment.

The proposed reformulated gasoline regulations not only fail to guarantee the environmental benefit mandated by the Clean Air Act, they also exclude ethanol as a summertime oxygen additive in reformulated gasoline.

Congress did not mandate the use of ethanol in reformulated gasoline. But it is possible to use ethanol in a gasoline fuel that meets all of the emissions reductions for reformulated gasoline that we did mandate. Ethanol can be the foundation of cleaner gasolines in the future.

I think it is more than fair to say that members of the Senate and the House who voted for the reformulated gasoline program in 1990 expected ethanol additives to play a big role. Ethanol is our Nation's best renewable energy source.

I know that I had every expectation that it would be a good program, not just for the environment, but for the farmers of Minnesota and all of the American Midwest. They grow the corn that makes a good portion of the Nation's ethanol and they have invested in ethanol production facilities.

Let me tell you how important this issue is to the farm economy of my State. Currently 7 million bushels of Minnesota corn is converted to ethanol for the fuel market each year. That is 30 million gallons of ethanol. If the reformulated gasoline program is carried out as the Congress intended, demand for Minnesota ethanol will grow to 210

million gallons taking 93 million bushels of corn.

Everyone recognizes that the reformulated gasoline amendment that was sponsored in this body by Senator DASCHLE only passed the Senate and the House of Representatives because of the support of the American farm community.

So, it was a real surprise to learn that EPA's rule is designed to preclude the use of ethanol in reformulated gasoline. The rule is anti-ethanol. If the EPA proposed rule is put into place, the market for ethanol will actually decline from current levels. This would reduce farm income, increase subsidy payments from the Federal budget, and make the United States even more dependent on imported fuels.

It is likely that the rule as proposed would cause dramatic increases in the importation of methanol made from natural gas produced in the Middle East, thus increasing our dependence on these foreign energy supplies. That is not what Congress had in mind when it passed the Clean Air Act Amendments of 1990.

EPA needs to start over on this rule and rebuild it on a sound legal foundation. And when it does, it must give ethanol a fair chance to participate in the reformulated gasoline program.

WHAT WENT WRONG

It is not oversight of the Congress that excludes ethanol from the reformulated gasoline that is mandated by the Clean Air Act. It is the so-called simple model in EPA's rule that creates the problem. As most Senators know, EPA wrote this rule through a regulatory negotiation. They got all the interest groups into a room and cut a series of deals to avoid a long controversy and possible litigation over this rule. The result of the negotiation was this simple model that reduces all of the reformulated gasoline requirements to one or two changes in the fuel that is sold today.

Unfortunately, the simply model does not satisfy the air quality requirements of the Clean Air Act. And it excludes ethanol from the market. I urge my colleagues to join with us in this resolution to make it clear that the U.S. Senate wants EPA to rewrite the rule so that it lives up to promise we made to the American people when the Clean Air Act Amendments were signed into law in 1990.

REFORMULATED GASOLINE

With that introduction, Mr. President, let me describe in more detail how this rule violates the precise requirements of the 1990 Clean Air Act Amendments.

Reformulated gasoline is a very complicated and technical subject not easily described in a speech on the Senate floor. But I will do my best to describe how these rules violate the law, so that Senators will know why this amendment must be adopted.

As its name indicates, reformulated gasoline is to be a different fuel than the gasoline that is currently sold across the Nation. It is to be reformulated.

Gasoline is a complex mixture of some 200 different chemical substances. There is a wide variation in the exact formulation of various gasoline fuels sold by different oil companies, in different grades from regular to premium and in different seasons of the year.

It is possible to adjust this complex mixture of chemicals so that it is more friendly to the environment, so that it makes less air pollution. Requiring refiners to produce and sell a much cleaner gasoline in the cities with the worst pollution problems is the purpose of the reformulated gasoline requirements of the 1990 Clean Air Act Amendments.

So, we want the chemical formula for gasoline changed. But if a change is to occur, it must be measured against a baseline fuel. We need a yardstick to know whether or not the oil companies have made the reformulation that is required.

