

HOUSE OF REPRESENTATIVES—Tuesday, November 16, 1993

The House met at 12 noon.
His Excellency Anthony Sablan Apuron, archbishop of Agana, Agana, Guam, offered the following prayer:

Lord, God, whose goodness fills our hearts with joy, You are blessed for bringing us together this day to work in harmony, in peace, and in justice. Send Your blessings upon our U.S. House of Representatives, who generously devote themselves to the work of our Nation and territories in the laws they make. In times of difficulty and need grant them strength to transcend personal interests and seek after the common good of all. Strengthen them with Your grace and wisdom so that everything they do begin with Your inspiration, continue with Your help and by You be happily ended. Grace us with Your saving presence and aid us with Your constant blessing. All glory and praise be to You, God, forever and ever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. TRAFICANT. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. TRAFICANT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 157, not voting 26, as follows:

[Roll No. 567]

YEAS—250

Ackerman	Becerra	Brown (FL)
Andrews (ME)	Bellenson	Brown (OH)
Andrews (TX)	Berman	Bryant
Applegate	Bevill	Byrne
Archer	Bilbray	Cantwell
Bacchus (FL)	Bishop	Cardin
Baesler	Bonior	Carr
Barca	Borski	Castle
Barlow	Boucher	Clayton
Barrett (WI)	Brewster	Clyburn
Bateman	Browder	Coleman

Collins (IL)	Johnson (SD)	Penny	Collins (GA)	Inhofe	Quinn
Combest	Johnson, E. B.	Peterson (FL)	Cox	Jacobs	Ramstad
Condit	Johnston	Pickett	Crane	Johnson (CT)	Ravenel
Conyers	Kanjorski	Pickle	Crapo	Johnson, Sam	Regula
Cooper	Kaptur	Pombo	Cunningham	Kim	Ridge
Coppersmith	Kasich	Pomeroy	DeLay	King	Roberts
Costello	Kennedy	Poshard	Diaz-Balart	Kingston	Rogers
Coyne	Kennelly	Price (NC)	Dickey	Klug	Rohrabacher
Cramer	Kildee	Rangel	Doolittle	Knollenberg	Ros-Lehtinen
Danner	Kleczka	Reed	Dornan	Kolbe	Roth
Darden	Klein	Reynolds	Dreier	Kyl	Roukema
de la Garza	Klink	Richardson	Duncan	Lazio	Royce
Deal	Kopetski	Roemer	Dunn	Leach	Saxton
DeFazio	Kreidler	Rose	Emerson	Levy	Schaefer
DeLauro	LaFalce	Rostenkowski	Everett	Lewis (CA)	Schiff
Dellums	Lambert	Rowland	Ewing	Lewis (FL)	Schroeder
Derrick	Lancaster	Roybal-Allard	Fawell	Lightfoot	Sensenbrenner
Deutsch	Lantos	Rush	Fields (TX)	Linder	Shaw
Dicks	LaRocco	Sabo	Fowler	Machtley	Shays
Dingell	Laughlin	Sangmeister	Franks (CT)	Manullo	Shuster
Dixon	Lehman	Santorum	Franks (NJ)	McCandless	Skeen
Dooley	Levin	Sarpaluis	Gallely	McCollum	Smith (OR)
Durbin	Lewis (GA)	Schenk	Gallo	McCrery	Smith (TX)
Edwards (CA)	Lipinski	Schumer	Gekas	McDade	Snowe
Edwards (TX)	Livingston	Scott	Gilchrest	McHugh	Solomon
English (AZ)	Long	Serrano	Gingrich	McKeon	Spence
English (OK)	Lowey	Sharp	Goodlatte	McMillan	Stearns
Eshoo	Maloney	Shepherd	Goss	Meyers	Stump
Evans	Mann	Sisisky	Grams	Mica	Sundquist
Farr	Manton	Skaggs	Grandy	Michel	Talent
Fazio	Margolies-	Skelton	Gunderson	Miller (FL)	Taylor (MS)
Fields (LA)	Mezvinsky	Slaughter	Hancock	Molinari	Thomas (CA)
Filner	Markey	Smith (IA)	Hansen	Moorhead	Thomas (WY)
Fingerhut	Martinez	Smith (MI)	Hastert	Morella	Upton
Fish	Matsui	Smith (NJ)	Hefley	Murphy	Vucanovich
Foglietta	Mazzoli	Spratt	Herger	Nussle	Walker
Ford (MI)	McCloskey	Stark	Hobson	Oxley	Walsh
Ford (TN)	McCurdy	Stenholm	Hoekstra	Packard	Wolf
Frank (MA)	McDermott	Stokes	Hoke	Paxon	Young (AK)
Frost	McHale	Strickland	Horn	Petri	Young (FL)
Furse	McInnis	Studds	Huffington	Porter	Zeliff
Gejdenson	McKinney	Stupak	Hunter	Portman	Zimmer
Gephardt	McNulty	Swett	Hutchinson	Pryce (OH)	
Geren	Meehan	Swift	Hyde	Quillen	
Gibbons	Meek	Synar			
Gillmor	Menendez	Tanner			
Gilman	Mfume	Tauzin	Abercrombie	Engel	Sawyer
Glickman	Miller (CA)	Tejeda	Andrews (NJ)	Flake	Slatery
Gonzalez	Mineta	Thompson	Barca	Goodling	Taylor (NC)
Gordon	Minge	Thornton	Blackwell	Hilliard	Torkildsen
Green	Mink	Thurman	Brooks	Istook	Tucker
Greenwood	Moakley	Torres	Brown (CA)	Lloyd	Weldon
Gutierrez	Mollohan	Torricelli	Chapman	Peterson (MN)	Whitten
Hall (OH)	Montgomery	Towns	Clement	Rahall	Wise
Hall (TX)	Moran	Trafficant	Collins (MI)	Sanders	
Hamburg	Murtha	Unsoeld			
Hamilton	Myers	Valentine			
Harman	Nadler	Velazquez			
Hastings	Natcher	Vento			
Hayes	Neal (MA)	Visclosky			
Hefner	Neal (NC)	Volkmer			
Hinchee	Oberstar	Washington			
Hoagland	Obey	Waters			
Hochbrueckner	Olver	Watt			
Holden	Ortiz	Waxman			
Houghton	Orton	Wheat			
Hoyer	Owens	Williams			
Hughes	Pallone	Wilson			
Hutto	Parker	Woolsey			
Inglis	Pastor	Wyden			
Inslee	Payne (NJ)	Wynn			
Jefferson	Payne (VA)	Yates			
Johnson (GA)	Pelosi				

NAYS—157

Allard	Bentley	Burton
Armey	Bereuter	Buyer
Bachus (AL)	Bilirakis	Callahan
Baker (CA)	Bliley	Calvert
Baker (LA)	Blute	Camp
Ballenger	Boehlert	Canady
Barrett (NE)	Boehner	Clay
Bartlett	Bonilla	Clinger
Barton	Bunning	Coble

NOT VOTING—26

Andrews (NJ)	Engel	Sawyer
Barca	Flake	Slatery
Blackwell	Goodling	Taylor (NC)
Brooks	Hilliard	Torkildsen
Brown (CA)	Istook	Tucker
Chapman	Lloyd	Weldon
Clement	Peterson (MN)	Whitten
Collins (MI)	Rahall	Wise
	Sanders	

□ 1223

So the Journal was approved.
The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. GOODLING. Mr. Speaker, I regret that I was not present on Tuesday, November 16, 1993, to vote on rollcall vote No. 567 to approve the Journal. I was en route to Washington from Pennsylvania following a morning event at Spring Grove Area Middle School commemorating "American Education Week."

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. DE LA GARZA). The Chair recognizes our distinguished colleague, the gentleman

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

from Guam [Mr. UNDERWOOD] to lead the House in the Pledge of Allegiance.

Mr. UNDERWOOD led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

WELCOMING ARCHBISHOP APURON

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, I rise today on a most meaningful occasion, for me personally and for the people of Guam. I am here to introduce a man who is a symbol of hope for some, of aspiration for others, and most importantly, he is a man of spiritual guidance for my constituents on the island of Guam. Archbishop Anthony Sablan Apuron, son of Manuel Taijito Apuron and Ana Santos Sablan, both now deceased, was born in Agana, Guam on November 1, 1945. He attended Mongmong Elementary School, Cathedral Grade School, and Father Duenas Memorial High School Seminary on Guam prior to entering the Capuchin Novitiate at St. Lawrence Friary in Milton, MA.

While completing his college studies at St. Anthony Friary in Hudson, NH, where he received his BA degree in scholastic philosophy, he went on to continue his theological studies at Mary Immaculate Friary in Garrison, NY. He was ordained a Capuchin priest on August 26, 1972 at the Dulce Nombre De Maria Cathedral by the Most Rev. Felixberto C. Flores, bishop of Agana. After being ordained, he returned to New York to complete two masters of arts degrees one in theology, and the other in liturgical instruction. On February 19, 1984 he was ordained auxiliary bishop of Agana and appointed vicar general. After the death of Archbishop Flores, he was named apostolic administrator of the Archdiocese and subsequently appointed second archbishop of Agana by Pope John Paul on March 22, 1986.

Today, Mr. Speaker, I humbly introduce Archbishop Apuron of Agana, Guam to my fellow colleagues. It is an honor and great privilege to introduce a man of his stature to address this august body. He is here today to pray for our Nation and for the House of Representatives.

Thank you bishop, sir, for your presence now and your blessings. Long live our faith, long live the Pope, and long live the people of Guam.

ANNOUNCEMENT BY THE HONORABLE TIM VALENTINE

(Mr. VALENTINE asked and was given permission to address the House for 1 minute.)

Mr. VALENTINE. Mr. Speaker, it is with mixed emotions that I announce today that I do not plan to seek reelection to Congress.

Over the last 12 years, I have faced many tough battles in Congress and in my elections. I have truly enjoyed the challenges and the debates. I have sincerely worked to represent the people of the Second Congressional District of North Carolina to the very best of my ability. There is no greater feeling of achievement than that gained by someone who has worked to make his world a better place.

Coming to this decision has been rough. I have no doubt that I would win reelection were I to run again. In recent months, we have received very strong support from constituents attending citizens' meetings across the district. Financially, we have retired the campaign committee's debt. Every indicator shows support for another term to be higher than at any time since the creation of the current Second Congressional District. As confident as I am that we would win again, I look forward to not having to raise the enormous amount of money necessary to run a contentious reelection campaign.

I have chosen to leave at the end of this term for several reasons:

First, I believe that we are entering a new era in Government—one that I am pleased to have the opportunity to usher in as a Member of the 103d Congress. We are bringing the focus of our Government back to the people—back to meeting the needs of Americans today, as well as that of our children and grandchildren. Having helped to set the agenda of the nineties—I believe it is time to offer an opportunity to a new generation of leaders who can move our country along toward a more responsive and fiscally responsible Government.

North Carolina will remain in capable hands. It has truly been a pleasure to serve with my colleagues in the State's delegation. I can assure the people of our State that our delegation has best interests of our State at heart.

In the coming months and years, North Carolina will face some tough legislative battles. We will be required to pit the experience and leadership of our delegation against the power of overwhelming numbers found in delegations from California, New York, and Texas. Anyone who favors term limits should pay close attention. The only chance a small State like North Carolina has against a State like California, with more than 50 Representatives, is to gain the clout of seniority. North Carolina will continue to be well served by a capable and talented delegation.

Second, I have been privileged to enjoy two careers thus far in my life—the first as a country lawyer in Nashville, NC and the second as a Rep-

resentative in the Congress of the United States. Both have been valuable experiences which I will cherish for the rest of my years. I am looking forward to a third career—one of a former Member of Congress. I intend to combine a return to the practice of law with a full time enjoyment of my friends, my family, and my home in Nashville.

I am looking forward to being able to spend more quality time with my wife, Barbara, and with my children, step-children, and grandchild. Without the full support of my family, I could not have devoted the past 11 years to serving in the House. I am deeply grateful to each of them.

I can say with relative assurance that I do not plan to seek another elective office. But, while I may be leaving a career in politics, I do not plan to leave the life of politics. I intend to continue to serve the people of North Carolina in any way I can. As a former Member of Congress, I will also reserve the right to offer an opinion on anything and everything—another fringe benefit of leaving this job.

Third, I have chosen to announce my retirement now in fairness to those in the Second Congressional District who might seek the honor of serving their fellow citizens in this office. The second district is fortunate to have many qualified and dedicated individuals who may wish to offer their services as a candidate for the House of Representatives. I hope that those interested in serving will take advantage of my early notice as they prepare for the 1994 campaign.

Finally, I want to use the next year to say thank you to the people of North Carolina who have supported me, challenged me, and guided me as I have struggled with the decisions that have faced this country over the past 11 years. I can never express fully my gratitude to those who have allowed me to serve as their Representative. It is an honor to be cherished for the rest of my days. For the next year, I intend to continue to serve the people of the second district to the best of my ability as we attempt to steer the ship of state toward greater prosperity and responsibility.

REAL REFORM NOW

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, in electing Republicans at the recent elections America voted for real reform now, because Democrats have simply not succeeded in delivering the kind of changes voters want. This is especially evident in the area of regulatory reform.

Federal regulation is conservatively estimated to have cost the economy between \$595 and \$667 billion in 1992,

amounting to thousands of dollars per American household. The Office of Information and Regulatory Affairs [OIRA], within OMB, is the only Federal entity whose purpose is to minimize the cost of Federal regulations on the private sector. It has been highly successful, reducing the time spent filling out Government paperwork by almost 600 million man-hours per year since its creation in 1981, and generating total annual savings of at least \$6 billion.

The President recently signed an Executive order "reaffirm[ing] the primacy of Federal agencies in the regulatory decisionmaking process"—essentially ending OIRA's critical role as a restraint on excessive regulation. OIRA will be permitted to review only those regulations that will have a significant impact, as determined by it or the agencies themselves. However, AL GORE—an outspoken environmentalist who has never been known for his leadership in cutting redtape—is given the lead role in shaping regulatory policies and settling disputes between agencies and OIRA over what is significant.

I would like to know how the President concluded that reducing OIRA's ability to protect the private sector from the host of regulations that Federal bureaucrats promulgate daily is going to help reform Government. Obviously Democrats have no idea what the word "reform" really means.

□ 1230

THE NAFTA TURKEY

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker. We are going to celebrate Thanksgiving a week early here in the House of Representatives and the centerpiece is a 15-pound turkey—a turkey fattened by special interests, raised by George Bush behind a veil of secrecy and served by President Clinton.

Here it is, the NAFTA turkey. But even its admirers admit it needed some dressing up, so President Clinton whipped up some side agreements on labor and the environment. There will be much debate about the adequacy or inadequacy of the side agreements. But no matter what your opinion of the side agreements, you might be surprised to learn that they are not even going to be on the table when we sit down to feast on NAFTA tomorrow.

Here are the side agreements—notice no bill number—the side agreements will not be part of the legislative package. The side agreements—all those so-called labor and environmental protections—will be executed only by executive agreement. They will have no force of law behind them. In fact, because they were not specifically legis-

lated, any attempt by the United States to enforce the side agreements would violate the commerce clause of the Constitution.

So if you predicated your support of NAFTA on the side agreements, you will not be celebrating an early Thanksgiving tomorrow; rather it will be April Fools Day for you.

QUESTIONS ABOUT HEALTH CARE

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, I want to talk a little bit about health care. I think this is an issue that affects everyone in the country, and despite all the hoopla, I suspect it affects more jobs than NAFTA.

The health care debate needs to focus on the real issues, not somebody's political agenda or somebody's Presidential platform. We must focus on the needs of Americans, whether they be in cities or small towns or rural areas all over this country.

I believe there are some real questions that need to be addressed. One of them is what are the legislative goals and the legitimate goals. Certainly it is access, cost and maintenance of quality.

I think we should ask what is broken and what needs to be fixed, as opposed to the idea of simply uprooting the largest delivery system in this country to substitute it for something else.

I think we should ask ourselves are we prepared to pay for all that is being promised.

And finally, how much government do we want in the health care system. How much of the decision do you want being ceded to bureaucrats.

These are the questions we need to ask during the next year.

AGREEMENTS ON NAFTA

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, supporters say that NAFTA will solve our immigration problems and create jobs. I agree. Americans will be jumping the border trying to get jobs down in Mexico.

Supporters say that NAFTA will help the American farmers. I agree. American farmers will be pumping out welfare cheese day and night, Mr. Speaker.

NAFTA supporters say it is going to lower taxes in America. I guarantee, that is true. We will have another 5-year deal.

NAFTA supporters say that it is going to open up trade with Central and South American countries. Think about it, Nicaragua, Columbia, the CIA can negotiate that great treaty for us.

Mr. Speaker, I liken NAFTA to putting Evander Holyfield in the ring against the Mexican lightweight champion. With all the great heart of Evander Holyfield, it looks great for America, except when you find out that they tied his hands behind his back and put shackles on his legs.

Think about it. There is a lot at stake here tomorrow, Congress, and it is the responsibility of Congress to regulate commerce with foreign nations, not one single person on Pennsylvania Avenue.

FANTASY VERSUS REALITY

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, Disney announced recently it wants to build a major American theme park 30 miles west of the Capitol. What better place for a fantasy land than Washington, DC.

To the American people it must seem Goofy that Congress is taking only Minnie-sculc actions on the matter of congressional reform. Not that Congress is full of Sleeping Beauties. Far from it. Rather, the Democrat leadership acts as though it is in some sort of Fantasia, where Mickey-Mousing and dancing around public accountability like Hippos in Tutus substitutes for real action.

The House Democrats will not be able to Duck pressure for reform for long, Mr. Speaker. Americans can see when nothing has come from their calls for change in Congress. Because, Mr. Speaker, it is a Small, Small World and ultimately, the angry voters are the Fairest of Them All.

DEFEAT THIS NAFTA

(Mr. ROEMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, we need a trade region to compete with Pacific rim and with an increasingly unified Europe. We need fair and free trade, and we need new jobs in America; but this NAFTA Agreement achieves none of those three objectives.

I am opposed to this agreement, but I do think, Mr. Speaker, we need an eventual NAFTA, one that works closely with the Mexican Government and the Mexican people, one that will maybe sweep South America and include Argentina and Brazil coming together in 1995, and one that works with the new Mexican President elected in 1994 and one that has a vision for managed trade for America.

Defeat this NAFTA so that we get a better NAFTA for America and for Mexico.

CHILD PORNOGRAPHY

(Mr. DOOLITTLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOOLITTLE. Mr. Speaker, the good news is that President Clinton has finally started paying attention to what his Justice Department is doing to weaken the Federal child pornography law.

The bad news is that he is blaming Congress for the problem, when the problem lies squarely within the Clinton Justice Department. Rather than admit that his Justice Department has wrongly interpreted congressional intent in the case of Knox versus the United States, President Clinton wants to rewrite the law.

This rewrite is a convenient way for him to try to distance himself from his Attorney General's mistaken position on this issue.

Recently by a vote of 100 to 0, the other body voted against this interpretation of the Justice Department.

Now it is the turn of the House to reaffirm congressional intent on this issue. Our message to President Clinton is that the current law is sufficient and we do not need to enact new legislation.

I hope my colleagues will join the gentleman from New Jersey [Mr. CHRIS SMITH] and me in cosponsoring House Resolution 281 to request Justice Department reversal of its decision to weaken the Federal child pornography law.

□ 1240

SMALL BUSINESS SUPPORTS
NAFTA

(Mr. SKAGGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKAGGS. Mr. Speaker, small businesses want a "yes" vote on NAFTA. Here is what the owner of one small manufacturing firm in Colorado, Hierath Automated Systems, wrote me in a recent letter:

DEAR CONGRESSMAN SKAGGS: Please vote to support NAFTA. I am the founder of a 30-person Colorado owned manufacturing company located in Wheat Ridge, Colorado. Although we have already exported our systems to 18 countries, we need your help so we can develop business in Canada and Mexico. If NAFTA is approved, we will still do all of our manufacturing in Colorado. Further, with the benefits of the NAFTA agreement, I project that we will add 25 percent to our production staff in the next two years, to handle the additional business.

The NAFTA job loss projections are grossly exaggerated * * * [and show] no appreciation for the talent and responsiveness of small firms such as ours. Thousands of small firms like ours will benefit from removal of the trade barriers. I strongly recommend that you vote to support NAFTA.

Small businesses are the backbone of this economy, creating the majority of

new jobs in communities across America. We should listen to companies like Hierath which are asking for fair access to expanding markets and urging a "yes" vote on NAFTA.

EMPOWERING WELFARE RECIPIENTS
TO BECOME SELF-SUFFICIENT

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, last week House Republicans introduced a comprehensive package of welfare reforms that would cut Federal spending by \$20 billion over 5 years while empowering welfare recipients to become self-sufficient. This welfare reform package is a tough, but compassionate, approach to controlling skyrocketing welfare rolls and costs while restoring the hope for dignity, which is every citizen's birthright.

This legislation would prepare mothers and fathers on welfare to enter the work force. It would establish paternity standards to assist in child support enforcement. It denies benefits for a child born to a mother already receiving AFDC and end welfare benefits to all illegal aliens and most noncitizens.

Mr. Speaker, the ultimate goal of welfare programs should be to help people move off the welfare rolls and onto payrolls, not to create a permanent welfare class. My colleagues and I know that the majority of people now on welfare want to support themselves and their families and will do exactly that given the right kind of support, encouragement, and incentives. Our plan does just that.

SMALL BUSINESS AND NAFTA

(Mr. COPPERSMITH asked and was given permission to address the House for 1 minute and to revise and extend his remark.)

Mr. COPPERSMITH. Mr. Speaker, yesterday I received a letter from a constituent named Wes Sprunk. Mr. Sprunk is president of Tire Service Equipment Manufacturing Co. and Saf-Tee Siping & Grooving, Inc., a small business in Phoenix that has 18 employees and sales of about \$2 million a year. They make tire inflators, changers, and jacks. Mr. Sprunk voted for Ross Perot in the last election and joint United We Stand America, but he now thinks that Mr. Perot is just flat wrong on NAFTA.

Mr. Sprunk watched the debate last week and objected to Mr. Perot's main argument, that the standard of living and pollution problems in Mexico mean that we should not trade with them. However, if those are reasons for not trading, there are very few countries in the world that we could trade with. Second, as far as jobs moving, Mr.

Sprunk just attended a National Tire Dealers convention in Mexico. He saw personally no reason in the world why anyone that ever wanted to go to Mexico and build a factory is not already there. What NAFTA does is improve a market for U.S. products. And finally, when Mr. Perot said that people who do not earn anything cannot buy anything, well, Mr. Sprunk was just in Mexico, saw the world's largest Walmart, saw a country that is one of the few countries in the world where we have a large positive trade balance—one that will increase with NAFTA.

Small business says vote yes on NAFTA.

TOP 10

(Mr. BOEHNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOEHNER. Mr. Speaker, here are the top 10 reasons House Democrats are stonewalling reform:

No. 10. Like having all Members of the Democrat caucus being named Mr. Chairman.

No. 9. Sunshine hurts their eyes.

No. 8. Want to give the public a real good reason to support term limits.

No. 7. Ross Perot will need another issue after the vote on NAFTA.

No. 6. Do not want to live under those pesky laws Congress imposes on the rest of the country.

No. 5. Want to break the Communist Party's record of 75 years of one party control.

No. 4. Would miss all those prime time cameras on the beaches in the Bahamas.

No. 3. Want to see how close Congress can get to a zero approval rating.

No. 2. The Democrat majority is used to the hypocrisy that permeates the Capitol.

No. 1. It is not an election year.

SHRIMP AND SUGAR IMPORTS ARE
KEY ISSUES IN "NO" VOTE ON
NAFTA

(Mr. TAUZIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, each one of us will make a very personal decision this week on the NAFTA with Mexico. I have reached my own conclusion today.

For years now, we in south Louisiana have watched as shrimp imports have devastated fishing families—much of these imports coming from Mexican fishing fleets which do not pull Turtle Excluder Devices and which enjoy subsidies on fuel provided by the Mexican Government agency PEMEX. We have asked our Government to use its discretionary authority to end the unfairness of this trade and our Government

has turned a deaf ear. Instead our Government has continued to levy \$10,000 fines on Louisiana fishermen for real or imagined violations of rules the Mexican fishermen are not required to follow.

Now we are told to trust a discretionary side letter which purports to protect the 25,000 sugar farmers and families of my district from excess Mexican exports of sugar. And we learned this weekend that NAFTA will on January 1, 1994, allow unlimited amounts of Mexican sugar in the form of candy to come into our country duty free. Fool us once—your fault; fool us twice, our fault.

Mr. Speaker, the so-called sugar letter may read "Dear Sweetie" today, but tomorrow we fully expect it to say "Dear John." Despite sincere efforts to find adequate assurances from the administration, I have unfortunately concluded that NAFTA could well damage if not destroy the livelihoods of those 25,000 families of my district. Tomorrow, I will vote "no" on NAFTA.

VOTE FOR THE FUTURE—VOTE FOR NAFTA

(Mr. BARTON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Speaker, I would like to give my colleagues a few facts about NAFTA which they may not have heard in the debate.

Fact No. 1 is that the North American Free-Trade Agreement is patterned after the Canadian Free-Trade Agreement which has been in existence since 1989. It has made Canada our largest trading partner and also made the United States-Canada's largest trading partner.

Fact No. 2 is Mexico, seeing the benefits of the trade agreement with Canada, has begun to unilaterally lower their trading barriers to American-made goods. As a consequence, trade has doubled between the United States and Mexico, turning a \$5 billion trade deficit into a \$5.5 billion trade surplus for the United States. This surplus has helped to create 700,000 jobs in this country.

Fact No. 3, as Mexico has increased their trade with the United States, they have been able to cut their inflation rate from over 200 percent to less than 10 percent, and they have balanced their Federal budget, which is something that we have not been able to do in this country since 1969. Lowering the inflation rate and balancing the budget has raised their standard of living. In fact, the average Mexican wage has tripled since 1987.

We should vote for the future. We should vote for NAFTA, and this Member of Congress is going to do that tomorrow evening.

MYSTERIOUS WHEELING AND DEALING FOR NAFTA

(Mr. STUPAK asked and was given permission to address the House for 1 minute.)

Mr. STUPAK. Mr. Speaker and Members, for those of my colleagues that voted against President Clinton's budget because they could not support tax increases, even for the benefit of this country, I hope they are paying attention because, under NAFTA, they are going to vote for increasing taxes on their constituents, this time to support the Mexican economy. The financing mechanism of NAFTA is perhaps its greatest mystery. I cannot even begin to tell my colleagues how we are going to financially pay for this agreement, and I fear that we will pay for it in other ways such as no protections against the diversion of Great Lakes water, no protections to stop the flood of illegal immigration, and no incentives to help the American manufacturing base which will be devastated under NAFTA. None of these protections are in the agreement. None of those protections are part of all the back-room deals that are going on, in all honesty, with all the wheeling and dealing and with all the side deals. Congress does not even know what is in the side deals. We do not know the cost of the side agreements.

Mr. Speaker, what we do know is that once again the American taxpayer is asked to pay for something that his or her elected Representative does not even know about. The side deals have changed NAFTA and increased its cost to the American taxpayer. Therefore, Mr. Speaker, I say no to the side deals, no to unknown costs, no to increased taxes, no to this NAFTA.

ASTRONOMICAL NUMBERS OF THE CLINTON HEALTH PLAN

(Mr. EWING asked and was given permission to address the House for 1 minute.)

Mr. EWING. Mr. Speaker, the numbers on the Clinton health plan are out of this world.

The cost of the plan is estimated to be \$700 billion over just 5 years.

The taxes needed to pay for the plan are estimated by the White House at \$160 billion.

The GAP between the two is more than just one of credibility. It's the reason for the administration's weekly revision of how many Americans will pay more for health coverage.

Health and Human Services Secretary Donna Shalala says 40 percent of Americans will pay more.

OMB Director Leon Panetta then came back that only 30 percent of Americans would pay more. Not to be outdone, health czar Ira Magaziner says only 15 percent will pay more.

In spite of all the administration's fancy footwork with its mathwork,

Senator MOYNIHAN warned that "we face the prospect that perhaps half the population will find itself paying more in health premiums."

Because the administration is debating with itself, it is pretty evident that they have no idea of the cost of their plan.

□ 1250

IN SUPPORT OF NAFTA

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, in my role as chairman of the House Intelligence Committee. I have given a great deal of thought to America's long-term national security interests, both political and economic, in the whole NAFTA debate.

Last week, I decided to vote for the agreement. While I didn't start out that way the passage of NAFTA has become a critical and yes, symbolic test of U.S. leadership in the post-cold-war era. If Congress fails to ratify NAFTA, our country will be dramatically weakened—politically and economically. The defeat of NAFTA will enhance the power of Asia and the European Community to move into our historic and natural territory, and our ability to be an economic and political powerhouse may be a thing of the past.

NAFTA's failure will further alienate out Latin American allies, at a time when our neighbors offer the greatest economic promises of any area in the world. To vote the agreement down threatens America's position in the global economy, and could be one more step in making the United States a second-rate power.

Further, NAFTA's failure could have profound consequences for many industries. The potential Latin American market for commercial jet aircraft will exceed \$28 billion by the year 2010. The defeat of NAFTA would eliminate any market access advantage the United States expects to gain in Latin America and jeopardize the ability of Boeing and McDonnell-Douglas to compete against the Europeans Airbus consortium. That means tens of thousands of jobs in the United States.

The politics of this issue weigh clearly in favor of a "no" vote—at least in the short term. However, my belief is that the future of America is best protected by supporting and ratifying this agreement. I realize a "no" vote may be a short-term political positive, but a "yes" vote in the long term is the soundest and politically safest, vote.

CRIME BILL DEBATE SUGGESTS A NEW STRATEGY FOR HEALTH CARE REFORM

(Mr. BILIRAKIS asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. BILIRAKIS. Mr. Speaker, believe it or not, there is agreement in Congress on how to resolve our national health crisis.

Most health bills introduced in Congress this year address administrative streamlining, insurance portability, antifraud and antitrust reform, protection for those with preexisting conditions, and medical malpractice reform. Now is the time to act—now is the time to enact a consensus health package.

Mr. Speaker, this is not an unreasonable or unworkable solution. Take the crime bill, for example. In this body, we are currently debating crime legislation bill by bill. It appears to be working—the issues are being debated on the House floor and legislation is being approved in a timely fashion.

Why not adopt a similar strategy for health reform? Health care, like crime reform, is an issue that touches all Americans—it can mean the difference between life and death. Let us show the American people that we will not let them down, that we will not tolerate people losing their health insurance because they have changed jobs or, even worse, because they become ill.

So many Americans would benefit if we enacted into law these important consensus items. I urge my colleagues to show the American people we want change by supporting action now on health reform.

NAFTA AND THE FREE TRADE SWINDLE

(Mr. OWENS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS. Mr. Speaker, NAFTA is one more deadly step in the slow strangulation of the American economy. In the last 12 years the great free trade swindle has choked the industrial might of America into a coma. NAFTA will tighten the noose around the neck of American workers to the point of no recovery. Two things are certain about the free trade swindle: the rich move their factories to low wage areas and get richer while the workers lose their jobs and get poorer. American cities and towns lose their tax bases and everybody suffers from this steady strangulation. Instead of free trade we need balanced trade; we need reciprocal trade. NAFTA does not represent progress. NAFTA will mean a greater sharing of the bounty by the greedy elite jet-set of the world while the standard of living of the workers in this Nation will drop to the level of the Third World.

The concept of human rights must be expanded to include the right to participate in the production of the goods you need for daily living. American

consumers must demand the right to also be the producers. Stop the strangling of the American economy now. Don't let NAFTA tighten the noose. Vote "no" on NAFTA.

ANATOMY OF THE SOMALIA FIASCO

(Mr. INHOFE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INHOFE. Mr. Speaker, I rise today in order to share with the American people the travesty that took place in this Chamber last week.

The House was considering House Concurrent Resolution 170, which expressed the sense-of-the-Congress that United States troops should be removed from Somalia by March 31, 1994. The passage of an amendment offered by my colleagues, Mr. GILMAN and Mr. SPENCE, which would have moved the date of departure up 2 months to January 31, 1994, left many of us with the hope that the House would actually respond to the will of the people by taking this positive step toward ending our involvement in Somalia. It was much later, however, when the House then passed an amendment by Mr. HAMILTON which reestablished the President's date of March 31, 1994. How could this happen?

It happened because the liberal Democrat leadership was determined not to let those of us who want to end the fiasco in Somalia, embarrass the President. The Gilman/Spence amendment passed by a vote of 224 to 203. The Hamilton amendment passed by a vote of 226 to 201. Logic would have it, that if a member voted to bring the troops home in January, that they would then oppose subsequent efforts to keep them there until March. It is called political cover to make the people at home think that we want to bring them home, when in fact we do not.

Furthermore, the timing of this vote was no coincidence. To those of us who have watched the leadership schedule unpopular votes late enough so it cannot be covered on the nightly news, last week was business as usual. While the majority of Americans were focusing their attention on the NAFTA debate, the Democrat leadership quietly structured the debate and strong-armed several of their most liberal allies to protect the President. You would think they would be more interested in the safety of our troops.

While we all might disagree as to what date the United States involvement in Somalia should end, surely we can agree that this type of misrepresentation and tactical scheduling is a slap in the face of all those young men and women who have answered this Nation's call in Somalia.

Let us hope and pray that no more American lives will be lost just to pro-

tect the President's flawed foreign policy mistakes.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

(Mr. MENENDEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Speaker, for months I waited for the President to reveal the side agreements to NAFTA. When he sent them to me, I read them. I have weighed the merits, and come to a decision. When we vote on the NAFTA tomorrow, I will vote "no."

Yes, the United States can make any trade agreement into a winner—a winner not only for North America, but for all of the Americas. But this agreement is just not in our best interests.

Why will I vote "no?" Let us look at the merits. Will NAFTA raise the standard of living of the American people? No. Will NAFTA mean better jobs and better wages for American workers? No. Will NAFTA protect the environment? No. Will lower tariffs in Mexico make United States companies invest more here at home? No. Mr. Speaker, the entire Mexican market is smaller than my home State of New Jersey's market. Will NAFTA cost us billions in lost revenue and related costs? Yes.

I will not vote against the best interests of the American people. And I will not vote against the best interests of my constituents. Say "no" to this NAFTA.

AMERICAN BUSINESS SUPPORT OF NAFTA IS SHORTSIGHTED

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, in recent weeks, each of our offices has been deluged on NAFTA. As a matter of fact, mine has received more correspondence in a shorter time period than on any other issue.

And, here is the reason. Computer generated letters, each with a different name and address, but all make reference to Citibank, and everyone has the same handwriting for the signature.

My question is, Do these individuals even know that their names have been used? If the issue is so critical to these persons why could they not each write directly to us?

It is my belief that American companies have given up on manufacturing in the United States—that they no longer want to deal with ever-increasing taxes, unfunded mandates, and endless regulations. But these companies see a light at the end of the tunnel, and that light is shining in Mexico. These companies will have the best of both

worlds—with lower taxes, fewer regulations, but still access to the American market. So they will move to Mexico.

But these companies appear to forget that only wage earners have money. If the jobs move, so does the capacity to buy products.

I believe American business is shortsighted, and should wage its war here in Washington instead of running away to Mexico.

Is this the handwriting of the New World Order? And is it signing the death warrant to highpaying American jobs?

A TIDAL MOVEMENT TOWARD SUPPORT FOR NAFTA

(Mr. INSLEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, the American people are moving toward NAFTA, and that tide has been reflected in the polls, and that tide has been reflected by the many Members who have come out for NAFTA in the last few days.

This tidal movement is not the result of anything going on in Washington, DC.

□ 1300

It is the result of the American people finally having access to the truth about NAFTA, that NAFTA knocks down Mexican trade barriers to zero, where they belong; that NAFTA continues the direction of progress in Mexico; that our job creation will accelerate through NAFTA. In the last moment, when the chips are down, Members will step forward in this Chamber, stand up with conviction, and say with this vote that they will lead the world not just in free speech, not just in the free exercise of religion, but also in the fight for free trade. And when we do so, we will have done what we have come here to do—make the world's borders as free as America's.

DECLARATION OF SUPPORT FOR NAFTA

(Mr. GEKAS asked and was given permission to address the House for 1 minute.)

Mr. GEKAS. Mr. Speaker, I rise today to announce my support for and my vote for the North American Free Trade Agreement. During the last several weeks I have held several extensive discussions with every group in my constituency, farm groups, labor groups, industrial groups, manufacturers, small business, clerical workers, and retailers. You name it, we have talked. And although the argument can be made pro or con and when you put it on the scales it appears even Steven, the one theme that goes through all the arguments and which is acknowledged by even the sternest opponents

of NAFTA, is that the result of NAFTA will be the expansion of markets for American workers.

Mr. Speaker, once you put that truth into the mix and into the argument, there is no choice but to support NAFTA, because in the final run, it is American spirit and American competitiveness that will prevail and make NAFTA work.

INTEGRITY AND DIGNITY OF CONGRESS HINGES ON REJECTION OF NAFTA

(Ms. VELÁZQUEZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Ms. VELÁZQUEZ. Mr. Speaker, I rise today, on the eve of a crucial vote on the North American Free-Trade Agreement, in hopes that as my colleagues cast their votes they will remember that we are sworn Members of this Congress, and as such, we represent the American people. We cannot allow narrow self-interest to guide our decision on such an important issue.

The passage of NAFTA would mean the loss of close to one-half million jobs in this country. Is a bridge, or a highway, or two C-17 bombers worth this price? Is this the future that we give to our children and our Nation?

Let us remember what it is this Congress stands for and the American people whom we have sworn to serve. The temptations that pro-NAFTA leaders offer are great, but when we cast our votes tomorrow, let us make sure that we do so in the interest of the American people. I urge all Members to vote "no" on NAFTA and insure the integrity and dignity of this Congress.

PASS NAFTA NOW

(Mr. BALLENGER asked and was given permission to address the House for 1 minute.)

Mr. BALLENGER. Mr. Speaker, there is a lot of misinformation being circulated about NAFTA. Opponents say the trade accord will hurt United States industries and cause American jobs to be lost to Mexico. This is simply not the case in my State of North Carolina. In fact, since Mexico partially reduced its protectionist trade barriers in 1987, North Carolina has seen just the opposite; an increase in demand for North Carolina goods and services, resulting in more jobs.

As the chart here shows, increased North Carolina exports to Mexico are directly linked to the partial reduction of trade tariffs, from 30 percent to 15 percent. In 1987, North Carolina exports to Mexico equaled \$95 million. In 1992, total exports to Mexico equaled \$440 million, a 365-percent increase.

Over the 5-year period, the furniture industry had a 6,800-percent increase,

textile mill products, a 946-percent increase, the apparel industry, a 524-percent increase. Increased exports result in increased jobs. These numbers are fact, not fiction.

Mr. Speaker, all of these occurred on a partial reduction of tariffs. Can you imagine what total reduction would do? Passing NAFTA will create new jobs in North Carolina and across America, and I urge my colleagues to pass NAFTA.

KEEP RACISM AND BIGOTRY OUT OF NAFTA DEBATE

(Mr. DE LA GARZA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DE LA GARZA. Mr. Speaker, as we enter the final hours of the debate on NAFTA, I am concerned with something that is happening outside of this body, and I take the floor to ask my colleagues to disassociate yourselves from this endeavor.

I picked up from the Wall Street Journal of yesterday an article about a group fighting NAFTA that are called no-namers. Let me quote from it—they have dinners—it says:

The atmosphere turns xenophobic with anti-Mexican slurs. It is kind of amusing and kind of frightening, one attendee says.

Mr. Speaker, we have not done this with China and we have not done it with the Soviet Union. We have not done it with any country that we have trade or disagreements with.

Mr. Speaker, I share Mexican blood; I share Mexican ancestry. But there are some half truths and more that are becoming part of the debate. I do not know if it is so or not, but anti-Mexican slurs to kill a piece of legislation that should be debated solely on its merits, and solely on the personal interests of our Members. I ask my colleagues, do not in any way associate yourselves with this truth, because Mexico, the Mexican people, and one of your colleagues that shares their blood, do not deserve that kind of treatment.

"YEAH, BUT'S" ON NAFTA

(Mr. WYNN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYNN. Mr. Speaker, I rise today in opposition to the North American Free-Trade Agreement. I have noted, however, as the debate progressed, that we have had an onslaught of a new species, a species called the "Yeah, but's." Not rabbits, "Yeah, but's."

You see, every time you point out that if we pass NAFTA we are going to have job loss, you hear, "Yeah, but." If you say that 55 percent of American businessmen have said if NAFTA passes they would actually consider

moving to Mexico, you hear it again, "Yeah, but." If you say that we will lose jobs for low and medium skilled workers in textiles, electrical machinery, trucking, agriculture, glass, toys, sporting goods, and consumer products, once again you hear "Yeah, but." If you talk about the fact that NAFTA will lower our standard of living, that the wages in Mexico are 10 to 15 percent of United States wages, and that our companies will be going to Mexico for cheap labor, once again, "Yeah, but."

If you talk about the fact that this so-called trade surplus is misleading, if you talk about the fact that the Mexican peso is overvalued so we are given a false impression that Mexico is a great trading partner, you will hear, once again, "Yeah, but."

If you talk to conservative "Yeah, but's" about the cost, they, "Yeah, but."

So I hope that tomorrow when we vote on this agreement, that we can put the "Yeah, but's" out of their misery and kill the North American Free-Trade Agreement.

NAFTA DANGEROUS TO SMALL BUSINESS

(Ms. FURSE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FURSE. Mr. Speaker, I am here to read a letter from a CEO from my home State of Oregon. This is what he has to say:

The proposed NAFTA agreement will be disastrous to our company. We are a small apparel manufacturer in Portland, OR. NAFTA will directly cause the loss of the jobs of 200 employees, and indirectly impact service and other employment related to our industry.

He goes on to say:

I have reviewed the plan in detail and there is no question about the negative impact on our company. In short, our company and our employees are totally against NAFTA. We would appreciate your looking at this again from a realistic standpoint and defeating NAFTA.

□ 1310

NAFTA IS STILL DISASTA

(Mr. FILNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FILNER. Mr. Speaker, tomorrow this House will vote on this NAFTA. Proponents say one of its many benefits will be cleaning up the United States-Mexico border. However, as the Congressman who represents San Diego, CA—the largest city on the border—I can tell you that this "trickle-down" treaty will not work. Under NAFTA, the border will continue to be trickled on.

For 30 years, raw sewage has been flowing from Tijuana, Mexico into San Diego. Today, 50 million gallons a day of the stuff runs through my district—fouling neighborhoods, polluting beaches, and threatening the health of my constituents.

NAFTA supporters say, "NAFTA will clean this up." Yet nothing in NAFTA guarantees a nickel for such cleanup.

On the contrary, NAFTA codifies and accelerates the very corporate activities which created this environmental disaster in the first place.

Let us start addressing these infrastructure needs directly—together. Let the real needs of our people be the true object of our economic agreements—not a hoped for side effect of a treaty that merely makes the world safe for multinational corporations.

NAFTA HURTS AMERICAN WORKERS

(Mr. MANTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MANTON. Mr. Speaker, I rise today to express my opposition to the North American Free-Trade Agreement.

I have concluded that this agreement is not in the best interest of workers in New York City or the rest of the country. The working people in my District have already seen thousands of manufacturing jobs leave New York City. Their fears about NAFTA are genuine and are justified.

Even NAFTA supporters concede that we will lose many labor-intensive jobs in the short term. I cannot encourage the escalation of this trend by voting for NAFTA. I cannot, in good conscience, support a trade agreement which threatens the very livelihood of those I represent.

I believe that implementing NAFTA will reinforce artificially low wages in Mexico exerting downward pressure on United States wage levels. Those who are fortunate enough to keep their jobs will likely see their wages go down. Lower wages will make it increasingly difficult for my constituents in Queens and the Bronx to provide the essentials for their families and maintain a decent standard of living.

Mr. Speaker, we need a trade agreement that promotes our economic security and job growth in the United States. NAFTA is not that agreement and I urge its defeat.

THE COMMONWEALTH OF PUERTO RICO

(Mr. DE LUGO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DE LUGO. The Commonwealth of Puerto Rico conducted the first plebi-

scite in 26 years Sunday on the political status its people want for their island.

The vote was an outstanding exercise of the democratic process. Over three-quarters of the electorate may have participated. This is an extraordinary number for a plebiscite or a referendum. It is the highest to participate in this type of exercise in the history of Puerto Rico, and there were no incidents; 48.4 percent of the vote was for commonwealth, 46.2 was for statehood, and 4.4 was for independence.

The island's status remains a serious issue requiring our attention, and the Congress of the United States cannot ignore this magnificent democratic expression by the American people of Puerto Rico.

The Congress has a constitutional obligation to acknowledge the will of the people of Puerto Rico and give it serious and constructive consideration. The Federal Government should consider the specific developments proposed and the various views expressed by the American citizens of Puerto Rico.

Mr. Speaker, as chairman of the Subcommittee on Insular and International Affairs, I am advising my colleagues that the committee will hold a hearing on the results of the plebiscite and recommendations regarding them.

IN OPPOSITION OF NAFTA

(Mr. STRICKLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STRICKLAND. Mr. Speaker, I think those of us who have the privilege of serving in this body also have a moral obligation to consider our vote a sacred trust. There are literally thousands of people in this country who are expressing their views about NAFTA, yet only 435 of us can cast a vote tomorrow for or against the treaty.

As Members of this House, we must approach NAFTA responsibly, rationally, and with an open mind, willing to listen to both sides of the debate.

But, Mr. Speaker, we ought not to vote against our better judgment for narrow self-interested reasons, and our role in casting votes in Congress should not include caving in to the big deal.

Are there some pluses for NAFTA? Absolutely. Will the world come to an end if NAFTA passes? Probably not.

But on balance, this NAFTA is a bad deal for this country. We can do better. We can negotiate a better treaty. We can stand up for the working men and women of this country. We can protect the environment, and we can foster positive political change in Mexico.

We have time to do this correctly, but not with this NAFTA, not now.

AMERICAN SAMOAN SOLDIERS

(Mr. FALEOMAVAEGA asked and was given permission to address the

House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. FALEOMAVAEGA. Mr. Speaker, I have just returned this past weekend from Fort Bragg, NC, after visiting my Samoan constituent soldiers who proudly serve as members of the 82d Airborne Regiment, or are members of the elite Ranger and Special Forces units. I am proud to say to my colleagues that our American Samoan soldiers are capable warriors of the first order, and are committed to defend our country in time of war.

Mr. Speaker, I rise today to express my concerns with Gen. Carl Mundy's recent statements on the CBS show "60 Minutes" during which he said minority officers do not shoot, swim, or land navigate as well as white officers.

Mr. Speaker, it is unfathomable to me that in 1993 we still have high-ranking military officers, apparently as high as the Commandant of the U.S. Marine Corps, who continue to maintain the false stereotype that minority officers are incapable of performing as well as white officers when given similar training and circumstances.

While I have had the opportunity to review General Mundy's apology, I remain troubled because a statement of that nature, by an officer of flag rank, on prime-time national television says a lot about where the Marine Corps is today.

I am pleased to learn that our chairman of the House Armed Services Committee and the Secretary of the Navy is looking into the issue of unequal promotion rates of minorities within the Department of the Navy and the Marine Corps and hope that at least some good will come out of yet another offhanded, offensive remark by a very senior military officer.

I include for the RECORD, Mr. Speaker, this article from the Washington Post:

[From the Washington Post, Nov. 16, 1993]
MARINES: RACIAL FIGURES BACK MUNDY;
VALIDITY DISPUTED

(By John Lancaster and Barton Gellman)

The Marine Corps yesterday released test results that it said support a recent statement by the service's top officer that black officers do not shoot, swim or navigate as well as whites. But the differences in most categories were small and statisticians said their significance is unclear.

In the study of junior Marine officers, whites outperformed blacks in 17 of 19 different military skills, such as target shooting, first aid and night navigation. Marine officials said yesterday that Marine Commandant Gen. Carl E. Mundy Jr. was referring to that data when he made his controversial statement in an Oct. 13 broadcast of the CBS program "60 Minutes."

Mundy's remarks prompted criticism from civil rights leaders and others, who compared his remarks to suggestions by former baseball executive Al Campanis that blacks do not have the "necessities" to become team managers. Mundy, however, quickly apologized and Marine officials emphasized

that he was merely expressing concerns about racial inequities he wants badly to correct.

In any event, they said, Mundy should not be vilified for talking openly about measurable differences in performance among blacks and whites at the service's Basic School at Quantico, where newly minted Marine officers attend a nine-week training course. They released the supporting data in response to queries from news organizations.

The significance of the data remained unclear. In the sample of 1,000 whites and 85 blacks who attended the Basic School over the past two years, the gaps between average black and white scores on individual skills are so narrow that they are statistically insignificant, said David Banks, a statistics professor at Carnegie-Mellon University who examined the data at the Washington Post's request.

Banks said, however, that while the comparisons in individual skill areas do not appear to mean much, "there is a tendency for the differences to be all in one direction and this is puzzling." Blacks outperformed whites in two skill areas: the "double obstacle course" and radio communication.

Senior civilians at the Pentagon said there is better evidence that blacks have a harder time getting promoted than they do competing with whites on job performance or military skills.

Edwin Dorn, the Defense Department's top official for personnel matters, said in an interview last night that the jury is still out on whether black Marines fall short on any meaningful test of military skill. The "one bit of data that is bothersome to us," he said, is that in an analysis of 1993 officer selections, "minorities, and particularly blacks, appear less likely to get promoted from captain to major than are whites."

Gen. Walter E. Boomer, the assistant commandant of the Marines, said in an interview yesterday that Mundy "feels in his heart of hearts" that he was quoted out of context on the CBS broadcast. What he was trying to say, Boomer said, was that "we are making a very dedicated attempt to encourage young black officers to go into the combat arms fields * * * and he expressed concern that from looking at the data from the Basic School, some of the black officers had a more difficult time swimming."

"You and I know that's not a cultural thing, it's an economic thing, because young black males don't have the opportunity * * * to have access to swimming pools or country clubs," Boomer said. "There's nothing about a black person that has anything to do with swimming, inherently."

Boomer said Mundy was trying to say "we're going to devote more time to helping them learn how to swim," but "it came across as blacks can't shoot, can't swim, can't read a compass. And that's not what he meant."

Blacks account for 5.6 percent of Marine officers, compared with 11 percent in the Army. The respective figures for the Navy and Air Force are 4.7 percent and 5.6 percent, according to Air Force Lt. Col. Doug Hart, a Pentagon spokesman.

Though some black leaders expressed anger over Mundy's remarks, there were signs that most were not treating his comments as a major offense. One aide to a member of the Congressional Black Caucus said Mundy's remarks had been "more of a gaffe than an offense."

COMMERCE SECRETARY RON BROWN

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, for some time now we have been trying to get from the White House, from the Justice Department, from the Commerce Department information concerning the Ron Brown affair.

Mr. Brown, the Secretary of Commerce, is accused of taking a \$700,000 bribe from the Vietnamese Government to normalize relations with our country, even though we have not had a full accounting of the 2,200 POW/MIA's.

These allegations are very serious. They are so serious there has been a grand jury empaneled down in Miami to look into these allegations.

Mr. Brown testified before the Committee on Foreign Affairs on some trade issues, and we believe he misled the Congress, maybe inadvertently. Maybe he lied. I do not know. But we need to get to the bottom of this thing.

We have written to all these agencies, and we have been stonewalled. So before this Congress adjourns, I implore the President, Mr. Speaker, and the Secretary of Commerce and Ms. Reno, the head of the Justice Department, to give us all the information that we need so we can get to the bottom of this.

If there is nothing to it, it will be cleared up. But if Mr. Brown is guilty, as alleged, then he should be removed as quickly as possible.

IN SUPPORT OF NAFTA

(Mr. PAYNE of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAYNE of Virginia. Mr. Speaker, the House of Representatives will vote tomorrow on whether or not to approve NAFTA. This is an important and an historic vote.

I support NAFTA because I believe it will create jobs, good jobs, in my congressional district, and across the country.

Some concerns have been raised about how NAFTA will affect the textile and apparel industries—large employers in my Virginia district.

Included in NAFTA's implementing legislation in an amendment I offered in Ways and Means which strengthens the rules of origin for textiles and apparel.

This amendment helps our United States textile and apparel workers by guaranteeing that under NAFTA, duty-free treatment will apply only to textile and apparel products that are spun, woven, and sewn in North America—not China, not Pakistan, not India.

This means that the United States will be more competitive in the world textile and apparel markets.

And that means jobs—new jobs and good jobs—for American workers.

I urge my colleagues, especially those who represent large numbers of textile and apparel workers, to support NAFTA.

□ 1320

NAFTA: MORE THAN JOBS AND TRADE

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, the values we cherish deeply, democracy, human rights, the rule of law, and free economics, are on the ascent everywhere in the world. With the end of the cold war our influence is at its zenith, and the eyes of the world are watching to see whether we have the vision and the courage to lead.

Americans can rise up, as we have so often in our proud history, to embrace the challenges of the global economy and aggressively work to promote our values all over the planet.

Alternatively, we can turn inward, and as Ross Perot and the American labor movement urge us to do, shut off from the rest of the world and maintain barriers to protect ourselves from the uncertainties of change.

After 45 years of exhorting all nations toward free trade, under Democrat and Republican administrations alike, we are asking ourselves the question: Can we afford to freely trade with a weak economy to our south and a tiny economy to our north?

What message will it send about America, Mr. Speaker, if we say no?

NAFTA MUST PASS ON ITS OWN MERITS, NOT WITH THE HELP OF PORK

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, if this NAFTA deal were so good, it would pass on its own merits. The problem is those proponents of the agreement have to buy it.

I find it interesting that Prime Minister Brian Mulroney of Canada, who shoved it down the throats of the Canadian working people and his own parliament, was given a board appointment on Archer Daniels Midland, one of the biggest concerns, multinational companies, right after he left office. Most interesting is what is going on here. There are two trade agreements that are going on. One is NAFTA, and the other, trading votes for pork which is now going on within the bowels of the White House.

We cannot believe what they are trading. Some people are going to trade

America and our working people for peanuts, some for citrus, some for sugar, some for home appliances, some for grazing fees, some for rapid transit systems, roads, bridges, harbors, airplanes, banks, and even helium facilities.

If we read pages 48 to 52 of the agreement and the supplementary chapters, will find Honda Motor Corp. will get a \$17.5 million tax forgiveness because this agreement will supersede the United States-Canada Free-Trade Agreement.

What is going on here is wrong. I say to the President of the United States, "Win it on the merits, not the pork."

NAFTA SEEN AS BENEFICIAL TO CALIFORNIA AND THE NATION

(Ms. ESHOO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, over the past months, I have listened to compelling arguments on both sides of the NAFTA debate. Constituents from my district have spoken out on NAFTA revealing both their hopes from the future and their fears of losing what they already have.

After much analysis and reflection, I have determined that NAFTA is good for the people of the 14th Congressional District, for California, and our country. My decision is one of hope, not of fear—it looks to a better future while correcting failures of the past.

My district is where much of our Nation's future is shaped. Those who make products in the 14th District—home of Silicon Valley—have the opportunity to compete in an expanded market under NAFTA and will do particularly well with this agreement.

For California, exports to Mexico are responsible for creating over 150,000 jobs in our State. NAFTA will help secure these jobs and create new ones.

NAFTA will increase our exports, improve competitiveness, strengthen our Nation's foreign policy.

This is an agreement that is worthy of support, and one which I believe exports the best of America—our products, our democratic principles, and our values—not our jobs.

NAFTA: BAD FOR THE UNITED STATES, GOOD FOR HONDA

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, let us be clear on who NAFTA hurts and who it helps. It hurts U.S. workers. It opens U.S. trade to a country with a direct policy of keeping workers' wages low. Low-wage workers, who have no power to demand health care or other benefits, mean a lower cost of doing busi-

ness. That will lure many United States businesses to Mexico. The Mexican Government knows it, supports it, and advertises it as an asset when trying to attract United States businesses.

Against all conventional economic wisdom, Mexican wages have failed by a wide margin to keep up with the productivity of Mexican workers. And contrary to recent statements, no formal Mexican policy is in place to change this. None; in fact, just the opposite. Mexican Government and businesses officials continue "El Pacto"—their pact to keep wages low despite gains in productivity.

And who does the agreement help? Honda. Yes, Honda. The agreement allows \$17 million in tax forgiveness for that Japanese automaker. This was money Honda was fined because it violated the domestic content provisions of U.S. trade law. But NAFTA gives Honda a \$17 million dollar break.

Mr. Speaker; it is difficult to imagine that the best we can do, the best NAFTA we can negotiate, will cost the jobs of United States workers, but helps Japanese automakers. I urge my colleagues to weight their decision carefully and vote "no" on NAFTA.

URGING MEMBERS TO VOTE NO ON THIS NAFTA

(Mrs. UNSOELD asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. UNSOELD. Mr. Speaker, each of us understands that by virtue of geography, the American and Mexican futures are linked, but we must also understand that America's interests are not served when Mexicans are denied hope for a decent future.

Indeed, this was at least in part a conscious strategy of the Bush administration that drafted NAFTA. Then-United States Secretary of Commerce Mosbacher distributed materials at a meeting of business investors interested in Mexico, encouraging them to move south of the border, and he forecast even more cheap labor in the future because of a prospective increase in the gap between the United States minimum wage and the Mexican direct wage.

This NAFTA paints a grim future for Mexico's workers. It does nothing to end the Mexican Government's policy of suppressing wages. It does nothing to end its policy of denying basic labor rights. We must have a NAFTA that is in the best interests of all the workers of North America. Vote no on this NAFTA.

AMERICA IS NOT AFRAID TO COMPETE

(Mr. DURBIN asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, after months of deliberation, I have reached a decision on the North American Free-Trade Agreement. I will cast my vote in favor of NAFTA. This is my reason. American cannot continue to be a great Nation if we are gripped in fear of the future.

We have nothing to apologize for in this country. We have the most productive workers in the world, we have the best farmers in the world, and we are blessed with the best natural resources we could ever ask for.

America has shown that it can compete and it will compete. If we live in fear of cheap labor markets, let me tell the Members, those cheap labor markets are always going to be there. Companies that want to leave the United States to find cheap labor will always have someplace to go. But we have to look to the future, not to excuses, but to exports. We have an opportunity with NAFTA to open a market for American workers and American farmers.

As far as I am concerned, the theme song for the anti-NAFTA group is "Make the World Go Away." It will not go away. This is a world for global competition, and Americans are not afraid to compete.

NAFTA DISREGARDS THE INTERESTS OF THE AMERICAN WORKER

(Mr. MILLER of California asked and was given permission to address the House for 1 minute.)

Mr. MILLER of California. Mr. Speaker, this NAFTA should be rejected because this NAFTA was never negotiated with the interests of American workers. For the past 20 years we have watched the workers of this country, some of the most productive workers in the world—in our automobile industry, our electronics industry, our airline industry, in our defense industries—be hit with wave after wave of unemployment. In each and every case they have basically been told to fend for themselves.

As we now address the notion of international trade with this NAFTA agreement, and later with the GATT agreement, nowhere on the table, either at the time of negotiating these agreements or today, as we consider voting for them, were the interests of the American workers taken into consideration.

We still live with the system in this country where, if you are unemployed because of trade or because of downsizing or leveraged buy-outs or any cause at all, you and your family essentially must become poor and start over again.

There is something very wrong that after what we have seen, after the last

20 years, we will consider doing this again to tens of thousands of workers who must start over, lose their homes, take their children out of school, and catch as catch can.

□ 1330

That cannot be the future of the American family and the American worker. There has got to be a labor component, a worker component, a family component to NAFTA and its ramifications. This NAFTA does not have that.

NORTH AMERICAN FREE-TRADE AGREEMENT

(Ms. CANTWELL asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CANTWELL. Mr. Speaker, Washington State is an outstanding example of what can happen when an economy and a people embrace the challenge and opportunity of international trade. Washington is America's beachhead for trade to Asia and the Pacific rim. We share a border with Canada, and our trade with Mexico rose by 577.5 percent between 1987 and 1992. Today, approximately one of every four people in Washington earn their living from export-related jobs.

NAFTA will help Washington State and it will help America. I have met personally with more than 1,000 of my constituents on this issue. Dozens of companies in my district have convinced me that NAFTA will increase their sales, create hundreds of high-wage jobs, and strengthen their relationships with America's other trading partners.

Mr. Speaker, NAFTA is not the only important trade decision being made this week. In Seattle, the United States is hosting the Asia-Pacific Economic Cooperation conference in an effort to strengthen trade policies and relationships with 15 member nations from Asia and the Pacific rim—a market that buys 52 percent of all U.S. exports.

If Congress fails to pass the North American Free-Trade Agreement tomorrow, what kind of leverage will Mr. Clinton have at the APEC conference in Seattle?

How can the United States hope to be effective in future trade negotiations—or convince other nations of our sincere desire to open new markets—if this Congress is unwilling or unable to agree to more open trade with our two closest neighbors?

I urge my colleagues to vote yes on NAFTA and open the door of opportunity.

MYTHS EXPOSED

(Mr. DREIER asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, the dictionary definition of myth is: A fiction or half-truth, especially one that forms part of the ideology of a society.

The opponents of NAFTA are trying to make their opposition to this agreement part of the ideology of our society. But their efforts are based on several fictions and half-truths that must be exposed.

Myth No. 1: Jobs will go to Mexico: Not true. If NAFTA is passed, Mexican tariffs will be reduced, allowing companies to stay in America to manufacture their products meant for Mexico.

Myth No. 2: The environment will be hurt: Not true. Only if NAFTA is passed will we be able to work with our neighbors to improve our hemisphere's environment.

Myth No. 3: NAFTA will reduce wages of U.S. workers: Not true. Actually, export-related jobs pay 17 percent more than the average wage, and NAFTA will be responsible for creating at least 200,000 more of those jobs in the next 24 months.

Mr. Speaker, let us dispense with the myths. The truth is that NAFTA is good for American workers, good for the world environment, and good for jobs in this country.

UNANSWERED QUESTIONS ON THIS NAFTA

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Speaker, tomorrow this body will vote on a complex trade agreement, the North American Free-Trade Agreement. It has now become a very controversial trade agreement. I would like to just set the record straight, because I received a number of calls in my office and they say, "BARBARA, AL GORE won the debate. Why aren't you with AL GORE?" I am with AL GORE but not with this treaty.

I have been on the Ways and Means Committee for a number of years. I've had this Treaty before me for some time. I met with Mrs. Carla Hill, our U.S. Trade Representative time and again. This piece of legislation came first to Ways and Means. It was attached to our General Agreement on Tariffs and Trade. It was on a fast track, the North American Free-Trade Agreement.

Many of us voted for this trade agreement because of the importance of GATT. We did say at that time over 2 years ago that we had reservations about NAFTA, about workers' wages, we had reservations about animal protections, we had reservations about the environment. There were a number of questions unanswered, but we voted "yes" to let the process work internationally as far as GATT was concerned.

Since that time, hours and hours and hours have been spent on side agreements, and yet for some of us our questions were not answered. And as a result, in my mind, any agreement, policy or directive entered into by this country, whether foreign or domestic, must have one goal, one priority, and that is the improved quality of life of the American people.

Mr. Speaker, this NAFTA does not pass that test.

CRIME LEGISLATION

(Mr. FORD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker, I rise today to say that on Saturday the President was in my district of Memphis, and he reminded us that the civil rights struggle of the 1960's was not fought so that we could rob, rape, assault, and murder one another with weapons of our choice in the 1990's. Too many of our communities, he indicated, were under siege, and it was unacceptable that children cannot go to school, or go to playgrounds, or go to swimming pools without fear of being shot. It was unacceptable that sounds that fill our communities are the sirens of ambulances and police cars and the wails of grieving families. It is unacceptable that the 11-year-olds are planning their funerals and asking to be buried in prom clothes that they do not believe that they will have an opportunity to wear.

Mr. Speaker, we call upon the Congress to take whatever action is necessary for certain components of the crime bill, but also let us look long and hard at job creation in this Nation. We need jobs in our urban areas, we need jobs in our rural areas to address some of the crime problems that we are faced with.

COMPANIES NOT FUNDING BENEFITS PACKAGES

(Mr. PICKLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, yesterday General Motors announced their intention to put considerable additional assets into their seriously underfunded pension plan for hourly employees. This additional contribution would total some \$5 billion to \$6 billion. I think that is a good step, and I hope it can be approved by the administration. At least it appears they are willing to put back into their most seriously underfunded plan about as much money as they gave away last month when they negotiated the last labor contract.

While that sounds good, we should remember that we still have a serious

problem with unfunded pension liabilities. In less than 1 year the underfunding in General Motors' pension plans has gone from \$19 billion to \$24 billion. This latest proposal by General Motors will reduce that indebtedness some but, even if it is ultimately approved, the plans will still be seriously underfunded. The administration has proposed legislation that will address many of the problems we face in this area, however, we still must put a stop to the fact that companies can promise more and more benefits even when they have failed to fund their existing pension promises. We must stop that.

NAFTA IS A BAD DEAL

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, if the North American Free-Trade Agreement is so great, why can it not pass on its merits?

If the North American Free-Trade Agreement is so great, why cannot the proponents of it win the minds and the hearts of the American people?

If the NAFTA is so great, why did the Mexican Government spend \$30 million in a historically unprecedented move to lobby the Members of this Congress by hiring every top-notch lobbyist in this community?

If NAFTA is so great, why must USA NAFTA spend tens of millions of dollars on television ads and on people flying to Washington, and paying people and lobbyists all over this town, and all over this country to lobby Members of Congress?

And if NAFTA is so great, why to get this passed did Honda need a \$17 million tax break?

And if NAFTA is so great, why are people in this institution for NAFTA having their votes bought, and why is there the buying of votes for this bill, for the C-17 spending \$1.4 billion for airplanes that do not fly, by creating a national North American Development Bank? Why do they have to buy those votes of Members in Congress in order to pass the North American Free-Trade Agreement?

And Mr. Speaker, we do not even know what all of the deals are, and we are expected to vote on this bill tomorrow when we do not know what kind of deals are made, we do not know what kind of offers are coming from the administration. It does not smell good. It is not a good thing for the American public, it is not a good thing for any of us. It is a job killer. It hurts communities, it hurts small business.

NAFTA is a bad deal.

□ 1340

NAFTA NOT IN BEST INTERESTS OF UNITED STATES

(Mr. BARCA of Wisconsin asked and was given permission to address the House for 1 minute.)

Mr. BARCA of Wisconsin. Mr. Speaker, I rise today to urge my colleagues to reject the North American Free-Trade Agreement.

The goal of any trade agreement, including this NAFTA, must be to expand economic growth, enhance the export opportunities of American businesses, and promote a higher standard of living so that businesses can create more family supporting jobs for American workers.

A good agreement would help us to accomplish these goals, but this NAFTA certainly does not.

NAFTA was not negotiated on the most favorable terms to the United States. Any gains that the United States will make into the Mexican market will come at a substantial cost. The United States has racked up more than a \$1 trillion trade deficit since 1974 due in part to having negotiated trade agreements that have given up a lot in order to gain a small amount of market access.

We are not likely to realize the gains purported because under this NAFTA, the standard of living of Mexican workers will not grow to provide them with the needed purchasing power to buy American goods and services.

And the side agreements, which were designed to address this concern through enforcement of Mexican labor and environmental laws, lack real enforcement mechanisms to ensure we provide American businesses and workers with at least somewhat of a level playing field.

Mr. Speaker, the first step to negotiating an agreement that does allow us to accomplish the goals of free and fair trade is to set aside this NAFTA and then begin negotiating a better and more promising agreement. That is the course that I hope we will follow.

IS NAFTA GOOD FOR AMERICA?

(Mr. DEUTSCH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEUTSCH. Mr. Speaker, if the North American Free-Trade Agreement is approved, it would be the first time in the history of the world that a developed country entered into a free-trade agreement with an undeveloped country. Supporters of NAFTA point to the free-trade agreement of Portugal and Germany as a parallel. There are, however, fundamental differences between that agreement and NAFTA.

First, the wage ratio between Portugal and Germany was 1-to-4. The wage ratio between Mexico and the

United States is closer to 1-to-8. Second, before Portugal, Spain, and Greece were allowed to enter the European Community market they were required to change labor standards to make them more in line with the standards of the more developed European countries. More importantly, Portugal and Greece were required to change their systems of government before they were allowed to enter the European Community.

Mexico remains essentially a dictatorship. Economic theory has shown that wages go up and working conditions improve with productivity in a democracy but not in a dictatorship. If productivity increases in Mexico are not matched with wage increases and improved working conditions, the wages of American workers will not only not increase but will go down. The living standards of Americans will also go down.

Free trade is a critical value to secure our economic security, our national security, and even our freedom. This NAFTA, however, is not a free-trade agreement.

As Senator MOYNIHAN of New York has stated, "You cannot have a free-trade agreement with a country that is not free."

There is only one criteria for me in voting on NAFTA: "Is NAFTA good for America?" I must answer that question "no."

VOTE "NO" AGAINST NAFTA

(Miss COLLINS of Michigan asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Miss COLLINS of Michigan. Mr. Speaker, why would some Members of this Congress attempt to sell the American worker down the river with NAFTA? Why would some Members of Congress vote for NAFTA which will only line the pockets of the fat cats at the expense of the American workers?

Mr. Speaker, 2 weeks ago 20,000 people in the city of Detroit lined up at the U.S. Post Office for applications for jobs that will not be filled for another 5 years. Last week, 10,000 Detroiters lined up for applications for a casino that has not even been built yet.

The American worker is suffering and suffering for jobs in this country, and the American middle class is dying.

This Congress, instead of serving our people, some of my colleagues are delivering the fatal blow. Remember who sent you here, and remember why you were sent here.

Defeat NAFTA. Vote "no" against NAFTA, and I ask all of my colleagues to let your conscience be your guide. Do not sell out to the higher bidder.

I do not care where it is or who he is, remember your constituents. Vote "no" against NAFTA.

WHEAT DEAL IS INADEQUATE

(Mr. POMEROY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POMEROY. Mr. Speaker, it is my privilege to represent one of the richest wheat-producing areas in the world in this House of Representatives.

In light of yesterday's announcement on a wheat deal as part of the NAFTA negotiations, people have asked me whether I will be inclined to support this deal. My answer is a clear and unequivocal "no."

I have two major problems with the so-called wheat deal. The first is that it is not a NAFTA issue. In fact, the linkage of these issues should worry any agricultural commodity or product with protection placed in this trade treaty.

The experience of wheat has been that treaty protections do not mean anything unless and until the administration becomes desperate for votes from Representatives from impacted rural areas.

Second, the wheat deal is totally inadequate. Canadian wheat imports have risen 500 percent since the ratification of the Canadian free-trade agreement. We do not need further study of this problem. What we need is an emergency section 22 action against Canada to stop another flood of imports occurring now and in coming months.

When it comes to wheat, my position remains the same: No new trade agreement until meaningful steps have been taken to fix the last one.

The wheat deal announced yesterday does not come close to being an adequate response.

RENEGOTIATE NAFTA

(Mr. LEVIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, in the Wall Street Journal today there is a little article. It is headlined "Hedging a Pledge: Mexico May Dilute Productivity-Linked Wage Boost."

Why is this significant? Because it relates to the weakest link in this NAFTA, the 1-to-10 differential in wages and salaries, a State-directed policy of Mexico to combine low wages with high productivity to lure more investment to Mexico.

Well, the answer has been that Mexico will somehow amend this policy and link wages to productivity, but as this article indicates, there is no legal link between them. And if there were, what would it mean when the minimum wages in Mexico are 60 cents an hour?

This divisive, bitter battle over NAFTA is not one that had to be, and that is the tragedy of this. The best an-

swer is to renegotiate NAFTA, and to do it right.

HOURLY MEETING ON TOMORROW

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that, when the House adjourns today, it adjourn to meet at 9 a.m. on tomorrow, Wednesday, November 17, 1993.

The SPEAKER pro tempore (Mr. VOLKMER). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

AUTHORIZING PLACEMENT OF A MEMORIAL CAIRN IN ARLINGTON NATIONAL CEMETERY HONORING VICTIMS OF TERRORIST BOMBING

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate joint resolution (S.J. Res. 129) to authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, VA, to honor the 270 victims of the terrorist bombing of Pan Am flight 103.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. STUMP. Mr. Speaker, reserving the right to object, I yield to the gentleman from Mississippi [Mr. MONTGOMERY], the chairman of the Committee on Veterans' Affairs, for a brief explanation of the resolution.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to rise in support of Senate Joint Resolution 129, legislation authorizing the Department of the Army to place a memorial cairn on the grounds of Arlington National Cemetery to honor the memory of the 270 victims who lost their lives in the terrorist bombing of Pan Am flight 103. One hundred eighty-nine of the 270 victims were U.S. citizens, representing 21 States and the District of Columbia.

I consider Arlington National Cemetery to be especially appropriate for this memorial since 15 of those killed were active duty service members and at least 10 others were veterans. A small plot of land unsuitable for gravesites at Arlington has been proposed for the placement of the cairn.

I want to thank the Honorable JOE KENNEDY, a very able member of our committee, for bringing this matter to my attention and commend him for its efforts to get this resolution adopted.

I also want to thank my colleague, GEORGE SANGMEISTER, the very able chairman of our Subcommittee on Housing and Memorial Affairs, DAN BURTON, the ranking minority member of the subcommittee, and BOB STUMP, the ranking minority member of the full committee, for allowing the resolution to be taken up today.

I, of course, wish to thank the distinguished chairman and ranking minority member of the Senate Veterans' Affairs Committee, JAY ROCKEFELLER and FRANK MURKOWSKI, for their support.

Mr. Speaker, Senate Joint Resolution 129 has the full support of President Clinton and Secretary of Defense Les Aspin. In addition, major veterans organizations, including the American Legion, Disabled American Veterans, and Veterans of Foreign Wars, support the proposal.

The people of Scotland are to be commended for their generous donation of the materials to erect the cairn. No costs are to be borne by the Government. I urge my colleagues to support the Senate joint resolution.

Mr. STUMP. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. WALSH].

Mr. WALSH. Mr. Speaker, I rise today to speak on behalf of the victims of terrorism on the night of December 21, 1988. It was on that evening that college students from Syracuse University's Semester Abroad Program were excitedly winging their way home after a semester of discovery and wonder in one of the world's great urban centers, London. There were 35 of them and they never made it home. Imagine the horror of the parents who awaited them at John F. Kennedy International Airport in New York when they were told the news: Their beloved children, students, lovers of beauty and art and travel, were gone now, erased from the sky by—no one knew. But now we do.

The students were among 270 persons from 21 countries. They paid a price for their American citizenship, we have been told. Because it was terrorists who placed a bomb on that particular flight, bound for New York, oblivious to the personal pain they would inflict, joyful over the wound they would register against a great nation. Our great Nation.

As we now seek to bring the perpetrators to justice, we need to remember those who are now American heroes because they indeed died for our country. I am an original cosponsor of Mr. KENNEDY's resolution to place a memorial cairn in Arlington National Cemetery.

The cairn is a gift of the people of Lockerbie, Scotland, the exact location of the explosion, that faraway place which has become legendary in central New York. It is fitting that we honor my former constituents, their families, and all the victims of the flight 103 tragedy.

Mr. Speaker, I urge the adoption of Senate Joint Resolution 129.

□ 1350

Mr. STUMP. Mr. Speaker, reclaiming my time, I share the profound regret, sympathy, and loss associated with the appalling violence committed on De-

cember 21, 1988, over Lockerbie, Scotland, by an act of terrorism.

Personally, however, I am concerned that the placement of this memorial in Arlington National Cemetery goes outside the purpose of this national shrine.

Arlington, as a national shrine, holds a very unique place in the eyes of the American people. There must, of necessity, be some restrictions on burials and monuments at Arlington.

Specifications and guidelines established at Arlington state that the design of memorials to commemorate events or groups should aspire "to honor heroic military service as distinguished from civilian service however notable or patriotic."

I will not object to this unanimous-consent request. I do hope, however, that the chairman will sit down to draft legislation to establish in statute once and for all the criteria for burial and memorial at Arlington National Cemetery.

I am hopeful that we can do this to avoid exceptions in the future that stray even further from the stated purpose of Arlington National Cemetery.

Mr. SANGMEISTER. Mr. Speaker, I am pleased to lend my support to Senate Joint Resolution 129. This resolution would authorize the Department of the Army to erect a memorial cairn at Arlington National Cemetery to honor the 270 victims of terrorism on Pan Am flight 103.

Mr. Speaker, it is more than 4½ years since the terrorist bombing of Pan Am flight 103, on December 21, 1988. Although only one of the 189 U.S. citizens is from my home State of Illinois, I view terrorists attacks against any Americans as actions against the United States. I want to congratulate the people of Scotland, especially those from Lockerbie, and recognize their generosity in donating the memorial cairn. No costs for the cairn are to be borne by the U.S. Government.

As subcommittee chairman of the Veterans Housing and Memorial Affairs Committee, officials of Arlington National Cemetery have assured me that the placement of the memorial will not take away from available gravesites at the cemetery. The cairn is simply a small way for our Nation to memorialize each citizen who died on Pan Am flight 103.

Veterans service organizations, including the American Legion, Disabled American Veterans, and the Veterans of Foreign Wars have expressed support for the resolution, as both active duty personnel (15) and veterans—at least 10—were killed in the terrorist act.

Letters in support of Senate Joint Resolution 129, have also been received from the White House and the Department of Defense.

I urge adoption of the resolution by the full House.

Mr. KENNEDY. Mr. Speaker, the terrorist bombing of Pan Am flight 103 marks a tragedy in our Nation's history that must not be forgotten. For this reason, I bring forward a joint resolution to authorize the placement of a memorial in Arlington National Cemetery to honor the victims of Pan Am flight 103. Arlington National Cemetery is an appropriate location for

a national memorial to honor our citizens who lost their lives as a result of an attack that was unquestionably waged on America.

We are all aware that the tides of terrorism are encroaching upon our shores—our own soil is not immune from terrorist threats. The World Trade Center bombing in February and the recent alleged plot on the U.N. building and the Holland and Lincoln Tunnels drive home the fact that we, as a Nation, must maintain our resolve against future terrorist acts.

On December 21, 1988, 189 United States citizens were killed by the terrorist bombing of Pan Am flight 103 over Lockerbie, Scotland. Fifteen active duty and at least 10 veterans of the U.S. armed services were on the flight. Thousands of Americans were chilled by the loss of a family member, a friend, a loved one—many of whom were traveling home to the United States for the holidays. Together, they were innocent victims of a truly heinous act.

The families left behind have suffered an incalculable loss. Their loved ones were senselessly killed in an act of war; a terrorist war in which none of them played a role until they became its casualties. I admire the strength that the relatives and friends of the victims have demonstrated by working to prevent further terrorist acts against the United States, and also to prosecute the terrorists responsible for the bombing.

The families have selected a small, vacant tract of land, unsuitable for gravesites, for the cairn's location in Arlington National Cemetery. The people of Scotland have graciously donated the memorial cairn. Any of the funds required for placing the cairn will be raised through fundraising by the families at no Federal expense.

This monument will serve as a point of healing, a point of remembrance, and a point of reference in our continuing quest to prevent terrorist acts. The placement of this memorial in Arlington National Cemetery is appropriate for an act of war against the United States, and it will serve to heighten national recognition against terrorism.

The sorrow and pain caused by terrorist acts will never be erased. However, our determination to end terrorism must remain strong. The memorial cairn will always serve as a powerful symbol that the vigilance against terrorism must go on. I urge my colleagues to support this important initiative.

Mrs. ROUKEMA. Mr. Speaker, I commend to my colleagues attention legislation the House passed earlier today, authorizing the placement of a memorial cairn in Arlington Cemetery, to honor the victims of Pan Am flight 103. There can be no more fitting monument to the 270 lives lost in this barbaric act of terrorism.

This memorial will be erected in Arlington National Cemetery, on a plot of land identified by the families of the victims of Pan Am 103. Stones for the monument have been donated by the people of Scotland, and the families of the victims have indicated that they will raise any additional moneys involved in its erection.

This memorial cairn will serve foremost to honor the memory of those who lost their lives in this bombing. No words can convey the horror of this senseless act, or the pain so many

families felt when their children, husbands, wives, and parents were killed that day. In my own district, so many of the losses were young men and women, whose potential and life will never be known. The loss of a child is perhaps the most singular grief a parent can know, and 4 years later, our sympathy and thoughts remain with the families of these innocent victims.

Furthermore, this monument serves to recognize these families, and all those who lost loved ones. As many of my colleagues know, the families of Pan Am 103 have worked tirelessly since the tragedy to make certain no such horror ever happens again. Their diligent efforts to improve airline security, heighten our awareness and defense against international terrorism, and ensure that justice is served affects every American. The families of Pan Am 103 have taken their grief and anger, and made the most selfless act of putting it to positive use. Every American owes them a debt of gratitude.

Each of my colleagues should join me in support of this memorial. The Pan Am flight 103 memorial cairn will serve to remind Americans for years to come of the sacrifice of these victims and their families, and of the need to remain ever vigilant in our war against terrorism. There can be no more fitting honor.

Mr. STUMP. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. VOLKMER). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the Senate joint resolution as follows:

S. J. RES. 129

Whereas Pan Am Flight 103 was destroyed by a bomb during the flight over Lockerbie, Scotland, on December 21, 1988;

Whereas 270 persons from 21 countries were killed in this terrorist bombing;

Whereas 189 of those killed were citizens of the United States including the following citizens from 21 States, the District of Columbia, and United States citizens living abroad:

ARKANSAS: Frederick Sanford Phillips;

CALIFORNIA: Jerry Don Avritt, Surinder Mohan Bhatia, Stacie Denise Franklin, Matthew Kevin Gannon, Paul Isaac Garrett, Barry Joseph Valentino, Jonathan White;

COLORADO: Steven Lee Butler;

CONNECTICUT: Scott Marsh Cory, Patricia Mary Coyle, Shannon Davis, Turhan Ergin, Thomas Britton Schultz, Amy Elizabeth Shapiro;

DISTRICT OF COLUMBIA: Nicholas Andreas Vrenios;

FLORIDA: John Binning Cummock;

ILLINOIS: Janina Jozefa Waido;

KANSAS: Lloyd David Ludlow;

MARYLAND: Michael Stuart Bernstein, Jay Joseph Kingham, Karen Elizabeth Noonan, Anne Lindsey Otenasek, Anita Lynn Reeves, Louise Ann Rogers, George Watterson Williams, Miriam Luby Wolfe;

MASSACHUSETTS: Julian MacBain Benello, Nicole Elise Boulanger, Nicholas Bright, Gary Leonard Colasanti, Joseph Patrick Curry, Mary Lincoln Johnson, Julianne Frances Kelly, Wendy Anne Lincoln, Daniel Emmett O'Connor, Sarah Susannah Buchanan Philipps, James Andrew Campbell Pitt, Cynthia Joan Smith, Thomas Edwin Walker;

MICHIGAN: Lawrence Ray Bennett, Diane Boatman-Fuller, James Ralph Fuller, Kenneth James Gibson, Pamela Elaine Herbert, Khalid Nazir Jaafar, Gregory Kosmowski, Louis Anthony Marengo, Anmol Rattan, Garima Rattan, Suruchi Rattan, Mary Edna Smith, Arva Anthony Thomas, Jonathan Ryan Thomas, Lawanda Thomas;

MINNESOTA: Philip Vernon Bergstrom;

NEW HAMPSHIRE: Stephen John Boland, James Bruce MacQuarrie;

NEW JERSEY: Thomas Joseph Ammerman, Michael Warren Buser, Warren Max Buser, Frank Ciulla, Eric Michael Coker, Jason Michael Coker, William Allan Daniels, Gretchen Joyce Dater, Michael Joseph Doyle, John Patrick Flynn, Kenneth Raymond Garczynski, William David Giebler, Roger Elwood Hurst, Robert Van Houten Jeck, Timothy Baron Johnson, Patricia Ann Klein, Robert Milton Leckburg, Alexander Lowenstein, Richard Paul Monetti, Martha Owens, Sarah Rebecca Owens, Laura Abigail Owens, Robert Plack Owens, William Pugh, Diane Marie Renevich, Saul Mark Rosen, Irving Stanley Sigal, Elia Stratis, Alexia Kathryn Tsairis, Raymond Ronald Wagner, Dederica Lynn Woods, Chelsea Marie Woods, Joe Nathan Woods, Joe Nathan Woods, Jr.;

NEW YORK: John Michael Gerard Ahern, Rachel Maria Asrelysky, Harry Michael Bainbridge, Kenneth John Bissett, Paula Marie Bouckley, Colleen Renee Brunner, Gregory Capasso, Richard Anthony Cawley, Theodora Eugenia Cohen, Joyce Christine Dimauro, Edgar Howard Eggleston III, Arthur Fondiler, Robert Gerard Fortune, Amy Beth Gallagher, Andre Nikolai Guevorgian, Lorraine Buser Halsch, Lynne Carol Hartunian, Katherine Augusta Hollister, Melina Kristina Hudson, Karen Lee Hunt, Kathleen Mary Jermyn, Christopher Andrew Jones, William Chase Leyrer, William Edward Mack, Elizabeth Lillian Marek, Daniel Emmet McCarthy, Suzanne Marie Miazga, Joseph Kenneth Miller, Jewell Courtney Mitchell, Eva Ingeborg Morson, John Mulroy, Mary Denise O'Neill, Robert Italo Pagnucco, Christos Michael Papadopoulos, David Platt, Walter Leonard Porter, Pamela Lynn Posen, Mark Alan Rein, Andrea Victoria Rosenthal, Daniel Peter Rosenthal, Joan Sheanshang, Martin Bernard Caruthers Simpson, James Alvin Smith, James Ralph Stow, Mark Lawrence Tobin, David William Trimmer-Smith, Asaad Eldi Vajdany, Kesha Weedon, Jerome Lee Weston, Bonnie Leigh Williams, Brittany Leigh Williams, Eric Jon Williams, Stephanie Leigh Williams, Mark James Zwynenburg;

NORTH DAKOTA: Steven Russell Berrell;

OHIO: John David Akerstrom, Shanti Dixit, Douglas Engine Malicote, Wendy Gay Malicote, Peter Raymond Peirce, Michael Pescatore, Peter Vulcu;

PENNSYLVANIA: Martin Lewis Apfelbaum, Timothy Michael Cardwell, David Scott Dornstein, Anne Madelene Gorgacz, Linda Susan Gordon-Gorgacz, Loretta Anne Gorgacz, David J. Gould, Rodney Peter Hilbert, Beth Ann Johnson, Robert Eugene McCollum, Elyse Jeanne Saraceni, Scott Christopher Saunders;

RHODE ISLAND: Bernard Joseph McLaughlin, Robert Thomas Schlageter;

TEXAS: Willis Larry Coursey, Michael Gary Stinnett, Charlotte Ann Stinnett, Stacey Leanne Stinnett;

VIRGINIA: Ronald Albert Lariviere, Charles Dennis McKee;

WEST VIRGINIA: Valerie Canady;

UNITED STATES CITIZENS LIVING ABROAD: Sarah Margaret Aicher, Judith Bernstein Atkinson, William Garretson Atkinson III,

Noelle Lydie Berti, Charles Thomas Fisher IV, Lilibeth Tobila Macalooloo, Diane Marie Maslowski, Jane Susan Melber, Jane Ann Morgan, Sean Kevin Mulroy, Jocelyn Reina, Myra Josephine Royal, Irja Syhnove Skabo, Milutin Velimirovich;

Whereas 15 active duty members and at least 10 veterans of the United States Armed Forces and members of their families were among those who lost their lives in this tragedy;

Whereas the terrorist bombing of Flight 103 was unquestionably an attack on the United States;

Whereas a memorial cairn honoring the victims of the bombing of Flight 103 has been donated to the people of the United States by the people of Scotland;

Whereas a small, vacant plot of land, unsuitable for gravesites, has been located in Arlington National Cemetery, Arlington, Virginia; and

Whereas Arlington National Cemetery, Arlington, Virginia, is a fitting and appropriate place for a memorial in honor of those who perished in the Flight 103 bombing: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to place in Arlington National Cemetery, Arlington, Virginia, a memorial cairn, donated by the people of Scotland, honoring the 270 victims of the terrorist bombing of Pan Am Flight 103 who died on December 21, 1988, over Lockerbie, Scotland.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 days in which to revise and extend their remarks on Senate Joint Resolution 129, which was just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REPEALING REQUIREMENT THAT UNDER SECRETARY FOR HEALTH IN DEPARTMENT OF VETERANS AFFAIRS BE A DOCTOR OF MEDICINE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the Committee on Veterans' Affairs be discharged from further consideration of the Senate bill (S. 1534) to amend title 38, United States Code, to repeal a requirement that the Under Secretary for Health in the Department of Veterans Affairs be a doctor of medicine, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. STUMP. Mr. Speaker, reserving the right to object, I yield to the gentleman from Mississippi for the purpose of explaining this legislation.

Mr. MONTGOMERY. I thank the gentleman for yielding to me.

Mr. Speaker, the Senate bill would lift the requirement in current law that the VA Under Secretary for Health be a physician.

The committee concurs in principle with the apparent aim of that proposal, to provide the latitude for appointment of the most qualified person available to the important position of VA Under Secretary for Health. But the committee believes that that latitude must be balanced against the need to ensure that the highest levels of VHA management retain physician leadership.

The Senate bill was apparently based on a legislative proposal advanced by the Department of Veterans Affairs on September 16, 1993. The Department submitted that proposal to the House and Senate after a reportedly unsuccessful search of many months' duration for a new Under Secretary, and requested the introduction and enactment of legislation to lift the physician requirement for that position. The Department framed this request in terms of a quest for greater latitude to find the most qualified person for this important position.

VA has been well served by physicians occupying the most senior positions in the Veterans Health Administration and the Department of Medicine and Surgery. This committee does not lightly turn away from the vital and unique contributions physician-leaders can and do provide the Veterans Health Administration. Whether in the role of advising a Secretary of Veterans Affairs on the Department's Research Budget, negotiating with physician peers in other Federal departments or appearing before committees of the Congress, a physician brings a unique expertise, insight, and stature.

Yet there is force to the view that VHA needs the most able leadership. Dramatic changes are underway within the national health care system which, even without enactment of a national health care reform bill, will require reforming the VA health care system. The inevitability of such change, and the prospect that that change may be sweeping and complex, underscores the importance of assuring the most able VHA leadership. While physicians have long provided that leadership, it could conceivably also come from another clinical perspective or another sector.

With respect to the Under Secretary post, the Department's request that Congress lift the physician requirement, however, raised questions. Its request provided no insight into the kind of analysis that led the Department to the specific legislative solution it proposed. Moreover, the request provided no insight into the nature of the proc-

ess by which the search itself had been conducted, or the basis on which a search committee would proceed under the proposed legislation. The Department offered no hint, for example, as to how it envisioned the search committee would weigh physicians against non-physicians in identifying the most qualified candidate.

It became clear to the committee that the Department's administration of the search process was flawed. The Committee on Veterans' Affairs would have anticipated that that process would be thorough, methodical, and constituted so as to avoid any reasonable criticism. The evidence suggested otherwise. The committee found particularly disturbing, for example, the Department's failure to furnish the members of the search commission any criteria by which to evaluate candidates other than the requirements of the law itself. The significance of that failure was all the more striking in light of the committee's understanding that of some 54 candidates judged to be qualified only 8 were interviewed.

The composition of the search commission is set by law, and includes substantial representation from activities affected by the Veterans Health Administration. VA gains immeasurably from the experience and insight of eminent professionals who participate in such a process. But it is unreasonable for the Department to abdicate taking a role which extends much beyond establishing the search commission and hosting its meetings. In fairness to the commission members themselves, the Department owes them substantial guidance on the criteria they should employ in conducting their evaluations and their determinations on whom to interview. Absent specific, sound criteria, the process is open to the criticism that it is not free from the potential for arbitrary and capricious decisionmaking. Neither the Secretary nor the Commission members could tolerate a process open to such a perception.