The Clean Air Act contains that yardstick. It is a set of specifications for a test gasoline used in the California clean air program. The specifications include standards for benzene content, Reid vapor pressure, octane, sulfur content, aromatics content, the boiling point, specific gravity, and so on—all very technical specifications for gasoline. Each of these parameters can affect the amount of pollution that comes from burning gasoline in a car or truck.

Mr. President, I would ask that a chart containing these specifications be printed at this point in the RECORD.

The chart follows:

Baseline Gasoline Fuel Properties

API gravity	57.4
Sulfur, ppm	339
Benzene, percent	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10 percent, F	128
50 percent, F	218
90 percent, F	330
End Point, F	415
Aromatics, percent	32.0
Olefins, percent	9.2
Saturates, percent	58.8

Without going into great detail, the fundamental notion is that we burn this test gasoline in a random sample of 1990 cars to determine how much pollution is emitted. Reformulated gasoline burned in the same sample of cars has to produce less air pollution than this test gasoline—15 percent less hydrocarbons, 15 percent less toxics, with no increase in nitrogen oxides.

There are any number of ways that a refiner can reformulate gasoline to reduce emissions. But whatever method is chosen, the reformulated gasoline sold in 1995 is to produce 15 percent less hydrocarbons, 15 percent less toxics, and no more nitrogen oxides than the baseline gasoline when burned in the same sample of cars on the road in 1990.

THE SIMPLE MODEL

One way to implement this program would have been to actually test alternative gasoline formulations to see if they produced less pollution than the Clean Air Act baseline gasoline. But EPA and the oil companies didn't want to do that. It would cost too much and lead to a great deal of paperwork.

So, instead of actually testing alternative fuel formulations, EPA and the oil companies decided to use mathematical models based on previous test data, data collected in research sponsored by the auto and oil companies. They would estimate the emissions reductions that might be expected from various changes from the Clean Air Act baseline gasoline.

But EPA and the oil companies also decided that they didn't have enough good information from previous tests to design a model that would truly reflect all the complexity of gasoline, the 200 different chemicals that can be combined in different mixtures to make a fuel. They did not want to test, because modeling would be easier. But they do not have the information to do a really good model. So, they came up with what is called the simple model.

Essentially, the simple model is based on just two of the many specifications of the test gasoline. One is called Reid vapor pressure, or RVP; the other is benzene content. Vapor pressure is a measure of how rapidly a liquid evaporates. A fuel with a high vapor pressure, puts a lot of pollution into the air. Fuel evaporates from the gas tank and from the engine. A fuel with a lower vapor pressure makes less pollution.

EPA has relatively good information on RVP because in the late 1980's they promulgated regulations requiring lower RVP in most fuels sold during the summertime. In preparing this rule, EPA took the easier path, sticking with what they already knew.

It was decided that compliance for the 15-percent hydrocarbon emissions reduction under the simple model would be based on this one single parameter, RVP. If gasolines sold in 1995 meet the lower RVP limits in the proposed rule, they are deemed under the simple model to have achieved the 15-percent reduction in hydrocarbon emissions. No other demonstration is necessary.

This is all well and good for the oil companies because RVP is easy to measure and it is a change in the gasoline formula they can make without too much trouble. It is good for EPA, too, because they didn't have to learn a lot of new things about gasoline and pollution to get the rule out.

SIMPLE MODEL PRODUCES MORE SMOG

But, as I have said, there are big problems with the simple model. For one thing, it doesn't assure that reformulated gasoline actually achieves the 15-percent reduction in hydrocarbon emissions.

The California test gasoline that is used as a yardstick for reformulated gasoline has many specific parameters that are spelled out in the Clean Air Act. Each of these parameters may affect the amount of hydrocarbon emissions that are caused by burning that gasoline. Controlling for just one of the parameters does not guarantee a clean fuel, if the reformation violates the baseline in other ways. And the rule doesn't require that the reformation meet the other baseline requirements.