In the belief that the Department would share that view, the Subcommittee on Hospitals and Health Care sought assurances from the Secretary that the Department would address these and related concerns regarding the search process. Regrettably, the Secretary has declined to do so or to provide assurances to that effect.

The above concerns led the committee on November 9, 1993, to address these issues legislatively in a committee amendment to H.R. 3400, the Government Reform and Savings Act of 1993, which it ordered reported as amended. In so acting, the committee sought, through amendments to title 38, to address its concerns regarding the conduct of the search process, while at the same time providing greater latitude in filing the position of Under Secretary for Health. My proposed amendment to S. 1534 would in-

corporate the pertinent provisions of the committee amendment to H.R. 3400. The amendment would provide in essence that, if at the time a search commission were established, the positions of Deputy and Associated Deputy Under Secretary were held by physicians, the Under Secretary could be a nonphysician. In either case, however, the amendment would require the Secretary to develop and furnish to the search commission specific criteria which the commission shall use in evaluating candidates. The amendment would further require that, in the case where the physician requirement was not applicable in filing the Under Secretary position, the commission shall accord a priority to the selection of a physician over a nonphysician.

This physician priority requirement does not mean that nonphysicians may only be considered if the commission cannot identify a physician who meets the specific criteria developed by the Secretary. It does contemplate, however, that the criteria reflect and give weight to clinical experience and particularly to that of a physician. The committee would expect that the criteria would also be weighed in a manner that would ensure that those individuals recommended for appointment would have a background which would provide a level of sensitivity to patients' needs comparable to that gained from clinical practice.

The physician priority should also be read in the context of the requirement in law that the commission recommend at least three individuals for appointment. It is inconceivable that a meaningful priority could have been afforded physicians if such a list of recommended candidates included only a single physician or failed to include any.

The committee does not presume to dictate to the Secretary the list of criteria that official should establish. Such criteria should, however, take account of VA's potential role as a competitor under health reform. They should also recognize VA's broad and relatively unique role as a provider of long-term care and psychiatric care, and should give additional weight to candidates with such experience.

As regards the two positions immediately subordinate to the Under Secretary, the measure would also amend section 7306 of title 38 to permit the appointment of a non-physician to either the Deputy or Associate Deputy Under Secretary positions when two of the top three positions in the Veterans Health Administration are held by physicians.

My proposed amendment to S. 1534 reflects discussions between the House and Senate, and I urge my colleagues to support the amendment.

Mr. STUMP. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the Senate bill as follows:

S. 1534

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

SECTION 1. REPEAL OF REQUIREMENT THAT UNDER SECRETARY OF VETERANS AFFAIRS FOR HEALTH BE A DOCTOR OF MEDICINE.

(a) REPEAL.—Subsection (a)(2) of section 305 of title 38, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by striking out “shall be a doctor of medicine and”; and

(2) in subparagraph (A)—

(A) by striking out “in the medical profession,”; and

(B) by striking out the comma after “policy formulation”.

(b) TECHNICAL CORRECTION.—Subsection (a)(1) of such section is amended by striking out “a Under Secretary” and inserting in lieu thereof “an Under Secretary”.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MONTGOMERY

Mr. MONTGOMERY. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. MONTGOMERY: Strike all after the enacting clause and insert the following:

SECTION 1. MODIFICATION TO PHYSICIAN REQUIREMENT FOR CERTAIN SENIOR VETERANS HEALTH ADMINISTRATION OFFICIALS.

(a) UNDER SECRETARY.—Section 305 of title 38, United States Code, is amended—

(1) in subsection (a)(2), by striking out “shall be a doctor of medicine and shall be” and inserting in lieu thereof “shall (except as provided in subsection (d)(1)) be a doctor of medicine. The Under Secretary shall be”;

(2) in subsection (d)—

(A) by adding at the end of paragraph (1) the following: “If at the time such a commission is established both the position of Deputy Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed by the President as Under Secretary for Health may be someone who is not a doctor of medicine. In any case, the Secretary shall develop, and shall furnish to the commission, specific criteria which the commission shall use in evaluating individuals for recommendations under paragraph (3).”;

(B) by redesignating paragraph (4) as paragraph (5);

(C) by inserting after the first sentence of paragraph (3) the following: “In a case in which, pursuant to paragraph (1), the individual to be appointed as Under Secretary does not have to be a doctor of medicine, the commission may make recommendations without regard to the requirement in subsection (a)(2)(A) that the Under Secretary be appointed on the basis of demonstrated ability in the medical profession, but in such a case the commission shall accord a priority to the selection of a doctor of medicine over an individual who is not a doctor of medicine.”; and

(D) by designating the sentence beginning “The commission shall submit” as paragraph (4).

(b) DEPUTY AND ASSOCIATE DEPUTY UNDER SECRETARY.—Section 7306 of such title is amended—

(1) in subsection (a), by inserting “(except as provided in subsection (c))” in paragraphs (1) and (2) after “and who shall”;

(2) in subsection (c)—

(A) by inserting “(1)” after “(c)”; and

(B) by adding at the end the following:

“(2) If at the time of the appointment of the Deputy Under Secretary for Health under subsection (a)(1), both the position of Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Deputy Under Secretary for Health may be someone who is not a doctor of medicine.

“(3) If at the time of the appointment of the Associate Deputy Under Secretary for Health under subsection (a)(2), both the position of Under Secretary for Health and the position of Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Associate Deputy Under Secretary for Health may be someone who is not a doctor of medicine.”.

Mr. MONTGOMERY (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Mississippi [Mr. MONTGOMERY].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: “An Act to amend title 38, United States Code, to allow one of the three senior officials in the Veterans Health Administration of the Department of Veterans Affairs to be an individual who is not a doctor of medicine.”

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote

is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken at the end of legislative business today.

VETERANS HEALTH IMPROVEMENTS ACT OF 1993

Mr. MONTGOMERY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3313) to amend title 38, United States Code, to improve health care services of the Department of Veterans Affairs relating to women veterans, to extend and expand authority for the Secretary of Veterans Affairs to provide priority health care to veterans who were exposed to ionizing radiation or to agent orange, to expand the scope of services that may be provided to veterans through vet centers, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3313

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Health Improvements Act of 1993”.

TITLE I—WOMEN VETERANS HEALTH IMPROVEMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the “Women Veterans Health Improvements Act of 1993”.

SEC. 102. HEALTH CARE SERVICES FOR WOMEN.

(a) ENSURED PROVISION OF SERVICES.—The Secretary of Veterans Affairs shall ensure that each health-care facility under the direct jurisdiction of the Secretary is able, through services made available either by individuals appointed to positions in the Veterans Health Administration or under contracts or other agreements made under section 7409, 8111, or 8153 of title 38, United States Code, or title II of Public Law 102-585, to provide in a timely and appropriate manner women's health services (as defined in section 1701(10) of title 38, United States Code (as added by section 3)) to any veteran described in section 1710(a)(1) of title 38, United States Code, who is eligible for such services.

(b) ROUTINE HEALTH CARE SERVICES.—The Secretary shall ensure that each health-care facility under the direct jurisdiction of the Secretary that serves a catchment area in which the number of women veterans described in section 1710(a)(1) of title 38, United States Code, makes it cost effective to do so shall provide routine women's health services directly (rather than by contract or other agreement). The Secretary shall ensure that each such facility is provided appropriate equipment, facilities, and staff to carry out the preceding sentence and to ensure that the quality of care provided under the preceding sentence is in accordance with professional standards.

(c) CONFORMING REPEAL.—Section 302 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 1004; 38 U.S.C. 1701 note) is repealed.

SEC. 103. WOMEN'S HEALTH SERVICES.

(a) WOMEN'S HEALTH SERVICES.—Section 1701 of title 38, United States Code, is amended—

(1) in paragraph (6)(A)(i), by inserting “women's health services,” after “preventive health services,”; and

(2) by adding at the end the following:
 "(10) The term 'women's health services' means the following health care services provided to women:

"(A) Papanicolaou tests (pap smear).
 "(B) Breast examinations and mammography.

"(C) General reproductive health care (including the management of menopause), but not including infertility services (other than infertility counseling), abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.

"(D) The management and prevention of sexually-transmitted diseases.

"(E) The management and treatment of osteoporosis.

"(F) Counseling and treatment for physical or psychological conditions arising out of acts of sexual violence.

"(G) Early detection, management, and treatment for cardiac disease, in the case of women who are determined to be at risk of cardiac disease."

(b) **REPEAL OF SUPERSEDED AUTHORITY.**—Section 106 of the Veterans Health Care Act of 1992 (Public Law 102-585; 38 U.S.C. 1710 note) is amended—

(1) by striking out subsection (a); and
 (2) by striking out "(b) RESPONSIBILITIES OF DIRECTORS OF FACILITIES.—" before "The Secretary".

(c) **EXTENSION OF ANNUAL REPORT REQUIREMENT.**—Section 107(a) of such Act is amended by striking out "Not later than January 1, 1993, January 1, 1994, and January 1, 1995" and inserting in lieu thereof "Not later than January 1 of 1993 and each year thereafter through 1998".

(d) **REPORT ON HEALTH CARE AND RESEARCH.**—Section 107(b) of such Act is amended—

(1) in paragraph (1), by striking out "services described in section 106 of this Act" and inserting in lieu thereof "women's health services (as such term is defined in section 1701(10) of title 38, United States Code)";

(2) in paragraph (2)(A), by inserting "(including information on the number of inpatient stays and the number of outpatient visits through which such services were provided)" after "facility"; and

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

"(5) A description of the actions taken by the Secretary to foster and encourage the expansion of such research."

SEC. 104. MAMMOGRAPHY QUALITY STANDARDS.

(a) **IN GENERAL.**—(1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 7319. Mammography quality standards

"(a) A mammogram may not be performed at a Department facility unless that facility is accredited for that purpose by a private nonprofit organization designated by the Secretary. An organization designated by the Secretary under this subsection shall meet the standards for accrediting bodies established under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)).

"(b) The Secretary, in consultation with the Secretary of Health and Human Services, shall prescribe quality assurance and quality control standards relating to the performance and interpretation of mammograms and use of mammogram equipment and facilities of the Department of Veterans Affairs consistent with the requirements of section 354(f)(1) of the Public Health Service Act.

Such standards shall be no less stringent than the standards prescribed by the Secretary of Health and Human Services under section 354(f) of the Public Health Service Act and shall be prescribed during the 120-day period beginning on the date on which the Secretary of Health and Human Services prescribes quality standards under section 354(f) of the Public Health Service Act (42 U.S.C. 263b(f)).

"(c)(1) The Secretary, to ensure compliance with the standards prescribed under subsection (b), shall provide for an annual inspection of the equipment and facilities used by and in Department health care facilities for the performance of mammograms. Such inspections shall be carried out in a manner consistent with the inspection of certified facilities by the Secretary of Health and Human Services under section 354(g) of the Public Health Service Act.

"(2) The Secretary may not provide for an inspection under paragraph (1) to be performed by a State agency.

"(d) The Secretary shall ensure that mammograms performed for the Department under contract with any non-Department facility or provider conform to the quality standards prescribed by the Secretary of Health and Human Services under section 354 of the Public Health Service Act.

"(e) For the purposes of this section, the term 'mammogram' has the meaning given such term in section 354(a)(5) of the Public Health Service Act (42 U.S.C. 263b(a))."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7318 the following new item:

"7319. Mammography quality standards."

(b) **TRANSITION.**—(1) Subsection (a) of section 7319 of title 38, United States Code, as added by subsection (a), shall take effect on the date on which standards are prescribed by the Secretary of Veterans Affairs under subsection (b) of such section.

(2) During the transition period, the Secretary may waive the requirement of subsection (a) of section 7319 of title 38, United States Code, as added by subsection (a), to any facility of the Department. The Secretary may provide such a waiver in the case of any facility only if the Secretary determines, based upon the recommendation of the Under Secretary for Health, that during the period such a waiver is in effect for such facility (including any extension of the waiver under paragraph (3)) the facility will be operated in accordance with standards prescribed by the Secretary under subsection (b) of such section to assure the safety and accuracy of mammography services provided.

(3) The transition period for purposes of this section is the six-month period beginning on the date specified in paragraph (1). The Secretary may extend such period for a period not to exceed 90 days in the case of any Department facility. Any such extension may be made only if the Under Secretary for Health determines that—

(A) without the extension access of veterans to mammography services in the geographic area served by the facility would be significantly reduced; and

(B) appropriate steps will be taken before the end of the transition period (as extended) to obtain accreditation of the facility as required by subsection (a) of section 7319 of title 38, United States Code, as added by subsection (a).

(c) **IMPLEMENTATION REPORT.**—The Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a re-

port on the Secretary's implementation of section 7319 of title 38, United States Code, as added by subsection (a). The report shall be submitted not later than 120 days after the date on which the Secretary prescribes the quality standards required under subsection (b) of that section.

SEC. 105. RESEARCH RELATING TO WOMEN VETERANS.

(a) **INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS.**—(1) In conducting or supporting clinical research, the Secretary of Veterans Affairs shall ensure that, whenever possible and appropriate—

(A) women who are veterans are included as subjects in each project of such research; and

(B) members of minority groups who are veterans are included as subjects of such research.

(2) In the case of a project of clinical research in which women or members of minority groups will under paragraph (1) be included as subjects of the research, the Secretary of Veterans Affairs shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.

(b) **POPULATION STUDY.**—Section 110(a) of the Veterans Health Care Act of 1992 (Public Law 102-585; 106 Stat. 4948) is amended by adding at the end of paragraph (3) the following: "If it is feasible to do so within the amounts available for the conduct of the study, the Secretary shall ensure that the sample referred to in subsection (a) constitutes a representative sampling (as determined by the Secretary) of the ages, the ethnic, social and economic backgrounds, the enlisted and officer grades, and the branches of service of all veterans who are women."

SEC. 106. SEXUAL TRAUMA COUNSELING.

(a) **EXTENSION OF PERIOD OF AUTHORITY TO PROVIDE SEXUAL TRAUMA COUNSELING.**—Subsection (a) of section 1720D of title 38, United States Code, is amended—

(1) by striking out "December 31, 1995," in paragraph (1) and inserting in lieu thereof "December 31, 1998,"; and

(2) by striking out "December 31, 1994," in paragraph (3) and inserting in lieu thereof "December 31, 1998,".

(b) **PERIOD OF ELIGIBILITY TO SEEK COUNSELING.**—(1) Such subsection is further amended—

(A) by striking out paragraph (2); and
 (B) by redesignating paragraph (3) (as amended by subsection (a)(2)) as paragraph (2).

(2) Section 102(b) of the Veterans Health Care Act of 1992 (Public Law 102-585; 106 Stat. 4946; 38 U.S.C. 1720D note) is repealed.

(c) **REPEAL OF LIMITATION ON PERIOD OF RECEIPT OF COUNSELING.**—Section 1720D of title 38, United States Code, is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(d) **INCREASED PRIORITY OF CARE.**—Section 1712(i) of title 38, United States Code, is amended—

(1) in paragraph (1)—
 (A) by inserting "(A)" after "To a veteran"; and

(B) by inserting ", or (B) who is eligible for counseling under section 1720D of this title, for the purposes of such counseling" before the period at the end; and

(2) in paragraph (2)—
 (A) by striking out ", (B)" and inserting in lieu thereof "(B)"; and

(B) by striking out “, or (C)” and all that follows through “such counseling”.

(e) PROGRAM REVISION.—(1) Section 1720D of title 38, United States Code, is further amended—

(A) by striking out “woman” in subsection (a)(1);

(B) by striking out “women” in subsection (b)(2)(C) and in the first sentence of subsection (c), as redesignated by subsection (c); and

(C) by striking out “women” in subsection (c)(2), as so redesignated, and inserting in lieu thereof “individuals”.

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

“§ 1720D. Counseling for sexual trauma.”

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

“1720D. Counseling for sexual trauma.”.

(f) INFORMATION BY TELEPHONE.—(1) Paragraph (1) of section 1720D(c) of title 38, United States Code, as redesignated by subsection (c) of this section, is amended to read as follows:

“(1) shall include availability of a toll-free telephone number (commonly referred to as an 800 number), and”.

(2) In providing information on counseling available to veterans as required under section 1720D(c)(1) of title 38, United States Code (as amended by this section), the Secretary of Veterans Affairs shall ensure that the Department of Veterans Affairs personnel who provide assistance under such section are trained in the provision to persons who have experienced sexual trauma of information about the care and services relating to sexual trauma that are available to veterans in the communities in which such veterans reside, including care and services available under programs of the Department (including the care and services available under section 1720D of such title) and from non-Department agencies or organizations.

(3) Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the operation of the telephone assistance service required under section 1720D(c)(1) of title 38, United States Code (as so amended). The report shall set forth the following:

(A) The number of persons who sought information during the period covered by the report through a toll free telephone number regarding services available to veterans relating to sexual trauma, with a separate display of the number of such persons arrayed by State (as such term is defined in section 101(20) of title 38, United States Code).

(B) A description of the training provided to the personnel who provide such assistance.

(C) The recommendations and plans of the Secretary for the improvement of the service.

SEC. 107. COORDINATORS OF WOMEN'S SERVICES.

(a) FULL-TIME STATUS.—Section 108 of the Veterans Health Care Act of 1992 (Public Law 102-585; 106 Stat. 4948; 38 U.S.C. 1710 note) is amended—

(1) by inserting “(a)” before “The Secretary”; and

(2) by adding at the end the following:

“(b) Each official who serves in the position of coordinator of women's services under subsection (a) shall serve in such position on a full-time basis.”.

(b) EMPOWERMENT.—The Secretary of Veterans Affairs shall take appropriate actions

to ensure that the coordinator of women's services at each facility of the Veterans Health Administration—

(1) is able to carry out the responsibilities of a coordinator in ensuring that women veterans receive quality medical care and, to the extent practicable, have equal access to Veterans Administration facilities; and

(2) has direct access to the Director or Chief of Staff of the facility to which the coordinator is assigned.

SEC. 108. PATIENT PRIVACY.

(a) IDENTIFICATION OF DEFICIENCIES.—The Secretary of Veterans Affairs shall conduct a survey of each medical center under the jurisdiction of the Secretary to identify deficiencies relating to patient privacy afforded to women patients in the clinical areas at each such center which may interfere with appropriate treatment of such patients.

(b) CORRECTION OF DEFICIENCIES.—The Secretary shall ensure that plans and, where appropriate, interim steps, to correct the deficiencies identified in the survey conducted under subsection (a) are developed and are incorporated into the Department's construction planning processes and given a high priority.

(c) REPORTS TO CONGRESS.—The Secretary shall compile an annual inventory, by medical center, of deficiencies identified under subsection (a) and of plans and, where appropriate, interim steps, to correct such deficiencies. The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than October 1, 1994, and not later than October 1 each year thereafter through 1996 a report on such deficiencies. The Secretary shall include in such report the inventory compiled by the Secretary, the proposed corrective plans, and the status of such plans.

TITLE II—CARE FOR VETERANS EXPOSED TO TOXIC SUBSTANCES

SEC. 201. AUTHORITY TO PROVIDE HEALTH CARE.

(a) AUTHORIZED INPATIENT CARE.—Section 1710(e) of title 38, United States Code, is amended to read as follows:

“(e)(1)(A) Subject to paragraph (2), a herbicide-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for any disease specified in subparagraph (B).

“(B) The diseases referred to in subparagraph (A) are those for which the National Academy of Sciences, in a report issued in accordance with section 2 of the Agent Orange Act of 1991, has determined—

“(i) that there is sufficient evidence to conclude that there is a positive association between occurrence of the disease in humans and exposure to a herbicide agent;

“(ii) that there is evidence which is suggestive of an association between occurrence of the disease in humans and exposure to a herbicide agent, but such evidence is limited in nature; or

“(iii) that available studies are insufficient to permit a conclusion about the presence or absence of an association between occurrence of the disease in humans and exposure to a herbicide agent.

“(C) A radiation-exposed veteran is eligible for hospital care and nursing home care under subsection (a)(1)(G) for—

“(i) any disease listed in section 1112(c)(2) of this title; and

“(ii) any other disease for which the Secretary, based on the advice of the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between occurrence of the disease in humans and exposure to ionizing radiation.

“(2) Hospital and nursing home care may not be provided under or by virtue of paragraph (1)(A) after September 30, 1996.

“(3) For purposes of this subsection and section 1712 of this title—

“(A) the term ‘herbicide-exposed veteran’ means a veteran (i) who served on active duty in the Republic of Vietnam during the Vietnam era, and (ii) who the Secretary finds may have been exposed during such service to a herbicide agent;

“(B) the term ‘herbicide agent’ has the meaning given that term in section 1116(a)(4) of this title; and

“(C) the term ‘radiation-exposed veteran’ has the meaning given that term in section 1112(c)(4) of this title.”.

(b) AUTHORIZED OUTPATIENT CARE.—Section 1712 of such title is amended—

(1) in subsection (a)(1)—

(A) by striking out “and” at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

“(D) during the period before October 1, 1996, to any herbicide-exposed veteran for any disease listed in section 1710(e)(1)(B) of this title; and

“(E) to any radiation-exposed veteran for any disease covered under section 1710(e)(1)(C) of this title.”; and

(2) in subsection (i)(3)—

(A) by striking out “(A)”; and

(B) by striking out “, or (B)” and all that follows through “title”.

SEC. 202. SAVINGS PROVISION.

The provisions of sections 1710(e) and 1712(a) of title 38, United States Code, as in effect on the day before the date of the enactment of this Act, shall apply with respect to hospital care, nursing home care, and medical services in the case of any veteran furnished care or services before such date of enactment on the basis of presumed exposure to a substance or radiation under the authority of those provisions.

TITLE III—READJUSTMENT SERVICES

SEC. 301. SCOPE OF SERVICES PROVIDED IN VET CENTERS.

(a) EXPANSION OF SERVICES.—Section 1712A of title 38, United States Code, is amended—

(1) in subsection (a)(1) by inserting “and, to the extent otherwise authorized by law, may furnish such additional needed services as described in subsection (i)” in the first sentence after “life”;

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

(3) by inserting after subsection (g) the following new subsections:

“(h) The Secretary may, to the extent resources and facilities are available, furnish to any veteran who served in combat during World War II or the Korean conflict counseling in a center to assist such veteran in overcoming the effects of the veteran's combat experience.

“(i) In operating centers under this section, the Secretary may provide (1) preventive health care services, (2) medical services reasonably necessary in preparation for hospital admission, and (3) referral services to assist in obtaining specialized care. The Secretary shall provide such services through such health care personnel as the Secretary determines appropriate.”.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report relating to the implementation of the amendments made by

subsection (a). The report shall include the following:

(1) The number of veterans provided services described in section 1712A(i) of title 38, United States Code, as added by subsection (a).

(2) The number of centers which provided services described in that section.

(3) An assessment of the effect providing such services has had on access to and timeliness of service delivery.

SEC. 302. ADVISORY COMMITTEE ON THE READJUSTMENT OF VETERANS.

(a) IN GENERAL.—(1) Subchapter II of chapter 17 of title 38, United States Code, is amended by inserting after section 1712B the following new section:

“§ 1712C. Advisory Committee on Veterans Readjustment Counseling

“(a)(1) There is in the Department the Advisory Committee on Veterans Readjustment Counseling (hereinafter in this section referred to as the ‘Committee’).

“(2) The Committee shall consist of 18 members. The members of the Committee shall be appointed by the Secretary and shall include individuals who are recognized authorities in fields pertinent to the social, psychological, economic, or educational readjustment of veterans. An officer or employee of the United States may not be appointed as a member of the Committee. At least 12 of the Committee shall be veterans of the Vietnam era or other period of war. Appointments of members of the Committee shall be made from among individuals who have experience with the provision of veterans benefits and services by the Department or who are otherwise familiar with programs of the Department.

“(3) The Secretary shall seek to ensure that members appointed to the Committee include persons from a wide variety of geographic areas and ethnic backgrounds, persons from veterans service organizations, minorities, and women.

“(4) The Secretary shall determine the terms of service and pay and allowances of the members of the Committee, except that a term of service may not exceed two years. The Secretary may reappoint any member for additional terms of service.

“(b)(1) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the provision by the Department of benefits and services to veterans in order to assist veterans in the readjustment to civilian life.

“(2) In providing advice to the Secretary under this subsection, the Committee shall—

“(A) assemble and review information relating to the needs of veterans in readjusting to civilian life;

“(B) provide information relating to the nature and character of psychological problems arising from military service;

“(C) provide an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting veterans in readjusting to civilian life; and

“(D) provide on-going advice on the most appropriate means of responding to the readjustment needs of future veterans.

“(3) In carrying out its duties under paragraph (2), the Committee shall take into special account veterans of the Vietnam era and the readjustment needs of those veterans.

“(c)(1) Not later than March 31 of each year, the Committee shall submit to the Secretary a report on the programs and activities of the Department that relate to the readjustment of veterans to civilian life. Each such report shall include—

“(A) an assessment of the needs of veterans with respect to readjustment to civilian life;

“(B) a review of the programs and activities of the Department designed to meet such needs; and

“(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

“(2) Not later than 90 days after the receipt of each report under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

“(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

“(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to that section.”

(2) The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1712B the following:

“1712C. Advisory Committee on Veterans Readjustment Counseling.”

(b) ORIGINAL MEMBERS.—(1) Notwithstanding subsection (a)(2) of section 1712C of title 38, United States Code (as added by subsection (a)), the members of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans on the date of the enactment of this Act shall be the original members of the advisory committee established under that section.

(2) The original members shall so serve until the Secretary of Veterans Affairs carries out appointments under such subsection (a)(2). The Secretary shall carry out such appointments as soon as is practicable. The Secretary may make such appointments from among such original members.

SEC. 303. PLAN FOR EXPANSION OF VIETNAM VETERAN RESOURCE CENTERS PILOT PROGRAM.

(a) PLAN.—The Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a plan for expansion of the Vietnam Veteran Resource Centers program established by section 1712A(h) of title 38, United States Code. The plan submitted shall be a plan which the Secretary would implement if resources for such implementation were available.

(b) SUBMISSION OF PLAN.—The plan, together with an analysis setting forth in detail the resources required for the implementation of the plan, shall be submitted under subsection (a) not later than four months after the date of the enactment of this Act.

TITLE IV—SERVICES FOR MENTALLY ILL VETERANS

SEC. 401. AUTHORITY TO ESTABLISH NONPROFIT CORPORATIONS.

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1718 the following new section:

“§ 1718A. Nonprofit corporations

“(a) The Secretary may authorize the establishment at any Veterans Health Administration facility of a nonprofit corporation (1) to arrange for therapeutic work for patients of such facility or patients of other such Department facilities pursuant to sec-

tion 1718(b) of this title, and (2) to provide a flexible funding mechanism to achieve the purposes of section 1718 of this title.

“(b) The Secretary shall provide for the appointment of a board of directors for any corporation established under this section and shall determine the number of directors and the composition of the board of directors. The board of directors shall include—

“(1) the director of the facility and other officials or employees of the facility; and

“(2) members appointed from among individuals who are not officers or employees of the Department of Veterans Affairs.

“(c) Each such corporation shall have an executive director who shall be appointed by the board of directors with concurrence of the Under Secretary for Health of the Department. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

“(d) A corporation established under this section may—

“(1) arrange with the Department of Veterans Affairs under section 1718(b)(2) of this title to provide for therapeutic work for patients;

“(2) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purposes of this section; and

“(3) employ such employees as it considers necessary for such purposes and fix the compensation of such employees.

“(e)(1) Except as provided in paragraph (2), any funds received by a corporation established under this section through arrangements authorized under subsection (d)(1) in excess of amounts reasonably required to carry out obligations of the corporation authorized under subsection (d)(3) shall be deposited in or credited to the Special Therapeutic and Rehabilitation Activities Fund established under section 1718(c) of this title.

“(2) The Secretary, in accordance with guidelines which the Secretary shall prescribe, may authorize a corporation established under this section to retain funds derived from arrangements authorized under subsection (d)(1).

“(3) Any funds received by a corporation established under this section through arrangements authorized under subsection (d)(2) may be transferred to the Special Therapeutics and Rehabilitation Activities Fund.

“(f) A corporation established under this section shall be established in accordance with the nonprofit corporation laws of the State in which the applicable medical facility is located and shall, to the extent not inconsistent with Federal law, be subject to the laws of such State.

“(g)(1)(A) The records of a corporation established under this section shall be available to the Secretary.

“(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

“(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

“(3) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year.

The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

"(4) Each member of the board of directors of a corporation established under this section, each employee of such corporation, and each employee of the Department who is involved in the functions of the corporation during any year shall—

"(A) be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

"(B) submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as Federal employees are required to.

"(h) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.

"(i) No corporation may be established under this section after September 30, 1999.

"(j) If by the end of the four-year period beginning on the date of the establishment of a corporation under this section the corporation is not recognized as an entity the income of which is exempt from taxation under the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1718 the following new item:

"1718A. Nonprofit corporations."

SEC. 402. EXTENSION OF DEMONSTRATION PROGRAM.

Section 7 of Public Law 102-54 (105 Stat. 269; 38 U.S.C. 1718 note) is amended—

(1) in subsection (a), by striking out "1994" and inserting in lieu thereof "1998";

(2) in subsection (c)—

(A) by striking out "no more than 50"; and

(B) by striking out "under this subsection." and inserting in lieu thereof "under this subsection—

"(1) at no more than 58 sites during fiscal year 1994;

"(2) at no more than 70 sites during fiscal year 1995;

"(3) at no more than 82 sites during fiscal year 1996;

"(4) at no more than 94 sites during fiscal year 1997; and

"(5) at no more than 106 sites during fiscal year 1998."

SEC. 403. SPECIAL COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of Veterans Administration, acting through the Under Secretary for Health of the Department of Veterans Affairs, shall establish in the Veterans Health Administration a Special Committee on Care of Severely Chronically Mentally Ill Veterans (hereinafter in this section referred to as the "Special Committee"). The Under Secretary shall appoint employees of the Department with expertise in the care of the chronically mentally ill to serve on the Special Committee.

(b) FUNCTIONS.—The Special Committee may assess, and carry out a continuing assessment of, the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of severely, chronically mentally ill veterans. In carrying out that responsibility, the Special Committee shall—

(1) monitor the care provided to such veterans through the Veterans Health Administration;

(2) identify systemwide problems in caring for such veterans in facilities of the Veterans Health Administration;

(3) identify specific facilities within the Veterans Health Administration at which program support is needed to improve treatment and rehabilitation of such veterans; and

(4) identify model programs which have had demonstrated success in the treatment and rehabilitation of such veterans and which should be implemented more widely in or through facilities of the Veterans Health Administration.

(c) ADVICE AND RECOMMENDATIONS.—The Special Committee shall—

(1) advise the Under Secretary regarding the development of policies for the care and rehabilitation of the severely, chronically mentally ill; and

(2) make recommendations to the Under Secretary—

(A) for improving programs of care of such veterans at specific facilities and throughout the Veterans Health Administration;

(B) for establishing special programs of education and training relevant to the care of such veterans for employees of the Veterans Health Administration;

(C) regarding research needs and priorities relevant to the care of such veterans; and

(D) regarding the appropriate allocation of resources for all such activities.

(d) ANNUAL REPORTS.—(1) Not later than April 1, 1994, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this section. The report shall include the following:

(A) A list of the members of the Special Committee.

(B) The assessment of the Under Secretary for Health, after review of the findings of the Special Committee, regarding the capability of the Veterans Health Administration, on a systemwide and facility-by-facility basis, to meet effectively the treatment and rehabilitation needs of severely, chronically mentally ill veterans.

(C) The plans of the Special Committee for further assessments.

(D) The findings and recommendations made by the Special Committee to the Under Secretary for Health and the views of the Under Secretary on such findings and recommendations.

(E) A description of the steps taken, plans made (and a timetable for their execution), and resources to be applied toward improving the capability of the Veterans Health Administration to meet effectively the treatment and rehabilitation needs of severely, chronically mentally ill veterans.

(2) Not later than February 1, 1995, and February 1 of each of the three following years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing information updating the reports submitted under this subsection before the submission of such report.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Mississippi [Mr. MONTGOMERY] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. STUMP] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 3313, and also on the next bill, H.R. 3456.

The SPEAKER pro tempore. Is there objection to the requests of the gentleman from Mississippi?

There was no objection.

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3313, as amended, would provide improved health care services for women veterans, expand the authority of the Secretary of Veterans Affairs to provide priority health care to veterans who were exposed to radiation or agent orange, expand the scope of the services that may be provided to veterans through the vet centers, and improve services to veterans suffering from mental illnesses.

I want to thank our ranking minority member, my good friend, the gentleman from Arizona [Mr. STUMP], for his usual cooperation and support. I certainly want to thank the chairman of the subcommittee, the gentleman from Georgia [Mr. ROWLAND], chairman of the Subcommittee on Hospitals and Health Care, and also the ranking minority member, CHRIS SMITH, for their fine work on the bill.

Mr. Speaker, this is a very comprehensive bill, especially for women veterans, and I urge my colleagues to support the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. ROWLAND].

Mr. ROWLAND. I thank the chairman for yielding this time to me, and I want to express to him my very firm appreciation for all the work he has done on this legislation as well.

I want to also thank my good friend, the gentleman from Arizona [Mr. STUMP], the ranking minority member, and the ranking minority member on the subcommittee, the gentleman from New Jersey [Mr. SMITH], for the good work they did on this bill as well.

Mr. Speaker, H.R. 3313, as amended, is an omnibus health care bill which tackles a broad spectrum of issues affecting special veteran populations—women, veterans exposed to agent orange and radiation, veterans with war-related readjustment problems, and those suffering with chronic mental illness.

Title I of that bill will substantially improve the scope and quality of women's health care services in the VA. Among its provisions, title I would require that the Secretary ensure that each VA health care facility is able to provide women's health services—a term defined in the bill—to eligible

veterans in a timely and appropriate manner, either directly or through sharing arrangements. The bill includes an expansive definition of the term "women's health services," which identifies the services VA is to provide women veterans eligible for medical services under chapter 17 of title 38, United States Code. Consistent with a longstanding policy specifically articulated in Public Law 102-585, the bill explicitly identifies certain services which may not be provided. These are infertility services—other than infertility counseling—abortions, or pregnancy care, including prenatal and delivery care. Historically, the foundation of the VA health care system is its role of providing care and treatment for service-incurred disabilities. Central to that role, even as the scope of VA's mission has expanded to caring for those with limited financial means, has been an eligibility system based on caring for veterans' disabilities with priority to service-connected disabilities. With the most limited exceptions, VA has not had authority to provide comprehensive care for men or women, particularly not for outpatient care. For example, many veterans cannot now receive routine maintenance treatment for chronic conditions like diabetes and hypertension, because existing law limits VA intervention to care to obviate a need for hospitalization. Such limitations have long prompted calls for reforming the laws governing VA health care eligibility.

Routine pregnancy is not a disability. Thus, VA has not had authority to cover such care. VA similarly lacks authority to overcome a disability, such as through provision of services like in vitro fertilization. VA does treat disabilities, and thus may treat damaged fallopian tubes, for example, which cause infertility. In retaining longstanding limitations in law, the committee concurs with VA Secretary Jesse Brown that we should defer action on far-reaching changes in VA's health care mission such as provision of routine pregnancy care until we consider national health reform legislation.

While dedicated to expanding women veterans' access to VA care, the committee recognizes that it may not be cost effective for VA to provide routine women's health services directly at each of its health care facilities. H.R. 3313, as amended, does call for VA facilities to provide routine women's health services directly if the facility serves an area with a sufficient number of eligibles to make it cost effective to do so. In limiting that requirement to routine services, the committee recognizes that workload or other considerations may conceivably make it impractical for a VA facility with a women's clinic to have costly in-house mammography equipment, for example, and that it would be appropriate to

provide mammograms through an agreement with an affiliated institution or other sharing partner.

To help ensure that the goals of improved services for women veterans reflected in the bill are, in fact, realized, the bill calls on the Department to strengthen or empower its hospital-level coordinators of women's services to carry out their responsibilities. Such officials must, for example, have access to top management of the facility to be effective advocates.

Among its many important provisions, title I would also extend and strengthen the program of sexual trauma counseling authorized under Public Law 102-585. The bill would also attempt to ensure that women veterans who elect care through the VA receive safe, accurate mammograms. Those provisions would require that: First, VA establish quality assurance and quality control standards for performing and interpreting mammograms and for using mammography equipment in VA facilities; second, VA facilities be accredited in order to perform mammograms; third, VA facilities undergo annual inspections to ensure compliance with the quality standards; and, fourth, any entity providing mammograms to VA under contract meet the quality standards prescribed under the Mammography Quality Standards Act of 1992.

While availability, safety, and reliability of services are critical, the Department must also assign a priority to identifying and correcting deficiencies at its health care facilities which compromise women patients' reasonable expectations of privacy. Accordingly, the bill would require VA to employ a process under which it would survey its facilities to identify deficiencies relating to privacy of women patients, develop remedial plans which assign a high priority to such remedial efforts within the construction planning process, and report annually to Congress on its inventory and the status of its plans for corrective action.

Title II of the bill would establish special eligibility for veterans who may have been exposed to agent orange or radiation in service. Currently, there exists special authority in law applicable to veterans who may have been exposed in service to agent orange or to radiation. VA is authorized to provide such veterans hospital care and limited outpatient treatment for certain conditions, which are not attributable to a cause other than such exposure. That special authority, first established in 1981 when relatively little was known about the health effects of exposure to agent orange in particular, will expire at the end of the year. Much has been learned since 1981.

In that regard, Public Law 102-4 required VA to enter into an agreement with the National Academy of Sciences [NAS] to conduct a comprehensive re-

view and evaluation of the available scientific and medical literature regarding the health effects of exposure to herbicides. The NAS, through a 16-member committee with expertise in the areas of occupational and environmental medicine, toxicology, epidemiology, pathology, clinical oncology, psychology, neurology, and biostatistics, conducted an extensive review of the literature and produced a report which reviewed and summarized the strength of the scientific evidence concerning the association between herbicide exposure during Vietnam service and each condition suspected to be associated with that exposure. The NAS Committee found sufficient evidence to conclude that there is a statistical association between exposure to herbicides or dioxin and several health outcomes. The committee found evidence suggestive of an association between exposure and three types of cancer, but stated that this association may be limited because of chance, bias, or other factors. For many other diseases, the scientific data were not sufficient to determine whether an association exists. Finally, for a small group of cancers, the committee concluded that several adequate studies are mutually consistent in not showing a positive association between these cancers and either herbicide or dioxin exposure. The bill specifically applies the Academy's scientific findings to both radiation and agent orange exposure and would thereby identify certain specified diseases which would be considered service-incurred for treatment purposes. The bill gives veterans every benefit of the doubt, and would authorize VA treatment even for the many diseases where science provides insufficient evidence to determine whether there is any relationship between the diseases and exposure to herbicides. With regard to radiation-exposed veterans, the bill would authorize care and treatment to those with illnesses listed in section 1112(c)(2) of title 38 as well as illnesses which the Secretary, based on advice from the Advisory Committee on Environmental Hazards, determines that there is credible evidence of a positive association between exposure and manifestation of the disease. The bill also generously expands the scope of outpatient treatment for these veterans; covered conditions are effectively considered as though service-incurred for treatment purposes. In view of the considerable body of scientific literature and the work already undertaken by the National Academy, the bill imposes no sunset on the provisions applicable to radiation-exposed veterans. As regards the special eligibility provided herbicide-exposed veterans, the measure authorizes care and treatment through September 30, 1996, in light of the NAS' ongoing responsibilities under Public Law 102-4 to continue to review relevant scientific literature

and report to the Congress, with the next report due in or about July 1995. This sunset provision will enable the committee to reauthorize care based on the NAS' biennial analysis of the scientific evidence. Finally, even for diseases where science finds no link to exposure, title II of the bill assures that no veteran who has received VA care for such a condition under the expiring authority will be denied continued care.

Other titles of the bill would expand the scope of services that may be provided to veterans in vet centers and assist in the rehabilitation of the chronically mentally ill. For example, the bill would authorize VA to furnish counseling in vet centers, to the extent resources and facilities are available, to veterans of World War II or Korean conflict combat. Such counseling is authorized only to assist such veterans in overcoming the effects of the combat experience. The bill would also expand the scope of any vet center's operations to include furnishing its clients limited medical services to include preventive services and services to prepare for hospital admission.

Title IV of the bill would lay the foundation for expanding certain highly effective rehabilitation programs which have served chronically mentally ill veterans. It would authorize VA to establish nonprofit corporations at VA medical facilities for the purpose of arranging and administering therapeutic work for patients under compensated work therapy programs and as vehicles to seek and administer grants and gifts to foster patient rehabilitation programs. The bill would also extend and expand VA's therapeutic transitional residency program established under Public Law 102-54. Finally, it would require that VA establish a special committee composed of VA clinicians and other VA experts on the care of chronically mentally ill veterans.

Mr. Speaker, I urge Members to support H.R. 3313.

□ 1400

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3313, as amended, the Veterans Health Improvements Act of 1993. This legislation includes provisions which will go a long way toward addressing the concerns of women and other veterans.

I want to commend Chairman MONTGOMERY for his leadership and also Dr. ROWLAND and CHRIS SMITH for their leadership and expertise on these issues, as well.

I urge my colleagues to support H.R. 3313, as amended.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. SMITH], the ranking minority member on the Subcommit-

tee on Hospitals and Health Care for the Committee on Veterans' Affairs, for an explanation of the bill.

Mr. SMITH of New Jersey. Mr. Speaker, I thank my colleague for yielding this time to me.

Mr. Speaker, I am pleased to see the House take up consideration of H.R. 3313. I would like to thank our excellent chairman, the gentleman from Georgia [Mr. ROWLAND] for his leadership during the hearings and the markup of this legislation in the many meetings that we had in trying to work out differences. He has shown tremendous leadership, and I want to thank him for that. Also I want to thank the chairman of the Veterans' Affairs Committee, the gentleman from Mississippi [Mr. MONTGOMERY], and the gentleman from Arizona [Mr. STUMP]. As usual, they are operating on a bipartisan basis on behalf of our veterans, and that is as it ought to be.

Mr. Speaker, H.R. 3313 is an omnibus bill which includes several measures approved in the Hospitals and Health Care Subcommittee. I am proud to have written and sponsored the provisions on health care at vet centers and commend Chairman ROWLAND for his bipartisan cooperation in developing both title I, the women veterans health improvements, and title II section on the care of veterans exposed to toxic substances.

Mr. Speaker, the legislation before the House makes great strides in the provision of health care to women veterans. This measure contained in the bill, coupled with last year's effort, will help remedy several serious shortcomings in VA medical services as they relate to women veterans.

Under H.R. 3313, accreditation of mammograms is required for the VA. Furthermore, when appropriate, the VA shall include women and minorities as subjects in clinical research.

This bill also authorizes specific women's health services including: Pap smears, mammography, the management and treatment of sexually transmitted diseases and osteoporosis, and counseling and treatment for victims of sexual violence.

Mr. Speaker, H.R. 3313 incorporates the recommendations and the findings of the National Academy of Sciences [NAS] regarding the exposure of veterans to agent orange and other herbicides. The bill delineates eligibility for medical care and provides—for the first time—priority access to these veterans for outpatient care. I am pleased that the bill will properly grandfather any veterans who may currently be receiving medical care based upon agent orange exposure. This will ensure that we do not deny care for those presently under the care of VA physicians.

The vet center language in H.R. 3313 which I offered during markup would authorize the VA to provide preventive health care services, pre-admission

screening and referral services at vet centers for those veterans currently eligible for readjustment counseling. Under this bill, for the first time, the VA would have clear legal authority to place physicians, nurses or other health care providers in the vet centers. Veterans would be able to seek certain limited medical services at their local vet centers rather than being required to travel great distances to VA medical centers for routine services. The VA has enjoyed great success with its pilot program that placed health teams in vet centers on a part-time basis. In fact, a pilot program has operated at the Linwood, NJ, vet center for 7 years. It is now time to apply those lessons elsewhere in the VA. It has been tested and passed with flying colors and needs to be rolled out to every vet center.

The subcommittee approved an amendment I offered which will permit the VA to provide readjustment counseling services to World War II and Korean war veterans where resources are available. We know that post traumatic stress afflicts veterans of all wars, not just Vietnam veterans. My amendment would also authorize the VA's establishment of an Advisory Committee on Veteran Readjustment Counseling. Finally, the amendment requires the VA to submit a plan for expanding the Vietnam Veteran Resource program which provides assistance to veterans in claiming VA benefits. This language reflects a compromise on the readjustment counseling bill sponsored by Congressman LANE EVANS.

In conclusion, Mr. Speaker, I want to commend Congressman KREIDLER for his work in crafting the provisions on services to mentally ill veterans. The creation of nonprofit corporations to provide therapeutic work will go a long way toward helping these particularly needy veterans.

Mr. Speaker, during the Subcommittee on Hospitals and Health Care consideration of women veterans health care legislation, an amendment was debated which would have required the VA to perform abortions. The amendment was defeated.

Mr. Speaker, VA health care has always been—and should always be—all about healing, curing, nurturing, rehabilitating, in a word, affirming the basic dignity of human life.

I have served on the Hospitals and Health Care Subcommittee for 13 years and know that efforts to provide the very best health care for our veterans within the parameters imposed by budgeting has been the bipartisan goal of the subcommittee. Dr. ROWLAND continues that fine commitment. The abortion amendment addressed in the subcommittee, however, radically departs from that hallowed tradition by regarding unborn children not as patients, but as diseases or infections to be vanquished.

The harsh, undeniable consequence if the amendment becomes law is that more children will be put at risk of suffering violent deaths

from abortion. Sanitize it if you like, but abortion methods either rip the child apart with razor blade tipped hose connected to a suction device or destroy the infant with an injection of chemical poison.

Poison shots and child dismemberment don't strike me as nurturing life.

Mr. Speaker, let me just say to Members who may disagree with my pro-life position on abortion that they still might want to vote "no" on legislation providing abortions in the VA. I ask you to take into consideration the tens of millions of taxpayers who don't want to be forced to pay for abortion, or to facilitate it in any way.

Perhaps some of my colleagues will appreciate the view that no one should be compelled to provide the means and wherewithal by which a child's life is snuffed out. Don't make us a party to this grisly business.

I would remind members that virtually every public opinion poll clearly shows that most Americans simply do not want their tax dollars being used for abortion.

As just one example, I cite a New York Times/CBS News nationwide poll that found that 72 percent of Americans don't want abortion covered by the national health care plan. Only 23 percent want abortion covered.

Even White House pollster Stan Greenberg admits that most people "abhor the act and are opposed to using tax dollars for abortions."

Mr. Speaker, it seems to me that, turning the VA's 171 hospitals and 350 outpatient clinics into abortion mills has no popular support among Americans, it tangibly cheapens life and would result in many wanton child deaths.

Likewise, Mr. Speaker, I want my colleagues to know the details of a veiled attempt to impose in vitro fertilization on the VA.

Mr. Speaker, I strongly believe that serious moral, ethical and fiscal issues must be raised, debated and settled before this Congress authorizes taxpayer funds under the auspices of the VA for in vitro fertilization [IVF].

At the outset, my colleagues may find it of interest to know that the issue of test tube babies remains so explosive and fraught with so many ethical quandaries—and is so expensive—that Mr. Clinton's health care proposal specifically excludes IVF from the basic plan.

Experts in the field say the average cost of treatment is approximately \$8,000 per treatment cycle with absolutely no assurance of success. As a matter of fact, failure rates for a treatment cycle are as high as 80–90 percent.

According to Dr. Mishell, professor and chairman of the department of obstetrics and gynecology at the University of Southern California, "the woman must be prepared to undergo at least six treatment cycles to improve chances of success."

At a time when this Congress is struggling to find every available penny for VA health care, I seriously question the wisdom of subsidizing a procedure with such a cost and an extremely poor efficacy rate. Would a veteran be entitled to as many of these costly IVF treatments as wished? Regardless of ethical and cost issues?

Then there is the ethical issue of destroying test tube babies or embryos that don't fit into the game plan.

In a Washington Post article a few years ago, Dr. Robert Stillman, director of the IVF program at George Washington University, and a strong proponent of test tube babies, said:

We just continue to let it grow until it becomes nonviable * * * we are stepping out of the active role of destroying it. It just stops growing. It does that on its own. It is its own fault. But even with these measures, discarding a pre-embryo, is a shameful and wasteful act. It gives us pause.

The doctor doesn't explain, of course, how a newly created human being can be faulted for not being provided the environment necessary to continue living.

Surely no one has ever asked to be conceived, but the presumption must be in favor of nurturing life. Arbitrarily destroying thousands of embryos by dumping them in the garbage or failing to provide a suitable environment simply cannot be condoned.

Moreover, we should not be surprised where IVF may take us in the future.

Recently, according to the Washington Times, Dr. Stillman, head of IVF at GW, as crowing about the successful cloning of human embryos at GW hospital. "If a woman has only a single egg to be fertilized, the chances of a successful pregnancy are only about 10 percent," said Dr. Stillman. "But if doctors could clone that embryo into quintuplets, the likelihood of the women successfully giving birth would rise dramatically."

Arthur Caplan, director of the Center for Biomedical Ethics at the University of Minnesota said, "you can get the child of your choice. If you like the way a particular child turns out, they could tell you that they've got 10, 11, or 12 more just like it frozen in liquid nitrogen somewhere."

I would remind Members that freezing embryos isn't futuristic, but a present day reality at many IVF clinics.

According to a Congressional Office of Technology Assessment report, "Infertility, Medical and Social Choice," two dozen or more IVF programs in the United States have stored frozen embryos.

Again, even proponents appear to have some reservations about this dehumanizing process. The OTA report notes that the American Fertility Society deems the transfer of embryos from one generation to another "unacceptable."

While the ethical premise for this view isn't explained, the society raises a pertinent question concerning how long it would countenance freezing human life. If it's OK to freeze beings for a year or 10 years—why not 50 or 100 years?

And then there is the high mortality rate associated with freezing. Most embryos die during the thawing process or soon thereafter. Also, no one really knows whether the freezing process causes retardation or other anomalies in a child.

In 1988, Dr. John Gronvall, Chief Medical Director of the Veterans Administration asked a number of pertinent questions. He testified:

No other federal program provides benefits of this type and the limits of such a program would be difficult to set. How many unsuccessful attempts to achieve pregnancy would be authorized. (It is estimated that seven attempts at in vitro fertilization provide a 50%

chance of live birth.) If a couple is successful in having a child through a government sponsored program, are they entitled to other attempts to have a second child? Would the VA set limits on family size or be able or required to consider age or health status in eligibility for continuing benefits? Would so called "experimental" procedures be authorized if that was the only hope for a specific couple? * * * Would ever more aggressive or controversial technology come to be considered routine and therefore available to veterans eligible for this benefit? What would the VA's liability be in the case where the infertility was successfully treated and an offspring was born with major birth defects requiring a lifetime of expensive medical and custodial care?

The bottom line, Mr. Speaker, is that the multitude of unanswered questions regarding IVF and attendant technologies demand comprehensive and frank answers before this questionable technology is sanctioned or funded.

I am very pleased that both abortion and in vitro fertilization was excluded from H.R. 3313. However, I want my colleagues to fully understand the issue involved in these two matters for we may again debate these questions in the future.

Mr. STUMP. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I am pleased to rise in support of H.R. 3313, legislation that will expand and improve the medical care that our Nation's servicemen and women receive. I commend the gentleman from Georgia [Mr. ROWLAND] and the subcommittee's ranking member, the gentleman from New Jersey [Mr. SMITH], for introducing this worthwhile legislation, and I praise the commitment that House Committee on Veterans' Affairs has shown to the issues that affect our Nation's veterans. Under the leadership of its distinguished chairman, the gentleman from Mississippi [Mr. MONTGOMERY], and the distinguished ranking minority member, the gentleman from Arizona [Mr. STUMP], the 103d Congress has approved a number of significant legislative initiatives that will significantly benefit our Nation's veterans.

It is most appropriate that today, as we return from the Veterans Day holiday this past weekend, that the House is discussing H.R. 3313, worthy legislation that expands veterans health care by addressing female veterans' health concerns and by extending health care to veterans who have been exposed to agent orange. In a continuing effort to improve the services that our Nation's veterans receive, H.R. 3313 will establish advisory committees to study the issues that affect our Nation's veterans, including the ability of combat veterans to readjust to civilian life and the needs of chronically ill veterans.

To address the health concerns of our servicewomen, H.R. 3313 will require all VA health care facilities to provide women's veterans health services, such as routine Pap smears and mammograms. H.R. 3313 will also provide for the counseling and treatment of physical or psychological conditions that arise out of acts of sexual violence. This measure is long overdue. Our Nation's VA health care facilities are dedicated to providing the highest quality health services. Through progressive legislative initiatives, such as H.R. 3313, we will ensure that all of our Nation's veterans—men and women—receive the medical care that they need.

It was gratifying to learn recently that the Secretary of Veterans Affairs announced that Vietnam veterans suffering from Hodgkins disease and porphyria cutanea tarda will be eligible for disability payments based upon their presumed exposure to agent orange. The Secretary's decision was based upon a recently released report issued by the National Academy of Sciences. In an effort to continue to serve our Vietnam veterans, H.R. 3313 authorizes treatment for Vietnam veterans with diseases that have been found to be caused by exposure to herbicides. H.R. 3313, by extending the requirement for mandatory hospital care from December 31, 1993, to September 30, 1996, sends an important message to our Nation's veterans, who have given so much to our Nation.

I encourage my colleagues to join in supporting H.R. 3313 and to make certain that we provide the finest of health care to all of our Nation's veterans.

Mr. MONTGOMERY. Mr. Speaker, I yield myself 1 minute.

I want to reiterate again what has been said by the gentleman from Georgia [Mr. ROWLAND], the gentleman from New Jersey [Mr. SMITH], the gentleman from Arizona [Mr. STUMP], and the gentleman from New York [Mr. GILMAN].

This bill is geared toward helping our female veterans in our medical care facilities and outpatient clinics, also our hospitals and nursing homes.

So Mr. Speaker, I would urge our colleagues to totally support this legislation.

Mr. Speaker, I yield 1 minute to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I rise to express my support for the bill.

Mr. MONTGOMERY. Mr. Speaker, I yield 1 minute to the gentlewoman from New York [Ms. SLAUGHTER], who has shown a great interest in this legislation.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in strong support of this bill.

I certainly want to recognize all the hard work that went into this bill and thank those who were involved.

Mr. Speaker, I rise today in support of H.R. 3313. This bill will make great strides toward improving the health services we offer to our country's women veterans, whose needs have historically been neglected. I would like to commend the gentleman from Mississippi, Chairman MONTGOMERY, and the gentleman from Georgia, Chairman ROWLAND, for their work on bringing this measure to the floor.

As important as this legislation is, I am disappointed that the committee stopped short of providing truly equal health services for women veterans. As Chair of the Women's Health Task Force of the Women's Caucus, I must point out that for women, obstetrics and gynecology are not luxuries—they are health necessities. Denying women the full range of treatment they need to stay healthy shows a lack of gratitude for the service and sacrifice they offered to our country when they were in uniform. Women deserve the same generous level of health benefits we offer to their male counterparts. They should not be told to settle for less.

In committee, an amendment was offered to add comprehensive obstetrics and gynecological care to H.R. 3313. Unfortunately, this proposal was turned down. I might note, however, that all three women on the committee voted in favor of the amendment. Twenty-one Congresswomen joined me in writing to the committee to urge that this issue be revisited in the near future.

And, so, Mr. Speaker, I rise in support of H.R. 3313, but it is qualified support. I wish we were discussing a bill this afternoon that would offer health benefits to women veterans which are comparable to those offered by private insurance policies.

Congress must quickly remedy this inequity. Meanwhile, I urge my colleagues to support H.R. 3313, a promising first step in that direction.

Mr. MONTGOMERY. Mr. Speaker, I would like to thank the gentlewoman for her interest, and the other Members in the House for their support.

Mr. STUMP. Mr. Speaker, I urge my colleagues to support H.R. 3313.

Ms. BROWN of Florida. Mr. Speaker, the good news is that H.R. 3313, the Veterans Health Improvements Act of 1993 ensures that veterans who were exposed to agent orange receive priority health care, and expands the services provided at vet centers, which are the first places our veterans go for help.

The bad news is that this bill continues to treat women veterans as second-class citizens. When women veterans go to the VA for non-service related care, they will be denied access to the comprehensive reproductive health care that they need and want. Service-connected and poor women will not be able to get gynecological services, contraceptive services, infertility services and pre-natal care.

On the other hand, male veterans are able to get medical implants and treatment for prostate problems.

It is clear that the health of our women veterans is not taken seriously at all. In fact, Congress was able to appropriate \$10 million dollars last year to establish smoking rooms in all 171 VA medical centers, but only \$7.5 million was allocated to women veterans' health.

When is this committee and this Congress going to get it? These women who have

fought for our country, cared for our men, and protected the home front must be treated as well as our male soldiers. This new member of the VA committee will continue to fight for them.

Mr. EVERETT. Mr. Speaker, I rise in support of an important measure before the House today—H.R. 3313, the Veterans' Health Improvements Act of 1993. As a member of the Veterans' Affairs Committee, I feel that we must enact this legislation which would provide much-needed care and benefits to our veterans.

Mr. Speaker, I know that many veterans feel that the Federal Government has been slow to move on recognizing agent orange veterans and I am pleased with the provision in H.R. 3313 that would expand the VA's authority to treat this class of veterans in accordance with the most recent findings of a study conducted by the National Academy of Sciences, [NAS]. This bill provides that agent orange veterans can retain their eligibility for continued treatment even if they have received care under the VA's expiring authority to treat radiation and herbicide exposure. H.R. 3313 gives these veterans a higher priority for care than exists in current law. I am also pleased that this bill provides critical services for our women veterans including mammograms, treatment for osteoporosis, and counseling for acts of sexual violence and requires that each VA health facility have a full-time women's health services coordinator.

H.R. 3313 also addresses the special needs of those in the veteran community suffering from mental illness by establishing non-profit corporations for the purpose of providing this care in the community. The VA is directed, under this proposal, to establish a special committee on care of the severely chronically mentally ill for the purpose of evaluating the current VA mental health care system. This special committee will report to Congress before April 1, 1994 with their recommendations for changes needed to improve the quality of services provided by the VA. I am pleased with the provisions in this bill that I have outlined, and I believe they are another step toward keeping our promise to our veterans to ensure they are provided with quality care.

Mr. Speaker, I would be remiss if I did not also express my gratitude for the hard work of the chairman of the full committee, Mr. MONTGOMERY, and the distinguished ranking minority member, Mr. STUMP, in bringing this proposal before the House. Mr. Speaker, I urge my colleagues to support this important piece of legislation to ensure that our veterans receive the care they deserve.

Mr. KREIDLER. Mr. Speaker, I would first like to express my appreciation to Mr. ROWLAND for his hard work on H.R. 3313. This bill contains a number of provisions that will provide better health care to our Nation's veterans, including new services for our women veterans. I hope that in the future the Veterans' Affairs Committee will be able to strengthen its commitment to medical care for women veterans.

I am particularly thankful to Mr. ROWLAND for including in H.R. 3313 language from a bill I had previously introduced to extend and expand the VA's compensated work therapy and

therapeutic residency programs and, in conjunction with them, create non-profit corporations.

I believe these programs provide VA medical centers important tools to help our veterans who are suffering from addictions and mental illnesses. These programs offer social, living, and working skills that enable veterans to re-enter society as productive and self-sufficient citizens.

In group and individual counseling settings, staff help recovering veterans work through self-defeating behaviors, learn or relearn social skills, and understand the medical and psychological implications of recovery. Successful program completion is measured by continued recovery and stable work experience leading to gainful private sector employment.

Important to the success of these programs is the ability to contract with non-federal entities for work opportunities. Currently, DVA is limited in its ability to contract with large private companies for work projects, and cannot compete for private sector grants. H.R. 3313 allows the Secretary to authorize the establishment, at any Veterans Health Administration facility, of a nonprofit corporation for the purposes of therapy.

Nonprofit corporation status will enhance the ability of compensated work therapy programs to bid for work and grants in the private sector. This ability allows for a greater diversity in the work patients can do, and introduces them into the private sector where they will work after completing the program. Meaningful and remunerative work is vital for the successful treatment of these veterans.

Mr. Speaker, I am proud to be a cosponsor of H.R. 3313 and I urge my colleagues to support it today.

Mr. KYL. Mr. Speaker, I rise today in support of H.R. 3313, the Veterans Health Improvements Act. Let me highlight some of the key provisions in the bill.

First, title I of the bill provides women veterans with comprehensive health services. It requires the VA to make women's veterans health services available either directly at VA facilities or by contracting with other health care providers or institutions. Specifically, it will ensure access to such critical services as pap smears, mammograms and breast exams, general reproductive care, STD prevention and management, treatment of osteoporosis, and sexual violence counseling and treatment.

H.R. 3313 includes many other important measures such as a toll free number for veterans seeking counseling and a provision that will ensure that women and minorities be included in appropriate research.

Title II of the bill incorporates the recommendations of the National Academy of Sciences regarding the exposure of veterans to agent orange and other herbicides and authorizes appropriate treatment and priority access to outpatient care. Title III of the bill allows vet centers to provide counseling to veterans who served in combat during World War II and the Korean conflict. The final title of the bill includes important provisions to expand services for mentally ill veterans.

Mr. Speaker, I am very pleased to support this bill which includes so many improvements of vital importance to our Nation's veterans, and of particular interest to me.

Mr. SLATTERY. Mr. Speaker, I rise in strong support of H.R. 3313, a comprehensive health care package that would improve the health care services provided for women veterans, expand current authority for the VA to provide priority health care for veterans who were exposed to radiation and herbicide agents, expand the scope of services offered by vet centers, and provide improved services to veterans with mental illnesses, including veterans of World War II and the Korean conflict.

I am particularly pleased that the bill authorizes specific health care services for female veterans, including Pap smears, management and treatment of sexually transmitted diseases and osteoporosis, mammography, and treatment and counseling for victims of sexual violence. These are the types of services that have been long overdue and I am very pleased to see us moving in the direction of providing a full spectrum of routine care for these veterans.

I am also pleased that the bill would provide for special health care eligibility for veterans who were exposed to radiation or agent orange while in the service. There already exists authority in law for the VA to treat these veterans on an inpatient basis. However, this bill expands the scope of outpatient services available to these veterans and authorizes care for disabilities consistent with findings and recommendations of the National Academy of Sciences on the health effects of exposure to herbicides. There may be many remaining questions regarding these effects, but this bill takes another step towards insuring that full authority is provided to meet the health care needs of such veterans.

I strongly support this measure and will work with my Chairman, SONNY MONTGOMERY, and our Hospitals and Health Care Subcommittee Chairman, ROY ROWLAND, to insure its swift passage in the other body.

Mr. STUMP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MONTGOMERY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. VOLKMER). The question is on the motion offered by the gentleman from Mississippi [Mr. MONTGOMERY] that the House suspend the rules and pass the bill, H.R. 3313, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SURVIVING SPOUSES' BENEFITS ACT OF 1993

Mr. MONTGOMERY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3456) to amend title 38, United States Code, to restore certain benefits eligibility to unremarried surviving spouses of veterans, as amended.

The Clerk read as follows:

H.R. 3456

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surviving Spouses' Benefits Act of 1993".

SEC. 2. SPECIAL DEATH GRATUITY FOR UNREMARIED SURVIVING SPOUSES.

(a) IN GENERAL.—Chapter 13 of title 38, United States Code, is amended by adding at the end of subchapter II the following new section:

"§ 1319. Special death gratuity

"In any case in which benefits under this chapter have been terminated or denied as the result of a marriage by a surviving spouse and in which such marriage has subsequently been terminated by a death or divorce, a special monthly death gratuity shall be payable to an unremarried surviving spouse in an amount equal to the amount payable under section 1311(a)(1) of this title, subject to a reduction of \$1 for each \$1 of income countable under section 1315(f)(1) of this title."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1318 the following new item:

"1319. Special death gratuity."

SEC. 3. RESTORATION OF PENSION ELIGIBILITY FOR UNREMARIED SPOUSES.

Section 1501 of title 38, United States Code, is amended by adding at the end the following new paragraph:

"(5) The term 'surviving spouse' includes the spouse of a deceased veteran whose eligibility for benefits under this chapter as a surviving spouse was terminated or denied by reason of a subsequent remarriage if such subsequent remarriage is terminated by death or divorce."

SEC. 4. RESTORATION OF BURIAL ELIGIBILITY FOR UNREMARIED SPOUSES.

Section 2402(5) of title 38, United States Code, is amended by inserting "(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)" after "surviving spouse".

SEC. 4.5. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by sections 2 and 3 shall take effect on December 1, 1994.

(b) CONTINGENCY.—The amendments made by sections 2 and 3 shall not take effect if there has not been enacted as of December 1, 1994, a law providing a cost-of-living adjustment in the rates of compensation payable under chapter 11 or dependency and indemnity compensation payable under chapter 13 of title 38, United States Code, for fiscal year 1995.

SEC. 5. 6. POLICY REGARDING COST-OF-LIVING ADJUSTMENT IN COMPENSATION RATES FOR FISCAL YEAR 1995.

(a) ROUNDING DOWN.—The fiscal year 1995 cost-of-living adjustments in the rates of and limitations for compensation payable under chapter 11 of title 38, United States Code, and of dependency and indemnity compensation payable under chapter 13 of such title will be no more than a percentage equal to the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1994, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)), with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower dollar.

(b) LIMITATION ON FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR CERTAIN DIC RECIPIENTS.—(1) During fiscal year 1995, the

amount of any increase in any of the rates of dependency and indemnity compensation in effect under section 1311(a)(3) of title 38, United States Code, will not exceed 50 percent of the new law increase, rounded down (if not an even dollar amount) to the next lower dollar.

(2) For purposes of paragraph (1), the new law increase is the amount by which the rate of dependency and indemnity compensation provided for recipients under section 1311(a)(1) of such title is increased for fiscal year 1995.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Mississippi [Mr. MONTGOMERY] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. STUMP] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi [Mr. MONTGOMERY].

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Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3456, as amended, would restore certain benefits to unremarried surviving spouses of veterans, and I want to thank the gentleman from Kansas [Mr. SLATTERY], chairman of this subcommittee, as well as the ranking minority member, the gentleman from Florida [Mr. BILIRAKIS], for their hard work on this legislation. I also want to thank the ranking minority member, the gentleman from Arizona [Mr. STUMP] and the chairman of the Subcommittee on Housing and Memorial Affairs, the gentleman from Illinois [Mr. SANGMEISTER] who offered a key amendment contained in the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Kansas [Mr. SLATTERY], the chairman of the Subcommittee on Compensation, Pension and Insurance.

Mr. SLATTERY. Mr. Speaker, I first would like to thank the gentleman from Mississippi [Mr. MONTGOMERY] and the gentleman from Arizona [Mr. STUMP], our ranking minority member, for bringing this bill to the floor on such a timely basis. I also want to thank the gentleman from Florida [Mr. BILIRAKIS], the ranking minority member of the subcommittee, for his cooperation and support of this measure. We have been working on this bill for some time now, and I am very pleased to have the opportunity to explain its provisions.

Mr. Speaker, H.R. 3456 proposes to provide or restore VA benefits eligibility to a group we refer to as unremarried surviving spouses. The intent of this legislation is to provide some measure of relief for those spouses whose disqualifying marriages have ended either by death or divorce, and particularly for those who may be in financial distress.

Under current law, a permanent bar to benefits reinstatement is raised if a surviving spouse should remarry. This bar was imposed by section 8003 of the

Omnibus Budget Reconciliation Act of 1990 [OBRA '90].

H.R. 3456 would do three things:

First, it would provide a special death benefit to an unremarried surviving spouse of a veteran whose death was service related. This would be paid at the same level as the base rate for dependency and indemnity compensation [DIC], currently \$750 per month, or \$9,000 per year, but would be subject to a dollar for dollar offset for each dollar of outside income received.

Second, the bill would restore eligibility for nonservice-connected death pension for this group who would otherwise be eligible for reinstatement were it not for the OBRA '90 bar. The maximum annual benefit now payable under the death pension program is \$5,108.

These two benefit provisions would be effective on December 1, 1994.

Finally, Mr. Speaker, the reported bill contains a provision that would correct an unintended effect of OBRA '90 to provide for the restoration of eligibility for burial in national cemeteries to these unremarried surviving spouses. This section would be effective on the date of enactment. This provision was added to the bill by the gentleman from Illinois, Mr. SANGMEISTER, and I thank him for his interest in this area.

In order to defray the cost of any of the benefit restorations, the bill contains two provisions that will fully offset the cost. It provides that new rates in compensation and DIC which may be enacted next year for fiscal year 1995 must be rounded down in the same manner as the fiscal year 1994 COLA. We were bound by the reconciliation act to round down the rates for this year's COLA and we did so in the bill we just sent down to the President.

The bill would also continue a policy also embodied in the reconciliation act and consistent with the COLA bill we just enacted. It would require that the fiscal year 1995 COLA for so-called grandfathered DIC recipients be limited to a flat rate equal to one-half of the COLA provided for the base rate of DIC.

This inclusion of these two limitations fully offsets the costs associated with enactment of this bill.

Mr. Speaker, I say to my colleagues this is a good bill and I urge each Member to support its passage.

Mr. MONTGOMERY. Mr. Speaker, I reserve the balance of my time.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3456, as amended, legislation to restore certain benefits eligibility to unremarried surviving spouses.

Mr. Speaker, I would like to commend JIM SLATTERY, chairman of the Subcommittee on Compensation, Pension and Insurance, and MIKE BILIRAKIS, the subcommittee's ranking

member, for their efforts in reaching a compromise for these deserving widows.

Special appreciation goes to my friend and colleague, Chairman SONNY MONTGOMERY, for his able leadership in bringing this measure to floor in such a timely manner.

This bill deserves the support of all of our Members, and I recommend its passage.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Speaker, I would also like to thank the gentleman from Mississippi [Mr. MONTGOMERY] and my soul mate, the gentleman from Arizona [Mr. STUMP], and there is no one that looks after military active duty, or reservists or spouses more than SONNY MONTGOMERY, and I support fully H.R. 3456, and those of us that have served in the military have seen time and time again this strength of family members that have been left behind. What less could we give than for those that have given the last full measure, have given a life for this country? They give more than just their life. They leave a family behind, and that family has to survive. This will help those individuals and families get through the tough times because a servicemember loses everything, the family loses everything, and they have given their lives for this country. It is the least we can do is to help that family member.

Mr. Speaker, I rise in full support of H.R. 3456.

Mr. STUMP. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, I am in strong support of this measure, of taking care of a long-needed problem, the taking care of the surviving spouse, the unremarried surviving spouse, of a veteran whose death was service related.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill deserves the support of all our Members, and I recommend its passage.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MONTGOMERY. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I thank the gentleman from California [Mr. CUNNINGHAM] for his kind remarks on both of these suspension bills.

Mr. Speaker, we have further explanations of the bill at the desk here if Members would like to pick up these blue sheets.

Mr. DORNAN. Mr. Speaker, will the gentleman yield?

Mr. MONTGOMERY. I yield to the gentleman from California.

Mr. DORNAN. Mr. Speaker, I join in support of this bill having just visited with some widows of some of our heroes from Somalia. I know this will be a unanimous vote in support.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman from California [Mr. DORNAN] for his comments.

Mr. GILMAN. Mr. Speaker, I am pleased to rise in support of H.R. 3456, the Surviving Spouses' Benefit Act of 1993. I commend my colleague, the subcommittee chairman, the gentleman from Kansas [Mr. SLATTERY] for introducing this important legislation. I would also like to add my appreciation for the gentleman from Mississippi, the chairman of the Veterans Committee [Mr. MONTGOMERY], and the ranking member of the committee, the gentleman from Arizona [Mr. STUMP] for bringing this timely measure to the House floor and for their commitment to our Nation's veterans.

I support H.R. 3456, as I believe it is important that the spouses of deceased veterans, whose subsequent marriages have ended due to death or divorce, are provided with the appropriate burial and survivors benefits.

According to a provision of the Omnibus Reconciliation Act of 1990, certain surviving spouses of deceased veterans whose subsequent marriages ended in death or divorce were deemed ineligible for survival and burial benefits. I am pleased that H.R. 3456 will correct this discrepancy. Specifically, this legislation will provide \$750 per month in compensation to surviving spouses of veterans whose death was service related. This measure will also restore non-service-connected death pension eligibility for surviving spouses who had been deemed ineligible for payments due to provisions of the Reconciliation Act of 1990. Lastly, this measure will make benefit restoration effective December 1, 1994, unless a cost-of-living adjustment in veteran's compensation and dependency and indemnity compensation programs has not been authorized for fiscal year 1995.

As a nation, we have a moral obligation to provide our service men and women with the benefits they so justly deserve. For this reason I am pleased to support H.R. 3456. However, I believe that we should go a step further. Accordingly, I urge my colleagues to support H.R. 3456, my legislation which will further reinstate veterans' funeral benefits. By doing this we will fulfill our obligation to all those who have fought and risked their lives to protect the ideals and the people of our great Nation. We should do no less, for those who have given so much to defend our freedom, and I urge my colleagues to support this important legislation.

Mr. MONTGOMERY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. VOLKMER). The question is on the motion offered by the gentleman from Mississippi [Mr. MONTGOMERY] that the House suspend the rules and pass the bill, H.R. 3456, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

AMERICAN INDIAN AGRICULTURAL RESOURCE MANAGEMENT ACT

Mr. RICHARDSON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1425) to improve the management, productivity, and use of Indian agricultural lands and resources, as amended.

The Clerk read as follows:

H.R. 1425

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Indian Agricultural Resource Management Act".

SEC. 2. FINDINGS.

The Congress finds and declares that—

(1) the United States and Indian tribes have a government to government relationship;

(2) the United States has a trust responsibility to protect, conserve, utilize, and manage Indian agricultural lands consistent with its fiduciary obligation and its unique relationship with Indian tribes;

(3) Indian agricultural lands are renewable and manageable natural resources which are vital to the economic, social, and cultural welfare of many Indian tribes and their members; and

(4) development and management of Indian agricultural lands in accordance with integrated resource management plans will ensure proper management of Indian agricultural lands and will produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) carry out the trust responsibility of the United States and promote the self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) authorize the Secretary to take part in the management of Indian agricultural lands, with the participation of the beneficial owners of the land, in a manner consistent with the trust responsibility of the Secretary and with the objectives of the beneficial owners;

(3) provide for the development and management of Indian agricultural lands; and

(4) increase the educational and training opportunities available to Indian people and communities in the practical, technical, and professional aspects of agriculture and land management to improve the expertise and technical abilities of Indian tribes and their members.

SEC. 4. DEFINITIONS.

For the purposes of this Act:

(1) The term "Indian agricultural lands" means Indian land, including farmland and rangeland, but excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

(2) The term "agricultural product" means—

(A) crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(B) domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animal specifically raised and utilized for food or fiber or as beast of burden;

(C) forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(D) other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

(3) The term "agricultural resource" means—

(A) all the primary means of production, including the land, soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the agricultural community; and

(B) all the benefits derived from Indian agricultural lands and enterprises, including cultivated and gathered food products, fibers, horticultural products, dyes, cultural or religious condiments, medicines, water, aesthetic, and other traditional values of agriculture.

(4) The term "agricultural resource management plan" means a plan developed under section 101(b).

(5) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(6) The term "farmland" means Indian land excluding Indian forest land that is used for production of food, feed, fiber, forage and seed oil crops, or other agricultural products, and may be either dryland, irrigated, or irrigated pasture.

(7) The term "Indian forest land" means forest land as defined in section 304(3) of the National Indian Forest Resources Management Act (25 U.S.C. 3103(3)).

(8) The term "Indian" means an individual who is a member of an Indian tribe.

(9) The term "Indian land" means land that is—

(A) held in trust by the United States for an Indian tribe; or

(B) owned by an Indian or Indian tribe and is subject to restrictions against alienation.

(10) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term "integrated resource management plan" means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals and landscape descriptions of all designated resources that may include (but not be limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as community and municipal resources, and may include any previously adopted tribal codes and plans related to such resources.

(12) The term "land management activity" means all activities, accomplished in support of the management of Indian agricultural lands, including (but not limited to)—

(A) preparation of soil and range inventories, farmland and rangeland management plans, and monitoring programs to evaluate management plans;

(B) agricultural lands and on-farm irrigation delivery system development, and the application of state of the art, soil and range conservation management techniques to restore and ensure the productive potential of Indian lands;

(C) protection against agricultural pests, including development, implementation, and evaluation of integrated pest management programs to control noxious weeds, undesirable vegetation, and vertebrate or invertebrate agricultural pests;

(D) administration and supervision of agricultural leasing and permitting activities, including determination of proper land use, carrying capacities, and proper stocking rates of livestock, appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing lease rental receipts;

(E) technical assistance to individuals and tribes engaged in agricultural production or agribusiness; and

(F) educational assistance in agriculture, natural resources, land management and related fields of study, including direct assistance to tribally-controlled community colleges in developing and implementing curriculum for vocational, technical, and professional course work.

(13) The term "Indian landowner" means the Indian or Indian tribe that—

(A) owns such Indian land, or

(B) is the beneficiary of the trust under which such Indian land is held by the United States.

(14) The term "rangeland" means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

(15) The term "Secretary" means the Secretary of the Interior.

TITLE I—RANGELAND AND FARMLAND ENHANCEMENT

SEC. 101. MANAGEMENT OF INDIAN RANGELANDS AND FARMLANDS.

(a) MANAGEMENT OBJECTIVES.—Consistent with the provisions of the Indian Self-Determination and Education Assistance Act, the Secretary shall provide for the management of Indian agricultural lands to achieve the following objectives:

(1) To protect, conserve, utilize, and maintain the highest productive potential on Indian agricultural lands through the application of sound conservation practices and techniques. These practices and techniques shall be applied to planning, development, inventorying, classification, and management of agricultural resources;

(2) To increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians and Alaska Natives, through the development of agricultural resources on Indian lands;

(3) To manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion;

(4) To enable Indian farmers and ranchers to maximize the potential benefits available to them through their land by providing technical assistance, training, and education

in conservation practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas;

(5) To develop Indian agricultural lands and associated value-added industries of Indians and Indian tribes to promote self-sustaining communities; and

(6) To assist trust and restricted Indian landowners in leasing their agricultural lands for a reasonable annual return, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

(b) INDIAN AGRICULTURAL RESOURCE MANAGEMENT PLANNING PROGRAM.—(1) To meet the management objectives of this section, a 10-year Indian agriculture resource management and monitoring plan shall be developed and implemented as follows:

(A) Pursuant to a self-determination contract or self-governance compact, an Indian tribe may develop or implement an Indian agriculture resource plan. Subject to the provisions of subparagraph (C), the tribe shall have broad discretion in designing and carrying out the planning process.

(B) If a tribe chooses not to contract the development or implementation of the plan, the Secretary shall develop or implement, as appropriate, the plan in close consultation with the affected tribe.

(C) Whether developed directly by the tribe or by the Secretary, the plan shall—

(i) determine available agriculture resources;

(ii) identify specific tribal agricultural resource goals and objectives;

(iii) establish management objectives for the resources;

(iv) define critical values of the Indian tribe and its members and provide identified holistic management objectives;

(v) identify actions to be taken to reach established objectives;

(vi) be developed through public meetings;

(vii) use the public meeting records, existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and lands grant universities; and

(viii) be completed within three years of the initiation of activity to establish the plan.

(2) Indian agriculture resource management plans developed and approved under this section shall govern the management and administration of Indian agricultural resources and Indian agricultural lands by the Bureau and the Indian tribal government.

SEC. 102. INDIAN PARTICIPATION IN LAND MANAGEMENT ACTIVITIES.

(a) TRIBAL RECOGNITION.—The Secretary shall conduct all land management activities on Indian agricultural land in accordance with goals and objectives set forth in the approved agricultural resource management plan, in an integrated resource management plan, and in accordance with all tribal laws and ordinances, except in specific instances where such compliance would be contrary to the trust responsibility of the United States.

(b) TRIBAL LAWS.—Unless otherwise prohibited by Federal law, the Secretary shall comply with tribal laws and ordinances pertaining to Indian agricultural lands, including laws regulating the environment and historic or cultural preservation, and laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction. The Secretary shall—

(1) provide assistance in the enforcement of such tribal laws;

(2) provide notice of such laws to persons or entities undertaking activities on Indian agricultural lands; and

(3) upon the request of an Indian tribe, require appropriate Federal officials to appear in tribal forums.

(c) WAIVER OF REGULATIONS.—In any case in which a regulation or administrative policy of the Department of the Interior conflicts with the objectives of the agricultural resource management plan provided for in section 101, or with a tribal law, the Secretary may waive the application of such regulation or administrative policy unless such waiver would constitute a violation of a Federal statute or judicial decision or would conflict with his general trust responsibility under Federal law.

(d) SOVEREIGN IMMUNITY.—This section does not constitute a waiver of the sovereign immunity of the United States, nor does it authorize tribal justice systems to review actions of the Secretary.

SEC. 103. INDIAN AGRICULTURAL LANDS TRESPASS.

(a) CIVIL PENALTIES; REGULATIONS.—Not later than one year after the date of enactment of this Act, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of trespass on Indian agricultural lands, which provide for—

(A) collection of the value of the products illegally used or removed plus a penalty of double their values;

(B) collection of the costs associated with damage to the Indian agricultural lands caused by the act of trespass; and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility within the Department of the Interior for the detection and investigation of Indian agricultural lands trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) TREATMENT OF PROCEEDS.—The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of agricultural products from the Indian agricultural lands upon which such trespass occurred.

(c) CONCURRENT JURISDICTION.—Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) shall have concurrent jurisdiction with the United States to enforce the provisions of this section and the regulations promulgated thereunder. The Bureau and other agencies of the Federal Government shall, at the request of the tribal government, defer to tribal prosecutions of Indian agricultural land trespass cases. Tribal court judgments regarding agricultural trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section. Nothing in this Act shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

SEC. 104. ASSESSMENT OF INDIAN AGRICULTURAL MANAGEMENT PROGRAMS.

(a) ASSESSMENT.—Within six months after the date of enactment of this Act, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in agricultural management on Federal and private lands to conduct an independent assessment

of Indian agricultural land management and practices. Such assessment shall be national in scope and shall include a comparative analysis of Federal investment and management efforts for Indian trust and restricted agricultural lands as compared to federally-owned lands managed by other Federal agencies or instrumentalities and as compared to federally-served private lands.

(b) **PURPOSES.**—The purposes of the assessment shall be—

(1) to establish a comprehensive assessment of the improvement, funding, and development needs for all Indian agricultural lands;

(2) to establish a comparison of management and funding provided to comparable lands owned or managed by the Federal Government through Federal agencies other than the Bureau; and

(3) to identify any obstacles to Indian access to Federal or private programs relating to agriculture or related rural development programs generally available to the public at large.

(c) **IMPLEMENTATION.**—Within one year after the date of enactment of this Act, the Secretary shall provide the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate with a status report on the development of the comparative analysis required by this section and shall file a final report with the Congress not later than 18 months after the date of enactment of this Act.

SEC. 105. LEASING OF INDIAN AGRICULTURAL LANDS.

(a) **AUTHORITY OF THE SECRETARY.**—The Secretary is authorized to—

(1) approve any agricultural lease or permit with (A) a tenure of up to 10 years, or (B) a tenure longer than 10 years but not to exceed 25 years unless authorized by other Federal law, when such longer tenure is determined by the Secretary to be in the best interest of the Indian landowners and when such lease or permit requires substantial investment in the development of the lands or crops by the lessee; and

(2) lease or permit agricultural lands to the highest responsible bidder at rates less than the Federal appraisal after satisfactorily advertising such lands for lease, when, in the opinion of the Secretary, such action would be in the best interest of the Indian landowner.

(b) **AUTHORITY OF THE TRIBE.**—When authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, the Secretary—

(1) shall provide a preference to Indian operators in the issuance and renewal of agricultural leases and permits so long as the lessor receives fair market value for his property;

(2) shall waive or modify the requirement that a lessee post a surety or performance bond on agricultural leases and permits issued by the Secretary;

(3) shall provide for posting of other collateral or security in lieu of surety or other bonds; and

(4) when such tribal resolution sets forth a tribal definition of what constitutes "highly fractionated undivided heirship lands" and adopts an alternative plan for providing notice to owners, may waive or modify any general notice requirement of Federal law and proceed to negotiate and lease or permit such highly fractionated undivided interest heirship lands in conformity with tribal law in order to prevent waste, reduce idle land acreage, and ensure income.

(c) **RIGHTS OF INDIVIDUAL LANDOWNERS.**—(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee in the legal or beneficial use of his or her own land or to enter into an agricultural lease of the surface interest of his or her allotment under any other provision of law.

(2)(A) The owners of a majority interest in any trust or restricted land are authorized to enter into an agricultural lease of the surface interest of a trust or restricted allotment, and such lease shall be binding upon the owners of the minority interests in such land if the terms of the lease provide such minority interests with not less than fair market value for such land.

(B) For the purposes of subparagraph (A), a majority interest in trust or restricted land is an interest greater than 50 percent of the legal or beneficial title.

(3) The provisions of subsection (b) shall not apply to a parcel of trust or restricted land if the owners of at least 50 percent of the legal or beneficial interest in such land file with the Secretary a written objection to the application of all or any part of such tribal rules to the leasing of such parcel of land.

TITLE II—EDUCATION IN AGRICULTURE MANAGEMENT

SEC. 201. INDIAN AND ALASKA NATIVE AGRICULTURE MANAGEMENT EDUCATION ASSISTANCE PROGRAMS.

(a) **AGRICULTURAL RESOURCES INTERN PROGRAM.**—(1) Notwithstanding the provisions of title 5, United States Code, governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau or other appropriate office or bureau within the Department of the Interior at least 20 agricultural resources intern positions for Indian and Alaska Native students enrolled in an agriculture study program. Such positions shall be in addition to the forester intern positions authorized in section 314(a) of the National Indian Forest Resources Management Act (25 U.S.C. 3113(a)).

(2) For purposes of this subsection—

(A) the term "agricultural resources intern" means an Indian who—

(i) is attending an approved postsecondary school in a full-time agriculture or related field, and

(ii) is appointed to one of the agricultural resources intern positions established under paragraph (1);

(B) the term "agricultural resources intern positions" means positions established pursuant to paragraph (1) for agricultural resources interns; and

(C) the term "agriculture study program" includes (but is not limited to) agricultural engineering, agricultural economics, animal husbandry, animal science, biological sciences, geographic information systems, horticulture, range management, soil science, and veterinary science.

(3) The Secretary shall pay, by reimbursement or otherwise, all costs for tuition, books, fees, and living expenses incurred by an agricultural resources intern while attending an approved postsecondary or graduate school in a full-time agricultural study program.

(4) An agricultural resources intern shall be required to enter into an obligated service agreement with the Secretary to serve as an employee in a professional agriculture or natural resources position with the Department of the Interior or other Federal agency or an Indian tribe for one year for each year of education for which the Secretary pays the intern's educational costs under paragraph (3).

(5) An agricultural resources intern shall be required to report for service with the Bureau of Indian Affairs or other bureau or agency sponsoring his internship, or to a designated work site, during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement under paragraph (4).

(b) **COOPERATIVE EDUCATION PROGRAM.**—(1) The Secretary shall maintain, through the Bureau, a cooperative education program for the purpose, among other things, of recruiting Indian and Alaska Native students who are enrolled in secondary schools, tribally controlled community colleges, and other postsecondary or graduate schools, for employment in professional agriculture or related positions with the Bureau or other Federal agency providing Indian agricultural or related services.

(2) The cooperative educational program under paragraph (1) shall be modeled after, and shall have essentially the same features as, the program in effect on the date of enactment of this Act pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) The cooperative educational program shall include, among others, the following:

(A) The Secretary shall continue the established specific programs in agriculture and natural resources education at Southwestern Indian Polytechnic Institute (SIPI) and at Haskell Indian Junior College.

(B) The Secretary shall develop and maintain a cooperative program with the tribally controlled community colleges to coordinate course requirements, texts, and provide direct technical assistance so that a significant portion of the college credits in both the Haskell and Southwestern Indian Polytechnic Institute programs can be met through local program work at participating tribally controlled community colleges.

(C) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement an informational and educational program to provide practical training and assistance in creating or maintaining a successful agricultural enterprise, assessing sources of commercial credit, developing markets, and other subjects of importance in agricultural pursuits.

(D) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement research activities to improve the basis for determining appropriate management measures to apply to Indian agricultural management.

(4) Under the cooperative agreement program under paragraph (1), the Secretary shall pay, by reimbursement or otherwise, all costs for tuition, books, and fees of an Indian student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement; and

(B) is interested in a career with the Bureau, an Indian tribe or a tribal enterprise in the management of Indian rangelands, farmlands, or other natural resource assets.

(5) A recipient of assistance under the cooperative education program under this subsection shall be required to enter into an obligated service agreement with the Secretary to serve as a professional in an agricultural resource related activity with the Bureau, or other Federal agency providing agricultural or related services to Indians or Indian

tribes, or an Indian tribe for one year for each year for which the Secretary pays the recipients educational costs pursuant to paragraph (3).

(c) **SCHOLARSHIP PROGRAM.**—(1) The Secretary may grant scholarships to Indians enrolled in accredited agriculture related programs for postsecondary and graduate programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipients course of study, with—

(A) the Bureau or other agency of the Federal Government providing agriculture or natural resource related services to Indians or Indian tribes;

(B) an agriculture or related program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination and Education Assistance Act; or

(C) a tribal agriculture or related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited post secondary or graduate institution.

(d) **EDUCATIONAL OUTREACH.**—The Secretary shall conduct, through the Bureau, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, an agricultural resource education outreach program for Indian youth to explain and stimulate interest in all aspects of management and careers in Indian agriculture and natural resources.

(e) **ADEQUACY OF PROGRAMS.**—The Secretary shall administer the programs described in this section until a sufficient number of Indians are trained to ensure that there is an adequate number of qualified, professional Indian agricultural resource managers to manage the Bureau agricultural resource programs and programs maintained by or for Indian tribes.

SEC. 202. POSTGRADUATION RECRUITMENT, EDUCATION AND TRAINING PROGRAMS.

(a) **ASSUMPTION OF LOANS.**—The Secretary shall establish and maintain a program to attract Indian professionals who are graduates of a course of postsecondary or graduate education for employment in either the Bureau agriculture or related programs or, subject to the approval of the tribe, in tribal agriculture or related programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian professionals in exchange for the assumption by the Secretary of the outstanding student loans of the employee. The period of employment shall be determined by the amount of the loan that is assumed.

(b) **POSTGRADUATE INTERGOVERNMENTAL INTERNSHIPS.**—For the purposes of training, skill development and orientation of Indian and Federal agricultural management personnel, and the enhancement of tribal and Bureau agricultural resource programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal and Indian agricultural resource personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau and Indian agricultural resource employees

in the agricultural resource related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of agricultural resource personnel from the other Department of the Interior agencies within the Bureau, and, with the consent of the tribe, within tribal agricultural resource programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an inter-agency agreement, internships within the Bureau and, with the consent of the tribe, within a tribal agricultural resource program of other agricultural resource personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian agricultural resource employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) **CONTINUING EDUCATION AND TRAINING.**—The Secretary shall maintain a program within the Trust Services Division of the Bureau for Indian agricultural resource personnel which shall provide for—

(1) orientation training for Bureau agricultural resource personnel in tribal-Federal relations and responsibilities;

(2) continuing technical agricultural resource education for Bureau and Indian agricultural resource personnel; and

(3) development training of Indian agricultural resource personnel in agricultural resource based enterprises and marketing.