As a specific example, if a fuel has a lower RVP as required by the proposed rule, but contains a great deal more sulfur than the Clean Air Act baseline gasoline, then it will not get a 15-percent reduction in hydrocarbon emissions even with that low RVP. The excess sulfur will increase emissions.

But excess sulfur is not considered in the simple model. Because the simple model only controls for RVP, there may be, there surely will be, many fuels sold in 1995 that are dirtier than the test gasoline on the other parameters and therefore cause more smog-forming pollution.

In fact, that is why the oil industry is in favor of this proposed rule. The Clean Air Act baseline gasoline is a pretty clean fuel to begin with—cleaner than a lot of gasoline blends that are on the market today. It would take a substantial investment by many refiners just to get to the baseline, not to mention the 15-percent reduction in hydrocarbon and toxics reductions that are mandated beyond the baseline.

Refiners outside the California market would need to make a very big investment to get to the baseline and then more investment to get the 15-percent reduction. But the simple model saves them all that trouble. They do not have to actually test their reformulated gasoline to see if it gets the reductions. They just have to follow the model. And the model does not cover the whole complexity of a fuel containing 200 chemicals. It just covers RVP.

To be sure, EPA is working on a complex model that is supposed to cover all of the other parameters. But that model is somewhere off in the future, its development dependent on further research to be done by the auto and oil industries.

Mr. President, this simple model was endorsed by all the interest groups that participated in the regulatory negotiation. That includes representatives from the environmental community and from the State air pollution control agencies.

You would think that before they agreed to this simple model they might have estimated how much of the pollution reduction mandated by the act that they were giving up. But apparently they did not.

They do not know how much gasoline sold in the nine cities exceeds the other parameters in the baseline fuel that are specified in section 211(k) of the Clean Air Act.

They do not know what impact higher sulfur content or a lower boiling point or a failure to comply with any of the other parameters might have on hydrocarbon emissions.

They do not know if a fuel that meets the RVP requirement of the simple model, but that is dirtier on the other parameters will get a 12-percent reduction or a 10-percent reduction or a 5-percent reduction or no reduction at all.

It is shocking to me that the representatives of the State air pollution control agencies and the environmental community would agree to the simple model without knowing how the other parameters in the baseline gasoline affect emissions and how much additional pollution will be caused because compliance with those other parameters is not required by the simple model.

In asking questions about this falling of the simple model, I have heard it suggested that the various specifications in the Clean Air Act baseline gasoline simply reflect the average of all the gasolines sold in the United States in 1989. If that is true, then one-half the gasoline is dirtier—produces more pollution—than the baseline. That is the nature of a mathematical average.

That also means that one-half the gasoline meeting only the lower RVP limit under the simple model will fail to achieve the full 15-percent reduction in hydrocarbon emissions that is mandated by the act. Under the simple model half the gasoline sold in the nine cities with the worst smog problems may not be in compliance with the fundamental air quality requirement of the act.

Because a 15-percent reduction in hydrocarbon emissions is not assured, the proposed rule is not in compliance with the Clean Air Act. That is what this amendment says. It says that the proposed rule is not in compliance with the requirements of the Clean Air Act. There are a dozen other ways this rule does not measure up, but a failure even to achieve this basic objective is so essential that the Senate must express its disapproval of this rule.

NO_x EMISSIONS WILL INCREASE

Mr. President, the second most significant failure of the simple model is on nitrogen oxide emissions. Nitrogen oxides are gases that are produced when fuel is burned. The nitrogen and oxygen in the air combine in the combustion reaction to form NO_x compounds. NO_x contributes to the summertime smog problem. It is one of the pollutants that mix in the atmosphere to form smog on hot summer days.

When Congress developed the reformulated gasoline program, we had a real concern about NO_x. Reformulated gasoline adds more oxygen to the fuel and we suspected that the additional oxygen may increase NO_x emissions. Since our purpose was to reduce smog, Congress mandated that no gasoline reformulation under section 211 of the Clean Air Act should lead to increased NO_x emissions.