SEC. 203. COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND INDIAN TRIBES.

(a) **COOPERATIVE AGREEMENTS.**—

(1)(A) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary may negotiate and enter into cooperative agreements with Indian tribes to—

(i) engage in cooperative manpower and job training,

(ii) develop and publish cooperative agricultural education and resource planning materials, and

(iii) perform land and facility improvements and other activities related to land and natural resource management and development.

(B) The Secretary may enter into these agreements when the Secretary determines the interest of Indians and Indian tribes will be benefited.

(2) In cooperative agreements entered into under paragraph (1), the Secretary may advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of section 3324 of title 31, United States Code, relating to the advance of public moneys.

(b) **SUPERVISION.**—In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for the purposes of sections 2671 through 2680 of title 28, United States Code, and sections 8101 through 8193 of title 5, United States Code.

(c) **SAVINGS CLAUSE.**—Nothing in this Act shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

SEC. 204. OBLIGATED SERVICE; BREACH OF CONTRACT.

(a) **OBLIGATED SERVICE.**—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this title, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) **BREACH OF CONTRACT; REPAYMENT.**—Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service that was performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Secretary of the Treasury.

TITLE III—GENERAL PROVISIONS

SEC. 301. REGULATIONS.

Except as otherwise provided by this Act, the Secretary shall promulgate final regulations for the implementation of this Act within 24 months after the date of enactment of this Act. All regulations promulgated pursuant to this Act shall be developed by the Secretary with the participation of the affected Indian tribes.

SEC. 302. TRUST RESPONSIBILITY.

Nothing in this Act shall be construed to diminish or expand the trust responsibility of the United States toward Indian trust lands or natural resources, or any legal obligation or remedy resulting therefrom.

SEC. 303. SEVERABILITY.

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this Act shall not be affected thereby.

SEC. 304. FEDERAL, STATE AND LOCAL AUTHORITY.

(a) **DISCLAIMER.**—Nothing in this Act shall be construed to supercede or limit the authority of Federal, State or local agencies otherwise authorized by law to provide services to Indians.

(b) **DUPPLICATION OF SERVICES.**—The Secretary shall work with all appropriate Federal departments and agencies to avoid duplication of programs and services currently available to Indian tribes and landowners from other sources.

SEC. 305. AUTHORIZATION OF APPROPRIATIONS.

(a) **GENERAL AUTHORIZATION.**—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

(b) **FUNDING SOURCE.**—The activities required under title II may only be funded from appropriations made pursuant to this Act. To the greatest extent possible, such activities shall be coordinated with activities funded from other sources.

The **SPEAKER pro tempore**. Pursuant to the rule, the gentleman from New Mexico [Mr. RICHARDSON] will be recognized for 20 minutes, and the gentleman from California [Mr. CALVERT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Mexico [Mr. RICHARDSON].

GENERAL LEAVE

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

Mr. RICHARDSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, over the past 20 years, there has been a serious decline in the condition of Indian agriculture. Over 1.1 million acres of Indian agricultural lands are lying idle. Currently, 12 million acres of Indian agricultural lands do not have basic soil and range inventories. Since 1975, the Bureau of Indian agricultural program budget has not increased. The Bureau of Indian Affairs reports that it would need to double its staffing levels to meet the ratio of staff per managed acre maintained by other Federal agencies. These trends must not continue, this nation must fulfill its trust obligations to Native Americans.

Mr. Speaker, H.R. 1425, provides a statutory framework for the Federal Government to carry out its trust responsibilities for Indian agricultural resources. It reflects changes recommended by Indian tribes, the Intertribal Agriculture Council, and the Bureau of Indian Affairs in testimony before the subcommittee and other comments submitted to the subcommittee.

H.R. 1425 establishes the Indian agricultural resource management planning program, which provides for the development of a 10-year agricultural resource management plan for any interested Indian tribe. It also provides that the Secretary shall conduct all land management activities in accordance with the tribal management plans and tribal laws and ordinances.

It provides that the Indian Self-Determination Act applies to all the provisions of the act to ensure that Indian tribes will be able to contract any program or function of the act. It also includes a disclaimer provision which states that section 102 of the act shall not constitute a waiver of sovereign immunity of the United States nor does it authorize tribal courts to review actions of the Secretary.

This legislation includes a new section which establishes civil penalties for trespass on Indian agricultural lands. H.R. 1425 requires the Secretary to contract with a non-Federal entity to conduct an assessment of Indian agricultural land management and practices.

Section 105 of the act has been amended to authorize the Secretary to lease or permit lands for up to 10 years, or for up to 25 years when it is in the best interest of the Indian landowner

and the lease requires substantial investment in the lands. It also provides that when authorized by an Indian tribe, the Secretary may waive or modify requirements for surety bonds or require other collateral or security in lieu of surety bonds. In addition, it provides that section 105 shall not be construed as limiting or altering the authority of an individual allottee to the legal or beneficial use of his or her own land.

The bill establishes an Indian Natural Resources Intern Program to create at least 20 intern positions for Indian students. It would establish a recruitment program for Indian professionals for employment in the Bureau of Indian Affairs agricultural program. It establishes a cooperative education program in tribal community colleges for American Indians and Alaska Natives. H.R. 1425 includes a provision for scholarships to Indian students enrolled in accredited agriculture and related programs in postsecondary and graduate institutions.

The committee has included language suggested by the Education and Labor Committee to make clear that the education activities under title II of this act shall be funded out of appropriations made pursuant to the authorization in this act. Funds for these activities are not to be taken from the Indian Student Equalization Program or the appropriations under the Tribally Controlled Community Colleges Assistance Act. The Secretary may take such steps as are necessary to see that these activities are coordinated with and supplement but not supplant, the activities under these other authorities.

The committee has also made several changes to the bill that were recommended by the administration. This bill enjoys bipartisan support, wide tribal support, and the support of the administration. I urge my colleagues to support it.

□ 1420

Mr. CALVERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a member of the Subcommittee on Native American Affairs, I rise today in support of H.R. 1425, the American Indian Agricultural Act of 1993.

The gentleman from New Mexico has adequately explained the bill's provisions, so I will be brief. H.R. 1425 addresses a troublesome land issue in Indian country the resolution of which is long overdue.

I urge my colleagues to support passage of this legislation.

The SPEAKER pro tempore (Mr. VOLKMER). The question is on the motion offered by the gentleman from New Mexico [Mr. RICHARDSON] that the House suspend the rules and pass the bill, H.R. 1425, as amended.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

AIR FORCE MEMORIAL FOUNDATION AUTHORIZATION

Mr. CLAY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 898) to authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs.

The Clerk read as follows:

H.R. 898

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

SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—The Air Force Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor the men and women who have served in the United States Air Force and its predecessors.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001 et seq.).

SEC. 2. PAYMENT OF EXPENSES.

The Air Force Memorial Foundation shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the memorial. No Federal funds may be used to pay any expense of the establishment of the memorial.

SEC. 3. DEPOSIT OF EXCESS FUNDS.

If, upon payment of all expenses of the establishment of the memorial (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of such Act, there remains a balance of funds received for the establishment of the memorial, the Air Force Memorial Foundation shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of such Act.

The SPEAKER pro tempore (Mr. COPPERSMITH). Pursuant to the rule, the gentleman from Missouri [Mr. CLAY] will be recognized for 20 minutes, and the gentleman from Nebraska [Mr. BARRETT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I rise in support of H.R. 898. This memorial is a celebration of aviation history that will serve as a historical reminder of the past and an educational vision to the future of aerospace.

H.R. 898 has overwhelming support and seeks authority to establish a memorial to the men and women who served in the U.S. Air Force and its predecessor, the Army Air Corps.

No Federal funds will be used for the establishment of this memorial, therefore, the Air Force Memorial Foundation has prepared an extensive fundraising plan for the memorial's construction.

I urge my colleagues to support this important legislation, and honor the brave men and women who served our country.

Mr. Speaker, I reserve the balance of my time.

Mr. BARRETT of Nebraska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, from the birth of this country to the present, our military forces have played a vital role in providing the strength and independence of our Nation. Our country won the cold war as a direct result of our superior defense.

Any military strategist will attest to the value of a powerful air force. Most people will agree that, in a military conflict, a large advantage is gained by assuming control of the air. Our Air Force has continually demonstrated that it is the most formidable in the world.

Today, we have an opportunity to demonstrate our gratitude to the exceptional men and women who have served in our Air Force. Their dedication exemplifies their honor and discipline.

I urge my colleagues to support H.R. 898. As has been mentioned by Chairman CLAY, it will authorize the establishment of a memorial to "honor the men and women who have served in the U.S. Air Force and its predecessors." The Air Force Memorial Foundation will be in charge of raising funds for the memorial, and it would not involve the use of any Federal funds.

This memorial will serve as an educational tool as well. The memorial can teach youngsters about famous Air Force officers from Billy Mitchell to Gus Grissom, from Jimmy Doolittle to Chuck Yeager. These individuals can inspire youngsters to become our future leaders, role models, and also teach them to aim high.

I thank the Speaker and I reserve the balance of my time.

Mr. Speaker, I reserve the balance of my time.

Mr. CLAY. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. HUTTO].

Mr. HUTTO. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 898. H.R. 898, known as the Air Force Memorial bill, will honor the men and women who serve and have served in the U.S. Air Force and its predecessors such as the Army Air Corps. The Air Force Memorial Foundation proposes to build a memorial on Federal land in Washington, DC, in time for the 50th anniversary of the Air Force as a separate service in 1997.

It is important to point out two important facts in connection with this bill: First, no public funds will be used to construct or maintain this memorial. The memorial foundation, which is a 501(C)(3) organization under the Internal Revenue Code is responsible for raising the needed funds. Second, the Air Force is the only service now not recognized with a memorial in our Nation's Capital. Please join me in making this memorial a reality as a testament to those who have served this Nation and served it well in the Air Force.

Mr. BARRETT of Nebraska. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I thank the gentleman from Nebraska [Mr. BARRETT] for yielding this time to me.

Mr. Speaker, I am pleased to rise in support of H.R. 898, legislation to authorize the Air Force Memorial Foundation and to establish an Air Force Memorial in the District of Columbia.

I commend my colleague from Florida [Mr. HUTTO] for introducing this worthwhile legislation. And the distinguished chairman, the gentleman from Missouri [Mr. CLAY].

I am pleased that this legislation is being discussed today, as we have just celebrated Veterans Day. The observance of Veterans Day honors our fellow veterans who, through their dedication and courage, have sacrificed so much for our freedom. As Americans we must never forget the horrors of the battlefield, the sacrifice, the bloodshed, the destruction, the suffering, and the lives that are lost. For this reason I am gratified that H.R. 898 authorizes and establishes a memorial dedicated to the brave men and women who have served in our Nation's Air Force.

Memorials provide a lasting symbol which encourage the lessons of the past to be taught to future generations. Accordingly I strongly support H.R. 898 and the message of courage, dedication, freedom, and liberty that will be passed on to future generations.

Mr. CLAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BARRETT of Nebraska. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. DORNAN].

Mr. DORNAN. Mr. Speaker, on Veterans Day, a few of us were at the unveiling of the Women's Vietnam Veterans Memorial. We were near the flag and the beautiful statute of the young soldiers coming through the woods and the incredible wall itself. No one could be in front of the beautiful statue of three Army nurses and a wounded American across the lap of one, looking exactly like Michaelangelo's beautiful Pieta in Rome, without having the tears well up in your eyes and feeling yourself choke with emotion.

□ 1430

This is a rallying point for women who have served their country proudly

and so well, women of all conflicts, even for civilian women who were in the Special Services Corps that went into combat theaters in Vietnam. They will see this memorial as a rallying point and a point of deep emotional remembrance.

I also went, when cap Weinberger was our Secretary of Defense, and presided over the ribbon cutting for the beautiful Navy Memorial on Pennsylvania Avenue. Every American President who ever gets sworn in, as long as our great Nation exists, will pass by that lone sailor on that beautiful Navy Memorial.

Our Army has several great memorials, both of them very close to the White House. The 1st Division, with all of the places where it took its hits and won its glory, is right in front of the old Executive Office Building. Right on Constitution, on the south side of the White House, is the beautiful memorial of the flaming twin swords for the 2nd Army Division.

And who could ask for a more beautiful memorial than the Marine Corps. On the bluffs above the Potomac, commemorating the raising of the flag on February 23, 1945, is the Iwo Jima Memorial.

This Air Force Memorial is long overdue and will do as much tribute to the Army of the United States as the Air Force, because it will go back to the Signal Corps, the pilots who won such incredible glory, without the security of parachutes, over the skies of France. It will go back to honor the fledgling Army Air Corps, that took such heavy casualties at the beginning of World War II. It also will commemorate the Army Air Force, 86,000 young Americans died in the skies over Europe alone as members of the AAF.

This very year, 50 years ago, was the darkest period for our bomber pilots and the fighter pilots that could not stay with them all the way to the target and back, 1943 would see 10, 15, 20 percent of our bombers going down on some of the most difficult targets over the Ruhr industrial area in Germany.

Then within 3 years and 2 months of the birth of the Air Force, we saw our F-86 pilots engaged in combat over the skies of Korea. This memorial will recall this chapter in our history that has come back into our consciousness today.

Mr. Speaker, I read from a Government report that was only declassified within the past few days, about POW's, hundreds of them being sent to die a lonely death in Soviet gulag camps. It says,

The most highly-sought-after POWs for exploitation were F-86 pilots and others knowledgeable of new technologies.

Living U.S. witnesses have testified that captured U.S. pilots were, on occasion, taken directly to Soviet-staffed interrogation centers. A former Chinese officer stated that he turned U.S. pilot POWs directly over to the Soviets as a matter of policy.

Missing F-86 pilots, whose captivity was never acknowledged by the Communists in Korea, were identified in recent interviews with former Soviet intelligence officers who served in Korea. Captured F-86 aircraft were taken to at least three Moscow aircraft design bureaus for exploitation. Pilots accompanied the aircraft to enrich and accelerate the exploitation process.

And then to die a lonely, miserable death in some Soviet gulag camp.

Mr. Speaker, for these F-86 pilots, a plane I had the thrill of flying in peacetime, and right down to our great airmen from Desert Storm, to those bringing every piece of equipment and supplies over to our courageous sailors, Marines, and soldiers in Somalia, this memorial is long overdue. It will be a rallying place not only for pilots, but also for those who own the planes, our brave crew chiefs.

Mr. Speaker, I am going to a conference on the Committee on Intelligence, and I will talk to a great marine who borrowed F-86's in Korea and had three aerial victories in them, JOHN GLENN. I will also talk to a Navy war hero, JOHN MCCAIN. I supported his lonely sailor memorial. I hope to get the Senate off the dime today on this Air Force Memorial.

Gen. Jimmy Doolittle, who now has gone to his eternal reward in the skies, personally told me that more than anything, he wanted to be at the unveiling of this memorial. My former Air Force F-100 "Super Sabre" squadron commander, Chuck Yeager, told me that the dedication would be for him a "must appearance."

Mr. Speaker, I look forward, with the gentleman from Florida [Mr. HUTTO], and the gentleman from Missouri [Mr. CLAY], as well as my great colleague, the gentleman from Nebraska [Mr. BARRETT], to seeing the first shovelful of dirt turn on that memorial next year.

Mr. BARRETT of Nebraska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. COPPERSMITH). The question is on the motion offered by the gentleman from Florida [Mr. HUTTO] that the House suspend the rules and pass the bill, H.R. 898.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on H.R. 898, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993

Ms. SLAUGHTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 303 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 303

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 322) to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill. The committee amendment in the nature of a substitute shall be considered by title rather than by section. Each title shall be considered as read. The amendments en bloc specified in the report of the Committee on Rules accompanying this resolution to be offered by Representative Miller of California or a designee may amend portions of the bill not yet read for amendment, shall be considered as read, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from New York [Ms. SLAUGHTER] is recognized for 1 hour.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield the customary 30 minutes of debate time to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 303 is an open rule providing for the consideration of H.R. 322, the Mineral Exploration and Development Act of 1993.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and rank-

ing minority member of the Committee on Natural Resources.

The rule makes in order as an original bill for the purposes of amendment, the Natural Resources Committee amendment in the nature of a substitute now printed in the bill. The committee substitute shall be considered by title and each title shall be considered as read.

Further, the rule provides that the amendments en bloc, to be offered by Representative MILLER or his designee and printed in the report accompanying the rule, may amend portions of the bill not yet read for amendment, shall be considered as read, and shall not be subject to a demand for a division of the question.

Finally, the rule provides for one motion to recommit with or without instructions.

Mr. Speaker, H.R. 322, the bill for which the Rules Committee has recommended this rule, is an overdue reform of the mining law of 1872 to conform it to modern mining practices. The bill would abolish the outdated procedure under which title to valuable mineral lands could be obtained for as little as \$2.50 an acre. It would establish a reasonable royalty for minerals extracted from public land in order to fund an abandoned minerals mine reclamation fund. H.R. 322 would further protect the environment by limiting mining activities in sensitive areas and requiring reclamation of lands damaged by exploration or extraction.

Mr. Speaker, I ask my colleagues to support this open rule so that we may proceed with consideration of the merits of this legislation.

□ 1440

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the gentlewoman from New York [Ms. SLAUGHTER] has described, this is an open rule, and I urge its adoption.

The mining law of 1872 was enacted to promote exploration and development of domestic mineral resources and to encourage settlement of the western United States. A great deal has changed in the areas of public land use policy and techniques for mineral exploration and development since the original law was enacted over 120 years ago, but the central provisions of that law remains about the same.

I think we all agree that we need to make our mining laws more compatible with today's modern business practices and land use philosophies. However, we do not all agree that this bill, H.R. 322, is the way to achieve that goal.

This measure goes way beyond reform. The regulatory burdens and increased fees could cripple domestic production and result in significant job loss. Mr. Speaker, we can reform our mining policy without crushing our domestic hardrock mining industry.

This is a comprehensive, complicated piece of legislation, and its economic impact will be felt in almost all 50 States. Under the open rule, all members will be able to offer appropriate amendments to address the many controversies in this measure.

Mr. Speaker, I urge my colleagues to support this rule.

OPEN VERSUS RESTRICTIVE RULES 95TH-103D CONG.

Congress (years)	Total rules granted ¹	Open rules		Restrictive rules	
		Number	Per-cent ²	Number	Per-cent ³
95th (1977-78)	211	179	85	32	15
96th (1979-80)	214	161	75	53	25
97th (1981-82)	120	90	75	30	25
98th (1983-84)	155	105	68	50	32
99th (1985-86)	115	65	57	50	43
100th (1987-88)	123	66	54	57	46
101st (1989-90)	104	47	45	57	55
102d (1991-92)	109	37	34	72	66
103d (1993-94)	47	12	26	35	74

¹Total rules counted are all order of business resolutions reported from the Rules Committee which provide for the initial consideration of legislation, except rules on appropriations bills which only waive points of order. Original jurisdiction measures reported as privileged are also not counted.

²Open rules are those which permit any Member to offer any germane amendment to a measure so long as it is otherwise in compliance with the rules of the House. The parenthetical percentages are open rules as a percent of total rules granted.

³Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules, as well as completely closed rule, and rules providing for consideration in the House as opposed to the Committee of the Whole. The parenthetical percentages are restrictive rules as a percent of total rules granted.

Source: "Rules Committee Calendars & Surveys of Activities," 95th-102d Cong.; "Notices of Action Taken," Committee on Rules, 103d Cong., through Nov. 10, 1993.

OPEN VERSUS RESTRICTIVE RULES: 103D CONG.

Rule number date reported	Rule type	Bill number and subject	Amendments submitted	Amendments allowed	Disposition of rule and date
H. Res. 58, Feb. 2, 1993	MC	H.R. 1: Family and medical leave	30 (D-5; R-25)	3 (D-0; R-3)	PQ: 246-176. A: 259-164. (Feb. 3, 1993).
H. Res. 59, Feb. 3, 1993	MC	H.R. 2: National Voter Registration Act	19 (D-1; R-18)	1 (D-0; R-1)	PQ: 248-171. A: 249-170. (Feb. 4, 1993).
H. Res. 103, Feb. 23, 1993	C	H.R. 920: Unemployment compensation	7 (D-2; R-5)	0 (D-0; R-0)	PQ: 243-172. A: 237-178. (Feb. 24, 1993).
H. Res. 106, Mar. 2, 1993	MC	H.R. 20: Hatch Act amendments	9 (D-1; R-8)	3 (D-0; R-3)	PQ: 248-166. A: 249-163. (Mar. 3, 1993).
H. Res. 119, Mar. 9, 1993	MC	H.R. 4: NIH Revitalization Act of 1993	13 (D-4; R-9)	8 (D-3; R-5)	PQ: 247-170. A: 248-170. (Mar. 10, 1993).
H. Res. 132, Mar. 17, 1993	MC	H.R. 1335: Emergency supplemental Appropriations	37 (D-8; R-29)	1(not submitted) (D-1; R-0)	A: 240-185. (Mar. 18, 1993).
H. Res. 133, Mar. 17, 1993	MC	H. Con. Res. 64: Budget resolution	14 (D-2; R-12)	4 (1-D-0 not submitted) (D-2; R-2)	PQ: 250-172. A: 251-172. (Mar. 18, 1993).
H. Res. 138, Mar. 23, 1993	MC	H.R. 670: Family planning amendments	20 (D-8; R-12)	9 (D-4; R-5)	PQ: 252-164. A: 247-169. (Mar. 24, 1993).
H. Res. 147, Mar. 31, 1993	C	H.R. 1430: Increase Public debt limit	6 (D-1; R-5)	0 (D-0; R-0)	PQ: 244-168. A: 242-170. (Apr. 1, 1993).
H. Res. 149 Apr. 1, 1993	MC	H.R. 1578: Expedited Rescission Act of 1993	8 (D-1; R-7)	3 (D-1; R-2)	A: 212-208. (Apr. 28, 1993).
H. Res. 164, May 4, 1993	O	H.R. 820: Nate Competitiveness Act	NA	NA	A: Voice Vote. (May 5, 1993).
H. Res. 171, May 18, 1993	O	H.R. 873: Gallatin Range Act of 1993	NA	NA	A: Voice Vote. (May 20, 1993).
H. Res. 172, May 18, 1993	O	H.R. 1159: Passenger Vessel Safety Act	NA	NA	A: 308-0 (May 24, 1993).
H. Res. 173 May 18, 1993	MC	S.J. Res. 45: United States forces in Somalia	6 (D-1; R-5)	6 (D-1; R-5)	A: Voice Vote (May 20, 1993)
H. Res. 183, May 25, 1993	O	H.R. 224: 2d supplemental appropriations	NA	NA	A: 251-174. (May 26, 1993).
H. Res. 186, May 27, 1993	MC	H.R. 2264: Omnibus budget reconciliation	51 (D-19; R-32)	8 (D-7; R-1)	PQ: 252-178. A: 236-194 (May 27, 1993).
H. Res. 192, June 9, 1993	MC	H.R. 2348: Legislative branch appropriations	50 (D-6; R-44)	3 (D-3; R-3)	PQ: 240-177. A: 226-185. (June 10, 1993).
H. Res. 193, June 10, 1993	O	H.R. 2200: NASA authorization	NA	NA	A: Voice Vote. (June 14, 1993).
H. Res. 195, June 14, 1993	MC	H.R. 5: Striker replacement	7 (D-4; R-3)	2 (D-1; R-1)	A: 244-176. (June 15, 1993).
H. Res. 197, June 15, 1993	MO	H.R. 2333: State Department, H.R. 2404: Foreign aid	53 (D-20; R-33)	27 (D-12; R-15)	A: 294-129. (June 16, 1993).
H. Res. 199, June 16, 1993	C	H.R. 1876: Ext. of "Fast Track"	NA	NA	A: Voice Vote. (June 22, 1993).
H. Res. 200, June 16, 1993	MC	H.R. 2295: Foreign operations appropriations	33 (D-11; R-22)	5 (D-1; R-4)	A: 263-160. (June 17, 1993).
H. Res. 201, June 17, 1993	O	H.R. 2403: Treasury-postal appropriations	NA	NA	A: Voice Vote. (June 17, 1993).
H. Res. 203, June 22, 1993	MO	H.R. 2445: Energy and Water appropriations	NA	NA	A: Voice Vote. (June 23, 1993).
H. Res. 206, June 23, 1993	O	H.R. 2150: Coast Guard authorization	NA	NA	A: 401-0. (July 30, 1993).
H. Res. 217, July 14, 1993	MO	H.R. 2010: National Service Trust Act	NA	NA	A: 261-164. (July 21, 1993).
H. Res. 218, July 20, 1993	O	H.R. 2530: BLM authorization, fiscal year 1994-95	NA	NA	
H. Res. 220, July 21, 1993	MC	H.R. 2667: Disaster assistance supplemental	14 (D-8; R-6)	2 (D-2; R-0)	PQ: 245-178. F: 205-216. (July 22, 1993).
H. Res. 226, July 23, 1993	MC	H.R. 2667: Disaster assistance supplemental	15 (D-8; R-7)	2 (D-2; R-0)	A: 224-205. (July 27, 1993).
H. Res. 229, July 28, 1993	MO	H.R. 2330: Intelligence Authority Act, fiscal year 1994	NA	NA	A: Voice Vote. (Aug. 3, 1993).
H. Res. 230, July 28, 1993	O	H.R. 1964: Maritime Administration authority	NA	NA	A: Voice Vote. (July 29, 1993).
H. Res. 246, Aug. 6, 1993	MO	H.R. 2401: National Defense authority	149 (D-109; R-40)		A: 246-172. (Sept. 8, 1993).
H. Res. 248, Sept. 9, 1993	MO	H.R. 2401: National defense authorization			PQ: 237-169. A: 234-169. (Sept. 13, 1993).
H. Res. 250, Sept. 13, 1993	MC	H.R. 1340: RTC Completion Act	12 (D-3; R-9)	1 (D-1; R-0)	A: 213-191-1. (Sept. 14, 1993).
H. Res. 254, Sept. 22, 1993	MO	H.R. 2403: National Defense authorization	91 (D-67; R-24)	2 (D-1; R-1)	A: 241-182. (Sept. 28, 1993).
H. Res. 262, Sept. 28, 1993	O	H.R. 1845: National Biological Survey Act	NA	NA	A: 238-188 (10/06/93).
H. Res. 264, Sept. 28, 1993	MC	H.R. 2351: Arts, humanities, museums	7 (D-0; R-7)	3 (D-0; R-3)	PQ: 240-185. A: 225-195. (Oct. 14, 1993).
H. Res. 265, Sept. 29, 1993	MC	H.R. 3167: Unemployment compensation amendments	3 (D-1; R-2)	2 (D-1; R-1)	A: 239-150. (Oct. 15, 1993).
H. Res. 269, Oct. 6, 1993	MO	H.R. 2739: Aviation infrastructure investment	N/A	N/A	A: Voice Vote. (Oct. 7, 1993).
H. Res. 273, Oct. 12, 1993	MC	H.R. 3167: Unemployment compensation amendments	3 (D-1; R-2)	2 (D-1; R-1)	PQ: 235-187. F: 149-254. (Oct. 14, 1993).
H. Res. 274, Oct. 12, 1993	MC	H.R. 1804: Goals 2000 Educate America Act	15 (D-7; R-7; F-1)	10 (D-7; R-3)	A: Voice Vote. (Oct. 13, 1993).
H. Res. 282, Oct. 20, 1993	C	H.J. Res. 281: Continuing appropriations through Oct. 28, 1993	N/A	N/A	A: Voice Vote. (Oct. 21, 1993).
H. Res. 286, Oct. 27, 1993	O	H.R. 334: Lumber Recognition Act	N/A	N/A	A: Voice Vote. (Oct. 28, 1993).
H. Res. 287, Oct. 27, 1993	O	H.J. Res. 283: Continuing appropriations resolution	1 (D-0; R-0)	0	A: 252-170. (Oct. 28, 1993).
H. Res. 289, Oct. 28, 1993	C	H.R. 2151: Maritime Security Act of 1993	N/A	N/A	A: Voice Vote. (Nov. 3, 1993).
H. Res. 293, Nov. 4, 1993	MC	H. Con. Res. 170: Troop withdrawal Somalia	N/A	N/A	A: 350-8. (Nov. 8, 1993).
H. Res. 299, Nov. 8, 1993	MO	H.R. 1036: Employee Retirement Act-1993	2 (D-1; R-1)		A: Voice Vote. (Nov. 9, 1993).
H. Res. 302, Nov. 9, 1993	MC	H.R. 1025: Brady handgun bill	17 (D-6; R-11)	4 (D-1; R-3)	A: 238-182. (Nov. 10, 1993).
H. Res. 303, Nov. 9, 1993	O	H.R. 322: Mineral exploration	N/A	N/A	
H. Res. 304, Nov. 9, 1993	C	H.J. Res. 288: Further CR, FY 1994	N/A	N/A	

Note.—Code: C-Closed; MC-Modified closed; MO-Modified open; O-Open; D-Democrat; R-Republican; PQ: Previous question; A-Adopted; F-Failed.

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time.

Ms. SLAUGHTER. Mr. Speaker I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to do.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. COPPERSMITH). Pursuant to House Resolution 303 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 322.

The Chair designates the gentleman from Connecticut [Mrs. KENNELLY] as Chairman of the Committee

of the Whole and requests the gentleman from Texas [Mr. DE LA GARZA] to assume the chair temporarily.

□ 1444

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 322) to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes, with Mr. DE LA GARZA, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. LEHMAN] will be recognized for 30 minutes, and the gentleman from Nevada [Mrs. VUCANOVICH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. LEHMAN].

Mr. LEHMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 322, the Mineral Exploration and Development Act of 1993, seeks to reform a law that was enacted during the last century.

Mr. Chairman, at the outset, I would like to commend Representative NICK RAHALL, the sponsor of H.R. 322 for his diligence and persistence in pursuing

mining law reform. I would also like to acknowledge the chairman of the Natural Resources Committee, GEORGE MILLER, for the leadership he has shown in helping the members of our committee work out a consensus bill on a very contentious issue, so that we stand together, on this side of the aisle, having unanimously voted for the bill's favorable recommendation to the House.

The purposes of H.R. 322, as amended, are to eliminate the abuses and deficiencies of the mining law of 1872; to maintain a strong mining industry while imposing necessary safeguards to ensure that Federal lands are managed in a more environmentally sound manner, and; to address the problems caused by abandoned mines throughout the West.

You may recall that at the very end of the last Congress, we began consideration of H.R. 918, the predecessor to H.R. 322. We did not complete consideration of that bill before adjourning. However, even if we had, former President Bush had promised to veto it. This year, we bring to the House, a bill which has been considered and tested by both the Subcommittee on Energy and Mineral Resources and the Committee on Natural Resources. It is different, in many ways, than the bill introduced by Representative RAHALL, yet, it retains the basic principles of mining law reform. This year, the administration is supportive of our efforts to replace the 1872 mining law. In fact, Secretary Babbitt and his staff have been most helpful in providing technical support. Finally, after 121 years, with President Clinton's backing, Congress is going to replace a land tenure relic from the last century with a new law that fosters hardrock mining in an environmentally sound manner and collects for the first time—on gold, silver, and other minerals extracted from the public domain.

I found it interesting to discover that during House debate on what was to become the mining law of 1872, former Congressman Sargent of California said:

Now, sir, this legislation was originally an experiment. In 1866, when the original quartz law was passed, the question was fiercely debated whether it was worthwhile for the Government to sell the mineral lands of the United States. Some thought on some idea of a royalty belonging to the Government.

Sargent went on to argue that the experiment of claim location, patents, and no royalty, should for the time being continue.

Yet, here we are today, saddled with what was acknowledged at the time to be an experiment.

Today, in 1993, we still allow miners and mining companies to take any hard rock minerals, such as gold, silver, or copper, found on public lands, without paying any sort of royalty or other production fee to the American taxpayer on the value of the minerals extracted.

This differs from Federal policy toward coal, oil, and gas industries operating on public lands, the laws and regulations of State governments, as well as leasing arrangements in the private sector.

In an August 1992 report, the GAO estimated that of the \$8.6 billion worth of hard rock minerals produced in the United States during 1990, \$1.2 billion is attributable to Federal land—and therefore could be covered by H.R. 322.

For comparative purposes, you should know that all State lands share in the proceeds from minerals mined on State lands in all western States. The royalty rates range from 2 to 10 percent. On private lands, royalties are usually similar to those imposed on Federal and State lands and are usually set on a gross-income basis for metals—H.R. 322, as amended, would reserve an 8-percent royalty on the net smelter return or gross income from mining.

The Federal royalty base for hard rock minerals is already small and is rapidly diminishing as mining operations take patent to the land at 1872 prices. Based on current patenting actions pending before Secretary Babbitt, the Federal production base may be reduced by more than 50 percent from 1992 levels before the end of this year. If so, revenues from an 8-percent gross income or net smelter return royalty could be far below administration and CBO estimates.

Patents are, simply put, fee-simple title. The option to take title to valuable mineral lands through the patent provisions of the mining law would be eliminated by H.R. 322. The mining industry has resisted efforts to eliminate the patent provisions even though it is not necessary to take title in order to extract minerals from a mining claim.

The requirements to gain a patent have not changed since 1872. After fulfilling several requirements, a lode claim can be acquired, or patented, for \$5 an acre while a placer claim can be patented for \$2.50 an acre.

It is estimated that the Government has issued over 65,000 mineral patents encompassing 3.2 million acres of land, roughly the size of Connecticut. According to GAO, in 1988 the Government received less than \$4,500 for 20 patents that transferred title to land valued between \$13.8 and \$47.9 million.

While approximately 90 percent of all patents were issued prior to World War II, in recent years, mining companies have resumed applying for patents, presumably in an effort to avoid paying royalties under the new law. Currently, there are 583 patent applications pending which, if approved, will transfer over 200,000 acres of mineral-rich public lands to private entities for a fraction of their real value.

An example of the rapid drain of public wealth occurring under the existing law is seen in the applications made by

a Canadian mining company to gain patent to several thousand acres of public land encompassing the Goldstrike Mine in Nevada. This property, which is ranked second out of 25 top gold-producing mines in the United States, is expected to produce nearly 10 percent of total U.S. gold output and will continue to yield approximately 1 million ounces of gold per year for the next decade. The mining company will pay the United States approximately \$15,000 in patent fees for this multi-million-dollar property.

H.R. 322 would impose the reservation of an 8-percent net smelter return, or gross income royalty, to address this deficiency in existing law. In addition, the bill would permanently extend the \$100 claim maintenance fee enacted as part of budget reconciliation. It is estimated that by fiscal year 1998, the royalty would be generating approximately \$114 million per year.

Not only have we ignored the option to collect a fair return on these minerals, we also do not have a Federal law to regulate hard rock mining. In its absence, Federal agencies have cobbled together a combination of rules, programmatic agreements and cooperative agreements with States to regulate mining on Federal lands. Environmental statutes can moderate the adverse effects normally associated with mining, however, these laws do not provide a comprehensive regulatory framework to govern hard rock mining activities on Federal lands. Further, certain environmental laws do not specifically address hard rock mining. For instance, RCRA exempts most hard rock mining from its hazardous solid waste management requirements and does not specifically regulate mining waste under the nonhazardous waste program.

This is significant in light of the technology used to extract minerals today. Gold mining—for instance—requires the processing of large amounts of material since the metal occurs in concentrations best measured in parts per million. An estimated 620 million tons of waste are produced in gold mining each year. The Goldstrike mine in Nevada, moves 325,000 tons of ore and waste to produce 50 kilograms of gold each day.

Perhaps, more significantly than the amount of earth moved, however, is the process known as heap leaching which is required to leach particles of gold from soil and rock. Huge quantities of rock are ground up into pebble-sized pieces which are then piled into gigantic heaps sitting on top of impenetrable liners. A weak cyanide solution is then showered on the top, which leaches out the gold. The pregnant solution is then collected and processed to release the gold.

Since the mid-1980's, the number of cyanide leach operations in the West

has exploded and now accounts for 35 percent of U.S. production. While RCRA does address the hazardous wastes generated by cyanide mining, there is still no federal law in place to assure that this very complex, and potentially dangerous, technology is properly governed on Federal lands.

This is not to say that I am opposed to mining. Indeed, I see tremendous economic benefits to the Nation from mining. For instance, since the onset of this modern-day gold rush, U.S. production has grown tenfold, making the United States the second ranking gold producer in the world.

As of August 31, 1993, there were roughly 300,000 mining claims, and 2,000 to 3,000 operations, located on public lands throughout the 12 Western States including Alaska, with most mineral activity occurring in Arizona, California, Nevada, and Utah.

H.R. 322, as amended, would establish in law a Federal permitting, bonding and reclamation program to govern hard rock mining operations on western public domain lands. Further, the bill, as amended, would modify the way hard rock mining activities are factored into Federal land use planning so that areas unsuitable for mining would be identified and avoided before significant investment had been made in these areas.

Mitigating the hazards of abandoned hard rock mines is a critical goal in reforming the mining law of 1872. Abandoned sites pose serious problems ranging from simple safety hazards to hazardous chemical dumps to runoff of acidic mine drainage carrying toxic concentrations of heavy metals. Of particular concern are reports of injuries and deaths which are attributed to these sites each year. The General Accounting Office, the Western Governors Association, the Department of the Interior's inspector general, and the Mineral Policy Center have each concluded that there are tens of thousands of abandoned mines that are serious environmental problems, including 50 on the Superfund national priorities list.

Mr. Chairman, during the past 10 months, the Subcommittee on Energy and Mineral Resources has held 2 hearings and held countless meetings as well as several caucus meetings on the reform of the 1872 mining law. I believe we have produced a product which, while not totally acceptable to either of the sides, cuts down the middle. During subcommittee and full committee discussion we debated the issue at length and in depth. I believe we bring to the House a bill which reflects a consensus view—at least as far as the Democrats on our committee are concerned.

The bill would extend the \$100 claim maintenance fee enacted as part of the 1993 Budget Reconciliation Act for existing claims and would impose a \$20 claim maintenance fee for new claims,

which at 40 acres would be twice as large as 20-acre lode claims located under the 1872 law.

The bill, as amended, would reserve an 8-percent net smelter return royalty from production on claims to pay for the reclamation of abandoned hard rock mines on Federal lands in the West, which is to be accomplished through the establishment of an abandoned locatable minerals mine reclamation fund.

This fund would address health, safety, and environmental problems associated with past mining practices.

The bill would establish in law a reasonable, but strong program to govern hard rock mining on Federal lands.

In closing, I would like to add that we have reached agreement on amendments which the Agriculture Committee, the Merchant Marine and Fisheries Committee, and the Energy and Commerce Committee have requested. We will offer a group of amendments on their behalf when the bill comes to the floor.

□ 1450

Madam Chairman, I reserve the balance of my time.

Mrs. VUCANOVICH. Madam Chairman, I yield 3 minutes to the distinguished gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Madam Chairman, I rise today in opposition to H.R. 322. From Wall Street, to Main Street, Delta, UT, people recognize that if this bill passes, it will eliminate a significant portion of the rural West's economy and move the mining industry to the Pacific rim, the former Soviet Union and Latin and South America.

Madam Chairman, rather than this bill, I would like to pass a bill on the House floor that would allow for a viable mining industry and answer legitimate fiscal and environmental concerns.

H.R. 322, the Lehman substitute, is not that bill. I will be offering later amendments that I feel will make this bill a better vehicle, and hope that they will be accepted.

As I have studied this bill, which is the Lehman substitute to the original H.R. 322, it strikes me that it represents simply a shuffling of the original H.R. 322. We all know the problems of the original H.R. 322.

Perhaps the only meaningful change from the original text that signals understanding of concerns that have been raised, deals with certainty in permitting of operations. Besides that, this bill contains the onerous provisions relating to reclamation, unsuitability, royalties, claim conversion, security of tenure, fees, and citizen suits that will bring about an end to jobs, and destroy a viable U.S. industry.

The mining law is a complex, but working, system of land tenure. What H.R. 322 does is make the United States

uncompetitive with regards to mining. If you support shipping jobs overseas, then support this bill, but if, like myself, you believe that we can have a balance of mining and resource protection, then your choice is simple.

This bill fails to recognize that we can have a viable mining industry, and at the same time provide for environmental protection.

Mr. LEHMAN. Madam Chairman, I yield 5 minutes to the gentleman from California [Mr. MILLER], the chairman of the full Committee on Natural Resources.

Mr. MILLER of California. Madam Chairman, the House today takes up the very critical and overdue task of reforming the Nation's mining law.

We often hear the phrase, "If it isn't broke, don't fix it." Madam Chairman, after 121 years of massive environmental damage, billions of dollars in lost revenues for taxpayers, and bureaucratic chaos that ties the hands of legitimate industry, we must all agree that the Federal mining program is broke.

The question is how to fix it.

H.R. 322 is going to bring the mining program into the 21st century; about a century late, but at least we are making progress.

The bill reported to the House by the Committee on Natural Resources is different from past efforts to reform the mining law. Our committee, including representatives from States with very active mining operations on public lands, has worked exhaustively to develop a bill that is good for the environment, good for the mining industry and good for taxpayers.

Several members of the committee deserve special praise for their work on mining law reform. Congressman NICK JOE RAHALL, who previously chaired the Subcommittee on Energy and Mineral Resources and who drafted the initial version of H.R. 322, has been the moving force behind mining law reform, and deserves a tremendous amount of credit for defining this issue and bringing it to the attention of the Congress.

The new chairman of the subcommittee, RICK LEHMAN of California, has skillfully worked with a very diverse group of Members in fashioning his substitute to H.R. 322, which was adopted by the subcommittee and the committee.

I also want to acknowledge the very constructive role played by other Members who represented their diverse constituencies with great skill and effectiveness despite the significant pressures that have been brought to bear against them from all sides in this issue. KARAN ENGLISH, LARRY LAROCOCO, PAT WILLIAMS, KAREN SHEPHERD, BILL RICHARDSON—they and many other members of the committee have made great contributions to improving this bill and assuring its passage today.

Last, I want to acknowledge the great contributions of Deborah Lanzone, the staff director of the Energy and Mineral Resources Subcommittee, and Jim Zoia, the former staff director. Their work with the many constituencies who are concerned with this legislation has played a major role in helping us to fashion a bill that will successfully modernize the mining program.

Now, I know that some are going to characterize this legislation as the latest chapter in the "War on the West." That characterization is the simplistic and inaccurate response by some to every effort to prod resources management into the modern age: water, timber, grazing, and now mining. But it is not the case.

A sound, modern mining program is good for the mining industry and good for the West. For many years, this program has been in turmoil, with industry incapable of making critical long term decisions because no one knew the final terms of the reform program. Our goal is to provide that certainty, and to provide it within the context of reasonable criteria that allow industry to operate, but that also takes care of the environment and the taxpayer who owns this resource.

The specifics of this legislation are extremely complex. But the principles and goals that underline the committee bill plan are quite straightforward.

We cannot continue the archaic patenting process that requires the Government virtually to give away billions of dollars of public resources for a pittance, as we have done in the hard rock mining program for 121 years. We cannot tell taxpayers that we are looking out for their assets when we allow private interests to capture resources worth \$9 billion for the paltry sum of \$9,000. And yet, that is what is going on right now in the Federal mining program.

That practice must end, and it will end, with enactment of H.R. 322.

The taxpayers who own these resources must receive a fair return from their development. Unlike oil, water, natural gas, coal, even grazing fees, taxpayers receive nothing—nothing—from mining production on public lands. Every year, \$1.2 billion is precious metal is extracted from Federal lands, and the taxpayers don't get a penny. And we must keep in mind that many of these mining companies are making very respectable profits—in the tens of millions of dollars—from this production from public lands.

We must reclaim thousands upon thousands of abandoned mines sites on public lands that present serious health and safety threats to people, to fish and wildlife, and to the environment. Throughout the public lands, there are open shafts, unsafe tunnels, leaking ponds, contaminated rivers and stream, and dozens of other severe

problems that must be mitigated. Cyanide spills in Nevada, South Dakota, Montana and elsewhere have devastated rivers and streams, killed thousands of waterfowl, and jeopardized public water supplies.

Cleaning up these abandoned sites, as H.R. 322 will initiate, will not only remove these blights from our landscape, but also will create thousands of jobs—26 jobs for every million dollars expended on abandoned mine reclamation. In fact, it is ironic that cleaning up old mine sites might well produce more jobs than current and future mining activities in many areas.

Every nickel of the money we raise through the royalty and other fees imposed by H.R. 322 will be deposited in an Abandoned Mines Reclamation Fund to mitigate those past damages.

We must also provide industry with a fair system for the processing of claims and of mining plans, one that assures that mining can continue, safely and profitably, on the public domain. We reject complex, duplicative mandates that will cost industry precious money and time without enhancing the safety of the mining program or the protection of endangered resources.

As part of that planning process, the Secretary of the Interior must have the ability to determine that certain lands are inappropriate for mining because of other values, and that certain lands can only be mined if adequate safeguards are in place to assure restoration and mitigation. This legislation establishes a workable balance of planning, review, and security both for taxpayers, the Government, and for the industry itself, building on existing land use review processes instead of simply fabricating another layer of bureaucracy.

To those who oppose this bill by employing the incendiary rhetoric about a war the West or on the mining industry, I point to the leading voices of the West who embrace reforms even stronger than those in the current version of H.R. 322:

The Arizona Republic of August 31, 1993, says:

H.R. 322 will put some reasonable and long overdue controls on the virtually free access miners and mining companies have had to federal lands since a post-Civil War Congress dreamed up fabulous incentives to speed the settlement and exploitation of the West . . . The Arizona Mining Association knows this, of course, but shamelessly played on the worst fears of working Arizonans to stir some public opposition . . . [H.R. 322] would require of mining the same kinds of responsible economic and environmental conditions placed on other enterprises that glean profit from natural treasures that belong to all Americans. And that's good public policy.

The Sacramento Bee of March 26, 1993, notes:

It's about time the public domain was treated as something other than a bargain basement.

The New Mexican of September 4, 1993, which notes that mining is re-

sponsible for only one-sixth of 1 percent of all jobs in new Mexico, says:

The 1872 Mining Act has allowed mining companies to trash vast areas of the Four Corners states while paying not a dime for the copper, lead, silver and gold they gouged from the earth . . . The mines' only real argument against reform is that they've had it their way with the West for 120 years, and that any changes could cut into the profits. With Phelps Dodge alone making profits of a quarter of a billion dollars a year, that's not much of an argument.

And these views are shared broadly by the people who live in the West as well. Nearly 8 in 10 New Mexicans want regulation of hard rock mining to be at least as strong as that for coal; in Montana, according to a poll by the Northern Plains Resource Council—which is composed of farmers, ranchers and environmentalists—88 percent of the people favor reform, 77 percent want regulation as tight as for the coal industry, and 60 percent want mining companies to make royalty payments.

The Natural Resources Committee has given exhaustive review to this issue. We have met with dozens of representatives of the mining industry, labor groups, environmentalists, State and local officials and many others. The committee passed an earlier version of the bill last year, and the House considered it just prior to adjournment, but we did not have time to complete its consideration.

During our committee's action, we took all amendments and debated every point raised. No one was denied an opportunity to participate in this process, and we have come to the floor similarly under an open rule. As a result, I am certain that the bill that emerges from the House will represent the strong position of this body. That will give us greater leverage in addressing the minimalist and unacceptable Senate version, which was described even by its supporters as a symbolic measure intended only to get to the conference committee.

Madam Chairman, as we close in on the beginning of the 21st century, the time has come to bring the mining program of the 19th century at least into the 20th. I would hope to construct a 21st century solution; I will be satisfied with a 20th century version. I think we all will be able to go home to our constituencies proud in the knowledge that the last remaining initiative of the Ulysses Grant administration has at long last been brought up to date.

But having come this far, having built a solid coalition in support of reform, we cannot allow the present economic and environmental disgrace to continue.

And yet, if we do not act, that is exactly what will happen. Failure of this Congress to pass H.R. 322 will leave in place an abominable program where tens of billions of dollars in taxpayer owned resource will be literally given over to private interests for a few thousand dollars. It will leave in place the

remnants of a system who poisonous and hazardous blight endangers our people and our environment in State after State throughout the Union. And, not incidentally, it will leave in limbo a mining industry that, even without this reform, has been packing up and moving to other nations in recent years because of the uncertainties of the American program.

A hundred years ago, this Congress enacted a series of resource laws on water, timber, mining, and land ownership that were designed to encourage the settlement of the West by the generous provision of subsidies. The West is settled; the goal has been achieved; and yet the subsidies linger on, decade after decade, simply to benefit the few at the expense of the many.

At a time when we are asking all Americans to tighten their belts, we can ask the mining industry to do its fair share, to pay reasonable fees for the extraction of public resources, and to leave the public lands in useable condition when the mining is finished. Those are the goals of H.R. 322, and I would hope the House will give this balanced bill its strong and bipartisan support.

□ 1500

Mrs. VUCANOVICH. Madam Chairman, I yield 2 minutes to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Madam Chairman, I thank the gentlewoman for yielding me this time.

Madam Chairman, I would like to express very serious concern about H.R. 322. Not only does this legislation duplicate existing Federal regulatory programs such as the Clean Water Act and Clean Air Act, it runs havoc over state primacy. State primacy has been the guiding principle for environmental regulation and reclamation of mining, particularly in Western States.

H.R. 322 federalizes regulation of mining operations on public lands—which, comprise such an important portion of available lands in more Western States—as well as on most contiguous non-Federal lands. Under this bill, there would be no real role or authority for State-run programs for regulating mining. There would only be costly duplication or conflicts with State programs. There would also only be the opportunity—through the cooperative agreement provisions—for States to enforce Federal law. Because of the conflicts with existing programs, H.R. 322 promises to present a stream of jurisdictional problems resulting, of course, in legal challenges.

H.R. 322 modifies and infringes upon State authority for water rights and water allocation, effectively establishing new Federal Reserve water rights without a prior claim.

Importantly, because the Cooperative Agreements provisions of the bill extend its reach to mining operations on

contiguous private and State lands, H.R. 322 potentially will impact upon existing mining properties on States lands which generate State royalties. In most Western States these mineral royalties are dedicated to education.

Madam Chairman the Western Governors Association has expressed serious reservations about this bill. Let me quote from a June 8th letter sent to Chairman MILLER and Chairman LEHMAN by Gov. Michael Leavitt of Utah on behalf of the Western Governors' Association:

We are convinced that effective coordinated regulation will not occur under the Federal program delineated in H.R. 322. As the House and senate work together to formulate a program, we urge you to utilize the existing framework of State primacy programs, State and Federal laws, and memoranda of agreement between Federal and State agencies. We can ill afford, at either the Federal or State level, the excessive cost, unnecessary duplication, and conflicting legal requirements of the non-delegable Federal regulation imposed in H.R. 322.

In conclusion let me just say this; one of the most important principles of our representative democracy is that the government working closest to the people is the most responsive to and understanding of the needs of those people. This is important to keep in mind as we consider the debate on mining law reform.

The bill before us today violates this crucial tenet. The second title of H.R. 322 strips away State primacy in the regulation of mining activities. It preempts State control and replaces this structure with a rigid Federal program. In doing so, the bill's supporters are dooming a host of workable and effective State programs.

States have vastly more experience with hard-rock mining regulation than Federal regulators. Even if I was convinced that a Federal program was workable, I have a hard time believing that a bureaucrat in Washington has any idea of how a mine in Colorado would be regulated. Or the important differences between mining conditions in the desert of Nevada versus mining in the hills of West Virginia.

Certainly, the mining law needs changes. But these are not the changes we need. I urge you to reject the bill before us today, and to work together on a bill which will protect States rights and protect our domestic mining industry.

Madam Chairman, I feel that the people in Colorado know a lot more about running their State than the Federal Government.

I include for the RECORD the Western Governors' Mine Task Force recommendations regarding H.R. 322, the Mineral Exploration and Development Act of 1993. And I also include as a part of the RECORD the Proposed Policy Resolution dated June 22, 1993.

The material referred to follows:

WESTERN GOVERNORS' ASSOCIATION MINE WASTE TASK FORCE RECOMMENDATIONS REGARDING H. 322, MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993 (1872 MINING LAW REFORM) JUNE 8, 1993

SUMMARY AND RECOMMENDATIONS

Effective regulation of hardrock mining and reclamation operations should utilize existing state primacy programs, state and federal laws, and memoranda of agreement between state and federal agencies; focus on regulatory gaps; advance field science instead of tracking administrative procedures; support transfer of evolving regulatory practices; and require federal agency coordination with state primacy programs. As currently drafted, these objectives cannot be met under proposed H. 322, Mineral Exploration and Development Act of 1993.

The Mine Waste Task Force of the Western Governors' Association (WGA), which includes regulatory program representatives from seventeen states, supports comprehensive environmental regulation of mining operations. This support is evidenced in state laws, in ongoing state coordination with federal land regulators and land managers, and in the states' commitment of time and technical expertise in recent efforts to revise mine waste regulation through reauthorization of the Resource Conservation and Recovery Act (RCRA). All western federal land states have primacy for environmental regulation of mining operations on federal and non-federal lands through the Clean Water Act, the Clean Air Act, and RCRA. All but one of the western states have comprehensive state regulatory programs, enforced in coordination with federal land management agencies, which set criteria for permitting exploration, development, and reclamation of mining operations, with provisions for financial assurance, protection of surface and ground water, designation of post-mining land use, and public notice and review. These state programs are not stand-alone state programs. They consist of coordinated state and federal regulations, based on federal, state, and state-primacy laws, and memoranda of agreement which provide coordination, reduce duplication, and promote cost-effective on-the-ground regulation.

Initially, the WGA Mine Waste Task Force thought it was possible to revise H. 322 to meet the goal of comprehensive environmental regulation of mining operations. However, as structured, H. 322 cannot meet that goal. Instead, H. 322 establishes a duplicative, federalized program which preempts state and state primacy program authority and creates an unworkable, federal regulatory structure which fails to take into account the mixed land ownership patterns of western states. The federal criteria and standards proposed in H. 322 are too prescriptive and inflexible to deal with hardrock mining operations and regional conditions.

In order to be effective, the focus of Title II of H. 322 should be changed. Experience indicates that a state primacy approach to regulations works. That framework is recommended. The state primacy approach also provides the opportunity for states to develop equivalent regulation at the state level for non-federal lands. It is not likely that a state-level regulatory program will be developed in conjunction with the federal structure of H. 322. The following comments identify the problems and recommendations which, when taken together, provide solutions to the overbroadened reach of H. 322. The Task Force comments focus on Titles II, III, and IV, but should not be construed to support other unaddressed portions of H. 322.

UTILIZE EXISTING FEDERAL AND STATE-BASED
REGULATION

1. Existing state primacy programs including the Clean Water Act, Clean Air Act, RCRA, existing federal and state laws, and memoranda of agreement from an effective state-federal framework for regulation of mining and reclamation.

2. As the need for a federal mining reclamation program has been debated, there have been examples cited of mining operations which have degraded the environment. In some cases, the examples are abandoned, pre-law operations which require reclamation. Other abandoned operations may be reclaimed through re-mining. Yet other examples are active or suspended operations which require more effective regulation. It is a mistake to think the need for effective regulation can be met with a new federal regulatory program.

What is needed is funding and support on federal and state levels for existing regulation. Where gaps are identified in programs, they should be corrected with necessary legislation or rulemaking. Funding which would otherwise go to administrative costs of establishing and implementing a new federal umbrella of regulation, should instead be allocated to more effective on-the-ground implementation of existing regulation. Even the oft-cited Summitville mine exemplifies the need for sufficient staff and funding to implement existing regulation, not a lack of necessary federal regulation.

Existing cooperative state-federal regulation now provides some uniquely effective means of addressing mining regulation. When the cumbersome federal review and appeals process is ineffective, states such as Utah, through state regulatory agencies and boards, have often enforced permit and reclamation requirements on federal as well as non-federal lands. Where shortage of staff and funding are common, federal and state agencies, through MOAs, have designated a lead agency for permitting and inspection activities. Although federal regulation has not required financial assurance for reclamation of small (five acres or less) mining and exploration operations, some states have enacted state statutory requirements for reclamation of all lands, federal and non-federal. Financial assurance is already required for larger operations, and most states have MOAs with federal agencies to avoid duplicate "bonding" requirements.

3. Title II federalizes the regulation of mining operations on federal lands and contiguous non-federal lands. There is no authority or role for state regulation under Title II unless the state chooses, through a cooperative agreement, to enforce federal law, not state law, on all federal and non-federal lands. There is no opportunity for delegation from the Secretary of the Interior to the state for regulation of federal lands or contiguous non-federal lands.

4. Section 203(c) should be amended to provide an opportunity for state-based regulation. The term "Cooperative Agreement" should not be used in the restrictive sense of enforcement of federal regulations, but rather delegation of authority to regulate under a state-based program on federal lands. Amend as follows:

"(c) Cooperative Agreements—Any state with existing state laws and regulations, or any State which following enactment of the Act adopts laws and regulations that are consistent with the requirements of section 201 (l), (m) and (n) and section 202 of the Act may elect to enter into a cooperative agreement with the Secretary to develop a State

Plan which provides for state regulation of mineral activities subject to this Act on Federal lands within the State, provided the Secretary determines in writing that such state has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provisions of the Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the state, prior to approval by the Secretary of a new cooperative agreement, provided that such existing cooperative agreement is modified to fully comply with the applicable regulatory procedures set forth in sections 201 and 202 of this Act. If pursuant to this subsection the State elects to regulate mineral activities subject to this Act, the Secretary shall reimburse the State for its regulatory costs in an amount approximately equal to the amount of the Federal Government would have expended for such regulation if the State had not made such election. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the State his duty to approve land use plans on Federal lands, to designate certain Federal lands as unsuitable for mining pursuant to section 204 of this Act, or to regulate other activities taking place on Federal lands. The Secretary shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment."

Delete existing subsections (d) and (e).
The recommended changes strengthen the cooperative agreement subsection of the legislation, encouraging reliance on state programs rather than creating a duplicative, overlapping, and confusing set of federal regulations. Federal environmental laws to protect air and water quality are generally implemented through state programs. Cooperative agreements would help to ensure that the reclamation plan and standards developed for a specific operation are consistent with specific permits to protect air and water quality. Such agreements would also provide a framework for interagency coordination of financial assurance requirements, inspections, and enforcement actions.

5. H. 322 creates new requirements for federal rulemaking and new opportunities for legal challenges and delays, which will result in expenditures for judicial processes rather than on-the-ground regulation and reclamation.

6. Legislation should focus on gaps in existing programs, such as those identified by the WGA Mine Waste Task Force in conjunction with EPA, state, environmental, and industry representatives as part of RCRA reauthorization.

7. A plan of operations should not be required for exploration activities just because the activities include construction of access roads. Construction and reclamation of access roads, including financial assurance, are currently regulated by the BLM and Forest Service under Special Use Permits. Section 201(b)(2)(B). The extensive environmental requirements of the Title II Plan of Operations are unnecessary for access road construction and reclamation.

A plan of operations is also not necessary where the environmental impact of exploration is insignificant.

8. Judicial review related to operations should be conducted by a state or federal court in the jurisdiction of the mining operation. Judicial review should not be utilized until all administrative remedies have been exhausted. Recognize the ability of states to

establish rules at the state level, in accordance with state primacy program requirements. Section 202(g).

AVOID NEW, OVERREACHING FEDERAL PROGRAM

1. Avoid developing a new federal program which duplicates existing state laws. Instead, develop a program which compliments and enhances existing state and federal law. Memoranda of Agreement already provide a workable framework for state-federal regulation of mining operations. Many states have already established MOAs with federal land management agencies. For example, Idaho created a Mining Advisory Committee several years ago to coordinate the regulation of mining operations. The Committee's membership includes three state agencies, four federal agencies, and environmental and mining industry representatives. After three years of informal cooperation, these parties are about to sign a Memorandum of Understanding to formalize their partnership.

2. Title II of H. 322 creates an umbrella of new federal regulation which duplicates existing programs. This approach to regulation is duplicative, expensive, and creates jurisdictional problems which will result in legal challenges rather than effective implementation.

3. The Applicant Violator System (AVS) is excessive and unworkable as currently drafted. Section 201(g)(3)(A).

It is appropriate to have a level of coordination between states and with federal agencies. However, as defined in H. 322, the system would be more cumbersome than the existing multi-million dollar Office of Surface Mining (OSM) system, and will still fail to resolve problems where operations are conducted or owned by non-U.S. companies. Once again, significant amounts of money would be spent on administrative systems and legal challenges, rather than for on-the-ground compliance.

Also at issue is who has control of the operation. Extending AVS to claim holders and "affiliates" could involve hundreds of people with no real ties and certainly no control over the operation.

Revisions to this section should be made in recognition of the fact that problems do occur and should be allowed to be corrected within the jurisdictional context in which they occur (i.e., Clean Water Act, RCRA, Clean Air Act, etc.) without jeopardizing other permits or operations. Taken in the extreme, as has sometimes occurred with SMCRA, a simple administrative or non-environmental violation could result in denial of approval of a plan of operations. This is neither fair nor justified. Furthermore, some of the AVS provisions incorporated in H. 322 have been found to be unworkable under SMCRA and should therefore be deleted or revised.

4. The amount of financial assurance retained during the reclamation phase should be based on the cost of ensuring successful revegetation, not on a percentage set in statute. Section 201(l)(5)(A). The cost of ensuring successful revegetation of a site may be more or less than 50 percent of the total financial assurance, depending on the specific mining operation.

5. Criteria identified in Section 201(m) and 201(n) for reclamation and other environmental standards will be extremely difficult to achieve in many mining circumstances. The type of reclamation standard proposed may have been possible with coal mining, but it is not possible to generalize to the wide variety of mining methods with other minerals. Amend Section 201(n) to read as follows.

"The Secretary shall work with representatives of states, mining industry, and environmental groups to develop reclamation standards for the purposes of this Act. The Secretary, working with these affected groups, shall propose standards no later than 12 months following passage of this Act. The standards shall include, but not necessarily be limited to, soils, stabilization, erosion, hydrologic balance, grading, revegetation, excess spoils and waste, sealing, structures, and fish and wildlife".

Strike the rest of subsection (n).

The geography of states is so different that there should be flexibility for tailoring requirements to specific circumstances. For example, New Mexico's new reclamation law, which was endorsed by environmental groups, does not require contouring to natural topography during reclamation as it is not always appropriate for non-coal mining operations. New Mexico's law calls for reclamation to achieve a self-sustaining ecosystem consistent with approved post-mining land use while meeting all environmental standards. There is no mention of natural topography. By allowing for this flexibility rather than creating different and conflicting standards for mining on federal and non-federal lands, appropriate site specific solutions are encouraged.

6. Inspection and enforcement should not be conducted by Office of Surface Mining (OSM) personnel. Section 202(c)(2). SMCRA is a distinctly different law, and OSM staff are trained to enforce and oversight that law. The standards, perceptions and practices which govern the coal regulatory program should not be carried over to federal hardrock mining regulation.

This is an opportunity to use MOAs between the state and the BLM and Forest Service to designate a lead agency for inspections.

7. State and federal agencies should have the authority to hold one bond jointly. Section 203(a)(2). It is wasteful to establish regulation which will result in duplicate bonding.

Joint bonding is occurring already in many western states through the use of MOAs. The process is working effectively and avoids the need to tie up capital in duplicative financial sureties.

H. 322 TITLE II SHOULD NOT SUPERSEDE EPA AND STATE PRIMACY JURISDICTION

1. Title II establishes jurisdiction in the Department of the Interior which attempts to override existing EPA and state primacy jurisdiction under the Clean Water Act, the Clean Air Act, and RCRA. While there are savings clauses within Title II, specific findings which the Secretary is required to make contradict the existing jurisdiction of EPA and EPA delegated state primacy programs. If EPA or state primacy program jurisdiction is to be altered or subrogated, those changes should be made within the existing environmental acts, and under the jurisdiction of the environmental committees of the House and Senate, not within separate authorizations to the Department of the Interior under the 1872 Mining Law.

For example, state primacy programs already issue and regulate: Surface water point source discharge permits, Cyanide leach facility permits, Process water discharge permits, Storm water discharge permits, Ground water protection permits, Facility permits under the Clean Air Act, and RCRA waste management permits.

Existing state enforcement authority includes fines, such as \$10,000 per day for a violation of the Clean Water Act. Federal funds would be better spent in support of existing

regulatory programs, rather than in development of a duplicative federal regulation within the Department of the Interior.

2. Mining permit applications should reference compliance with existing requirements of EPA and EPA-delegated state primacy programs, rather than providing data for separate Department of the Interior (DOI) compliance or permit determination. For example, Title II should reference compliance requirements of existing environmental law, e.g., Clean Water Act, rather than require submittal of data or plans regarding surface and ground water monitoring. Section 201(d) and (e). Such environmental impacts are already regulated through existing environmental programs.

3. Compliance requirements should reflect existing requirements of EPA and EPA-delegated state primacy programs. Section 201(l)(4)(B) and (1)(7). Compliance should be with existing laws, not duplicate requirements of Title II.

4. Standards for regulation of mining activities such as cyanide leaching operations are regulated under existing EPA and state law. Separate standards set by the Secretary are not necessary. Title II should reference existing laws. Section 201(o). Establishing a separate regulatory authority under DOI creates conflict and duplication with existing law.

5. Because portions of mining operations are regulated under existing EPA laws which include determinations of "Best Available Demonstrated Control Technology," any determinations regarding BACT made by the Secretary of the Interior should be directed to be consistent and coordinated with the appropriate federal or state primacy permits and rules. Section 201(p)(2). It is inappropriate and contradictory to have two agencies setting standards or making separate determinations of BACT.

6. The monitoring reports and jurisdiction for enforcement operations and monitoring should be with EPA or the state primacy program for all environmental operations under existing laws. Section 202(a)(2)(d). If two agencies require monitoring of the same activity, conflicting enforcement actions and double jeopardy problems will result.

7. The authority granted to states through numerous separate federal environmental acts cannot be altered except directly within the respective act. Sections 203(a)(1) and 203(b)(1) should be reworded to recognize the full authority of EPA-delegated state primacy jurisdiction on federal lands.

UNSUITABILITY CRITERIA SHOULD NOT BE MORE STRINGENT FOR MINING

1. The review standards for determining lands unsuitable for all or certain types of mineral activity are too broad. In many cases, the standards used to deny mining operations are more stringent than the standards set for other uses of public lands.

2. As written, virtually any land unit could be declared unsuitable.

Section 204(e) sets standards and procedures for unsuitability reviews and areas in which mining is to be prohibited. There are administrative problems in this section, including failure to establish timeframe to complete the identification of such lands. The review standards in 204(e) in several instances exceed the standards applied in other environmental laws. A few examples are found in (1)(D), (1)(E), (1)(F) and the open ended catchall (2)(F). Many of these provisions should be deleted or significantly rephrased. In response to questions before Congress, even Secretary Babbitt conceded these provisions would be impossible to administer.

3. Inequitable standards of acceptability are applied to mining compared to other land use activities. These types of constraints are inflexible, do not allow for design of effective mitigation, nor even allow mitigation potential to be considered.

4. Land use and unsuitability determinations are clearly within the purview of reform of the 1872 Mining Law. The states generally support the concept that some lands are too ecologically sensitive to lend themselves to mining activities. The Task Force has wrestled with general criteria for unsuitability and would be happy to share some of those ideas with Congress. The criteria and decision-making process for determining lands as unsuitable for mining must be clearly defined so that they are fair and workable for all parties. Furthermore, there must be provisions for appeals and variances.

5. Unsuitability criteria in H. 322 would make it virtually impossible to initiate new exploration and mining operations and potentially impossible to sustain some existing operations. Under Section 204(e), lands are deemed unsuitable for all or certain types of mineral activity if:

Water quality or supply would be substantially impaired. Section 204(e)(1)(A). "Substantially impaired" is a broad, undefined term;

Activity would cause loss or damage to riparian areas. Section 204(e)(1)(D). No opportunity is provided for mitigation or establishment of alternative areas;

Productivity of land is impaired. Section 204(e)(1)(E). No provisions are made for temporary designation of land for surface uses related to mining as opposed to grazing or forestry;

"Candidate species" for threatened and endangered species status are adversely affected. Section 204(e)(1)(F). Candidate species is a much broader category than Category I or II listed species and significantly extends the prohibitions of the Endangered Species Act; and

Activity would result in loss of wetlands. Section 204(e)(2)(D). No opportunity is provided for mitigation or alternative establishment of wetlands.

6. The focus should be on feasibility of reclamation, not on unsuitability. Procedures already exist within BLM and Forest Service planning laws to protect certain land uses, including an Area of Critical Environmental Concern (ACEC), and to designate where mining should not occur.

7. The feasibility of reclamation would best be evaluated after reviewing the plan, not before.

8. Furthermore, the timeframes for implementation of unsuitability provisions in H. 322 are unworkable, and will serve only to establish grounds for citizen-initiated lawsuits.

9. There is a savings clause which would appear to exempt existing operations. However, the exemption exists except where a citizen petition is filed. Section 204(d)(2) and (g). Thus, an existing operation could be determined retroactively to be curtailed due to an unsuitability determination.

10. Section 204(f) provides for a review of administrative withdrawals with a view towards opening these lands for location. Yet the unsuitability determination would have the same effect as the withdrawal. There is no need for withdrawals when the agency can say "no" based on technical findings regarding reclamation and land use.

STATE WATER JURISDICTION IS PREEMPTED IN H. 322 TITLE II

1. State authority for determinations regarding water rights and allocation are

modified by H. 322 Title II, thus creating federal reserve water rights without prior claim.

2. Lands may be determined to be unsuitable if the water supply (quantity) is impaired. Yet, state water laws provide for diversion or appropriation of groundwater encountered during mining operations. The restriction in H. 322 is an infringement of state water rights jurisdiction.

3. It should be clearly stated that the provisions of H. 322 will not supersede state water law.

RECLAMATION OF ABANDONED MINES IS A PRIORITY

1. Abandoned mine reclamation should be the priority for funding. It was the initially-stated purpose for utilizing royalties in early drafts of 1872 Mining Law reform.

2. Title III of H. 322 as now written is a federally-administered program, similar to the abandoned coal mine fund under OSM. While the OSM program ultimately became functional, and largely implemented by the states, it still is plagued with problems. The BLM, not OSM, is the more appropriate agency for administration of grant funds.

3. Allocation processes proposed in H. 322 could result in "pork barrel" projects. For example, states not eligible for the coal reclamation funds are given priority over those which participate in the existing SMCRA abandoned mine reclamation program. This may seem on the surface to be a good idea but it does not necessarily result in funds allocated to meet the greatest needs or environmental benefits. Furthermore, states which currently conduct SMCRA reclamation programs cannot by law use SMCRA reclamation funds to alleviate environmental problems until they have reclaimed health/safety priorities. For the wisest use of funds, to achieve the greatest environmental improvements, a minimum state program funding level should be established, with allocation of additional funds based on a prioritized inventory.

4. In the final analysis, the states are the best entities to decide on project priorities within their own boundaries. The majority of funding should therefore flow to state programs rather than to federal agencies which will focus only on problems within the discrete boundaries of their management units. With state management, the needs for remediation on federal and non-federal lands would be prioritized.

5. The "allowed" projects for reclamation and restoration should not be constrained by the list of situations given in Sec. 422(a) (1 through 7). For example, it is not clear that water pollution created by abandoned milling and processing operations could be reclaimed since it is not specifically listed. The language should provide flexibility in designating projects.

6. The WGA Task Force has long supported a program with funding for reclamation of abandoned hardrock mines. However, state testimony has indicated that there is insufficient funding to complete abandoned mine reclamation with the revenue sources identified in H. 322. The sufficiency of reclamation funding is further threatened by the expense of Title II regulation. Neither the public nor the state and federal agencies are served well by a program which establishes authority, but lacks sufficient funding to conduct reclamation of abandoned sites.

7. Section 301 (d)(2) is a necessary element to allow states and their contractors to remediate mines without fear of CERCLA liability. It is recommended that remining and reprocessing of mine wastes by private or

public-private ventures should also be exempt from liability.

8. Section 424(b) should be amended to designate only one reclamation program per state. If a SMCRA Title IV program exists in a state, it should also be the reclamation program under hardrock reclamation.

9. Establishing inventories and priorities for abandoned mine reclamation ought to be directed by a single agency: the state, where a SMCRA reclamation program is in place, or the state, BLM or Forest Service as appropriate in other situations. The BLM and Forest Service are already developing inventories under the storm water provisions of the Clean Water Act. In many cases, states have developed inventories also. This work should be coordinated to avoid duplication and ensure priority reclamation.

DESIGNATION OF FUNDS

1. Forfeited bonds and penalties should be deposited in a trust account for reclamation. Section 201(1), 202(b)(5) and 202(d).

Without clarification, these funds would probably go to the Federal Treasury and would require an act of Congress, to be used for reclamation.

2. Section 410(e) should be amended to read:

"(e) Disposition of Receipts.—All receipts from royalties collected pursuant to this section shall be distributed as follows—

(1) 50 percent shall be deposited into the Fund referred to in Title III;

(2) 25 percent collected in any State shall be paid to the State; and

(3) 25 percent shall be deposited into the Treasury of the United States. Priority for the expenditure of the funds deposited into the Treasury shall be for administration of this Act, with priority given to cooperative agreement regulatory grants pursuant to section 203(c)."

To carry out the duties under this act and to reimburse states for impacts, the states strongly recommend providing funding to states to achieve the purposes of this Act.

GENERAL PROBLEMS AND TECHNICAL CORRECTIONS

1. A plan of operations should be reviewed for completeness before requiring the applicant to publish notice or to make it available to the public. Section 201(f) (1) and (2). Sometimes applications and plans of operation are grossly deficient when initially submitted. Rather than present an unclear or confusing document, it would be better to wait until the plan is determined complete.

2. Section 201(f)(3) should be clarified regarding whether only affected parties who have filed comments may testify at the hearing.

3. Requiring proposed reclamation measures to have been demonstrated elsewhere previously will unnecessarily stifle advancement of the art and the development of new reclamation technologies. It is recommended that the remainder of the sentence after the words "high probability of success" be deleted in Section 201(g)(1)(B).

4. The timeframe in Section 201(h)(4) should be changed from 120 to 180 days for plan renewal submittals. This will ensure sufficient time for review, resolution of deficiencies and completion of public notice requirements.

5. Specific requirements for compliance with plan of operations during reclamation phase should be deleted. Section 201(l)(6). Once an operation is in reclamation stage, the plan of operations may be in conflict with requirements of the plan of reclamation.

6. Reference should be to the plan of reclamation, not the plan of operations. Section 201(l)(8). Reclamation is conducted under the plan of reclamation.

7. The terms "boundaries of the existing plan of operations" and "area covered by the plan of operations" should be amended in Sections 201(h)(3) and 201(i)(1)(B). It is unclear what defines the area.

8. Citizen suit provisions should be clarified. Citizen suits should only be brought if the party has standing. Section 201(e). Occasionally citizen suits are used to harass the state and/or the permittee. Problems which constitute imminent danger to public health and safety or substantial, imminent harm to the environment, as well as public complaints of suspected or alleged permit violations, can be brought at any time to a state agency. In the event that the agency does not satisfactorily respond, citizens should appeal first through the state administrative process which may include petitions or appeals to boards or commissions. After exhausting administrative remedies, a citizen suit may be filed against the permittee in court. The following conditions should also be met:

The state or DOI is not diligently prosecuting an action,

Advance notice of 60 days must be provided by the plaintiff to the state and the permittee of intent to sue, and

Plaintiff must meet standing requirements.

In situations where a citizen believes the state has failed to follow its approved state plan, their appeal efforts should be to the state and/or DOI and not directly to court against the permittee.

9. In Sections 421 and 423, references to the "1991" and "1992" Act should be changed to "1993", reference the current legislation.

10. Encourage reclamation through remining. Section 423(a)(B). As written, H. 322 hinders prompt reclamation of speculative properties. The economics should be used to encourage remining, not limit reclamation.

11. The use of the term "engineering techniques" in the legislation is ambiguous. "Mining or exploration methods" would be more appropriate.

12. Photographs should be allowed for description required in Section 201(e)(1).

13. Include timeframes wherever certain actions are required. For example, Section 201(f)(3) requires a hearing within 30 days. The same is true of Section 201(g)(1) for plan approval. Specify, reasonable timeframes for reviews and decisions by regulatory agency to provide more certainty to operators and citizens.

PROPOSED POLICY RESOLUTION¹

[Western Governors' Association, Resolution 93-D, June 22, 1993, Tucson, AZ]

Sponsor: Governors Leavitt, Roberts and Bob Miller.

Subject: Mining Law of 1872.

A. BACKGROUND

1. Federal lands account for as much as 86 percent of the lands in certain western states, and the Mining Law of 1872 provides the legal mechanism to enter onto, explore for, and mine hard rock minerals on these lands.

2. The Mining Law, through its key provisions of self-initiation and security of tenure, has played an important role in developing this nation's wealth, providing an important source of state revenue, economic activity and employment. The mining industry

¹ Adopted June 22, 1993.

continues to play an important role in the nation's economy and security.

3. The Mining Law has been augmented by a large body of federal, state, state primacy, and local environmental laws and regulations which govern mineral exploration, development and reclamation. All western federal land states have primacy for environmental regulation of mining operations on federal and non-federal lands through the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. Western states also have comprehensive state regulatory programs, enforced in coordination with federal land management agencies, which set criteria for permitting exploration, development, and reclamation of mining operations, with provisions for financial assurance, protection of surface and ground water, designation of post-mining land use, and public notice and review.

4. Valid concerns have been raised regarding abuses of the Mining Law in such areas as transfer of title, diligent development, non-mining use of lands, and access to environmentally sensitive areas. Further, valid concerns have been raised regarding the absence of a fair return, in the form of royalty, to the public from the production of hard rock minerals from federal lands.

5. Congress is considering revisions of the 1872 Mining Law which would replace the existing framework of federal/state regulation with a federal regulatory program governing mining operations on federal lands and contiguous non-federal lands. Under the proposed revision, there is only a minor role for state regulation on federal lands and only if the state chooses to enter into a cooperative agreement to enforce federal law, not state law, on federal and contiguous non-federal lands. The proposed federal program is duplicative, confusing, and in some cases contradicts existing state, federal, and EPA-delegated state primacy regulation.

6. The proposed law establishes an abandoned mine reclamation program for hard rock mines and provides grants to states and federal agencies to accomplish that reclamation.

7. The pending federal legislation would grant the Secretaries of the Department of the Interior (DOI) and the Department of Agriculture (DOA) broad authority to designate lands unsuitable for mining.

8. The proposed law also requires royalty payments for minerals produced on mining claims. The royalty revenue is proposed to be shared with states.

B. GOVERNORS' POLICY STATEMENT

1. The western governors believe that responsible mining activity on the public lands is important and that key provisions of self-initiation and security of tenure are essential to the effective operation of the Mining Law. Because of its importance to security of tenure and the financing of new properties, patenting should be preserved, but amended to correct abuse.

2. Abuses of the Mining Law cannot be tolerated and must be stopped through maximum enforcement. While the mining industry has every right to use the land for locating and extracting minerals, no one should misrepresent the mining use of the land in order to build, for example, condos, apartments, or vacation homes on public lands, or to speculate on those lands. Non-mining uses such as these should be prohibited.

3. The geographic diversity of the states, and the important local economic role played by the mining industry is recognized by the western governors and we believe the states are the most appropriate level of envi-

ronmental regulation. Effective regulation of hard rock mining and reclamation operations should utilize existing state primary programs, state and federal laws, and memoranda of agreement between state and federal agencies. The Mining Law should be amended to provide an option to states for regulatory primacy if state law contains standards equal to or greater than federal standards.

4. The governors further believe that mining activity should be conducted in an environmentally sensitive and responsible fashion. Compliance with and enforcement of all existing federal, state and local statutes and regulations, including reclamation regulations, should be assured.

5. Deficiencies in this existing statutory and regulatory framework or its enforcement should be identified and corrected. Establishing a new, duplicative federal law regulating mining is not a substitute for adequate budget, support, and enforcement of the existing framework of federal and state laws and regulations.

6. If legislation goes forward with provisions for unsuitability reviews, then the legislation should be amended to require the appointment of a federal advisory committee composed of state mining regulatory authorities, state mineral resource agencies, and environmental and industry interest groups. The purpose of the advisory committee would be to assist the Secretaries of DOI and DOA in the identification of lands unsuitable for mining and in the design of a program for reclaiming historically abandoned mines. Existing land use planning and environmental protection laws should provide the basis for determinations of unsuitability of federal lands.

7. Mine operators should be required to provide bonds or other financial assurance for reclamation of lands disturbed by mining, including cleanup of any water polluted by mining. The constraints of small operations (less than five acres) should be considered.

8. The western governors believe the federal reclamation programs for hardrock mining activities should be designed, as much as possible, to encourage states to seek program primacy. DOI and DOA should be required by statute to cooperatively develop, in partnership with the states, a supporting document which outlines flexible guidance to states to assist in preparing state plans. This document must be guidance order designed to allow states to produce federally approvable plans with the least disruption to existing state reclamation and mine waste programs.

9. Abandoned mined land reclamation on federal and non-federal lands should be conducted at the state level, through existing reclamation programs where possible. Where programs do not exist at the state level, the state should have the opportunity to develop a program.

10. The governors also believe that a fair royalty provides a return to the federal and state government but should not be so high as to cause a significant decrease of mining and exploration activity, the loss of jobs and the negative economic impact on mining communities and domestic mineral production. It also should not result in the loss of competitiveness of mineral production on federal lands with production from other lands. Any federal royalty on hard rock mine production from federal land should be based on profitability, recognizing the cost of producing the mineral commodity, as well as the cyclical and international nature of minerals markets.

11. The Mining Law reform legislation should be amended to prohibit federal administrative charges on the states' share of mineral royalty payments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. Direct staff to work with the WGA Mine Waste Task Force to develop, in cooperation with the appropriate congressional staff, a regulatory structure for hard rock exploration, development and reclamation for federal lands based on existing federal, state and state primacy programs. Inform and coordinate with governors as program is formulated.

2. Staff is to work with states to review and report on methods for determining and collecting royalties based on profitability.

3. Staff will work with states to review on methodology for unsuitability determinations.

4. This resolution is to be transmitted to the Secretary of the Interior, the Secretary of Agriculture, the House and Senate Natural Resources Committee Members, Chairmen of the House and Senate Environmental Committees, sponsors of the proposed legislation, and the western states congressional delegations.

Mr. LEHMAN. Madam Chairman, I yield 3 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Madam Chairman, I thank the gentleman for yielding me this time.

Madam Chairman. If today's vote were on final passage of the final legislation reforming the general mining law, I would have reservations about how to vote and so would others. As my colleagues know, the Senate passed a mining law reform bill in the dead of night last spring, justified as a ticket to conference. So, today the House considers its ticket to conference.

America does need mining reform. This Nation is a far different place from 1872, and the rules of that law, in which the right to mine is secured if it can be done at a profit, are inappropriate in today's world.

I want to thank the chairmen of the subcommittee and of the full committee for working with those of us from the West who support mining reform but who had great concern about the Rahall bill's provisions which would have unnecessarily impeded mining from going forward on public lands.

The Rahall bill would have required a nationwide study of lands as to their suitability for mining and would have imposed such broad criteria that the only thing certain was that unsuitability decisions would have been tied up in the agencies and then in the courts for decades. The chairman of the subcommittee worked with those of us who believe, on one hand, that we should provide the agencies with authority to decide that some Federal lands are so environmentally critical that they are unsuitable for mining. And on the other hand, that the provisions need to be crafted very thoughtfully and with full protection for existing projects or those well into the planning stages.

The Rahall bill would have treated exploration for minerals in the same

way that it treated the actual mining of minerals. Again, the chairmen worked with me and others in providing a separate track entirely for the Forest Service and BLM to consider mineral exploration activities. We have now protected the traditional practice of allowing small miners and explorationists to go on to the public lands and do the same kinds of exploration work they do today, under the same procedures they use today.

And the two chairmen worked with us most recently to resolve what had become the mining industry's most important concern, that being the rules of transition in which existing mines and those in the planning process must come under the new system. The bill provides for an orderly transition process which will threaten no project which today has a formal relationship with the Federal Government.

I have remaining disagreements with the bill and I hope that these are addressed in conference. The 8-percent royalty should be reworked, and it's clear that it will be in conference. Clearly, the American people should be paid for a resource they own; the difficulty is to determine both a fair price and a price that doesn't force mines to close and put people out of work.

The bill does not, in my judgment, go far enough to protect the small miner, the folks who have used their own ingenuity and resourcefulness to go out and do the enormous amount of work it takes to develop a small mine. There are hundreds of these small operators in Montana, they don't have lobbyists and what they think of this bill quite frankly is unprintable. I have an amendment which I may offer to give these folks a break from the bill's requirement that they pay the full cost of the agency's expenses to process a permit.

In conclusion, Madam Chairman, there is some good work being done here today. Revenues we receive from the royalty and holding fees will go—100 percent—to the reclamation of abandoned mines. My State has several hundred abandoned mines yet there is no program, no source of funds to begin the cleanup necessary to recover these sites.

For the first time we will have minimum Federal land mining and reclamation standards, assuring a basic level of protection for Federal lands regardless of the policies of one State or another.

And for the first time we will have in place Federal authority to decide that in some places of significant importance, because of their special natural resources, mining is simply not appropriate.

There are many places where mining is appropriate. Mining is a critical American industry. Metals are an important national resource.

Let us get on with this reform by passing a bill to conference so we can find suitable legislation.

□ 1510

Mrs. VUCANOVICH. Madam Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. SMITH].

Mr. SMITH of Oregon. Madam Chairman, we have come full circle. We started with the timber industry, eliminating 75 percent of the harvest in the Northwest. Then we went to grazing fees, and you tried to price livestock people off the range. Now we are in mining, and now you are doing the same thing.

The greatest enemy we have in this country is the Federal Government.

I rise in strong opposition to this bill. It not only takes mining jobs away from small miners in the West, it will stop any further exploration or development of our public lands.

An American mining company in my district has spent \$30 million on EIS's and permits, and they are prepared to begin developing a gold mine, and if this bill passes, they will not do it—250 family jobs here are at stake.

Why are they not coming? Because this bill has so many loopholes, radical preservationists and unelected bureaucrats will have wide latitude to shut-down any mining operation.

After spending \$30 million, by the way, 8 percent gross on the royalty, that takes us out of competition.

Everybody and anybody knows that if you want to help me, stay away from me.

Oregon has the most stringent mining laws in the world, certainly in the United States, zero wildlife mortality, preservation of critical habitat, reclamation of mining sites, rigorous protection of ground and surface water, bonding to provide funds for reclamation and any environmental cleanup.

What more do you want? I do not need any more of your protection.

Please, allow us some opportunity to increase jobs in our part of the State and in this country instead of being the enemy of the small working man and jobs in America.

Mrs. VUCANOVICH. Madam Chairman, I yield 2 minutes to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Madam Chairman, I thank the gentlewoman for yielding me this time.

Madam Chairman, first, let me say that everyone agrees on the need for change in the mining law. So the old argument that it is frozen in place just does not fly.

We are talking about change. The question is: What kind of change?

This entire debate on the 1872 law is simply another followup on the Babbitt-Clinton assault of the West. And it is real.

We are talking about grazing. We are talking about timber. We are talking about oil and gas, reclamation water, the whole gauntlet of the kinds of things that we depend on in the West for economic growth, and this is simply another one.

Let me tell you that there are, I believe, after having been involved in this discussion for some time, several myths that continue to come forth with respect to this bill. One of them is that the law has not changed since 1872. That simply is not true. There have been some 50 amendments.

Certainly all of the environmental laws that impact this industry have changed since 1872. That is an idea that simply does not fly.

Second, that there is not enough environmental control. There certainly is a great deal of environmental control, whether it is called mining, whether it is called clean water, whether it is called clean air, if there is anything that we have plenty of, it is certainly regulations on the environment.

Another is the notion that somehow because of a few instances where the land was patented, and has gone to some other purpose that tenure is not necessary. Let me tell you that mining that is involved here requires millions of dollars of investment with very long periods of recovery.

The idea that somehow you can do away with the tenure question, do away with patenting without replacing it with some kind of tenure simply is not in keeping with reality.

The last myth, it seems to me, is the notion that somehow you can continue to raise the rates without affecting the jobs.

This bill needs a real, real change.

Mrs. VUCANOVICH. Madam Chairman, I yield 2 minutes to the gentleman from California [Mr. CALVERT].

Mr. CALVERT. Madam Chairman, H.R. 322, as reported by the Natural Resources Committee, contains numerous reclamation standards which are so onerous they will simply defy the ability of companies to comply. Whether intentional or not, these requirements will cause the shutdown of many operating mines after the 5-year interim period and frustrate the opening of an untold number of new mines.

I will talk about just one of these onerous and unworkable reclamation requirements—the fish and wildlife habitat standard in section 207(b)(10). The provision states as follows:

Fish and Wildlife habitat in areas subject to mineral activities shall be restored in a manner commensurate with or superior to habitat conditions which existed prior to the mineral activities, including such conditions as may be prescribed by the Director, Fish and Wildlife Service.

There are two problems with this provision. First, the standard itself would be impossible to meet. It would require all areas of a mine site to be restored to premining habitat conditions or conditions superior to premining conditions. There are portions of any mine—for example, the pit and the area under the toe of the waste rock dump—which simply cannot be restored to equal or superior conditions. It is absurd to suggest that such a possibility

exists. As one member of the committee from the other side of the aisle said during markup: "It is even more absurd to suggest that we can do better than the Almighty and manufacture better habitat than nature provides."

What makes this inflexible requirement even more offensive is that it would apply to all fish and wildlife species, including instances where the species and their habitat are found in abundance.

Furthermore, efforts which a mine operator might make to enhance off-site habitat to mitigate for on-site impacts would not meet this standard. For example, an operating gold mine in Nevada employing over 600 people this past year agreed with the Nevada Department of Wildlife and the U.S. Forest Service to spend about \$500,000 to enhance off-site habitat for mule deer and about \$60,000 to enhance off-site habitat for sage grouse—both non-threatened species. These projects were undertaken to mitigate for the alteration of habitat by the expansion of the mine's waste rock dumps. Yet, under H.R. 322, that mining activity would be prohibited unless the actual area subject to the waste rock dump could be restored to the pre-mining habitat conditions.

The second major flaw in this provision is the unprecedented power it grants to the Director of the Fish and Wildlife Service, by subjecting mine permits to such conditions as may be prescribed by the Director of the United States Fish and Wildlife Service. Ironically, this provision grants Fish and Wildlife Service greater authority over all species than Fish and Wildlife Service possesses under the Endangered Species Act for listed threatened and endangered species. This is because under section 7 of the ESA, a land managing agency, such as BLM of the Forestry Service, merely consults with Fish and Wildlife Service to determine whether a Federal undertaking may jeopardize a threatened and endangered species and to develop appropriate mitigating conditions. However, the Federal land managing agency retains the ultimate authority over the action.

No precedent exists—whether it be in the Federal coal leasing program, the Federal onshore and offshore oil and gas leasing program, the Forest Service or BLM timber programs, or the Surface Mining Control and Reclamation Act—which would grant direct conditioning authority to Fish and Wildlife Service for all species, as H.R. 322 does. The Fish and Wildlife Service would have authority to place any condition, no matter how abusive, with the land management agency having no authority to alter it in any way to meet its broader, multiple-use mandate.

The Fish and Wildlife provision in the reclamation standards of H.R. 322 upends the principle of multiple-use,

by giving a single-purpose agency—the Fish and Wildlife Service—veto authority over all mining activities. Worse, it prescribes an environmental standard that is impossible to achieve. If this were not bad enough, this provision is not an isolated problem. The very same fault is found in other sections throughout H.R. 322. If this bill is passed today, the challenge for the conference committee to produce rational mining law reform legislation will become even more formidable.

I urge my colleagues to oppose this legislation.