Well, the simple model just flat ignores that requirement of the law. Rather than describe it myself, let me just quote to the Senate comments from two of the people who participated in the regulatory negotiation that led up to this rule. These quotes are from a hearing that EPA held in Chicago on June 10 of this year. The first quote is from John Elston who is the assistant director of the Office of Energy for the New Jersey Department of Environmental Protection and Energy. He was testifying on behalf of the State air pollution control officials.

This is what Mr. Elston said about NO_x at the hearing in Chicago:

> Throughout the reformulated gasoline negotiation, the most hotly debated item between ethanol industry and state and local representatives was the explicit Clean Air Act provision prohibiting an increase in emissions of NO_x from the use of reformulated gasoline. The final agreement includes at least one very significant concession made by state and local regulators.
>
> After the initial agreement was tentatively reached, the ethanol industry disputed the "no-NO_x-increase" language related to the reformulated gasoline program, particularly with respect to the non-ozone season and requested from state and local regulators a supplemental agreement to the rule. Accordingly, we agreed to the following language: "prior to May 1997, up to 3.5% oxygen will be presumed to result in no NO_x increase except (1) during the months with ozone violations (at the discretion of the impacted state) and (2) in those areas where the state has notified the Administrator that the use of an oxygenate would interfere with attainment or maintenance of another ambient air quality standard or other air quality problem.
>
> This concession was made even though we were well aware that oxygen levels up to 3.5 percent by weight result in NO_x increase that often exceed seven percent. For areas that are now reducing NO_x to meet federal ozone standards, this was and is a critical concern.

That pretty much makes my case, Mr. President. The addition of oxygen to gasoline increases NO_x emissions. The Clean Air Act prohibits increased NO_x emissions from reformulated gasoline. Rather than mandate other changes to gasoline that would offset the NO_x impact of the oxygen additives, the States agreed to look the other way. The laws of physics and chemistry were made discretionary "with the impacted State." The law passed by Congress was ignored entirely.

Let me quote from a representative of the environmental community on this same point. This is the Chicago testimony of Mr. David Doniger who is a senior attorney with the Natural Resources Defense Council, Inc., and an active participant in the regulatory negotiation that led up to this rule. This is Mr. Doniger's statement:

> The ethanol industry bargained sharply for other concessions but accepted these RVP

limits. RFA (the Renewable Fuels Association) led the way in effective bargaining for concessions on oxides of nitrogen. The law clearly prohibits oxygenates from causing any increase in NO_x emissions. The data, however, showed that all oxygenates, but especially ethanol, can cause NO_x increases.

In return for their signature on the overall agreement, including their acceptance of the RVP limits I discussed above, RFA and other ethanol representatives won from us, from the environmental and state interests, an agreement not to press our concern over those NO_x increases during the period when the simple model is used.

Mr. President, can you imagine the howl we would have heard had it been EPA or OMB or the White House who gave away the NO_x cap in the reformulated gas program. And not only the NO_x cap, but the mandated 15-percent reduction in hydrocarbon emissions, as well.

To be sure, the environmental community and the States believed that the negotiated agreement gave them concessions from the oil industry and the ethanol industry that benefit the environment. I wish I could tell my colleagues who got the better side of the deal. But I cannot. No one knows. There is not enough information available to tell whether the proposed rule will reduce smog and toxic air pollution more or less than the Clean Air Act that was passed by the Congress.

However, there are two things we do know for sure. The proposed rule for reformulated gasoline is not in compliance with the legal requirements of the Clean Air Act. And it would exclude ethanol fuels from a large portion of American gasoline market. I hope the Senate will join with the cosponsors of this resolution to condemn the proposed rule.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Sharon Peterson, a member of the staff of Senator BAUCUS, to participate in a program in Taiwan, Hong Kong, Malaysia, and Singapore, sponsored by the Hong Kong Government and the Chinese National Association of Industry and Commerce [CNAIC] from August 14–24, 1992.

The committee determined that participation by Ms. Peterson in this program, at the expense of the Hong Kong Government and CNAIC is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Lamar Smith, a member of the staff of Senator GARN, to participate in a program in Taiwan, sponsored by Johns Hopkins University and the National Chengchi University, from July 16–20, 1992.

The committee has determined that participation by Mr. Smith in this program, at the expense of the Chengchi University, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for David Balland, a member of the staff of Senator SIMPSON, to participate in a program in Taiwan, sponsored by the Tamkang University, from August 29 to September 4, 1992.

The committee determined that participation by Mr. Balland in this program, at the expense of the Tamkang University is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Patrick McCartan, a member of the staff of Senator SEYMOUR, to participate in a program in Taiwan, sponsored by the Soochow University, from August 29 to September 4, 1992.

The committee determined that participation by Mr. McCartan in this program, at the expense of the Soochow University is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Sharon Waxman, a member of the staff of Senator LAUTENBERG, to participate in a program in China, sponsored by the Tamkang University, from August 29 to September 4, 1992.

The committee determined that participation by Ms. Waxman in this program, at the expense of the Tamkang University is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Mary Naylor, a member of the staff of Senator SIMON, to participate in a program in Chile, sponsored by the Chilean-American Chamber of Commerce, from August 31 to September 3, 1992.

The committee determined that participation by Ms. Naylor in this program, at the expense of the Chilean-American Chamber of Commerce is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Senator GORE to participate in conferences held in Japan from June 29 to July 3, 1991, and in France from May 16–18, 1992, sponsored by Globe International.

The committee determined that participation by Senator GORE in these conferences, at the expense of Globe International, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Lynn Schloesser, a member of the staff of Senator BURDICK, to participate in a program in China, sponsored by the United States-Asia Institute and the People's Republic in China, from August 15 to September 1, 1992.

The committee determined that participation by Mr. Schloesser in this program, at the expense of the People's Republic of China is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Mike Tongour, a member of the staff of Senator SIMPSON, to participate in a program in Chile, sponsored by the Chilean-American Chamber of Commerce, from August 30 to September 4, 1992.

The committee determined that participation by Mr. Tongour in this program, at the expense of the Chilean-American Chamber of Commerce is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Dan Berkovitz, a member of the staff of Senator BURDICK, to participate in a program in Chile, sponsored by the Chilean-American Chamber of Commerce, from August 30 to September 4, 1992.

The committee determined that participation by Mr. Berkovitz in this program, at the expense of the Chilean-American Chamber of Commerce is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for David Cox, a member of the staff of Senator BOREN, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from August 17–29, 1992.

The committee determined that participation by Mr. Cox in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for William M. Long, Jr., a member of the staff of Senator HEFLIN, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs and the Far East Studies Institute, from August 15 to September 1, 1992.

The committee determined that participation by Mr. Long in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Ben Cooper, a member of the staff of Senator JOHNSTON, to participate in

a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from August 17-29, 1992.

The committee determined that participation by Mr. Cooper in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.•

THE 90TH BIRTHDAY OF ANNA BERMAN

• Mr. DODD. Mr. President, it is a great honor for me to recognize a woman in my home State who will be celebrating her 90th birthday on September 24.

Anna Berman was born in 1902 and moved to Hartford when she was 18 years old. She married Jacob Berman, a lawyer in Hartford, in 1927. Anna and Jacob had four children who were all raised in West Hartford. The children and relatives will be celebrating Anna's 90th birthday in West Hartford on September 12, and it is for this occasion that I wish to extend my wishes for a very happy celebration.

The fruitful life of one so giving and morally outstanding does not go unnoticed. I salute Anna Berman on the monumental occasion of her 90th birthday.•

REGIONAL MINORITY CONTRACTOR AWARD GIVEN

• Mr. D'AMATO. Mr. President, I rise today to pay tribute to E. Porter General Contractor, Inc., who have been selected to receive Minority Business Development Agency's Regional Minority Contractor Firm of the Year Award. In addition to being the recipient of this prestigious regional award, E. Porter General Contractor, Inc. has been placed in nomination for national recognition in the National Minority Contractor of the Year competition.