Mr. LEHMAN. Madam Chairman, I yield 2 minutes to the gentleman from Idaho [Mr. LAROCCO].

Mr. LAROCCO. Madam Chairman, I rise today in qualified support of H.R. 322, legislation to reform the general mining law of 1872. While I have a number of unresolved difficulties with the bill, I am able to support it today due to the leadership of Chairman MILLER and Chairman LEHMAN. I would also like to acknowledge the Representative from Nevada, Mrs. VUCANOVICH, for her efforts in shaping this bill.

This issue of mining law reform is critical to my State of Idaho and the West in general. I am hopeful that by scrutinizing the proposal through every step of the legislative process—the committee process, and now, floor consideration, and later the conference committee—the 103d Congress will have been able to construct a workable reform of the antiquated general mining law. That is the reason I urge my colleagues to support this bill—not because I believe that we have a finished product, but because we are far enough along the way to warrant continuing with the effort.

While it is imperative that we bring true reform to the act of 1872, we must not destroy our domestic metal production capability. Obviously, the Nation needs a viable domestic metals industry. And we in the West need the high-paying jobs this industry creates. As my colleague from Montana said during committee markup of this bill, western Democrats are caught between a desire for reform and the need for responsible preservation of an important sector of our economy.

The members of the Natural Resources Committee, with the help of Chairmen MILLER and LEHMAN, have made significant progress. In marking up this legislation, we were able to improve many provisions, and clarify how current mining operations will comply with new environmental requirements. In order to realize meaningful reform, the spirit of cooperation we saw while developing this transition language must continue through the entire process.

There are several parts of the current legislation that will undoubtedly be modified as this bill continues through the legislation process:

The reclamation and unsuitability provisions of this bill will undoubtedly undergo adjustments before the House votes on a final conference report.

I believe the public ought to receive a fair return on the production of minerals from the public lands, and a royalty on the value of minerals is a good way to assure the public's fair share. However, I am concerned that the method the current legislation uses to calculate royalties—the net smelter return method—may not be the fairest option, nor the one easiest to administer.

Instead of assessing a royalty on the processing of the minerals after they leave the ground—in effect taxing the value added by mining companies—I believe a fairer approach would be to assess a royalty on the value of the ore as it leaves the mine mouth. This mine-mouth royalty would be compatible with the way the Federal Government now collects royalties for oil, gas, and coal. A mine-mouth royalty would be simpler and less costly for the Federal Government to administer, and would better reflect the public's true interest in the value of the asset.

This is an example of a possible solution that shows, despite some of the rhetoric we have heard from both sides today, that there are common sense solutions that can balance the competing demands of the environment and industry. Many of us in the West who will have to live with the results of the legislative product are absolutely dedicated to producing this type of workable reform.

In closing, I would urge my colleagues, particularly my friends from the West on this side of the aisle, to support this legislation today, and to support the continuation of the mining law reform process. I am confident that through our work at the conference table, we will produce a product that will strike the correct balance between meaningful reform and productive western economy.

Mrs. VUCANOVICH. Madam Chairman, I yield such time as he may consume to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Madam Chairman, I rise in strong opposition to H.R. 322.

The mining law of 1872 has fostered today's mining industry which generates over \$1.5 billion in annual receipts and employs thousands of Californians. Under this law, thousands of citizens have exercised their own initiative in our free enterprise economy to continually explore and assess open public lands. I am a strong supporter of the right for small mining enterprises and individuals to continue exploring mineral deposits on public lands.

There seems to be a general consensus that the mining law should be reformed. However, I do not believe that there should be a headlong rush to replace the current system with a law that does not reward initiative and which punishes all miners for the abuses of a few renegade companies or individuals.

I would welcome the opportunity to work with my colleagues on both sides of the issue to balance any changes in the current law against the economic disincentives they might create. It is critical that we retain a system which encourages self initiative and exploratory activities by all those who have traditionally explored the public lands.

H.R. 322 is an ill-conceived solution to the adjustments that need to be made in existing mining law. It will cost up to 44,000 jobs and \$5.7 billion in lost economic output. I urge my colleagues to vote "no" on H.R. 322.

Mrs. VUCANOVICH. Madam Chairman, I yield 2 minutes to the gentleman from Alaska [Mr. YOUNG].

□ 1520

Mr. YOUNG of Alaska. I thank the gentlewoman for yielding this time to me.

Madam Chairman, I rise in strong opposition to H.R. 322, the mining law reform bill.

Sometimes I just do not know where to begin around here. While everyone is fighting about NAFTA, making claims that its passage will help or hurt American jobs, we are on the floor debating passage of legislation that the Department of the Interior says will cost American mining jobs. These are the best paying jobs in the manufacturing sector of our economy, according to the Bureau of Labor Statistics.

I do not understand this Department of the Interior. Secretary of the Interior Babbitt supports this bill that his Department says will cost 5,000 American workers their jobs, even though President Clinton says he supports American workers. While President Clinton talks about protecting American jobs, Secretary Babbitt says Adios to American workers who work the land.

I just want the Members to know that if they vote for this bill today, there is no question about jobs going to Mexico—our own Government says this bill will make it happen. I also want to point out that this body does this all the time. While I hear Members talking about trade on an even playing field, those who care more about what people do with their leisure time on the weekends than what workers do for a living continue to push legislation that locks up more of our Nation's natural resource base, or makes business here at home impossible or uncompetitive. That's why we import over half of our oil. That's why we are puny in the world steel market. That is why businesses are leaving the United States in droves for foreign shores where businesses are welcomed with open arms. That is why loggers sit idle in Washington, Oregon, California, and Alaska while all of our timber is exported billions of dollars from Canada.

It is a disgrace.

Let me focus in on Mexico, since that is a hot topic right now. Three years ago, the Mexican law for mining was

almost as bad as the law before us today. The Mexican Government saw that their mining industry was in the toilet, so they looked around to see what they needed to do. They changed their law to mirror our existing law, and investment in the Mexican economy has taken off. The same thing happened in Canada. Same thing in Bolivia. Chile. Peru. Spain. Sweden. Zimbabwe.

Investment in these countries is taking off in mining, while, good, high-paying jobs in the U.S. mining industry are shipped to those countries because some people do not like mining conflicting with their weekend activities.

If you do not believe me, listen to what a Member of the other body said July 20 at a press conference when asked by reporters about mining job losses to Mexico because of a similar bill he sponsored: "Adios, as far as I'm concerned, Why mine America first?"

America was built upon the premise that if a person worked hard, the Government would reward such work. As a result, the mining law was passed to encourage mining. The Government said, If you got the gumption to go out and risk your money, your time, and your labor to find minerals important to our country, we'll reward those successful by allowing you to mine and employ Americans. Likewise, the Homestead Act was passed. In those days, the Government's policy was to give land to those who would work hard, and in return for that hard work, they got title to the land. Nowadays, we not longer give away land to those who will work it. It is more fashionable to give a Government check to people who do not work.

Madam Chairman, this body should reject this bill. At a time when Americans are concerned that jobs might go to foreign countries, we have before us a bill that the administration says will result in a loss of jobs. Why is this body turning its back on the working men and women in this country? What do we have against hard-working men and women in the mining industry? Why is it that some in this body pretend to be the friend of the worker, and then show workers the door whenever the Sierra Club or the Wilderness Society snaps their fingers?

I say enough is enough. The leisure lobby in this country does not care about workers' jobs, they care about what they do on their days off. What is more important?

Madam Chairman, this bill is a bad bill. It is antijobs. It is antimining. It is anti-American. I urge the House reject the bill.

Mr. LEHMAN. Madam Chairman, I yield 6 minutes to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. I thank the gentleman for yielding this time to me.

Madam Chairman, I rise in strong support of H.R. 322 and wish to com-

mend the chairman of the subcommittee, the gentleman from California [Mr. LEHMAN], as well as our full committee, the gentleman from California [Mr. MILLER], for bringing this legislation to the floor today. This is a historic debate, it is long overdue. I salute the chairman, the gentleman from California [Mr. MILLER], in particular, for his work on this legislation, sticking with the goal of real mining reform over a number of years.

Madam Chairman, the year was 1872. Ulysses S. Grant resided in the White House, Union troops still occupied the South, the invention of the telephone and Custer's last stand at the Little Big Horn were still 4 years away. In 1872 Congress passed a law that allowed people to go onto public lands in the West, stake mining claims, and if any gold or silver were found, mine it for free. In an effort to promote the settlement of the West, Congress said that these folks could also buy the land from the Federal Government for \$2.50 an acre. That was 1872. Good law then, served its purpose. This is 1993. Today the mining law of 1872 is still in force.

I served for 8 years as chairman of the Subcommittee on Mining and began this effort to reform the law in earnest in 1987. Numerous hearings were held, 222 witnesses in the field, and more than 6 years later, we are now on the verge of reforming this Jurassic Park of all Federal laws, the granddaddy of all perks, if you will. And for the most part, it is not the lone prospector of old, pick in hand, accompanied by his trusty pack mule who is staking those mining claims on public lands.

It is large corporations, many of them foreign controlled, who are mining gold owned by the people of the United States for free, and snapping up valuable Federal land at fast food hamburger prices.

Remaining as the last vestige of frontier-era legislation, the mining law of 1872 played a role in the development of the West. But it also left a staggering legacy of poisoned streams, abandoned waste dumps, and mutilated landscapes.

Obviously, at the public's expense, the western mining interests have had a good thing going all of these years.

But the question has to be asked: Is it right to continue to allow this speculation with Federal lands, not to require that the lands be reclaimed, and to permit the public's mineral wealth to be mined for free?

Make no mistake about it.

Today, you, or me, or anybody else listening to this debate can go onto Federal lands in States like Nevada and Montana and stake any number of mining claims, each averaging about 20 acres.

In order to maintain our mining claim, until this year, all that we were required to do is to spend \$100 per year on it.

Now, in the event we find gold or silver on that mining claim, we mine it for free. We are not required to pay the Federal Government any royalty in return for the profit we make from producing minerals from these Federal lands.

On average, an estimated \$1.8 billion worth of hardrock minerals are mined from Federal lands in the Western States.

Yet, the Federal Government does not collect one red cent in royalty from any of this mineral production that was conducted on public lands owned by all Americans.

Incredible you say. Oh, it gets better.

Say we decide that we want to own the Federal land that is embraced by our mining claim. For whatever reason, we want to actually buy this Federal land.

The mining law of 1872 says that we can do this. And it says that we can do this by first showing that the lands have valuable minerals, and then by paying the Federal Government \$2.50 or \$5 an acre.

You heard me right.

Depending on the type of claim, \$2.50 or \$5 an acre for land that may contain millions of dollars worth of gold, silver, copper, lead, and zinc.

This is called obtaining a mining claim patent. Perhaps a good feature in 1872, when we were trying to settle the West. But today, I hardly think we need to promote the additional settlement of LA, San Francisco, or Denver.

To give you an idea of what is going on, recently a mining company received preliminary approval to obtain 25 of these patents covering about 2,000 acres of public land in Montana.

This company will pay the Federal Government little more than \$10,000 for land estimated to contain \$32 billion worth of platinum and palladium.

Now, once we own those lands, nothing in this so-called mining law says that we have to actually mine it.

The land is now ours to do with what we will. We are free to build condos or ski-slopes on this land. We are free to sell the land for whatever price we can charge. We can do this because the land is now ours.

Why, last year the Arizona Republic carried a story about a gentleman who paid the Federal Government \$155 for 61 acres worth of mining claims.

Today, these mining claims are the site of a Hilton Hotel. This gentleman now estimates that his share of the resort is worth about a cool \$6 million.

Not a bad deal, except from the taxpayers point-of-view.

And now—the rest of the story. As it turns out, you can mine these Federal lands with minimal reclamation requirements.

Arizona does not even have a reclamation law on its books.

Meanwhile, the only Federal requirement is that when operating on these

lands you do not cause unnecessary or undue degradation.

And what does this term mean? It means that you can do whatever you want as long as it's pretty much what all of the other miners are doing.

Oh yes, there have been environmental successes by responsible companies. I take nothing from them.

But, my colleagues, the standard of the 1872 law has given rise to an incredible amount of environmental damage. Loot at pages 58, 59, and 60 of this week's Time magazine to see the threats posed therein to some of our country's most pristine areas.

How can this be, you might ask. This is incredible.

And indeed, it is.

If you are mining coal, this is not the case. There is a very stringent Federal law on the books that says coal miners must completely reclaim the land.

It simply makes no sense whatsoever to provide a lesser degree of protection to people and communities who happen to be near hardrock mining operations than those near coal mining operations.

And I would remind my colleagues that the mining law and the pending legislation does not deal with coal, or for that matter, oil and gas. These energy minerals, if located on Federal lands, are leased by the Government, and a royalty is charged.

Further, the mining law of 1872, and the pending legislation, does not deal with private lands. The scope of the mining law and this bill is limited to Federal lands in the western States.

The pending legislation addresses all of these concerns.

It would prohibit the continued giveaway of public lands.

It would require that mining claims are diligently developed.

It would require that a royalty be paid on the production of these minerals.

And, it would require industry to comply with some basic reclamation standards.

We are beginning a historic debate. A debate, I would maintain, that is long overdue.

I am here to suggest that if we continue under the current regime, that if we do not make corrections, the ability of the mining industry to continue to operate on public domain lands in the future is questionable.

While the mining law of 1872 over the years has helped develop the West, and caused needed minerals to be extracted from the earth, we have long passed the time when this 19th century law can be depended upon to serve the country's 21st century mineral needs.

And to do so in a manner accepted by society.

Reform of the mining law of 1872 is a matter of the public interest.

The interest of the American taxpayer. The interest of all Americans

who are the true owners of these public lands. Because the name of every American is on the deed of these lands.

As the sponsor of H.R. 322, I would not that the intent and basic thrust of the introduced version of the bill has been maintained in the version of the bill as reported by the Natural Resources Committee. In fact, the committee has chosen to maintain many of the most important provisions of H.R. 322 without amendment, except in certain instances, technical and conforming amendments were made. These provisions have a long history, having been developed over the course of bills I sponsored in the 101st and 102d Congresses during my tenure as the chairman of the former Subcommittee on Mining and Natural Resources.

In this regard, I now wish to address several critical provisions of the bill which have been maintained from the introduced version of H.R. 322 or were added to the bill as a result of amendments I offered in committee. These provisions are important to achieving the goals of the legislation, and I think it important that my intent in authorizing and sponsoring these provisions be as clear as is possible.

There is little question that the single greatest adverse impact of hardrock mines has been on the surface and ground-water resources of the United States. The scope of the abuse, through the discharge of acid or toxic mine drainage to the surface waters or the degradation of ground water by pollutants from the mineral activities, is truly overwhelming. It was my purpose in authoring the basic hydrologic provisions of this legislation, including the amendments which I offered in full committee, to end this abuse and to break new ground to protect these vital resources.

Accordingly, section 207(b)(4)(C) establishes a no-degradation standard for both surface and ground water. Under section 207(b)(4)(C) a permittee must prevent any contamination of surface and ground water from acid or other toxic pollutants, including any heavy metals. Contamination would occur whenever the naturally occurring pre-mining background levels of the surface or ground water is exceeded for any pollutant, be it ph, iron, manganese, copper, zinc, lead, mercury, cadmium, arsenic, silver, selenium, cobalt, or cyanide. I intend to exclude no substance which can adversely affect the quality of the water resource.

In establishing the hydrologic protection provisions, I note that section 404(b) includes a requirement that the point of compliance shall be as close as is technically feasible to the mineral activity involved. Thus, as far as ground-water resources are concerned, monitoring is to occur as close as possible to any potentially polluting source, be it a waste pile, pit, subgrade ore pile, tailings pond, or tailings pile,

to mention a few obvious potential sources of pollution. By requiring that the point of compliance be as close as is technically feasible to the potential pollution source, and by requiring monitoring at such points, I intended to ensure that the no-degradation or zero-discharge standard which the bill establishes be met in fact. As such, the so-called dilution or mixing zones are expressly prohibited by the standards.

I would note, however, some difference in the application of the standard in section 207(b)(4)(C) and section 404(b) to surface and ground water. As far as ground-water resources are concerned, the bill prohibits any contamination of any ground water wherever found. As far as surface water is concerned, however, I recognize that some on-site contamination of surface waters is inevitable in some mining situations. As such, it is my intent in authoring section 207(b)(4)(C) and establishing a no-degradation standard for surface water to prevent any off-site contamination of surface water and to minimize to the extent possible the contamination of surface water on-site.

I now turn to another critical hydrologic provision, that found in section 207(b)(4)(B) which based on my amendment in full committee requires permittees and operators to prevent, using the best technology currently available, the formation of acidic, toxic, or other contaminated water. Where prevention is impossible, the operator or permittee must use the best technology currently available to minimize the formation of such contaminated water. In no case, however, even where it is impossible to prevent the formation of acidic, toxic, or other contaminated water, may this water contaminate any ground water or any surface water off-site. Under this provision, treatment of water will be the exception, not the rule, and where treatment is necessary despite the use of the best technology currently available to prevent the formation of contaminated water on-site, it must be designed and maintained to ensure that there is no contamination whatsoever of surface waters from the treated discharge. These standards should lead to more zero-discharge to surface water sites.

In authoring the original hydrologic protection provisions in H.R. 322, and in offering strengthening amendments to what I believed to be weaker provisions which had been adopted in subcommittee, I intended to establish a strong regulatory mechanism to deal with the hydrologic impacts of mining. Among other things, the provisions require compliance with all applicable NPDES standards. If violations of these standards are shown to exist in the monitoring reports required under that program, the Secretary or his authorized representative must take enforcement action under the enforcement provisions of this act to ensure

prompt abatement. In requiring abatement action to correct the violation, the inspector shall require that the condition or practice causing the violation be addressed and corrected, and not limit abatement requirements to end-of-the-pipe treatment.

Soil contamination is another critical adverse impact of hardrock mining. In the committee, I authored an amendment to the bill to bring the bill's provisions back into line with the approach I had advocated in the introduced version of H.R. 322. In committee, I sponsored two important changes to the subcommittee approved bill. First, I delete the phrase "take measures to" from the requirement to decontaminate or dispose of contaminated soils. My purpose in authoring the amendment was to establish an absolute requirement that where soils are contaminated on a site, they are either decontaminated or properly disposed of. The subcommittee provision had allowed the operator simply to take measures to decontaminate or dispose.

My second change to section 207(b)(1)(D) was to delete the phrase "of the operator" which was in the subcommittee reported measure. My intent here was to establish a firm requirement that the permittee or operator is responsible for all contaminated soil within the permit area without regard to whether the contamination resulted from the mineral activities of the operator or permittee.

As a general matter, H.R. 322 provides that all reclamation proceed as contemporaneously as practicable with the conduct of mineral activities and that the permittee use the best technology currently available in meeting the reclamation standards of the bill. These are two of the most important on-the-ground requirements in the bill.

The method of compliance with the contemporaneous reclamation requirement will depend in large part upon the mining method employed. As such, in drafting the two provisions which, except for one technical amendment which I offered in full committee, are unchanged from my original bill I expect the Secretary in implementing the provision to evaluate whether it is possible to establish specific provisions for contemporaneous reclamation based on specific mining, beneficiation, or processing methods or technique, and if so, to establish such specific standards in the regulation where possible. Where specific implementing standards are not possible, the general standard would continue to apply. Where the Secretary is unable to establish specific contemporaneous reclamation standards, the Secretary should require a specific plan in the plan of operation and inspect specifically to ensure the standard is met.

This section also requires all operations subject to the act to use the best technology currently available in

all reclamation-related activities. The Secretary in the implementing rule-making should consider what technologies will meet this standard for the major forms of mining, beneficiation, and processing now being employed by the industry and to disallow technologies which do not meet the statutory standard.

In drafting the reclamation standards for H.R. 322, and in offering strengthening amendments in full committee, I intended that the Secretary through rulemaking flesh out these basic standards, much as the Secretary did in promulgating the permanent program regulations under the Surface Mining Control and Reclamation Act of 1977. For example, the Secretary under section 201 and section 207(b) of the bill, must promulgate performance standards in addition to those in section 207(b) which are necessary to protect the environment from the adverse impacts of mineral activities. For this reason, I did not include in drafting and introducing the bill any specific performance standard addressing certain possible adverse environmental impacts from mining, such as blasting or subsidence. Section 201 and section 207(b) provide the Secretary with full authority to promulgate such regulations if he or she deems such regulations appropriate to achieve the act's goal of full environmental protection.

In addition, even where section 207(b) addresses a specific area of environmental protection or mining technology, such as soil contamination, for example, under the authority granted by section 201 the Secretary may impose requirements in addition to those set forth in section 207(b) with regard to soil contamination if he or she believes such standards are necessary to fully protect the environment. In no event, however, may the Secretary fail in any way to implement and enforce the specific provisions enumerated in section 207(b). Conversely, just as is true with the Surface Mining Act, the Secretary may not grant any variances that are not expressly provided in the statute.

In section 207(b), I included a provision granting the Secretary full authority to regulate the environmental impacts of mining by imposing standards applicable to selected forms of mining, beneficiation, or processing activity. These standards would be in addition to and not in lieu of the generally applicable standards. In drafting this provision, I was particularly concerned that certain forms of mining, beneficiation, and processing, such as heap leach cyanide mining, may create risks that require specific regulation.

In addition to heap leach cyanide mining, I was concerned with certain other forms of mining—dump leach mining, certain placer and hydraulic mining—may justify specific regulations addressing these specific forms of

mineral activity. Indeed, upon examination, the Secretary may conclude that particular aspects of such mining cannot occur in certain situations that certain technologies now being used cannot comply with the act and must be disallowed.

In this regard, I expect that the Secretary as part of the implementing rulemaking required by this act determine whether particular forms of mining, beneficiation, or processing require additional regulations specific to those activities. If so, the Secretary shall propose and promulgate such regulations. Given the well-documented risk associated with cyanide heap and dump leach mining, and placer mining, to mention a few obvious examples, I expect the Secretary to consider these forms of mining and determine whether specific additional regulations are required to address the environmental impacts of those forms of mining.

Section 208 establishes the basic provisions with regard to the States and the role States will play under the act. The section provides that States may enter into cooperative agreements with the Secretary and through those cooperative agreements play a role in administering the provisions of the act. However, as section 208 makes clear, this role is in addition to and not in lieu of the Secretary's role under the statute. Under section 208(e), which I authored, the Secretary may not delegate any duty, obligation, or responsibility under the act or regulation to a State. Thus, for example, the Secretary through cooperative agreement or otherwise may not shift his inspection, enforcement, permitting, unsuitability, or bonding obligations onto any State. However, the States may through cooperative agreements perform such functions on Federal lands in addition to that which the Secretary is required to do if they so choose.

I now turn to an issue of great concern to me: citizen participation. The bill provides expansive remedies for citizens based on the belief that only through the active participation of citizens can the goals of the bill be achieved. This is a concept I have found to be extremely important to the effective enforcement of regulatory regimes involving mining based on my experience with the Surface Mining Control and Reclamation Act and as the mining subcommittee chairman for 8 years.

In addition to the specific rights granted citizens in various sections of the bill, I included in H.R. 322 a general provision in the purposes section of the bill which establishes as a central purpose that the Secretary will assure that appropriate procedures are provided for public participation in the implementation of the act. This provision was meant to authorize the Secretary by regulation to create provi-

sions for citizen participation in addition to those specifically authorized by the bill where it would further the goals of the bill.

In this light, I would note that as introduced, H.R. 322 contained an express provision allowing a citizen to initiate a proceeding to declare an area unsuitable for mining. That provision was deleted from H.R. 322. I note, however, that the general provision providing for full citizen participation would provide the Secretary with authority to promulgate regulations providing citizens this important right. In this regard, I note that the committee report accompanying this bill is in accordance with this view.

Under the terms of the introduced version of the bill, a plan of operations could not be approved if the applicant, operator, any claim holder different than the applicant, or any subsidiary, affiliate, parent corporation, general partner, or person controlled by or under common ownership or control with the applicant operator or claim holder is currently in violation of any provision of the act, any surface management requirement or applicable air- and water-quality laws or regulations at any site where mining, beneficiation, or processing of minerals have occurred or are occurring.

As it relates to the consideration of proposed operations permits, this concept has been retained in the bill as reported by the committee.

Without question, this is the most important and effective enforcement tool in the bill. It was my intent in including this provision in H.R. 322, as the committee report accurately states, that the Secretary establish a computerized system to implement this provision, modelled along the lines of the applicant/violator system now maintained by the Office of Surface Mining Reclamation and Enforcement to implement section 510(c) of the Surface Mining Control and Reclamation Act. As the committee report states, the Secretary should initiate work on the system promptly upon enactment in order to ensure that the system is fully operational when the first plans of operation are submitted.

In including a permit block sanction, I intended the scope of the sanction to be quite broad, both in terms of violations covered and in terms of the scope of the ownership and control linkage. As such, included are all unabated violations of the Clean Water Act and the Clean Air Act at sites where mining, beneficiation, or processing have taken or are taking place without regard to when the mining activity occurred. By its express terms, this would include, of course, without limitation, any violations of the stormwater regulations applicable to abandoned hardrock mines. I saw no reason then and see none now to allow entities who have raped the land or polluted the water as

a result of past hardrock mining activities to receive new permits to mine under the terms of this bill. The bill also includes violations of the Surface Mining Control and Reclamation Act, and of course any uncorrected violations of the surface management requirements on Federal lands which exist at the time of passage of this legislation as well as any that may occur subsequent to the passage of this legislation. The committee also included within the scope of the sanction the failure to pay any civil penalties assessed under this act, and the failure to pay royalties due under this act, in addition to notices of violation, cessation orders, and bond forfeitures that occur under the bill.

I would note that in drafting the permit block sanction, we were careful to extend the scope of the sanction to all mining, beneficiation, or processing activities. We determined not to limit the scope of the sanction, or the violations covered, only to violations committed as a result of mineral activities under this bill.

I also provided in H.R. 322 for temporary cessation in certain, limited circumstances. Under the introduced version of the bill, which was not changed in any significant way during committee deliberations, an operator who wishes to temporarily cease mineral activities for more than 180 days of all or a portion of his or her activities must apply for approval prior to ceasing operations. After receipt of the application, the Secretary must conduct an inspection of the area for which temporary cessation is sought, and based on that inspection and other information available to the Secretary, make a number of affirmative findings with supporting justification for each finding before a person may temporarily cease mineral activities. The primary reason the committee included these requirements is to avoid the types of abuses that occur where operations are placed in a de facto permanent inactive status in an effort to avoid reclamation and possible bond forfeiture.

Among other things, the Secretary must find that reclamation is in compliance with the approved reclamation plan, except where a delay in reclamation is necessary to facilitate the resumption of operation. Second, the Secretary must specifically determine that the amount of financial assurance is sufficient to assure completion of the reclamation activities in the approved plan in the event of forfeiture, including any long-term water treatment. Finally, the Secretary must find that any existing violations are either in the process of being corrected or are subject to a stay.

I would note that in including this provision in my original bill I did not intend to limit the Secretary to the above factors in determining whether

to grant temporary cessation or in determining how long that cessation may exist without requiring resumption of operations or full reclamation. The Secretary may propose any additional requirements he deems reasonable to ensure that cessation will in fact be temporary. As such, I expect the Secretary to consider whether there is a need to limit cessation to a finite period, and to require periodic review of temporary cessation status to determine whether the status remains justified.

Subsections (e) and (f) of section 206 provide the procedures and standards for bond release and termination of liability. Essentially, the section provides, as did my original bill, and as does the Surface Mining Control and Reclamation Act, for a phased release of the bond or financial assurance. After the operator has completed backfilling, regarding, and drainage control of an area, he may seek phase I bond release. However, if there is an acid or toxic discharge which must be treated in order to meet applicable effluent or water-quality standards no release can occur unless in the unlikely event there is more than sufficient funds available to ensure perpetual treatment to the effluent limitation and water-quality standards of the NPDES permit held by the operator. In such case, any additional funds may be released.

Phase II may then be released upon a showing that the operator has successfully completed all mineral activities and reclamation activities and all requirements of the plan of operations and reclamation plan and all the requirements of this act have been fully met.

While the bond release system in both my original bill and the version of the bill now before the House bears some similarity to the provisions of the Surface Mining Control and Reclamation Act, it is my expectation that bond release will be substantially different under this bill than it is under SMCRA, particularly where toxic solutions such as cyanide are used in the mineral activities.

Over the past 20 years there has been a considerable increase in the use of cyanide to beneficiate gold. Generally, with such operations, it is necessary for the operator to engage in closure activities prior to the completion of land reclamation work. Typically, the spent ore and tailings from heap leach as well as other forms of mining or beneficiation contain residual amounts of cyanide which must be treated or neutralized in order to prevent environmental degradation and costly remedial activities. In such cases, no bond release occur may occur, until, among other things, all toxic materials have been successfully neutralized.

With respect to the bond release provisions, I expect that the Secretary's

authority not be limited to require specific closure activities prior to bond release for any type of mining, beneficiation, or processing. Where the Secretary deems that closure measures prior to bond release are required, I would maintain that the Secretary could take the action he or she deems necessary through rulemaking or in individual plans or operation or both, to provide for adequate effective closure activity.

Under section 206(h), the Secretary may after final bond release take whatever enforcement action he or she deems appropriate against a responsible party if the Secretary determines that an environmental hazard resulting from the mineral activities exists or if he determines that all the terms or conditions of the plan of operations or this act or regulations were not met at the time of bond release. In providing for such a procedure in H.R. 322, I intended to hold the person or persons responsible for the adverse impacts of their mineral activity whenever those impacts may occur. Only in this way will the external impacts of the mining activity be internalized.

Section 404 provides that inspections are to be conducted of all mineral activities to ensure compliance with the surface management requirements. Inspections are to be made of mineral activities not requiring a plan of operations and are to take place at least on a quarterly basis for mineral activities under an approved plan of operations. Operations under a temporary cessation are to be inspected at least twice a year.

In order for this requirement to be met, the Secretary must first determine what mineral activities exist which are subject to this act. Thus, to implement this provision effectively, the Secretary should carefully evaluate all existing mining beneficiation or processing activities subject to the bill, and develop a computerized inventory of said sites, so that the secretary will be prepared and able to meet the inspection requirements of this section when the act becomes effective. New sites would be added to the inventory and the Secretary would keep the inventory current.

Section 404(a) provides that the Secretary shall conduct the required inspections. It was my intent in drafting this provision that the Secretary would delegate the authority to field inspectors who will have full authority to inspect, and under section 202(b), take the required, mandatory enforcement actions set forth in that subsection.

Section 404(a)(3) establishes a procedure for citizens who maintain they may be adversely affected by alleged violations to contact the land manager and be assured that remedial actions are taken if warranted. Section 404(a)(3) establishes what is, in my view, the most important right pro-

vided citizens in the act, the citizen complaint process by which a citizen can bring to the attention of the Secretary any violation of any surface management requirement, and seek redress for that violation. Section 404(a)(3)(A) provides that any person who has reason to believe they are or may be adversely affected by mineral activities may file a citizen's complaint. It was not my intent in drafting and introducing this provision to impose article III constitutional standards on citizen complaints; thus, the interest showing required by section 404(a)(3)(A) to prosecute a citizen complaint is less than that required to initiate a citizens suite under section 406. Nor did I intend for the Secretary to conduct a standing analysis before proceeding with the evaluation of the merits of a citizen complaint. If the complaint contains an allegation that the person is or may be adversely affected and there is no reason for the Secretary to question that allegation, it was my intent that the Secretary proceed to the merits of the complaint.

A citizen complaint may address a host of alleged violations. Obviously, any on-the-ground violation by a responsible party of surface management regulations can be addressed through a complaint. Similarly, a complaint may address any failure by a responsible party to monitor or report as required by the act. In addition, a citizen complaint can address any failure by the Secretary to act as required by title II, or the implementing regulations, such as where a plan of operations violates surface management requirements or where the Secretary fails to assess civil penalties, impose a permit block, take alternative enforcement action, reclaim a site to full performance standards when a bond is forfeited, and so forth.

Section 404(a)(3)(A) establishes a firm, nonextendable 10-day period by which time the Secretary must act. A failure to act within the time period shall be subject to immediate review under subparagraph (B), or under section 406(b)(2), as the citizen deems appropriate.

Section 404(a)(3)(B) establishes an administrative review procedure for citizen complaints. Under subparagraph (B) the Secretary is required to establish procedures to review any refusal to act as a result of a citizen complaint. In establishing these procedures, it was my intent that the Secretary provide a fixed period of time not to exceed 30 days to review a failure to act on a citizen complaint. I intended that a failure of the Secretary to act within the time period constitutes a final agency action just as an affirmative agency decision under this subsection would constitute final agency action.

I expect that the Secretary will provide for review of his or her decisions under subparagraph (B) by the Interior

Board of Land Appeals, as the Secretary has done under the Surface Mining Control and Reclamation Act. The availability of such review, however, shall not affect the status of the decision under subparagraph (B) as final agency action subject to judicial review. The citizen may choose the administrative appeal in which case the citizen may not seek judicial review under a final decision as issued by the Board of Land Appeals, or seek relief directly in Federal court.

I have long been concerned with the delays petitioning parties face in receiving a final decision from the Board of Land Appeals, which often take 2 to 3 years. This is far too long. Thus, in the rulemaking implementing section 404(a)(3)(B), and to ensure effective implementation of this section of the bill, I expect the Secretary to establish procedures which ensure the prompt issuance of decisions by the Board of cases brought under this section to include an absolute time limit of no more than 1 year from final briefing to decision.

Section 404(b) directs the Secretary to require all operators to develop and maintain a monitoring and evaluation system which identifies whenever the site is in compliance with all surface management requirements, including compliance with all hydrological related provisions, including NPDES requirements. I expect the Secretary by regulation to establish procedures to ensure that each operator meets the statutory requirement and establish an efficient method for responsible parties to report the results of the monitoring and evaluation on compliance with each applicable performance standard to the Secretary on a periodic basis. Given the volume of data involved, the Secretary should give careful consideration to the establishment of an automated reporting and evaluation system. Once established, I would expect the Secretary to then review the data, and where violations are identified, to take enforcement action as provided in section 407.

Section 404(b)(3) establishes the standard for determining whether certain violations have occurred as a result of the mineral activity, particularly with regard to ground water. In many cases, of course, the point of compliance will be the mineral activity itself, as in the cases of soil toxification, failure to backfill, failure to revegetate, and so forth. Where ground water is concerned the point of compliance is to be as close as technically feasible to the potentially polluting mineral activity. This is a critical requirement and is intended to ensure that a true no-contamination standard is met; mixing or other dilution methodologies are not permitted under the act. Thus, the Secretary must require complete containment where toxic solutions are utilized in order to ensure that the statutory

standard of no contamination is met. Similarly, to meet the statutory standard, where structures such as leach pads or tailings ponds are concerned, the Secretary should require adequate leak detection devices adequate to ensure the detection of any leak of a toxic solution such as cyanide from the pond, pad, ditch, et cetera, and to require the necessary protective measures to meet the statutory standards.

As far as surface water is concerned, I would note that EPA already routinely requires a zero discharge permit for cyanide heap leach mining, an approach I support and believe should continue.

Subsection 406(c) provides for the award of fees and expenses for various matters. It was my intent that awards shall be made under this provision if the affected person prevails at least in part on any aspect of a merits claim. Awards shall be made against the plaintiff only upon a clear showing of bad faith on the part of the plaintiff. It was my further intent that awards to any entity which is engaged in a regulated activity under the act or who is a controller of such person, or who is representing such an entity shall receive an award only if the defendant was acting in bad faith.

Subsection (c) provides for the award of fees and expenses as a result of a proceeding under subsection (a) or (b) of section 406, including any judicial review that might arise from the administrative proceeding. In including section 406(a)(1)(C) within the scope of the fee award and in providing for review of various informal proceedings listed in section 406(a)(1)(C), I intended to provide for the award of fees from the outset of any informal proceeding identified in section 406(a)(1)(C), assuming that the citizen prevails at least in part or contributes to a full and fair determination of the issues raised.

I also intended through this provision to encourage citizen participation by the person affected by the mineral activity in informal as well as formal administrative proceedings and to provide reasonable compensation either when the citizen prevails at least in part on the merits of the claim at any stage of the proceeding or when the citizen contributes substantially to a full and fair determination of the issues.

As my colleagues should note, this legislation has been subject to a long and carefully deliberated history. I urge its adoption by the House.

Madam Chairman, I yield to the gentleman from Ohio [Mr. REGULA], who has been strongly supportive of our efforts to reform the mining law.

Mr. REGULA. I thank the gentleman for yielding.

Madam Chairman, I simply say I think we need a revision of the mining law. In the Subcommittee on Interior Appropriations we have been purchas-

ing land that was granted under the patents at \$2.50 an acre for, in some cases, thousands of dollars. I think we need to address that problem.

Second, we need to insure that there is environmental cleanup because the taxpayer is now stuck with about \$11 billion worth of Superfund sites resulting from mining in years past.

We cannot change that, but we should make sure that this does not happen in the future.

Madam Chairman, I rise in support of H.R. 322, the long overdue reform of the antiquated 1872 mining law.

Since 1990, I have included language in the Interior appropriations bill which would impose a moratorium on patenting mining claims.

Clearly the patent provisions in the 1872 mining law are not consistent with current Federal land management policies in that they allow patented mining claims to pass into private ownership which removes these lands from multiple-use management, impedes effective multiple-use management of adjacent public lands and does not permit the Government to receive a fair return on the land or minerals. BLM estimates that 3 million acres of Federal lands have been virtually given away to private ownership through this 120-year-old statute.

But this is only one aspect of the law which needs addressing and the bill before us today, along with eliminating the patenting process, will also address the issue of reclamation, and provide the Government with some compensation, in the form of a royalty payment, for the mineral resources it owns.

Under current law no permits are needed for mineral exploration, no royalties are required and claimants are exempt from many of the Federal environmental controls and reclamation standards that apply to other extractive industries. Because of the lack of environmental requirements, at least 48 mining sites have been placed on EPA's Superfund list and will cost the Federal Government an estimated \$11 billion to clean up.

A comparison with other governments' policies governing the development of hardrock minerals on Government lands shows U.S. policy stands alone. Canada, Australia, and South Africa, for example, all charge a royalty and allow minerals development under a leasing system whereby the government retains title to the land, not a patent system which virtually gives the Federal lands away.

When the mining law was enacted 120 years ago it was designed to promote exploration and development of domestic mineral resources. These incentives are no longer needed in what has become a \$9 billion per year industry employing some 44,000 workers.

At the time the \$2.50 cost per acre was about what these western lands were worth. Moreover at the time, the law applied to all types of minerals on all Federal lands. Since then legislation has removed from the mining law fuel minerals such as coal, gas, and oil and most common variety minerals such as sand, gravel, and stone. Most other extractive industries must adhere to a variety of requirements when operating on Federal lands. Only hardrock minerals continue to have primary claim to access on some 285 million acres of public land.

I have long been a proponent of multiple use of our public lands. But I believe such extractive use must be weighed against the other uses of the public lands and that the Government should get a fair return for allowing these activities.

By enacting this long overdue reform measure we will bring the hardrock mining industry into the 20th century and allow the Federal land management agencies to evaluate this use of the public lands fairly against other uses and receive a fair return for allowing mineral exploration on public lands.

Mr. RAHALL. Madam Chairman, I yield to the gentleman from Minnesota.

Mr. VENTO. Madam Chairman, I rise in support of the bill and commend the gentleman in the well, the gentleman from West Virginia [Mr. RAHALL].

Madam Chairman, as an original cosponsor of H.R. 322, and its antecedents over the past decade, I rise to strongly support the passage today of this refined legislative proposal.

This is the second time in the past 2 years that the House has considered a long-overdue comprehensive reform of the mining law of 1872. Earlier this year, the Senate passed a very minimal bill. We need to pass a good bill, so that a solid reform measure can emerge from conference.

Over and over, it has been demonstrated that basic changes in the 1872 mining law—a surviving relic of another era of public land policy—are needed to protect the public interest.

More than 70 years ago, by enacting the Mineral Leasing Act of 1920, Congress instituted a leasing system for coal, oil, and other minerals whose development was not suitably regulated by the 1872 mining law. But even then, more should have been done.

In 1970, over 20 years ago, the Public Land Law Review Commission called for remedying the mining law's remaining deficiencies and weaknesses.

In 1976, Congress passed the Federal Land Policy and Management Act, or FLPMA, which was largely based on the Land Law Review Commission's recommendations. FLPMA did make modest improvements in the hardrock mining law—for example, by mandating re-ordination of claims, to eliminate stale or abandoned claims that clouded the status of large parts of the public lands—but still, much more remained to be done.

In particular, for sound management of the public lands we need to close the gap between the mining law, with its principle of encouraging unrestricted prospecting and the unconfined staking of claims, and the basic land-use planning principles of FLPMA and the National Forest Management Act.

H.R. 322 would finally close this gap, by linking decisions about the suitability of particular lands for mining activities with the land-planning processes of the Bureau of Land Management and the Forest Service.

I believe that this is in the best interests not only of other users of the public lands, but of the mining industry as well—because such policy would provide greater certainty about where mining can appropriately occur, and under what conditions. Uncertainty is the enemy of investment and development, and

this feature of the bill will reduce that uncertainty.

Strengthened land-use planning can reduce or eliminate the need for ad hoc legislation to prevent mineral entry in places where it could not be reconciled with sound management—such as the Cave Creek Area, in Arizona, for which special withdrawal legislation, sponsored by the gentleman from Arizona [Mr. KOLBE], was passed last year.

Madam Chairman, H.R. 322 as reported by the Natural Resources Committee is a good bill. Chairmen MILLER and LEHMAN have demonstrated great leadership on this issue, and the gentleman from West Virginia [Mr. RAHALL] continues to deserve the thanks of the House for his persistence and hard work on this issue.

I urge the House to seize this opportunity to replace the archaic mining law of 1872 with a modern mining law by passing this very important bill.

Mr. RAHALL. Madam Chairman, as I conclude, I again say that while the mining law of 1872 served its purpose and helped develop the West and caused needed minerals to be extracted from the earth, we are long past that time when this 19th century law can be depended on to serve this country's 21st century needs. I would say that the development of the West has been completed and it is now time to take into consideration the taxpayers' interests.

Mrs. VUCANOVICH. Madam Chairman, I yield 3 minutes to the gentleman from New Mexico [Mr. SKEEN].

Mr. SKEEN. I thank the gentleman for yielding this time to me.

Madam Chairman, the mining reform bill brought to the floor by Congressman RAHALL is opposed because it will destroy thousands of jobs related to the mining industry.

Congress has been grappling with the question of reforming the mining law for a number of years, however, the Rahall approach would destroy an entire industry, the jobs it generates, the communities it sustains.

Congress should be able to reform the mining law without causing great harm to another domestic industry of vital interest to this Nation and our competitiveness. But, Congress is about to do it again, about to pass legislation which overregulates a domestic industry and makes it virtually impossible for it to stay in business. If we continue to drive the ranching, mining, and timber industries off public lands there will be nothing left out there. The people and communities will go away, move to the cities and the consumers living in the cities will foot the bill by paying higher prices for these goods.

It's too bad that some Members of Congress have not seen fit to draft responsible legislation on these public lands issues dealing with the ranching, mining, and the timber industries. Some of us from the West have tried, but our proposals never see the light of day on the House floor. Congress-

woman VUCANOVICH introduced a mining law reform bill which would not destroy this country's competitiveness and which promoted production, increased revenues to the Federal Treasury, and benefited the consumers. That bill never had a chance. Hopefully, the Senate will be able to provide a more responsible and balanced approach.

In Grant County, NM, the Phelps Dodge Mining Co. has been operating for over 80 years and has made major contributions to our State's economy. New Mexico gained more than \$571 million as a result of the combined direct and indirect contributions of Phelps Dodge Corp to personal, business, and Government income.

Phelps Dodge works hand in hand with chamber of commerce and economic development groups; it has donated land to build parks, and continually provided hundreds of students with scholarships to State colleges and universities.

Recent financial contributions from Phelps Dodge have gone to the Silver City Museum, the Animas, Silver City and Cobre Consolidated school districts, Gila Regional Medical Center, the New Mexico Museum of Natural History, Western New Mexico University, the Rio Grande Zoological Park, the New Mexico Symphony Orchestra, and the Santa Fe Opera.

The 1872 mining law reform is of crucial importance to my constituents, the State of New Mexico, and the Nation. We should stop treating this industry as a blight and trying to destroy it. The mining industry is important to this Nation. It provides benefits to the consumer, workers, and the surrounding communities.

Madam Chairman, I rise in strong opposition to H.R. 322, as reported by the Committee on Natural Resources. This bill is an arrow aimed squarely at the heart of my constituents. Oh yes, it will have plenty of impacts elsewhere—here and abroad—but Nevada miners are destined to pay the freight on H.R. 322. Until all our mining capital has taken flight, that is.

Let me begin, Madam Chairman, with a brief rebuttal to charges we have heard and will hear some more, no doubt. Yes, the mining law is 121 years old and was signed by President Ulysses S. Grant. But the 42d Congress, just 2 months earlier, passed the bill establishing the world's first National Park—Yellowstone. Is this park and that concept antiquated too?

Besides, the act of May 10, 1872, has been amended per se at least 35 times. More importantly, however, it has been amended, in effect, each time Congress or State legislatures enact environmental laws. That is right, despite the rhetoric of the antimining lobby, the 1872 act does not immunize miners from one single environmental law.

We have heard some complaints about the details of H.R. 322 already, I

would like to put my general concerns in the context of the principles of the mining law important to us if we are to keep a domestic industry. First, is the concept of free access to the public domain and the self-initiation of rights. Free access does not mean without fee, it means unfettered by bureaucratic redtape. The unsuitability provisions of this bill contradict this concept in a big way. I oppose letting unelected bureaucrats do the job of Congress.

Other principles completely thrashed in H.R. 322 are security of tenure and the associated right to mine under current law. These concepts are absolutely fundamental to investment in mineral exploration and development—worldwide. H.R. 322 has nothing like the property right associated with unpatented mining claims today, nor even the contractual rights a leaseholder for coal has. Nothing. One's investment is entirely at risk to the whims of Congress and the Secretary, it would appear.

Career officials at the Justice Department fully agreed—H.R. 322 represents a diminishment of rights so severe as to be labeled a taking of a property interest of some magnitude. Those officials suggested a major retrenchment of H.R. 322 to escape this consequence, but it is not in this substitute.

Now, I do not argue that the current right to mine is without qualification. It certainly is limited by the ability to meet current environmental thresholds in law. Can't meet Clean Water Act standards? Well, you can't mine until you demonstrate compliance. But the right is predicated upon meeting standards applicable to everyone.

How do today's miners gain secure tenure? Well, one way is to seek fee title to lands, what we call a patent. Some Members complain bitterly this is a big giveaway, but it has been grossly distorted. All we hear is \$2.50 per acre when the truth is that it costs a mining claimant tens of thousands of dollars on average to develop one's claim to this point. These are dollars working in our economy, only a portion of which are sent to Washington, thank goodness.

And, say some people with amazement, miners have patented an area the size of Connecticut since 1872. Let me put this in perspective. Here is a map of the Western States, sans Alaska, in which this law operates. Here is my State and district and here is a map of Connecticut at the same scale. Can you see it? Twenty-two Connecticut would fit into my district alone. What is the big problem? Are we concerned that at this pace the public domain may be privatized by the year 6000 or beyond?

Another chart I have here puts the lie to the magnitude of lands disturbed by mining versus other uses. Mining is way down the list. Again, what is the

problem? Perhaps those Members from States settled under the Homestead Act would like to explain the cost to patent those lands. I recall it was free from a fee, but we all know those pioneering people busted their backs proving up the homestead to land office satisfaction. And so do miners.

Now, I'm going to give an example from my district about why patenting is critical. Secretary Babbitt has been in the forefront of those calling for an end to patenting. He made very public statements regarding a mine near Elko, NV which he described as containing 25 million ounces of gold reserves and he was darn mad that he would have to grant title to the property and lose the opportunity to levy a royalty. Everyone agrees it's a world-class mine. He told me in committee testimony that he was obliged to follow the law and issue patents until the law is changed.

I took him at his word, but where is the patent? Well, it now seems Secretary Babbitt has concerns that endangered species consultation is necessary because a stream 7 miles away and outside the watershed of the mine, I believe, may have a fish in it needing protection. His own professionals at BLM have told him no hydrologic connection exists, but he persists. Bottom line, Madam Chairman? If this gold mine, probably the richest in America, cannot satisfy the Secretary's requirements for proving a valuable deposit exists, probably no mine can. Is this the way we want the Secretary of the Interior to use the Endangered Species Act? As leverage over patent applicants to somehow make them obliged to pay a royalty that they otherwise would not? I think not.

Speaking of royalty, let me reiterate my concerns this bill would send the United States on the opposite course most other nations are taking. Mexico dropped its 7 percent gross royalty over a year ago and is now satisfied with taxing miners' profits, as are Canada, South Africa, and gold mines in Western Australia. The World Bank advises developing nations to forgo gross royalties to lure mineral investments that pay many times over in their economic benefits. Yet, Secretary Babbitt and the sponsors of this bill still insist upon a gross royalty formula. They keep saying "That's what coal and oil and gas pay." But so what?

We all know coal royalties are paid by electricity consumers every month in their light bills. And oil and gas? It is valued at the wellhead, before any cost, other than pumping, is added. I would like to see the same scheme applied to hardrock mines. Value the broken ore at the minemouth. After all, it may be publicly owned minerals, but it's private labor that wins the metal from the ore. Why should Uncle Sam receive a cut off the top on these postmining costs? He would under H.R.

322 despite the net in net smelter return. It is indeed a gross royalty.

In my view, the Federal Government is entitled to a share of the profits, just as it is with any other business. And, other nations agree with me. This is the reality of today's global marketplace.

Let's take a look at the impact the royalty alone in this bill would have. This chart shows the results of various model studies run on the data. I show only 8 percent gross royalty numbers here, but other numbers were crunched. Let me call your attention to the first row. These are the Interior Department's own figures. The committee report acknowledges the net job loss associated with this royalty, 1,100 jobs. That is not an industry sponsored study, it's Secretary Babbitt's royalty task force that said this. And this is a net job loss. They are counting abandoned mine reclamation jobs as well as new bureaucrat positions needed under this bill against the real job losses of miners, geologists, engineers, haul truck drivers and the like. Believe me, the DOI numbers are cooked because the static analysis doesn't begin to account for the retreat from public lands that this ultrahigh royalty would cause.

Of course, studies that do recognize this real life principle show much more job loss and losses to the U.S. Treasury the bill would likely cause. We proved with the \$100 holding fee that the miners do have alternatives—they drop their claims and go elsewhere. OMB estimated \$97 million would be collected from the first-time rental fee. BLM actually received only \$51 million or so. So much for executive branch scoring.

Back to job losses. I have here on the poster a quote from President Clinton he made while speaking about NAFTA. I believe he is sincere about not wanting to knowingly cause job losses. But his guys down at Interior are causing him to misspeak. Whatever your vote will be tomorrow on NAFTA, I think we all agree that job loss—or creation—is the motivating factor. Well, here we have a bill that indisputably causes job loss, I think major losses, but this body is prepared to pass it anyway. We have got to get to conference with a tough position, says the chairman, because the Senate bill is so weak. I disagree strongly, but, more importantly, why should the House vote to send good high-paying jobs to Mexico unilaterally. That's where our dollars are headed, my friends, and H.R. 322 will accelerate the trend greatly.

Last, Madam Chairman, I would like to put a human touch to my remarks by telling you about Elko, NV, the best small town in America. Elko is in the heart of gold mining country today. More than one-third of its population is employed by the mining industry. Mining companies paid over \$250 million in salaries and benefits to Elko

area employees in 1992, plus scholarships to young adults, and donations for schools, hospitals, and the like. Mining is a good fit for this community whose residents I am proud to call my constituents. They are hard-working people, producers for this country. We export much of Elko's gold to help our Nation's balance of trade.

We should remember, mining jobs pay the highest wages of all production workers, averaging nearly \$39,000 per year benefits, as in health benefits.

So let me end by reflecting upon the candid statement of the sponsor of similar mining reform legislation in the other body. Senator BUMPERS actually said last July, "Adios, as far as I'm concerned. Why mine America first?" This extremely cavalier attitude shows he thinks his State will not be impacted by this bill. But let me differ once more. Miners on Nevada buy explosives, chemicals, trucks, bulldozers, and all sorts of other supplies and equipment from somewhere, and usually it's made out of State. And we are talking mucho dinero as they say south of the border. Will the manufacturers be able to sell dozers to Mexico at the same pace as to Nevada? I bet not. So, there will be an impact east of the Mississippi.

□ 1540

Madam Chairman, I yield 2 minutes to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Madam Chairman, once more we are here to consider a bill to change the general mining law of 1872. Today's measure is marginally better than the ones we have seen in year's past. But the overall effect is to call into question the majority's good faith in attempting to draft a workable mining reform bill.

At best, most of the environmental provisions in this bill are already on the books, either at the State or Federal level. What is needed is better enforcement, not more laws. At worst, this bill could shut down what little remains of domestic mining on public land.

Over the years this issue has been framed as a debate between those who want to protect the environment and think the mining industry is raping the land for a pittance, and those who see the mining industry as a source of well-paying jobs. I think we have failed to acknowledge the importance of mining to the Nation's needs.

If we do not have domestic mining, we are going to have to learn to do with some things we have grown used to. Mining is vital to making cars or lightbulbs or aspirin or what have you. If you cannot get it here, you will have to get it from overseas.

Each year, each American consumes an average of 40,000 pounds of new minerals. That works out to an average lifetime supply of 800 pounds of lead,

750 pounds of zinc, 1,500 pounds of copper, 3,593 pounds of aluminum, 32,700 pounds of iron, 26,500 pounds of various kinds of clays, 28,213 pounds of salts, and over 1 million pounds of various aggregate materials.

If we do not get these materials here, we have to get them overseas. I cannot believe that is good for this Nation's interests. Already, we consume about a quarter of the Earth's minerals production.

We can—and should—take steps to do better and smarter the things we have done in the past. But we must also dig for minerals where we find them, not where we want them to be. And, in many cases, where they are is on public land.

This is not a good bill. Hopefully, we can improve it somewhat today. And hopefully, the conference committee will come out with something that is in the best interests of everyone.

Mr. LEHMAN. Madam Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Madam Chairman, I thank the gentleman for yielding this time to me, and I thank him for his leadership on this landmark legislation.

Madam Chairman, in 1872 a good steak dinner was less than a quarter; \$2.50 an acre was a pretty decent price for land in the vast, unsettled, as we then called it, wilderness of the Western United States. Today a good steak dinner is more than 25 bucks, and the most valuable, resource rich, vanishing public lands in the Western United States are still going for \$2.50 an acre.

Now we have heard time and time again, particularly from the other side of the aisle: "Run the Government like a business." What business would give away, as in the case upon which the gentlemen from Nevada [Mrs. VUCANOVICH] waxed eloquent, a Canadian-owned company, so-called American Barrick, which wants to patent 1,793 acres of public lands, United States taxpayer-owned lands, in the Western United States? They want to pay us \$8,965 for those lands which have an estimated \$10 billion of gold reserves.

Run the Government like a business? Yes, that is great, \$8,900 for \$10 billion in resources. But, no, we cannot do away with the patenting; no, we cannot charge more for the land; no, we cannot have a smelter royalty or any other kind of royalty.

It is time to run the Government like a business, and I am here to say, "Let's get a fair return for the U.S. taxpayer. Let's get a fair protection for the environment of the vanishing Western United States, the precious ground water, and let's drag the mining industry into the 20th century."

□ 1550

Mr. LEHMAN. Madam Chairman, I yield myself the balance of my time.

Madam Chairman, frankly, we are hearing arguments offered on the floor today by opponents of this legislation that are not even being offered by the mining industry to the bill at the present time. This bill has been subjected probably more than almost any bill that has come to the floor this year to the rigors of the legislative process. It has been heard extensively; it has been amended extensively; it has been made to make more workable, and the product before us reflects a consensus broad enough to have gotten every Democrat on the committee in support of it, whether they are from the West or East, liberal or conservative.

Madam Chairman, this bill does not put undue hardship on the mining industry. Yes, it requires a royalty. Should we not have a royalty? If mining happens today on private lands, the private owner charges for the right to use that land. If mining happens on State land, the State charges it. Only the Federal Government gives its assets away.

The royalty in this bill as a modest one, and it is one that we can certainly live with. Yes, the bill requires reclamation standards. There are no reclamation standards today. States have reclamation standards on their properties; the Federal Government has none on theirs. Now, for the first time, with this legislation, we will have those.

Yes, the bill gives the Secretary discretion to use Federal lands and manage them as he sees fit. Finally, there is no job loss here, according to the CBO.

Mr. ALLARD. Madam Chairman, I rise in opposition to H.R. 322.

I am glad to have the opportunity to say a few words about this very important legislation that we are debating today. H.R. 322 seeks to revamp our Nation's mining law, a law that has guided this country for decades. While I am not opposed to refining some aspects of this law, the changes set forth in H.R. 322 are simply unwise considering that the current mining bill has evolved over the years, protecting private property rights.

Many of my colleagues have already expressed their concerns with this legislation—and rightfully so. Problems already exist throughout the text and new issues are bound to spring up from this poorly conceived legislation. The language in this bill raises a number of red flags, including the section dealing with hydrological balance as it applies to water.

H.R. 322 introduces for the first time in Federal law, a requirement to protect and restore hydrological balance. In the bill, the term hydrological balance is poorly defined to include water quality, water quantity and their interrelationships. As implemented, miners would be required to restore the approximate premining hydrologic balance during reclamation. Restoring all aspects of hydrological balance to premining conditions is probably impossible for many mines, and I question why it would be necessary unless a specific environmental harm could be identified. The important question to answer, missed entirely by

H.R. 322, is whether there are permanent adverse environmental impacts that can and should be addressed.

In addition, H.R. 322 would duplicate water quality laws and add burdensome new requirements. Water quality and water quantity laws already apply to mining. Mining operations in this country already comply with extensive water quality requirements at the Federal and State levels.

The most disturbing part of this section is the fact that this language would seriously infringe on and disrupt the operation of Western State water laws and would ignore the existing framework of Federal/State water quality protection laws. As you may know Madam Chairman, Western States have well-established traditions of allocating water among users. Miners, like all other users are answerable if they diminish, harm or otherwise interfere with the property rights of other water users. However, H.R. 322 would ignore and interfere with these systems by giving the Federal Government authority to second-guess the water allocation decisions made State laws. This interference is unprecedented and unwelcome, especially since no one has illustrated a compelling reason for singling out the mining industry for the uniquely onerous standards of H.R. 322 would impose.

As we debate how to restrict and tax our domestic mining industry, other nations are opening the doors to U.S. mining companies and investment by removing taxes and burdensome regulation.

For example, in 1992 the government of Mexico approved a new mining code which:

- Permits foreign ownership of Mexican mining interests;
- Eliminated a 7-percent national mining tax;
- Removed burdensome fees and permitting procedures; and
- Opened vast tracts of public land for mineral exploration.

Mexico and other nations of Latin America are seeking United States mining investment because it brings jobs, capital and technology to their countries. Latin America, not the Western United States is where the gold rush is occurring.

The Mining Journal of London recently editorialized:

For years North America has attracted the most exploration spending, but the growing anti-mining lobby and coincident introduction of new and improved mining and investment codes in many developing countries could soon shift the balance in the latter's favor.

Many industries come to Capitol Hill and claim that a particular piece of the legislation will push them offshore. Mining has the statistics to prove their claim. I submit for the RECORD a recent analysis prepared by the Gold Institute, and printed in American Metal Market, which illustrates the movement of new mining investment money south of the border.

The article is based on a study which examined exploration spending trends by U.S. gold producers and the efforts of Latin American nations to recruit mining investment. I request unanimous consent that the article and study be inserted in the CONGRESSIONAL RECORD.

Let us keep mining in America. Vote "no" on H.R. 322.

UNWELCOME HERE: U.S. FIRMS LOOK SOUTH

(By Michael Brown)

The resurgence of mining in the 1980s triggered a review of the 1872 law governing mining on U.S. public lands. The outcome of the current congressional debate on the General Mining Law will have ramifications for the industry, and our nation, for decades to come.

Mining is a global business and policymakers need to recognize that their actions will have international consequences. Ill-conceived reform will accelerate the export of the U.S. mining industry to other nations.

The gold industry has more at stake in this debate than perhaps any other mineral. Since 1980, the United States has risen from producing less than 1 million troy ounces of gold to more than 10 million ounces last year. The United States is now the second largest gold-producing nation in the world, and its annual output is 50 percent of South Africa's.

The rise in gold production has resulted in enormous job growth. Precious metal mining employment rose 186 percent during the 1980s. Today, more than 30,000 men and women work in gold mining. This number rises to nearly 80,000 when the related jobs are counted in the support industries. Gold mining jobs are the highest paid industrial jobs in America, with an average annual salary of \$34,000.

The growth in gold production has reversed the U.S. dependence on foreign gold and has made American gold available for export. As recently as 1980, 75 percent of the gold required by domestic manufacturers was imported. This deficit continued until 1989, when U.S. production first exceeded domestic demand in 1992, the nation's gold surplus totaled \$1.5 billion. Over the next three years, the surplus is expected to reach \$2.5 billion annually.

Since the fall of the Berlin Wall, the nations of Latin America have been aggressively courting mining investment. For them, mining brings a skilled work force and needed capital, as well as allowing them to develop valuable natural resources.

From Argentina to Venezuela, mining codes have been rewritten to encourage foreign investment. These incentives and favorable business climates are attractive to beleaguered American executives who are feeling unwelcome in their own nation.

Interest in Latin America among our members has been increasing for several years. We conducted a study of our members, representing 80 percent of U.S. gold production, and confirmed the rush to Latin America in 1989, this region attracted only 6 percent of total exploration expenditures. By 1992, that had risen to 15 percent, and it is growing. The number of our companies active in the region has doubled, and it is not uncommon to find that many companies are setting aside Friday afternoons for Spanish language lessons.

Gold mining has brought economic vitality and prosperity to mining families and communities across America. Other nations are envious of that success and seek to emulate it. We hope U.S. lawmakers will place the same value on this important domestic industry and produce a mining law reform bill that will keep the U.S. internationally competitive.

[From the Gold Institute Report, Feb. 1993]
THE SEARCH FOR GOLD: U.S. PRODUCERS LOOK ABROAD

SECTION ONE—OVERVIEW

The U.S. gold mining industry today

The decade of the eighties saw a modern-day gold rush in the western United States. Gold production rose from less than a million ounces in 1980 to 9.6 million ounces in 1991—a nine-fold increase. The industry employs 30,000 workers directly and approximately 50,000 jobs depend indirectly upon gold mining.¹

Much of U.S. gold production occurs on "public land" owned and administered by the federal government. Access and mining on public land is governed by statutes that have evolved and been modified over the years, commonly known as the 1872 Mining Law.² While the government has been unable to determine exactly what portion of U.S. gold mining operations occur on public lands, a simple examination of the major gold producing states (Nevada, California, Utah, Montana, Washington) reveals a high level of federal ownership or administration. For example, 60% of gold production occurs in Nevada, a state where 87% of the land is federally owned. Nevada is estimated to contain 50% of all demonstrated U.S. gold reserves.

North American gold mining companies are no longer in a high-growth stage. According to analysts at Goldman Sachs, gold mining companies are now in a period of low profitability, depleting hedging positions and faltering growth prospects. The U.S. gold mining industry appears to have matured just as the commodity cycle turned down and the supply/demand balance shifted. The year 1988 was probably the watershed year for the industry. Consolidation has already started to occur as the industry struggles with rising environmental regulation and other cost pressures.³

The U.S. gold industry is also at a public policy crossroads as Congress and the Clinton Administration debate proposed reforms of the 1872 Mining Law. Unfortunately, much of this debate has occurred without considering the growing international competitiveness in mining, and trends in exploration spending. U.S. gold production appears to have peaked and many hold that future growth opportunities are in the nations of Latin America for a variety of economic, geological and political reasons.

Reform of the 1872 Mining Law must occur with an eye towards maintaining an internationally competitive mining industry and preserving growth opportunities in the United States. The growth in Latin American exploration has gone virtually unnoticed by policymakers in the United States. As these mine projects begin production, however, the transfer of a U.S. industry to Latin America will become more apparent. The implications for the U.S. economy and international competitiveness are yet to be felt.

Exploration spending—The guide to mining's future

Every mine has a finite life based on its reserves. The long-run viability of the industry therefore depends on the finding of new gold deposits and the development profitability at prevailing gold prices, and the geologic, technical and economic infrastructure supporting the industry.

Exploration spending is the "research and development" money in mining. Finding new reserves to replace depleted reserves is a critical corporate objective for mining companies. During the mature part of the business cycle, when mine production rates are

Footnotes at end of article.

high, mining companies must run active exploration programs to replace rapidly declining reserves.

Gold reserves are unique in mining because of their reserve lives. Base metal reserves commonly range from 20 to 40 years, while gold reserves run in the 5 to 15 year range. This drives gold companies to constantly seek replenishment of their reserve base. It is estimated that the leading top ten mining companies have known reserves with an average life of 13 years.⁴

Mining companies employ two strategic approaches to exploration spending; (1) expand existing operations and reserves, or (2) discovering new prospects. In the United States, producers appear to be targeting exploration expenditures to extend existing reserves rather than towards the discovery of new deposits or adding to resource inventories at recently discovered deposits. Discovery exploration appears to be in the process of moving outside the United States, most dramatically to Latin America.

Latin American nations attract mining investment

The mining trade and investment media is replete with references to an emerging trend to deploy exploration resources to Latin America. The industry's leading trade publication, *The Mining Journal*, noted this trend in 1991 when it editorialized:

"For years North America and Australia have attracted most exploration spending, but the growing anti-mining lobby and coincident introduction of new and improved mining and investment codes in many developing countries could shift the balance in the latter's favor."

Respected international mining analysts have noticed the trend:

"Some years ago, I forecast that South America would be the center of mining investment in this decade (1990) and that seems to be coming true.

"With falling gold prices and ever increasing difficulties in environmental permitting, it is almost a foregone conclusion that the balance of gold mine development will switch from North to South America as the decade continues."—David Williamson, *International Mining Newsletter*, London, 1991.

Wall Street analysts have begun to comment on the trend:

"With ongoing exposure to a changing political environment it is readily understandable why so much of the U.S. industry is stepping up exploration efforts outside of the United States."—J.P. Morgan, 1992.

References have started to appear in corporate annual reports:

"While our primary focus remains on North American properties, we will be increasing our efforts on high quality projects in New Zealand and Central and South America."—Amex Gold, 1991.

Speeches by mining company executives carry the same message:

"Change is happening in North America, making it a less attractive place for mining capital, and in the world's lesser developed countries making them more attractive. We're seeing evidence of lesser developed countries seeking a share of the limited pool of international mining capital at the same time we're facing increased hostility at home."—Robert Calman, Chairman, Echo Bay Mines Ltd., Alaska Chamber of Commerce, Oct. 6, 1992.

The U.S. Bureau of Mines confirms these trends in their recently released 1993 Mineral Commodity Summary report. In their survey

of base and precious metals mining companies, they discovered that the number of Canadian and U.S. companies that have shifted exploration budgets to Latin America has almost doubled since 1991. They attributed this increase to (1) the favorable investment climate developing in Latin America, (2) North American environmental compliance and permitting costs, (3) the risk that reform of the 1872 Mining Law will increase the cost and investment risk of exploration in the United States.⁵

Sweeping economic reform in Latin America opened the way for mining

Since the fall of the governments of the former Eastern Bloc, and the rise of strong trade confederations such as the European Economic Community, the nations of Latin America have been reforming their economies and turning away from centrally planned systems to free markets. The International Development Bank reports that Latin America has undergone a fundamental change in its attitude towards market forces and private ownership. The Bank is confident that Latin America will continue on its present course, and this will underpin future economic growth, thus lessening any nationalistic tendencies to return to old ways of protectionism and statism.⁶

According to The Brookings Institute, Latin American nations are in varying stages of reform, with the progress often determined by the extent to which they have played by orthodox economic rules in recent years as well as by the level of development at which they entered the process. Some countries, most notably Chile, Mexico, and Venezuela, have made radical changes in their economies. Most have come to realize that their future rests in the comparable advantages they can offer world markets.

Chile was one of the top performing economies in Latin America in 1992 with a growth rate of 8 percent. Personal consumption increased a healthy 5.4 percent, real wages rose 4.9 percent and unemployment dropped to close to 5 percent, the lowest level in twenty years. The growth rates in the leading sectors were: transport and telecommunications (+11.9 percent), commerce and trade (+8.6 percent), fishing (+8.3) and mining (+4.8). It is the official policy of the Chilean government to: (1) build a competitive market economy open to international trade and investment, (2) ensure a climate of stability that provides guarantees for domestic and foreign investment.⁷

United States mining investment welcome in Latin America

Once closed to foreign investment, technology and management, the Latin American nations have changed their public policies on mining from the promotion of state-run public enterprises to massive privatization and recruitment of foreign investment. National legislatures have rewritten their mining codes and foreign ownership laws to encourage foreign investment:

Mining laws rewritten

Country:

Country	Year
Panama	1988
Brazil	1989
Colombia	1989
Argentina	1990
Chile	1990
Venezuela	1990
Bolivia	1991
Mexico	1991
Nicaragua	1991
Peru	1991

Political leaders are willing to "go the extra mile" to attract foreign investment

through programs involving widespread privatization and other free market steps.⁸ They recognize that nations must now compete for mining investment. In sharp contrast to earlier years, the developing nations of the world have come to realize that foreign investment can bring new capital, technological expertise and management skills now lacking in their nations. Investment capital will be attracted to those areas where the cost of doing business, including the taxation rates, are commensurate with the perceived level of risk.⁹

This strategy appears to be working. In most of the post-WW2 period, the United States and Canada attracted most mining investment. This was due to rich mineral deposits, strong domestic demand for minerals, strong currencies, the availability of financial resources, predictable tax laws, an absence of political risk and a highly educated work force. In the past, the nations of Latin America typically attracted only 5 percent of investment spending. But, new global attitudes are bringing new investment to the region.

The Metals Economic Group (MEC) estimates that of the 150+ gold mining companies they surveyed worldwide, 33 percent were looking at opportunities in Latin America. In base and precious metals they estimated that \$200 million was spent in Latin America in 1991.¹⁰

MEC estimates that 40 international mining companies are operating in Chile alone. Silver production has risen 35 percent since 1987 and gold production has increased 40 percent. So many mining projects are underway that engineering firms have had to recruit outside the country because they have emptied the local mining schools.¹¹ Chilean gold miners are said to be the highest paid workers in the nation.

Why Latin American nations are attractive for mining investment

(1) Availability of Mineral Reserves:

As one commentator noted, "there are ten geologists for every prospect in North America, and ten prospects for every geologist in South America." In reviewing nations for mineral exploration, the first criteria is that of geological potential. Latin American mineral deposits were created by the same geological forces that created the mountains of North America and in many cases are relatively untapped. Peru, Brazil, Argentina, Mexico, Bolivia, Venezuela, Chile, Columbia, and Ecuador are the leading prospects in Latin America.¹² There is a belief in the exploration community that "the easy to find ore deposits" in the United States have been found and the absence of exploration work in Latin America over the decades means that large ore deposits should be found easily.¹³

(2) Lessening of Latin American Political Risk:

Miners, unlike many other industries except perhaps petroleum, are sensitive to political risk. However, mining companies are increasingly confident that the reforms in Latin America will continue and provide the necessary security of tenure. The North American Free Trade Act, while not directly tied to the growth in mining interest, sends clear signals to Latin American political leaders and the mining community that long term interests can be jointly fulfilled.

Latin American reforms and initiatives to attract mining have included¹⁴:

- Security of tenure guarantees;
- Elimination of foreign ownership restrictions;
- Elimination or reductions in taxes, royalties and other fees;

Opening of public lands for mineral exploration;

- Reduced entry barriers;
- Improved government funded geological surveying and information collection;
- Simplified administrative procedures;
- Financial assistance incentives;
- Allowing the repatriation of profits to the home nation;
- Aggressive privatization of state run industries;
- Freedoms to sell, transfer or close properties;
- Nondiscrimination of foreign ownership;
- Encouragement of joint ventures;
- Improved infrastructure and competitive power costs; and
- Macro economic reforms including debt reduction and modernized banking.

Mexico has a five-year national program for modernizing the mining industry and is one of the leaders in opening its doors to mining investment. The reform movement initiatives include:

- Eliminating the national 7% production tax;
- Expanding access to federal lands;
- Simplifying administrative procedures;
- Offering financial assistance; and
- Encouraging foreign investment and ownership.

According to the Mexican government, the objective of this program is "to increase the development of the mining activity, its contribution to the country's economy and to intensify the more adequate use of its mineral resources." Mexican government leaders are traveling the world encouraging foreign investment and exploration activity in their country.

Other leading Latin American political leaders have abandoned their nationalistic views on foreign ownership:

"The idea that foreign investment should be resisted because of national sovereignty is an idea of yesterday. It is exhausted, this idea. Even the countries we call 'socialist' want foreign investment!"¹⁵—Patricio Aylwin, President of Chile.

According to the Mining Journal, the "Government of Peru has declared it to be in the public interest to promote private investments in mining. Furthermore, the government will no longer act as an investor, or operator, but rather will provide the framework to facilitate inward investment from abroad and from the domestic private sector."¹⁶

(3) Rising Political Risk in the United States:

The changes in Latin America are in sharp contrast to the political environment in the United States. American political leaders are giving serious consideration to measures which would:

- Assess an 8 percent royalty on hard-rock minerals mined on public lands;
- Tax the key chemical used in the heap-leach gold mining process;
- Restrict foreign ownership and investment;
- Limit access to federal lands;
- Impair the "security of tenure" need to obtain financing for mining;
- Increase the permitting times and reclamation requirements to levels non-competitive in the international marketplace; and
- Subject mining companies to citizen protest law suits.

In 1992 Congress applied a \$100 holding fee for public lands mining claims, a fee which may reduce exploration activities. Commenting on pending mining law reform

measures the American Mining Congress stated that the bills "so thoroughly alter the way minerals may be developed in the U.S. that they introduce considerable uncertainty to the industry. The bills shake the very foundation of America's industrial base."¹⁷ Congresswoman Barbara Vucanovich called one of the reform measures, "The Latin America Investment Act," because of her belief that enactment would accelerate the move to invest in Latin America.

In contrast to the President of Chile's progressive view of foreign investment, one American Congressman recently proposed to bar foreign citizens and corporations with a majority of foreign ownership from staking or operating claims on public lands.¹⁸

At a recent Northwest Mining Association conference an industry consultant remarked that "historically, companies have come to the United States because of the political stability. Now U.S. companies are going outside for the same reason."¹⁹

Karl Elers, Chairman and CEO of Battle Mountain Gold recently commented on the political risks in the United States by noting that "the risks in the United States are not the traditional risks of expropriation, discriminatory taxes or currency control. The risks are much more subtle, but still political."

Finally, mine permitting times have increased in the United States to the point "where they drain the economic life out of a project."²⁰

(4) Mining Investment Promotion:

The nations of Latin America are making an aggressive effort to recruit mining interests. In the past three years there have been several international conferences held on the topic of Latin America and its mining potential. Attendance has included leading Canadian and U.S. Mining companies, high government officials and Latin American business leaders. The most successful conference is the annual "Investing In The Americas" conference organized by International Investment Conferences, Inc. in Miami. It attracts hundreds of people from over a dozen nations.

Foreign exhibits and speakers have become commonplace at mining conventions and conferences held in North America. Several governments had large exhibits at the recent MinEXPO in Las Vegas.

Bolivia and Mexico are circulating colorful and well-crafted promotional materials on the potential for mining in their nations. The materials are available in English, Spanish and French. Mr. Alfredo Elias Ayub, the Harvard-educated Deputy Minister of Mines of Mexico, travels regularly around the United States promoting opportunities in his nation.

The governments are very "user friendly" and respond quickly and efficiently to inquiries about mining in their nations. They are working to improve their internal record keeping, geological surveys or build a base for future expansion. Argentina, a mineral rich nation, with few mines, plans a new mining school to train and educate mining professionals.²¹

Summary

There is a clear trend to move new discovery exploration efforts outside the United States to Latin America. These nations are the net beneficiary of redirected exploration and development monies as U.S. producers find their home country becoming more and more unfriendly to mining.²² The nations of Latin America offer large mineral resources and mine developers have confidence they can complete the necessary permitting in a timely manner.

SECTION TWO—GOLD INSTITUTE SURVEY

Survey Purpose

Statistics on exploration trends by nation are difficult to find. Many companies consider this proprietary information or their varying formats make it difficult to draw adequate comparisons. Private sector research often examines only the current year making it difficult to analyze trends.

In an effort to quantify exploration spending trends in the gold industry, a survey of Gold Institute mining members was conducted. Surveys were received from 18 companies, nearly all of the Institutes' U.S. mining members. Gold production by these companies represents 73 percent of total 1991 U.S. output.

It should be noted that these results reflect only the activities of the Institute's membership, and not the exploration work conducted by junior producers, prospectors and independent exploration companies. The nature of the industry is such that an important part of the exploration is conducted by these smaller companies. However, the presence of a senior gold producer in a given country is a sure sign that smaller companies have led the way.

Respondents provided exploration spending statistics for the years 1989-1992. Since the survey was conducted in the fall of 1992, it is recognized that the 1992 statistics are projections. The survey grouped spending into the following subsets; United States, Canada, Australia (including New Zealand and Papua New Guinea), Latin America and the Rest of the World (ROW). All responses were kept confidential.

Survey results

The decline in total spending on exploration from 1991 to 1992 is consistent with the independent research of Professors John Dobra and Paul Thomas in *The U.S. Gold Industry 1992* which found that lower gold prices forced mining companies to curtail exploration expenditures.

TABLE 1.—Total exploration spending—worldwide

1989	\$238,000,000
1990	251,000,000
1991	280,000,000
1992	235,000,000

TABLE 2.—TOTAL EXPLORATION SPENDING—UNITED STATES VERSUS FOREIGN

	1989	1990	1991	1992
USA	\$170	\$179	\$181	\$149
Foreign	68	72	99	86
Total	238	251	280	235

TABLE 3.—EXPENDITURES ON A DOLLAR BASIS
(In millions of dollars)

	1989	1990	1991	1992
USA	170	179	182	149
Canada	26	27	28	26
Australia	15	12	14	10
Latin America	14	16	30	35
Rest of world	13	17	26	15
Total	238	251	280	235

TABLE 4.—PRODUCERS PRESENCE IN LATIN AMERICAN DOUBLES

	(Number of U.S. producers)			
	1989	1990	1991	1992
USA	18	18	18	18
Canada	13	13	11	10
Australia	4	5	4	4
Latin America	7	10	12	15

TABLE 4.—PRODUCERS PRESENCE IN LATIN AMERICAN
DOUBLES—Continued
(Number of U.S. producers)

	1989	1990	1991	1992
Rest of world	3	3	3	3

Country review

United States

Gold exploration spending in the United States declined 18 percent in 1992 to a four year low of \$149 million.

The 71 percent of U.S. companies exploration budgets in 1989, declined to a low of 63 percent in 1992.

This is the first time total spending and share simultaneously declined together—clear evidence that the U.S. market is growing unattractive for investment.

According to Dobra-Thomas and the U.S. Bureau of Mines, most of the U.S. budgets were spent exploring for gold around existing operations and did not represent new discovery efforts.

Canada

The spending of U.S. producers in Canada remained steady at an average of \$27 million annually and at a consistent 10-11 percent share of exploration budgets.

Latin America

Latin America increased in dollar terms from \$14 million in 1989 to \$35 million in 1992, and its share of the exploration budget jumped from 6 percent to 15 percent.

Latin America was the only region in the world to post increases in dollars and share in 1992.

Mexico posted the most dramatic gains. In 1989 U.S. producers spent a half million dollars, which increased to approximately \$12 million in 1992.

Australia

U.S. producers appear to be wrapping up their efforts in Australia. Total spending and share declined over the period of the survey.

Rest of the World

In 1992, U.S. producers slashed their total spending in the rest of the world by 42 percent in dollar terms.

Lessons to be found in the U.S. oil industry

There are valuable lessons for U.S. gold producers and public policy officials to be found in the U.S. oil industry. According to a study²⁸ released by the Petroleum Finance Company in 1991, U.S.-oil based companies now spend a majority of their exploration dollars outside the United States. Foreign exploration spending overtook domestic spending in 1989 and has accelerated since that time. The U.S. share of exploration spending by major companies dropped from 60 percent in 1985 to 20 percent in 1990. In that industry, dollars which were once spent in the United States are now being spent overseas. This has contributed to the decline in U.S. oil output and increased the dependence on foreign sources.

U.S. oil output is now at its lowest level in 30 years. Industry analysts attributed several reasons for the shift, many of which parallel the current trend in gold (1) High discovery potential in countries which have not been properly explored and (2) Environmental restrictions that have placed large portions of the United States off-limits to exploration activities.

Conclusions

The United States economy has benefited greatly from the development of the world's second largest gold mining industry during

the 1980s. As congressional and administration leaders consider measures to reform laws regulating this industry, they must carefully consider how their actions will affect the competitive position of the United States. Latin American nations are taking deliberate and aggressive steps to recruit U.S. investment. Mining is an internationally competitive business and capital will flow to those nations which have mineral wealth and offer an attractive business climate.

FOOTNOTES

¹The "U.S. Gold Industry 1992," (Dobra-Thomas), University of Nevada, 1992.

²"The Battle for Natural Resources," Congressional Digest, 1983.

³"Review of Gold Industry," Gold Sachs, 1992.

⁴"The North American Gold Industry: A Market In Transition," JP Morgan, New York, July 1, 1992.

⁵"Mineral Commodity Summary," U.S. Bureau of Mines, 1993, p. 12.

⁶"Latin America's Spectacular Comeback," The International Development Bank newsletter, December 1992.

⁷"A Political Miracle," Forbes, May 11, 1992, p. 108+.

⁸Bolivia Today, Embassy of Bolivia, July 1992.

⁹"Mining Investment Promotion," United Nations Journal, National Resources Forum, Pre-publication copy.

¹⁰"Corporation Exploration Strategies," Metals Economics Group, Sept. 1992.

¹¹"Chile Breaks Out of Boom-Bust Cycle," Financial Times, Nov. 10, 1992.

¹²Ranking Countries For Minerals Exploration, Mining Journal, May 25, 1990, p. 15-19.

¹³"Incentives For Mining In Latin America," Speech at the Northwest Mining conference, Dec. 4, 1991.

¹⁴From the proceedings of the "Conference on U.S. Latin American Partnerships in Mining," Feb. 21-22, 1991 in Denver, Colorado.

¹⁵Interview with the President of Chile, Forbes, May 11, 1992, p. 115.

¹⁶"Peru," Mining Journal, London, Jan 22, 1993.

¹⁷Mining Law Repeal Legislation Threatens Job and Revenues, Press Release, American Mining Congress, Jan 28, 1992.

¹⁸Statement by Congressman Peter Defazio, 6/24/92.

¹⁹"South of the Border," Press Release, NWMA, Dec. 4, 1991.

²⁰Speech by Mr. Frank Joklik of Kennecott Corp., "Alaska Miner," Nov. 92.

²¹Speech by John Duncan, Conference on U.S. & Latin American Partnerships in Mining, Feb. 21, 1991.

²²Speech by Jay Taylor, "Gold and Silver Mining In Chile," Compania Minera Mantos de Or, at The Silver Institute Annual Meeting, Acapulco Mexico, March 1992.

²³"Looking For Oil In New Places," The Washington Post, December 28, 1991, p. D1-6 and "U.S. Oil Output Now At Its Lowest Level In Thirty Years," The Washington Post, January 16, 1992, p. D1.

Mr. MINETA. Madam Chairman. I rise in strong support of H.R. 322, the Mineral Exploration and Development Act of 1993.

Madam Chairman, this legislation is long overdue. In 1872, this body passed legislation to encourage the settlement of the western frontier, and the development of hardrock minerals such as gold and silver of Federal lands. That law was successful in attracting settlers to the West and in supporting the development of these minerals that have played such a key role in the development of our Nation.

Today, we no longer need to encourage people to move west, and today we cannot afford—from an economic or environmental perspective—to allow these western lands to be stripped of their beauty and resources for next to nothing. As the needs of our Nation change, the laws that govern us must adapt as well.

In 1872 it may have made sense to allow prospectors to remove these precious min-

erals at no cost. But in 1993 we are faced with a scarcity of resources, and the incentive of free gold and silver to anyone who wants to mine the land is not appropriate. The 8-percent royalty on the gross value of the minerals that this bill establishes is a fair and equitable price to charge for our resources.

Similarly, in 1872 this country did not face the environmental concerns that we do today. Today, we see our valuable natural resources disappearing before our eyes at an alarming rate. While I believe legitimate mining must be allowed to continue, we cannot allow the land to suffer as a result. The requirement that all mined Federal lands be restored to their original condition is the least we can do to ensure that when the minerals are extracted the beauty and integrity of the land are retained.

Madam Chairman, H.R. 322 will go a long way toward preserving our natural resources while allowing legitimate mining claims, and I encourage my colleagues to vote in favor of it. Mr. RICHARDSON. Madam Chairman, I rise in support of H.R. 322, the Mineral Exploration and Development Act of 1993.

This act sets out new procedures for mining and reclamation activities on public lands. Although the majority of actions resulting from his legislation will not directly affect Indian tribes, some of the provisions will.

This act provides that where appropriate, tribal laws and regulations regarding environmental issues such as air and water quality standards will apply. The act gives no new authority to Indian tribes and is consistent with current tribal authority under Federal environmental statutes. This act includes tribal lands as eligible for badly needed resources under the Abandoned Locatable Minerals Mine Reclamation Fund.

Title IV provides for citizen suits to be brought against those not in compliance with the terms of the act. An affirmation that Indian tribes enjoy sovereign immunity from suit is included. This is not intended to mean that tribes are not to be held responsible for their actions under this act. A provision is also included within title II of the act which authorizes the Secretary to require Indian tribes to waive sovereign immunity as a condition of issuing a permit under that section.

Congress has the authority to waive tribal sovereign immunity, although such waivers must be clearly expressed and are to be strictly construed. The waiver in this act is to be limited only to the terms of a permit sought by the tribe and not to be construed as subjecting Indian tribes to liability beyond the scope of the permits provided for under this act.

I wish to thank the chairman of the Natural Resources Committee, the gentleman from California [Mr. MILLER], as well as the chairman of the Subcommittee on Energy and Mineral Resources [Mr. LEHMAN], for their assistance in securing these important Indian provisions to this bill.

I urge my colleagues to support H.R. 322.

Mr. KOLBE. Madam Chairman, I rise in strong opposition to H.R. 322. This bill would spell doom for the hardrock mining industry and with it, its thousands of high-wage jobs, its multibillion-dollar contribution to the national economy, and America's leadership position in this important industry.

It is ironic that we are considering this bill on the day before the vote on the NAFTA.

NAFTA will help create new jobs; H.R. 322 will kill jobs. Anyone who is truly concerned about American workers will want to vote to defeat H.R. 322.

Numerous studies have confirmed the disastrous effects of this bill on America's job base. A Coopers & Lybrand study, for instance, found that H.R. 322 would result in the direct loss of 44,000 jobs, lost earnings of \$1.2 billion, lost output of about \$5.7 billion, and a loss of \$422 million to the Federal treasury.

Job losses of such magnitude would devastate entire communities, both in Arizona and throughout the West. In my State, the mining industry directly employs 19,000 people and contributes \$7.3 billion to the State's economy each year. The rest of the West would fare no better as entire rural communities would find their economies wiped out with the mining industry's departure.

The effects of this legislation would extend far beyond the West. Many manufacturing facilities, which process minerals mined in the West, are located in America's manufacturing heartland. The ripple effects of destroying an industry that contributes minerals for millions of American products would be enormous.

These jobs will be lost forever to other countries. It is one thing to lose jobs because the work can be done at less cost elsewhere. It is quite another to lose jobs because an otherwise competitive industry is being regulated into oblivion.

Worse still, these draconian mining reforms don't have to occur. Defects in the current mining law can be corrected. No one disagrees with that. But this bill goes beyond reasonable changes to a law that has served this country well for over 100 years. An 8-percent royalty, permanent, retroactive mining patent moratoriums and onerous reclamation standards, to name a few of the provisions contained in this bill, are not reforms. They represent the wholesale dismantling of an industry.

I support changes to the Nation's mining law that will enhance—not destroy—America's international competitiveness. I urge my colleagues to vote against the politically motivated destruction of an important American industry. Vote against H.R. 322.

Mr. KYL. Madam Chairman, I rise in opposition to H.R. 322, the Mineral Exploration and Development Act.

It's been said that the devil is in the details, and that is precisely the problem with this legislation. The concepts are right, but the details are extreme, unworkable, and unreasonable.

For example, just about everyone agrees that patenting lands for \$2.50 or \$500 per acre is an anachronism and ought to be changed. The answer, however, isn't necessarily to eliminate patenting altogether, as H.R. 322 would do, but rather to ensure that miners pay fair-market value for surface rights.

Just about everyone agrees that the industry should pay a royalty on the minerals extracted from public lands. But the royalty shouldn't be set so high or imposed in such a way that is punitive or which makes it economically infeasible to mine.

Under the royalty calculation of the bill, for example, not only the value of minerals would be considered, but also the value added by

processing after the minerals are extracted. But the Federal interest ends at the mouth of the mine, and there is no legitimate Federal claim to the value added later by processing. To assert a claim to that added value is unreasonable. It is unfair.

The bill's royalty provisions also ignore the tremendous costs involved in just exploring for minerals—costs incurred before even a dollar's worth of return is earned. Such costs ought to be deductible from the royalty calculation.

Just about everyone agrees that the environment ought to be protected. But, mining operations are already subject to all Federal and State environmental laws and regulations, and H.R. 322 will simply add multiple layers of additional regulation that won't necessarily provide better environmental protection, but which will cause significant delays and/or significantly increased costs for even the most legitimate and responsible operations.

Let me cite just a few examples which graphically illustrate the point, specifically with regard to H.R. 322's backfilling requirement. For Phelps Dodge's Morenci mine in Arizona, it would take approximately 3 billion tons of fill, \$2 billion, and 41 years to comply with that backfilling requirement. For Asarco's Ray mine, it would take 1.4 billion tons of fill, \$1.4 billion, and 20 years to comply. For Kennecott's Bingham Canyon mine, it's as much as 5 billion tons of fill, \$7 billion, and more than 50 years to comply with the backfilling requirement.

That isn't reasonable. It has nothing to do with significant threats to public health or the environment. It is merely punitive, and is just one of the ways this bill tries to discourage anyone from ever developing a mine on public land.

This bill is not about correcting abuses of the mining law, but rather about trying to shut down virtually all mining operations on public land, no matter how well those operations are conducted.

This bill represents an attack on jobs. According to a Coopers & Lybrand study of the original and nearly identical version of the bill, as many as 44,000 jobs could be lost over the next 10 years. Combined with lost output and lost earnings, the U.S. Treasury would experience a net loss—that's right, loss—of about \$422 million over that period.

And, at a time when State and local governments are crying out—and rightly so—about the costs of Federal mandates, H.R. 322 will deny them a significant amount of revenue as well—an estimated \$106 million. With this bill, Congress is putting the squeeze on the States both sides of the financial balance sheet.

Madam Chairman, the mining industry is not the enemy. Our nation needs mining and the mineral supplies it produces, not only for strategic purposes, but to satisfy the demands of people's everyday lives. Our goal ought not to be to shut down the mining industry, but rather impose reasonable requirements to protect taxpayers' interests, as well as the environment.

H.R. 322 is legislative overkill. It will make every mining operation think twice about developing any claim, no matter how promising, and no matter how responsibly to the environment the operation is conducted. It will cost jobs. It will reduce revenues to the Treasury.