E. Porter General Contractor, Inc. is a privately held corporation that has been incorporated since 1984. Since that time, the enterprise has become one of Rochester, NY's most successful minority-owned businesses. E. Porter General Contractor, Inc. was capitalized with a $3,000 investment from its owner, Emmett Porter. Today the firm boasts about its $2,000,000 bonding line and a six-figure line of credit.

The firm's first entry into the marketplace was as a contractor of janitorial services and supplies. Its early customers were Off Track Betting Corp. [OTB] and the Eastman Kodak Co. The firm has since evolved from janitorial services to the highly specialized field of asbestos abatement. Today, E. Porter General Contractor, Inc. holds the distinction of being the largest minority general contractor at the Eastman Kodak Co.

In its 8-year history, E. Porter has earned a solid reputation primarily due to its highly efficient work force which has risen as high as 105 employees. Job training has played an integral part in the firm's competitive status. E. Porter General Contractor has consistently maintained its civic role in the Rochester community working to develop the job training skills of minority youth in skilled trades.

I wish to congratulate Emmett Porter and his many employees for many a job well done. I wish them good fortune and much success in the national competition.•

COMMEMORATING THE ISRAELI ATHLETES OF THE 1972 OLYMPICS

• Mr. BRADLEY. Mr. President, I rise today to commemorate the 20-year anniversary of the Munich Olympic massacres. After years and years of preparation, the Olympics are the pinnacle of achievement for many athletes. Many Olympic athletes dream of a pride-filled return to his or her country. What despair not to return to your country at all.

The 17 Israeli athletes who died at the hands of terrorists should remind us of the horrific consequences of acts of intolerance of religious, national, or ethnic differences. In light of the ethnic cleansing we witness in the former Yugoslavia, the ongoing rioting aimed at immigrants in Rostock and other towns in eastern Germany, and the support enjoyed by some political figures who are harbingers of hate and divisiveness, this anniversary should serve as a symbolic reminder that anti-Semitism, racism, and fear of foreigners still exist. Moreover, in these hard economic times, xenophobic tensions flourish.

In this new world order, Mr. President, traditional national boundaries are not so clear. The number of political and economic refugees grows, and will continue to do so amid the massive changes occurring throughout the world. I hope that some day diverse peoples will live in harmony. Now, however, we must be aware of the delicate nature of this enormous transition. Economic frustrations, unemployment, and political instability must not be channeled into irrational hatred of people who are different for one reason or another. As we have seen in the past, this pattern destroys hope and sinks us to an inhumane level.

Mr. President, there is a difference between the surface ambitions driving those who murdered the Israeli Olympians and those whose enmity propels the violent acts of today. However, the underlying sentiments—hatred and intolerance operating under the auspicious claim of national interests—link all these situations.

The citizens of eastern Germany have had large counterdemonstrations to show that the acts of violence or symbols of hatred will not be tolerated. In a world where we use a window on history as a way to direct the future, we must learn from the past, mourn for those who were part of the unfortunate lesson, and steer away from hatred in the future. Let us do all in our powers so that events such as those that took place in Munich 20 years ago not be repeated in the future.•

ST. BENEDICT'S AT 100

• Mr. D'AMATO. Mr. President, I rise today to pay tribute to St. Benedict Joseph Labre Roman Catholic Church on the historical occasion of their 100th anniversary in Richmond Hill, NY. St. Benedict Joseph Labre Parish will celebrate its centennial on October 18, 1992, at a Mass celebrated by Bishop Daley.

In the spring of 1892, Mr. Thomas Lally, a builder and real estate developer, petitioned Bishop Charles E. McDonnell on behalf of a small group of Catholics settled in the Richmond Hill area for a new parish so they would no longer need to travel great distances to hear Mass. By October 1893, St. Benedict Joseph Labre wooden church was finished and dedicated to honor the name of a saint canonized in 1883.