Madam Chairman, this bill ought to be defeated.

Mr. GEJDENSON. Madam Chairman, I rise in strong support of H.R. 322, the Mineral Exploration and Development Act. I want to take this opportunity to acknowledge the gentleman from West Virginia [Mr. RAHALL] for all his hard work on this subject over the last few years. I also want to thank Representatives LEHMAN and MILLER for all their work in bringing this bill before the House today.

Mining reform is long overdue. While we have updated laws regulating the extraction of oil, coal, and natural gas from Federal lands, hardrock mining is still governed by the anachronistic 1872 mining law. This statute, passed to encourage Americans to settle the Western portions of this country, has outlasted its purpose. It has allowed speculators to gain title to the public's lands for \$2.50 or \$5 per acre and then turn around and sell them for tremendous profits. The General Accounting Office reported in 1988 that the Federal Government received less than \$4,500 for patented lands valued at \$48 million. The 1872 mining law, which doesn't include a royalty, has allowed domestic and foreign mining companies to extract billions worth of minerals from the public's land without paying for that privilege. Finally, the lack of reclamation standards has left a legacy of abandoned mines, poisoned streams, and scarred landscapes across this Nation. In this regard the American people have taken a double hit—they have been inadequately compensated for the use of their lands and they have been left to foot the bill for cleanup.

H.R. 322 makes important reforms which will ensure that the American people get a fair return on the use of their resources and that their land is used properly. H.R. 322 abolishes the patenting process, which has transferred more than 3 million acres of public lands, roughly the size of my State of Connecticut, to private hands for \$2.50 or \$5 per acre. It also establishes an 8-percent net smelter royalty on minerals extracted from public lands. This will ensure that the American people receive some compensation for the more than \$1 billion worth of minerals taken from their lands each year. In addition, this bill includes comprehensive reclamation standards designed to protect natural resources around mines and to guarantee that the mine site will be restored to conditions similar to those that existed prior to mining. H.R. 322 requires mining companies to post bonds to cover the cost of reclamation should the company go out of business. This will help to ensure that the American people aren't left with the reclamation bill if a company fails before reclamation is performed. Finally, this legislation establishes an abandoned mine reclamation fund, which will be capitalized with royalties and other fees included in the bill. This fund will be used to clean up the thousands of abandoned mines on Federal land, which threaten public health and safety and the environment.

Madam Chairman, by passing this legislation today we can reform one of the most outdated laws on the books. H.R. 322 will ensure that the American people will get a fair return on the sale of minerals mined on their lands. It will require mining companies to protect natural resources and reclaim mines once operations are completed. By instituting bonding

requirements, we can ensure that the American people won't be left holding the bag when a mining company folds prior to reclaiming the land. Additionally, this legislation uses proceeds from the royalties to begin addressing the problem of abandoned mines on Federal lands. It is time for the American people, not just mining companies, to profit from the wealth of minerals extracted from their lands. This legislation makes sense and it is good government.

Mr. COLEMAN. Madam Chairman, I want to congratulate my friend from California on bringing this measure to the floor for our consideration. I know he has worked very hard to produce the bill we are now debating. Much of the debate today will focus on mining activities themselves and the steps we think should be taken prior to mining. I would like to take just a moment to discuss mineral processing activities, which will also be impacted by this bill.

The district I represent, El Paso, TX, has two major plants which produce value-added products from the output of mines in Arizona, New Mexico, and Montana. Together, these 2 plants employ 1,225 in El Paso. Mr. Chairman, these are important jobs which pay good wages and provide good benefits in a community with a regular unemployment rate of approximately 10 percent. The combined payroll for both operations is \$51.9 million, a significant investment into the local economy. In addition, these operations make substantial purchases locally, spurring the local economy further and providing employment opportunities in related fields. Finally, these two plants pay a total of \$6.3 million in taxes to our community, which benefits our local schools and hospitals. In short, these mining-related industries provide a great benefit to the community. It is important to bear in mind that any changes we make to the mining laws will have an impact on processing and refining industries which rely on the mining of ore for their existence.

I would encourage my colleagues to adopt a bill which will not trade employment security for environmental protection. A law adopted in 1872 is ready for modernization; however, we must take care that the action we take today does not threaten the livelihood of our constituents. I understand that the other body has already acted on a measure which the mining industries have supported. Apparently everyone agrees that the current law is inadequate and needs revision, I would simply like to encourage my friend from California to bear these related jobs in mind as he works with the other body to formulate a final measure. I thank the gentleman for his time.

Mr. FRANKS of Connecticut. Mr. Speaker, I rise today in support of H.R. 322, the Mineral Exploration Act of 1993.

Today, we regulate the mining industry with a law that is over 100 years old. Given the changing dynamics of our society, I believe that a change to this law is necessary and long overdue.

Today, we allow an individual to stake a claim on Federal land, purchase that land for \$2.50 or \$5 per acre, and to extract minerals, without any royalties. The taxpayer receives no benefits from the production of these minerals. This may have been appropriate in 1872, however, taxpayers of 1993 demand greater standards.

The time has come for this Government to end the practice of subsidizing industries at the expense of the American taxpayer. From timber to agriculture, the American taxpayer has assumed responsibility for maintaining the viability of markets without a fair return on his investment. Industries are thriving at the expense of the American taxpayer. If oil and gas companies can pay a percentage of revenue received from operating on Federal property, it is only fair that the mining industry do the same.

This is taxpayer land, financed with taxpayer money and should be managed to ensure a fair return on the production of minerals from this land while considering environmental concerns.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and each title is considered as read.

The amendments en bloc specified in House Report 103-342 to be offered by the gentleman from California [Mr. MILLER] or a designee, may amend portions of the bill not yet read for amendment, shall be considered as read, and shall not be subject to a demand for a division of the question.

The Clerk will designate section 1.

The text of section 1 is as follows:

H.R. 322

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "Mineral Exploration and Development Act of 1993".

(b) *TABLE OF CONTENTS.*—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions and references.

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

- Sec. 101. Lands open to location.
- Sec. 102. Rights under this act.
- Sec. 103. Location of mining claims.
- Sec. 104. Conversion of existing claims.
- Sec. 105. Claim maintenance requirements.
- Sec. 106. Failure to comply.
- Sec. 107. Basis for contest.

TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

- Sec. 201. Surface management standard.
- Sec. 202. Permits.
- Sec. 203. Exploration permits.
- Sec. 204. Operations permit.
- Sec. 205. Persons ineligible for permits.
- Sec. 206. Financial assurance.
- Sec. 207. Reclamation.
- Sec. 208. State law and regulation.
- Sec. 209. Unsuitability review.
- Sec. 210. Certain mineral activities covered by other law.

TITLE III—ABANDONED LOCATABLE MINERALS MINE RECLAMATION FUND

- Sec. 301. Abandoned locatable minerals mine reclamation.
- Sec. 302. Use and objectives of the fund.
- Sec. 303. Eligible lands and waters.
- Sec. 304. Fund expenditures.
- Sec. 305. Authorization of appropriations.
- Sec. 306. Royalty.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SUBTITLE A—ADMINISTRATIVE PROVISIONS

- Sec. 401. Policy functions.
- Sec. 402. User fees.
- Sec. 403. Public participation requirements.
- Sec. 404. Inspection and monitoring.
- Sec. 405. Citizens suits.
- Sec. 406. Administrative and judicial review.
- Sec. 407. Enforcement.
- Sec. 408. Regulations; effective dates.

SUBTITLE B—MISCELLANEOUS PROVISIONS

- Sec. 411. Transitional rules; surface management requirements.
- Sec. 412. Claims subject to special rules.
- Sec. 413. Purchasing power adjustment.
- Sec. 414. Savings clause.
- Sec. 415. Availability of public records.
- Sec. 416. Miscellaneous powers.
- Sec. 417. Limitation on patent issuance.
- Sec. 418. Multiple mineral development and surface resources.
- Sec. 419. Mineral materials.
- Sec. 420. Application of Act to beneficiation and processing of non-Federal minerals on Federal lands.
- Sec. 421. Severability.

Mr. SYNAR. Madam Chairman, I move to strike the last word.

Madam Chairman, once again this body must make a choice. Will we choose special deals for the few or a better deal for all Americans? Just like grazing, the question here today is not whether a way of life is endangered but whether the U.S. taxpayers will get fair market value for the resources which belong to all of us. And just like grazing, some of the biggest beneficiaries of the hardrock mining program are large corporations, many of which are foreign-owned. Yet, each year they take billions of dollars' worth of gold, silver, uranium, copper, lead, cobalt, platinum, and palladium from the public lands and don't pay one red cent of royalties to the taxpayers.

As if that were not bad enough, companies which operate under the 1872 Mining Act can even own or patent valuable mineral bearing Federal lands for just \$2.50 to \$5 per acre. Here is just one example of what patenting means for the Federal Treasury.

The Department of the Interior is poised to transfer 2,000 acres of the Custer National Forest in Montana to the Stillwater Mining Company which is jointly owned by two mom-and-pop companies named the Manville Corp. and Chevron. Stillwater would pay a total of about \$10,810 for these lands.

But the company estimates that the total value of the platinum and palladium at the site is \$43 billion. In other words, under this wonderful deal, the taxpayers would get \$1 for every \$4 million in strategic minerals extracted from these public lands.

While mining companies were getting their good deal on land prices and paying no royalties, they often left the taxpayers with a truly raw deal in return: a legacy of contaminated abandoned mining sites with polluted surface and groundwater. Many of these sites will need to be cleaned up under Superfund.

In fact, there may be over 550,000 such sites nationwide with a final price tag for cleanup of tens of billions of dollars. And much of that cost may have to be paid for by the U.S. taxpayers.

H.R. 322 corrects the worst of these inequities. It ends patenting, institutes an 8-percent royalty, and gives Federal land managers the authority to withdraw environmentally unsuitable lands from mining or to condition mining permits on environmental factors.

The bill requires that mined Federal lands be reclaimed and restored to a condition that would support the same activities that occurred prior to mining. And all royalties and fees raised by the bill would go to a new fund for restoring old, abandoned mines on public lands.

So not only does the bill end the "something-for-nothing" tradition that has prevailed since 1872. It also creates a new hardrock mining tradition of environmental responsibility by instituting a polluter-pays concept for the very first time.

Madam Chairman, this is a fair deal for the hardrock mining industry. More important, it's a fair deal for the taxpayers and a good deal for the environment. It is time to end the tradition of ruin and run. The 19th century is long gone; the 1872 Mining Act should be, too.

I urge my colleagues to support H.R. 322 and bring hardrock mining into the real world, where taxpayer equity and environmental protection matter.

Mr. JOHNSON of South Dakota. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise today to express my qualified support for passage of H.R. 322, the Mineral Exploration and Development Act of 1993 which is designed to reform the 1872 Mining Act.

I say qualified because there remain provisions in this bill which trouble me, not least being the 8 percent net smelter return or modified gross royalty provision. Nonetheless, I appreciate the nature of the process we are about today, and I believe it is critically important that the House move this mining reform legislation forward so that a conference committee will have an opportunity to craft a final version which we can then approve or disapprove at that time.

It is not in the interest of either the environmental community or the mining industry to allow the 1872 Mining Act reform debate to go on year after year without resolution. Without action this year, irreparable environmental damage can be inflicted on the one hand, and business investment decisions are hampered by lack of certainty as to future mining rules, on the other. We absolutely must bring this debate to a final conclusion during the 103d Congress.

Despite my concern for some of the specifics of the substitute bill, I do

want to state my very strong support for moving forward with legislation to reform the 1872 Mining Act. This legislation, signed by President Ulysses S. Grant may have been appropriate to its time, but changes in our society, our values and simply in mining technology have made reform long overdue.

New recovery techniques now make it possible and profitable to crush 100 tons of mountain rock to obtain a single ounce of gold, and we have seen a tenfold increase in gold recovery over the past decade alone. The old law has long since ceased to adequately protect the interest of the environment or the taxpayers.

There are some areas where gold mining is no doubt the very best use of public lands, but the 1872 act gives primacy to mining over all other uses almost regardless of the nature of the land. Public land managers are currently not in a position to adequately weigh scenic, recreational, wildlife, grazing, timber or air and water quality values in a balance between mining and other uses. I believe that it is particularly important for competing potential uses of public land to be thoughtfully and carefully balanced where, as is the case in the Black Hills of my State, mining areas are interwoven with timber, grazing, tourism, business, recreational, and residential uses.

Where mining does take place, it is essential that the Federal Government insist on reasonable reclamation standards—standards which the mining industry can realistically meet, but which also restores the land for the use of future generations. Currently some 500,000 acres of public land have been mined out and are abandoned. Forty-eight of the Superfund sites in this country are abandoned mines with the largest of all being in my neighboring State of Montana. Huge pits carved for miles into mountains and left with waters contaminated by arsenic and mercury are not the legacy that this Nation wants to leave to future generations.

While much is made of the fact that 15 of the 25 largest gold mining companies in the United States are owned by foreign interests, the 1872 act also prevents professional management of smaller mining sites. In California, in particular, literally thousands of trailers, shacks, and cabins have been set up in the foothills on public land ostensible as mining operations, but in fact, as homes to full-time squatters and vacation shack seekers. One BLM manager in California contends that his region contains 10,000 mining claims to supervise, but that only 4 or 5 are actually involved in mining. In the meantime, the public loses access to what is supposed to be public land, environmental damage occurs, and pristine wilderness is esthetically blighted.

Madam Chairman, I have met with individuals and groups representing

virtually every conceivable perspective on this issue, all of them sharing their viewpoints with me in a sincere and good faith manner. I have met with mining interests, and I am proud of their willingness to recognize the need for reform of the 1872 act. Our South Dakota mining companies have not sought to stonewall this issue, but have been willing to enter into the debate and offer productive and good faith recommendations.

I again stress to you my interest in working closely with leaders from both bodies throughout the entirety of the remaining legislative process to assure that we emerge with a bill which accomplishes most of our goals, has maximum input from all interested parties—from environmental to mining—and which has the possibility of being signed by the President. We don't have time for symbolic gestures. The final product will no doubt antagonize all interested parties in one particular or another, but we cannot afford to allow this opportunity to actually move a bill to law to pass or to be used as a political statement rather than a real change in public policy.

Mr. TRAFICANT. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I have confidence in the committee and those who have fashioned this bill. They know more about it, naturally, than we who are not on the committee understand. We, like many who work in the committee system around here, follow the lead of the committees. But there are a couple of things here that concern me. I do have a couple of amendments, and I have been told that the committee may not necessarily look favorably at these amendments, and I thought there was more intelligence on this committee.

Madam Chairman, the first issue I think is very important. Everybody in this country knows that foreign interests are buying American land, race horses, baseball teams, companies, mining claims, and other valuables, at a record pace.

□ 1600

Between the years 1980 and 1990 alone, with no statistics in the early 1990's, there has been a 500-percent increase in foreign entity ownership in the good old piece of the rock here, folks. The truth is, when we talk about this bill, 18 of the top 25 gold-producing mines, Madam Chairman, in the United States are owned by foreign interests that control more than 40 percent, foreign interests that control 40 percent or more of 18 of the top 25 gold-producing mines in our country.

My God, Congress does not even know who owns the claims in the mines. Now, the Traficant amendment is very simple. It does not even stop foreign ownership that everybody is trying to say it does. It says, "There

shall be a report and Congress shall find out every year who the hell owns the mines and how many of these mines are owned by foreign entities."

Now, if that reinvents the wheel, beam me up. And if Congress does not want to know this, Congress should represent England or Japan.

Finally, there is a new element put in this bill called the abandoned locatable minerals mine reclamation fund. This fund does everything. It even impregnates the budget.

The Traficant second amendment says there is a simple buy American provision. Follow the buy American law. It is just a simple sense of the Congress that says, when they do all these good things to our real estate and save our Republic, that maybe they might buy some foreign-made goods like they have always been doing or maybe they can buy some American-made goods like the Traficant bill just suggests.

I am going to ask this committee to approve my two amendments. I do not want to have to call a vote. They will probably win.

I want them to approve the amendments and fight it out in conference. We put these on in the last bill, and they whacked them out in conference.

I am going to advise my colleagues, do not play mind games on this. I want my stuff kept in the bill.

Ms. ENGLISH of Arizona. Madam Chairman, I move to strike the last word.

Madam Chairman, long ago, I joined with the mining industry and the environmental community in calling for responsible mining law reform. The General Mining Law of 1872 is archaic. It's a relic of an era long since gone. Madam Chairman, the time has come to update the mining law to reflect modern business, environmental, and Federal land-use management practices. On this point, both sides agree.

Some people have tried to cast this effort as antimining, or antiindustry or antijobs. Others have tried to paint the mining industry as heartless pillagers of the environment, eager to make a quick buck and be gone, leaving toxic contamination behind for the Federal taxpayer to clean-up.

Both views have their use in this political arena, I suppose; but both are useless as well to any serious attempt to cut through the haze and make rational decisions involving these complex matters. But as I've said before, political rhetoric in Washington is like a view of the Grand Canyon on a clear day: there's just no end to it.

I represent a mining district. Arizona's copper industry is the number one employer in my district. It provides thousands of high-paying, sought after jobs in areas where few such jobs exist. I also represent thousands of people—including many whose livelihoods are tied to the mining industry—who care

about proper stewardship of our public lands. I represent thousands of people who are not antimining, but instead consider themselves preresponsible mining.

I believe that there is a critical difference, and it is in the preresponsible mining camp that I would place myself. Let me say clearly that I support responsible mineral exploration and production on the public lands.

But mining must take place in an environmentally responsible fashion and be accompanied by a fair return to the owners of the land: the American taxpayer. The bill before us today would do that.

As a supporter of mining law reform, I have been accused of not caring about mining jobs or the health of this basic domestic mining industry. When I offered what I believed was a common-sense amendment to the bill in committee, I was practically accused of betrayal by some in the environmental community.

Clearly, what is needed here—what is always needed—is balance. Let us realize that the old acrimonious debate pitting jobs versus the environment is ultimately self-defeating. Arizonans at least know that in the long-term, we must maintain a health partnership between extractive uses of the public lands and environmental protection. That should and must be our goal here today.

So, how does this bill measure up? Are we there yet? No, clearly not. The bill is not perfect. I, myself have several remaining concerns that I will continue to address.

H.R. 322 as reported out of the Natural Resources Committee is a step in the right direction. House passage of this bill will keep the process moving and get us closer to the day when the reform issue can be settled and we return predictability and stability to the mining industry.

H.R. 322 would eliminate the archaic patenting system established in 1872 that was designed to help settle the frontier. This is the provision which now allows international conglomerates to purchase thousands of acres of public land containing billions in mineral resources for as little as \$2.50 an acre.

As has been demonstrated for years by the operation of mines on unpatented public land, the ability to patent is not necessary to successfully conduct mining operations on public lands. The patenting process has been widely abused, and has led to some of the more spectacular cases of land speculation involving the 1872 mining law. It is clear that patenting no longer serves the public interest.

H.R. 322 contains tough new permitting, bonding, and reclamation standards. I believe that these new requirements are appropriate and necessary to ensure that mining takes place in an

environmentally responsible manner, and that the land disturbed by mineral activity is restored to a condition capable of supporting the varied and multiple uses that take place on the public lands.

Decades that have seen hundreds of mines abandoned and dozens of Superfund sites created by irresponsible mining activities have taught us that these new standards are necessary.

I also strongly support the abandoned mine reclamation fund created by the bill and the jobs that go along with it. Any casual traveler to the West can see for themselves the sad legacy of environmental destruction that 100 years of mining has wrought in the West. Much of this mining took place before we gained our current understanding of the environmental consequences of mining. The time has come to repair the damage.

Under H.R. 322, this fund is supported by a royalty on the removal of valuable mineral resources. I join with the mining industry and the most ardent voices in the reform community in supporting a fair return for the removal of valuable mineral resources from the public lands. It is fair and proper, in these times of high Federal deficits, that a royalty be collected.

But let me return to the notion of balance. I am concerned that the 8-percent royalty on gross income currently contained in H.R. 322 would unnecessarily drive some mining operations under the point of profitability and cost jobs. Let us keep in mind that 8 percent of zero is zero. I will support a somewhat lower royalty when this bill reaches conference with the Senate.

Finally, I would like to comment on one section of H.R. 322 that gives me great concern. I am deeply troubled by the section of the bill that deals with the situation—common in Arizona—that arises when a mining operation located substantially on private or State lands affects or includes a small percentage of Federal lands.

H.R. 322 requires the Secretary of the Interior to enter into what is called a cooperative agreement with the appropriate State agency to regulate mining operations that fall into this category. Because of the patchwork land-ownership patterns found throughout the West, most mines would indeed fall into this category, even if they are located on 99-percent private land.

This is a very serious issue, and an area that demands more attention. I appreciate the assurances I have received from chairman of the Natural Resources Committee, Mr. MILLER, and others to engage in a good faith effort to work this problem out in conference with the Senate.

To sum up, Madam Chairman, House passage of H.R. 322 today will hasten the day when we can move forward, settle the mining reform issue, and return stability to our domestic minerals

industry. While not perfect, the bill addresses key reform issues in a meaningful manner and deserves our support.

It will end abuse and land speculation by unscrupulous individuals who have no intention to engage in responsible mineral activities.

It will establish appropriate permitting, bonding, and reclamation standards that will help ensure that the public lands remain productive and open to multiple use.

It will create a mechanism by which we can begin cleaning up abandoned mine sites that pose public health, safety, or environmental problems.

In short, Madam Chairman, H.R. 322 will ensure that responsible mineral activities continue to take place on the public lands, and that the domestic minerals industry continues to provide good jobs and economic activity in the rural West, where it is so desperately needed.

I urge all my colleagues to support H.R. 322.

The CHAIRMAN. The Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress finds and declares the following:

(1) The general mining laws, commonly referred to as the Mining Law of 1872, at one time promoted the development of the West and provided a framework for the exploitation of Federal mineral resources.

(2) Congress recognized that the public interest was no longer being advanced under the Mining Law of 1872 when, in 1920, it removed energy minerals and minerals chiefly valuable for agricultural use, and in 1955, removed common varieties of mineral materials, from the scope of the general mining laws and made such minerals available under regimes which provide for a financial return to the public for the disposition of such minerals and which better safeguard the environment.

(3) The Mining Law of 1872 no longer fosters the efficient and diligent development of those mineral resources still under its scope, giving rise to speculation and nonmining uses of lands chiefly valuable for minerals.

(4) The Mining Law of 1872 does not provide for a financial return to the American people for use by claim holders of public domain lands or for the disposition of valuable mineral resources from such lands.

(5) The Mining Law of 1872 continues to transfer lands valuable for mineral resources from the public domain to private ownership for less than the fair market value of such lands and mineral resources.

(6) There are a substantial number of acres of land throughout the Nation disturbed by mining activities conducted under the Mining Law of 1872 on which little or no reclamation was conducted, and the impacts from these unreclaimed lands pose a threat to the public health, safety, and general welfare and to environmental quality.

(7) Activities under the Mining Law of 1872 continue to result in disturbances of surface areas and water resources which burden and adversely affect the public welfare by destroying or diminishing the utility of public domain lands for other appropriate uses and by creating hazards dangerous to the public health and safety and to the environment.

(8) Existing Federal law and regulations, as well as applicable State laws, have proven to be

inadequate to ensure that active mining operations under the Mining Law of 1872 will not leave to future generations a new legacy of hazards associated with unreclaimed mined lands.

(9) The public interest is no longer being served by archaic features of the Mining Law of 1872 that thwart the efficient exploration and development of those minerals which remain under its scope and which conflict with modern public land use management philosophies.

(10) The public is justified in expecting the diligent development of its mineral resources, a financial return for the use of public domain lands for mineral activities as well as for the disposition of valuable mineral resources from such lands.

(11) It is not in the public interest for public domain lands to be sold for below fair market value nor does this aspect of the Mining Law of 1872 comport with modern Federal land policy which is grounded on the retention of public domain lands under the principles of multiple use.

(12) Mining and reclamation technology is now developed so that effective and reasonable regulation of operations by the Federal Government in accordance with this Act is an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such mining operations.

(13) Mining activities on public domain lands affect interstate commerce, contribute to the economic well-being, security and general welfare of the Nation and should be conducted in an environmentally sound manner.

(14) It is necessary that any revision of the general mining laws insure that a domestic supply of hardrock minerals be made available to the domestic economy of the United States.

(15) America's economy still depends heavily on hardrock minerals and a strong environmentally sound mining industry is critical to the domestic minerals supply.

(16) Many of the deposits of hardrock minerals remain to be discovered on the Federal public domain.

(17) Private enterprise must be given adequate incentive to engage in a capital-intensive industry such as hardrock mining.

(18) The United States, as owner of the public domain, has a dual interest in ensuring a fair return for mining on the public domain and ensuring that any royalty and fees charged do not discourage essential mining activity on the public domain.

(19) The domestic mining industry provides thousands of jobs directly and indirectly to the domestic economy and those jobs must be preserved and encouraged by a sound Federal policy regarding mining on Federal lands.

(b) **PURPOSE.**—It is the purpose of this Act—

(1) to devise a more socially, fiscally and environmentally responsible regime to govern the use of public domain lands for the exploration and development of those minerals not subject to mineral leasing acts or mineral materials statutes;

(2) to provide for a fair return to the public for the use of public domain lands for mineral activities and for the disposition of minerals from such lands;

(3) to foster the diligent development of mineral resources on public domain lands in a manner that is compatible with other resource values and environmental quality;

(4) to promote the restoration of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent the beneficial use of land or water resources, and endanger the health and safety of the public;

(5) to assure that appropriate procedures are provided for public participation in the develop-

ment, revision and enforcement of regulations, standards and programs established under this Act; and

(6) to, whenever necessary, exercise the full reach of Federal constitutional powers to ensure the protection of the public interest through the effective control of mineral exploration and development activities.

The CHAIRMAN. Are there any amendments to section 2?

If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. DEFINITIONS AND REFERENCES.

(a) **DEFINITIONS.**—As used in this Act:

(1) The term "affiliate" means with respect to any person, any of the following:

(A) Any person who controls, is controlled by, or is under common control with such person.

(B) Any partner of such person.

(C) Any person owning at least 10 percent of the voting shares of such person.

(2) The term "applicant" means any person applying for a permit under this Act or a modification to or a renewal of a permit under this Act.

(3) The term "beneficiation" means the crushing and grinding of locatable mineral ore and such processes as are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques.

(4) The term "claim holder" means a person holding a mining claim located or converted under this Act. Such term may include an agent of a claim holder.

(5) The term "control" means having the ability, directly or indirectly, to determine (without regard to whether exercised through one or more corporate structures) the manner in which an entity conducts mineral activities, through any means, including without limitation, ownership interest, authority to commit the entity's real or financial assets, position as a director, officer, or partner of the entity, or contractual arrangement. The Secretary and the Secretary of Agriculture shall jointly promulgate such rules as may be necessary under this paragraph.

(6) The term "exploration" means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value not associated with mining, beneficiation, processing or marketing of minerals.

(7) The term "Indian lands" means lands held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(8) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(9) The term "land use plans" means those plans required under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or the land management plans for National Forest System units required under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), whichever is applicable.

(10) The term "legal subdivisions" means an aliquot quarter section of land as established by the official records of the public land survey system, or a single lot as established by the official records of the public land survey system if the pertinent section is irregular and contains fractional lots, as the case may be.

(11)(A) The term "locatable mineral" means any mineral, the legal and beneficial title to which remains in the United States and which is not subject to disposition under any of the following:

(i) The Mineral Leasing Act (30 U.S.C. 181 and following).

(ii) The Geothermal Steam Act of 1970 (30 U.S.C. 1001 and following).

(iii) The Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

(iv) The Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 and following).

(B) The term "locatable mineral" does not include any mineral held in trust by the United States for any Indian or Indian tribe, as defined in section 2 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101), or any mineral owned by any Indian or Indian tribe, as defined in that section, that is subject to a restriction against alienation imposed by the United States.

(12) The term "mineral activities" means any activity for, related to, or incidental to, mineral exploration, mining, beneficiation, processing, or reclamation activities for any locatable mineral.

(13) The term "mining" means the processes employed for the extraction of a locatable mineral from the earth.

(14) The term "mining claim" means a claim for the purposes of mineral activities.

(15) The term "National Conservation System unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or a National Conservation Area, National Recreation Area, a National Forest Monument or any unit of the National Wilderness Preservation System.

(16) The term "operator" means any person, conducting mineral activities subject to this Act or any agent of such a person.

(17) The term "person" means an individual, Indian tribe, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other organization and any instrumentality of State or local government including any publicly owned utility or publicly owned corporation of State or local government.

(18) The term "processing" means processes downstream of beneficiation employed to prepare locatable mineral ore into the final marketable product, including but not limited to, smelting and electrolytic refining.

(19) The term "Secretary" means the Secretary of the Interior, unless otherwise specified.

(20) The term "surface management requirements" means the requirements and standards of title II, and such other standards as are established by the Secretary governing mineral activities pursuant to this Act.

(b) REFERENCES.—(1) Any reference in this Act to the term "general mining laws" is a reference to those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30 of the United States Code.

(2) Any reference in this Act to the "Act of July 23, 1955", is a reference to the Act of July 23, 1955, entitled "An Act to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes" (30 U.S.C. 601 and following).

AMENDMENTS EN BLOC OFFERED BY MR.

LEHMAN

Mr. LEHMAN, Madam Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. LEHMAN: In section 3(a)(12), after "means any activity" insert "on Federal lands".

At the end of section 202, insert

(c) WAIVER OF THE SOVEREIGN IMMUNITY OF INDIAN TRIBES.—The Secretary is authorized to require Indian tribes to waive sovereign immunity as a condition of obtaining a permit under this Act.

In section 203(b)(2)(B), strike "air or water quality law or and regulation" and insert "air, water quality, or fish and wildlife conservation law or regulation".

In section 203(b)(2)(B), section 204(b)(2)(B), section 205(a)(2), and section 208(b), strike "solid waste" and insert "toxic substance, solid waste".

In section 203(b)(6), strike "may be".

In section 203(c)(1), insert after "land" ", including the fish and wildlife resources and habitat contained thereon,".

In section 203(c)(5), after "land" insert ", including the fish and wildlife resources and habitat contained thereon,".

In section 204(b)(2)(B), strike "air or water quality law or and regulation" and insert "air, water quality, or fish and wildlife conservation law or regulation".

In section 204(b)(11), strike "air and soils" and insert "air, soils, and fish and wildlife resources".

In section 204(b)(14), strike "may be".

In section 204(c)(1), after "land" insert ", including the fish and wildlife resources and habitat contained thereon,".

In section 204(c)(5), after "land" insert ", including the fish and wildlife resources and habitat contained thereon,".

In section 204(d)(1)(C), after "of the land" insert ", including the fish and wildlife resources and habitat contained thereon,".

In section 204(d)(2), insert before "and" "or other interested parties".

In section 204(d), after paragraph (2), insert the following:

(3) With respect to any activities specified in the reclamation plan referred to in subsection (b) which constitute a removal or remedial action under section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Secretary shall consult with the Administrator of the Environmental Protection Agency prior to the issuance of an operating permit. To the extent practicable, the Administrator shall ensure that the reclamation plan does not require activities which would increase the costs or likelihood of removal or remedial actions under Comprehensive Environmental Response, Compensation and Liability Act of 1980 or corrective actions under the Solid Waste Disposal Act.

In section 205(a)(2), strike "or water quality" and insert "water quality, or fish and wildlife conservation".

In section 206(e), after "such Secretary may" insert ", after consultation with the Administrator of the Environmental Protection Agency,".

In section 207(a)(1)(A), strike "the uses to" and insert "the uses, including fish and wildlife habitat uses,".

In section 207(a)(2), at the end insert "To the extent practicable, reclamation shall be conducted in a manner that does not increase the costs or likelihood of a removal or remedial action under section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or a corrective action under the Solid Waste Disposal Act,".

In section 207(b)(2), strike "and minimize attendant air and water pollution" and insert "and otherwise comply with toxic sub-

stance, solid waste, air and water pollution control laws and other environmental laws".

In section 207(b)(5), strike "Except as provided in paragraph (7), the" and insert "The", strike "revegetated and", and strike "to the extent practicable to blend with the surrounding" and insert "to its natural".

In section 207(b)(6), strike "if such introduction of" in the first sentence down through the period at the end of such sentence and insert the following: "in consultation with the Director, Fish and Wildlife Service, if such introduction of such species is necessary as an interim step in, and is part of a program to restore a native plant community."

In section 208(f), strike "The requirements" and insert "Subject to section 414(b), the requirements"

In section 302(b)(3), strike "and" and insert a comma and after "water" insert "and fish and wildlife".

At the end of section 302, insert the following:

(e) RESPONSE OR REMOVAL ACTIONS.—Reclamation and restoration activities under this title which constitute a removal or remedial action under section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, shall be conducted with the concurrence of the Administrator of the Environmental Protection Agency. The Secretary and the Administrator shall enter into a Memorandum of Understanding to establish procedures for consultation, concurrence, training, exchange of technical expertise and joint activities under the appropriate circumstances, which provide assurances that reclamation or restoration activities under this title, to the extent practicable, shall not be conducted in a manner that increases the costs or likelihood of removal or remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and which avoid oversight by multiple agencies to the maximum extent practicable."

In the third sentence of section 404(a)(3), after "imminent" insert "threat to the environment or".

In section 405, at the end of subsection (f) add the following sentence: "Nothing in this Act shall be construed to be a waiver of the sovereign immunity of an Indian tribe except as provided for in section 202(c)."

In section 407(a)(B), strike "air or water" and insert "air, water, fish or wildlife".

In section 414, after the period at the end of subsection (a) insert "Nothing in this Act shall affect or limit any assessment, investigation, evaluation or listing pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or the Solid Waste Disposal Act".

In section 414(b), after the first sentence insert "Nothing in this Act shall be construed as altering, affecting, amending, modifying, or changing, directly or indirectly, any law which refers to and provides authorities or responsibilities for, or is administered by, the Environmental Protection Agency or the Administrator of the Environmental Protection Agency, including the Federal Water Pollution Control Act, title XIV of the Public Health Service Act (the Safe Drinking Water Act), the Clean Air Act, the Pollution Prevention Act of 1990, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Food, Drug, and Cosmetic Act, the Motor Vehicle Information and Cost Savings Act, the Federal Hazardous Substances Act, the Atomic Energy Act, the Noise Control Act of 1972, the Solid Waste

Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Ocean Dumping Act, the Environmental Research, Development, and Demonstration Authorization Act, the Pollution Prosecution Act of 1990, and the Federal Facilities Compliance Act of 1992, or any statute containing amendment to any of such Acts."

The CHAIRMAN. Pursuant to the rule, the amendments may amend portions of the bill not yet read for amendment and are not subject to a demand for a division of the question.

The gentleman from California [Mr. LEHMAN] is recognized for 5 minutes in support of his amendments en bloc.

Mr. LEHMAN. Madam Chairman, this amendment would make a number of clarifying amendments to H.R. 322, as amended and reported by the Natural Resources Committee. This is the amendment referenced in the rule on H.R. 322.

This amendment reflects the concerns raised by the Energy and Commerce Committee, the Merchant Marine and Fisheries Committee, and the Agriculture Committee. I am extremely grateful to the chairmen—JOHN DINGELL, GERRY STUDDS, and KIKI DE LA GARZA—along with the members of these committees for agreeing to work with us in order that we bring H.R. 322 to the floor this year.

As is reflected in the report accompanying H.R. 322, as amended, the Committee on Natural Resources recognizes the jurisdictional claims of these committees. We are, therefore, most appreciate for the cooperative spirit in which the committee amendment was developed.

Specifically, this amendment clarifies that mineral activities would be regulated only on Federal lands.

It would also ensure that the Administrator of the Environmental Protection Agency be consulted prior to the issuance of an exploration or operations permit.

It would clarify that the introduction of nonnative species during revegetation, would be permissible only in certain situations and only during the initial of reclamation.

The amendment would clarify the need to protect fish and wildlife resources during mining and reclamation.

The amendment would extend the permit block sanction to violations of toxic waste laws.

Finally, the amendment clarifies the saving clause to clarify that certain environmental laws would not be affected by the provisions of H.R. 322, as amended.

I urge the adoption of this amendment.

□ 1610

Mr. HANSEN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I wonder if the gentleman from California [Mr. LEHMAN] would enter into a colloquy or respond to some questions we have regarding this en bloc amendment.

Madam Chairman, as we turn to page 66, as I understand it, line 10, strike "revegetated and"; page 66, strike "to the extent practicable to blend with the surrounding" and insert "to natural."

So as I read it, "except as provided in paragraph 7, the surface area distributed by mineral activity shall be," and taking out "revegetated and", "shaped, graded and contoured", take out "to the extent practicable to blend with the surrounding", "to its natural topography."

Then the next section talks about backfilling. I think there is a concern from some of us from the West as we look at areas like Anaconda, we look at Dodge Phelps, we look at Kennecott, if we tried to backfill those and if it was interpreted to be that way, that we would take this first section and have it stand by itself, and if I was somebody that was going to file a lawsuit against them, I would probably want it to stand by itself in that regard, and the rest of the lines there I do feel answer it.

Madam Chairman, I would ask the gentleman from California [Mr. LEHMAN], does he feel in regard to that that someone could argue the case that they are talking about backfilling, and if we had to backfill some of those huge mines in the West, does the gentleman know how long it would take to do Kennecott? It would take 100 years. That would be 50 million pounds of dirt or tons of dirt a day, and it would cost \$7 billion. Anaconda would be the same way.

Madam Chairman, I turn to the gentleman from California for some clarification, which I would appreciate. If that is the intent of that, I think this whole amendment would be very bad.

Mr. LEHMAN. Will the gentleman yield?

Mr. HANSEN. I yield to the gentleman from California.

Mr. LEHMAN. Madam Chairman, I thank the gentleman for his question. That is absolutely not the intent of the amendment or the legislation. I think the operative language is there on page 66, line 12: "Backfilling of an open pit mine shall be required only" if the Secretary finds that such pit or partially backfilled area, or contour, would pose a significant threat to public health or safety, and have an adverse effect, but the gentleman's hypothetical description is certainly not the intent of the law.

Mr. HANSEN. And I would ask the gentleman further, Madam Chairman, to understand that completely, it is not the intent of the legislation that the open pit mines of the West are ever to be backfilled, but possibly in the

event they are stopped, that they could be contoured somewhat, as the language says on page 66, is that correct? It is further on down than where the gentleman is reading.

Mr. LEHMAN. If the gentleman will yield further, it could be required on a new pit.

Mr. HANSEN. In the event there was a safety or public health problem, would that be a correct statement?

Mr. LEHMAN. If the gentleman will yield, that is correct.

Mr. HANSEN. But it is not the intent of the legislation that most of these would have to be backfilled, so we can rest assured, in the language of what the gentleman just said in his en bloc, that we are safe in those large mines, am I correct on that?

Mr. LEHMAN. If the gentleman will yield further, that is correct.

Mr. HANSEN. I thank the gentleman for those comments.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from California [Mr. LEHMAN].

The amendments en bloc were agreed to.

The CHAIRMAN. Are there other amendments to section 3?

The Clerk will designate title I.

The text of title I is as follows:

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

SEC. 101. LANDS OPEN TO LOCATION.

(a) LANDS OPEN TO LOCATION.—Except as provided in subsection (b), mining claims may be located under this Act on lands and interests in lands owned by the United States if—

(1) such lands and interests were open to the location of mining claims under the general mining laws on the date of enactment of this Act; or

(2) such lands and interests are opened to the location of mining claims after the date of enactment of this Act by reason of any administrative action or statute.

(b) LANDS NOT OPEN TO LOCATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law and subject to valid existing rights, each of the following shall not be open to the location of mining claims under this Act on or after the date of enactment of this Act:

(A) Lands recommended for wilderness designation by the agency managing the surface, pending a final determination by the Congress of the status of such recommended lands.

(B) Lands being managed by the Secretary, acting through Bureau of Land Management, as wilderness study areas on the date of enactment of this Act except where the location of mining claims is specifically allowed to continue by the statute designating the study area, pending a final determination by the Congress of the status of such lands.

(C)(i) Lands under study for inclusion in the National Wild and Scenic River System pursuant to section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), pending a final determination by the Congress of the status of such lands, and (ii) lands determined by a Federal agency under section 5(d) of such Act to be eligible for inclusion in such system, pending a final determination by the Congress of the status of such lands.

(D) Lands withdrawn from mineral activities under authority of other law.

(2) DEFINITION.—(A) As used in this subsection, the term "valid existing rights" refers to a mining claim located on lands described in paragraph (1) of subsection (a) that—

(i) was properly located and maintained under this Act prior to and on the applicable date, or

(ii) was properly located and maintained under the general mining laws prior to the applicable date, and

(I) was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the applicable date, and

(II) continues to be valid under this Act.

(B) As used in this paragraph, the term "applicable date" means one of the following:

(i) In the case of lands described in paragraph (1)(A), such term means the date of the recommendation referred to in paragraph (1)(A) if such recommendation is made on or after the enactment of this Act.

(ii) In the case of lands described in paragraph (1)(A), if the recommendation referred to in paragraph (1)(A) was made before the enactment of this Act, such term means the earlier of (I) the date of enactment of this Act or (II) the date of any withdrawal of such lands from mineral activities.

(iii) For lands described in paragraph (1)(B), such term means the date of the enactment of this Act.

(iv) For lands referred to in paragraph (1)(C)(i), such term means the date of the enactment of the amendment to the Wild and Scenic Rivers Act listing the river segment for study and for lands referred to in paragraph (1)(C)(ii), such term means the date of the eligibility determination.

(v) For lands referred to in paragraph (1)(D), such term means the date of the withdrawal.

SEC. 102. RIGHTS UNDER THIS ACT.

The holder of a mining claim located or converted under this Act and maintained in compliance with this Act shall have the exclusive right of possession and use of the claimed land for mineral activities, including the right of ingress and egress to such claimed lands for such activities, subject to the rights of the United States under this Act and other applicable Federal law. Such rights of the claim holder shall terminate upon completion of mineral activities of lands to the satisfaction of the Secretary. In cases where an area is determined unsuitable under section 209, holders of claims converted or located under this Act shall be entitled to receive a refund of claim maintenance fees.

SEC. 103. LOCATION OF MINING CLAIMS.

(a) GENERAL RULE.—A person may locate a mining claim covering lands open to the location of mining claims by posting a notice of location, containing the person's name and address, the time of location (which shall be the date and hour of location and posting), and a legal description of the claim. The notice of location shall be posted on a suitable, durable monument erected as near as practicable to the northeast corner of the mining claim. No person who is not a citizen of the United States, or a corporation organized under the laws of the United States or of any State or the District of Columbia may locate or hold a claim under this Act. On or after the enactment of this Act, a mining claim for a locatable mineral on lands open to location—

(1) may be located only in accordance with this Act,

(2) may be maintained only as provided in this Act, and

(3) shall be subject to the requirements of this Act.

(b) USE OF PUBLIC LAND SURVEY.—Except as provided in subsection (c), each mining claim located under this Act shall (1) be located in accordance with the public land survey system, and (2) conform to the legal subdivisions thereof. Except as provided in subsection (c)(1), the legal description of the mining claim shall be based on the public land survey system and its legal subdivisions.

(c) EXCEPTIONS.—(1) If only a protracted survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The legal description of the mining claim shall be based on the protracted survey and the mining claim shall be located as near as practicable in conformance with a protracted legal subdivision.

(B) The mining claim shall be monumented on the ground by the erection of a suitable, durable monument at each corner of the claim.

(C) The legal description of the mining claim shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent and conspicuous natural object.

(2) If no survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The mining claim shall be a regular square, with each side laid out in cardinal directions, 40 acres in size.

(B) The claim shall be monumented on the ground by the erection of a suitable durable monument at each corner of the claim.

(C) The legal description of the mining claim shall be expressed in metes and bounds and shall be defined by and referenced to the closest existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent and conspicuous natural object. Such description shall be of sufficient accuracy and completeness to permit recording of the claim upon the public land records and to permit the claim to be readily found upon the ground.

(3) In the case of a conflict between the boundaries of a mining claim as monumented on the ground and the description of such claim in the notice of location referred to in subsection (a), the notice of location shall be determinative, except where determined otherwise by the Secretary.

(d) FILING WITH SECRETARY.—(1) Within 30 days after the location of a mining claim pursuant to this section, a copy of the notice of location referred to in subsection (a) shall be filed with the Secretary in an office designated by the Secretary.

(2)(A) Whenever the Secretary receives a copy of a notice of location of a mining claim under this Act, the Secretary shall assign a serial number to the mining claim, and immediately return a copy of the notice of location to the locator of the claim, together with a certificate setting forth the serial number, a description of the claim, and the claim maintenance requirements of section 105. The Secretary shall enter the claim on the public land records.

(B) Return of the copy of the notice of location and provision of the certificate under subparagraph (A) shall not constitute a determination by the Secretary that a claim is valid. Failure by the Secretary to provide such copy and certificate shall not constitute a defense against cancellation of a claim for failure to follow applicable requirements of this Act.

(3) Notwithstanding any other provision of law, for every unpatented mining claim located after the date of enactment of this Act, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay a location fee of \$25.00 per claim. The location fee shall be in addition to the claim maintenance fee payable under section 105.

(4) Subsections (b) and (c) of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)) are repealed.

(e) CONVERTED CLAIMS.—For mining claims and mill sites deemed converted under this Act, for the purposes of complying with the requirements of subsection (d), upon receipt of the initial claim maintenance fee required under section 105, the Secretary shall issue a certificate referenced in subsection (d)(2) to the holder of the mining claim or mill site.

(f) DATE OF LOCATION.—A mining claim located under this Act shall be effective based upon the time of location.

(g) LANDS COVERED BY CLAIM.—A mining claim located or converted under this Act shall include all lands and interests in lands open to location within the boundaries of the claim, subject to any prior mining claim located or converted under this Act.

(h) CONFLICTING LOCATIONS.—Any conflicts between the holders of mining claims located or converted under this Act relating to relative superiority under the provisions of this Act may be resolved in adjudication proceedings in a court with proper jurisdiction, including, as appropriate, State courts. It shall be incumbent upon the holder of a mining claim asserting superior rights in such proceedings to demonstrate that such person was the senior locator, or if such person is the junior locator, that prior to the location of the claim by such locator—

(1) the senior locator failed to file a copy of the notice of location within the time provided under subsection (d); or

(2) the amount of claim maintenance fee paid by the senior locator at the time of filing the location notice referred to in subsection (d) was less than the amount required to be paid by such locator.

(i) EXTENT OF MINERAL DEPOSIT.—The boundaries of a mining claim located under this Act shall extend vertically downward.

SEC. 104. CONVERSION OF EXISTING CLAIMS.

(a) EXISTING CLAIMS.—Notwithstanding any other provision of law, on the effective date of this Act any unpatented mining claim for a locatable mineral located under the general mining laws prior to the date of enactment of this Act shall become subject to this Act's provisions and shall be deemed a converted mining claim under this Act. Nothing in this Act shall be construed to affect extralateral rights in any valid lode mining claim existing on the date of enactment of this Act. After the effective date of this Act, there shall be no distinction made as to whether such claim was originally located as a lode or placer claim.

(b) MILL AND TUNNEL SITES.—On the effective date of this Act, any unpatented mill or tunnel site located under the general mining laws before the date of enactment of this Act shall become subject to this Act's provisions and shall be deemed a converted mining claim under this Act.

(c) POSTCONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(g) when converted pursuant to subsection (a) or (b).

(d) DISPOSITION OF LAND.—In the event a mining claim is located under this Act for lands encumbered by a prior mining claim or mill site located under the general mining laws, such lands shall become part of the claim located under this Act if the claim or mill site located under the general mining laws is declared null and void under this section or is otherwise declared null and void thereafter.

(e) CONFLICTS.—(1) Any conflicts in existence before the effective date of this Act between holders of mining claims, mill sites and tunnel sites located under the general mining laws shall be subject to, and shall be resolved in accordance with, applicable laws governing such

conflicts in effect before the effective date of enactment of this Act in a court of proper jurisdiction.

(2) Any conflicts not relating to matters provided for under section 103(h) between the holders of a mining claim located under this Act and a mining claim, mill, or tunnel site located under the general mining laws arising either before or after the conversion of any such claim or site under this section shall be resolved in a court with proper jurisdiction.

SEC. 105. CLAIM MAINTENANCE REQUIREMENTS.

(a) **IN GENERAL.**—(1) The holder of each mining claim converted pursuant to this Act shall pay to the Secretary an annual claim maintenance fee of \$100 per claim.

(2) The holder of each mining claim located pursuant to this Act shall pay to the Secretary an annual claim maintenance fee of \$200 per claim.

(b) **TIME OF PAYMENT.**—The claim maintenance fee payable pursuant to subsection (a) for any year shall be paid on or before August 31 of each year, except that in the case of claims referred to in subsection (a)(2), for the initial calendar year in which the location is made, the locator shall pay the initial claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management.

(c) **OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.**—This section shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102-486; 106 Stat. 3111; 30 U.S.C. 242).

(d) **CLAIM MAINTENANCE FEES PAYABLE UNDER 1993 ACT.**—The claim maintenance fees payable under this section for any period with respect to any claim shall be reduced by the amount of the claim maintenance fees paid under section 10101 of the Omnibus Budget Reconciliation Act of 1993 with respect to that claim and with respect to the same period.

(e) **WAIVER.**—(1) The claim maintenance fee required under this section may be waived for a claim holder who certifies in writing to the Secretary that on the date the payment was due, the claim holder and all related parties held not more than 10 mining claims on lands open to location. Such certification shall be made on or before the date on which payment is due.

(2) For purposes of paragraph (1), with respect to any claim holder, the term "related party" means each of the following:

(A) The spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the claim holder.

(B) Any affiliate of the claim holder.

(f) **CO-OWNERSHIP.**—Upon the failure of any one or more of several co-owners to contribute such co-owner or owners' portion of the fee under this section, any co-owner who has paid such fee may, after the payment due date, give the delinquent co-owner or owners notice of such failure in writing (or by publication in the newspaper nearest the claim for at least once a week for at least 90 days). If at the expiration of 90 days after such notice in writing or by publication, any delinquent co-owner fails or refuses to contribute his portion, his interest in the claim shall become the property of the co-owners who have paid the required fee.

(g) **FUND.**—All monies received under this section shall be deposited in the Abandoned Locatable Minerals Mine Reclamation Fund established under title III of this Act.

(h) **CREDIT AGAINST ROYALTY.**—The amount of the annual claim maintenance fee required to be paid under this section for any claim for any period shall be credited against the amount of royalty required to be paid under section 306 for the same period with respect to that claim.

SEC. 106. FAILURE TO COMPLY.

(a) **FORFEITURE.**—The failure of the claim holder to file the notice of location, to pay the location fee, or to pay the claim maintenance fee for a mining claim as required by this title shall be deemed conclusively to constitute forfeiture of the mining claim by operation of law. Forfeiture shall not relieve any person of any obligation created under this Act, including reclamation.

(b) **PROHIBITION.**—No claim holder may locate a new claim on the lands such claim holder included in a forfeited claim for 1 year from the date such claim is deemed forfeited.

(c) **RELINQUISHMENT.**—A claim holder deciding not to pursue mineral activities on a claim may relinquish such claim by notifying the Secretary. A claim holder relinquishing a claim is responsible for reclamation as required by section 207 of this Act and all other applicable requirements. A claim holder who relinquishes a claim shall not be subject to the prohibition of subsection (b) of this section unless the Secretary determines that the claim is being relinquished and relocated for the purpose of avoiding compliance with any provision of this Act, including payment of the claim maintenance fee.

SEC. 107. BASIS FOR CONTEST.

(a) **DISCOVERY.**—(1) After the effective date of this Act, a mining claim may not be contested or challenged on the basis of discovery under the general mining laws, except as follows:

(A) Any claim located before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim is located within any National Conservation System unit, or within any area referred to in section 101(b).

(B) Any mining claim located before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim was located for a mineral material that purportedly has a property giving it distinct and special value within the meaning of section 3(a) of the Act of July 23, 1955 (as in effect prior to the date of enactment of this Act), or if such claim was located for a mineral that was not locatable under the general mining laws before the effective date of this Act.

(2) The Secretary may initiate contest proceedings against those mining claims referred to in paragraph (1) at any time, except that nothing in this subsection may be construed as requiring the Secretary to inquire into, or contest, the validity of a mining claim for the purpose of the conversion referred to in section 104, except as provided in section 412.

(3) Nothing in this subsection may be construed as limiting any contest proceedings initiated by the United States on issues other than discovery, or any contest proceedings filed before the effective date of this Act.

(4) Any contest proceeding initiated pursuant to paragraph (1) shall determine whether the mining claim or claims subject to such proceeding supported a discovery of a valuable mineral deposit within the meaning of the general mining laws on the effective date of this Act.

(b) **CONTINUED SUFFICIENCY OF MINING CLAIM.**—(1) At any time, upon request of the Secretary, the claim holder shall demonstrate that the continued retention of a mining claim located or converted under this Act is exclusively related to mineral activities at the site.

(2) Where the Secretary requests demonstration of the continuing sufficiency of any mining claim under this section, the claim holder shall have the burden of showing each of the following:

(A) The lands or interests in lands included in the mining claim are not used predominantly for

recreational, residential or other purposes rather than for mineral activities and are being held in good faith for the ultimate exploration for, development of, or production of locatable minerals, as demonstrated by the claimholder or his or her assigns through showings satisfactory to the Secretary.

(B) The claim holder or operator does not restrict access to the lands or interests in lands included in the mining claim in a manner that is not required for mineral activities.

(C) The mineral being or to be mined on the mining claim is a locatable mineral (unless such lands are used for beneficiation or processing).

(D) The claim holder or operator has not constructed, improved, maintained or used a structure located on a mining claim in a manner not specifically authorized by the Secretary in accordance with this Act.

(3) Any mining claim for which the claim holder fails to demonstrate continued sufficiency, in the determination of the Secretary, pursuant to subsection (b) of this section, shall thereupon be deemed forfeited and be declared null and void.

(c) **REMEDIES.**—(1) The Secretary may assess a civil penalty of not more than \$5,000 per claim against the claimholder upon declaring a mining claim null and void pursuant to subsection (b) of this section.

(2) Upon declaring a mining claim null and void pursuant to subsection (b), the Secretary shall provide a reasonable opportunity for the mining claim holder or operator to remove any real or personal property which such person had previously placed upon the claim. If the property is not removed within the time provided, the Secretary may retain the property or provide for its disposition or destruction.

(d) **OTHER LAW.**—The Secretary shall take such actions as may be necessary to ensure the compliance by claim holders with section 4 of the Act of July 23, 1955 (30 U.S.C. 612), consistent with this section.

The CHAIRMAN. Are there amendments to title I?

The Clerk will designate title II.

The text of title II is as follows:

TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

SEC. 201. SURFACE MANAGEMENT STANDARD.

Notwithstanding the last sentence of section 302(b) of the Federal Land Policy and Management Act of 1976, and in accordance with this title and other applicable law, the Secretary, and for National Forest System lands the Secretary of Agriculture, shall require that mineral activities on Federal lands conducted by any person minimize adverse impacts to the environment.

SEC. 202. PERMITS.

(a) **PERMITS REQUIRED.**—No person may engage in mineral activities on Federal lands that may cause a disturbance of surface resources, including but not limited to, land, air, ground water and surface water, fish, wildlife, and biota unless—

(1) the claim was properly located or converted under this Act and properly maintained; and

(2) a permit was issued to such person under this title authorizing such activities.

(b) **NEGLECTIBLE DISTURBANCE.**—Notwithstanding subsection (a)(2), a permit under this title shall not be required for mineral activities related to exploration, or gathering of data, required to comply with section 203 or 204 that cause a negligible disturbance of surface resources and do not involve any of the following:

(1) The use of mechanized earth moving equipment, suction dredging, explosives.

(2) The use of motor vehicles in areas closed to off-road vehicles.

(3) The construction of roads, drill pads, or the use of toxic or hazardous materials.

Persons engaging in such activities shall provide prior written notice. The Secretary and the Secretary of Agriculture may provide, by joint regulations the manner in which such notice shall be provided.

SEC. 203. EXPLORATION PERMITS.

(a) **AUTHORIZED EXPLORATION ACTIVITY.**—Any claim holder may apply for an exploration permit for any mining claim authorizing the claim holder to remove a reasonable amount of the locatable minerals from the claim for analysis, study and testing. Such permit shall not authorize the claim holder to remove any mineral for sale nor to conduct any activities other than those required for exploration for locatable minerals and reclamation.

(b) **PERMIT APPLICATION REQUIREMENTS.**—An application for an exploration permit under this section shall be submitted in a manner satisfactory to the Secretary or, for National Forest System lands, the Secretary of Agriculture, and shall contain an exploration plan, a reclamation plan for the proposed exploration, such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations, and each of the following:

(1) The name, mailing address, and social security number or tax identification number, as applicable, of each of the following:

(A) The applicant for the permit and any agent of the applicant.

(B) The operator (if different than the applicant) of the claim concerned.

(C) Each claim holder (if different than the applicant) of the claim concerned.

(2) A statement of whether any person referred to in subparagraphs (A) through (C) of paragraph (1) is currently in violation of, or was, during the 3-year period preceding the date of the application, found to be in violation of, any of the following and, if so, a brief explanation of the facts involved, including identification of the site and nature of the violation:

(A) Any provision of this Act or any regulation under this Act.

(B) Any applicable solid waste, air or water quality law or regulation at any site where mining, beneficiation, or processing activities are occurring or have occurred.

(C) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 and following) or any regulation under that Act at any site where surface coal mining operations have occurred or are occurring.

(3) A description of the type and method of exploration activities proposed, the engineering techniques proposed to be used and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the exploration activities proposed, including any planned temporary cessation of exploration.

(5) A map, to an appropriate scale, clearly showing the land to be affected by the proposed exploration.

(6) Information determined necessary by the Secretary concerned to assess the cumulative impacts, as may be required to comply with the National Environmental Policy Act.

(7) Evidence of appropriate financial assurance as specified in section 206.

(c) **RECLAMATION PLAN REQUIREMENTS.**—The reclamation plan required to be included in a permit application under subsection (b) shall include such provisions as may be jointly prescribed by the Secretary and the Secretary of Agriculture and each of the following:

(1) A description of the condition of the land subject to the permit prior to the commencement of any exploration activities.

(2) A description of reclamation measures proposed pursuant to the requirements of section 207.

(3) The engineering techniques to be used in reclamation and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the reclamation proposed.

(5) A description of the proposed condition of the land following the completion of reclamation.

(d) **PERMIT ISSUANCE OR DENIAL.**—The Secretary, or for National Forest System lands, the Secretary of Agriculture, shall issue an exploration permit pursuant to an application under this section if such Secretary makes each of the following determinations, and such Secretary shall deny a permit which he or she finds does not fully meet the requirements of this subsection:

(1) The permit application, the exploration plan and reclamation plan are complete and accurate.

(2) The applicant has demonstrated that proposed reclamation can be accomplished.

(3) The proposed exploration activities and condition of the land after the completion of exploration activities and final reclamation would conform with the land use plan applicable to the area subject to mineral activities.

(4) The area subject to the proposed permit is not included within an area designated unsuitable under section 209 or not open to location under section 101(b) for the types of exploration activities proposed.

(5) The applicant has demonstrated that the exploration plan and reclamation plan will be in compliance with the requirements of this Act and all other applicable Federal requirements, and any State requirements agreed to by the Secretary of the Interior (or Secretary of Agriculture, as appropriate) pursuant to a cooperative agreement under section 208.

(6) The applicant has fully complied with the requirements of section 206 (relating to financial assurance).

(e) **TERM OF PERMIT.**—An exploration permit shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed exploration, and in no case for more than 5 years.

(f) **PERMIT MODIFICATION.**—During the term of an exploration permit the permit holder may submit an application to modify the permit. To approve a proposed modification to the permit, the Secretary concerned shall make the same determinations as are required in the case of an original permit, except that the Secretary and the Secretary of Agriculture may specify by joint rule the extent to which requirements for initial exploration permits under this section shall apply to applications to modify an exploration permit based on whether such modifications are deemed significant or minor.

(g) **FEES.**—Each application for a permit pursuant to this section shall be accompanied by a fee payable to the Secretary of the Interior in such amount as may be established by the Secretary of the Interior. Such amount shall be equal to the actual or anticipated cost to the Secretary or the Secretary of Agriculture, as the case may be, of reviewing, administering, and enforcing such permit, as determined by such Secretary. All moneys received under this subsection shall be deposited in the Abandoned Locatable Minerals Mine Reclamation Fund established under title III of this Act.

(h) **TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS.**—(1) No transfer, assignment, or sale of rights granted by a permit issued under this section shall be made without the prior written approval of the Secretary or for National Forest System lands, the Secretary of Agriculture.

(2) Such Secretary may allow a person holding a permit to transfer, assign, or sell rights under the permit to a successor, if the Secretary finds, in writing, that the successor—

(A) is eligible to receive a permit in accordance with section 205;

(B) has submitted evidence of financial assurance satisfactory under section 206; and

(C) meets any other requirements specified by the Secretary.

(3) The successor in interest shall assume the liability and reclamation responsibilities established by the existing permit and shall conduct the mineral activities in full compliance with this Act, and the terms and conditions of the permit as in effect at the time of transfer, assignment, or sale.

(4) Each application for approval of a permit transfer, assignment, or sale pursuant to this subsection shall be accompanied by a fee payable to the Secretary of the Interior in such amount as may be established by such Secretary. Such amount shall be equal to the actual or anticipated cost to the Secretary or the Secretary of Agriculture, as appropriate, of reviewing and approving or disapproving such transfer, assignment, or sale, as determined by the Secretary of the Interior. All moneys received under this subsection shall be deposited in the Abandoned Locatable Minerals Mine Reclamation Fund established under title III of this Act.

SEC. 204. OPERATIONS PERMIT.

(a) **OPERATIONS PERMIT.**—Any claim holder may apply to the Secretary, or for National Forest System lands, the Secretary of Agriculture, for an operations permit authorizing the claim holder to carry out mineral activities on Federal lands. The permit shall include such terms and conditions as prescribed by such Secretary to carry out this title.

(b) **PERMIT APPLICATION REQUIREMENTS.**—An application for an operations permit under this section shall be submitted in a manner satisfactory to the Secretary concerned and shall contain an operations plan, a reclamation plan, such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations, and each of the following:

(1) The name, mailing address, and social security number or tax identification number, as applicable, of each of the following:

(A) The applicant for the permit and any agent of the applicant.

(B) The operator (if different than the applicant) at the claim concerned.

(C) Each claim holder (if different than the applicant) of the claim concerned.

(D) Each affiliate and each officer or director of the applicant.

(2) A statement of whether a person referred to in subparagraphs (A) through (D) of paragraph (1) is currently in violation of, or was, during the 3-year period preceding the date of application, found to be in violation of, any of the following and if so, a brief explanation of the facts involved, including identification of the site and the nature of the violation:

(A) Any provision of this Act or any regulation under this Act.

(B) Any applicable solid waste, air or water quality law or regulation at any site where mining, beneficiation, or processing activities are occurring or have occurred.

(C) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 and following) or any regulation under that Act at any site where surface coal mining operations have occurred or are occurring.

(3) A statement of any current or previous permits or plans of operations issued under the Surface Mining Control and Reclamation Act or the Federal Land Policy and Management Act.

(4) A description of the type and method of mineral activities proposed, the engineering techniques proposed to be used and the equipment proposed to be used.

(5) The anticipated starting and termination dates of each phase of the mineral activities proposed, including any planned temporary cessation of operations.

(6) Maps, to an appropriate scale, clearly showing the lands, watersheds, and surface waters, to be affected by the proposed mineral activities; surface and mineral ownership; facilities, including roads and other man-made structures; proposed disturbances; soils and vegetation; topography; and water supply intakes and surface water bodies.

(7) A description of the biological resources in or associated with the area subject to mineral activities, including vegetation, fish and wildlife, riparian and wetland habitats.

(8) A description of measures planned to exclude fish and wildlife resources from the area subject to mineral activities by covering, containment, or fencing of open waters, beneficiation, and processing materials; or maintenance of all facilities in a condition that is not harmful to fish and wildlife.

(9) A description of the quantity and quality of surface and ground water resources in or associated with the area subject to mineral activities, based on pre-disturbance monitoring sufficient to establish seasonal variations.

(10) An analysis of the probable hydrologic consequences of the mineral activities, both on and off the area subject to mineral activities, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the Secretary concerned of the probable cumulative impacts of the anticipated mineral activities in the area upon the hydrology of the area and particularly upon water availability.

(11) A description of the monitoring systems to be used to detect and determine whether compliance has and is occurring consistent with the surface management requirements and to monitor the effects of mineral activities on the site and surrounding environment, including but not limited to, ground water, surface water, air and soils.

(12) Accident contingency plans that include, but are not limited to, immediate response strategies and corrective measures to mitigate environmental impacts and appropriate insurance to cover accident contingencies.

(13) Any measures to comply with any conditions on mineral activities that may be required in the applicable land use plan or any condition stipulated pursuant to section 209.

(14) Information determined necessary by the Secretary concerned to assess the cumulative impacts of mineral activities, as may be required to comply with the National Environmental Policy Act.

(15) Such other environmental baseline data as the Secretaries, by joint regulation, shall require sufficient to validate the determinations required for issuance of a permit under this Act.

(16) Evidence of appropriate financial assurance as specified in section 206.

(17) A description of the site security provisions designed to protect from theft the locatable minerals, concentrates or products derived therefrom which will be produced or stored on a mining claim.

(18) A full characterization of soils and geology in the area to be affected by mineral activities.

(19) A copy of the applicant's advertisement to be published as required by section 403 (relating to public participation).

(c) RECLAMATION PLAN APPLICATION REQUIREMENTS.—The reclamation plan referred to in subsection (b) shall include such reclamation

measures as prescribed by the Secretary, or for National Forest System lands the Secretary of Agriculture, and each of the following:

(1) A description of the condition of the land subject to the permit prior to the commencement of any mineral activities.

(2) A description of reclamation measures proposed pursuant to the requirements of section 207.

(3) The engineering techniques to be used in reclamation and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the reclamation proposed.

(5) A description of the proposed condition of the land following the completion of reclamation.

(6) A description of the maintenance measures that will be necessary to meet the surface management requirements of this Act, such as, but not limited to, drainage water treatment facilities, or liner maintenance and control.

(7) The consideration which has been given to making the condition of the land after the completion of mineral activities and final reclamation consistent with the applicable land use plan.

(d) PERMIT ISSUANCE OR DENIAL.—(1) After providing notice and opportunity for public comment and hearing, the Secretary, or for National Forest System lands the Secretary of Agriculture, shall issue an operations permit if such Secretary makes each of the following determinations in writing, and such Secretary shall deny a permit which he or she finds does not fully meet the requirements of this paragraph:

(A) The permit application, operations plan, and reclamation plan are complete and accurate.

(B) The applicant has demonstrated that the proposed reclamation in the reclamation plan can be accomplished.

(C) The proposed mineral activities and condition of the land after the completion of mineral activities and final reclamation conform to the land use plan applicable to the area subject to mineral activities.

(D) The area subject to the proposed plan is not included within an area designated unsuitable or not open to location for the types of mineral activities proposed.

(E) The applicant has demonstrated that the mineral activities will be in compliance with this Act and all other applicable Federal requirements, and any State requirements agreed to by the appropriate Secretary pursuant to cooperative agreements under section 208.

(F) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subsection (b)(10) has been made and the proposed operation has been designed to minimize disturbances to the prevailing hydrologic balance of the permit area.

(G) The applicant has fully complied with the requirements of section 206 (relating to financial assurance).

(2) Issuance of an operations permit under this section shall be based on information supplied by the applicant and the applicant shall have the burden of establishing that the application complies with paragraph (1).

(e) TERM OF PERMIT; RENEWAL.—(1) An operations permit shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed mineral activities subject to the permit, and in no case for more than 10 years, unless the applicant demonstrates to the satisfaction of the Secretary, or for National Forest System lands the Secretary of Agriculture, that a specified longer term is reasonably needed for such mineral activities.

(2) Failure by the operator to commence mineral activities within one year of the date sched-

uled in an operations permit shall require a modification of the permit unless the Secretary concerned determines that the delay was beyond the control of the applicant.

(3) An operations permit shall carry with it the right of successive renewal upon expiration only with respect to operations on areas within the boundaries of the existing permit as issued. A renewal of such permit shall not be issued if such Secretary determines, in writing, any of the following:

(A) The terms and conditions of the existing permit are not being met.

(B) The operator has not demonstrated that the financial assurance would continue to apply in full force and effect for the renewal term.

(C) Any additional revised or updated information required by the Secretary concerned has not been provided.

(D) The applicant has not demonstrated that the mineral activities will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary concerned pursuant to cooperative agreements under section 208.

(4) A renewal of an operations permit shall be for a term of 10 years or for such additional term as the Secretary concerned deems appropriate. Application for renewal shall be made at least one year prior to the expiration of the existing permit. Where a renewal application has been timely submitted and a permit expires prior to Secretarial action on the renewal application, reclamation shall and other mineral activities may continue in accordance with the terms of the expired permit until the Secretary concerned makes a decision on the renewal application.

(f) PERMIT MODIFICATION.—(1) During the term of an operations permit the operator may submit an application to modify the permit (including the operations plan or reclamation plan, or both). To approve a proposed modification, the Secretary, or for National Forest System lands the Secretary of Agriculture, shall make the same determinations as are required in the case of an original operations permit, except that the Secretaries may establish joint rules regarding the extent to which requirements for original permits under this section shall apply to applications to modify a permit based on whether such modifications are deemed significant or minor. Such rules shall provide that all requirements applicable to a new permit shall apply to any extension of the area covered by the permit (except for incidental boundary revisions).

(2) The Secretary, or for National Forest System lands the Secretary of Agriculture, may, at any time, require reasonable modification to any operations plan or reclamation plan upon a determination that the requirements of this Act cannot be met if the plan is followed as approved. Such determination shall be based on a written finding and subject to notice and hearing requirements established by the Secretary concerned.

(g) TEMPORARY CESSATION OF OPERATIONS.—

(1) No operator conducting mineral activities under an operations permit in effect under this title may temporarily cease mineral activities for a period of 180 days or more under an operations permit unless the Secretary concerned has approved such temporary cessation or unless the temporary cessation is permitted under the original permit. Any operator temporarily ceasing mineral activities for a period of 180 days or more under an existing operations permit shall submit, before the expiration of such 180-day period, a complete application for temporary cessation of operations to the Secretary concerned for approval unless the temporary cessation is permitted under the original permit.

(2) An application for approval of temporary cessation of operations shall include such provisions as prescribed by the Secretary concerned,

including but not limited to the steps that shall be taken during the cessation of operations period to minimize impacts on the environment. After receipt of a complete application for temporary cessation of operations such Secretary shall conduct an inspection of the area for which temporary cessation of operations has been requested.

(3) To approve an application for temporary cessation of operations, the Secretary concerned shall make each of the following determinations:

(A) A determination that the methods for securing surface facilities and restricting access to the permit area, or relevant portions thereof, will effectively ensure against hazards to the health and safety of the public and fish and wildlife.

(B) A determination that reclamation is in compliance with the approved reclamation plan, except in those areas specifically designated in the application for temporary cessation of operations for which a delay in meeting such standards is necessary to facilitate the resumption of operations.

(C) A determination that the amount of financial assurance filed with the permit application is sufficient to assure completion of the reclamation activities identified in the approved reclamation plan in the event of forfeiture.

(D) A determination that any outstanding notices of violation and cessation orders incurred in connection with the plan for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the Secretary concerned.

(h) PERMIT REVIEWS.—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall review each permit issued under this section every 3 years during the term of such permit and, based upon a written finding, such Secretary may require the operator to take such actions as the Secretary deems necessary to assure that mineral activities conform to the permit, including adjustment of financial assurance requirements.

(i) FEES.—Each application for a permit pursuant to this section shall be accompanied by a fee payable to the Secretary of the Interior in such amount as may be established by such Secretary. Such amount shall be equal to the actual or anticipated cost to the Secretary, or for National Forest System lands the Secretary of Agriculture, of reviewing, administering, and enforcing such permit, as determined by the Secretary of the Interior. All moneys received under this subsection shall be deposited in the Abandoned Locatable Minerals Mine Reclamation Fund established under title III of this Act.

(j) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS.—(1) No transfer, assignment, or sale of rights granted by a permit under this section shall be made without the prior written approval of the Secretary, or for National Forest System lands the Secretary of Agriculture.

(2) The Secretary, or for National Forest System lands the Secretary of Agriculture, may allow a person holding a permit to transfer, assign, or sell rights under the permit to a successor, if such Secretary finds, in writing, that the successor—

(A) is eligible to receive a permit in accordance with section 205;

(B) has submitted evidence of financial assurance satisfactory under section 206; and

(C) meets any other requirements specified by such Secretary.

(3) The successor in interest shall assume the liability and reclamation responsibilities established by the existing permit and shall conduct the mineral activities in full compliance with this Act, and the terms and conditions of the permit as in effect at the time of transfer, assignment, or sale.

(4) Each application for approval of a permit transfer, assignment, or sale pursuant to this subsection shall be accompanied by a fee payable to the Secretary of the Interior in such amount as may be established by such Secretary. Such amount shall be equal to the actual or anticipated cost to the Secretary or the Secretary of Agriculture of reviewing and approving or disapproving such transfer, assignment, or sale, as determined by the Secretary of the Interior. All moneys received under this subsection shall be deposited in the Abandoned Locatable Minerals Mine Reclamation Fund established under title III of this Act.

SEC. 205. PERSONS INELIGIBLE FOR PERMITS.

(a) CURRENT VIOLATIONS.—Unless corrective action has been taken in accordance with subsection (c), no permit under this title shall be issued or transferred to an applicant if the applicant or any agent of the applicant, the operator (if different than the applicant) of the claim concerned, any claim holder (if different than the applicant) of the claim concerned, or any affiliate or officer or director of the applicant is currently in violation of any of the following:

(1) A provision of this Act or any regulation under this Act.

(2) An applicable solid waste, air, or water quality law or regulation at any site where mining, beneficiation, or processing activities are occurring or have occurred.

(3) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 and following) or any regulation implementing that Act at any site where surface coal mining operations have occurred or are occurring.

(b) SUSPENSION.—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall suspend an exploration permit or an operations permit, in whole or in part, if such Secretary determines that any of the entities described in subsection (a) were in violation of any requirement listed in subsection (a) at the time the permit was issued.

(c) CORRECTION.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, may issue or reinstate a permit under this title if the applicant submits proof that the violation referred to in subsection (a) or (b) has been corrected or is in the process of being corrected to the satisfaction of such Secretary or if the applicant submits proof that the violator has filed and is presently pursuing, a direct administrative or judicial appeal to contest the existence of the violation. For purposes of this section, an appeal of any applicant's relationship to an affiliate shall not constitute a direct administrative or judicial appeal to contest the existence of the violation.

(2) Any permit which is issued or reinstated based upon proof submitted under this subsection shall be conditionally approved or conditionally reinstated, as the case may be. If the violation is not successfully abated or the violation is upheld on appeal, the permit shall be suspended or revoked.

(d) PATTERN OF WILLFUL VIOLATIONS.—No permit under this Act may be issued to any applicant if there is a demonstrated pattern of willful violations of the surface management requirements of this Act by the applicant, any affiliate of the applicant, or the operator or claim holder if different than the applicant, and such violations are of such nature and duration, and with such resulting irreparable damage to the environment, as to clearly indicate an intent not to comply with the surface management requirements.

SEC. 206. FINANCIAL ASSURANCE.

(a) FINANCIAL ASSURANCE REQUIRED.—(1) Before any permit is issued under this title, the operator shall file with the Secretary, or for National Forest System lands the Secretary of Agriculture, evidence of financial assurance pay-

able to the United States on a form prescribed and furnished by such Secretary and conditional upon faithful performance of such permit and all other requirements of this Act. The financial assurance shall be provided in the form of a surety bond, trust fund, letters of credits, government securities, cash or equivalent.

(2) The financial assurance shall cover all lands within the initial permit area and shall be extended to cover all lands added pursuant to any permit modification made under section 203(f), section 204(f), or section 204(h). The financial assurance shall cover all lands to be affected by mineral activities as described and depicted in the permit application.

(b) AMOUNT.—The amount of the financial assurance required under this section shall be sufficient to assure the completion of reclamation satisfying the requirements of this Act if the work were to be performed by the Secretary concerned in the event of forfeiture. The calculation of such amount shall take into account the maximum level of financial exposure which shall arise during the mineral activity.

(c) DURATION.—The financial assurance required under this section shall be held for the duration of the mineral activities and for an additional period to cover the operator's responsibility for revegetation as specified under subsection 207(b)(6)(B), and effluent treatment as specified in subsection (g).

(d) ADJUSTMENTS.—The amount of the financial assurance and the terms of the acceptance of the assurance may be adjusted by the Secretary concerned from time to time as the area requiring coverage is increased or decreased, or where the costs of reclamation or treatment change, or pursuant to section 204(h), but the financial assurance must otherwise be in compliance with this section. The Secretary concerned shall specify periodic times, or set a schedule, for reevaluating or adjusting the amount of financial assurance.

(e) RELEASE.—Upon request, and after notice and opportunity for public comment, and after inspection by the Secretary, or for National Forest System lands the Secretary of Agriculture, such Secretary may release in whole or in part the financial assurance required under this section if the Secretary makes both of the following determinations:

(1) A determination that reclamation covered by the financial assurance has been accomplished as required by this Act.

(2) A determination that the operator has declared that the terms and conditions of any other applicable Federal requirements, and State requirements applicable pursuant to cooperative agreements under section 208, have been fulfilled.

(f) RELEASE SCHEDULE.—The release referred to in subsection (e) shall be according to the following schedule:

(1) After the operator has completed any required backfilling, regrading and drainage control of an area subject to mineral activities and covered by the financial assurance, and has commenced revegetation on the regraded areas subject to mineral activities in accordance with the approved plan, that portion of the total financial assurance secured for the area subject to mineral activities attributable to the completed activities may be released.

(2) After the operator has completed successfully all remaining mineral activities and reclamation activities and all requirements of the operations plan and the reclamation plan (including the provisions of section 207(b)(6)(B) relating to revegetation and effluent treatment required by subsection (g)), and all other requirements of this Act have in fact been fully met, the remaining portion of the financial assurance may be released.

During the period following release of the financial assurance as specified in paragraph (1),

until the remaining portion of the financial assurance is released as provided in paragraph (2), the operator shall be required to comply with the permit issued under this title.

(g) **EFFLUENT.**—Where any discharge resulting from the mineral activities requires treatment in order to meet the applicable effluent limitations, the financial assurance shall include the estimated cost of maintaining such treatment for the projected period that will be needed after the cessation of mineral activities. The portion of the financial assurance attributable to such estimated cost of treatment shall not be released until the discharge has ceased, or, if the discharge continues, until the operator has met all applicable effluent limitations and water quality standards for 5 full years without treatment.

(h) **ENVIRONMENTAL HAZARDS.**—If the Secretary, or for National Forest System lands the Secretary of Agriculture, determines, after final release of financial assurance, that an environmental hazard resulting from the mineral activities exists, or the terms and conditions of the operations permit of this Act were not fulfilled in fact at the time of release, such Secretary shall issue an order under section 407 requiring the claimholder or operator (or any person who controls the claimholder or operator) to correct the condition.

SEC. 207. RECLAMATION.

(a) **GENERAL RULE.**—(1) Except as provided under paragraphs (5) and (7) of subsection (b), the operator shall restore lands subject to mineral activities carried out under a permit issued under this title to a condition capable of supporting—

(A) the uses to which such lands were capable of supporting prior to surface disturbance by the operator, or

(B) other beneficial uses which conform to applicable land use plans as determined by the Secretary or for National Forest System lands, the Secretary of Agriculture.

(2) Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities and shall use, with respect to this subsection and subsection (b), the best technology currently available.

(b) **RECLAMATION STANDARDS.**—Mineral activities shall be conducted in accordance with the following standards; as well as any additional standards the Secretaries may jointly promulgate under section 201 and subsection (a) of this section to address specific environmental impacts of selected methods of mining:

(1) **SOILS.**—(A) Soils, including top soils and subsoils removed from lands subject to mineral activities shall be segregated from waste material and protected for later use in reclamation. If such soil is not replaced on a backfill area within a time-frame short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the soil is preserved from wind and water erosion, remains free of contamination by acid or other toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation.

(B) In the event the topsoil from lands subject to mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands subject to the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in a like manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.

(C) In the event the soil (other than topsoil) from lands subject to mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands subject to the mineral activities are available that support re-vegetation, these substitute materials shall be

removed, segregated or preserved in a like manner as under subparagraph (A) for later use in reclamation.

(D) Mineral activities shall be conducted to prevent contamination of soils to the extent possible using the best technology currently available. If contamination occurs, the operator shall decontaminate or dispose of any contaminated soils which have resulted from the mineral activities.

(2) **STABILIZATION.**—All surface areas subject to mineral activities, including segregated soils or other growth medium, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities so as to effectively control fugitive dust and erosion and minimize attendant air and water pollution.

(3) **SEDIMENTS, EROSION, AND DRAINAGE.**—Facilities such as but not limited to basins, ditches, stream bank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control sediments, erosion, and drainage of the area subject to mineral activities.

(4) **HYDROLOGIC BALANCE.**—(A) Mineral activities shall be conducted to minimize disturbances to the prevailing hydrologic balance of the permit area and surrounding watershed existing prior to the mineral activities in the permit area and in the surrounding watershed, as established by the baseline information provided pursuant to section 204(b)(10). Hydrologic balance includes the quality and quantity of ground water and surface water and their interrelationships, including recharge and discharge rates. In all cases, the operator shall comply with Federal and State laws related to the quality and quantity of such waters.

(B) Mineral activities shall be conducted using the technology standard referred to in subsection (a)(2) to prevent where possible the formation of acidic, toxic or other contaminated water. Where the formation of acidic, toxic or other contaminated water occurs despite the use of such technology standard, mineral activities shall be conducted using such technology so as to minimize the formation of acidic, toxic or other contaminated water.

(C) Mineral activities shall prevent any contamination of surface and ground water with acid or other toxic mine pollutants and shall prevent or remove water from contact with acid or toxic producing deposits.

(D) Reclamation shall restore approximate hydrologic balance existing prior to the mineral activities.

(E) Where the quality of surface water or ground water used for domestic, municipal, agricultural, or industrial purposes is adversely impacted by mineral activities, such water shall be treated, or replaced with the same quantity and approximate quality of water, comparable to premining conditions as established in paragraph (10) of section 204(b).

(5) **SURFACE RESTORATION.**—(A) Except as provided in paragraph (7), the surface area disturbed by mineral activities shall be revegetated and shaped, graded, and contoured to the extent practicable to blend with the surrounding topography. Backfilling of an open pit mine shall be required only if the Secretary, or for National Forest System lands the Secretary of Agriculture, finds that such open pit or partially backfilled, graded, or contoured pit would pose a significant threat to the public health safety or have a significant adverse effect on the environment in terms of surface water or groundwater pollution.

(B) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(6) **VEGETATION.**—(A) The area subject to mineral activities shall be vegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area subject to mineral activities, capable of self-regeneration and plant succession and at least equal in extent of cover to the natural re-vegetation of the surrounding area, except that introduced species may be used at the discretion of the Secretary, or for National Forest System lands the Secretary of Agriculture, if such introduction of such species is consistent with subsection (a). In such instances where the complete backfill of an open mine pit is not required under paragraph (5), such Secretary shall prescribe such vegetation requirements as conform to the applicable land use plan.

(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less. The period may be for a longer time at the discretion of the Secretary concerned where the average precipitation is 26 inches or less.

(7) **EXCESS WASTE.**—(A) Waste material in excess of that required to comply with paragraph (5) shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability, to prevent mass movement and to facilitate reclamation. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess waste material piles shall be certified by a qualified professional engineer.

(B) Excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(8) **SEALING.**—All drill holes, and openings on the surface associated with underground mineral activities, shall be backfilled, sealed or otherwise controlled when no longer needed for the conduct of mineral activities to ensure protection of the public and the environment, and management of fish and wildlife and livestock.

(9) **STRUCTURES.**—All buildings, structures or equipment constructed, used or improved during mineral activities shall be removed, unless the Secretary concerned in consultation with the affected land managing agency, determines that use of the buildings, structures or equipment would be consistent with subsection (a) or for environmental monitoring and the Secretary concerned takes ownership of such structures.

(10) **FISH AND WILDLIFE.**—Fish and wildlife habitat in areas subject to mineral activities shall be restored in a manner commensurate with or superior to habitat conditions which existed prior to the mineral activities, including such conditions as may be prescribed by the Director, Fish and Wildlife Service.

(c) **APPLICATION OF RECLAMATION STANDARDS TO EXPLORATION.**—The provisions of this section shall apply to mineral exploration pursuant to a permit under this Act, except that paragraphs (5) and (6) of subsection (b) shall not apply during any interim periods between completion of the approved exploration and the commencement of further mineral activities, not to exceed 2 years, if the operator maintains a sufficient financial assurance to reclaim the disturbed surface should further mineral activities not be authorized. The Secretary concerned shall prescribe standards for interim stabilization and revegetation.

(d) **SPECIAL RULE.**—A modified reclamation plan shall not be required for mineral activities related to reclamation where a mining claim is forfeited, relinquished or lapsed, or a plan is revoked or suspended or has expired in any such

case. Reclamation activities shall continue only as approved by the Secretary, or for National Forest System lands the Secretary of Agriculture, pursuant to the previously approved reclamation plan.

(e) **DEFINITIONS.**—As used in this section:

(1) The term "best technology currently available" means equipment, devices, systems, methods, or techniques which have demonstrated engineering and economic feasibility, success and practicality. Within the constraints of the surface management requirements of this Act, the Secretary, or for National Forest System lands the Secretary of Agriculture, shall have the discretion to determine the best technology currently available on a case-by-case basis.

(2) The term "waste material" means the material resulting from mineral activities involving extraction, beneficiation and processing, including but not limited to tailings, and such material resulting from mineral activities involving processing, to the extent such material is not subject to subtitle C of the Solid Waste Disposal Act or the Uranium Mill Tailings Radiation Control Act.

(3) The term "ore piles" means ore stockpiled for beneficiation prior to the completion of mineral activities.

(4) The term "subgrade ore" means ore that is too low in grade to be processed at the time of extraction but which could reasonably be processed in the foreseeable future.

(5) The term "soil" means the earthy or sandy layer, ranging in thickness from a few inches to several feet, composed of finely divided rock debris, of whatever origin, mixed with decomposing vegetal and animal matter, which forms the surface of the ground and in which plants grow or may grow.

SEC. 208. STATE LAW AND REGULATION.

(a) **STATE LAW.**—(1) Any reclamation standard or requirement in State law or regulation that meets or exceeds the requirements of section 207 shall not be construed to be inconsistent with any such standard.

(2) Any bonding standard or requirement in State law or regulation that meets or exceeds the requirements of section 206 shall not be construed to be inconsistent with such requirements.

(3) Any inspection standard or requirement in State law or regulation that meets or exceeds the requirements of section 404 shall not be construed to be inconsistent with such requirements.

(b) **APPLICABILITY OF OTHER STATE REQUIREMENTS.**—(1) Nothing in this Act shall be construed as affecting any solid waste, or air or water quality, standard or requirement of any State law or regulation, or of tribal law or regulation, which may be applicable to mineral activities on lands subject to this Act.

(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, such person's interest in water resources affected by mineral activities on lands subject to this Act.

(c) **COOPERATIVE AGREEMENTS.**—(1) Any State may enter into a cooperative agreement with the Secretary, or for National Forest System lands the Secretary of Agriculture, for the purposes of such Secretary applying such standards and requirements referred to in subsection (a) and subsection (b) to mineral activities or reclamation on lands subject to this Act.

(2) In such instances where the proposed mineral activities would affect lands not subject to this Act in addition to lands subject to this Act, in order to approve a plan of operations the Secretary concerned shall enter into a cooperative agreement with the State that sets forth a common regulatory framework consistent with the surface management requirements of this Act for the purposes of such plan of operations.

(3) The Secretary concerned shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment.

(d) **PRIOR AGREEMENTS.**—Any cooperative agreement or such other understanding between the Secretary concerned and any State, or political subdivision thereof, relating to the surface management of mineral activities on lands subject to this Act that was in existence on the date of enactment of this Act may only continue in force until the effective date of this Act, after which time the terms and conditions of any such agreement or understanding shall only be applicable to plans of operations approved by the Secretary concerned prior to the effective date of this Act.

(e) **DELEGATION.**—The Secretary, or for National Forest System lands the Secretary of Agriculture, shall not delegate to any State, or political subdivision thereof, the Secretary's authorities, duties and obligations under this Act, including with respect to any cooperative agreements entered into under this section.

(f) **PREEMPTION.**—The requirements of this Act shall preempt any conflicting requirements of any State, or political subdivision thereof relating to mineral activities for locatable minerals.

SEC. 209. UNSUITABILITY REVIEW.

(a) **AUTHORITY.**—(1) As provided for in this section, the Secretary of the Interior, in carrying out the Secretary's responsibilities under the Federal Land Policy and Management Act of 1976, and the Secretary of Agriculture, in carrying out the Secretary's responsibilities under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, shall each review lands that are subject to this Act in order to determine, in accordance with the provisions of subsection (b), whether there are any areas on such lands which are either unsuitable for all types of mineral activities or conditionally suitable for certain types of mineral activities.

(2) Any determination made in accordance with subsection (b) shall be immediately effective. Such determination shall be incorporated into the applicable land use plan when such plan is adopted, revised, or significantly amended pursuant to provisions of law other than this Act.

(3) In any instance where a determination is made in accordance with subsection (b) that an area is conditionally suitable for all or certain mineral activities, the Secretary concerned shall take appropriate steps to notify the public that any operations permit application relevant to that area shall be conditioned accordingly.

(b) **SPECIAL CHARACTERISTICS.**—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall determine that an area open to location is unsuitable for all or certain mineral activities if such Secretary finds that such activities would result in significant, permanent and irreparable damage to special characteristics as described in paragraph (3) which cannot be prevented by the imposition of conditions in the operations permit required under section 204 (b).

(2) The Secretary, or for National Forest System lands, the Secretary of Agriculture, may determine, after notice and opportunity for public comment, that an area is conditionally suitable for all or certain types of mineral activities, if the Secretary concerned determines that any of the special characteristics of such area, as listed in paragraph (3), require protection from the effects of mineral activities.

(3) Any of the following shall be considered special characteristics of an area which contains lands or interests in lands open to location under this Act:

(A) The existence of significant water quality or supplies in or associated with such area, such as aquifers and aquifer recharge areas.

(B) The presence in such area of publicly owned places which are listed on or are determined eligible for listing on the National Register of Historic Places.

(C) The designation of all or any portion of such area or any adjacent area as a National Conservation System unit.

(D) The designation of all or any portion of such area or any adjacent area as critical habitat for threatened or endangered species under the Endangered Species Act.

(E) The designation of all or any portion of such area as Class I under section 162 of the Clean Air Act (42 U.S.C. 7401).

(F) The presence of such other resource values as the Secretary, or for National Forest System lands, the Secretary of Agriculture, may, by joint rule, specify based upon field testing that verifies such criteria.

(c) **PERMIT APPLICATION PRIOR TO REVIEW.**—

(1) If an area covered by an application for a permit required under section 204, has not been reviewed pursuant to subsection (a) prior to submission of the application, the Secretary, or for National Forest System lands, the Secretary of Agriculture, shall review the area that would be affected by the proposed mineral activities to determine, according to the provisions of subsection (b), whether the area is unsuitable for all types of mineral activities or conditionally suitable for certain types of mineral activities. Such review and determination shall precede the final decision on the permit application.

(2) The Secretary concerned shall use such review in the next revision or significant amendment to the applicable land use plan to the extent necessary to reflect the unsuitability or conditional suitability of such lands.

(d) **EFFECT OF DETERMINATION.**—(1) In any instance in which a determination of unsuitability is made for any area in accordance with subsection (b)(1), all mineral activities shall be prohibited in such area, and the Secretary shall (with the consent of the Secretary of Agriculture for National Forest System lands) withdraw such area pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714). The Secretary's determination under this section shall constitute the documentation required to be provided under section 204(c)(12) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(2) In any instance where the Secretary, or for National Forest System lands, the Secretary of Agriculture, determines in accordance with subsection (b)(2) that, by reason of any of the special characteristics listed in subsection (b)(3), an area is conditionally suitable for all or certain mineral activities, the Secretary concerned shall include such additional conditions in each permit for mineral activities in such area as necessary to limit or control mineral activities to the extent necessary to protect the special characteristics concerned.

(3) Nothing in this section shall be construed as affecting lands where mineral activities were being conducted on the date of enactment of this Act under approved plans of operations or under notice (as provided for in the regulations of the Secretary of the Interior in effect prior to the date of enactment of this Act relating to operations that cause a cumulative disturbance of 5 acres or less).

(4) Nothing in this section shall be construed as prohibiting mineral activities at a specific site, where substantial legal and financial commitments in such mineral activities were in existence on the date of enactment of this Act, but nothing in this section shall be construed as prohibiting either Secretary from regulating such activities in accordance with other authority of law. As used in this paragraph, the term

"substantial legal and financial commitments" means, with respect to a specific site, significant investments, expenditures, or undertakings that have been made to explore or develop any mining claim or and millsite located at such site under the general mining laws or converted under this Act, such as but not limited to: contracts for minerals produced; construction; contracts for the construction; or commitment to raise capital for the construction of processing, beneficiation, extraction, or refining facilities, or transportation or utility infrastructure; exploration activities conducted to delineate proven or probable ore reserves; acquisition of mining claims (but only if such acquisition is part of other significant investments specified in this paragraph); and such other costs or expenditures related to mineral activities at such site as are similar to the foregoing itemized costs or expenditures and as may be specified by the Secretaries by joint rule.

(e) WITHDRAWAL REVIEW.—(1) In carrying out the responsibilities referred to in subsection (a), the Secretary or, for National Forest System lands, the Secretary of Agriculture, shall review all administrative withdrawals of land under such Secretary's jurisdiction (other than wilderness study areas) to determine whether the revocation or modification of such withdrawal for the purpose of allowing such lands to be opened to the location of mining claims under this Act is appropriate as a result of either of the following:

(A) The imposition of any conditions imposed as part of the land use planning process or the imposition of any conditions as a result of the review process under subsection (a).

(B) The limitation of section 417 (relating to limitation on patent issuance).

(2) The Secretary concerned shall publish the review referred to in paragraph (1) in the Federal Register no later than 1 year after the date of enactment of this Act. After providing notice and opportunity for comment, the Secretary may issue a revocation or modification of such administrative withdrawals as he deems appropriate by reason of the criteria listed in subparagraph (A) or (B) of paragraph (1).

(f) EXPLORATION REVIEWS.—In conjunction with review of a permit application submitted pursuant to section 203, and upon request of the applicant, the Secretary, or for National Forest System lands, the Secretary of Agriculture, shall review the area proposed to be affected by mineral activities to determine whether the area would be unsuitable or conditionally suitable for all or certain mineral activities.

SEC. 210. CERTAIN MINERAL ACTIVITIES COVERED BY OTHER LAW.

This title shall not apply to any mineral activities which are subject to the Stock Raising Homestead Act.

AMENDMENT OFFERED BY MR. WILLIAMS

Mr. WILLIAMS. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WILLIAMS: Page 39, line 13, after the period insert: "The Secretary shall waive the fee under this subsection in the case of a permit which covers less than 10 acres of land. Not more than one waiver may be granted under the preceding sentence to the same applicant during any 12-month period."

Page 54, line 3, after the period insert: "The Secretary shall waive the fee under this subsection in the case of a permit which covers less than 10 acres of land. Not more than one waiver may be granted under the preceding sentence to the same applicant during any 12-month period."

Mr. WILLIAMS. Madam Chairman, I would ask, who are the entrepreneurs

left in the American mining business? Are they the large companies, many of them foreign-owned, or are they the small miners? If they are the small miners, the independents, then this Congress has to decide whether it wants to aid those small miners to continue their entrepreneurial spirit, which results in the discovery of minerals in this country. It is, after all, the small explorers, the small miners, who make the discoveries, because they, and they alone, are the true entrepreneurs.

My amendment, Madam Chairman, is a step toward trying to create some equity for these small miners and their ability to continue exploring and doing very small-scale mining.

As it stands, the bill requires all applicants that mine on the public land must pay the full cost of the administrative and environmental review costs borne by the agency that processes the mining application. My amendment simply exempts small miners from those costs, and I define small miners as those who are disturbing less than 10 acres.

Madam Chairman, let me point out to the House the difficulty that this bill creates for truly small miners. The claim holding fees will prevent any individual on any sort of limited income from holding more than 10 claims, and most small miners hold more than 10 claims. The requirements in the bill for providing material such as maps and biological inventories and environmental baseline data and other technical information will be far beyond the capability of small miners and small independent operators, and those requirements, biological inventories and all the rest, are going to force those small miners to hire outside consultants to take them through the process.

Currently, the Forest Service and BLM work with the small operators to try to get their mining plans approved, and I work with the BLM, as many of the Members do, and I work with the Forest Service, as many of the Members do, and they are no pushovers in permitting the small operators.

The worst case scenario for establishing bonding will push those way beyond the limits of the small miners to afford. Another problem is that the requirements for a certified professional engineer to certify the disposition of excess waste material is nondiscretionary, and those small operators will face the hiring of expensive consultants in that matter, to satisfy those requirements.

The monitoring and reporting requirements in this bill again involve complexity that many small miners will find difficult, and again, will probably require outside consultants to take them through that.

□ 1620

Finally, there is another single item which is expensive to small miners, and

it is the one mining thing I am trying to relieve them of with this amendment, and that is, that the bill requires the mining applicants to pay a fee sufficient to cover the cost of processing the permit. Now what are those costs? Here is what the Forest Service tells me the typical workload for doing an environmental assessment for a small mining plan involves: a day's work for an archaeologist, a day's work at least for a wildlife biologist, a day's work for a fisheries biologist, a day's work for a hydrologist, 4 to 10 days' work for the minerals and geological staff, and about 2 days for the support staff. And the bill is sent to the small miner, and that bill quite often exceeds \$4,000 or \$5,000.

I support much of what we are doing here today, but it is not my policy, and I do not think it ought to be the policy of the Congress of the United States to pass mining legislation in which only the large, established companies, many of them foreign, have a legitimate shot to mine on the public lands, and by fiat, legal congressional fiat, the small and the independents are virtually shut out of the game simply because they cannot afford to even get on the land.

So my amendment says let us relieve the fee, let us at least not charge them that \$4,000 or \$5,000 that the permitting agency is going to pass along to them as they try to process their application. Let us at least get the small miners out from under that cost, and I encourage my colleagues and the committee to accept this amendment.

Mr. LEHMAN. Madam Chairman, I rise in opposition to the amendment. I rise reluctantly to oppose my good friend who has made a tremendous contribution to this bill, but I do so because this amendment is not in our best interest.

We made substantial concessions in the bill that is before the House today with respect to small miners. I would point out that this category of mining activity is exempt up to 10 claims, up to 400 acres of claims, from the holding fee requirements of the bill. In other words, these people under the bill before us today pay absolutely no rent for the use of their claims on Federal land up to 10 claims, up to 400 acres.

The gentleman from Montana [Mr. WILLIAMS] would now go beyond that and say that in addition to giving away the land, we will also in effect pay them for the right to be there by picking up the fees that they would otherwise have to incur.

There are no statistics to support the need for this amendment. As far as I can tell, 10 acres is pretty much an arbitrary number. The BLM has reported that 80 percent of operations on Federal lands are on 5 acres or less, but they are not able to tell us how many are on 10 acres or less.

More importantly, I believe, is the fact that it is not the size of the operation which most affects the environment, but it is the type of operation. And clearly, the blanket exemption that the gentleman from Montana would provide does not take into account the various kinds of mining operations which can occur on lands which are 10 acres or less. And in turn it does not take into account the ability of the small miner to pay for the processing permit.

What is gained by providing the relief for miners who want to operate on 10 acres or less? I guess it means if you are a small miner proposing to operate on 10 acres or less of Federal lands, then the American taxpayer would have to pay for the cost of processing the permit. I would like to point out that in most cases this is less than one-quarter of a normal permit size, those permits which would cost the least to process in the first place.

Finally, experience with the 2-acre exemption under the Surface Mining Act has shown that this type of immunity, while well-intentioned, will actually become a loophole through which honorable mining operators will be able to fit.

The amendment is well-intentioned, and we all want to help these so-called Gabby Hayes operators. But we have done so effectively in the bill by granting them the exemption from the holding fee. We should not ask the taxpayers to foot the bill for processing their permit applications.

I urge rejection of the amendment.

Mr. THOMAS of Wyoming. Madam Chairman, I move to strike the last word, and I rise in support of the amendment.

Madam Chairman, it seems to me that as Members may notice on the sheet, I have a similar amendment. Mine is a little broader, but I support this idea.

I do not think the idea is necessarily a Gabby Hayes sort of thing. That is OK. I guess you can give a better opportunity for the smaller ones, and I am for that, and we have talked about it.

But I think even beyond that we are talking here about a number of fees. We are talking about production royalties, and substantial ones unless it is changed. We are talking about filing fees, we are talking about holding fees as well. So these fees are substantially redundant. We have gone from relatively little fee now to excessive fees in four different kinds of categories.

I think it would make sense to try to get the production in place so that you have substantial fees rather than keeping it from happening. It is curious to me that we seem to be obsessed with the idea of keeping anybody from being successful in business here. We seem to have an aversion to some kind of a profit, the kind of a profit that causes investment for jobs.

I was going to read the bill. It is the broadest opportunity for the Secretary to assess fees that I have ever seen. Let me just read some of it:

The Secretary and the Secretary of Agriculture are authorized to establish and collect from persons subject to the requirements such user fees as may be necessary. Administrative fees may be assessed and collected under this section only in a manner which may reasonably expect and result in an aggregate amount of fees collected in the fiscal year which will not exceed the aggregate amount of the administrative expenses.

There is no limit to that.

So I rise in favor of the amendment. I just say in closing that we ought to be encouraging particularly small entrepreneurs to be doing it rather than discouraging, and I encourage the passage of this amendment.

Mr. DEFAZIO. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I will not take very long, but I want to rise in strong support of the Williams amendment.

Let us get straight what we are doing here. This does not waive any of the environmental requirements for the small operations. But what it does say is for these small entrepreneurs, the people who are out there for the most part slogging through the public lands, looking for locatable claims, those people who are still somewhat in the romanticized tradition of the old mining act are the people here who are going to be required to pay for the bureaucratic processing of permits by the Federal Government. I believe that we should relieve them of that disincentive. I believe that there is value to the public in locating these claims, and I think there is value in encouraging the individual entrepreneur, the small operator, the individual mine operator to go out and find and locate viable claims.

This amendment, at very little cost to the Federal Treasury, will provide that up-front incentive. After they comply with all of the environmental laws, after they get a permit, then the Federal Government is going to begin to get a return, because embedded in the other part of the bill is the royalty amendment which will far, far exceed the small amount of investment we have made in these small business operations up front.

So I think this is a fiscally responsible amendment, and a desirable amendment, and I strongly support it.

Mrs. VUCANOVICH. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in support of Mr. WILLIAMS' amendment. I join in his concern that the terribly high fee burden under this bill will snuff out the little guy. Indeed, the medium-size outfits would be hard-pressed. Given that royalties will be paid under this bill the user fee provisions are extraneous and outrageous anyway.

I support the gentleman's amendment.

Mr. MILLER of California. Madam Chairman, I move to strike the requisite number of words in opposition to the amendment.

Madam Chairman, I would hope that we would not support this amendment.

I think the criteria we are using are misplaced. The notion that somehow a small mining claim, a claim of less than 10 acres, somehow that that individual does not have the wherewithal to pay for the cost of processing that permit and the fees that are associated with that is simply that we do not know that there is any evidence to support that. We keep this noble image alive that this is Gabby Hayes going around with his mule and that he is prospecting and trying to turn over rocks, and he cannot really afford anything because he is living off of hard-tack and spring water, but that is not necessarily the case.

The fact that you are a small miner does not mean that you are a poor miner. Ross Perot is a small man, but he is not a poor man, and 10 acres, as we pointed out, we have some 80 percent of the claims are under 5 acres, or certainly under 10 acres in this provision, so this is a wholesale exemption.

People want to know how Federal deficits are created. This is how Federal deficits are created. The Government provides a service for which nobody reimburses them for providing that service, and in this case, we provide that service without regard to whether or not people can afford it under the Williams amendment. We do not ask them, "Can you afford to pay these fees, and if you can, would you do so?" We simply say nobody with 10 acres or less shall have to pay these fees.

We are going to beat our breasts around here come Saturday trying to save the Government money and the taxpayers some taxes on Government rescissions. This is an effort to reorganize our Government along the basis that those who can afford to pay, in fact, pay. This does not mean give the Secretary the discretion. This is a blanket waiver for anyone who has 10 acres or less.

If I have 10 acres or less, I do not have to pay. Why should that be the case? I am a weekend miner, and I do not have to pay. Why should that be the case? You know, when a small homebuilder or a small business person goes into my hometown or your hometown or goes to your county government and they want to get a permit to build a home or they want to get a permit to remodel a home or want to get a permit for small businesses today, governments say, "You are going to have to reimburse us the cost of processing that, because we cannot afford it any longer."

The gentleman from Montana [Mr. WILLIAMS] has long lamented the fact

that we do not run this Government on the basis where we take the general revenues from the income tax and we provide the services. But we have moved to a pay-as-you-go operation, except now that we have a special interest who has decided they do not want to pay. They just want to go. I think we have got to understand the facts that somebody who has 10 acres which can be a very substantial mining operation, and 10 acres does not mean that you have a small mine, a poor mine, an unprofitable mine. It simply means you have 10 acres. It does not mean you have an environmentally safe mine, it does not mean any of that, but it means you have 10 acres. And so what now that we are going to do is simply open the doors and say if you come to us, and apparently over 80 percent of the claims, if you walk in and you want a permit, the Government is going to eat the cost of doing that, even if you get your permit for the purposes of speculation, so that you can sell it to somebody else.

We know that in many instances that is what, in fact, is being done. You do not have to show the wherewithal that you can develop this or you can exploit the minerals that are there, you do not have to show anything. All you have to show is that the Congress was a sucker and they are willing to eat the cost if they accept this amendment.

Mr. VENTO. Madam Chairman, will the gentleman yield?

Mr. MILLER of California. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Madam Chairman, I was curious about the amendment. This is not for a claim. Somebody will have a claim on this land, and they are going to seek an exploration permit, and I listened to the gentleman from Montana explain this, but they may have a claim to far more than 10 acres, so they literally could have one 10-acre permit and another 10-acre permit, and then the Government, in that particular instance, the BLM or the Forest Service, would be expected to pick up whatever evaluation that has to be done in order to properly issue this exploration permit. Is that correct?

So it could be multiple numbers. Is there any income test here? Do we know that these individuals are really the sort of small-income individuals?

Mr. MILLER of California. On the first part, I believe that the amendment offered by the gentleman from Montana [Mr. WILLIAMS] does limit it to one claim, one of each kind of exploration and operational.

Mr. WILLIAMS. Madam Chairman, will the gentleman yield?

Mr. MILLER of California. I am happy to yield to the gentleman from Montana.

Mr. WILLIAMS. Madam Chairman, the gentleman in the well is incorrect. I limit this to one 10-acre claim per

year. So, in other words, if a mining company was trying to do what the gentleman in the well says, and it is simply open a lot of 10-acre parcels, they would only get this fee waiver on one. I am actually only trying to help small entrepreneurs.

Mr. VENTO. If the gentleman will yield further, it is once a year, is it not?

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Madam Chairman, the second point that the gentleman from Minnesota makes is that there is no requirement here whether or not these people have the wherewithal to pay this. We keep saying, "I am just trying to help the small apparently poor person get into the mining business," but there is no showing that that is the person we would be helping. It is anybody with 10 acres who can once a year come in and seek and get a permit paid for, seek and get the fees paid for, and get the permit.

I do not know how you can justify that when businessmen and women in every other walk of life dealing with every other level of, and entity of, government now have to pay their way. They now have to pay their way, because the taxpayers are not able to afford it any longer.

But all of a sudden we are going to create this kind of exemption.

I would just hope that the committee would understand that small does not mean unprofitable or poor or anything else. It simply means you have 10 acres of land, and you get the Government to pick up the bill, and I just do not see how that is going to work.

Mr. THOMAS of Wyoming. Madam Chairman, will the gentleman yield?

Mr. MILLER of California. I am happy to yield to the gentleman from Wyoming.

Mr. THOMAS of Wyoming. Madam Chairman, I think the difference is that you talk about housing permits and so on. Here is a situation where there is no revenue to be expected. There will be no royalty, there will be no jobs, there will be no income tax unless this is developed.

Mr. MILLER of California. That is the argument of a person that goes in for a housing permit that there will be no carpenters, there will be no plumbers, there will be no sales tax, no income tax, but we still expect people now to start paying their way. That is the cost of doing business.

Mr. THOMAS of Wyoming. If the gentleman will yield further, but there is no income, there is no royalty on a house. There is a royalty on this if it is developed into a production mine, and without this doing, and someone who is in the small category is not going to have that.

Mr. MILLER of California. But the royalty will only come if, in fact, the mine is productive, as you point out, and profitable, and there to run. Why should not you pay your way?

With the gentleman from Montana [Mr. WILLIAMS] if you get a profitable mine, he does not even let us go back and recapture the fees? Why are we subsidizing these people? What is this, a socialist economy? Why are you subsidizing these people?

Mr. THOMAS of Wyoming. Madam Chairman, I am a little surprised.

Mr. MILLER of California. You should be surprised.

Mr. THOMAS of Wyoming. I am surprised that the gentleman suspects me of being a socialist economist. If it is anybody for socialism, it is not me.

Mr. MILLER of California. I am shocked.

Mr. THOMAS of Wyoming. So am I. Mr. MILLER of California. And you are surprised.

Mr. WILLIAMS. Madam Chairman, I ask unanimous consent to strike the requisite number of words.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

There was no objection.

The CHAIRMAN. The gentleman from Montana [Mr. WILLIAMS] is recognized for 5 minutes.

Mr. WILLIAMS. Madam Chairman, the gentleman from California is in shock and amazement that I have offered a socialist amendment here on behalf of the small miners.

I think we have about concluded what folks want to say on this amendment. Let me just restate something.

I am for reform; 1872 is long enough. Ulysses Grant's signature is now dry on the act, and mining has changed, America has changed, and we ought to get on with reforming the act.

But it does seem to me that it is in the best interests of this country, yes, including the taxpayers of this country, that we provide a little jump-start to truly small miners, small explorers, America's real mining entrepreneurs.

Let us provide them with just a little jump-start.

How do we do that under my bill? We say that the Forest Service or the BLM's typical costs of environmental assessments, hiring archeologists, hiring wildlife biologists, hiring fisheries biologists, hiring geologists, hiring support staff, using their own mineral and geology staff, that the costs of that not be placed on the truly small miner.

Now, the question is: Well, what is a truly small miner? I worried about that myself. I want both the chairmen of the full committee and of the subcommittee to realize that I asked myself that, what is a small miner, so I went to the agency that works with miners. I went to the Forest Service. I went to BLM, and I said, "Tell me

what a small miner is." They said that 95 percent of the mining activity that is limited to 10 acres or less is being done by small miners in this country. The big mining companies do not operate on 10 acres or less. So that is the best definition I could find, and I think it is a good one.

Mr. MILLER of California. Madam Chairman, will the gentleman yield?

Mr. WILLIAMS. I am happy to yield to the gentleman from California.

Mr. MILLER of California. Madam Chairman, but again, not to be redundant, that does not tell us anything about that miner. We have already given them a jump start. They get the land rent-free. They get to hold 10 acres or less rent-free thanks to you, and now we are coming along and piling on a second one.

You cite a wildlife biologist and a hydrologist and all of these people. That is because some of these 10-acre sites, and you may call them small, but they may be complicated. They may be in serious watersheds. That is the cost of developing that claim.

Why is it that the Federal taxpayer has to absorb the cost of developing that claim when this miner who has 10 acres may, in fact, have all of the wherewithal to do it?

My colleagues who support this here are out with supporting amendments to means-test people on Social Security, but we are not going to means-test a miner who may end up with a profitable mine that they got free from the Government, and to date they do not have to pay anything for it.

□ 1640

I do not understand why we would do this.

Mr. WILLIAMS. Reclaiming my time, I want a means testing; that is exactly what I want to do. I want to say to the large mining companies that have the financial leverage and wherewithal to pay up-front costs, "you have to pay them." But that \$4,000, \$5,000, \$6,000, \$10,000 that is going to burden the truly small miner, I am saying let us at least take that small cost off of them. It is a small cost compared to what else they are going to have to pay under this bill.

This is not a ripoff, this is not a free ride, it is simply a jump start. And I am not sure it is enough of a jump-start to make the kind of difference that the miners—for the true mining entrepreneurs in this country. But let us hope it is.

Mr. MILLER of California. Well, if I have a claim, my wife has a claim, my son has a claim, my other son has a claim, and the claims are together, do we get 40 acres because we are all individuals? Do we get our permits paid for? And if my uncle has one next to me, do I get 50 acres? Could I string these together? Because that is what people did under coal mining. We had a

2½ acre exemption. And they did what they call string of pearls—was that the term—where people strung 2½ acres so that they could get an exemption. There is nothing in this provision.

So all of a sudden it is not just the small miner, it is the small family miner and then it is the small extended family miner, then it is the small extended family miner with friends, because we all get our permits taken care of and pretty soon the whole area is exempt. That is the problem with this amendment.

I understand what the gentleman has been trying to do. The gentleman from Montana [Mr. WILLIAMS] has been a champion of the small miner and keeping the entrepreneurs out there. But this amendment goes way beyond that effort. This amendment needs to be more narrowly drawn so we know exactly who it is we are dealing with and their right to maybe have Uncle Sam help them out or keep them in business.

Mr. WILLIAMS. In the few seconds I have left I want to say that the Miller Mining Co., cousins, aunts and uncles, would get one exemption under my amendment, one exception per company.

Mr. VENTO. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in opposition to the amendment. I understand the intentions of my colleagues, obviously, in asking the question about the single exemption per year. The gentleman resolved the one question I had. But as is indicated, there are other problems which existed under the law dealing with the coal mining problems which was passed earlier. But another problem that exists here is the fact that the BLM or the Forest Service may not have the budget to, in fact, deal with this.

One of the common practices that has occurred under the past method of dealing with this is that in order to advance the money when there was a presumption that the BLM or the Forest Service needed to do the work, they had to have the money advanced to them by the various applicants. This has been a past practice, one which I think is trying to be avoided in this instance by virtue of putting in place the free requirement.

So the question here is it may be a hollow promise if in fact you make these types of exemptions which would be very broad, and as the gentleman from California [Mr. LEHMAN], chairman of the subcommittee, pointed out, nearly 80 percent of the claims under BLM under 10 acres. So it is just possible there would not be the dollars.

Are we going to go to the Appropriations Committee and ask them to fund this? Has anyone given us a figure, a number as to what the cost of this would be per year? I have not heard

that number on the floor this afternoon. Would it be \$10 million? Would it be more or less?

I have not heard that number here.

So I think the fact is that in relying on the BLM or the Forest Service to, in fact, fund this particular part of the program, we do not know what it would be. It could be it would be offering or extending a benefit which is, I think, contrary to entrepreneurship. Entrepreneurism, the one with which I am familiar, is one of those willing to take some risk. Apparently that is to be set aside.

Madam Chairman, I understand what the gentleman is trying to do. I think there are many outstanding questions, however, and I would urge the amendment be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana [Mr. WILLIAMS].

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WILLIAMS. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 250, not voting 5, as follows:

[Roll No. 568]

AYES—183

Allard	English (AZ)	Laughlin
Andrews (NJ)	Everett	Leach
Applegate	Ewing	Levy
Archer	Fields (TX)	Lewis (CA)
Armey	Fish	Lightfoot
Bachus (AL)	Flake	Linder
Baker (CA)	Ford (MI)	Lipinski
Baker (LA)	Fowler	Livingston
Ballenger	Galleghy	Lloyd
Barrett (NE)	Gekas	Machtley
Bartlett	Geren	Manton
Barton	Gillmor	Manzullo
Bateman	Gingrich	McCandless
Bentley	Goodlatte	McCollum
Bereuter	Goodling	McCrery
Bilbray	Goss	McDade
Billirakis	Grams	McHugh
Blackwell	Grandy	McInnis
Billey	Gunderson	McKeon
Boehner	Hall (TX)	McMillan
Bonilla	Hamilton	Mica
Bunning	Hancock	Michel
Burton	Hansen	Miller (FL)
Buyer	Hastert	Mollinari
Callahan	Hayes	Mollohan
Calvert	Hefley	Montgomery
Camp	Hefner	Moorhead
Canady	Hergert	Murtha
Castle	Hinchey	Myers
Clayton	Hobson	Nussle
Coble	Horn	Oberstar
Collins (GA)	Houghton	Ortiz
Combest	Hunter	Orton
Condit	Hutchinson	Oxley
Cooper	Hutto	Packard
Cox	Hyde	Parker
Crane	Inglis	Pastor
Crapo	Inhofe	Paxon
Cunningham	Insole	Peterson (FL)
de la Garza	Istook	Peterson (MN)
DeFazio	Johnson, Sam	Petri
DeLay	Kasich	Pickle
Dickey	Kim	Pombo
Doolittle	King	Portman
Dornan	Kingston	Pryce (OH)
Dreier	Klink	Quinn
Duncan	Knollenberg	Regula
Dunn	Kolbe	Ridge
Emerson	Kyl	Roberts
Engel	LaRocco	Rogers

Rohrabacher	Smith (TX)	Tejeda	Wilson	Wyden	Zimmer
Royce	Spence	Thomas (CA)	Wise	Wynn	
Santorum	Stearns	Thomas (WY)	Woolsey	Yates	
Schaefer	Stenholm	Unsoeld			
Shaw	Stump	Vucanovich			
Shuster	Stupak	Walker	Bonior		Young (FL)
Skeen	Sundquist	Walsh	Chapman	Clinger	Sisisky
Skelton	Swift	Williams			
Smith (IA)	Talent	Wolf			
Smith (MI)	Tauzin	Young (AK)			
Smith (OR)	Taylor (NC)	Zeliff			

NOT VOTING—5

□ 1706

Messrs. EVANS, SYNAR, and GENE GREEN of Texas, Ms. LONG, Mr. RUSH, Ms. BYRNE, Mr. GORDON, Ms. BROWN of Florida, Mr. MINGE, and Mr. VOLKMER changed their vote from "aye" to "no."

Messrs. PETERSON of Florida, ORTIZ, and OXLEY changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title II?

Mr. YOUNG of Alaska. Madam Chairman, I move to strike the last word so I can enter into a colloquy with the chairman of the Committee on Natural Resources, the gentleman from California [Mr. MILLER]. I have a question regarding the impact of this legislation concerning minerals and lands conveyed under the Alaska Native Claims Settlement Act.

It is my understanding that this legislation is not intended to impact lands conveyed to Native corporations formed under ANCSA. Lands held by ANCSA corporations are not public domain lands. Further, section 3 of this legislation includes Alaska Native village and regional corporations in the definition of Indian "tribe." Minerals on lands held by Indian tribes are also excluded from the definition of "locatable mineral" under section 3.

Is it the view of the chairman that minerals on lands conveyed to Alaska Native corporations are not to be impacted by this bill?

Mr. MILLER of California. Madam Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from California.

Mr. MILLER of California. Yes; that is the intent of the legislation. The gentleman from Alaska is correct.

Mr. YOUNG of Alaska. I have one further question of the chairman. While it is clear that the bill is not intended to impact lands and minerals held by Native corporations, it is not so clear how claims on lands conveyed to Native corporations are to be administered under various sections of the bill. This is an issue under current law and would remain an issue under this bill. If a further clarification is needed, will the chairman work with me in conference or in later versions of this bill to ensure that the bill, if enacted, does not leave the administration of these claims unsettled?

Mr. MILLER of California. I assure the gentleman from Alaska that it is not our intent to leave administration of claims unsettled. If and when further action on the bill is taken, I will

work with the gentleman from Alaska to make sure that there is no uncertainty as to how such claims are to be administered under the bill.

Mr. YOUNG of Alaska. I thank the chairman for yielding and for the clarification.

□ 1710

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. DEFAZIO

Mr. DEFAZIO. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DEFAZIO:

Page 75, beginning in line 7, after the word "significant", strike ", permanent and irreparable".

Page 76, after line 13, insert the following new subparagraphs in section 209(b)(3) and redesignate subparagraph (F) beginning on line 14 as subparagraph (H):

"(F) The designation of all or any portion of such area by the Bureau of Land Management as an Area of Critical Environmental Concern.

"(G) The designation of all or any portion of such area by the Secretary of Agriculture as a Research Natural Area."

Mr. DEFAZIO. Madam Chairman, as the bill was reported by the committee, H.R. 322 says that certain sensitive areas will be unsuitable for mining only if the mining operation would cause significant, permanent, and irreparable harm.

Madam Chairman, the operable words here are "significant, permanent, and irreparable damage." Now, we are not talking about all the public lands in the West. We are talking about particular sensitive areas, national parks, wild and scenic rivers, high quality water sources, wilderness areas. These are the sensitive lands at issue. The Secretary would only find them unsuitable for mining if the harm caused would be significant, permanent, and irreparable.

My amendment would strike the words "permanent" and "irreparable," saying that for these very sensitive areas, unsuitability for mining would be deemed if significant damage is likely to occur.

So if we were to cause significant damage to a national park, significant damage to a wild and scenic river, significant damage to a wilderness area, the Secretary would have to make a determination. But if it is permanent and irreparable, I don't think any Secretary can make that determination. It is a very high hurdle to cross, to say that the damage is permanent and irreparable. Are we talking about lifetime? Are we talking about geologic time?

We have some precedent on permanent and irreparable, and the record is pretty grim. In 1993, under the Surface Mining Control Reclamation Act, a court found that pumping 4 billion gallons of acid mining discharge into a tributary of the Ohio River did not

NOES—250

Abercrombie	Gonzalez	Payne (NJ)
Ackerman	Gordon	Payne (VA)
Andrews (ME)	Green	Pelosi
Andrews (TX)	Greenwood	Penny
Bacchus (FL)	Gutierrez	Pickett
Baesler	Hall (OH)	Pomeroy
Barca	Hamburg	Porter
Barcia	Harman	Poshard
Barlow	Hastings	Price (NC)
Barrett (WI)	Hilliard	Quillen
Becerra	Hoagland	Rahall
Beilenson	Hochbruckner	Ramstad
Berman	Hoekstra	Rangel
Bevill	Hoke	Ravenel
Bishop	Holden	Reed
Blute	Hoyer	Reynolds
Boehlert	Huffington	Richardson
Borski	Hughes	Roemer
Boucher	Jacobs	Romero-Barcelo
Brewster	Jefferson	(PR)
Brooks	Johnson (CT)	Ros-Lehtinen
Browder	Johnson (GA)	Rose
Brown (CA)	Johnson (SD)	Rostenkowski
Brown (FL)	Johnson, E.B.	Roth
Brown (OH)	Johnston	Roukema
Bryant	Kanjorski	Rowland
Byrne	Kaptur	Roybal-Allard
Cantwell	Kennedy	Rush
Cardin	Kennelly	Sabo
Carr	Kildee	Sanders
Clay	Kleczka	Sangmeister
Clement	Klein	Sarpalius
Clyburn	Klug	Sawyer
Coleman	Kopetski	Saxton
Collins (IL)	Kreidler	Schenk
Collins (MI)	LaFalce	Schiff
Conyers	Lambert	Schroeder
Coppersmith	Lancaster	Schumer
Costello	Lantos	Scott
Coyne	Lazio	Sensenbrenner
Cramer	Lehman	Serrano
Danner	Levin	Sharp
Darden	Lewis (FL)	Shays
De Lugo (VI)	Lewis (GA)	Shepherd
Deal	Long	Skaggs
DeLauro	Lowey	Slattery
Dellums	Maloney	Slaughter
Derrick	Mann	Smith (NJ)
Deutsch	Margolies-	Snowe
Diaz-Balart	Mezvinsky	Solomon
Dicks	Markey	Spratt
Dingell	Martinez	Stark
Dixon	Matsui	Stokes
Dooley	Mazzoli	Strickland
Durbin	McCloskey	Studds
Edwards (CA)	McCurdy	Swett
Edwards (TX)	McDermott	Synar
English (OK)	McHale	Tanner
Eshoo	McKinney	Taylor (MS)
Evans	McNulty	Thompson
Faleomavaega	Meehan	Thornton
(AS)	Meek	Thurman
Farr	Menendez	Torkildsen
Fawell	Meyers	Torres
Fazio	Mfume	Torricelli
Fields (LA)	Miller (CA)	Towns
Filner	Mineta	Trafficant
Fingerhut	Minge	Tucker
Foglietta	Mink	Underwood (GU)
Ford (TN)	Moakley	Upton
Frank (MA)	Moran	Valentine
Franks (CT)	Morella	Velazquez
Franks (NJ)	Murphy	Vento
Frost	Nadler	Visclosky
Furse	Natcher	Volkmer
Gallo	Neal (MA)	Washington
Gejdenson	Neal (NC)	Waters
Gephardt	Norton (DC)	Watt
Gibbons	Obey	Waxman
Gilchrist	Oliver	Weldon
Gilman	Owens	Wheat
Glickman	Pallone	Whitten

cause permanent and irreparable damage to the river, and, therefore, was allowed under the act.

We are about to adopt that same standard for our parks, our precious natural parks, our wilderness areas, our wild and scenic rivers, areas of critical environmental concern and other sensitive areas in the Western United States.

In the case of Ohio, the court found that since the discharge only wiped out life in 20 miles of streams and creeks and visibly polluted the Ohio River with mining waste, it was still allowable because it was not permanent and irreparable. Over time those areas would regenerate and heal.

Today there are thousands of valid mining claims in the Western United States in or near wilderness areas, national parks, wild and scenic rivers, and other sensitive areas. I refer you to an article in this week's Time magazine about a proposed operation adjacent to Yellowstone National Park. In my own congressional district there are more than 200 valid mining claims within the wilderness areas on the Siskiyou National Forest. Quite a few of them are on the Wild and Scenic Chetco River, one of the best remaining Chinook salmon streams on the west coast.

Do we want to set a standard that mining can take place on that river or the periphery of Yellowstone National Park or in wilderness areas or in parks across the Western United States if the damage would be permanent and irreparable? If that is the only standard we are going to adopt, we can have significant damage. We can have damage that is long lasting. We can have damage that will outlive us. We can have damage that will destroy a trout stream or a river. But if it is not permanent and not irreparable over geologic time, it is okay.

Madam Chairman, I do not think that that is real reform. I do not think that is a high enough standard for this Congress. I do not think that is a high enough standard for the most sensitive areas in the Western United States. I would urge my colleagues to join me in striking the words "permanent" and "irreparable" and saying in these sensitive areas, if significant harm, significant damage occurred, that we would restrict mining activities.

Mr. LEHMAN. Madam Chairman, I rise in opposition to the amendment offered by my friend, the gentleman from Oregon [Mr. DEFAZIO].

Madam Chairman, I think this amendment does great damage to the bill. It is not an attempt to close a loophole in the legislation. Rather, it is an attempt to facilitate a broad lockup with Federal lands where the Secretary of the Interior will have absolutely no authority to make incremental decisions on the use of those lands.

As the bill is now written, it requires a suitability review to be done in the normal planning process with all of the public protections inherent in that process to determine whether or not a land is suitable for mining activities. The Secretary will make a decision that it is suitable, that it is unsuitable and cannot be mined, or that it can be mined, but it must be done under certain strict conditions to protect resources and values in the area.

□ 1720

It also comes down to this, my colleagues. This amendment restricts the Secretary's ability to manage public lands in the public interest. Under the legislation as now written, he is already forbidden to allow as suitable for mining any lands where there would be significant permanent and irreparable damage to special environmental characteristics due to mining.

The amendment would change that only to say where there is significant damage, not whether or not the damage can be mitigated, not whether or not it is permanent, but in every instance where it was determined that there might be significant damage, the Secretary would be restricted from having any mining activity with any conditions at all on that property. This will result in a broad lockup of Federal lands as the word "significant" is rather nebulous, and I am certain will be litigated on a case-to-case basis. That is why we have put the additional restrictions of "permanent" and "irreparable" here in the legislation, to try to nail this down and give the Secretary the authority he needs to manage those lands properly.

In many of those lands, the effects can be mitigated and in many of them they will go away. But under this legislation, there is a permanent lockup with no authority for the Secretary to do anything at all except to deny a mining permit in that area.

Also, the gentleman would expand the definition of special characteristics that the Secretary would have to look at in making this determination to include two new areas, areas of critical environmental concern and natural resource areas. The problem here is that none of these designations were set up for the purpose of eliminating mining. They were set up for certain other purposes, in most instances, yet here the restrictions on that use of that activity would extend to mining regardless of whether or not mining might affect the nature of that land and affect the values that the designation was set up.

Those areas are set up for a variety of reasons and, in many instances, have nothing to do with mining and, in many instances, the Secretary ought to have the authority, where there is not going to be damage, to condition permits and allow them to take place in that area.

It does not mean that they are going to be granted, but we certainly should not take away his discretion in that regard.

There is tremendous protection in this bill. There is ample opportunity for the Secretary, through the permit process, which is rather extensive and cumbersome and usually results in a lot of litigation, to deny permits at the present time. We do not need to tie his hands by expanding those much further in this legislation.

This will lock up far more land than is necessary and will not do any good to the values that the bill is trying to protect.

I urge a "no" vote on the DeFazio amendment.

Mr. DEFAZIO. Madam Chairman, will the gentleman yield?

Mr. LEHMAN. I yield to the gentleman from Oregon.

Mr. DEFAZIO. Madam Chairman, the gentleman stated that "significant" would have to be litigated. Is the gentleman familiar with the fact that it has been used as a standard under SMCRA and other concerns, that there is a significant body of law already on the word "significant"?

Mr. LEHMAN. This is not SMCRA. And what might be significant there might not be significant here. I am only saying that that word alone, I think, without the added emphasis here of "permanent" and "irreparable" as a condition to lock up Federal land forever is simply not a good idea. And I think taking away the Secretary's authority to condition a permit where it might be possible to do it and mitigate these damages is certainly the wrong way to go.

Mr. DEFAZIO. Madam chairman, if the gentleman will continue to yield, so the gentleman believes that significant damage in a national park is an acceptable standard. We would allow significant damage in a national park for the purpose of mining.

Mr. LEHMAN. Madam Chairman, new mining permits are not allowed in national parks under existing law. The gentleman's point is not relevant.

There is clearly a need to protect environmentally critical areas and also to have reasonable access to public lands for exploration and development of minerals. H.R. 322 recognizes this need.

Contrary to statements made by Mr. DEFAZIO, H.R. 322's provision for review of Federal lands prior to permitting a mining operation on those lands is a reasonable, workable provision that would require suitability reviews be fully integrated into the regular land-use planning process so that those interested in mining will know where potential hot spots are before they sink great sums of money into an area.

In those instances where a mining company wants to mine in an area that hasn't been reviewed for suitability, H.R. 322, as amended, would require the Secretary to do an unsuitability review before issuing a permit. If

an area is declared "unsuitable" the Secretary would withdraw, or close, the area to mining. The bill, as amended, would also allow the Secretary to declare areas "conditionally suitable." This means that a mining permit would be conditioned in order to avoid, protect, or restore, certain special characteristics.

The DeFazio amendment would add two categories of administrative land designations to the list of special characteristics which would govern the suitability process. The Secretary already has this authority under other law.

Under the bill as amended by the subcommittee and reported by the committee, the Secretary would be required to determine that an area is unsuitable if mining would result in significant, permanent and irreparable damage. The DeFazio amendment would change the requirement for determining an area unsuitable to just significant damage.

The committee—after hours of discussion and debate—chose to use a very narrow definition to declare areas unsuitable. Under the DeFazio amendment, many areas, many more than necessary or appropriate, could be declared unsuitable. The DeFazio amendment, while, purporting to be a compromise measure that would set a more reasonable standard, is a more extreme alternative than the carefully crafted language approved by the subcommittee and full committee. The committee language creates a powerful tool for the Federal land manager. The DeFazio amendment would diminish the power of the unsuitability determination.

I urge you to vote "no" on the DeFazio amendment to H.R. 322.

AMENDMENT TO H.R. 322, AS REPORTED BY THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, OFFERED BY MR. DEFAZIO

In section 209(b)(1) beginning after the word "significant" (on page 73, line 18 of the Committee draft dated November 2, 1993, 1:11 p.m.), strike ", permanent and irreparable".

In section 209(b)(3) redesignate subparagraph (F) as subparagraph (H) and insert the following new subparagraphs:

(F) The designation of all or any portion of such area or any adjacent area by the Bureau of Land Management as an Area of Critical Environmental Concern.

(G) The designation of all or any portion of such area or any adjacent area by the Secretary of Agriculture as a Research Natural Area."

EXPLANATION

In the Subcommittee bill, the Secretary "shall" find lands unsuitable for mining in the mining causes "significant, permanent and irreparable damage" to "special characteristics" described later in the section, and if that damage cannot be prevented by the imposition of conditions in the operations permit.

This amendment strikes "permanent and irreparable", making the new threshold for unsuitability a standard of "significant damage." It also adds two designations to the special characteristics list: BLM Areas of Critical Environmental Concern and Forest Service Research Natural Areas, thus according these very sensitive areas the same protection given by this Act to Wild and Scenic Rivers, National Recreation Areas or National Wildlife Refuges.

The "permanent and irreparable" standard creates an extraordinarily high threshold for an unsuitability finding, especially when ap-

plied to areas such as Wild and Scenic Rivers or Research Natural Areas. "Significant damage" is a standard used in the suitability review section of the Surface Mining Control and Reclamation Act (SMCRA). It is defined in regulation and is generally considered a term of art that should be relatively simple for the Secretaries to administer.

Mrs. VUCANOVICH. Madam Chairman, I move to strike the requisite number of words. Madam Chairman, I rise in opposition to the amendment offered by the gentleman from Oregon.

My colleagues, you may have received a letter from Carl Pope, executive director of the Sierra Club, dated November 12, 1993, asking you to support this amendment which would delete the qualifying words "permanent and irreparable" from the definition of damage on public lands to be declared "unsuitable" for mining, leaving only the threshold of "significant damage" necessary to declare such lands off-limits.

Mr. Pope offered an example from coal mining case law, not hardrock mining, to attempt to demonstrate the need for the DeFazio amendment. However, the substitute to H.R. 322, does not allow for an unsuitable designation to lie against existing mines where substantial legal and financial commitments have been made prior to enactment of the bill. In other words, the DeFazio amendment would not affect the Ohio litigation, or cases like it, even if it were to be applied to coal mines.

Another flyer drew a parallel to the Exxon Valdez and Chernobyl accidents. What is the point? Do we wish to make Prince William Sound unsuitable for oil tankers? I think plenty of Americans would oppose the long gasoline lines it would cause. Is the Ukraine unsuitable for continuing nuclear power? However, that is not the worst of the disinformation campaign on H.R. 322 by the environmental lobby. This bill is more properly titled "the Mexican Mineral Development Incentives Act of 1993" because it is already a huge disincentive to exploration and development of our domestic mineral resources. Latin America is where United States exploration dollars are now headed. Notwithstanding the Sierra Club's protestations, H.R. 322 allows no actual development if a miner cannot demonstrate compliance with the impossible-to-meet reclamation standards. H.R. 322 contains so many ways to stop exploration for and development of mineral deposits that the proposed unsuitability threshold is barely relevant.

The Sierra Club believes that mining companies would actually be better protected under the DeFazio amendment, because mining investments would not be made in the first place. Finally, the truth is out about H.R. 322. It is an attempt to thwart mineral development of the public lands that Congress has not set aside for special uses.

But the Sierra Club knows unsuitability is the key to administrative withdrawals.

Quite frankly, I don't understand the need for unsuitability when this Secretary almost daily flexes his administrative muscles. He is using FLPMA authorities unknown or unused by previous Secretaries to accomplish mining withdrawals. For example the Sweet Grass Hills have been segregated from mineral exploration on the basis of Indian Religious Freedom Act concerns. Because this unsuitability determination is for lands greater than 5,000 acres the Natural Resources Committee will have opportunity to overturn it later, but that is not about to happen.

Mr. Pope wrote in the Nov/Dec issue of Sierra magazine about the need for an environmental impact statement on NAFTA. Arguing for EIS preparation, Mr. Pope said: "we cannot afford to entrust the North American environment to unaccountable bureaucrats." Yet, that is exactly who would be making the unsuitability determinations proposed in H.R. 322—unelected, unaccountable bureaucrats, rather than Members of Congress acting on legislation specific to public lands parcels.

The Mexican Government doesn't give its bureaucrats the right to say "no" to development after mining concessions are granted. Why should the United States? I urge a "no" vote. Keep some mining jobs north of the border.

Mr. RAHALL. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, as the sponsor of H.R. 322, I rise in support of the amendment being offered by the gentleman from Oregon [Mr. DEFAZIO].

Simply put, this amendment would strengthen provisions in the bill that require an up-front, rather than after-the-fact, review of lands to determine whether they are suitable for mining.

These are, after all, Federal lands. And the issue before us involves whether we will allow these lands to be mined in a willy-nilly fashion, or, whether we will require some type of review to determine whether mining would be compatible with other resource values that may be present.

A suitability review makes sense. The taxpayers would be protected from situations where they may have to pay for remedial actions if hardrock mining occurs and the company fails to properly reclaim the land.

The environment is protected because only Federal lands which are found to be suitable for the particular type of mining method proposed would be made available.

And, in my view, this type of review is in industry's interest because, based on a suitability review, it would have prior knowledge of the stipulations associated with mining an area of Federal land upon which it could base its investment decisions.

Under the DeFazio amendment, a finding of significant damage to the land would be the determining factor in whether or not mining is conditionally allowed, or not allowed at all.

This is a far more workable standard than the one in the bill as reported by the committee.

Under this standard, a finding of permanent and irreparable damage would have to be made.

I would submit that this standard will give rise to a great deal of litigation, and will not provide for any type of realistic protections.

I urge my colleagues to support this amendment.

□ 1730

Mr. MILLER of California. Madam Chairman, I rise in opposition to the amendment offered by the gentleman from Oregon [Mr. DEFAZIO].

Madam Chairman, this is a difficult amendment. This is a section of the legislation that I believe was properly hammered out in the committee process to try and weigh both the concerns of the environmental community that expressed a great deal of concern about the impact of mining on our public lands and the need of the mining industry to have access to those public lands to continue to have a mining industry in this country, and at the same time to provide some certainty in that process.

When the issue of unsuitability was originally raised, it was raised in the back end of the process, so that the mining industry was put into the position of having to possibly expend a great deal of money, in some cases tens of millions of dollars, to go through a process, only to have the issue of unsuitability raised at the end of that process, without any real standards on which the Secretary could then deny that permit.

I felt that was unfair, the members of the committee felt that was unfair, and it also became clear that that would be a great deterrent to investment on the exploration and the development and potential of minerals in this country.

We then put in the front of the legislation a whole series of lands where the Secretary may not allow the location of mining permits. Those were cited by the gentleman from California [Mr. LEHMAN], where they cannot have the permits. Then we went to those lands, on both the Bureau of Land Management and the National Forest System, lands of special characteristics where we felt there should be a burden of proof. That burden of proof that we selected was that those activities would result in significant, permanent, irreparable damage to the special characteristics, as described in this paragraph.

It is my feeling that the so-called DeFazio amendment, as represented, the standard simply is not tough enough. The burden is not high enough.

What it really is is: It is a ticket to court. It is a ticket to litigation over each and every permit that would be in those lands where mining is not specifically allowed.

I think that is wrong. I think what we have tried to develop in this legislation is the notion that the public lands are in fact open to multiple uses, but recognizing that not every use would be available on all public lands, that there are competing interests, there are competing concerns that have to be taken into account.

What the so-called DeFazio amendment would do would be to extend the blanket authority to prohibit mining from those lands. He adds two new categories of lands where it would be prohibited, when in fact, as pointed out again by the chairman, the gentleman from California [Mr. LEHMAN], that those land classifications were never set forth, they never were proposed, with the idea that they would exclude mining.

I think the committee has struck a fair balance to both sides. We have done it with our colleagues whose districts are heavily impacted by the mining industry but who share a great deal of environmental concern about the long-term impacts of this industry on those lands.

I would hope my colleagues would stick with the committee bill and reject the so-called DeFazio-Rahall amendment.

Mr. HINCHEY. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in support of the amendment. None of us here today would deny the necessity of mining. Nor would we deny that mining is a valid, reasonable use of public lands. All of us recognize that mining requires damaging the land: To paraphrase the old saw about omelets, you can't make the pan you cook the omelet in without breaking rocks. The gold leaf that decorates this Chamber was not found in a tree: It was torn from the Earth.

But to say that allowing mining means we must break some rocks does not mean that we must leave no stone unturned. The purpose of this amendment is to draw a line, to say there are some rocks we should not break, some places we should not sacrifice, some damage we should not permit. As it stands, the bill acknowledges that some areas—parks and refuges, for instance—deserve that protection. But it provides protection only to the extent that the damage would be "significant, permanent, and irreparable."

Those are strong words; permanent and irreparable. The forest fires that swept California a few weeks ago and those that devastated Yellowstone a few years back horrified millions of Americans. But they did not do irreparable damage: Woods can grow back.

The pollution that destroyed the fish in the Hudson River that runs past my home town—and the damage pollution did to the Connecticut, the Passaic, the Chesapeake, and so many other rivers and lakes and estuaries—may not be permanent: With help, the rivers recover and the fish return. The Romans salted the earth at Carthage so nothing would grow there for centuries. They succeeded: Carthage never recovered, and its land was not cultivated until long after the Roman empire disappeared. But that was not permanent and irreparable damage: After 1,000 years, grasses and growth returned.

These are not idle examples. The language used in the bill has been interpreted in the past in other laws to permit devastating, long-term damage. It would allow areas to be declared "suitable for mining" even if mining brought similar devastation to our most treasured public lands—national parks, wilderness areas, wildlife refuges.

Please do not allow that to happen. Do not allow our commonly held treasures, our national family jewels, to be scarred for generations and centuries just so we may produce a little more gold and silver now. This amendment proposes a reasonable standard—a standard that allows miners to break rocks, that allows continued production of minerals we may need or want but that does not allow wanton destruction of our national treasures.

Please support this amendment.

Mr. VENTO. Madam Chairman, I rise in support of the amendment of the gentleman from Oregon, particularly as it involves those parts of the public lands that are designated as areas of critical environmental concern and national forest areas designated as research natural areas.

Under its Organic Act, the Bureau of Land Management is required, as a priority matter, to identify these areas of critical environmental concern—defined as areas where—

*** special management attention is required *** to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

Clearly, by definition such "areas of critical environmental concern" have special characteristics that the land managers need to take into account when they decide what conditions should apply to any mining activities affecting the areas.

Similarly, national forest "research natural areas" by definition have special natural characteristics of particular scientific or other value that must be taken into account in connection with proposed mineral development.

I commend the gentleman from Oregon [Mr. DEFAZIO] for offering this amendment, and I urge its adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. DEFAZIO].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DEFAZIO, Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 199, noes 232, not voting 7, as follows:

[Roll No. 569]

AYES—199

Ackerman	Greenwood	Oliver
Andrews (ME)	Gutierrez	Owens
Andrews (NJ)	Hamburg	Pallone
Andrews (TX)	Hamilton	Payne (NJ)
Bacchus (FL)	Harman	Pelosi
Baesler	Hastings	Petri
Barca	Hilliard	Porter
Barlow	Hinchee	Price (NC)
Barrett (WI)	Hoagland	Pryce (OH)
Becerra	Hochbrueckner	Rahall
Bellenson	Holden	Rangel
Berman	Hoyer	Ravenel
Bishop	Jacobs	Reed
Blute	Jefferson	Reynolds
Boehlert	Johnson (CT)	Richardson
Bonior	Johnson (GA)	Roemer
Borski	Johnson, E.B.	Ros-Lehtinen
Brown (FL)	Johnston	Roybal-Allard
Brown (OH)	Kaptur	Rush
Bryant	Kennedy	Sabo
Byrne	Kennelly	Sanders
Cantwell	Kildee	Saxton
Cardin	Klecicka	Schenk
Clay	Klink	Schiff
Clayton	Klug	Schroeder
Clyburn	Kopetski	Schumer
Coleman	Kreidler	Scott
Collins (IL)	LaFalce	Sensenbrenner
Collins (MI)	Lambert	Serrano
Conyers	Lancaster	Sharp
Cooper	Lantos	Shays
Coppersmith	Laughlin	Shepherd
Costello	Lazio	Skaggs
Coyne	Leach	Slaughter
Cunningham	Lewis (GA)	Smith (NJ)
de la Garza	Lipinski	Snowe
de Lugo (VI)	Lowey	Stokes
Deal	Machtley	Studds
DeFazio	Maloney	Stupak
DeLauro	Mann	Synar
Dellums	Manton	Tejeda
Derrick	Margolies-	Thompson
Deutsch	Mezvisinsky	Torkildsen
Dixon	Markey	Torres
Edwards (CA)	Martinez	Towns
Engel	McCloskey	Trafficant
Eshoo	McDade	Tucker
Evans	McDermott	Unsoeld
Fields (LA)	McHale	Upton
Filner	Meehan	Valentine
Fingerhut	Meek	Velazquez
Fish	Menendez	Vento
Foglietta	Meyers	Visclosky
Frank (MA)	Mfume	Washington
Franks (CT)	Miller (FL)	Waters
Franks (NJ)	Mineta	Watt
Furse	Minge	Waxman
Gallo	Moakley	Weldon
Gejdenson	Molinari	Wheat
Geren	Moran	Whitten
Gilchrest	Morella	Wise
Gillmor	Murphy	Woolsey
Gilman	Nadler	Wyden
Gonzalez	Neal (NC)	Wynn
Goodling	Norton (DC)	Yates
Goss	Oberstar	Zimmer
Green	Obey	

NOES—232

Abercrombie	Bentley	Buyer
Allard	Bereuter	Callahan
Applegate	Bevill	Calvert
Archer	Billbray	Camp
Army	Billrakis	Canady
Bachus (AL)	Billey	Carr
Baker (CA)	Boehner	Castle
Baker (LA)	Bonilla	Clement
Ballenger	Boucher	Coble
Barcia	Brewster	Collins (GA)
Barrett (NE)	Brooks	Combest
Bartlett	Browder	Condit
Barton	Bunning	Cox
Bateman	Burton	Cramer

Crane	Inglis	Pomeroy
Crapo	Inhofe	Portman
Danner	Inslee	Poshard
Darden	Istook	Quillen
DeLay	Johnson (SD)	Quinn
Diaz-Balart	Johnson, Sam	Ramstad
Dickey	Kanjorski	Regula
Dicks	Kasich	Ridge
Dingell	Kim	Roberts
Dooley	King	Rogers
Doollittle	Kingston	Rohrabacher
Dornan	Klein	Romero-Barcelo
Dreier	Knollenberg	(PR)
Duncan	Kolbe	Rose
Dunn	Kyl	Rostenkowski
Durbin	LaRocco	Roth
Edwards (TX)	Lehman	Rowland
Emerson	Levin	Royce
English (AZ)	Levy	Sangmeister
English (OK)	Lewis (CA)	Santorum
Everett	Lewis (FL)	Sarpallus
Ewing	Lightfoot	Sawyer
Faleomavaega	Linder	Schaefer
(AS)	Livingston	Shaw
Farr	Lloyd	Shuster
Fawell	Long	Sisisky
Fazio	Manzullo	Skeen
Fields (TX)	Matsul	Skelton
Flake	Mazzoli	Slattery
Ford (MI)	McCandless	Smith (IA)
Ford (TN)	McCollum	Smith (MI)
Fowler	McCreery	Smith (OR)
Frost	McCurdy	Smith (TX)
Galleghy	McHugh	Solomon
Gekas	McInnis	Spence
Gephardt	McKeon	Spratt
Gibbons	McMillan	Stark
Gingrich	McNulty	Stearns
Glickman	Mica	Stenholm
Goodlatte	Michel	Strickland
Gordon	Miller (CA)	Stump
Grams	Mink	Sundquist
Grandy	Mollohan	Swett
Gunderson	Montgomery	Swift
Hall (OH)	Moorhead	Talent
Hall (TX)	Murtha	Tanner
Hancock	Myers	Tauzin
Hansen	Natcher	Taylor (MS)
Hastert	Neal (LA)	Taylor (NC)
Hayes	Nussle	Thomas (CA)
Hefley	Ortiz	Thomas (WY)
Hefner	Orton	Thornton
Herger	Oxley	Thurman
Hobson	Packard	Underwood (GU)
Hoeckstra	Parker	Volkmer
Hoke	Pastor	Vucanovich
Horn	Paxon	Walker
Houghton	Payne (VA)	Walsh
Huffington	Penny	Williams
Hughes	Peterson (FL)	Wilson
Hunter	Peterson (MN)	Wolf
Hutchinson	Pickett	Young (AK)
Hutto	Pickle	Young (FL)
Hyde	Pombo	Zelliff

NOT VOTING—7

Blackwell	Clinger	Torricelli
Brown (CA)	McKinney	
Chapman	Roukema	

□ 1759

Mrs. JOHNSON of Connecticut, Messrs. JOHNSTON of Florida, FRANK of Massachusetts, RANGEL, GUTIERREZ, SCHUMER, PRICE of North Carolina, and BERMAN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. MCKINNEY, Madam Chairman, during rollcall vote No. 569 on the DeFazio amendment I was unavoidably detained. Had I been present I would have voted "aye."

AMENDMENT OFFERED BY MRS. VUCANOVICH
Mrs. VUCANOVICH, Madam Chairman, I offer an amendment.

The clerk read as follows:

Amendment offered by Mrs. VUCANOVICH:

On Page 61, line 24, after the word "shall" insert the following: ", to the maximum extent practicable."

Mrs. VUCANOVICH, Madam Chairman, my amendment to section 207, the reclamation provisions of this bill is quite simple—yet it lies at the crux of today's debate.

I seek to add the phrase "to the maximum extent practicable" to the general rule for reclamation, because it is conspicuous in its absence. Not only are the reclamation standards in H.R. 322 inappropriate in light of the reclamation standard adopted by this body just 7½ months ago in the Stock Raising Homestead Act amendments, they also are conflicting and wholly unworkable.

The general reclamation standard in section 207(a)(1) of H.R. 322, applicable to both exploration permits and operations permits, requires that the permittee restore lands after mineral activities to a condition capable of supporting the "uses to which such lands were capable of supporting prior"—and I emphasize prior—to the mineral activities. Alternatively, it would require reclaiming the lands to some other beneficial use determined by the appropriate Secretary, if that use conforms to the applicable land use plan.

Yet this basic concept and over-arching standard of restoration to conditions of prior use is ignored in two other sections of H.R. 322 which set the requirements for the reclamation plans that the applicants must submit for exploration and operating permits. Instead, sections 203(d)(3) and 204(d)(1)(C) require that the reclamation plan guarantee that the land will be placed in the condition necessary to support whatever use is chosen for that area in the applicable land use plan. As the use which the planners may have selected for that land often is different from the existing use, this standard for the permits' reclamation plans in sections 203 and 204 conflicts with the general reclamation standard in section 205.

This reclamation plans' standard requiring conformance with the use selected for the land in the applicable land use plan is particularly invidious because it gives any Forest Service or BLM planner a veto over all exploration and mining. All the planner needs to do is select an idealized use which cannot be achieved by reclamation and he or she will have effectively withdrawn the land from all mineral activities.

This is not idle speculation. For example, Forest Service and BLM plans often identify new, different conditions and uses for planning areas. Indeed, the regulations even encourage this. For example, the Forest Service rules (at 36 CFR §219.11(b)) require that every land use plan must identify and describe the "desired future condition" of all the lands in every forest. The "desired future condition" very frequently varies

from the current condition both because ecosystems evolve naturally over time and because the Forest Service often chooses to actively manage forests over time to create conditions the agency finds to be preferable. The Forest Service plans are typically revised every 10 to 15 years (36 CFR §219.10(g)) but they have a planning horizon of 50 years (36 CFR §219.3). Aggressive planners have provided for desired uses that simply cannot be established in the near term even absent any mineral activities whatsoever. To ask—indeed require—as a condition for a permit that a mineral explorer or miner must not simply return the land to the maximum extent practicable to the condition in which he or she found it but instead must satisfy the planners' every whim and provide for such idealized uses is ridiculous.

Let me finish by reminding my colleagues that the conditional phrase "to the maximum extent practicable" is used some 428 times in Federal statute according to a recent search of the Lexis legal database. Congress knows what it means and we qualify our laws with that phrase routinely.

Furthermore, this body voted 421 to 1 on March 30, 1993, to amend the Stock Raising Homestead Act with respect to the manner in which mining claimants do business on privately owned surface over Federal reserved minerals. The other body quickly adopted the reclamation language as well and sent it to President Clinton. On April 16, 1993, he signed H.R. 239 into law, containing a reclamation standard qualified by the very same phrase. I find it very ironic that this body even contemplates placing an unqualified reclamation standard on public lands miners while leaving private surface owners at the "practicable" threshold, since section 210 of this bill bars the application of title II to Stock Raising Homestead Act lands.

Please support my amendment.

Madam Chairman, I yield to the gentleman from Arizona [Mr. STUMP].

□ 1810

Mr. STUMP. Madam Chairman, I thank the gentlewoman for yielding this time to me, and I thank her for all her efforts in this matter. I rise in support of the gentlewoman's amendment.

Madam Chairman, mining is good for America.

Our economic growth as a Nation and the technological advances we have attained could not have been possible without hard rock minerals, such as gold, silver, and copper that were extracted from our public lands.

The success of our domestic mining industry affects each and every American, and touches our lives every day. Regardless of whether you live in the North, South, East, or West, or some point in between, the minerals extracted by hard-rock mining operations in the West are used in products that help to improve the quality of our lives and provide jobs.

There are those who would argue that mining on our public lands is not in the public interest. In response, I would like to let the facts speak for themselves.

In 1992, Arizona's copper industry provided 12,100 mining jobs, and indirectly created more than 57,000 additional jobs through the purchase of more than \$1.1 billion in goods and services. The industry also helped State and local governments provide services for their people by paying more than \$117 million in State and local taxes. The total economic impact of Arizona's copper industry in 1992 was \$6.5 billion. Mining has always been an important part of Arizona's economy, and continues to be today.

It would be a tragic mistake if H.R. 322 were to be passed into law. The bill, deceptively titled the Mineral Exploration and Development Act, would actually take away many of the incentives to mineral exploration and development and threatens to collapse our domestic mining industry. If this bill is passed, we run the very real risk of forcing our mining industry to leave the United States in search of better opportunities, taking U.S. jobs and the opportunity for job creation with them.

Mining is good for America. Jobs are good for Americans. And, H.R. 322 would be bad for us all. If our mining laws are truly in need of reform, let's move toward meaningful and fair reforms, not toward the elimination of our domestic mining industry. I strongly encourage my colleagues to find the wisdom to vote against this bill.

Mr. LEHMAN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in opposition to the amendment of the gentleman from Nevada.

It ought to be apparent to Members of the House now that this bill is a very finely balanced piece of legislation between two very important needs, the need to have decisive and certain action to protect the environment where none or very little has been provided in the past, and the need to maintain a very viable and significant mining industry.

The House on the last two votes has wisely rejected attempts to unbalance this bill in either of those directions. This is an attempt here to make a major change, not a minor one, and to do away with the standards that have been worked out in our committee with respect to reclamation.

The bill already requires, and I quote from it:

Reclamation shall proceed as contemporaneously as practical with the conduct of mineral activity and shall use with respect to this subsection the best technology currently available.

So the standard in the bill for reclamation procedures is to use the best technology available.

This would be an extension of that to say under the Vucanovich amendment that it could be carried out only to the maximum extent practicable. What is the maximum extent practicable? In most instances that will not involve

technology. That will involve whether or not it is cost-effective at a certain time.

Madam Chairman, I believe that reclamation on public lands, lands which belong to the American people, should be carried out in a manner that assures the land will be returned to its pre-mining condition or to another condition if it would support specific beneficial uses as specified in the appropriate land use plan, not just because it is cost-effective at a certain point in time to do so.

In other words, under the bill as it is written right now, if you want to mine on public lands, you must meet a standard that requires that the land be left in good or better condition after mining, regardless of whether it affects your profit margin. This is a tremendous loophole in the bill being opened up on reclamation practices. We have sound standards in the bill. They are tough, but they are fair and I think they meet the requirements that the American people want us to.

This amendment, the standard is far too low. It would allow for far too much mischief.

Madam Chairman, I yield to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. Madam Chairman, I thank the gentleman for yielding to me.

I join in strong opposition to this amendment which is, my colleagues, a backdoor effort to reject the reclamation standards that have been so well-written into this bill.

We in the Appalachian region have a reclamation law on the books that governs surface mining of coal. It is a reclamation law that has worked since its enactment in 1977. Coal companies have responsibly reclaimed our land and made better uses of the land after the mining has been conducted.

In the West, Madam Chairman, there are still open pits. There is still a legacy of poisoned streams. There is still much reclamation work that needs to be done, all because of the hard rock surface mining that has been done in the western areas.

This amendment, the reclamation standards in it, goes a great deal toward reclaiming those open pit shafts, the poisoned streams, et cetera.

The amendment of the gentlewoman would say that reclamation only has to be done to the maximum extent practicable. And who is to judge what is the maximum extent practicable? The mining companies would be under the way the amendment of the gentlewoman is drafted.

I think it is no surprise to any Member of this body that the mining companies, what they would judge as the maximum extent practicable and what any environmentally sound person would judge as the maximum extent practicable, are not the same standards.

So the amendment of the gentleman is to say to the mining companies that they can reclaim to whatever standards they deem to be profitable and whatever they would determine is the maximum extent practicable, and it is just not a practical way to reclaim the land.

So Madam Chairman, I would join with the distinguished subcommittee chairman in urging the rejection of the amendment of the gentleman, which is truly a gutting amendment.

Mr. LEHMAN. Madam Chairman, the reclamation standards are the guts of this bill, what it is really all about. Let us not substantially weaken them now with this amendment. I urge a "no" vote.

Mr. THOMAS of Wyoming. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in support of the amendment.

Certainly whatever is done in restoration is going to be somewhat subjective. I will not take long, but I simply tell you that when you live in the arid west, the idea of restoring land is often one that involves changing it.

Indeed, many times it is better when it is over, but it is not the same.

I think there is a notion that it needs to be practicable, the high side walls and these kinds of things have turned into something that is quite different. It is subjective.

You say who is going to make the decision. Who is going to make the decision anyway? Who is going to decide whether it is returned exactly the way it was. Of course, you cannot do that. Of course, it is subjective. Of course, it is a matter of practicality.

I think this puts it into the proper context and into one of reason.

Madam Chairman, I urge my friends to support this amendment.

The CHAIRMAN. The gentleman is on the amendment offered by the gentleman from Nevada [Mrs. VUCANOVICH].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. VUCANOVICH. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 278, not voting 11, as follows:

[Roll No. 570]

AYES—149

Allard	Bentley	Castle
Archer	Billrakis	Coble
Army	Billey	Collins (GA)
Bachus (AL)	Boehner	Combost
Baker (CA)	Bonilla	Cox
Baker (LA)	Bunning	Crane
Ballenger	Burton	Crapo
Barcia	Buyer	de la Garza
Barrett (NE)	Callahan	DeLay
Bartlett	Calvert	Dickey
Barton	Camp	Dingell
Bateman	Canady	Doolittle

Dornan	Istook	Pombo
Dreier	Johnson (CT)	Portman
Duncan	Johnson, Sam	Pryce (OH)
Dunn	Kasich	Quinn
Emerson	Kim	Ridge
Everett	King	Roberts
Ewing	Kingston	Rogers
Fields (TX)	Knollenberg	Rohrabacher
Fowler	Kolbe	Roth
Franks (NJ)	Kyl	Royce
Gallegly	Levy	Schaefer
Gallo	Lewis (CA)	Schiff
Gekas	Lewis (FL)	Schroeder
Gilchrist	Lightfoot	Shuster
Gillmor	Linder	Skaggs
Gingrich	Livingston	Skeen
Goodlatte	Lloyd	Smith (MI)
Goodling	Manzullo	Smith (OR)
Goss	McCandless	Smith (TX)
Grams	McCollum	Solomon
Grandy	McCrary	Spence
Hall (TX)	McDade	Stearns
Hancock	McHugh	Stenholm
Hansen	McInnis	Stump
Hastert	McKeon	Sundquist
Hayes	McMillan	Talent
Hefley	Mica	Taylor (MS)
Herger	Michel	Taylor (NC)
Hobson	Miller (FL)	Thomas (CA)
Hoekstra	Montgomery	Thomas (WY)
Hoke	Moorhead	Valentine
Houghton	Myers	Vucanovich
Huffington	Nussle	Walker
Hunter	Orton	Walsh
Hutchinson	Oxley	Wolf
Hutto	Packard	Young (AK)
Hyde	Parker	Zeliff
Inhofe	Paxon	

NOES—278

Abercrombie	Derrick	Inslee
Ackerman	Deutsch	Jacobs
Andrews (ME)	Diaz-Balart	Jefferson
Andrews (NJ)	Dicks	Johnson (GA)
Andrews (TX)	Dixon	Johnson (SD)
Applegate	Dooley	Johnson, E. B.
Bacchus (FL)	Durbin	Johnston
Baessler	Edwards (CA)	Kanjorski
Barca	Edwards (TX)	Kaptur
Barlow	Engel	Kennedy
Barrett (WI)	English (AZ)	Kennelly
Becerra	Eshoo	Kildee
Bellenson	Evans	Klecza
Bereuter	Faleomavaega	Klein
Berman	(AS)	Klink
Bevill	Farr	Klug
Bilbray	Fawell	Kopetski
Bishop	Fazio	Kreidler
Blute	Fields (LA)	LaFalce
Boehert	Filner	Lambert
Bonior	Fingerhut	Lancaster
Borski	Fish	Lantos
Boucher	Flake	LaRocco
Brewster	Foglietta	Laughlin
Brooks	Ford (MI)	Lazio
Browder	Frank (MA)	Leach
Brown (FL)	Franks (CT)	Lehman
Brown (OH)	Frost	Levin
Byrne	Furse	Lewis (GA)
Cantwell	Gejdenson	Lipinski
Cardin	Gephardt	Long
Carr	Geren	Lowey
Chapman	Gibbons	Machtley
Clay	Gilman	Maloney
Clayton	Glickman	Mann
Clement	Gonzalez	Manton
Clyburn	Gordon	Margolies-
Coleman	Green	Mezvinsky
Collins (IL)	Greenwood	Markey
Collins (MI)	Gunderson	Martinez
Condit	Gutierrez	Matsui
Conyers	Hall (OH)	Mazzoli
Cooper	Hamburg	McCloskey
Coppersmith	Hamilton	McCurdy
Costello	Harman	McDermott
Coyne	Hastings	McHale
Cramer	Hefner	McKinney
Cunningham	Hilliard	McNulty
Danner	Hinchey	Meehan
Darden	Hoagland	Meek
de Lugo (VI)	Hochbruckner	Menendez
Deal	Holden	Meyers
DeFazio	Horn	Mfume
DeLauro	Hoyer	Miller (CA)
Dellums	Hughes	Mineta

Minge	Reed	Studds
Mink	Regula	Stupak
Moakley	Richardson	Swett
Molinari	Roemer	Swift
Mollohan	Romero-Barcelo	Synar
Moran	(PR)	Tanner
Morella	Ros-Lehtinen	Tauzin
Murphy	Rose	Tejeda
Murtha	Rostenkowski	Thompson
Nadler	Rowland	Thornton
Natcher	Roybal-Allard	Thurman
Neal (MA)	Rush	Torkildsen
Neal (NC)	Sabo	Torres
Norton (DC)	Sanders	Towns
Oberstar	Sangmeister	Trafficant
Obey	Santorum	Tucker
Olver	Sarpaluis	Underwood (GU)
Ortiz	Sawyer	Unsoeld
Owens	Saxton	Upton
Pallone	Schenk	Velazquez
Pastor	Schumer	Vento
Payne (NJ)	Scott	Visclosky
Payne (VA)	Sensenbrenner	Volkmer
Pelosi	Serrano	Washington
Penny	Sharp	Waters
Peterson (FL)	Shaw	Watt
Peterson (MN)	Shays	Waxman
Petri	Shepherd	Weldon
Pickett	Siskiy	Wheat
Pickle	Skelton	Whitten
Pomeroy	Slattery	Williams
Porter	Slaughter	Wise
Poshard	Smith (IA)	Woolsey
Price (NC)	Smith (NJ)	Wyden
Quillen	Snowe	Wynn
Rahall	Spratt	Yates
Ramstad	Stark	Young (FL)
Rangel	Stokes	Zimmer
Ravenel	Strickland	

NOT VOTING—11

Blackwell	English (OK)	Roukema
Brown (CA)	Ford (TN)	Torrice
Bryant	Inglis	Wilson
Clinger	Reynolds	

□ 1835

So the amendment was rejected. The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title II?

Mr. ORTON. Madam Chairman, I move to strike the last word.

Madam Chairman, much has been said here about the mining industry. In fact, the remarks of today have at times sounded more like the mining industry on trial than the honest debate over public policy needed to reform the 120-year-old mining law which most agree is in need of reform.

Mining is one of America's most important industries. Few products are produced in this country that do not use minerals in some form. We need only look around at our Capitol Hill offices to recognize the myriad products which owe their existence to minerals and metals. Included are everything from the personal computer, without which my office could not function, to the copying machine, chairs, paper clips, pens and pencils, as well as the building, electricity, and even the roof over our heads. The average person simply doesn't think about how important mining is to everyday life.

The mining industry creates some of the highest skilled and best paying jobs in the country. The average mining wage is over \$37,000 a year, for direct employment of nearly 280,000 Americans. The mining industry produces hundreds of millions of dollars in direct

payroll, and billions of dollars in the purchase of American made equipment, products and payment of taxes. Indirect employment that supports mining accounts for nearly 3 million U.S. jobs, in virtually all 50 States.

Furthermore, our mining industry is the most efficient, productive and environmentally sound of any in the world. It continues to furnish America with the raw materials needed by our manufacturing industry.

The mining industry is clearly one of our most critical industries. However, H.R. 322 would devastate America's mining industry, and would economically cripple it by imposing an unrealistic 8-percent gross royalty, a rate exceeding the entire profit margin of most operating mines. It would create layers of new bureaucracy, overly broad citizen suit provisions and inflexible environmental requirements that will not provide any cost effective increment of environmental protection. This bill would simply drive up the costs of mining on the public lands to the point of closing many of our existing mines, and preventing the opening of new mines.

There was an alternative to H.R. 322. Mrs. VUCANOVICH and I introduced H.R. 1708, which deals with the legitimate issues raised by critics of the mining industry. Our bill provides for reasonable fees and royalties to be paid to the Federal Government for mining on public lands and mandates that mining be accomplished in an environmentally sound manner, subject to Government-approved plans of operation, and proven, enforceable State or Federal reclamation requirements. Our legislation would update the mining law without destroying the industry or causing massive job loss.

All legitimate issues that critics of the mining industry have raised are dealt with in our bill. Royalties would be paid. Land would no longer be sold for \$2.50 to \$5 an acre. Reclamation would come under Federal law if responsible State law is not in place. And enforcement of the law against illegal uses would be required. Yet, under our legislation, the mining industry would continue to operate on a competitive basis with foreign producers to the benefit of all Americans.

So what happened to H.R. 1708? Long before today's debate, H.R. 1708 was sacrificed on the altar of extremism. And sacrificed along with it are the jobs of thousands, thousands of Americans.

I will not offer H.R. 1708 as a substitute today. I will not submit it to a vote of my esteemed colleagues who, with all due respect, have come to view H.R. 322 as the only mining reform bill—an inevitable result of a committee predisposition.

The Natural Resources Committee did hold numerous hearings and took hours of testimony from both sides.

But, frankly, both sides are not reflected in the legislation before us.

I do not stand here as just another westerner defending a western industry. Mining has direct effects on job creation throughout the country from Maine to Florida and from New York to California. It is critical that all of us realize what we are doing today to our nationwide mining industry.

We are, on the eve of the NAFTA debate, considering legislation that will absolutely, positively, send jobs south of the border and far overseas. The debate over NAFTA is a difficult one, this debate is not. Major mining companies, fearful of overbroad reform, are preparing to move south and overseas.

Mexico abolished its royalty in 1991. Argentina is reducing its royalty to 3 percent. Bolivia imposes no royalty on new mines. Brazil's royalty runs from 0.2 to 3 percent, and is paid to the states. Chile has no royalty.

Even Canada has no royalty. Ghana's royalty can run as low as 3 percent. Zimbabwe—no royalty. Indonesia's royalty is negotiable, from 1 to 2 percent. The Philippines is considering lowering its royalty from 5 to 2 percent. Papua New Guinea's royalty is just 1.25 percent.

Under H.R. 322, our royalty in the United States will be 8 percent gross. And I remind my colleagues, that this royalty would exceed the profit margin of most operating mines.

The math is pretty simple—it will be far cheaper to mine in other countries, where environmental regulations and enforcement are laughable in comparison to the United States. The global environment is also being sacrificed on the altar of extremism. H.R. 322 is environmental parochialism at its worst. It's a feel good, quick fix at home without regard to the global environmental balance that is threatened by rapid overdevelopment in emerging economies.

I urge my colleagues to avoid the quick fix; to reconsider the destruction of our mining industry. And finally, I urge my colleagues to think about the thousands of jobs we may sacrifice with this vote today.

The 1872 mining law is in desperate need of reform. But let's do it right. Do not put Americans out of work. Vote "no" on H.R. 322.

□ 1840

The CHAIRMAN. Are there other amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—ABANDONED LOCATABLE MINERALS MINE RECLAMATION FUND

SEC. 301. ABANDONED LOCATABLE MINERALS MINE RECLAMATION.

(a) ESTABLISHMENT.—(1) There is established on the books of the Treasury of the United States a trust fund to be known as the Abandoned Locatable Minerals Mine Reclamation Fund (hereinafter in this title referred to as the

'Fund'). The Fund shall be administered by the Secretary acting through the Director of the Office of Surface Mining Reclamation and Enforcement.

(2) The Secretary shall notify the Secretary of the Treasury as to what portion of the Fund is not, in the Secretary's judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the Fund in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the Fund.

(b) AMOUNTS.—The following amounts shall be credited to the Fund:

(1) All moneys received from the collection of claim maintenance fees under section 105.

(2) All moneys collected pursuant to section 106 (relating to failure to comply), section 407 (relating to enforcement) and section 405 (relating to citizens suits).

(3) All permit fees and transfer fees received under sections 203 and 204.

(4) All donations by persons, corporations, associations, and foundations for the purposes of this title.

(5) All amounts referred to in section 306 (relating to royalties and penalties for under-reporting).

(6) All other receipts from fees, royalties, penalties and other sources collected under this Act.

(c) ADMINISTRATIVE COSTS.—(1) In calculating the amount to be deposited in the Fund during any fiscal year under subsection (b), the enacted appropriation of the Department of the Interior during the preceding year attributable to administering this Act shall be deducted from the total of the amounts listed in subsection (b) prior to the transfer of such amounts to the Fund.

(2) The amount deducted under paragraph (1) of this section shall be available to the Secretary, subject to appropriation, for payment of the costs of administering this Act.

SEC. 302. USE AND OBJECTIVES OF THE FUND.

(a) IN GENERAL.—The Secretary is authorized, subject to appropriations, to use moneys in the Fund for the reclamation and restoration of land and water resources adversely affected by past mineral activities on lands the legal and beneficial title to which resides in the United States, land within the exterior boundary of any national forest system unit, or other lands described in subsection (d) or section 303, including any of the following:

(1) Prevention, abatement, treatment and control of water pollution created by abandoned mine drainage.

(2) Reclamation and restoration of abandoned surface and underground mined areas.

(3) Reclamation and restoration of abandoned milling and processing areas.

(4) Backfilling, sealing, or otherwise controlling, abandoned underground mine entries.

(5) Revegetation of land adversely affected by past mineral activities to prevent erosion and sedimentation and to enhance wildlife habitat.

(6) Control of surface subsidence due to abandoned underground mines.

(b) PRIORITIES.—Expenditure of moneys from the Fund shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past mineral activities, especially as relates to surface water and groundwater contaminates.

(2) The protection of public health, safety, and general welfare from the adverse effects of past mineral activities.

(3) The restoration of land and water resources previously degraded by the adverse effects of past mineral activities.

(c) **HABITAT.**—Reclamation and restoration activities under this title, particularly those identified under subsection (a)(4), shall include appropriate mitigation measures to provide for the continuation of any established habitat for wildlife in existence prior to the commencement of such activities.

(d) **OTHER AFFECTED LANDS.**—Where mineral exploration, mining, beneficiation, processing, or reclamation activities has been carried out with respect to any mineral which would be a locatable mineral if the legal and beneficial title to the mineral were in the United States, if such activities directly affect lands managed by the Bureau of Land Management as well as other lands and if the legal and beneficial title to more than 50 percent of the affected lands resides in the United States, the Secretary is authorized, subject to appropriations, to use moneys in the fund for reclamation and restoration under subsection (a) for all directly affected lands.

SEC. 303. ELIGIBLE LANDS AND WATERS.

(a) **ELIGIBILITY.**—Reclamation expenditures under this title may only be made with respect to Federal lands or Indian lands or water resources that traverse or are contiguous to Federal lands or Indian lands where such lands or waters resources have been affected by past mineral activities, including any of the following:

(1) Lands and water resources which were used for, or affected by, mineral activities and abandoned or left in an inadequate reclamation status before the effective date of this Act.

(2) Lands for which the Secretary makes a determination that there is no continuing reclamation responsibility of a claim holder, operator, or other person who abandoned the site prior to completion of required reclamation under State or other Federal laws.

(3) Lands for which it can be established that such lands do not contain locatable minerals which could economically be extracted through the reprocessing or re-mining of such lands, unless such considerations are in conflict with the priorities set forth under paragraphs (1) and (2) of section 302(b).

(b) **SPECIFIC SITES AND AREAS NOT ELIGIBLE.**—The provisions of section 411(d) of the Surface Mining Control and Reclamation Act of 1977 shall apply to expenditures made from the Fund established under this title.

(c) **INVENTORY.**—The Secretary shall prepare and maintain an inventory of abandoned locatable mineral mines on Federal lands and any abandoned mine on Indian lands which may be eligible for expenditures under this title.

SEC. 304. FUND EXPENDITURES.

Moneys available from the Fund may be expended for the purposes specified in section 302 directly by the Director of the Office of Surface Mining Reclamation and Enforcement. The Director may also make such money available for such purposes to the Director of the Bureau of Land Management, the Chief of the United States Forest Service, the Director of the National Park Service, Director of the United States Fish and Wildlife Service, to any other agency of the United States, to an Indian tribe, or to any public entity that volunteers to develop and implement, and that has the ability to carry out, all or a significant portion of a reclamation program under this title.

SEC. 305. AUTHORIZATION OF APPROPRIATIONS.

Amounts credited to the Fund are authorized to be appropriated for the purpose of this title without fiscal year limitation.

SEC. 306. ROYALTY.

(a) **RESERVATION OF ROYALTY.**—Production of all locatable minerals from any mining claim lo-

cated or converted under this Act, or mineral concentrates or products derived from locatable minerals from any mining claim located or converted under this Act, as the case may be, shall be subject to a royalty of 8 percent of the net smelter return from such production. The claimholder and any operator to whom the claimholder has assigned the obligation to make royalty payments under the claim and any person who controls such claimholder or operator shall be jointly and severally liable for payment of such royalties.

(b) **DUTIES OF CLAIM HOLDERS, OPERATORS, AND TRANSPORTERS.**—(1) A person—

(A) who is required to make any royalty payment under this section shall make such payments to the United States at such times and in such manner as the Secretary may by rule prescribe; and

(B) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment that such person may have made of the obligation to make any royalty or other payment under a mining claim.

(2) Any person paying royalties under this section shall file a written instrument, together with the first royalty payment, affirming that such person is liable to the Secretary for making proper payments for all amounts due for all time periods for which such person as a payment responsibility. Such liability for the period referred to in the preceding sentence shall include any and all additional amounts billed by the Secretary and determined to be due by final agency or judicial action. Any person liable for royalty payments under this section who assigns any payment obligation shall remain jointly and severally liable for all royalty payments due for the claim for the period.

(3) A person conducting mineral activities shall—

(A) develop and comply with the site security provisions in operations permit designed to protect from theft the locatable minerals, concentrates or products derived therefrom which are produced or stored on a mining claim, and such provisions shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances on mining claims; and

(B) not later than the 5th business day after production begins anywhere on a mining claim, or production resumes after more than 90 days after production was suspended, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(4) The Secretary may by rule require any person engaged in transporting a locatable mineral, concentrate, or product derived therefrom to carry on his or her person, in his or her vehicle, or in his or her immediate control, documentation showing, at a minimum, the amount, origin, and intended destination of the locatable mineral, concentrate, or product derived therefrom in such circumstances as the Secretary determines is appropriate.

(c) **RECORDKEEPING AND REPORTING REQUIREMENTS.**—(1) A claim holder, operator, or other person directly involved in developing, producing, processing, transporting, purchasing, or selling locatable minerals, concentrates, or products derived therefrom, subject to this Act, through the point of royalty computation shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with rules or orders under this section. Such records shall include, but not be limited to, periodic reports, records, documents, and other data. Such reports may also include, but not be limited to, pertinent technical and financial data relating to the quantity, quality,

composition volume, weight, and assay of all minerals extracted from the mining claim. Upon the request of any officer or employee duly designated by the Secretary or any State conducting an audit or investigation pursuant to this section, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee or State.

(2) Records required by the Secretary under this section shall be maintained for 6 years after release of financial assurance under section 206 unless the Secretary notifies the operator that he or she has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the operator of the obligation to maintain such records.

(d) **AUDITS.**—The Secretary is authorized to conduct such audits of all claim holders, operators, transporters, purchasers, processors, or other persons directly or indirectly involved in the production or sales of minerals covered by this Act, as the Secretary deems necessary for the purposes of ensuring compliance with the requirements of this section. For purposes of performing such audits, the Secretary shall, at reasonable times and upon request, have access to, and may copy, all books, papers and other documents that relate to compliance with any provision of this section by any person.

(e) **COOPERATIVE AGREEMENTS.**—(1) The Secretary is authorized to enter into cooperative agreements with the Secretary of Agriculture to share information concerning the royalty management of locatable minerals, concentrates, or products derived therefrom, to carry out inspection, auditing, investigation, or enforcement (not including the collection of royalties, civil or criminal penalties, or other payments) activities under this section in cooperation with the Secretary, and to carry out any other activity described in this section.

(2) Except as provided in paragraph (4)(A) of this subsection (relating to trade secrets), and pursuant to a cooperative agreement, the Secretary of Agriculture shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of locatable minerals, concentrates, or products derived therefrom from claims on lands open to location under this Act.

(3) Trade secrets, proprietary, and other confidential information shall be made available by the Secretary pursuant to a cooperative agreement under this subsection to the Secretary of Agriculture upon request only if—

(A) the Secretary of Agriculture consents in writing to restrict the dissemination of the information to those who are directly involved in an audit or investigation under this section and who have a need to know;

(B) the Secretary of Agriculture accepts liability for wrongful disclosure; and

(C) the Secretary of Agriculture demonstrates that such information is essential to the conduct of an audit or investigation under this subsection.

(f) **INTEREST AND SUBSTANTIAL UNDERREPORTING ASSESSMENTS.**—(1) In the case of mining claims where royalty payments are not received by the Secretary on the date that such payments are due, the Secretary shall charge interest on such underpayments at the same interest rate as is applicable under section 6621(a)(2) of the Internal Revenue Code of 1986. In the case of an underpayment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount.

(2) If there is any underreporting of royalty owed on production from a claim for any production month by any person liable for royalty

payments under this section, the Secretary may assess a penalty of 10 percent of the amount of that underreporting.

(3) If there is a substantial underreporting of royalty owed on production from a claim for any production month by any person responsible for paying the royalty, the Secretary may assess a penalty of 10 percent of the amount of that underreporting.

(4) For the purposes of this subsection, the term "substantial underreporting" means the difference between the royalty on the value of the production which should have been reported and the royalty on the value of the production which was reported, if the value which should have been reported is greater than the value which was reported. An underreporting constitutes a "substantial underreporting" if such difference exceeds 10 percent of the royalty on the value of production which should have been reported.

(5) The Secretary shall not impose the assessment provided in paragraphs (2) or (3) of this subsection if the person liable for royalty payments under this section corrects the underreporting before the date such person receives notice from the Secretary that an underreporting may have occurred, or before 90 days after the date of the enactment of this section, whichever is later.

(6) The Secretary shall waive any portion of an assessment under paragraph (2) or (3) of this subsection attributable to that portion of the underreporting for which the person responsible for paying the royalty demonstrates that—

(A) such person had written authorization from the Secretary to report royalty on the value of the production on basis on which it was reported, or

(B) such person had substantial authority for reporting royalty on the value of the production on the basis on which it was reported, or

(C) such person previously had notified the Secretary, in such manner as the Secretary may by rule prescribe, of relevant reasons or facts affecting the royalty treatment of specific production which led to the underreporting, or

(D) such person meets any other exception which the Secretary may, by rule, establish.

(7) All penalties collected under this subsection shall be deposited in the Fund.

(g) DELEGATION.—For the purposes of this section, the term "Secretary" means the Secretary of the Interior acting through the Director of the Minerals Management Service.

(h) EXPANDED ROYALTY OBLIGATIONS.—Each person liable for royalty payments under this section shall be jointly and severally liable for royalty on all locatable minerals, concentrates, or products derived therefrom lost or wasted from a mining claim located or converted under this section when such loss or waste is due to negligence on the part of any person or due to the failure to comply with any rule, regulation, or order issued under this section.

(i) EXCEPTION.—No royalty shall be payable under subsection (a) with respect to minerals processed at a facility by the same person or entity which extracted the minerals if an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974 with respect to any portion of such facility.

(j) DEFINITION.—For the purposes of this section, for any locatable mineral, the term "net smelter return" shall have the same meaning as the term defined in section 613(c)(1) of the Internal Revenue Code.

(k) EFFECTIVE DATE.—The royalty under this section shall take effect with respect to the production of locatable minerals after the enactment of this Act, but any royalty payments attributable to production during the first 12 calendar months after the enactment of this Act

shall be payable at the expiration of such 12-month period.

The CHAIRMAN. Are there amendments to title III?

The Clerk will designate title IV.

The text of title IV is as follows:

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Subtitle A—Administrative Provisions

SEC. 401. POLICY FUNCTIONS.

(a) MINERALS POLICY.—Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by adding at the end thereof the following: "It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this section."