The church's namesake, Benedict Joseph Labre, was born in France in 1748, and although he was born to a comfortable existence, chose a life of poverty, rags, and silence. He spent his life wandering from place to place seeking ways of serving God better. He is considered the patron saint of the homeless.

The original wooden church was replaced by a brick structure in 1919, and a school was added in 1913. The school was expanded both in 1935 and again in 1938.

St. Benedict Joseph Labre Parish serves over 2,000 families today. The current pastor is Msgr. William Thomas Hendel. He is assisted by Fathers Jurgensen and McLaughlin. Pastor emeritus is Father William O'Leary, and the resident is Msgr. John Condon.

St. Benedict Joseph Labre Parish has a long legacy of serving the needs of the people of Richmond Hill, protecting family values, and sharing the message of the Lord; providing each member a foundation of strength and spirit for all times. As a U.S. Senator, I commend the entire congregation of St. Benedict Joseph Labre Church for their dedication to the goals and aspirations of Catholicism. I ask my colleagues to join me in wishing St. Benedict Joseph Labre congregation a well-celebrated 100th anniversary.•

INSTALLATION OF RICK GUSTAFSON AS THE PRESIDENT OF THE INDEPENDENT INSURANCE AGENTS OF AMERICA

• Mr. SMITH. Mr. President, I rise today to commend a fellow New Hampshirite, Rick Gustafson of Portsmouth, who will be installed as the president of the Independent Insurance Agents of

America [IIAA] next week in New Orleans.

Rick has had a long and distinguished career as an agent in Portsmouth and as chairman of the Blake Insurance Agency. His service to this association has been equally long and impressive. He is a past president of the Portsmouth Insurance Association, president of the New Hampshire State Association and has served on the national board of IIAA. It's interesting to note how many people traverse the great State of New Hampshire wanting to be president, but Rick is about to take that role for the third time.

Rick's commitment to his association is evidence of his dedication to his profession and his customers. This dedication has spilled over into a variety of community activities where he is also a leader: He is past president of the Portsmouth Jaycees, past president and founder of the Seacoast United Way, and has served as chairman of the Portsmouth Hospital.

I have worked closely with the Independent Insurance Agents of New Hampshire and IIAA's Capitol Hill office, and it will be a pleasure for me to work with Rick when he assumes the mantle of leadership for the Nation's largest insurance association.

I know Rick will serve with distinction as president of the Independent Insurance Agents of America, and I wish my fellow citizen of New Hampshire all the best in his new role.•

RELATIVE TO THE DEATH OF THE HONORABLE QUENTIN N. BURDICK OF NORTH DAKOTA

Ms. MIKULSKI. Mr. President, on behalf of the majority leader and the minority leader, and all other Members of the Senate, I ask unanimous consent that the Senate now proceed to Senate Resolution 338, a resolution relative to the death of our colleague, QUENTIN BURDICK.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 338) relative to the death of the Honorable Quentin N. Burdick, of North Dakota.

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Quentin N. Burdick, a Senator from the State of North Dakota.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

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

The PRESIDING OFFICER. Without objection, the resolution and the preamble are agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS FOR TOMORROW

Ms. MIKULSKI. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. Wednesday, September 9; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that immediately following the Chair's announcement, the Senate proceed into executive session to resume consideration of the Carnes nomination as provided for under a previous unanimous consent agreement; that the mandatory live quorum be waived with respect to the cloture vote on the Carnes nomination; and that upon disposition of the Carnes nomination, the Senate return to legislative session and then resume consideration of H.R. 5679, the VA–HUD appropriations bill.

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

RECESS UNTIL 9 A.M. WEDNESDAY

Ms. MIKULSKI. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate now stand in recess in accordance with Senate Resolution 338 as a mark of further respect to our late dear and well-respected colleague, Senator QUENTIN BURDICK of North Dakota.

There being no objection, the Senate, at 9:57 p.m., recessed pursuant to the provisions of Senate Resolution 338 until Wednesday, September 9, 1992, at 9 a.m.