(b) MINERAL DATA.—Section 5(e)(3) of the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1604) is amended by inserting before the period the following: ", except that for National Forest System lands the Secretary of Agriculture shall promptly initiate actions to improve the availability and analysis of mineral data in Federal land use decisionmaking".

SEC. 402. USER FEES.

The Secretary and the Secretary of Agriculture are each authorized to establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for the expenses incurred in administering such requirements. Fees may be assessed and collected under this section only in such manner as may reasonably be expected to result in an aggregate amount of the fees collected during any fiscal year which does not exceed the aggregate amount of administrative expenses referred to in this section.

SEC. 403. PUBLIC PARTICIPATION REQUIREMENTS.

(a) OPERATIONS PERMIT.—(1) Concurrent with submittal of an application for an operations permit under section 204 or a renewal or significant modification thereof, the applicant shall publish a notice in a newspaper of local circulation at least once a week for 4 consecutive weeks. The notice shall include: the name of the applicant, the location of the proposed mineral activities, the type and expected duration of the proposed mineral activities, the proposed use of the land after the completion of mineral activities and a location where such plans are publicly available. The applicant shall also notify in writing other Federal, State and local government agencies and Indian tribes that regulate mineral activities or land planning decisions in the area subject to mineral activities or that manage lands adjacent to the area subject to mineral activities. The applicant shall provide proof of such notification to the Secretary, or for National Forest System lands the Secretary of Agriculture.

(2) The applicant for an operations permit shall make copies of the complete permit application available for public review at the office of the responsible Federal surface management agency located nearest to the location of the proposed mineral activities, and at such other public locations deemed appropriate by the State or local government for the county in which the proposed mineral activities will occur prior to final decision by the Secretary, or for National Forest System lands the Secretary of Agriculture. Any person, and the authorized representative of a Federal, State or local governmental agency or Indian tribe, shall have the right to file written comments relating to the approval or disapproval of the permit application until 30 days after the last day of newspaper publication. The Secretary concerned shall promptly make such comments available to the applicant.

(3) Any person may file written comments during the comment period specified in paragraph (2) and any person who is, or may be, adversely affected by the proposed mineral activities may request a nonadjudicatory public hearing to be held in the county in which the mineral activities are proposed. The Secretary concerned shall consider all written comments filed during such period. If a hearing is requested by any person who is, or may be, adversely affected by the proposed mineral activities, the Secretary concerned shall consider such request and may conduct such hearing. When a hearing is to be held, notice of such hearing shall be published in a newspaper of local circulation at least once a week for 2 weeks prior to the hearing date.

SEC. 404. INSPECTION AND MONITORING.

(a) INSPECTIONS.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall make inspections of mineral activities so as to ensure compliance with the surface management requirements of title II.

(2) The Secretary concerned shall establish a frequency of inspections for mineral activities conducted under a permit issued under title II, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter or, two per calendar quarter in the case of a permit for which the Secretary concerned approves an application under section 204(g) (relating to temporary cessation of operations). After revegetation has been established in accordance with a reclamation plan, such Secretary shall conduct annually 2 complete inspections. Such Secretary shall have the discretion to modify the inspection frequency for mineral activities that are conducted on a seasonal basis. Inspections shall continue under this subsection until final release of financial assurance.

(3)(A) Any person who has reason to believe he or she is or may be adversely affected by mineral activities due to any violation of the surface management requirements may request an inspection. The Secretary, or for National Forest System lands the Secretary of Agriculture, shall determine within 10 working days of receipt of the request whether the request states a reason to believe that a violation exists. If the person alleges and provides reason to believe that an imminent danger to the health or safety of the public exists, the 10-day period shall be waived and the inspection shall be conducted immediately. When an inspection is conducted under this paragraph, the Secretary concerned shall notify the person requesting the inspection, and such person shall be allowed to accompany the Secretary concerned or the Secretary's authorized representative during the inspection. The Secretary shall not incur any liability for allowing such person to accompany an authorized representative. The identity of the person supplying information to the Secretary relating to a possible violation or imminent danger or harm shall remain confidential with the Secretary if so requested by that person, unless that person elects to accompany an authorized representative on the inspection.

(B) The Secretaries shall, by joint rule, establish procedures for the review of (i) any decision by an authorized representative not to inspect or (ii) any refusal by such representative to ensure that remedial actions are taken with respect to any alleged violation. The Secretary concerned shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(b) MONITORING.—(1) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall require all operators to develop and maintain a monitoring and evaluation system which shall identify compliance with all surface management requirements.

(2) Monitoring shall be conducted as close as technically feasible to the mineral activity involved, and in all cases such monitoring shall be conducted within the permit area.

(3) The point of compliance referred to in paragraph (1) shall be as close to the mineral activity involved as is technically feasible, but in any event shall be located to comply with applicable State and Federal standards. In no event shall the point of compliance be outside the permit area.

(4) The Secretary concerned may require additional monitoring be conducted as necessary to assure compliance with the reclamation and other environmental standards of this Act.

(5) The operator shall file reports with the Secretary, or for National Forest System lands the Secretary of Agriculture, on a frequency determined by the Secretary concerned, on the results of the monitoring and evaluation process, except that if the monitoring and evaluation show a violation of the surface management requirements, it shall be reported immediately to the Secretary concerned. Information received pursuant to this subsection from any natural person shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement. The Secretary shall evaluate the reports submitted pursuant to this paragraph, and based on those reports and any necessary inspection shall take enforcement action pursuant to this section.

(6) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall determine what information must be reported by the operator pursuant to paragraph (5). A failure to report as required by the Secretary concerned shall constitute a violation of this Act and subject the operator to enforcement action pursuant to section 407.

SEC. 405. CITIZENS SUITS.

(a) IN GENERAL.—Except as provided in subsection (b), any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance—

(1) against any person (including the Secretary or the Secretary of Agriculture) alleged to have violated (if there is evidence the alleged violation has been repeated), or to be in violation of, any of the provisions of title II or section 404 of this Act or any regulation promulgated pursuant to title II or section 404 of this Act or any term or condition of any permit issued under title II of this Act; or

(2) against the Secretary or the Secretary of Agriculture where there is alleged a failure of such Secretary to perform any act or duty under title II or section 404 of this Act, or to promulgate any regulation under title II or section 404 of this Act, which is not within the discretion of the Secretary concerned.

The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties, including actions brought to apply any civil penalty under this Act. The district courts of the United States shall have jurisdiction to compel agency action unreasonably delayed, except that an action to compel agency action reviewable under section 406 may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 406.

(b) EXCEPTIONS.—(1) No action may be commenced under subsection (a) prior to 60 days after the plaintiff has given notice in writing of such alleged violation to the Secretary, or for National Forest System lands the Secretary of Agriculture, except that any such action may be brought immediately after such notification if the violation complained of constitutes an imminent threat to the environment or to the health or safety of the public.

(2) No action may be brought against any person other than the Secretary or the Secretary of Agriculture under subsection (a)(1) if such Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance.

(3) No action may be commenced under paragraph (2) of subsection (a) against either Secretary to review any rule promulgated by, or to any permit issued or denied by such Secretary if such rule or permit issuance or denial is judicially reviewable under section 406 or under any other provision of law at any time after such promulgation, issuance, or denial is final.

(c) VENUE.—Venue of all actions brought under this section shall be determined in accordance with title 28 U.S.C. 1391.

(d) INTERVENTION; NOTICE.—(1) In any action under this section, the Secretary, or for National Forest System lands the Secretary of Agriculture, may intervene as a matter of right at any time. A judgment in an action under this section to which the United States is not a party shall not have any binding effect upon the United States.

(2) Whenever an action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Secretary, or for National Forest System lands the Secretary of Agriculture. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the date on which a copy of the proposed consent judgment is submitted to the Attorney General and the Secretary, or for National Forest System lands the Secretary of Agriculture. During such 45-day period the Attorney General or such Secretary may submit comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(e) COSTS.—The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including attorney and expert witness fees) to any prevailing party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) SAVINGS CLAUSE.—Nothing in this section shall restrict any right which any person (or class of persons) may have under chapter 7 of title 5 of the United States Code, under section 406 of this Act or under any other statute or common law to bring an action to seek any relief against the Secretary or the Secretary of Agriculture or against any other person, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law. Nothing in this section shall affect the jurisdiction of any court under any provision of title 28 of the United States Code, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law.

SEC. 406. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) REVIEW BY SECRETARY.—(1)(A) Any person issued a notice of violation or cessation order under section 407, or any person having an interest which is or may be adversely affected by such notice or order, may apply to the Secretary, or for National Forest System lands the Secretary of Agriculture, for review of the notice or order within 30 days of receipt thereof, or as the case may be, within 30 days of such notice or order being modified, vacated or terminated.

(B) Any person who is subject to a penalty assessed under section 106, section 107(c), or section 407 may apply to the Secretary concerned

for review of the assessment within 30 days of notification of such penalty.

(C) Any person having an interest which is or may be adversely affected by a decision made by the Secretary or the Secretary of Agriculture under section 203, 204, 205, 206, 209, or 404(a)(3) may apply to such Secretary for review of the decision within 30 days after it is made.

(2) The Secretary concerned shall provide an opportunity for a public hearing at the request of any party to the proceeding as specified in paragraph (1). The filing of an application for review under this subsection shall not operate as a stay of any order or notice issued under section 407.

(3) For any review proceeding under this subsection, the Secretary concerned shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying or terminating the notice, order or decision, or with respect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under section 407, the Secretary concerned shall issue the written decision within 30 days of the receipt of the application for review or within 30 days after the conclusion of any hearing referred to in paragraph (2), whichever is later, unless temporary relief has been granted by the Secretary concerned under paragraph (4).

(4) Pending completion of any review proceedings under this subsection, the applicant may file with the Secretary, or for National Forest System lands the Secretary of Agriculture, a written request that the Secretary grant temporary relief from any order issued under section 407 together with a detailed statement giving reasons for such relief. The Secretary concerned shall expeditiously issue an order or decision granting or denying such relief. The Secretary concerned may grant such relief under such conditions as he may prescribe only if such relief shall not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights under section 405.

(b) JUDICIAL REVIEW.—(1) Any final action by the Secretaries of the Interior and Agriculture in promulgating regulations to implement this Act, or any other final actions constituting rulemaking to implement this Act, shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who commented or otherwise participated in the rulemaking or any person who may be adversely affected by the action of the Secretaries.

(2) Final agency action under this Act, including such final action on those matters described under subsection (a), shall be subject to judicial review in accordance with paragraph (4) and pursuant to 28 U.S.C. 1391 of the United States Code on or before 60 days from the date of such final action. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights under section 405 (relating to citizens suits).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary or Secretaries concerned. The court may affirm or vacate any order or decision or may remand the proceedings to the Secretary or Secretaries for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the Secretary or Secretaries concerned.

(c) COSTS.—Whenever a proceeding occurs under subsection (a) or (b), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or Secretaries concerned or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, in the case of judicial review, or the Secretary or Secretaries concerned in the case of administrative proceedings, deems proper if it is determined that such party prevailed in whole or in part, achieving some success on the merits, and that such party made a substantial contribution to a full and fair determination of the issues.

SEC. 407. ENFORCEMENT.

(a) ORDERS.—(1) If the Secretary, or for National Forest System lands the Secretary of Agriculture, or an authorized representative of such Secretary, determines that any person is in violation of any surface management or monitoring requirement, such Secretary or authorized representative shall issue to such person a notice of violation describing the violation and the corrective measures to be taken. The Secretary concerned, or the authorized representative of such Secretary, shall provide such person with a period of time not to exceed 30 days to abate the violation. Such period of time may be extended by the Secretary concerned upon a showing of good cause by such person. If, upon the expiration of time provided for such abatement, the Secretary concerned, or the authorized representative of such Secretary, finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary concerned, or the authorized representative of the Secretary concerned, determines that any condition or practice exists, or that any person is in violation of any surface management or monitoring requirement, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air or water resources;

such Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice or violation.

(3)(A) A cessation order pursuant to paragraphs (1) or (2) shall remain in effect until such Secretary, or authorized representative, determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order. The Secretary concerned shall require appropriate financial assurances to ensure that the abatement obligations are met.

(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary concerned or an authorized representative of such Secretary.

Any person to whom any such notice or order is issued shall be entitled to a hearing on the record.

(4) If, after 30 days of the date of the order referred to in paragraph (3)(A) the required abatement has not occurred the Secretary concerned shall take such alternative enforcement action against the claimholder or operator (or any person who controls the claimholder or operator) as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action may include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement. Nothing in this paragraph shall preclude the Secretary, or for National Forest System lands the Secretary of Agriculture, from taking alternative enforcement action prior to the expiration of 30 days.

(5) If a claimholder or operator (or any person who controls the claimholder or operator) fails to abate a violation or defaults on the terms of the permit, the Secretary, or for National Forest System lands the Secretary of Agriculture, shall forfeit the financial assurance for the plan as necessary to ensure abatement and reclamation under this Act. The Secretary concerned may prescribe conditions under which a surety may perform reclamation in accordance with the approved plan in lieu of forfeiture.

(6) The Secretary, or for National Forest System lands the Secretary of Agriculture, shall not cause forfeiture of the financial assurance while administrative or judicial review is pending.

(7) In the event of forfeiture, the claim holder, operator, or any affiliate thereof, as appropriate as determined by the Secretary by rule, shall be jointly and severally liable for any remaining reclamation obligations under this Act.

(b) COMPLIANCE.—The Secretary, or for National Forest System lands the Secretary of Agriculture, may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, or any other appropriate enforcement order, including the imposition of civil penalties, in the district court of the United States for the district in which the mineral activities are located whenever a person—

(1) violates, fails or refuses to comply with any order issued by the Secretary concerned under subsection (a); or

(2) interferes with, hinders or delays the Secretary concerned in carrying out an inspection under section 404.

Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under paragraph (1) shall continue in effect until the completion or final termination of all proceedings for review of such order unless the district court granting such relief sets it aside.

(c) DELEGATION.—Notwithstanding any other provision of law, the Secretary may utilize personnel of the Office of Surface Mining Reclamation and Enforcement to ensure compliance with the requirements of this Act.

(d) PENALTIES.—(1) Any person who fails to comply with any surface management requirement shall be liable for a penalty of not more than \$25,000 per violation. Each day of violation may be deemed a separate violation for purposes of penalty assessments.

(2) A person who fails to correct a violation for which a cessation order has been issued under subsection (a) within the period permitted for its correction shall be assessed a civil penalty of not less than \$1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.

(3) Whenever a corporation is in violation of a surface management requirement or fails or refuses to comply with an order issued under

subsection (a), any director, officer or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same penalties as may be imposed upon the person referred to in paragraph (1).

(e) SUSPENSIONS OR REVOCATIONS.—The Secretary, or for National Forest System lands the Secretary of Agriculture, may suspend or revoke a permit issued under title II, in whole or in part, if the operator or person conducting mineral activities—

(1) knowingly made or knowingly makes any false, inaccurate, or misleading material statement in any mining claim, notice of location, application, record, report, plan, or other document filed or required to be maintained under this Act;

(2) fails to abate a violation covered by a cessation order issued under subsection (a);

(3) fails to comply with an order of the Secretary concerned;

(4) refuses to permit an audit pursuant to this Act;

(5) fails to maintain an adequate financial assurance under section 206;

(6) fails to pay claim maintenance fees or other moneys due and owing under this Act; or

(7) with regard to plans conditionally approved under section 205(c)(2), fails to abate a violation to the satisfaction of the Secretary concerned, or if the validity of the violation is upheld on the appeal which formed the basis for the conditional approval.

(f) FALSE STATEMENTS; TAMPERING.—Any person who knowingly—

(1) makes any false material statement, representation, or certification in, or omits or conceals material information from, or unlawfully alters, any mining claim, notice of location, application, record, report, plan, or other documents filed or required to be maintained under this Act; or

(2) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method be required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(g) KNOWING VIOLATIONS.—Any person who knowingly—

(1) engages in mineral activities without a permit required under title II, or

(2) violates any other surface management requirement of this Act or any provision of a permit issued under this Act (including any exploration or operations plan on which such permit is based), or condition or limitation thereof,

shall upon conviction be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after the first conviction of such person under this paragraph, punishment shall be a fine of not less than \$10,000 per day of violation, or by imprisonment of not more than 6 years, or both.

(h) FAILURE TO COMPLY WITH ROYALTY REQUIREMENTS.—(1) Any person who fails to comply with the requirements of section 306 or any regulation or order issued to implement section 306 shall be liable for a civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1719) to the same extent as if the claim located or converted under this Act were a lease under that Act.

(2) Any person who knowingly and willfully commits an act for which a civil penalty is provided in paragraph (1) shall, upon conviction, be punished by a fine of not more than \$50,000, or by imprisonment for not more than 2 years, or both.

(i) **DEFINITION.** For purposes of this section, the term "person" includes a person as defined in section 3(a) and any officer, agent, or employee of any such person.

SEC. 408. REGULATIONS; EFFECTIVE DATES.

(a) **EFFECTIVE DATE.**—The provisions of this Act shall take effect on the date of enactment of this Act, except as otherwise provided in this Act.

(b) **REGULATIONS.**—The Secretary and the Secretary of Agriculture may issue such regulations as may be necessary under this Act. The regulations implementing title II and the provisions of title IV which affect United States Forest Service shall be joint regulations issued by both Secretaries.

(c) **NOTICE.**—Within 180 days after the date of enactment of this Act, the Secretary shall give notice to holders of mining claims and mill sites maintained under the general mining laws as to the requirements of sections 104, 105, and 106.

Subtitle B—Miscellaneous Provisions

SEC. 411. TRANSITIONAL RULES; SURFACE MANAGEMENT REQUIREMENTS.

(a) **NEW CLAIMS.**—Notwithstanding any other provision of law, any mining claim for a locatable mineral on lands subject to this Act located after the date of enactment of this Act shall be subject to the requirements of title II.

(b) **PREEXISTING CLAIMS.**—(1) Notwithstanding any other provision of law, any unpatented mining claim or mill site located under the general mining laws before the date of enactment of this Act for which a plan of operation has not been approved or a notice filed prior to the date of enactment shall upon the effective date of this Act, be subject to the requirements of title II, except as provided in paragraphs (2) and (3).

(2)(A) If a plan of operations had been approved for mineral activities on any claim or site referred to in paragraph (1) prior to the date of enactment of this Act, for a period of 5 years after the effective date of this Act mineral activities at such claim or site shall be subject to such plan of operations (or a modification or amendment thereto prepared in accordance with the provisions of law applicable prior to the enactment of this Act). During such 5-year period, modifications of, or amendments to, any such plan may be made in accordance with the provisions of law applicable prior to the enactment of this Act if such modifications or amendments are deemed minor by the Secretary concerned. After such 5-year period the requirements of title II shall apply, subject to the limitations of section 209. In order to meet the requirements of title II, the person conducting mineral activities under such plan of operations (or modified or amended plan) shall apply for a modification under section 203(f) and 204(f) no later than 3 years after the date of enactment of this Act. For purposes of this paragraph, any modification or amendment which extends the area covered by the plan (except for incidental boundary revisions) or which significantly increases the risk of adverse effects on the environment shall not be subject to this paragraph and shall be subject to other provisions of this Act.

(B) During the 5-year period referred to in subparagraph (A) the provisions of section 404 (relating to inspection and monitoring) and section 407 (relating to enforcement) shall apply on the basis of the surface management requirements applicable to such plans of operations prior to the effective date of this Act.

(C) Where an application for modification or amendment of a plan of operations referred to in subparagraph (A) has been timely submitted

and an approved plan expires prior to Secretarial action on the application, mineral activities and reclamation may continue in accordance with the terms of the expired plan until the Secretary makes an administrative decision on the application.

(3)(A) If a substantially complete application for approval of a plan of operations or for a modification of, or amendment to, a plan of operations had been submitted by November 3, 1993 and either a scoping document or an Environmental Assessment prepared for purposes of compliance with the National Environmental Policy Act of 1969 had been published with respect to such plan, modification, or amendment before the date of the enactment of this Act but the submitted plan of operations or modification or amendment had not been approved for mineral activities on any claim or site referred to in paragraph (1) prior to such date of enactment, for a period of 5 years after the effective date of this Act mineral activities at such claim or site shall be subject to the provisions of law applicable prior to the enactment of this Act. During such 5-year period, subsequent modifications of, or amendments to, any such plan may be made in accordance with the provisions of law applicable prior to the enactment of this Act if such subsequent modifications or amendments are deemed minor by the Secretary concerned. After such 5-year period, the requirements of title II shall apply, subject to the limitations of section 209. For purposes of this paragraph, any subsequent modification or amendment which extends the area covered by the plan (except for incidental boundary revisions) or which significantly increases the risk of adverse effects on the environment shall not be subject to this paragraph and shall be subject to other provisions of this Act.

(B) In order to meet the requirements of title II, the person conducting mineral activities under a plan of operations (or modified or amended plan referred to in subparagraph (A)) shall apply for a modification under section 203(f) and 204(f) no later than 3 years after the date of enactment of this Act. During such 5-year period the provisions of section 404 (relating to inspection and monitoring) and section 407 (relating to enforcement) shall apply on the basis of the surface management requirements applicable to such plans of operations prior to the effective date of this Act.

(C) Where an application for modification or amendment of a plan of operations referred to in subparagraph (A) has been timely submitted and an approved plan expires prior to Secretarial action on the application, mineral activities and reclamation may continue in accordance with the terms of the expired plan until the Secretary makes an administrative decision on the application.

(4) If a notice or notice of intent had been filed with the authorized officer in the applicable office of the Bureau of Land Management or the United States Forest Service (as provided for in the regulations of the Secretary of the Interior or the Secretary of Agriculture, respectively, in effect prior to the date of enactment of this Act) prior to the date of enactment of this Act, mineral activities may continue under such notice or notice of intent for a period of 2 years after the effective date of this Act, after which time the requirements of title II shall apply, subject to the limitations of section 209(d)(2). In order to meet the requirements of title II, the person conducting mineral activities under such notice or notice of intent must apply for a permit under section 203 or 204 no later than 18 months after the effective date of this Act, unless such mineral activities are conducted pursuant to section 202(b). During such 2-year period the provisions of section 404 (relating to inspection and monitoring) and 407 (relating to en-

forcement) shall apply on the basis of the surface management requirements applicable to such notices prior to the effective date of this Act.

SEC. 412. CLAIMS SUBJECT TO SPECIAL RULES.

(a) **CERTAIN CLAIMS NOT CONVERTED.**—Notwithstanding any other provision of law, except as provided under subsection (c), an unpatented mining claim referred to in section 37 of the Mineral Leasing Act (30 U.S.C. 193) shall not be converted under section 104 of this Act until the Secretary determines that the claim was valid on the date of enactment of the Mineral Leasing Act of 1920 and has been maintained in compliance with the general mining laws.

(b) **CONTEST PROCEEDINGS.**—As soon as practicable after the date of enactment of this Act, the Secretary shall initiate contest proceedings challenging the validity of all unpatented claims referred to in subsection (a), including those claims for which a patent application has not been filed. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void. If, as a result of such proceeding, a claim is determined valid, the claim shall be converted and thereby become subject to this Act's provisions on the date of the completion of the contest proceeding.

(c) **OIL SHALE CLAIMS.**—(1) The provisions of section 411 shall apply to oil shale claims referred to in section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102-486).

(2) Section 2511(f) of the Energy Policy Act of 1992 (Public Law 102-486) is amended as follows:

(A) Strike "as prescribed by the Secretary".

(B) Insert the following before the period: "in the same manner as if such claims were subject to title II of the Mineral Exploration and Development Act of 1993".

SEC. 413. PURCHASING POWER ADJUSTMENT.

The Secretary shall adjust all location fees, claim maintenance rates, penalty amounts, and other dollar amounts established in this Act for changes in the purchasing power of the dollar every 10 years following the date of enactment of this Act, employing the Consumer Price Index for all-urban consumers published by the Department of Labor as the basis for adjustment, and rounding according to the adjustment process of conditions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890).

SEC. 414. SAVINGS CLAUSE.

(a) **SPECIAL APPLICATION OF MINING LAWS.**—Nothing in this Act shall be construed as repealing or modifying any Federal law, regulation, order or land use plan, in effect prior to the date of enactment of this Act that prohibits or restricts the application of the general mining laws, including laws that provide for special management criteria for operations under the general mining laws as in effect prior to the date of enactment of this Act, to the extent such laws provide environmental protection greater than required under this Act, and any such prior law shall remain in force and effect with respect to claims located (or proposed to be located) or converted under this Act. Nothing in this Act shall be construed as applying to or limiting mineral investigations, studies, or other mineral activities conducted by any Federal or State agency acting in its governmental capacity pursuant to other authority.

(b) **EFFECT ON OTHER FEDERAL LAWS.**—The provisions of this Act shall supersede the general mining laws, but, except for the general mining laws, nothing in this Act shall be construed as superseding, modifying, amending or repealing any provision of Federal law not expressly superseded, modified, amended or repealed by this Act. Nothing in this Act shall be construed as modifying or affecting any provision of the Native American Graves Protection and Repatriation Act (Public Law 101-601) or any provision of the American Indian Religious Freedom Act (42 U.S.C. 1996).

(c) **PROTECTION OF CONSERVATION AREAS.**—In order to protect the resources and values of National Conservation System units, the Secretary, as appropriate, shall utilize authority under this Act and other applicable law to the fullest extent necessary to prevent mineral activities within the boundaries of such units that could have an adverse impact on the resources or values for which such units were established.

SEC. 415. AVAILABILITY OF PUBLIC RECORDS.

Copies of records, reports, inspection materials or information obtained by the Secretary or the Secretary of Agriculture under this Act shall be made immediately available to the public, consistent with section 552 of title 5 of the United States Code, in central and sufficient locations in the county, multi county, and State area of mineral activity or reclamation so that such items are conveniently available to residents in the area proposed or approved for mineral activities.

SEC. 416. MISCELLANEOUS POWERS.

(a) **IN GENERAL.**—In carrying out his or her duties under this Act, the Secretary, or for National Forest System lands the Secretary of Agriculture, may conduct any investigation, inspection, or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties.

(b) **ANCILLARY POWERS.**—In connection with any hearing, inquiry, investigation, or audit under this Act, the Secretary, or for National Forest System lands the Secretary of Agriculture, is authorized to take any of the following actions:

(1) Require, by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary concerned may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary.

(2) Administer oaths.

(3) Require by subpoena the attendance and testimony of witnesses and the production of all books, papers, records, documents, matter, and materials, as such Secretary may request.

(4) Order testimony to be taken by deposition before any person who is designated by such Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection.

(5) Pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(c) **ENFORCEMENT.**—In cases of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary concerned and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and produce documents before the Secretary concerned. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to \$10,000 a day.

(d) **ENTRY AND ACCESS.**—Without advance notice and upon presentation of appropriate credentials, the Secretary, or for National Forest System lands the Secretary of Agriculture, or any authorized representative thereof—

(1) shall have the right of entry to, upon, or through the site of any claim, mineral activities, or any premises in which any records required to be maintained under this Act are located;

(2) may at reasonable times, and without delay, have access to any copy any records, inspect any monitoring equipment or method of operation required under this Act;

(3) may engage in any work and to do all things necessary or expedient to implement and administer the provisions of this Act;

(4) may, on any mining claim located or converted under this Act, and without advance notice, stop and inspect any motorized form of transportation that he has probable cause to believe is carrying locatable minerals, concentrates, or products derived therefrom from a claim site for the purpose of determining whether the operator of such vehicle has documentation related to such locatable minerals, concentrates, or products derived therefrom as required by law, if such documentation is required under this Act; and

(5) may, if accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone may stop and inspect any motorized form of transportation which is not on a claim site if he has probable cause to believe such vehicle is carrying locatable minerals, concentrates, or products derived therefrom from a claim site on Federal lands or allocated to such claim site. Such inspection shall be for the purpose of determining whether the operator of such vehicle has the documentation required by law, if such documentation is required under this Act.

SEC. 417. LIMITATION ON PATENT ISSUANCE.

(a) **MINING CLAIMS.**—After January 5, 1993, no patent shall be issued by the United States for any mining claim located under the general mining laws or under this Act unless the Secretary determines that, for the claim concerned—

(1) a patent application was filed with the Secretary on or before January 5, 1993; and

(2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims were fully complied with by that date.

If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mining claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

(b) **MILL SITES.**—After January 5, 1993, no patent shall be issued by the United States for any mill site claim located under the general mining laws unless the Secretary determines that for the mill site concerned—

(1) a patent application for such land was filed with the Secretary on or before January 5, 1993; and

(2) all requirements applicable to such patent application were fully complied with by that date.

If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mill site claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

SEC. 418. MULTIPLE MINERAL DEVELOPMENT AND SURFACE RESOURCES.

The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), commonly known as the Multiple Minerals Development Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), shall apply to all mining claims located or converted under this Act.

SEC. 419. MINERAL MATERIALS.

(a) **DETERMINATIONS.**—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert "(a)" before the first sentence.

(2) Insert "mineral materials, including but not limited to" after "varieties of" in the first sentence.

(3) Strike "or cinders" and insert in lieu thereof "cinders, and clay".

(4) Add the following new subsection at the end thereof:

"(b)(1) Subject to valid existing rights, after the date of enactment of the Mineral Exploration and Development Act of 1993, notwithstanding the reference to common varieties in subsection (a) and to the exception to such term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in such subsection, including the block pumice referred to in such subsection, shall be subject to disposal only under the terms and conditions of the Materials Act of 1947.

"(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material had some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of enactment of the Mineral Exploration and Development Act of 1993, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws as in effect immediately prior to the date of enactment of the Mineral Exploration and Development Act of 1993 and that such claim continues to be valid under this Act."

(b) **MINERAL MATERIALS DISPOSAL CLARIFICATION.**—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) insert "and mineral material" after "vegetative".

(2) In subsection (c) insert "and mineral material" after "vegetative".

(c) **CONFORMING AMENDMENT.**—Section 1 of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by striking "common varieties of" in the first sentence.

(d) **SHORT TITLES.**—

(1) **SURFACE RESOURCES.**—The Act of July 23, 1955, is amended by inserting after section 7 the following new section:

"SEC. 8. This Act may be cited as the 'Surface Resources Act of 1955'."

(2) **MINERAL MATERIALS.**—The Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

"SEC. 5. This Act may be cited as the 'Materials Act of 1947'."

(e) **REPEALS.**—(1) Subject to valid existing rights, the Act of August 4, 1892 (27 Stat. 348, 30 U.S.C. 161) commonly known as the Building Stone Act is hereby repealed.

(2) Subject to valid existing rights, the Act of January 31, 1901 (30 U.S.C. 162) commonly known as the Saline Placer Act is hereby repealed.

SEC. 420. APPLICATION OF ACT TO BENEFICIATION AND PROCESSING OF NONFEDERAL MINERALS ON FEDERAL LANDS.

The provisions of this Act (including the surface management requirements of title II) shall apply in the same manner and to the same extent to Federal lands used for beneficiation or processing activities for any mineral without regard to whether or not the legal and beneficial title to the mineral is held by the United States. This section applies only to minerals which are locatable minerals or minerals which would be locatable minerals if the legal and beneficial

title to such minerals were held by the United States.

SEC. 421. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

AMENDMENT OFFERED BY MR. SKEEN

Mr. SKEEN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SKEEN: Page 136, after line 21, insert:

SEC. 422. AWARD OF COMPENSATION FOR TAKINGS FROM FUND.

To the extent a court of competent jurisdiction, after adjudication, finds that Federal action undertaken pursuant to this Act effects a taking under the Fifth Amendment of the United States Constitution and enters a final judgment against the United States, the court shall award just compensation to the plaintiff, from the fund established under this title, together with appropriate reasonable fees and expenses to the extent provided by section 304 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4654(c)). In any case in which the Attorney General effects a settlement of any proceeding brought under section 1346(a)(2) or 1491 of title 28 of the United States Code alleging that any Federal action undertaken pursuant to this Act effects a taking under the Fifth Amendment of the United States Constitution, the Attorney General shall use amounts available in the Fund subject to appropriations to pay any award necessary pursuant to such settlement.

Page 83, after line 23, insert: "Moneys in the Fund shall also be available for purposes of compensation (and other payments) under section 307."

Page 83, line 24, strike "Expenditures" and insert "To the extent that moneys in the fund are in excess of the amount of compensation (and other payments) paid under section 307, expenditures".

Mr. SKEEN (during the reading). Madam Chairman I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

Mr. SKEEN. Madam Chairman, this amendment would provide that compensation for any takings declared by a court of jurisdiction must come from the abandoned locatable minerals mine reclamation fund and not the Department of Justice.

I am not going to take a great deal of time in explaining this, because I think it is pretty straightforward.

This is a straightforward amendment which attempts to place the responsibility of compensation with the implementing agencies which administer the mining law and not the Department of Justice. Whether or not you believe that takings will occur under this bill is not the question. If, as the authors claim, this bill will not result in takings, then no money would be expended from the reclamation fund.

If on the other hand, a taking is declared by an appropriate court, then

the land management agency should provide the compensation. The logic goes that if an agency is going to take rights and property it should provide the compensation. This might spur the land management agency into drafting more responsible regulations which provide concern as to whether or not a taking will occur.

We all want to prevent takings from occurring and if this amendment passes, then the result will be that fewer takings will occur. And requiring payment of compensation for taking out of the fund established under this bill also reduces the bill's impact on the Federal deficit.

Mr. LEHMAN. Madam Chairman, I move to strike the last word.

I have no objection to the amendment and am prepared to accept it over here.

Mr. RAHALL. Madam Chairman, will the gentleman yield?

Mr. LEHMAN. I yield to the gentleman from West Virginia.

Mr. RAHALL. Madam Chairman, I think it is important to point out the facts about the Skeen amendment, because what the gentleman is trying to suggest and the interpretation that could be applied to this amendment, I think, could lead to a wrong conclusion.

He is trying to suggest that there are taking implications in this bill, and that is what I have a serious problem with.

Then his saying that if the court finds that a taking without just compensation happened under this bill, the award would be paid out of the abandoned mine reclamation fund that we are seeking to establish in the bill.

First, I would point out that this particular legislation deals with Federal lands, not private lands. And I make that point most emphatically. These are mining claims on Federal lands so they should not be confused with what happens with mining on private lands and with private property rights.

Second, to even suggest that funds dedicated to paying for the past sins of the hard-rock mining industry be diverted for other uses is not, in my view, a responsible manner in which to operate. But this is what this particular amendment would suggest. It would require that funds intended to reclaim abandoned hard-rock mines to mitigate the health, safety, and environmental threat these sites pose to people living in the West be used for a much different purpose.

So while I understand that the committee is going to accept the amendment, and I am willing to live by that, I just wanted to correct what could be some false interpretations of this particular amendment.

Mr. SKEEN. Madam Chairman, will the gentleman yield?

Mr. LEHMAN. I yield to the gentleman from New Mexico.

Mr. SKEEN. Madam Chairman, I appreciate what the gentleman is saying, and I want to say this to my colleagues, that I think that clears up a misrepresentation because it is not intended. If a court adjudicates a taking, then the compensation would be paid for in that manner. It does not suggest that this is a normal course of action.

Mr. DELAY. Madam Chairman, I rise in support of the Skeen/DelAy amendment, which would require that any payments made by the Federal Government for takings claims resulting from H.R. 322 be paid out of the abandoned locatable minerals mine reclamation fund established by the bill.

Ownership of property is a right protected by the Constitution, a precious right which should not be infringed upon except in the most grave of situations. In 1772, Samuel Adams set out to "state the rights of the colonists * * * as men, and as subjects; and to communicate the same to the several towns and the world." He began his task with the declaration that:

The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property.

Two centuries later, the institution of private property has lived up to our Founding Fathers' expectations. America's agricultural productivity, leadership in medical and engineering technology, and wealth of entrepreneurial opportunity can all be traced to the incentives inherently created by private property rights. The same holds true of mining.

According to a letter written earlier this year by Faith Burton, Acting Assistant Attorney General at the Department of Justice—a letter which appears to have been suppressed by the administration—"It has long been established that a valid mining claim is property in the full sense, unaffected by the fact that the paramount title to the land is in the United States."

Furthermore, the letter continues, "such a claim * * * enjoys the protection of the fifth amendment to the United States Constitution," which states that private property shall not be taken for public use "without just compensation."

Currently such claims are paid out of a fund called the permanent judgment appropriation, which covers all liabilities of the Federal Government, not only takings claims. In other words, when an agency ruling or action results in a taking, it never really feels the financial impact of that action. As a result, there is no incentive for Federal agencies to be prudent in their implementation of laws and regulations.

Look at it this way. Would you pay for every speeding ticket your teenage son or daughter received? Of course not. If you did, there would be no incentive for your child to change the way he drove because he would never have to feel the consequences of his actions.

Although this situation is not identical, it serves to make a point. Agencies never have to worry about how much their actions are going to cost the Federal Treasury, and in turn, the taxpayers. Our amendment would make the agencies charged with enforcing this

bill—which would be those under the jurisdiction of the Departments of Agriculture and Interior—aware of the consequences of their actions that result in a taking by giving them the responsibility of paying the claim out of the newly created reclamation fund. In this way, they will be more likely to take into account the true impact of their actions and not frivolously pursue mining claims.

There is ample evidence that H.R. 322 could lead to massive takings claims in the courts. The Department of Justice letter I mentioned earlier states that "the United States could be liable for countless millions of dollars in damages for the taking of private property, and it could face a volume of litigation requiring years to resolve."

The letter also states, "The Federal circuit has made it clear that a taking may occur when regulations deprive claimholders of any economically viable use of their mining claims."

Because the possibility of takings is very real as a result of this bill, I believe it is important to make the agencies affected by H.R. 322 aware of the possible consequences of their actions, and having them take on the financial responsibility for them is one way to do so. I urge a "yes" vote on the Skeen-DeLay amendment.

MODIFICATION OF AMENDMENT OFFERED BY MR. SKEEN

Mr. SKEEN. Madam Chairman, I ask unanimous consent that the amendment be modified.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification of amendment offered by Mr. SKEEN: Line 9 of the amendment, strike "this title" and insert "title III, subject to appropriation." On page 2, on the third line, strike "307" and insert "422," and in the last line, strike "307" and insert "422."

Page 136, after line 21, insert:

SEC. 422. AWARD OF COMPENSATION FOR TAKINGS FROM FUND.

To the extent a court of competent jurisdiction, after adjudication, finds that Federal action undertaken pursuant to this Act effects a taking under the Fifth Amendment of the United States Constitution and enters a final judgment against the United States, the court shall award just compensation to the plaintiff, from the fund established under title III, subject to appropriation, together with appropriate reasonable fees and expenses to the extent provided by section 304 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4654(c)). In any case in which the Attorney General effects a settlement of any proceeding brought under section 1346(a)(2) or 1491 of title 28 of the United States Code alleging that any Federal action undertaken pursuant to this Act effects a taking under the Fifth Amendment of the United States Constitution, the Attorney General shall use amounts available in the Fund subject to appropriations to pay any award necessary pursuant to such settlement.

Page 83, after line 23, insert: "Moneys in the Fund shall also be available for purposes of compensation (and other payments) under section 422."

Page 83, line 24, strike "Expenditures" and insert "To the extent that moneys in the fund are in excess of the amount of com-

pensation (and other payments) paid under section 422, expenditures".

□ 1850

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The text of the amendment, as modified, is as follows:

Mr. LEHMAN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, we have no problem, and we urge the adoption of the amendment, as modified.

Mrs. VUCANOVICH. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in support of the amendment offered by the gentleman from New Mexico [Mr. SKEEN]. The bottom line on this issue is that all revenues generated from rents, royalties, fees, and fines in this bill go into the new abandoned locatable minerals mine reclamation fund. Not one penny goes into the general fund of the U.S. Treasury.

I agree that should judgment awards on takings litigation be handed down because of provisions of H.R. 322, it is only fair to have them paid out of the revenue stream created by H.R. 322.

Of course, I think revenues are likely overestimated greatly. And, the likelihood for takings awards is quite high. Just ask the career people at the Justice Department.

So, yes, this amendment could diminish the size of the reclamation fund. But, that is the price Congress must pay if we adopt bills such as this one.

Vote "aye" on the so-called Skeen amendment.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from New Mexico [Mr. SKEEN].

The amendment, as modified, was agreed to.

The CHAIRMAN. Are there further amendments?

Mr. STUPAK. Madam Chairman, I ask unanimous consent to return to title III. I have an amendment to offer.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

AMENDMENT OFFERED BY MR. STUPAK

Mr. STUPAK. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STUPAK: Page 95, after line 21, insert the following new section:

SEC. 307. INVENTORY OF INACTIVE MINE SITES.

(a) SURVEY.—The Secretary, acting through the Director of the Bureau of Mines, and in consultation with the United States Geological Survey and other Federal, State, and local agencies, and Tribal governments shall conduct a survey to identify the location of all inactive mine sites for nonfossil fuel and nonsand and gravel mining in each State and to identify any threats to public health or the environment associated with such sites. To the maximum extent prac-

ticable, in carrying out this subsection the Secretary shall use existing data bases and mapping resources maintained by the Office of Surface Mining Reclamation and Enforcement and by other Federal agencies and State governments.

(b) INVENTORY.—The Secretary shall maintain, and from time to time update, a list of the sites identified pursuant to subsection (a). The list shall be referred to as the Inactive Hard Rock Mine Site Inventory (hereinafter in this Act referred to as the "Inventory"). The Inventory shall contain the site location and the identification of the current owner of each site, together with such information regarding toxic or hazardous substances at the site and such other threats to public health or the environment associated with the sites as the Secretary deems appropriate. All information on the Inventory shall be available to the public upon request.

Make the necessary conforming changes in the table of contents.

Mr. LEHMAN. Madam Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from California reserves a point of order on the amendment.

The Chair recognizes the gentleman from Michigan [Mr. STUPAK] in support of his amendment.

Mr. STUPAK. Madam Chairman, my amendment would take an important step in identifying and capping abandoned mines in northern Michigan, Wisconsin, Minnesota, and other areas of the Midwest. While I fully support H.R. 322 and think it undertakes significant reform of the Mining Act of 1872.

States that have mines on non-Federal, nontribal lands need assistance in identifying uncapped mines to avoid health, safety, and environmental risks to citizens in those areas. My amendment would create authority for the Secretary of the Interior to undertake an inventory of abandoned mine sites for such States.

While there have been a number of inventories conducted to date, they have been conducted primarily in Western States and have not covered the scope necessary to address the problem fully. My amendment supports a comprehensive inventory of abandoned hardrock mine sites on all lands.

Unfortunately, in many States, these inactive sites—whether shut down or abandoned—are only discovered when tragedy strikes. Recently, in Iron County, MI, a 16-year-old boy died after falling into an abandoned mine shaft. Prior to that tragedy, a young girl was killed when she fell into a similar mine in Houghton County, MI. We have a responsibility to prevent the loss of life and the imminent health and safety threats that these uncapped mines present to our citizens.

Similarly, these abandoned mines pose a threat to infrastructure in rural America. Recently, a section of Michigan's highway 2 collapsed into an abandoned mine shaft—at a substantial cost to taxpayers.

Madam Chairman, my amendment would be the first step in alleviating these problems by authorizing the Secretary of Interior to conduct an inventory to identify the location of all inactive mine sites for nonfossil fuel and non-sand-and-gravel mining in each State. The inventory would also include information regarding toxic or hazardous substances at the site.

This amendment presents no additional cost to taxpayers. Any funds necessary would be subject to the appropriations section of H.R. 322. The mining industry has testified that this inventory needs to be performed, and the amendment itself is strongly supported by Chairman RAHALL as well as the mineral policy center.

Each year that the abandoned mines go untended, we subject our citizens to needless environmental, health, and safety risk.

POINT OF ORDER

Mr. LEHMAN. Madam Chairman, although I have great respect for the gentleman from Michigan [Mr. STUPAK] and sympathy for what he is trying to do here, I make a point of order against the amendment, as it constitutes a violation of clause 7, rule XVI, in that the amendment is not germane to the bill.

Mr. STUPAK. Madam Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The amendment of the gentleman from Michigan [Mr. STUPAK] is withdrawn.

AMENDMENTS OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Madam Chairman, I offer two amendments, and ask unanimous consent that they be considered en bloc.

The Clerk read as follows:

Amendments offered by Mr. TRAFICANT: Page 136, after line 6 insert the following:

SEC. 421. 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 funds the entity will comply with section 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act").

SEC. 308. SENSE OF CONGRESS.

In the case of any equipment or products purchased with funding provided under this Act, it is the sense of the Congress that such funding should be used to purchase only American-made equipment and products.

SEC. 309. PROHIBITION OF CONTRACTS.

If it has been finally determined by a court of Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or sub-contract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures de-

scribed in sections 9.400 through 9.409 of title 48 of the Code of Federal Regulations.

And make the necessary changes in the table of contents on page 3.

Page 136, after line 11, insert the following:
SEC. 412. REPORT TO CONGRESS ON MINING CLAIMS IN THE UNITED STATES HELD BY FOREIGN FIRMS.

(a) REPORT.—Not later than one year after the date of enactment of this Act and annually thereafter, the Secretary of the Interior shall submit a report to the Congress describing the percentage of each mining claim held by a foreign firm.

(b) FOREIGN FIRM.—(1) For the purposes of this section, the term "foreign firm" means any firm that is not a domestic firm.

(2) For the purposes of paragraph (1), the term "domestic firm" means a business entity—

(A) that is incorporated or organized in the United States;

(B) that conducts business operations in the United States; and

(C) the assets of which at least 50 percent are held by United States citizens, permanent resident aliens or other domestic firms.

And make the necessary changes in the table of contents on page 3.

Mr. TRAFICANT (during the reading). Madam Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. Is there objection to the initial request of the gentleman from Ohio that the amendments be considered en bloc?

There was no objection.

Mr. TRAFICANT. Madam Chairman, the first amendment deals with procurement. It is a simple buy-American act to follow the buy-American laws.

Second, the Secretary of the Interior shall give us a report as to how many foreign interests control and own our mining claims. With that, I say that it has broad-based support. I ask the committee to pass over without prejudice.

Mr. LEHMAN. Madam Chairman, I move to strike the last word.

Madam Chairman, I thank the gentleman for his comments and for his amendments. On this side, we are willing to accept the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. HANSEN

Mr. HANSEN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HANSEN: At page 131, line 5 insert the following paragraph:

(e) NATIONAL SECURITY WAIVER.—The Secretary shall waive any provision of this Act if he or she is advised by the Secretary of Defense that it is in the national security interest to insure that a sufficient domestic supply of strategic and critical materials defined in the Strategic and Critical Materials Stockpile Act (50 U.S.C. 98h-3(1), and amended) is available to meet the nation's needs.

The Secretary of Defense shall identify the minerals or materials, and specify the provisions of this Act which shall be waived.

Mr. HANSEN [during the reading]. Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. HANSEN. Madam Chairman, I seek to add at the end of section 416, miscellaneous powers, a new paragraph (e) which would give the Secretary of the Interior, in consultation with the Secretary of Defense, proper authority to ensure that a sufficient supply of minerals is available to meet our national security needs.

I would also like to place into the RECORD a letter of support for the amendment from the Department of Defense. They recognize that the source or essential domestic producers of strategic and critical materials could be adversely affected by provisions of this bill, and that the Secretary for national security reasons must maintain the ability to advise the Secretary of the Interior on provisions that must be waived.

Although, the cold war is over, the world is not a peaceful place. Our Nation continues to face many national security concerns around the globe.

Despite major decreases in the Defense budget, the Department of Defense continues to maintain a strategic and critical materials stockpile. The purpose of this stockpile is to maintain independence of foreign supply in the event of a national emergency. In times of war or other national emergency such materials as gallium, copper, gold, beryllium, and iron ore could be crucial to our general welfare and national defense.

These days we hear a great deal about the way in which smart bombs performed in the Middle East conflict. We were impressed at the precision with which these smart weapons hit their targets. However, few people gave much thought to the materials which were used to construct these systems—and we gave even less thought to where these materials come from.

Madam Chairman, the infrared targeting systems, the optical targeting systems, the lasers which guide the bombs to targets, the night vision systems on helicopters and fighter aircraft, and the ceramic packages which housed the electronic components of these and other systems all used one or more strategic material in their construction. Many of these metals, or ceramics, are products of hardrock mining.

One example of a critical material mined on public lands is the metal beryllium. Because of the strategic and critical nature of beryllium, its alloys, and compounds, the Government continues its purchase. The Western

World's only beryllium mine exists in the Topaz Mountain region. This mine was developed in the early 1960's by an Ohio corporation named Brush Wellman.

If for any reason, economic or other, this deposit was not available to the beryllium industry, the alternative would be to import beryl from Brazil, Africa, India, or China. This foreign ore is available as a by-product of other activity and is hand-picked from among other materials. It is not a direct product of mining efforts. As a result, this is a very unreliable source upon which to build an industry supplying a critical defense material.

Low levels of production of critical minerals, coupled with proposed increases in royalties and reclamation costs make development of foreign ore attractive, thereby threatening our national security. We must have the flexibility to protect the production of vital minerals in times of national emergency. This will ensure that mineral reserves will be available to ensure our future national security.

I would urge support of this amendment.

□ 1900

Mr. LEHMAN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise to oppose this amendment by my friend from Utah. He may believe this is a good idea, but in fact this would require the Secretary of the Interior in all instances to waive any of the requirements of this act if the Secretary of Defense requested him to do so. It allows no opportunity for coordination or input or discussion in that process. It does not even have a process. It merely says if the Secretary of Defense makes this determination that it suspends all other aspects of this law. It does not just suspend permits, but it suspends mining reclamation, rents, royalties, inspection, and enforcement as well.

That is certainly not the way we ought to be making public policy today. Under existing law the Secretary of Defense submits to the Congress each year an inventory of strategic materials and what the conditions are as to their availability, and each year the President must also submit to the Congress his emergency contingency plan for dealing with that, should it be necessary. So we deal with this in the present law in that fashion from the President on down, dealing with the various agencies involved, not in the manner that the gentleman from Utah would, which is to just have the Secretary of Defense take over mining in this country and eliminate all laws thereto.

This is a bad amendment and I urge the House to reject it.

Mr. RAHALL. Madam Chairman, will the gentleman yield?

Mr. LEHMAN. I yield to the gentleman from West Virginia.

Mr. RAHALL. Madam Chairman, I appreciate the gentleman yielding and associate myself with his remarks.

Madam Chairman, with all due respect to our former colleague in this body, the now-Secretary of Defense, I do not feel that Secretary Babbitt at the Interior Department would feel very comfortable with this language, nor with the fact that he may be considered as a lap dog, so to speak, for the Secretary of Defense. Yet, that is what would happen if this amendment were to be adopted.

I happen to feel very strongly that the amendment is not germane to this particular piece of legislation. This legislation is limited in scope to the manner by which mining claims may be located and maintained on these lands, the service management requirements associated with these lands, including provisions for environmental protection and public participation and the restoration of previously mined public domain lands.

So the gentleman's amendment involves subject matter that is not germane to this legislation. He speaks to a matter of national security, and it is totally beyond this particular piece of legislation.

So I urge rejection of the gentleman's amendment.

Mr. GILLMOR. Madam Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Madam Chairman, many people perceive this legislation as mainly affecting Western States. In fact, mining affects many people in other States, such as Ohio, and I do not support this proposal.

While Ohio is a State with one of the lowest public lands percentages in the country, what happens to mining in the West directly affects people in my district and other parts of the State. When a mine closes in Nevada or Montana, economic impacts and job losses can be felt in all 50 States.

Last year over \$30 million in services and supplies were purchased in Ohio by the hardrock mining industry. Over three times that amount was spent in Illinois. Those purchases generated millions of dollars in taxes and supported jobs in States not thought of as mining States.

Let me give a quick example of what's at stake here. This neat little hexagonal rock here contains beryllium. NASA has used beryllium in space vehicles; the defense industry uses it to protect the highly sensitive circuitry in smart bombs from meltdown; it is also used for brakes in fighter jets, and for numerous commercial applications. We have three options: First, we can have South American natives gather these rocks in baskets from along river banks, second, we can buy this critical defense material from the former Soviet States and Red China; or third, we can mine it from the only known beryllium ore deposit in the free world, which is in Utah.

We need responsible controls for public lands use, but it should be done in a way that

does not damage critical industries that are of strategic importance to our national defense.

Mr. CUNNINGHAM. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, with all due respect to my friend, when he says that he would rather have the Secretary of the Interior look at this, I would rather have Secretary Aspin deal with Defense issues. For example, beryllium in our smart weapons is the only material we can use. A lot of our fighter aircraft have it in there. If that runs short, Secretary Babbitt is not going to know that, and he has to confer with the Secretary of Defense.

So I support the gentleman's amendment.

Mr. MILLER of California. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Madam Chairman, there simply is no need for this amendment. This amendment allows the Secretary of Defense, upon no showing of need, no showing of purpose, to waive any provision of the law.

The fact is, under the Strategic and Critical Materials Act, the law that is put in place to protect this Nation against a loss of those critical and strategic materials, the Secretary of Defense already is required to make an annual assessment to us and to the President of the United States. And under the existing law the President, to quote the law, is authorized to lease, buy, acquire by condemnation, gift, grant, or other device any such land or rights-of-way that may be necessary for any purpose to achieve those materials.

So coming forth with this amendment to allow the Secretary of Defense, not the President of the United States as under the current law, to waive all of the provisions of this law is simply without rationale, without any showing of need at all. I would hope that Members would reject this amendment. It is an outrageous amendment, all in the name of national security.

We know the abuses that we have suffered over the years under that guise, and I would hope we would vote "no" on this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. HANSEN].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HANSEN. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 193, noes 238, not voting 7, as follows:

[Roll No. 571]

AYES—193

Allard
Andrews (TX)
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Billirakis
Billey
Blute
Boehner
Bonilla
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chapman
Coble
Coleman
Collins (GA)
Combest
Cox
Crane
Crapo
Cunningham
de la Garza
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards (TX)
Emerson
Everett
Ewing
Fawell
Fields (TX)
Fowler
Franks (CT)
Franks (NJ)
Frost
Gallegly
Gallo
Gekas
Geren
Gillmor
Gingrich
Goodlatte
Goodling
Goss
Grams

Grandy
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hobson
Hoekstra
Hoke
Horn
Houghton
Huffington
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Istook
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Kyl
Lancaster
Lazio
Leach
Levy
Lewis (CA)
Lewis (FL)
Lightfoot
Linder
Livingston
Lloyd
Machtley
Mann
Manzullo
McCandless
McCollum
McCrery
McCurdy
McDade
McHugh
McInnis
McKeon
McMillan
McNulty
Meyers
Mica
Michel
Miller (FL)
Molinari
Montgomery
Moorhead

Myers
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Pickett
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quillen
Quinn
Ramstad
Roberts
Rogers
Rohrabacher
Roth
Roukema
Rowland
Royce
Santorum
Saxton
Schaefer
Schiff
Sensenbrenner
Shaw
Shepherd
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Torkildsen
Vucanovich
Walker
Walsh
Weldon
Wolf
Young (AK)
Young (FL)
Zeliff

NOES—238

Abercrombie
Ackerman
Andrews (ME)
Andrews (NJ)
Applegate
Bacchus (FL)
Baesler
Barca
Barcia
Barlow
Barrett (WI)
Becerra
Bellenson
Berman
Bevill
Bilbray
Bishop
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (FL)

Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Carr
Clay
Clayton
Clement
Clyburn
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Coppersmith
Costello
Coyne
Cramer
Danner
Darden
de Lugo (VI)
Deal
DeFazio
DeLauro

Dellums
Derrick
Deutsch
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Engel
English (AZ)
English (OK)
Eshoo
Evans
Faleomavaega
(AS)
Farr
Fazio
Fields (LA)
Filner
Fingerhut
Fish
Flake
Foglietta
Ford (MI)

Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Glickman
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamburg
Harman
Hastings
Hefner
Hilliard
Hinchev
Hoagland
Hochbrueckner
Holden
Hoyer
Hughes
Insee
Jacobs
Jefferson
Johnson (GA)
Johnson (SD)
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Klein
Klink
Kopetski
Kreidler
LaFalce
Lambert
Lantos
LaRocco
Laughlin
Lehman
Levin
Lewis (GA)
Lipinski
Long
Lowe
Maloney
Manton
Margolies-
Mezvinisky
Markey

Martinez
Matsui
Mazzoli
McCloskey
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murphy
Murtha
Nadler
Natcher
Neal (MA)
Neal (NC)
Norton (DC)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickle
Poshard
Price (NC)
Rahall
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Ridge
Roemer
Romero-Barcelo
(PR)
Ros-Lehtinen
Rose
Rostenkowski

NOT VOTING—7

Blackwell
Brown (CA)
Clinger

Ford (TN)
Valentine
Wilson

Yates

□ 1923

Mr. GREENWOOD and Mrs. MEYERS of Kansas changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. RAHALL. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise just to make a couple of concluding comments as we near the end of the consideration of this measure.

I want to first, as I earlier today did, commend the distinguished subcommittee chairman, the gentleman from California [Mr. LEHMAN] for his hard work in bringing this bill to the floor today. I also commend our full committee chairman, the gentleman from California [Mr. MILLER] for his strong leadership in fashioning the balance that was struck in bringing the bill out of the Committee on Natural Resources to the floor today.

I also commend the staff that has worked so hard on this legislation,

Deborah Lanzone and Jim Zoia of my staff.

Madam Chairman, I want to note, in my second and concluding comment, that throughout the debate on this bill we have been hearing attacks by the other side, and other opponents, about how bad H.R. 322 is. They have been touting some type of alternative to the pending measure. This alternative of theirs was introduced in the House as H.R. 1708 and is identical to the bill passed earlier this year by the other body under the guise of mining law reform. This is a bill, of course, that the pending legislation, H.R. 322, will join in a conference committee.

As many of us know, H.R. 1708, the bill passed by the other body by a voice vote, hardly reflects true mining law reform. It would allow the patenting of mining claims—that is, the outright purchase of the Federal lands—for the mere price of the surface estate of the land while allowing title to the underlying mineral estate to be transferred at no cost. Its royalty would not raise any revenue for the treasury. The other body's bill provides nothing in the way of environmental protections.

Yet I must admit that I am somewhat perplexed, amazed that those opposed to H.R. 322, in particular the Vucanovich/Orton measure, have not offered their alternative measure. I noted that the gentleman from Utah took to the floor a few minutes ago to lambast H.R. 322, and I sent to him as well as to others promoting that measure as being far superior to H.R. 322, that we have an open rule on this particular bill. I have been somewhat taken aback that under an open rule governing debate on H.R. 322 these opponents have not seized the opportunity to advance their alternative legislation.

So, I can only surmise, Madam Chairman, that they well know that if that measure was offered and taken to a vote, they would garner very little support from this body, and I mean very, very little support. I hope that is noted by the other body as we head to conference on this legislation.

Mr. LEHMAN. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. MARGOLIES-MEZVINSKY) having assumed the chair, Mrs. KENNELLY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 322) to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3450, IMPLEMENTATION OF NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103-369) on the resolution (H. Res. 311) providing for consideration of the bill (H.R. 3450) to implement the North American Free-Trade Agreement, which was referred to the House Calendar and ordered to be printed.

COMMUNICATION FROM THE HONORABLE PAT ROBERTS, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable PAT ROBERTS, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 16, 1993.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the Superior Court of the District of Columbia.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

PAT ROBERTS.

□ 1930

TIME CHANGE FOR SPECIAL ORDER

Mr. WISE. Madam Speaker, I ask unanimous consent to change the 60-minute special order for the gentleman from American Samoa [Mr. FALEOMAVAEGA] to a 5-minute special order tonight.

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Is there objection to the request of the gentleman from West Virginia?

There was no objection.

TIME CHANGE FOR SPECIAL ORDER

Mr. WISE. Madam Speaker, I ask unanimous consent to change the 15-minute special order tonight for the gentleman from New York [Mr. HINCHEY] to a 30-minute special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

REALLOCATION OF SPECIAL ORDER TIME

Mr. WISE. Madam Speaker, I ask unanimous consent that the 60-minute special order for the gentleman from

California [Mr. MATSUI] on November 16, 1993, be allocated to the gentleman from Arizona [Mr. COPPERSMITH].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

TIME CHANGE FOR SPECIAL ORDER

Mr. DORNAN. Madam Speaker, I ask unanimous consent to vacate my 60-minute special order tonight and reduce it to a 5-minute special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INVESTIGATE MISSING KOREAN POW'S

(Mr. DORNAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN. Mr. Speaker, there is a lot of passion around here today, and some of it involves I guess a scene like this, "Not for sale at any price." It is talking about Members' votes here.

Mr. Speaker, no matter how we discuss this, it is still politics. I would like to join in the NAFTA debate, and I probably will tomorrow.

But there is an article, and this should have particular importance to the gentleman who sits in the chair, being 1 of 8 million World War II veterans that are left in the country of almost 258 million people. "Pentagon releases Korean POW report."

Mr. Speaker, the report, written by U.S. Government analysts in August and presented to Russian Government officials in Moscow, in secret, I might add, in early September, says that several hundred United States prisoners taken in the Korean war were secretly taken to various places in the Soviet Union, mostly by rail, and in some cases through China.

Here is the report. And this sign about just old politics, what about the American lives for sale at any price? I am talking about under Republican Presidents who were war heroes. Did we in the name of peace write off hundreds of our young men to die at 10, 15, 20, and 30 years in Stalinist gulag camps? What a nightmare. When are we going to investigate this in the Congress?

Mr. Speaker, I submit for the RECORD the Washington Times article from which I quote. Also, I submit the executive summary from the mentioned Government report.

[From the Washington Times, Nov. 13, 1993]

PENTAGON RELEASES KOREAN POW REPORT

After weeks of refusing public release, the Pentagon yesterday made available copies of a report that accuses the Soviet Union of forcibly moving U.S. Korean War prisoners to its territory and never releasing them.

The report, written by U.S. government analysts in August and presented to Russian government officials in Moscow in early September, is Washington's most comprehensive effort since the 1950-53 war to link Moscow to missing U.S. servicemen.

It states that several hundred U.S. prisoners in Korea were secretly taken to various places in the Soviet Union, mostly by rail, and in some cases through China.

About 8,140 American servicemen are officially unaccounted for from the Korean War.

THE TRANSFER OF UNITED STATES KOREAN WAR POW'S TO THE SOVIET UNION

EXECUTIVE SUMMARY

We believe that U.S. Korean War POWs were transferred to the Soviet Union and never repatriated.

This transfer was a highly-secret MGB program approved by the inner circle of the Stalinist dictatorship.

The rationale for taking selected prisoners to the USSR was:

To exploit and counter U.S. aircraft technologies;

To use them for general intelligence purposes;

It is possible that Stalin, given his positive experience with Axis POWs, viewed U.S. POWs as potentially lucrative hostages.

The range of eyewitness testimony as to the presence of U.S. Korean War POWs in the Gulag is so broad and convincing that we cannot dismiss it.

The Soviet 64th Fighter Aviation Corps which supported the North Korean and Chinese forces in the Korean War had an important intelligence collection mission that included the collection, selection and interrogation of POWs.

A General Staff-based analytical group was assigned to the Far East Military district and conducted extensive interrogations of U.S. and other U.N. POWs in Khabarovsk. This was confirmed by a distinguished retired Soviet officer, Colonel Gavriil Korotkov, who participated in this operation. No prisoners were repatriated who related such an experience.

Prisoners were moved by various modes of transportation. Large shipments moved through Manchouli and Pos'yet.

Khabarovsk was the hub of a major interrogation operation directed against U.N. POWs from Korea. Khabarovsk was also a temporary holding and transshipment point for U.S. POWs. The MGB controlled these prisoners, but the GRU was allowed to interrogate them.

Irkutsk and Novosibirsk were transshipment points, but the Komi ASSR and Perm Oblast were the final destinations of many POWs. Other camps where American POWs were held were in the Bashkir ASSR, the Kemerovo and Archangelsk Oblasts, and the Komi-Permyatskiy and Taymynskiy National Okrugs.

POW transfers also included thousands of South Koreans, a fact confirmed by the Soviet general officer, Kan San Kho, who served as the Deputy Chief of the North Korean MVD.

The most highly-sought-after POWs for exploitation were F-86 pilots and others knowledgeable of new technologies.

Living U.S. witnesses have testified that captured U.S. pilots were, on occasion, taken directly to Soviet-staffed interrogation centers. A former Chinese officer stated that he turned U.S. pilot POWs directly over to the Soviets as a matter of policy.

Missing F-86 pilots, whose captivity was never acknowledged by the Communists in

Korea, were identified in recent interviews with former Soviet intelligence officers who served in Korea. Captured F-86 aircraft were taken to at least three Moscow aircraft design bureaus for exploitation. Pilots accompanied the aircraft design bureaus for exploitation. Pilots accompanied the aircraft to enrich and accelerate the exploitation process.

SOVEREIGNTY, AN ESSENTIAL FOR AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mrs. BENTLEY] is recognized for 5 minutes.

Mrs. BENTLEY. Madam Speaker, listening to the proponents of NAFTA has become entertaining as they give various definitions of sovereignty in the United States and what it means to us as a country.

Some of the explanations are downright silly. In fact, their high school teachers would flunk them out of school for some of the explanations, but they still miss the mark in understanding sovereignty under the North American Free-Trade Agreement [NAFTA].

Included in NAFTA are dispute panels which will, according to the General Accounting Office, "operate much like the courts which they replace." These panels will settle disputes between companies, professionals, countries, whatever is included in the commerce of NAFTA. What is also included is the limitation of appeals in the United States courts.

In fact, the gentleman from Texas [Mr. ARMEY] has written that under article 2021 of NAFTA that "private parties do not have a right of action in U.S. courts based on Commission findings." The gentleman uses this argument to lock out special interests—but it also keeps American citizens from the right of adjudication in court.

At a recent speaking engagement, a friend asked me, "Why did we spend all this time working in the civil rights movement to have someone stand before me and my right to be heard in court?"

Remember, the commissions are two-thirds foreign, but their decisions will have the force of law in the United States and there is not a right of appeal into the U.S. court system.

Samuel Francis reporting in the Washington times further explained what this new definition of sovereignty means to us. He stated:

The less guarded fans of NAFTA boast of how the agreement will encourage "convergence", "integration" and the New World Order, all of which are code words for the globalization of economies, cultures, populations and nation-states in the post-Cold War Era.

But aside from this rhetoric, NAFTA itself contains language that severely undermines the ability of Americans to rule themselves and their nation.

Samuel Francis explained how the dispute panels will operate. He said,

"These panels, composed of lawyers and trade experts, will be unelected, will meet in secret and will not be bound by either Mexican or U.S. legal precedents." Now the secret is out about NAFTA.

How can anyone after reading this explanation by Samuel Francis equate NAFTA with sovereignty for the American people. A state which can limit your right of appeal is not giving more freedom but gathering more power for itself, in this case for international bureaucrats. This is at the expense of American citizens who have lived under the flag of the oldest continuous form of representative government in history. Our freedom has attracted millions to this shore in search of opportunity for their family. Any citizen has the right to be heard.

In fact, one of the strengths of America has been the right of any citizen to fight city hall. This will be no more. Under NAFTA an American businessman can wander around from Government offices to international institutions spread across three countries.

As William Orme reported in the Washington Post:

NAFTA lays the foundation for a continental common market, as many of its architects privately acknowledge. Part of this foundation, inevitably, is bureaucratic: The agreement creates a variety of continental institutions—ranging from trade dispute panels to labor and environmental commissions—that are, in aggregate, an embryonic NAFTA government.

And, I might add, an embryonic common market.

What does this mean to us and to American citizens. It means—that American citizens are no fools about their rights. Once the American people fully understand what is in this agreement—they will come visiting and want to know why we did not defend the Constitution.

I for one, prefer to stand in the tradition of the American patriots who defended this Constitution—instead of chipping away its protection of the American people.

Madam Speaker, I include the following articles:

[From the Washington Times, Nov. 16, 1993]
UN-AMERICAN, UN-LIBERAL, ANTI-NATIONAL
NAFTA

(By Samuel Francis)

Forget Ross Perot and Al Gore. The insults, accusations and innuendoes these two clowns exchanged with each other last week had nothing to do with the substance of NAFTA, and as an exercise in public forensics, their "debate" was less in the great tradition of Lincoln and Douglas than in that of Harpo and Chico.

Now that the nation has had its entertainment and the House of Representatives must quit posturing and evading and really vote on NAFTA this week, it might be useful to go over one more time the compelling reasons why the congressmen should vote against it. Here are the main reasons:

Jobs. Despite the Clinton administration's grandiose promises of hundreds of thousands

or millions of new jobs, most economists now confess that NAFTA may have little impact on jobs at all. Yet NAFTA advocates contradict their own arguments. On the one hand, they say the agreement will not cause U.S. firms to move plants and jobs to Mexico; on the other hand, they say plants and jobs are already moving south to the maquiladora factories across the border.

They're right on the latter point. There are now more than 500,000 Mexican jobs in the maquiladora plants, every one of them created at the expense of American workers to avoid labor and regulatory costs in the United States.

Under NAFTA, that job flow will increase. The agreement will make Mexico safer for foreign investors by protecting intellectual property rights, allowing repatriation of profits and safeguarding against expropriation of property. Thus, not only the larger firms that can now afford to do business there but also smaller ones will be able to move and operate securely—and not only because of much lower labor costs.

The main argument that jobs won't flee the country is that raising Mexico's purchasing power through U.S. investments will allow Mexicans to buy exports from this country, thereby boosting jobs here. Of course, that argument assumes that "U.S. investments—meaning American jobs—will go to Mexico. Even so, it may be decades before most Mexicans can afford to buy the goods Americans now produce, and even when they can afford them, no one explains why the firms that will produce them won't also slip over the border.

In the minds of many corporate managers, NAFTA's acceleration of the job flow south is the whole point. Last week, Mr. Gore made much of General Motors' recent decision to relocate 1,000 jobs from Mexico back to this country. But neither he nor Mr. Perot mentioned that when the administration asked the Big Three auto companies to take a pledge not to move jobs to Mexico if NAFTA passes, they flatly refused to do so.

Sovereignty. The less guarded fans of NAFTA boast of how the agreement will encourage "convergence," "integration" and the New World Order, all of which are code words for the globalization of economies, cultures, populations and nation-states in the post-Cold War Era. But aside from this rhetoric, NAFTA itself contains language that severely undermines the ability of Americans to rule themselves and their nation.

No, there's no language in NAFTA that explicitly says "sovereignty is abrogated," but there is language that empowers tri-national panels to resolve disputes over trade, environmental and regulatory issues. These panels, composed of lawyers and trade experts, will be unelected, will meet in secret and will not be bound by either Mexican or U.S. legal precedents.

As economist Alfred Eckes writes, the panels "may soon prevail over domestic courts and encroach on the authority of Congress and individual states * * * Once a NAFTA panel submits its finding, governments party to the dispute must resolve the conflict either by removing measures not conforming to NAFTA or by paying compensation."

U.S. Trade Representative Mickey Kantor himself essentially conceded NAFTA's intrusion on sovereignty in testifying before the House Ways and Means Committee that "no nation can lower labor or environmental standards, only raise them, and all states or provinces can enact even more stringent measures." NAFTA thus limits how nations

party to it can legislate on their internal affairs and thereby constitutes a clear violation of U.S. sovereignty, the right of Americans to make, enforce and repeal the laws by which they govern themselves.

Immigration. The immigration crisis is now a national issue, as it was not when NAFTA was negotiated and signed. Last week, Mr. Gore claimed, as many NAFTA advocates do, that the agreement will reduce illegal immigration by raising Mexican living standards and removing the pressure on Mexicans to migrate. This is simply wrong.

Demographers Thomas Espenshade and Dolores Acevedo, who support NAFTA, have written that "in the short term—perhaps the next 5 to 10 years—NAFTA could increase the number of undocumented workers migrating into the U.S." In the "long term," NAFTA might reduce the push factors in immigration—if it succeeds in developing the Mexican economy—but why should we wait that long?

Our immigration crisis is really a result of our own weak laws and our weak enforcement of them. The crisis can be solved quickly by a few simple legal changes and by more rigorous enforcement of existing laws. NAFTA won't help, at least in time, and we can reduce or stop immigration without it.

But aside from its specific provisions, NAFTA in a larger sense is really part of a worldwide trend promoted by multinational businesses, transnational bureaucracies and One-World ideologues to move away from concrete national identities, sovereignties and heritages and to engineer the planet into a uniform supranational mold under their own managerial power.

In this sense, it represents the same trend as the more extreme and more explicit Maastricht treaty, the "global economy" and a unitary transnational regime that sends U.S. troops to fight in Somalia under the command of foreign officers with no regard to the national interests of any country involved. This trend is profoundly and dangerously un-American, un-liberal and anti-national, and NAFTA is merely the first step toward "integrating" the United States into it. Every American—liberal or conservative, Republican or Democrat—needs to understand this trend and its dangers and to stand united against it.

It's sad the case against NAFTA had to be led by such flashy flim-flammers as Ross Perot, Jesse Jackson and Ralph Nader, and it's even sadder that Big Media, Big Government and Big Business have not presented that case more fairly than they have. There are compelling reasons to vote against NAFTA. This week Americans and their congressmen need to know what they are and to act on them—for their jobs, their country and their people.

[From the Washington Post, Nov. 14, 1993]

NAFTA IS JUST ONE FACET OF A GROWING ECONOMIC COHESION

(By William A. Orme Jr.)

Congressional passage of NAFTA next week may speed the economic integration of North America, but the defeat of NAFTA won't stop it. Like it or not, this process is already well under way and cannot be reversed. The next step, if NAFTA passes, is likely to be something much more powerful—a North American common market that eventually will bind the continent together as one economic unit, from the Yukon to the Yucatan.

Americans don't warm to the notion of a common market. To conservatives, it conjures up images of aloof Eurocrats imposing

new rules and taxes on over-regulated entrepreneurs. Liberals are more fearful still, envisioning supranational rule by trade potentates deaf to environmental and labor concerns.

Canadians and Mexicans are even warier. A continental common market can sound unnervingly like a United States of North America, with Washington its unchallenged capital.

Yet a North American common market is both inevitable and desirable. Economic integration cannot and will not stop with the adoption of a freer trade and investment regime. A common market structure is needed—and in fact is already being developed—to resolve the inevitable conflicts of economic integration and to capitalize fully on its inherent advantages.

When NAFTA was first proposed, critics in all three countries claims that its hidden agenda was the development of a European-style common market. Didn't Europe also start out with a limited free trade area? And, given the Brussels precedent, wouldn't this mean ceding some measure of sovereignty to unelected bureaucrats? Even worse, wouldn't this lead to liberalization and collaborative policy making in many other sensitive areas, from monetary policy and immigration to labor and environmental law?

NAFTA's defenders said no. They argued that the agreement is designed to dismantle tariff barriers, not build a new regulatory bureaucracy. NAFTA, declared one congressional backer, "is a trade agreement, not an act of economic union."

Yet the critics were essentially right. NAFTA lays the foundation for a continental common market, as many of its architects privately acknowledge. Part of this foundation, inevitably, is bureaucratic: The agreement creates a variety of continental institutions—ranging from trade dispute panels to labor and environmental commissions—that are, in aggregate, an embryonic NAFTA government.

Border environmental and public works problems are being addressed by new regulatory bodies, and new financial mechanisms are being developed within the NAFTA framework. These institutions won't be just concepts, or committees, but large buildings with permanent staff. The environmental commission is to be housed in Canada, the labor commission in the United States, and the coordinating NAFTA Secretariat in Mexico. With their trinational personnel and a mandate to work collectively and independently, these agencies should develop a distinctive NAFTA corporate culture.

North America's political and demographic structure encourages a decentralized integration. Each NAFTA partner is a continent-wide assemblage of industrially and culturally distinct population centers and geographical districts. Unlike any other international trade grouping, the member governments are all organized federally: NAFTA would be a consortium of 92 states and provinces, plus scattered federal districts, territories and dependencies.

The Canadian provinces and U.S. and Mexican states cover the same range of size and population and are reasonably analogous juridically. The provinces have far more autonomy than U.S. states, while the Mexican states, by dint of tradition (though not by law), have far less. Still, the Mexican states are getting greater independence in environmental affairs, investment promotion and educational management. Opposition governments in several states—a Mexican first—are accelerating this trend. So are tax provi-

sions and pollution codes discouraging additional industry in Mexico City. Economic deregulation and belated electoral reforms are gradually loosening the capital's choke hold on the body politic.

Mexico isn't alone in its rediscovery of federalism. In Canada, whatever the outcome of the next round of constitutional reform, Ottawa will devolve still more power to the provinces. Indeed, one reason that Quebec is the province most favorably disposed toward NAFTA is that Quebecers see it as a way to consolidate local autonomy within the quasi-federal context of an integrated North America.

REDRAWING THE MAP

In the 19th century, Mexico was in the West. Now it is in the South. NAFTA would reinvigorate traditional north-south trade corridors from Canada to central Mexico. And these, in turn, would further stimulate economic integration within the many natural regions of North America that spill across national boundaries. Washington Post reporter Joel Garreau anticipated this trend in his 1982 book "The Nine Nations of North America."

More important than formal trade reforms will be the informal progress toward market unification, with revamped transportation networks, new trade corridors and population centers, and new industrial specializations. Electric power grids would be interconnected; so would broadcasting and telecommunications networks. "National" parks would cross national borders. Fiber-optic information highways would connect telecommuters in all three countries.

Bullet trains would link Dallas to Monterrey and New York to Montreal. New airports and seaports would be built along borders to draw customers from both countries. All this would naturally encourage new subregional economic relationships across national lines. And this, in turn, would transform a regional free trade zone into something denser, more integrated and more stimulating.

The U.S.-Canadian free trade agreement has already deepened this subregional consciousness in the northern United States. In the Pacific Northwest, the growing trade with British Columbia has made "Cascadia" a standard marketing and industrial planning concept. More important than the exchange of goods is the perception—in Victoria, Spokane and Eugene—of common regional interests: in the timber and fishing industries; in high-tech education; in environmental practices; in expanding trade with Asia. On issues ranging from GATT to wildlife preservation, Vancouver and Seattle have more in common with each other than they do with Montreal and Cleveland.

At the border's midpoint, entrepreneurs and local governments are promoting a "Red River" district uniting Minnesota and the Dakotas with Manitoba and Western Ontario. Many of the same commodities are produced on both sides of the border (iron and wheat, machine tools and auto parts) with surprisingly little direct overlap.

NAFTA would impose new subdivisions on the continent, with northern Mexico and its contiguous neighbors coalescing into four distinct subregions—a more diverse and differentiated area than Garreau's "Mexico" monolith, which embraced everything from Texas to California, with most of Mexico thrown in.

These emerging NAFTA border regions correspond naturally to North America's time zones. (Mexico, Baja excepted, keeps all its clocks on central standard time, but that

will change.) Moving from west to east, they are:

Las Californias: the two Californias, upper and lower, are linked by culture, history and immigration. Los Angeles is the second-largest "Mexican" city in North America. The central Californian valleys that form the country's highest-yielding agricultural district have depended for generations on Mexican labor. The second-biggest city on the North American Pacific Coast, Tijuana—edging past San Francisco and San Diego—is the definitive border metropolis, a sprawling gateway where an Americanized Mexico intermingles with a Mexicanized America. The rest of Baja California is a winter playground for American Californians. Wealthy Mexicans, meanwhile, favor vacation stays in La Jolla, and UCLA undergraduate educations for their bilingual children.

NAFTA would bind the Californias even closer together. Long Beach is already Mexico's biggest Pacific port; a proposed Tijuana desalination plant could become San Diego's biggest new source of electricity and fresh water. The privatization of Mexican farmlands and NAFTA's foreign investment reforms would lure California agribusiness to Baja's fertile northern valleys. The expanding Tijuana airport, hard by the border, would be Southern California's big air freight hub.

The Rocky Madres: The trade corridor where NAFTA would have its biggest impact is east of California, along the continent's mountainous spine: the great ranching and mining badlands from Alberta to the Bajío that are North America's real West. Despite their obvious similarity, the Mexican and American sides on this region have never had much to do with one another. There are few good road and rail crossings and—on both sides—sparse industrial development and little agricultural exchange. NAFTA would change that.

With NAFTA facilitating financing and promoting demand, and removing obstacles to cross-border trucking and tourist buses, Guaymas would become a port and resort, first for Tucson and Phoenix, and eventually for the entire Southwest. Three hours farther south, the deep-water harbor at Topolobampo would be developed into an efficient alternative rail port with direct overland service to west Texas and Denver. The region's emerging industrial center is Hermosillo; its anchor, the \$2 billion Ford Tracer plant.

As this central swath of North America becomes more urbanized and industrialized, manufacturing trade would bind the region together just as cattle and immigrations did in the past. The pivotal cities are Juarez and Denver.

Monterrey Metroplex: The crux of the new NAFTA trading relationship is the connection between greater Monterrey, the capital city of private Mexican industry, and the Eastern Texas triangle bounded by Houston, San Antonio and the Dallas-Fort Worth metroplex.

Cross-border traffic naturally funnels through the corridor—it's already the conduit for a third of all U.S.-Mexican trade. High-speed rail service and borderless information services would revolutionize this route before the NAFTA transition period was over. Monterrey is the headquarters for Mexico's cement, glass, brewing, petrochemicals, plastics, and steel industries, three of its top five banks, and two of its top five retailers, and for franchise chains of everything from Blockbuster videos to Domino's pizza.

Texas, meanwhile, sits directly athwart Mexico's principal population centers. Eastern Texas is the center for U.S.-Mexican marketing, shipping and export-import financing. It's also Mexico's main supplier of goods, ranging from helicopters and customized computer software to refined gasoline, cotton clothing and advanced machine tools.

The Gulf Coast: The final border region is essentially maritime, sweeping from Tampico to Tabasco and around to Tampa and Galveston. The big industries on all sides are oil, shrimp and shipping. Fertilizer and petrochemical plants are an integral part of the gulf economy. The coasts are fringed by the same lowland subtropical agriculture: cotton, citrus, sugar, Brahma beef, winter vegetables.

This is the most predictably protectionist of the NAFTA regions. It is also the most polarized environmentally. The fishing industry, a leading employer in all gulf coastal states, is everywhere at odds with oil drillers and shippers. But there is a growing sense of common interest in the protection of the gulf's fragile ecology, both offshore and along what remains of the original mangrove coastlines.

RESETTLING THE CONTINENT

It was exactly a century ago that Frederick Jackson Turner warned that the West was won—that is, the territories seized from Mexico were being tilled and populated—and the great pioneering era of American history was coming to a possibly traumatic close.

Turner was a bit premature. But the 1990 census confirmed that the westward expansion finally is over. The national center of demographic gravity is no longer marching toward the Rockies. California's population is still rising, but that is the result of immigration (Mexico being the principal culprit), not citizens relocating west.

The fastest-growing state in the 1980s was Florida, the first time in generations that distinction had been held by an eastern state. Californians are looking back East for work, cheaper housing and the greener spaces they bypassed on the way out. Southern California is as crowded and costly as the northeastern corridor; its air is warmer but also dirtier. The West, accustomed since birth to constant growth, is becoming just another region, with the same cycles of growth and decay that the rest of the country has long endured.

Its westward expansion finally complete, the United States is again trying to push south into Mesoamerica. The difference this time is that, by mutual assent, Mexico is wedding itself to the United States—and laying subtle claims to the lands that Santa Ana lost.

NAFTA would restructure the continent, with lines of people and goods running north-south as well as east-to-west, and once-fixed borders blurring in overlapping spheres of economic influence and political power. Economically, Mexico ultimately would be nearly the size of Canada, and a bigger and better trading partner than Japan. Mexican immigration would diminish over time as Mexican prosperity rises, while the immigration that remains could be regulated and legalized within a common market system of preferences. The North American Free Trade Agreement is the framework for a relationship that would restructure much more than mere trade.

AMERICAN COALITION
FOR COMPETITIVE TRADE,
Washington, DC.

STOP NAFTA

DEAR FELLOW AMERICAN: Within a matter of weeks—Congress will vote on one of the most fateful treaties our country has ever considered—the North American Free Trade Agreement—NAFTA.

If Congress votes "Yes" on NAFTA, it will merge the economy of the U.S. with Mexico's Third World economy. Your life and your income will be changed forever—for the worse.

Incredibly, most Americans—55% in one recent poll—have little or no understanding of the potential consequences of this monumental economic merger.

Indeed, it is my belief that if the American public were to be made fully aware of the magnitude of this unprecedented blunder, they would reject it overwhelmingly.

But as of today, a majority in the Congress are leaning toward approval of NAFTA. And the Clinton Administration is going all-out to get it passed. And that's why I am writing to you today—to ask you to sign your enclosed Petition protesting NAFTA.

Did you know that NAFTA was negotiated in secret under a "fast-track" procedure that forbids debate in the House and Senate?

Did you know that the full force of the Executive Branch of the Federal government is behind NAFTA—lobbying Members of Congress incessantly to get their vote for this treaty?

Did you know that the Mexican government is spending millions on high priced lobbyists to pressure your Representative and Senators into voting for this U.S.-Mexico economic merger?

The truth is that the American voters are being kept in the dark—so Washington insiders can slip NAFTA into law this Fall.

For eight years during the 1980s, I served as the U.S. Commissioner of Customs. From the experience I had in those years, much of it dealing with problems on the Mexican border, I developed solid reasons for opposing NAFTA. I think you should oppose it too. Here's why.

NAFTA will place an estimated 5.9 million more American jobs at risk during this period of widespread industrial layoffs.

NAFTA will make it easier to import illegal drugs—through our already porous border with Mexico.

NAFTA will induce much greater illegal immigration—from the current two million a year to up to five million.

NAFTA will increase the exodus of American industries to Mexico—where about 2,200 American plants are already operating.

NAFTA will usher-in a surge of crime and violence—due primarily to the projected increase in drugs.

The American Coalition for Competitive Trade—ACCT—was the very first national organization to sound the alarm on NAFTA.

ACCT now has 25 organizations with an aggregate membership of 500,000 citizens represented on its Board of Directors and Advisory Board.

Our goal is to increase ACCT's membership to over one million citizens—so our collective voice will be heard over the clamor of the lobbyists swarming over Capitol Hill.

I am writing to you today to urge you to become part of this movement to block NAFTA by signing your Petition and joining ACCT in its fight to block NAFTA.

If you and I don't take action right now, today, to stop NAFTA our American way of life will be unalterably changed.

Please let me explain:

Mexico is a Third World nation, with an average hourly wage of about \$1.15—about one sixth of our hourly wage and much less than that in our most important industries.

Most of Mexico's people live in abject poverty. While I'm sure you feel sorry for Mexico's poor, you must realize, as I do, that we simply cannot afford to support them with our tax dollars and our jobs.

Mexican drug lords are buying up companies in the Maquiladora zones below the border so the trucks from these plants can camouflage their drug exports into the United States.

Mexico does not observe U.S. environmental standards—nor does it enforce the safety standards that we take for granted.

The proponents of this disastrous economic merger claim that we will uplift Mexico's economy to our level. When, in fact, our shaky economy is much more likely to be dragged down to that of Mexico's.

NAFTA is being shoved down our throats by the Washington "insiders"—that is, the lawyers, lobbyists, bureaucrats and beneficiaries of large-scale government spending who influence votes in Congress for their own gain.

(Bill Clinton ran against these insiders last year. This year he has joined them!)

What the insiders see in NAFTA is additional layers of bureaucracy and regulation that will enhance their influence and keep the revolving door paying them off for years to come.

Only an immediate and overwhelming outcry against NAFTA from citizens like you and me can offset this gigantic lobbying campaign to pass this catastrophic treaty.

Here are a few facts to give you an idea of the magnitude of the American industrial migration to Mexico and the impact NAFTA will have on our economy if Congress approves it.

Fact: More than 600,000 U.S. manufacturing jobs have been shifted to Mexico since 1980.

Fact: Of the 2,200 U.S.-owned plants in Mexico, most are turning out electronics products, TV sets, automobiles and auto parts—all high-wage production in the U.S.

Fact: General Motors is now the largest private employer in Mexico—with nearly 36,000 Mexicans already on the GM payroll there. While GM shifts plants to Mexico, it is laying off 75,000 workers in its U.S. and Canadian factories.

Fact: One American entrepreneur with 21,000 employees in his Mexican plants wants NAFTA approved because it will save him approximately \$11 million he now pays in U.S. tariffs—all of which he declares will be re-invested in Mexico.

Fact: According to a U.S. embassy official in Mexico City, 70% of all cocaine sold in the United States comes through Mexico. With the increased flow of goods over our borders our overworked Customs officers are unlikely to stop the new flood of drugs.

Fact: NAFTA will end Mexican farm subsidies and drive millions of Mexican farmers off their land—dramatically increasing illegal immigration to the U.S. where our strained social and health care systems will try to cope with them.

Fact: Politically, Mexico is a one-party dictatorship that operates on the Mordida—the bribe.

But lost jobs and increased drug traffic, crime and illegal immigration are not the only way we lose if NAFTA passes ***

From the years I spent as U.S. Commissioner of Customs, I can tell you from certain knowledge that the statistics the Clinton Administration is using to justify support for ratification of NAFTA are not valid.

Overall, Customs collects approximately \$20 billion per year on tariffs from imported goods and a large slice of this will be lost under NAFTA.

As far as we know, no Administration or Congressional official is on record as telling us how we will make up those lost revenues.

By now you may be wondering, "If NAFTA is so bad, then who wants it? And why?"

The only apparent beneficiaries of this disastrous trade agreement with Mexico are the big, international Wall Street Banks ***

The hidden reason for the international banks' frantic lobbying for NAFTA is that they already have \$100 billion in loans to Mexico outstanding—loans that have been in default for a decade!

The banks have no hope of recovering their money—that is, unless the U.S. taxpayer subsidizes the Mexican economy by adopting this treaty.

Purely and simply, NAFTA is a bailout scam for mismanaged banks that will make the Savings and Loan bailout pale by comparison.

The powerful Wall Street Banks are hoping to use NAFTA to trade off American jobs and industries so Mexico can afford to eventually pay off its massive debts to them.

What the bankers aren't telling us is who will pay for the billions in defaulted mortgages and other American loans that Americans won't be able to pay because they lost their jobs to Mexico.

You and I know full well who will pay for this mess *** American wage earners and taxpayers—just like we always do ***

*** Only this time the stakes are too big for us to absorb! We taxpayers can't afford an economic shock of this magnitude.

The U.S. is already nearly five trillion dollars in debt! No one knows how much NAFTA will add to that back-breaking national debt, but it is obvious that it will be substantial.

And it's our taxes—yours and mine—that will ultimately have to pay the bill!

Unless we hear from you and other concerned citizens right away—today—Congress is likely to pass NAFTA.

Members of the House and Senate are under tremendous pressure from the Clinton Administration, the big banks, the industries planning to move more plants to Mexico and the scores of lobbyists working in Washington for the Mexican government.

I look forward to your response.

Sincerely,

WILLIAM VON RAAB,
Director of ACCT.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1697

Mr. INGLIS. Madam Speaker, I ask unanimous consent to have my name removed as a cosponsor of the bill, H.R. 1697.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

NAFTA—THE CHOICE FOR JOBS IN AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. TORKILDSEN] is recognized for 5 minutes.

Mr. TORKILDSEN. Madam Speaker, when all is said and done, the success of the North American Free-Trade Agreement will be measured by one standard. If the NAFTA becomes law and employers either add or keep more workers than they would without the NAFTA, then the agreement will be a success.

Because of the controversy surrounding the NAFTA, there are many points that need to be addressed in evaluating it.

I want to specifically address the fears that many people have about this agreement concerning both jobs and the environment.

The existing trade relationship between the United States and Mexico is not a fair one. While goods made in Mexico and sold in the United States are taxed with an average tariff of 2 to 4 percent, goods made in the United States and sold in Mexico are taxed with an average tariff of 8 to 10 percent! In addition, for United States companies to sell many products in Mexico, those products must meet the rigid Mexican domestic content law.

Because of these unfair tariffs and the Mexican domestic content law, it is currently more profitable for many companies to move operations to Mexico and manufacture goods there, rather than continue to manufacture those goods in the United States. These incentives to move jobs to Mexico exists now, and we have seen many jobs move to Mexico in recent years because of them. These particular incentives will no longer exist for most goods once that NAFTA is ratified.

The existing unfair relationship is more than just general barriers. There are specific industries and companies, including many in my home State of Massachusetts, that are penalized by the status quo.

Financial service companies have been locked out of the Mexican market. Mexican law prohibits financial service companies that were not already established in Mexico prior to the 1930's from doing business there. The NAFTA will phase out this unfair trade barrier, and allow all United States financial service companies to compete in Mexico.

For computer companies, the Mexican tariff is much higher than the 8-percent average—it can be as high as a staggering 20 percent. Computer makers are forced to absorb this 20-percent tariff, which effectively prices them out of the market for many U.S.-made computers.

With computer software, current Mexican law offers virtually no protection for intellectual property. The NAFTA will protect intellectual property, and that is good news for U.S. jobs in the software industry.

Some telecommunications companies must pay an incredible 35-percent tariff on their equipment sold in Mexico.

Thirty-five percent. Telecommunications companies will benefit not only by reducing this tariff, but also by eliminating the Mexican domestic content law.

There are some arguments that many people make against the NAFTA, and after reviewing the facts, I believe most of them are grounded in fear, not fact. But it is important to address peoples' fears, especially as they relate to their jobs, as well as the environment.

First, many opponents say the NAFTA will lose jobs because of low wages paid in Mexico. The United States has lost jobs to Mexico because of low wages combined with other factors. Just as Northern States lost textile, leather, and other jobs to Southern States years ago, the United States has lost jobs not only to Mexico, but many countries overseas because of low wages. But these job losses have happened because of the status quo, and not because of the NAFTA.

The NAFTA, by all accounts, will increase wages in Mexico, even if only slightly in the first few years. Even a slight increase in wages, coupled with the elimination of the Mexican domestic content law and reduction of tariffs, will greatly reduce the incentives to move jobs to Mexico, not increase them.

Also, opponents point to the large trade surplus the United States has with Mexico, and assume it has only been fueled by an increase in export of capital goods as companies build factories in Mexico. But the facts tell a different story.

Currently, the United States as a nation relies on the sale of capital goods to make up 40 percent of all its international exports. This is because capital goods are among the highest value-added goods to produce, and the demand for U.S.-made capital goods is still very strong around the world.

By comparison, only one-third of United States exports to Mexico are for capital goods. Not only is this less than the national average of 40 percent, but the percentage is actually declining. Thus, each year more consumer goods are being exported from the United States to Mexico.

Another fear that opponents state is that immediately eliminating trade barriers would cause too much of a jolt to the U.S. economy. But again the facts tell a different story. The reality is that the NAFTA does not immediately eliminate all barriers, but instead gradually phases many of them out over a period of years, over a 15-year period for some products. In addition, the NAFTA gives any country the authority to delay for 3 or 4 years the tariff reductions in a particular industry, if that country believes that industry is being adversely affected by the scheduled reduction or tariff and trade barriers.

And finally, there are many fears being circulated about the environment. On the facts, Mexico does have a dismal environmental record—but this, also, is without the NAFTA. Much of this poor record is due to the fact that Mexico does not even enforce the environmental laws it has on the books now. Defeating the NAFTA will not improve the environment in Mexico, especially along the United States border.

But with the side agreements to NAFTA, will not improve the environment in Mexico, especially along the United States border.

But with the side agreements to NAFTA, Mexico has committed to enforce its own environmental laws, or face trade sanctions if they do not. Just enforcing its own laws will be a significant improvement for Mexico, and that is why many environmental groups have given their support to the NAFTA. These groups include the National Wildlife Federation, the National Audubon Society, the Environmental Defense Fund, the Natural Resources Defense Council, and the World Wildlife Federation.

During the past year, I have spoken with people throughout the Sixth District, employers and employees, union and nonunion, as well as President Clinton and his advisers just a few weeks ago. Based on the facts, the NAFTA will create tens of thousands of new jobs in the United States.

Facing the North American Free-Trade Agreement, this country has two choices. We could retreat in fear from global competition, or we could turn and face it head on. I believe we must take the latter course. Dealing with competition and change is never easy. But we must tackle both in order to create jobs, and to succeed.

□ 1940

THE ECONOMIC REALITY OF NAFTA

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Under a previous order of the House, the gentleman from West Virginia [Mr. WISE] is recognized for 5 minutes.

Mr. WISE. Madam Speaker, I rise in opposition to NAFTA. It is a decision that I have reached after a great deal of thought and consultation over the past many months. But I would like to say that I believe it is important that people keep things in perspective.

Madam Speaker, I have heard a lot of rhetoric on both sides of the issue, and I think it is important to recognize where the United States, and Canada, and particularly Mexico, are today without NAFTA. Without NAFTA the Mexican economy is growing, and it is growing because Mexico has chosen to make some economic decisions in its own enlightened self-interest, which it should have made, relaxing state con-

trol of industry, encouraging foreign investment and lowering tariffs to foreign goods, including United States goods going to Mexico. The Mexican standard of living has slowly been rising and Mexican conditions slowly improving, and during this whole time without NAFTA I might add that the United States has been enjoying and beginning to enjoy a trade surplus. It did not take a NAFTA for the United States to begin selling more to Mexico. What it took was economic reality and perceptions on both sides.

Madam Speaker, that trade continues regardless of what happens on this floor tomorrow night. That trade will go on and will increase, both from Mexico and the United States. The United States is the largest customer of Mexico. I do not think anyone is about to cut that customer off, and we, by the same token, in the United States have seen improvement with Mexico so that trade has grown.

My question then goes: With so many unanswered questions and, indeed, so many troubling questions, why rush into a sweeping NAFTA?

I think history bears looking at, history of the European community, the Common Market. It has taken decades for the Common Market to come together and the European Community to come together in its complex trading arrangements, and I might add that in that situation there were two nations, Spain and Portugal, with great wage disparities and standard of living disparities, and those nations took a long time to accommodate, just as Mexico has the same disparity with Canada and the United States.

Is it necessary to do a 1½-year slam dunk and pass NAFTA, or should this thing be approached much more deliberately? I have heard the arguments that Japan, and Canada and Germany will make inroads if NAFTA fails. The reality is that Japan and Germany are well positioned in Mexico already. They will continue to, and they will be, should NAFTA pass.

I think it is interesting to note that I have heard the claim that Mexico will seek some sort of special trading arrangement with Japan. Turn from the United States to Japan? Good luck. The United States has been hammering away at the Japanese market for lo these 20 years, and it is interesting that we, after an army of negotiators, still have a \$50 billion trade deficit with Japan, and almost every other nation that is dealing with Japan has a trade deficit. I do not think Mexico wants to substitute its best customer for one that is going to be one of its worst.

Finally, Madam Speaker, I note that I have asked many of our largest corporations in our State and in our country for a simple statement. During the August recess I visited with many, I have consulted with many, and I have

learned that in West Virginia, as in every State almost, their trade with Mexico is steadily improving; it has for the last 4 years, from roughly \$12 million several years ago to \$44 million this year. That is positive. That trade is going to only improve with or without NAFTA.

So then I ask the next question: "What do you predict if NAFTA passes?"

Naturally everyone predicts increased trade.

Final question: Can you assure me then that no job will move south from this plant? Can you assure me that in your plans, if NAFTA passes, there will not be any jobs lost to Mexico?

Economic theory, I am assured by national corporations, is that NAFTA will not move jobs south. Tariffs come down; too large a capital investment in Mexico. Therefore jobs will stay in West Virginia and in this country.

□ 1950

The reality is no one will take the pledge. I know the theory, but no one will give me the pledge of reality. So that is what concerns me a great deal. Surely an American company such as an automobile company that can tell you what your 1998 car model is going to be, that can already announce multiyear layoffs of American workers as they go through a downsizing, surely they know what they are going to do under NAFTA. If they cannot tell me what they are going to do under NAFTA, then I have got great concerns. I would feel a lot better if when Lee Iococca looked in that TV camera he was not saying, "Just pass NAFTA," but he was saying Chrysler Corp. would not move any more jobs to Toluca, Mexico; that those jobs would be guaranteed to stay in this country. That is the kind of commitment that I think a lot of Americans would feel much better about.

So I feel that NAFTA should be defeated. Not because we should not have increased trade with Mexico. We have it. We will continue to have it without NAFTA. But because it is time to begin renegotiating a treaty that answers those questions, that makes those pledges, that is approached much more slowly, much more deliberately. We can have, yes, increased trade; but this NAFTA is not needed. We can have another NAFTA, one that answers questions that America has.

REGARDING THE LATE PATRIOT KEITH PEARSON

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. DORNAN. Madam Speaker, in one of the special orders I was doing on Somalia, I reached into my folder to

read a letter from a young widow of one of the four Army MP's who was killed when an autodetonated landmine blew up his Humvee vehicle. To World War II folks, that is like a big modern wide-track jeep. It killed all four of those young MP's. That was the first time more than one American had been killed at one instance. There had been four Americans killed singly, another two to land mines, one to a fire-fight, and one from a sniper. But that was the first time Americans died together in Somalia, and it was on August 8.

Madam Speaker, I want to read the letter from this young widow, Jody Pearson. It was written to myself and Congressman HUNTER. I think it makes a strong case why we should not adjourn this week without at least having one hearing in the Committee on Armed Services about the firefight on October 3 and 4 and the mortar fire that hit the airport, killing a 19th Ranger, a Special Forces Delta man, during that horrible first week of October.

This letter is dated October 23. It states:

DEAR CONGRESSMEN DORNAN AND HUNTER: My name is Jody Pearson. My husband Keith was one of the soldiers murdered in Somalia on August 8, 1993, in the landmine explosion while he and three other soldiers were driving their Humvee. I am sending you a letter I received from a soldier over in Somalia.

By the way, Madam Speaker, that letter was one of Keith's colleagues. I think his name was Sean Rafferty. I wish I had it here to put in. It was a beautiful letter. It was excerpts from his diary, the last few days before Keith was killed, with an addendum of what a special, fine American Keith Pearson was.

Madam Speaker, I will continue with Jody's letter:

I am sending you a letter I received from a soldier over in Somalia, along with several other newspaper articles and some personal things I hold dear to me. I have received so many letters from various military personnel and government officials and they were greatly appreciated, but the one thing that has meant the most to me is the phone call I received from both of you. I had not received one phone call from anyone except family and friends. When I was able to speak with you I finally felt as if someone really did care about our soldiers in Somalia. I understand when you are in the military it is your duty to do as your country asks and if necessary die for your country in the process. But that does not mean soldiers are expendable. They are living and breathing human beings, who have friends and families who love them very much and who think that their lives are very important. You both showed me you cared about our American Soldiers and that makes me very proud to be part of a nation that values its military tradition. Of course I know a lot of people in this administration don't have this pride and honor for our armed forces. But I would like to believe that most people do and that helps me to accept my husband's death. I hope that most people are proud of him and of all the others who have given their lives so un-

selfishly for their country. Even though we who are left behind are left with the loneliness, memories and our undenyng love we shall never forget.

The people of this country elect officials to go to Washington to speak and voice the opinions and concerns of the people of this nation. I believe you to be true to this belief and that your best interests are for the people of this great country. You are truly an asset to us all. I have some concerns of my own, which I would like to express. Why is it that 30 Americans have been killed and over 100 have been wounded in a peacetime "humanitarian mission" and the headline news of the evenings has been about Russia—Bosnia—or Haiti. Why is it that the President has time to jog and talk about health care reform but doesn't have time to pick up the phone to call family members to express "his grief"? Why is it that the President has time to go to Russia in January instead of going to Somalia to visit his troops who are in need of moral support. Is anyone going to visit them for Thanksgiving or Christmas? Why hasn't anyone spoken about all the wounded soldiers? Are they not important? What has happened to them? Thirty American soldiers have been murdered, who is responsible for this and why haven't any actions been taken against those responsible? This does not send a good message to other nations around the world. Kill Americans or take them hostage, and you won't get in trouble.

People in this administration are more concerned about their political image rather than the security and well being of the American men and women in the Armed Forces. How can we allow our soldiers to be murdered for handing out food to a supposedly starving nation. If you're strong enough to carry ammunition, weapons and to beat and drag a dead body through the streets, you can't be too hungry. I call your attention to the pictures in Time and Newsweek magazines. The Somalis certainly don't look like they are dying and I can't believe my husband's life was worth sacrificing for the grinning people depicted in these pictures.

I miss my husband dearly and I will always love him. He is gone and I know he will never come home. I do not want anyone to have to go through all the pain and suffering that I and my family have gone through. I just hope people become more aware and more sensitive to the fact that Americans are being killed in a country by people who do not want us there.

Once again, thank you for caring and thank you for listening. May God Bless You all.

P.S. If you could, will you please send the picture of Keith and me. It's the only one I have.

Sincerely,

Mrs. KEITH D. PEARSON (JODY).

Madam Speaker, the letter speaks for itself.

INDIAN HERITAGE MONTH NOTED PERSONALITIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from American Samoa [Mr. FALEOMAVAEGA] is recognized for 5 minutes.

Mr. FALEOMAVAEGA. Madam Speaker, I rise this evening in support of this month as National American Indian Heritage Month. Tonight, I would

like to mention a few American Indians known in the fields of sports and medicine.

Perhaps the most famous of all American Indian sports personalities is Mr. Jim Thorpe, who was an all-American football player in 1911 and 1912, and also won the pentathlon and decathlon in the 1912 Olympics. Sonny Sixkiller is another noted professional football player.

Not as well known nationally, but worthy of note is Kenneth Stanley (Bud) Adams. Mr. Adams is a 70-year-old native Oklahoman who is part Cherokee Indian and owner of the Houston Oilers. He is a charter member of the AFL, owns a Houston-based oil and gas company, several car dealerships, a 16,000-acre farm in California's Sacramento Valley, and a 10,000 acre ranch in Texas. His estimated net worth is approximately \$230 million.

Mr. Jim Thomas is a 52-year-old full-blooded Lumbee Indian from North Carolina and owner of the NBA basketball team, the Sacramento Kings. He is a former IRS lawyer and who later made millions of dollars developing high-rise projects in Los Angeles, Dallas, and Philadelphia. During his youth, he picked cotton, cucumbers, and tobacco, but he now owns Bing Crosby's old house at Pebble Beach, CA.

Madam Speaker, another most famous American Indian in professional sports is Johnny Bench, who spent many years with the Cincinnati Reds. He is part Choctaw Indian.

Johnny Bench got an early start as a baseball catcher, and was the Minor League Player of the Year in 1967, National League Rookie of the Year in 1968, and the National League's Most Valuable Player in 1970, when at the age of 22, he hit .293, with 45 home runs and 148 runs batted in.

He has been called the best all-around catcher in baseball history, changing the strategy of the position of the catcher in professional baseball.

The legend of the force of Johnny Bench's throwing arm places him in a category all his own. In his book "Johnny Bench," author Mike Shannon notes that at one time Johnny Bench bare-handed a weak fast ball and threw it back faster than it had been pitched. In the 1976 world series, Bench threw out Mickey Rivers while trying to steal in the first game of the series, and the Yankees did not test his arm again until the series was lost.

Among Bench's most notable achievements: He hit a home run in his first all-star game at bat, he won 10 consecutive Gold Glove awards as best defensive catcher, became the Reds all-time home run king in 1979 by hitting his 325th home run, got his 2,000 career hits in 1983, and was elected to the National Baseball Hall of Fame in the first year he was eligible.

Madam Speaker, in the field of medicine, Dr. David Baines is one of 500

American Indian physicians in the United States. He practices in the State of Idaho, and merges traditional and modern methods in this practice.

Dr. Baines is a member of the Tlingit/Tsimshian tribes and a graduate of the Mayo Medical School. He believes that traditional methods can help the spiritual side of the being while modern methods can compliment this by helping heal the physical parts of the being.

Dr. Baines has been recognized by Idaho's Governor Cecil Andrus for his dedication to improving the health of American Indians, and was appointed by the Clinton administration to be a member of a six-member screening committee to select the director of the Indian Health Services.

Madam Speaker, there are many other native Americans worthy of mention, but my time is limited, and I know others are anxious to get a head start on tomorrow's debate on the North American Free-Trade Agreement.

□ 2000

THE TRACK RECORD OF CORPORATE AMERICA—A "NO" VOTE ON NAFTA

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Under a previous order of the House, the gentleman from Vermont [Mr. SANDERS] is recognized for 5 minutes.

Mr. SANDERS. Madam Speaker, the NAFTA agreement is a long and complicated treaty. And the truth is that on both sides there are sincere, honest and principled people.

While it is terribly important that we understand this treaty as best we can, and many of us in Congress are trying to do that, and while it is terribly important that we try to understand the implications of this treaty as best we can, and a lot of debate about that, it seems to me that it is also terribly important that we try to learn a little bit from history and try to understand who wants this NAFTA treaty and why. Why do they want it?

Madam Speaker, as my colleagues may know, the NAFTA treaty is being vigorously supported by almost every multinational corporation in America. In fact, these corporations are spending tens of millions of dollars trying to influence the Members of this body to vote for it tomorrow. Further, this treaty, in an amazing way, is being supported by almost every newspaper in America. We have a Nation which is divided, but somehow or another the corporate media, almost without exception, I have yet to see the daily newspaper that is in opposition to NAFTA.

So we have all of corporate America telling the American people that this agreement is a good agreement for them.

To my mind, Madam Speaker, the 64-dollar question is really quite simple: What is the track record of corporate America in terms of standing up and trying to improve the lives of ordinary people? Should we believe them? During the last 20 years what is their record? Let us examine it very briefly.

Madam Speaker, Members may remember that 12 years ago the wealthy people of this country came forward and they said, "Give us large tax breaks, and if you give us large tax breaks, we promise you that we are going to reinvest in America and that we are going to create new and good-paying jobs."

Was that true? No, it was not true. What happened is, we gave the wealthiest people huge tax breaks and, lo and behold, they became much wealthier and the deficit became larger.

At the same time, the big corporations in America, they came forward and they said, "Give us, the big corporations, huge tax breaks. We are going to reinvest in America. We are going to create decent-paying jobs."

Well, did they do that? I think the record is very clear; that is not what they did. We gave them big tax breaks, and what they did with their breaks is not build new factories in America, not invest in research and technology here. They took those tax breaks. They ran to Mexico. They ran to the Philippines. They ran to Asia. They ran wherever they could get cheap labor. They were not telling the truth. And in that process, millions of American workers were thrown out on the street as they ran to the Third World to get cheap labor.

Then, Madam Speaker, during the 1980's Wall Street said, "Don't put a tax on the transfer of stocks and bonds. We can't afford it. It is a bad thing. We don't have the money to pay that tax to help deal with the deficit."

But Wall Street, amazingly enough, had billions of dollars in order to fund leveraged buyouts which ended up destroying many, many productive and profitable companies in America. And once again, American workers were thrown out on the street.

During the 1980's the leaders of the savings and loan industry, corporate American, said, "Deregulate us. Get off our backs. Let us reinvest in America. We want to create new jobs."

Madam Speaker, once again, I think the record is clear. They were not telling the truth. What they did is turned out to be a bunch of crooks, and the American people, for the next 30 years, will be spending hundreds of millions of dollars paying the debt caused by these crooks.

During the 1980's and the early 1990's corporate America said to the American workers, "Things are tough. We have got to tighten our belts. That is what we have got to do. You workers have got to take a decrease in your wages. We can't afford to give you decent wages."

Madam Speaker, corporate America was not telling the truth. They raised the salary level and the income level of the CEO's off the wall. Last year, 56 percent increase in the income of the chief executive officers. Workers who are declining in their standard of living, the CEO's now make 157 times more than the average American worker.

Madam Speaker, the point that I am trying to make is that corporate America has not been telling us the truth on virtually everything that they fought for. What ended up happening is the rich got richer and everybody else got poorer.

And now, my colleagues, corporate America wants us to pass NAFTA, and they are telling us that NAFTA is going to create more jobs.

Madam Speaker, it is the same old song, and I fear that they are once again not telling the truth.

I think that NAFTA will end up, once again, making the rich richer, but it is going to hurt the vast majority of working people in this country. That is why I am voting "no" tomorrow and why I hope the House votes "no".

TRIBUTE TO PARK RINARD ON THE OCCASION OF HIS RETIREMENT FROM THE STAFF OF REPRESENTATIVE NEAL SMITH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Iowa. Mr. Speaker, it is a long road from working as a secretary for a then unknown artist, but now Iowa's most famous artist, Grant Wood, to being an assistant in my office; but a person who will retire this month has travelled that road. Park Rinard graduated from the University of Iowa in 1931 and was a secretary and personal assistant to American Gothic painter Grant Wood from 1935 until World War II, during the period when the then unknown, struggling artist painted some of his masterpieces. Park even donned a wig to serve as a model for a painting for the cover of an historical novel.

During World War II, Lieutenant Commander Rinard married Phyllis, who was a Navy nurse. Together they had three children and have one grandson.

Park Rinard's long service to Iowa office holders began in 1956 when he became special assistant to Gov. Herschel Loveless. Since that time, he has served in a special way to former Governor and Senator Harold Hughes and former Senator John Culver, and since 1981, I have benefited from his valuable experiences and services. I have worked with many people over the years in both Iowa and Washington, but few compare in quality and substance to Park Rinard. He is tireless in his commitment to progressive goals and unyielding in his efforts to help make the quality of life better for all Americans. We have too few who render such services which are so necessary—and too often those who do are not shown sufficient appreciation. I urge my

colleagues to join me in congratulating Park Rinard on his remarkable career and best wishes for a happy retirement.

NATIONAL BIBLE WEEK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. HUTTO] is recognized for 5 minutes.

Mr. HUTTO. Mr. Speaker, for 53 consecutive years, American men and women of diverse faiths have supported National Bible Week, sponsored by the Laymen's National Bible Association. This nonsectarian celebration reminds the Nation of the Bible's distinctive roll in the chronicles of America's history and culture. National Bible Week will be observed this year from Sunday, November 21 through Sunday, November 28, 1993.

This is a time when people everywhere are seeking ways to address crucial issues and remedy the conflicts in our cities, States, and Nation. What is more essential to seeing the American vision and to opening the way to full participation in the American experience than knowledge of the Bible?

The Bible has transformed our civilization. The basic premises of our national thought are the affirmations of the Judeo-Christian principles expounded in this book. The Bible, called by President John Adams "the best book in the world," has given direction to the citizens and leaders of America from its very inception and throughout all our national history.

The United States of America has been organized around the precepts of the Bible. The Bible has set the standards for our social and moral behavior. It forms the foundation of our national life and activities.

This year Senator WILLIAM V. ROTH, JR. of Delaware and I are serving as congressional cochairmen for National Bible Week. We understand there are different viewpoints held by the American people about the Bible. However, no one can deny the significant role the Bible has played in our Nation's life and history.

Founded in 1940, the Laymen's National Bible Association is an interfaith association dedicated to the singular goal of encouraging every American to read the Bible. In connection with sponsoring the annual observance of National Bible Week, LNBA conducts a year-around media campaign designed to encourage Bible reading and foster an appreciation of the Bible's influence on American culture, Government, and society. LNBA distributes materials to secular and religious groups which conduct local Bible Week celebrations throughout America.

During National Bible Week I hope you will take the opportunity to remind your constituents of the part the Bible has played in our past and en-

courage them to read what the Bible has to say to us today.

□ 2010

TRANSFER OF SPECIAL ORDER TIME

Mr. BROWN of Ohio. Madam Speaker, I ask unanimous consent that the special order time of the gentleman from Indiana [Mr. BURTON] be transferred to me.

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Is there objection to the request of the gentleman from Ohio?

There was no objection.

OPPOSITION TO NAFTA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. BROWN] is recognized for 60 minutes.

Mr. BROWN of Ohio. Madam Speaker, I yield first to my friend, the gentlewoman from Connecticut [Ms. DELAURO], who has been an absolute leader in the fight against the North American Free-Trade Agreement.

Ms. DELAURO. Madam Speaker, I thank my colleague, the gentleman from Ohio [Mr. BROWN], who indeed has been a leader in this effort, in defeating the NAFTA agreement.

I also want to compliment our good friend, the gentleman from Michigan, DAVE BONIOR, who will be speaking later on, for his leadership during the long months of the NAFTA debate.

The gentleman from Ohio [Mr. BROWN], the gentleman from Michigan [Mr. BONIOR], and others who have been week after week on this floor talking about NAFTA have kept in mind something that often gets lost here in Washington, and that is what the needs of the working men and women are in this Nation. The opposition of the gentleman from Michigan [Mr. BONIOR] to NAFTA has been predicated on his deep concern, as has been the concern of the gentleman from Ohio [Mr. BROWN], the gentlewoman from Florida [Mrs. THURMAN], who is here, the gentleman from Oregon [Mr. DEFAZIO], and others, their concern for its effect on American workers and the inequities that are built in. That is really what the crux of the opposition is on NAFTA.

Madam Speaker, this agreement is full of protections for American technology, American ideas, and American property rights. It opens up Mexico to United States banks and insurance companies. But when it comes to American working men and women, what protections are there? Precious few.

Those who push this treaty do not seem to understand this, but then again, they don't stand to lose their jobs. They are our academics, corporate executives, economists, and editorialists. As Abe Rosenthal said in today's New York Times, "They have

shown so little care, compassion, or understanding about the fears of working people who might lose their jobs—how they would howl if their own jobs were in danger.

Those who are pro-NAFTA dismiss the job losses as maybe 100,000 maybe 200,000—a small percentage of the jobs in this country. But what about those people. Those families. Who will support them? Where will they find jobs to replace those lost to Mexico? Who will pay their mortgages, health care bills, the college educations of the children? No easy answers here. And no answers provided by this NAFTA.

Again quoting Abe Rosenthal: "We really do expect workers who lose their jobs after years at a craft or assembly line to be sweet and humble, because some day some other workers in some other factory may pick up jobs."

It is time we faced reality, and looked at the consequences of what this NAFTA will do. It will put Americans out of work. Hundreds of thousands. That is undisputed. And it will not give them new jobs. Those who say it will are only speculating.

Jobs will leave this country for one simple reason: the cost of labor. The minimum wage in Mexico amounts to 58 cents an hour. Even in the best manufacturing jobs Mexican workers earn less in a day than United States workers earn in an hour. And Mexican workers have few benefits and no bargaining power.

Mexican business and Government officials pursue a policy known as *El Pacto* that is designed to keep workers' wages low. While conventional economic wisdom states that workers raises in salary follow their productivity, that is not true in Mexico under *el pacto*. For example, in the first quarter of this year Mexican workers increased their productivity 9 percent, but their real hourly wages went up only 1 percent.

Some have said that the Mexican Government is turning this policy around. This is simply not true. President Salinas made a promise to this effect, but nothing has come of it. In fact, the *Wall Street Journal* reported today that he is busy backtracking on this promise.

United States businesses will move to Mexico for cheaper labor, more relaxed regulation of environmental and health standards. Businesses still in the United States will put pressure on their workers to work for lower wages and fewer benefits, threatening the move to Mexico and take jobs with them if they do not get concessions. And so on. And on. And on.

All this at a time when the U.S. economy is weak. We are already undergoing a hemorrhaging of manufacturing jobs begun by the recession and continued by the decrease in defense spending and the move of United States companies to establish Mexican

maquiladoras. Now we will lose hundreds of thousands of more jobs.

And no one can predict the impact of NAFTA on the complex of interconnections that make up the U.S. economy. This is a major change in U.S. trade policy. Many, many economic relationships will be forever altered. Now, when our economy is weak and anemic is not the right time to experiment with implementing such fundamental trade adjustments.

Of course, there is a further economic impact: the cost of the agreement. Conservative estimates put the direct costs at \$20 billion. Billions of dollars in lost tariffs; tens of billions in investment on the border infrastructure; and tens of millions more for worker retraining.

Just a note here: while the mild estimates are that 100,000 to 200,000 American workers will lose their jobs, the administration has planned to fund worker retraining for only about 51,000 workers over 5 years, hardly enough to even begin the massive undertaking necessary.

But there are indirect costs as well: lost income tax revenues from the American workers who will lose their jobs, lost corporate tax revenues from businesses who move to Mexico, and the ripple effects to communities whose plants are closed and workers unemployed. These are costs we cannot bear at a time when we are stretching to cut the Federal budget, and when cities and States are straining to find the dollars to provide police protection, build jails, and fund our schools.

And in the end, many of the costs of NAFTA will be borne by the same tax-paying workers who are in danger of losing their jobs to Mexico as a result of the pact. The irony of that cannot be missed. American workers will be footing the bill for a trade agreement that moves their jobs to Mexico.

So, if these are the costs, there must be something solid we are getting in return. Right? Wrong. The vaunted trade surplus we ran with Mexico in 1992 is down by half this year over the first 8 months of last year. Half. The Mexican Government has bought what it could afford to build up its infrastructure, and its buying spree is over.

We all knew this would happen. Most Mexican workers with their artificially depressed wages cannot afford to buy American goods. Autoworkers in Mexican factories in some cases cannot afford to buy the spark plugs they manufacture, much less the cars.

This is not a good NAFTA. It is not an acceptable NAFTA. It is full of problems and short on solutions. Let me give you one final example. An example of the kind of winners this treaty promotes at the expense of our workers. In this treaty, Honda, the Japanese car manufacturer, gets a \$17 million tax break, \$17 million. This was money Honda was fined by the U.S. Customs Service because it violated

domestic content laws. And this treaty retroactively changes those domestic content laws and overturns the fine levied against Honda.

It is clear that, if we defeat this NAFTA, which we will, it is not the end of the pursuit of trade. Our future is in trade, and we all know that. Our future is to the north and south, but we should not pursue that future at any cost. We should not trade at any price. We should have a strong agreement, one that takes the future of American workers, and Mexican workers, into account. Our goal should be a better standard of living for American, Canadian, and Mexicans.

An acceptable treaty will bring the standards and wages for workers on both sides of the border up to a higher common denominator, not down to a lower one. I am committed, once this NAFTA is defeated, to negotiating a NAFTA that does just that, one that protects working people, gives them jobs with higher wages, gives them access to training for new skills, a treaty that looks to the future, and keeps the American dream alive.

□ 2020

Mr. BROWN of Ohio. I thank the gentlewoman from Connecticut.

It is clear that another kind of agreement is possible, that there is an alternative, not just the present situation, which frankly is not very good. There is not this North American Free-Trade Agreement, which is worse. There is a third alternative. The third alternative has been talked about and articulated by a number of people in this Chamber. The majority leader, Mr. GEPHARDT, has not only talked about that and the desirability of that, and talked specifically about what could be in it with such things as minimum wage things, as labor standards, such things as democratic elections, more guarantees for democratic elections in Mexico, peso devaluation, guarding against peso devaluation, citrus issues, food safety, truck safety, all of those kinds of issues, but he has made a commitment already to so many of us that we are going right back after defeating this NAFTA, right back to talk to the Mexicans and the Canadians to work out an agreement that will help people in this country, that will help families in this country, that will help Mexicans, that will help create a middle class there, and we will be able to trade and uplift those countries and also Canada.

Because of that, I would like to yield to the gentleman from Missouri, Mr. GEPHARDT, who has really set the moral and intellectual tone of the opposition to NAFTA and has done a tremendous job.

Mr. GEPHARDT. I thank the gentleman for yielding. I appreciated very much the statement of the gentlewoman from Connecticut. I thought

she hit all of the important points that need to be expressed in this debate, and I am sure will be tomorrow.

I have been asked by many individuals and Members in the last weeks about what happens if NAFTA is turned down, how do we get a NAFTA, is it possible to get back to a negotiation, and my answer is that I think a NAFTA is inevitable. I do not think Mexico can go back into the past and be a closed economy as it was in the past.

Obviously the United States has a huge amount of trade with Mexico. That will continue whether or not NAFTA goes forward.

But I am absolutely confident that if this NAFTA is defeated tomorrow that we will be back at the table, and we will have to get a North American Free-Trade Agreement. It may take a little bit of time. The Mexicans have an election I think in August of next year. It may be that that election campaign has to go on. We have an election in November of next year. But after that, there is absolutely no reason that we cannot fix the problems in NAFTA.

I want to spend the rest of my time tonight talking about fixing the problems, because I think people need to know clearly what it is that we are talking about that is deficient in this NAFTA. The gentlewoman from Connecticut talked about wage levels in Mexico. She talked about how wages are set by government-run boards called El Pacto. She is absolutely right. Workers are not able to bargain, to associate as they can in America and in most other countries.

At the end of the negotiation and during the negotiation I was insisting that the NAFTA contain an enforcement process for both the environmental and the labor laws in Mexico. All during the negotiation we heard back that the Mexican negotiators would not agree to either trade sanctions on any of the environmental or labor laws as a final sanction to get the law enforced. And that they would not agree to put any of their labor law in the enforcement process.

On the last day of the side agreement negotiation, the Mexicans finally agreed to both trade sanctions as the final sanction for not enforcing their laws, and even though that comes at the end of a labyrinthian enforcement process, I felt that was real progress, and I was willing to accept that.

But on the final day they simply were unwilling to put their labor in the enforcement process. In the final hours, they agreed to put their minimum wage in the enforcement process, child labor laws and safety laws. But importantly, they were adamantly unwilling to put their industrial relations laws into the enforcement process. Those walls are obviously the right to associate, the right to collectively bargain and ultimately the right to strike.

That refusal left me and lots of other people who were following the negotiation not only with no confidence that wage setting processes in Mexico would not change, but left us with absolute confidence that they would not change, that there was no willingness to entertain those ideas, there was no willingness to allow workers to associate, to bargain, and ultimately to strike. And it left me with the impression, the clear impression that if we passed this NAFTA in fact we would be ratifying the wage setting processes that exist today in Mexico, which as the gentlewoman from Connecticut explained, is a government-run board that sets the wage levels and the wage increases, if there are any, in the Mexican economy.

This is a fatal omission from this agreement. In my view, it goes to the heart of what needs to be done. This is a free-trade agreement. This is the beginning of economic integration with another country. In Europe when this was done they insisted on the harmonization of labor laws between the European Community and Spain, Portugal and Greece.

Mr. BROWN of Ohio. Mr. leader, how many years did it take to do that in Europe?

Mr. GEPHARDT. It took 15 years for that harmonization to occur, and it was an absolute condition of coming into the community by these three developing countries.

So here we have a case where we are not only insisting on harmonization, we are ratifying the difference, the vast difference in the way wages are set between the two countries.

Obviously, artificially held down wages are an inducement for companies, our companies to go there to do business. It puts downward pressure on our wages in the United States. And finally, and most importantly, the promise of NAFTA is that we can get access to Mexican markets so that we can sell our products to Mexican consumers. If Mexican consumers have artificially held down wages, they are never going to have the money to buy our products. The promise and the potential of NAFTA will be lost. So this is a critical omission.

I will spend just one more moment on the second critical omission, and that is adequate monies to clean up the border and to train American workers who do lose their jobs. Thirty years ago we set up the maquiladores program, and lots of Mexican citizens were attracted to the border to work in the maquiladores plants. In fact, millions of people. But there was no provisions made for water systems and sewer systems and road systems. And if you go there today and see on both sides of the border how people are living, you can see the necessity of ensuring that this infrastructure is built.

This NAFTA says it will be done by the private sector, essentially. If the

private sector was going to this, they would have done it 15 years ago. They are not going to do it. They have no intention of doing it, and for the most part, the people on the border do not have the money to do it.

□ 2030

And then we say, well, the World Bank will do it or the National Development Bank or the North American Bank. Where are those banks going to get the money? They are going to get it from the Congress of the United States if they get it at all.

I predict to you, because of our budget constraints which are overwhelming today, those moneys will never be appropriated, and in my view they should not be, because I do not think the people who live in the rest of the United States should bear the burden of that cost.

That is why, 2½ years ago, I suggested a border transaction fee of 2 percent on every good that crosses the border. Nobody likes that idea. I understand that. None of us like to figure out how to pay for anything. But this, at least, paid for it, and it paid for it from the people who gained the most from the trade.

Whether you are making your product in Saint Louis or Boston or Minneapolis, you are benefiting from being able to trade that product into Mexico, and any product made in Mexico, the people who made it and owned the company are benefiting by bringing the good back into the United States. Who better to pay these costs than the people who are making money from the transaction?

And so I maintain today that the 2-percent fee is the best way to do it. We could dedicate it to a trust fund. We could float bonds that would be paid off by the taxes that would be going into the trust fund, and we would know that the bonds are going to be paid off, and we would know that the infrastructure is going to be built.

What a burst of confidence there would be on the border if the people who lived there saw water systems and sewer systems and roads and bridges being built that will be needed for over 30 years. I predict that if this NAFTA passes tomorrow, and I hope it does not, that if you go back to the border 10 years from now, you will see worsened environmental conditions than you see today by far, and they are bad today, very bad.

So this NAFTA is flawed. We can do better.

This is a new world in which we live. We do not have to take second and third-best trade agreements. We can get good trade agreements.

We do not have to be worried about refusing a trade agreement that the party we are refusing it with will wind up not doing something that we need done to fight communism, as we did for

50 years. Those days are over with. We do not have to do second and third-best trade agreements. We can do good trade agreements, and we need to.

This NAFTA is fatally flawed. I wish it were not. I wish we could support it. I wish it were a trade agreement that would help all three counties in substantial ways. I will not.

I reluctantly come to that conclusion.

I hope that Members tomorrow will keep these things in their minds as they consider their vote, and they make their vote. If we turn this NAFTA down, we can, and we will, go back to the table, and this time we can get it right. We can solve these kinds of problems. We can get the Mexican standard of living coming up as it should, because they are very productive workers. We can solve the problems at the border. We can raise the moneys that are needed to solve real problems for real people.

If we will do all of that, we will satisfy the expectation of the people in both countries that expect us, as legislators, to produce a good product, a solid product, and a sound product for the future.

I thank the gentleman for holding this special order to further air these important issues tonight as we are on the eve of this important debate, and I will join with him and others who are here tonight in debating this extremely important issue for our country and for the world tomorrow.

Mr. BROWN of Ohio. I thank the majority leader. No one in this institution has shown more leadership on, and understanding of, trade issues and world citizenship and interests of American families than you on all of these kinds of trade issues, and all of us are grateful.

We are joined this evening by the gentleman from Ohio [Mr. STRICKLAND], the gentleman from Wisconsin [Mr. BARCA], the gentleman from Oregon [Mr. DEFAZIO], the gentleman from Vermont [Mr. SANDERS], the gentlewoman from Washington [Mrs. UNSOELD], the gentleman from California [Mr. TUCKER], and a special guest tonight that I would like to ask to come forward now who has an announcement to make, the gentleman from Pennsylvania [Mr. KANJORSKI], if he would like to tell us what he has to say tonight.

Mr. KANJORSKI. Madam Speaker, I thank my friend, the gentleman from Ohio, for yielding.

Madam Speaker, I come here really with a heavy heart in a way, because I have struggled with an issue now for more than a year, and in these last several weeks, with the desire to support a new, vital President with all the vigor that he shows and recognizing full well that NAFTA, the North American Free-Trade Agreement, represents a good thing for America.

It is the policy that America should have. There is not any question that we cannot return to protectionism. There is not any question that America's wealth will be created by trade agreements, and it is to the benefit of America and our trading partners throughout the world that we exercise the Common Market-type concepts that NAFTA represents.

I could give all the positive economic arguments for NAFTA. Indeed, it will create technology jobs. It will create new wealth in the future. It will break down barriers. It will change social orders in Mexico. I am sure it will even economically benefit some aspects of the Mexican worker and the Mexican society.

God knows, almost anything done in Mexico to increase the economy and its benefits would serve those people well.

I know that there are many Americans tonight throughout my district, and I have talked to hundreds over the weekend, who are fearful; they are frightened and would like to return to the security of protectionism. To those constituents of mine, I would say that was another day, that shall never return again. If I had my chance, I would probably like to live in an America of 1950 or 1960. Oh, how easy it was then compared to now. But that day will never come again.

We are, indeed, in 1993. We are faced with moving on in a measured, thoughtful process of how finally, without the threat of communism and totalitarianism in the world, we can bring the world together, and ultimately, whether it benefits the West, the South, or the disadvantaged of the Northeast or the Midwest, it really means little difference, because a free-trade zone in North America is not only what should occur but will occur, and it is good policy.

The question comes down to the free-trade agreement we have.

It seems to me that a fundamental condition of trade is the question of how it affects both countries or all countries involved. In America, there will be great benefit to those who are in the high-technology industries and have little fear for their jobs. Certainly it will be of great benefit in profits to large American corporations which just in the last few weeks have become American corporations and not international corporations, as I so often have heard them describe themselves in the past.

But we know what profit and interest mean, and the element of our large industry in America would be well served by this agreement. I understand why they are for it.

On the other hand, we have the extreme of organized labor and the work force, and, to some extent, we have heard arguments that are rather extreme. The sky will not fall. All Americans will not lose their jobs. The im-

port is a loss of jobs at the lower end of the scale and an increase of jobs at the higher end of the scale, and I am not wise enough to know what advantage will go to either side of the economic scale.

But I am wise enough to know this, that an agreement such as this is a contract, and when people enter into a contract, and I think of my days as a lawyer, they very seldom get within a very close position of executing a contract unless both parties to the contract feel they are winners. Indeed, it is possible to have two winners come out of the contractual relationship, not only possible, but most contracts have that effect.

What is the positive effect for America? For big business and industry, an increase in big business and industry; for technology, a concentration in technology, and a moving away from the more substantial industries of our past which will occur with or without NAFTA.

What are the advantages for our work force? Some people will undoubtedly gain more personal income as workers in high technology; they will benefit greatly.

What area of the countries may benefit? We cannot really project that. Probably the West and probably the South, but I come from the Northeast, and we have seen the South and the West benefit over the last 30 years without objection, without jealousy. That is the nature of our economic system, and we should not impede it.

We do have a responsibility also to look at Mexico. Who will benefit in Mexico? Clearly the government in power politically, clearly, the families that run the oligarchy of Mexico today will benefit greatly.

Can we truly say that the impact on the 90 million Mexicans will be that good? I wonder.

□ 2040

I do know that we have to look at the effect on the American economy, the effect on the Mexican economy, and if we are not satisfied then we have to look at NAFTA II.

I want to suggest this: That as we look at the effects of NAFTA on the United States, I think there is little reason that we would doubt that a large segment of the working men and women of America, organized and unorganized, are in dire fear that their Government is about to carry on a change and exercise a contract that may be very detrimental to their economic health.

In Mexico, the Mexican worker is not a part of this transaction. He will just feel the effect one way or the other. I believe it comes down to a fundamental, basic question. That question is: What is the role America should play in the 21st century and beyond? As we have preserved democracy, as we have

fought for freedom and individual rights, we have required nations that deal with us to elevate the treatment they give in human rights and civil rights around this world. I wonder whether or not we do not realize that a basic human right is the right to economic security, the right to pursue your profession, your job, your activity with a basic substance of security.

Have we given that to the American worker? Well, I can tell you the impression I have: We would not have a vote that will probably be close to 50-50 percent in the House if we had convinced average working Americans that this agreement was in their benefit. They may not be right as to what the result would be, but they have a suspicion and they have a lack of comfort level that is shocking and surprising.

Now, I think we as Members of Congress, and I particularly as a Member of Congress, have a duty to pay attention to the fundamental right of economic security.

Domestically I believe our work force does not have that satisfaction.

When I look at Mexico, it is far more tragic than the impact on Americans. In Mexico, we are freezing the profitability of using low-level and continuing it, and after this agreement goes into effect it will not only attract American business, because it is going to attract American business whether we have the agreement or not, what we will be doing is saying to all American manufacturers and all manufacturers of the world, "The United States Government and the United States Army stand behind your capital protected in Mexico."

The Mexican government is advertising today, "Come and use and abuse the low economic life of our worker." Does America really want to stand for the exploitation of the economic security of another nation on our southern border? Maybe we would have had to do that, as the majority leader said, when we were dealing with communism. And so often we did. How many dictators, how many tyrants in the world did we strike agreements with that caused the pits of our very stomach to revolt? But we did it because democracy and freedom in the world was challenged. That is not the case in 1993. In 1993 America should set the course to develop the fundamental right of economic security not only for American workers, not only for Mexican workers, but workers throughout the world; the concept of minimum wage, the concept of collective bargaining, the concept of human dignity provided the work force should be a fundamental right that this Nation will not engage in the acceptance of profit at the surrendrance of that right. It is more vital today in 1993 that we send a message not only to Mexico but around the world that the American people, not the American

President, not the American government, but the American people, demand that where we open our markets to trade and where we encourage increase of economic activity, the concomitant responsibility of that nation will be providing economic fundamental security to its work force. This we have not done.

"Mr. President, you will get a lot of votes on the other side. Some of us made tough votes back in August. We did not see any of our friends on the other side save your presidency. We stood on this side to save your presidency. They have us think that your presidency is in jeopardy. If I thought that for a moment, against my logic, against my belief, and with the full responsibility of losing my office tomorrow, I would vote for you. But do not let anyone say that the strength of the American presidency and our institution is that weak. You will march from tomorrow stronger than when you went into tomorrow because you will have made a hard fight, we will have made a tough decision, win or lose, but the Congress that represents the American people will have spoken. I have more faith in you Mr. President, than that; I know you are one devil of a fine lawyer and you know how to negotiate and you know how to trade, and we are going to send you to that trade session in Seattle so you can tell the Asian world that the war is over, America is no longer the patsy, but on the other hand we are not protectionists; that now we want to deal on an even playing field, and yet we feel responsible for the fundamental economic right of not only our citizens but all the citizens of the world and that is so fundamental to us that we will forego profits and advantage here at home to attain that end."

I cannot think of a higher mission to take around the world by an American President in this decade than that commitment. We will have battles again in the future, we will disagree and we will agree; we will fight hard. Some of us will feel we have done our damndest and lost, and some will feel that we have not put it all together and won. But one thing is for certain, we are so close in this country I think it would be fallacious for us to argue to the American people or the rest of the people of the rest of the world that two great nations such as the United States and Mexico having come so close could walk away and take their marbles and go home.

What we need in that agreement is minimal changes. I will not repeat them for the RECORD. I cannot think of a better explanation than the gentleman from Ohio [Ms. KAPTUR] and the majority leader, the gentleman from Missouri [Mr. GEPHARDT] have just given.

I will say that "As we move toward that next agreement, there are things

that you must put in place. You must rise up and provide for a comfort level of the American working people by laying out holistically your economic program for the United States here at home. The work force in America is fearful that we in Government by fiat are giving their economic security away. You can do this, you can do this by explaining all the programs you have and intend to introduce and fight for over the rest of your term. I am aware of many of them and agree with them and think that they will provide that economic security for the American work force. We must do that. We must also tell the American worker who no longer is competitive that he must retrain and he must improve his skills and talents, so that he can compete in the world of the future. We must provide training to accomplish that, but you cannot provide training without job opportunity.

"So we must fundamentally get down to a policy that this Congress and you, as President, lead this country into the development of new jobs so the security level and comfort level of the American worker will accept the change that has to come about in the future world."

I worry, I say to the President, about the passage of NAFTA tomorrow. I hear some of my friends who have become your ardent supporters in the last several weeks say that this is important to have and then everything else will follow.

□ 2050

My father used to warn me as a young man, never allow someone to have dessert before they have had their meal, because you may find they may not eat the meal.

Two weeks ago we had the challenge of unemployment compensation on this floor, and there was no pity found for the unemployed American worker. We failed.

Five or six months ago we had a stimulus bill in the U.S. Senate and the Minority Leader led the charge to deny the vote on that bill by using the filibuster.

I suggest that as we return to NAFTA II the strategy of this Government and this Congress should be that we put in place the economic policies necessary to provide the jobs that could be lost or will be lost as a result of the large common market in North America. If we do that, we will provide the comfort level for the American worker who is now in fear.

We have to make the hard votes to put health care reform into place.

Then finally, we will have to reform government. When that is all done, you should have another year to negotiate with Mexico on NAFTA II and that should be the reward for industry and the reward for our friends on the other side of the aisle, because we will have

indeed in tandem developed a policy and program to truly serve and protect the American worker and the Mexican worker.

I think the last vestiges of fear when people seek votes are to suggest that the American President would fail or the Presidency would fail if the vote goes the wrong way. If this country is indeed that weak, then we should fail.

"Mr. President, I for one tell you that there will be little effect on the success of your Presidency or the support of your party, if you pursue the policies that we have discussed and we are discussing tonight, you come back with NAFTA II, and I tell you, there is one Member of Congress who has faith in you. I will give you a Fast Track. I voted against the last one, but I will support the President on the next fast track, because I feel you will do the job to best represent the American people."

Mr. BROWN of Ohio. Madam Speaker, I thank the gentleman from Pennsylvania [Mr. KANJORSKI] for his eloquent statement in opposition to the North American Free Trade Agreement and for the courage the gentleman has shown in opposing this agreement.

The gentleman from California [Mr. HUNTER] has just joined us, the gentleman from Ohio [Mr. STRICKLAND], the gentleman from California [Mr. TUCKER] and the gentleman from Washington [Mrs. UNSOELD].

I understand the pressure they have been under, that all Members of Congress are under who oppose this agreement, the pressure from the newspapers, from large corporations in this country, from all kinds of groups, the White House and everyone else. We know the kind of courage it took for them to take that position.

I want to shift for a moment before yielding to the gentleman from California [Mr. TUCKER]. I want to shift for a moment on this whole Agreement. We have heard eloquent statements from the gentleman from Pennsylvania [Mr. KANJORSKI], by the majority leader, the gentleman from Missouri [Mr. GEPHARDT], the gentleman from Connecticut [Ms. DELAURO], about reasons to oppose NAFTA, substantive reasons why the North American Free Trade Agreement is a bad idea. We have heard from others in this Chamber, the gentleman from California [Mr. TUCKER], over time, night after night, week after week.

I have sort of a rhetorical question to ask of each of us. If the North American Free Trade Agreement is so great, why can this Congress not pass it on its merits? It is pretty clear that the pro-NAFTA people have lost the NAFTA debate on its merits. They have lost the domestic debate. It is clear the American people do not buy the argument that this Agreement with Mexico will create jobs. It is clear that the pro-NAFTA people have not won the

hearts and minds of the American people in convincing the American people that NAFTA in fact is in all our interests, that it will create jobs, that it will mean more trade with Mexico, that it will benefit Americans and Mexicans alike.

If NAFTA is so great, you have got to ask yourself, why has the Mexican Government spent some \$30 million to lobby this Agreement through the United States Congress?

Never in history, never has one country spent that kind of money trying to lobby elected officials in another country, ever, \$30 million the Mexican Government has spent trying to convince the American people, and more directly the United States Congress, that NAFTA is in the interests of the American people, \$30 million.

They bought television ads. They spent money hiring the best lobbyists in Washington. They spent money hiring lobbyists in Ohio, Washington, New York, California and all over this great country. They have hired friends of Members of Congress to try to influence them in very back door way and every front door way, people coming into our offices every which way that \$30 million has been used by the Mexican Government to try to convince the American people to support NAFTA.

At the same time, you have got to ask if NAFTA is so great, why has USA NAFTA, the corporate group, the corporate arm of this effort put the kind of money they have into the television ads you see?

It is like election time. It is like an October election in Any Town USA on television. It is one pro-NAFTA ad after another.

Most importantly, if NAFTA is such a great idea, we have got to ask ourselves why all of a sudden has Christmas come early in the Congress? Why has Christmas come early? There is one shopping day until Christmas when it comes to what is going on in this institution.

Every day—not every day, I take that back, every hour of the last 2 days we hear about a new deal. Let me run through briefly our little game of "let's make a deal." What has happened in the last few days from the pro-NAFTA people trying to convince Members of Congress that it is a good idea to pass NAFTA?

First, there were two cargo planes, C-17's that the administration promised to build a couple C-17's in one district at the cost of \$1.4 billion to convince this Member of Congress to vote for NAFTA.

What do C-17's, I ask the gentleman from California [Mr. TUCKER], have to do with the trade agreement?

Perhaps the only thing it has to do with the trade agreement is the C-17 cargo planes are so large that maybe we can use them to put some American factories in and fly those plants to

Mexico. That is about the only connection I can make between C-17 cargo planes in a trade agreement.

The Pickle Center in Austin, TX, \$10 million, more pork, more buying votes to try to get the vote of another Member of Congress; a grazing fee back-down, the administration caved in on grazing fees.

The East Houston Bridge, tobacco tax scale-back.

One of the real doozies is the creation of the North American Development Bank, the changing of airline routes, Maytag given breaks so that we can have a little protectionism for appliances in this country for the appliance industry; a Florida vegetable deal, a citrus deal, a sugar deal, a cotton deal, a peanut deal, all kinds of things, one issue after another.

There was even a special deal offered for manufacturers of bedframes and headboards, anything you can think of. Things are for sale.

It smells bad to the American people. It is a bad idea. It is Christmas come early, unfortunately for Members of Congress, unfortunately for those who are willing to sell out their vote for their districts, for something in their districts. It might be Christmas come early for those Members of Congress, but it is not Christmas for the American people.

This issue should be judged on its merits. The North American Free-Trade Agreement is a bad idea.

And to pay for all this, it is going to cost at least \$50 billion.

If anybody in this institution is going to vote for NAFTA, they had better explain straightforwardly to the American people how they are going to come up with \$50 billion. It is going to be a NAFTA tax? Well, they do not want to vote for a tax.

Is it going to be more spending cuts? Well, we do not know where we are going to make the cuts, but we want this program.

Well, if you are going to vote for NAFTA, tell us where you are going to get the \$50 billion.

NAFTA is a job killer for American families. NAFTA hurts small business in this country, and NAFTA clearly can devastate communities. It is a bad idea.

We need people in this country to let Members of Congress know in the next 24 hours, look them in the eye and say, "Did you make a deal for your vote on NAFTA? Did you make a deal, did you say, yes, I'll vote for NAFTA as long as you give me this, this and this is my district?"

If your Member of Congress did that, tell them what you think. Tell him or her that you do not want NAFTA under any circumstances. Do not sell your vote to the pro-NAFTA people. Do not sell your vote to the administration.

NAFTA is a bad idea for a lot of years to come, and if we pass it because

a bunch of us sold our votes, I do not think we can go home and look people in the eyes and say we did the right thing for the American people.

Madam Speaker, I yield to the gentleman from California [Mr. TUCKER], who has shown great leadership in this whole NAFTA debate. The gentleman has been here night after night, week after week in opposition to NAFTA, and has been an articulate spokesman against this.

Mr. TUCKER. Madam Speaker, I thank the gentleman from Ohio, who is my classmate and who has shown great leadership and great foresight in this NAFTA debate.

Earlier today a reporter called me and asked me about where I was when Kennedy was shot some 30 years ago. Indeed, as I reflected, as a young boy at that time, I realized that was a defining moment in my life.

□ 2100

As I reflected, Madam Speaker, I realized it was a defining moment for all of America. Now, some 30 years later, we are at another defining moment for this country. The North American Free-Trade Agreement is that defining moment.

When I decided to run for Congress, I understood that this place, these hallowed halls and this hallowed floor, was a place where men and women came to represent the spirit and the interests of the people, and upon being blessed enough to get here to Washington, DC, one of the first orientations that we had by the Speaker of the House, the gentleman from Washington [Mr. FOLEY], indicated to us that way atop the hall and the wall of this hallowed building read a sign that said we hope and we pray that we may be able to do something, something, that may be worthy of being remembered, and, as I stand here on this floor on the eve of the NAFTA vote searching my conscience and my soul, I know that come tomorrow night, whichever way the vote goes, that my no vote will truly be something worthy of being remembered.

Why? A yes vote on NAFTA means a no vote on the American worker. A yes vote on NAFTA means a no vote on human rights. A yes vote on NAFTA means a no vote on democracy, and fairness and morality. A yes vote on NAFTA means a no vote on being truthful with the American people.

There are those on the other side of this issue who have said that NAFTA is supportive of the American people, that it is a job creator. But tonight my colleague, and I and other colleagues from all over the country are here to set the record straight, to give our colleagues the truth against the backdrop of all of this misinformation about this North American Free Trade Agreement, for in truth and fact we will find, to the man and to the woman, that my

colleagues are not against free trade, and we are not against a North American Free Trade Agreement. What we are against is the particulars of this agreement which do not have the enforcements and the safeguards in the interest of the American people.

Yes, if worse comes to worse and this agreement passes, someone will make a lot of money; the rich will get richer. The poor, and the disenfranchised and the already unemployed will be more unemployed and more disenfranchised. But when is America going to stand up for Americans and for this country?

As my colleague indicated earlier on the floor tonight, Madam Speaker, the same people who vote for NAFTA will vote against extending unemployment benefits. The same people who will vote for NAFTA vote against a stimulus package to put money back into our urban communities, back into our cities, to put people back to work. The same people who are for NAFTA will say that it is a job creator, but they will not talk about the fine print. They do not talk about the pain, and the loss and the immediate deprivation that is going to come in the way of job loss, up to 500,000 in the immediate future. They will talk about the light at the end of the tunnel.

Mr. DREIER. Madam Speaker, will the gentleman yield?

Mr. TUCKER. I yield to the gentleman.

Mr. DREIER. Madam Speaker, I thank my friend for yielding, and I thank him for his remarks, and I appreciate the fact that my friend from Lorain has let me jump in here for just a second. I would like to just respond to one particular item that my friend from Los Angeles has mentioned, and specifically that has to do with the plight of the urban poor, and obviously I share tremendous concern and sympathy for those who are less privileged.

But to argue that the rich are going to get richer and the poor are going to get poorer under the NAFTA really begs the point here. It seems to me that we need to recognize that President John F. Kennedy, the man to whom the gentleman referred in his opening remarks, said that a rising tide lifts all ships. Now President Clinton has said there may be a loss of jobs, and most predict there will be a loss of jobs, but I believe that President Clinton was right when he said that there will be not a single year when we have a net loss of jobs.

Now I am not going to argue that every job opportunity that is going to come down the pike from implementation of the North American Free-Trade Agreement is going to end up in the inner city, but it does seem to me that, if we are going to enhance the economic standing of people in this country, we have to do it by doing what John F. Kennedy wanted us to do, break down barriers, and breaking

down barriers is very simply what this is about.

Now I am not a supporter of the kind of things that have been going on over the past several weeks, twisting arms and trying to do those kinds of things. I am a pure free trader, having supported this initiative—

Mr. TUCKER. Reclaiming my time, Madam Speaker, I appreciate what the gentleman is saying, that we have to bring down barriers, and I appreciate the fact that we have to have free trade. But the gentleman and I both know that way before we even had the side agreements in this NAFTA agreement that this agreement is about foreign investment. This agreement is about making some foreign investors richer. That is what I was talking about when I said that the rich are going to get richer.

We have our investment in Mexico. The foreign investment in Mexico is 63 percent of all the foreign investment they have. Therefore, way before we even got into this notion of trade we know that this agreement is about protecting their investment in the event of any nationalization in Mexico, making sure that, if there is a nationalization in Mexico, that their investment will be compensated either by the Mexican Government or by us raising new tariffs.

Mr. BROWN of Ohio. Madam Speaker, I would add to that this is a Wall Street agreement, it is an investment agreement, it is not a jobs agreement, it is not a trade agreement. The big supporters of USA NAFTA are Wall Street firms. That is where most of the money comes from. They know that they are going to benefit because they can invest more in Mexico—

Mr. TUCKER. Reclaiming my time for a moment, and then I will yield to this gentleman, here is what NAFTA is about.

Heading south. United States companies plan major moves into Mexico. The following is from the Wall Street Journal:

In a sign of American eagerness to expand in Mexico 40 percent of respondents said it is very likely, or somewhat likely, that they will shift some production to Mexico in the next few years. That share is even higher, 55 percent for executives at companies with \$1 billion a year in sales.

Mr. DREIER. Madam Speaker, will the gentleman yield so I can respond to that? I would like to specifically respond to that quote that was in the Wall Street Journal.

Mr. BROWN of Ohio. I have given you a chance; it is all right, Mr. DREIER. It is my time, and I would like to yield to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Madam Speaker, I appreciate the gentleman from California [Mr. DREIER] getting in this debate. I think he has gotten in though, from his perspective, at the wrong time because,

as a person who has a 13 percent AFL-CIO rating and has not regularly been with labor on this issue, I think that we all have to agree that this agreement is about moving production to Mexico, and I say, "You don't have to believe me about that, you don't have to believe Mr. BROWN, or Mr. DREIER or anybody else. Believe the President of Mexico."

The President of Mexico spends his money not saying, "Ship your products to the United States." His advertisement that has an American executive scratching his head, burning the midnight oil, is saying:

"I can't find good workers for a dollar an hour within a thousand miles of here."

Madam Speaker, this reflects what the Government of Mexico needs. The president of Mexico wants investment in Mexico. The card that he is willing to play for that investment is the one thing he has in abundance, and that is inexpensive labor. I might add it is very good labor, it is very productive labor, and, when they are given the right equipment, the right middle level management and the right training, and they have some 200,000 vocational graduates each year, they do a darned good job, and they do it at very, very low wages.

We are talking about an investment agreement. We are talking about moving production to Mexico. And the president of Mexico has average wage earners making about \$2,500 a year. That means that the Sony worker at the plant south of my district in Tijuana could work the entire year, starve his family, never spend a dime on rent. He could not buy a single television set that he makes.

□ 2110

Nobody on either side of the aisle really expects that worker to triple and quadruple his earnings.

Mr. BROWN of Ohio. Mr. Hunter, I would add real briefly, not only does the President of Mexico talk that way, I know the Wall Street Journal survey of about a year ago, over half the executives and CEO's in the Fortune 500 companies surveyed in this country said if NAFTA passes, they plan to move more production to Mexico. Another 25 percent made the statement that they would use the threat of going to Mexico to keep wages down.

Both those statements tell us what the real intent of corporate America is, large corporate America, not small businesses creating the jobs.

I yield to Mr. TUCKER.

Mr. TUCKER. Let me amplify that. You can see here in the hourly compensation of manufacturing workers in the United States, Canada, and Mexico, what the disparity is. You can see in 1980, here is the hourly average compensation of a Mexican worker, \$2.18. For the United States, \$8.67.

Notice what happened in the next 12 years. Over here, the average hourly compensation of the Mexican worker, it is still \$2.35, while the United States workers have gone up to \$16.17. So, obviously the wages in Mexico are kept artificially low, and that is to attract foreign investment into Mexico.

Now I would like to make just a couple of other points before my time runs out. There has been a great prevarication, falsehood, perpetrated on the American people in the last few days. There have been two big scare tactics that have been put out there.

First of all, they accused labor and other people of intimidating Members of Congress by saying that if they voted for this agreement, they would be put out. Well, they need to be held accountable to their vote on this agreement, because the American people put them in there. And that is not a threat, that is just a promise. In fact, it is better than the promises that our President is giving with these last minute Monty Hall "Let's Make a Deal" things, because those promises are not going to come through. But the thing they have done, the intimidation they have done, they said if this agreement does not go through, then Japan will take this agreement and we will lose out.

Mr. FORD of Michigan. Mr. Speaker, NAFTA is a budgetbuster for the American taxpayer, and it is becoming more expensive every minute. Initial estimates are that NAFTA will, at a minimum, cost \$2.7 million in lost tariff revenues. The Joint Economic Committee figures losses at closer to \$3.5 million.

Now, the cost of NAFTA is rising because of the deals being made to buy votes for a deeply flawed agreement. At this stage, each vote costs money, in deals that the American people won't learn about for weeks. And it will take money from existing programs to pay for all these deals.

One of these deals is that the Government will forgive \$17 million in customs duties owed by Honda Motor Co. because its cars assembled in North America violated complex content rules in the Free-Trade Agreement the United States signed with Canada in 1988.

Under NAFTA, Honda's cars assembled in Canada are to be free from import duties. Because Canada insisted in NAFTA that the provision apply retroactively, the \$17 million that Honda has refused to pay while engaged in legal wrangling with the United States Customs Service would never have to be paid.

Guess who gets to make up the difference? The U.S. taxpayer.

How are we to pay for all of these deals? As Chairman of the Committee on Education and Labor, I know that the programs to help Americans adjust to the brave new competitive world proclaimed by NAFTA supporters already are woefully short of funds. Are they to be slashed to help pay for revenues lost because of NAFTA?

Funding for enforcement of occupational safety and health, wage and hour, and child labor laws is deficient. Worker training programs are under-funded. The education pro-

grams that are supposed to enable our people to compete in high-skill, high-wage jobs are under-funded, beginning with Head Start for preschoolers and continuing to financial aid for college students.

Many, many special interests have been bought off by these deals except one—working Americans. There are wheat deals, peanut deals, citrus deals, banking deals, even deals for Japanese carmakers.

The only program to help workers adjust to the loss of their jobs to dollar-an-hour labor in the Third World is a paltry \$30 million for a program administered by the Labor Department that its own inspector general says doesn't work. This is the Trade Adjustment Assistance Act. The inspector general reported in October that the trade act's training program has done little to help workers whose jobs have been exported find new jobs at comparable wages. Training is nothing more than a cruel hoax if it is not connected to good jobs.

The administration is unable to say what job training awaits the auto and other manufacturing workers in my district who are going to lose their jobs. If the administration is going to claim that NAFTA would create jobs based on higher exports, it needs a plan to put my constituents into those new jobs. I don't see one. Michigan workers are left out in the cold.

Mr. Speaker, I would like to enter into the RECORD a column by Abe Rosenthal in this morning's New York Times that puts the finger on the essence of this agreement, on how it is that economists, editorial page editors, Wall Street executives, and much of the elite in this country are so sure NAFTA is a good thing, while working people are scared to death of it.

Hundreds of thousands of working-class Americans will lose their jobs in the years after this NAFTA is passed. No journalist, or economist, or investment banker, or university professor will be threatened by NAFTA.

I say to this elite: it's a class thing. You wouldn't understand.

Mr. Speaker, I have one more item I want to enter into the RECORD. In his weekly op-ed column last Sunday, Albert Shanker, the president of the American Federation of Teachers, compared NAFTA to the European Community, the largest and most successful multilateral trading block in the world. In my friend Al's careful analysis, NAFTA falls way short of the standards that an agreement of this importance should meet.

As Al notes, there are great disparities in the standards of living among some of the European Community's members. The rich nations of Western Europe spent many years and hundreds of billions of dollars lifting the economies of its poorer neighbors before admitting them to the bloc.

Just as importantly, the European Community consists solely of progressive, representative democracies whose people enjoy freedom of association, including the right to form trade unions.

Obviously, Mr. Speaker, Mexico comes up way short in these important areas. You certainly cannot favorably compare Mexico to Spain, one of the European Community's most recent members, in terms of political or social maturity. Mexican workers are denied basic rights to organize and to strike. The contrast

between the handful of families who control Mexico and the millions who toil in poverty is staggering.

Sadly, you cannot compare the United States, the richest country in the world, with any of the European Community nations in terms of the social services provided to workers who lose their jobs. European nations certainly have their problems, but their citizens don't lose their health security when they lose their jobs, as Americans do. Their citizens have income maintenance and effective job retraining programs unavailable to Americans. As Al says, "For European workers, losing a job is a great inconvenience; for American workers, it is a disaster."

This NAFTA will be a disaster for millions of our citizens. When the Members of this House cast their votes tomorrow night, I hope they will be thinking of the hard-working people whose working lives this NAFTA would end.

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NAFTA HITS INTELLECTUALS

(By A.M. Rosenthal)

No need to worry. Nafta will not cost the job of a single American factory or agricultural worker. No plant or farm will be put out of business.

However, because of various complicated Nafta tax and anti-subsidy provisions, some other Americans will experience inconvenience.

Jobs will be lost by several hundred thousand editorial writers, columnists and other journalists, plus publishing executives, university professors, Wall Street specialists and members of state and Federal legislative staffs. A few dozen think tanks will close down altogether.

But unemployment insurance will be available, often, for these newly unemployed intellectuals. And many may be retrained for jobs as newsroom receptionists, school custodians or clerks in automated warehouses.

Of course they must be flexible—willing to sell their homes, pull their children out of school and hunt for new jobs in other cities around the country. Many will find employment above the minimum wage, probably, if they take care not to be too old to compete with high school dropouts.

But being educated people they will also understand that contrasted to the possibility of a better balance of trade with Mexico their problems are entirely minor and not whine about it.

Anyway, perhaps things will pick up for them toward the end of the 90's.

Ah—all this has been my evil little fantasy these past couple of weeks. Ah—how they would howl, those journalistic and academic supporters of Nafta who have shown so little care, compassion or understanding about the fears of working people who might lose their jobs, how they would howl if their own jobs were in danger.

I can hear them already, because I have heard them so often before. If a newspaper is in danger of closing, or Wall Street brokers have a bad year, or if professors face loss of tenure for anything but murder, we fill pages of print and hours of air time with sheer poignancy.

But we really do expect workers who lose their jobs after years at a craft or assembly line to be sweet and humble, because some day some other workers in some other factory may pick up jobs.

I was in favor of Nafta, though I never did think the Republic would collapse. America be driven from the company of decent nations and extraterrestrials take over if it did not pass. But now the Administration and the intelligentsia have converted me to opposition to the current version of Nafta.

The genuine fears of frightened workers are dismissed contemptuously by the Clinton Administration, press and academia. If that is true now, while workers are still fighting, what care will be shown them or their thoughts if they are defeated and find themselves out of work in the name of grander interest?

I am a company man; any union that threatens my paper, watch out. But that does not turn me into some kook union-

hater, spilling over with rage at unions exercising their right to lobby.

The Administration's attack on the whole A.F.L.-C.I.O. and its leaders is not only unjust, but damaging to freedom movements everywhere.

When it was not at all fashionable, the A.F.L.-C.I.O. and Lane Kirkland, its president, came to the quiet assistance of freedom fighters, dissidents and political prisoners throughout Eastern Europe and the Soviet Union. The U.S. will need Kirklands again.

But Mr. Kirkland is suddenly painted Mussolini and his members a bunch of know-nothing boobs.

Workers fear that Nafta would preserve child labor, abysmal wages and government-police union-busting in Mexico. All of these are brutally unfair to Mexicans and to competing U.S. workers. And in case anybody cares about such niceties, Mr. Kirkland argues they also run counter to provisions in U.S. free-trade laws.

But if this version of Nafta is defeated, American business, labor and government still have a chance to try to negotiate a Nafta that would open Mexico not only to free trade but to free unions and halfway decent pay.

President Clinton says he needs Nafta as a message of support to the Asian summit meeting in Seattle. If he loses, maybe the message will be even stronger: In Asia as in the U.S. and Mexico, Americans are against slave wages, forced labor, child labor and government union-smashing.

Aren't we supposed to be?

(By Albert Shanker, president, American Federation of Teachers)

SAY "NO" TO NAFTA

In a few days, the Congress will vote on NAFTA—the North American Free Trade Agreement. President Clinton and NAFTA supporters believe it will be a win-win situation for Canada, Mexico and the U.S. They believe that increased investment in Mexico will raise living standards there, making it a big market for our goods and services and increasing the number of U.S. jobs. They say U.S. job loss will be small, and workers can be retrained. Also, greater prosperity in Mexico will reduce illegal immigration to the U.S. They cite the success of the European Community as a model.

If I thought it would work out this way, I'd support NAFTA, but I don't.

We should enter into a NAFTA which is modeled on the European Community, but this one is not. Europe faced problems similar to the ones we face. There are wealthy European nations like Germany, France and Belgium and poorer ones like Spain, Portugal and Greece. There are great disparities between these countries in terms of standard of living and average wages—just as there are between Mexico and the U.S. But the European Community did not accept the poorer countries into membership immediately. It spent 30 years and billions of dollars—\$100 billion since 1989 alone—on programs to reduce the disparities between countries and to retrain workers from richer countries who lost jobs. It negotiated agreements about minimum wages and working conditions that poor countries had to meet before becoming full-fledged community members. Why? Because the community feared a huge drain of jobs from rich to poor countries. Why can't we follow this pattern? Why can't we spend five, ten or fifteen years increasing trade and investment and entering full free trade when the disparities between the two countries are narrowed?

The Europeans had another proviso: Only democratic countries can be members of the European Community. There is vigorous debate about NAFTA going on here and in Canada. Whatever the decision, it will have legitimacy because of the debate. Why is there no debate in Mexico? We have ample evidence that there is opposition to NAFTA in Mexico—maybe even a majority of people oppose it—but with state control of radio, TV and the press, we don't know whether the treaty represents the wishes of the Mexican people or is being imposed on them by a government that was unfairly elected.

Democratic Spain, Portugal and Greece have freedom of association. There are free trade unions to guarantee that, as productivity rises, workers can increase their standard of living so they're able to buy from the richer countries. But Mexican workers don't have free trade unions. Workers who try to improve wages and working conditions through strikes are fired and blackballed. Mexico has increased its productivity, but wages have gone down. The small wealthy class has gotten richer, but the poor remain poor. How will NAFTA change this? Will NAFTA help to prop up an undemocratic system? If workers don't have a better standard of living, how will they buy our products? If they remain poor, won't they continue pouring over the border to look for better jobs here?

There is another major difference between what we're doing and what the Europeans did. They established effective worker training and retraining systems. The U.S. does not have these things. U.S. workers who lose their jobs remain unemployed for long periods of time and, if and when they are reemployed, it is usually at a great loss in their living standard. Also, when Europeans lose their jobs, the impact is different. American workers lose their health care, but European workers continue to have theirs. And they receive unemployment benefits which last longer and are much closer to their salaries than ours. For European workers, losing a job is great inconvenience; for American workers, it is a disaster.

Why are teachers concerned about NAFTA? When plants close, the tax base for schools disappears. When workers are unemployed, funds are shifted from education to social services for the unemployed. When one or two plants close, it affects other businesses in the community. But most of all, it has a devastating impact on families and the children we teach.

We need a NAFTA, one which has been developed as carefully as the European Community developed its common market, a NAFTA which works in the interests of workers here and in Mexico and is supported by the people of both countries. Is it this NAFTA or none? Nobody can really believe that. The U.S. is the greatest consumer market in the world. If this NAFTA is defeated, as it should be, free trade between the U.S. Canada and Mexico will be just as attractive as it is today. Only next time, we can do it right.

AGAINST NAFTA

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Under a previous order of the House, the gentleman from Michigan [Mr. BONIOR] is recognized for 60 minutes.

Mr. BONIOR. I yield to my friend from California to conclude his remarks.

Mr. TUCKER. I thank the distinguished gentleman, the majority whip from the State of Michigan.

My point was that that intimidation, that coercion, that Japan is going to take this market and exploit this opportunity that we have before us, could be no further from the truth, for a couple of reasons.

First of all, this whole agreement is not so much a question of the exports that they want us to believe that are going to benefit this country going into Mexico. The real basis of this agreement has to do with their access to our markets. When I "their," I really should say it has to do with the access of multinational, international, U.S.-based corporations, access with U-turn exports back into our own markets.

Basically what we are doing is we are selling our people out. We are saying that we can circumvent the wages that are here in the United States. We can circumvent the right to strike, the right to organize, the right to collectively bargain. We can circumvent health care and all the things we are trying to do in the next year here in Congress.

We can go down to Mexico and we can export goods into Mexico to build factories, to use cheap labor, and send the finished products back into this country.

The point is, what market are we going to be exploiting? We are going to be exploiting the U.S. market. For, indeed, if you look at the overall picture, you will understand that we, the United States of America, with our \$5.5 trillion economy, is 85 percent of the North American market. Canada is 11 percent. Mexico is only 4 percent.

The average buying power, by my opponents' own claims, of the Mexican worker is \$450. If you net it out, it is more like \$60.

Here is how it goes. Here is what happens. They claim we are going to have more exports because the tariffs are going to go down. They will be eliminated. There are going to be more exports. More exports are going to create more jobs.

What they do not tell you, like the used car salesman with the fine print, is that 43 percent of those exports are phony exports. They account for \$17.4 billion. Those exports will just be the parts and materials that are sent down to Mexico and are completely assembled down in Mexico with cheap labor, with that 58-cent-an-hour labor, with that \$2.35-an-hour labor, that are assembled completely down there and then are sent back up to the United States of America as imports, or as exports from Mexico, and which cause job dislocation.

Thirty-eight percent of those exports, \$15.5 billion out of a total \$40.6 billion of exports, are capital goods, machinery, and equipment. That

means we are sending the capital goods, the machinery, and equipment, down to Mexico, in order to build factories down there.

That is what is going on now. With NAFTA, those kinds of exports are going to increase.

That is what it is about. Only \$7.7 billion of the \$40 billion actually goes into the Mexican market, actually goes into consumer goods. So what this agreement is, is the multinational corporations taking advantage of not only the American worker, but taking advantage of the Mexican worker in order to more cheaply produce goods and send them back to the biggest consumer market in North America, and that is the United States. And who is going to pay the bill? Us, the American taxpayer.

Now, why does this discourage Japanese involvement? It does, because the Japanese would not take this deal. They are not going to let the Mexican Government send goods into their economy by bringing their tariffs down the zero, like we are willing to do, because they are a protectionist nation.

The other reason why they do not want to do the deal with Japan and the other reason why the Japanese effect is of no effect, is the fact we are the most natural trading partner with Mexico. They are our third largest trading partner.

But, even more than that, we are contiguous to Mexico. Do you realize that 80 percent of all the commerce between the United States and Mexico comes as a result of trucking? Trucking. There ain't no trucks going over the Pacific Ocean to Japan. The trucks are coming across the border here to the United States, which brings up another big problem.

Those of us in California know of this problem, and that is where I am from, California. We know the problems we have experienced with drivers without insurance, without any driver's license, without any registration.

Do you realize what the standards are in Mexico? Let me give you an example. In Mexico you can drive when you are 18, instead of 21. There is no drug testing. They do not use front brakes.

These are not racist statements, these are facts. There are no front brakes. Their load is more than twice that of the limit of the American trucks. It is 70,000 pounds here; theirs is 170,000 pounds. And they do not have any limits on how long they can drive. Our truckers have limits of 10 hours a day and 60 hours a week. So imagine somebody who has not been tested for drugs, does not have a license, does not have registration, driving a payload twice that of ours, ruining our roads and streets, and there is no English language requirement. So they do not even read the wrong way signs. And we do not know if they are sober or not.

These are the problems that are in NAFTA. This is why we have to slow this agreement down and make this agreement better.

In conclusion, to those who say that if we lose this agreement, we lose this opportunity, our President will be embarrassed, the presidency will be of no effect and will be ineffectual, I say to them this: The President of the United States did not elect me and cannot be the one to whom I am accountable to vote on NAFTA or any other important agreement that will affect the entire Nation, the entire United States of America. You, the people, elected these Members of Congress, and it is to you, the people, that we owe that debt, to make sure that this country moves along, yes, in progress and in trade.

This is not a question of trading off the past for the future. This is a question of doing what is right, of having the morality and the courage and the forthrightness to stand up and say when is this country going to be honest with its people? When is this country going to be right with its people, and to invest. Yes, we need to ensure that the minimum wage is in that agreement and that there is a schedule for it to go up every year. Yes, we need to make sure there is more money than just the \$8 million for border cleanup. Yes, we need to have an across-the-border tax. But, most importantly, we need to make sure that come tomorrow night, we do not sell out the American people for just some multinational corporations.

□ 2120

We need to make sure that when we do what we do tomorrow night and we vote on this agreement, as Daniel Webster said up there in that sign, that we do something that is worthy to be remembered and not something that we will be ashamed about and not something that we cannot look in the face of our constituents about as we look at the soup lines and the unemployment lines getting larger and larger.

Let us do something right for a change. Let us slow this agreement down. Let us make it better and let us invest in the American worker and the American people. Then we will truly have free trade, but we will also have fair trade.

Mr. BONIOR. Madam Speaker, I thank my colleague for his eloquent statement and for his passion and his commitment on this issue. He has been on the floor week after week, night after night expressing his views. I want him to know how much I appreciate his participation in this debate, as well as the participation of my friends on the other side of the aisle, DUNCAN HUNTER, HELEN BENTLEY, among others, who have been there, TERRY EVERETT, JERRY SOLOMON and others who have spoken, even to my friend from California [Mr. DREIER], who we do not agree

with on this issue but who has provided us with opposition from time to time and who, I am sure, we have provided with stimulating opposition as well from time to time. I thank them for their participation for all these 6 months that we have debated this issue.

I also want to thank some of my Democratic colleagues who have been with us here in the evenings: BART STUPAK, SANDY LEVIN from Michigan; SHEROD BROWN, who literally, with MARCY KAPTUR, has been here every single week, JOLENE UNSOELD, from the State of Washington, who has come by and expressed vigorous opposition to this agreement based on rights issues, environmental issues, wages, worker concerns that she has; the Majority Leader, DICK GEPHARDT, who has participated with an eloquent and thoughtful approach to this issue; ERIC FINGERHUT from Ohio, who has been here; KAREN THURMAN from the State of Florida, who was, early on, a strong opponent of NAFTA, remains so, has addressed us on a continual basis; BERNIE SANDERS, the Independent from Vermont, who has spoken with passion; as well as the chairman of the anti-NAFTA caucus, COLLIN PETERSON; HENRY GONZALEZ, the chairman of the Committee on Banking, Finance and Urban Affairs, who has come before us and spoken about the concerns he has on financial institutions on a regular basis; NYDIA VELÁZQUEZ, who has spoken with passion and heart on this issue and how it affects working people and how the human rights issue has not been addressed adequately in this provision.

I think virtually everybody I have spoken about here feels that we need to do an agreement, that this is not a good NAFTA agreement. This is not a fair agreement. I thank them all for their tireless work on behalf of working families in this country and on behalf of human rights and progress and stability for our Mexican friends and neighbors.

Madam Speaker, I now yield to my distinguished colleague, the gentleman from California, MARTY MARTINEZ, for comment.

Mr. MARTINEZ. Madam Speaker, I want to thank the gentleman from Michigan for yielding to me, and I want to probably come at this from a little different perspective than anybody has up to this point, at least in the messages I have heard.

I do not have any charts that indicate any numbers pro or con, but I do have a long-held, strong feeling about our relationship with Mexico and the South American countries, a lot of it from history and a lot of it from personal experiences.

Madam Speaker, God blessed this country and its people with good fortune. With the creation of our democracy, there began a great expansion of

new frontiers that enabled us to grow to a prosperity the world has never known. We accepted people from all over the world who came to our shores wanting an opportunity to develop their own kind of dreams, in a free society. And while we were developing as a Nation, so was a country to the north and many more to our south.

We all grew and developed at a different pace. America became a great industrial empire and pretty much dominated the Western Hemisphere. For 140 years, the United States and Mexico have shared a common border. During this period of time, we have either ignored or exploited most of our neighbors to the south.

Beginning with President Polk's conquest of Mexico, and the acquisition of one-third of what was then Mexico—we pursued what we believed was our manifest destiny to rule from sea to shining sea. We did this with fervor and absolute conviction in our quest. We interpreted the Monroe Doctrine in establishing our divine preeminence in the Western Hemisphere, setting the stage for the American supremacy that followed.

Our historical presence and legacy regarding our Latin American neighbors has been checkered to say the least. We have occupied a number of their countries when it suited our purpose and left them shackled under the boots of authoritarian thugs like the Somozas, Batista and, more recently, Noriega whom we conspired with until we found it necessary to remove him from power. So, in many respects, the United States has not been a good neighbor.

Maybe it's about time we start giving instead of taking. Maybe, just maybe, it's about time we begin to practice the politics of hope rather than the politics of fear and intimidation. Although I feel strongly about this, there are overriding American interests which must be addressed before we can fully embrace Mexico in a North American Free Trade Agreement.

I don't believe that NAFTA is the 800-pound gorilla that is going to crush our economic engine and derail our economy. I don't believe that NAFTA will lead to the end of American prosperity. And I don't believe that NAFTA is a Trojan Horse—that it represents the seed of our own destruction.

We all know what we do tomorrow will determine NAFTA's future and will determine whether our votes will be chronicled in history as presaging the dawn of a new economic era, or viewed just as a footnote in American history. Set the stage for a renegotiated NAFTA, an improved NAFTA. Make it all the more important to be sure we are doing the right thing.

Having said that, let me share the real concerns I have as one of the 434 votes that will be cast tomorrow. I have asked questions in the hope of

coming to terms with my concerns about this agreement. But most of my questions remain unanswered. It has caused me to agonize whether to support this NAFTA. So I have asked myself exactly what are we afraid of in this agreement. I for one do not believe for a second that Americans are afraid of competing with Mexicans head-on. Nor do I believe that an economy that is 5 percent of the size of our own economy can threaten our standard of living.

What I'm concerned about is that the politics of fear, the politics of intimidation, and the politics of disinformation are swaying the debate and votes over this NAFTA.

When the whole concept of a free-trade agreement with Mexico came up, under the Bush administration, my first instinct, my kneejerk reaction, was to say "no, no way, no how!"

From my first job in a machinist shop to owning a business for 21 years before entering politics, I developed a keen sense of the needs of both workers and businesses alike. Through my own work experience, I know the concerns of workers and I know the concerns of businesses. These concerns are not always the same but they should be because they are central to our ability to prosper.

NAFTA raises some serious concerns that I have about American jobs lost to lower wages south of the border. As near as anyone can tell, some 400,000 Americans could lose their jobs as a result of NAFTA. And to tell you the truth, 400,000 jobs sounds like a lot of jobs. And if one of those is your job, even one is too many. But in a total U.S. labor force of 128 million, 400,000 jobs amounts to less than one-half of 1 percent.

□ 2130

On the other hand, however, I have seen studies which indicate that passage of NAFTA will create an additional 500,000 net American jobs over the next decade.

So what is truly at stake here? I have heard convincing arguments for NAFTA, and I have heard convincing arguments against it. And to tell the truth, I am dissatisfied with the presentations made by both NAFTA advocates and NAFTA opponents.

I have been lobbied for, against and every which way on NAFTA. Business has said to me, "Mr. MARTINEZ, we would like your vote for NAFTA." The unions have said, "MARTY, we need your vote against NAFTA." The administration has said to me, "MARTY, we need you to vote in favor of the agreement." Well, I want to know something from all of these people.

From business, I think I would like to see more emphasis on research and job development. I see American businesses showing off new products at trade shows and then immediately

move overseas for production. Let us see these new products built here, by the very workers that business expects to be the consumers of these products. For that matter, I would like to see American businesses quit shopping around for what they see as the best deal and employ where they sell.

Let me say this again—businesses ought to make products where they sell them. I swear, I think Mattel Toys has gone around the world in 80 days looking for a place to set up its manufacturing operations when I know where their biggest market is—right here in the United States.

My friends in the labor community have disappointed me. I was raised on the belief that the American worker was the best in the world.

What has happened to the competitive spirit of the American worker? Why have American labor unions bowed to fear of Mexican workers?

The question I ask myself tonight, on the eve of the NAFTA vote, is are we ready to risk not only our own future but the future of our children and our children's children on this flawed agreement.

We still have the opportunity to take the time to revisit this agreement. We should open this process up, and improve this agreement with an eye toward meeting the economic changes sweeping the world as we enter the 21st century.

I must say I have begun to grow impatient with our new administration. No two ways about it, NAFTA is a tough vote.

But I would sure be happier if the President would start talking about investment in human resource again—people are our greatest asset. And he should be talking about revitalizing out cities and rural areas where Americans are hurting.

It would be really helpful to hear about incentives for jobs to stay here in the U.S.A. in places like south central Los Angeles or east Los Angeles or Chicago, New York or rural America.

Since the NAFTA debate has begun, many of my colleagues have traveled to Mexico to see a factory, a lake, a river to convince them to vote one way or the other on NAFTA. I do not need to go to Mexico to help me decide which way to vote. The reasons are right here at home.

NAFTA has got to be one of the most difficult decisions I have ever made since I came to Congress. In arriving at my decision, I do so in the interests of my constituents—the people of the 31st Congressional District of California. My district in the San Gabriel Valley has the highest rate of unemployment in the County of Los Angeles.

The County of Los Angeles leads the State of California in economic dislocation. In addition, we all know that California continues to have the highest unemployment rates in the Nation.

I am worried about the short-term effects that passage of NAFTA could have on my constituents.

But, over the long term, and I believe that it is to the future that we must look, I believe that free and fair trade is to the great advantage of both America and Mexico.

Trade does not have to be a zero sum game, there does not have to be a winner and a loser. Since World War II, we have been the champions of liberalized, free trade.

We have prospered as a people, we have prospered as a Nation, when world trade has remained open and unfettered.

The mercantile and creative spirit that has driven this Nation to the pre-eminent role that we are privileged to occupy today, is alive and well in the hearts and minds of Americans because of, and not despite, our competitive nature.

Madam Speaker, rather than retreat into a cocoon-like shelter, ignoring the tides of history brushing up against our shores, we should prepare to take advantage of the opportunities and challenges that lay ahead by renegotiating NAFTA.

As I have indicated, I am a proponent of free trade. I believe that free trade is the best course for America as we try to maintain our economic leadership in the post cold war world.

So I would support a North American Free-Trade Agreement—but not this North American Free-Trade Agreement.

Considering the suffering going on in my district and among the unemployed everywhere in this country, I cannot, in good conscience, support this particular agreement, as much as I would like to support the President. It was hastily conceived by a Republican administration that evidenced little concern for the issues that matter most to average working class Americans—job creation, job flight, and the continued lessening of our competitive edge as a nation.

This NAFTA has been brought to us as a so-called "fast track" piece of legislation.

What is wrong with it? First, the agreement lacks any provision that would discourage American business from fleeing the country and closing more factories and businesses.

In fact, the agreement does not even contain any incentives that would support businesses staying here in the United States.

So, continuing the penchant to only look at the bottom line, I believe that many American businesses will continue to move out of the country.

Second, the agreement provides no protection for American workers—either in terms of protecting the jobs they have now or providing viable and sensible alternatives for those who lose their jobs.

Make no mistake about it—American labor fears this NAFTA because it has no protections for labor, not just because they feel that unions will continue to lose members.

American business likes this NAFTA because it does not require them to consider any factors in making a decision to steal away in the night.

American ecological interests fear this NAFTA because they see it as reinforcing the status quo regarding the deplorable situation on the Rio Grande River.

And well they might because this NAFTA contains neither incentives to clean up their act nor disincentives that would cause businesses to think that pollution is a bad economic condition, not just a dirty word.

Were it not for the fast track aspect of this NAFTA, I believe that we here in the Congress could have worked with the Clinton administration.

I believe that we could have crafted a NAFTA that would have protected American workers, and also enhanced the state and future of Mexican workers.

I believe that we could have addressed the concerns of the environment in sensible ways that would not involve paper tiger commissions, and would have been good both for business and for humans and other beings on both sides of the river.

But we are not offered that chance, and, given only this NAFTA on which to vote, I will vote no.

Mr. BONIOR. Mr. Speaker, I thank the gentleman for his eloquent and courageous statement. We understand how difficult this vote is for all of us, but particularly for you, Marty, and we appreciate the eloquence and the thought that you have given to it.

We can do better, as you said. We can come back and do a much better NAFTA that will protect American working families and working people in both countries. That is the goal for those of us who oppose it, so bravo.

I yield to the gentleman from California [Mr. DREIER] for a brief moment, before I go to the gentlewoman from Washington [Mrs. UNSOELD] and the gentlewoman from Maryland [Mrs. BENTLEY].

Mr. DREIER. Madam Speaker, I thank the gentleman from Michigan [Mr. BONIOR] for yielding to me, and I ask for just a moment to respond to a point that was made by both my friends, the gentlemen from California [Mr. MARTINEZ and Mr. TUCKER]. It specifically has to do with this issue of jobs moving to Mexico.

We all know that we have seen over the past several years the flight of United States jobs to Mexico, but there is an important point that needs to be made. These jobs have not gone to Mexico to utilize Mexico as an export platform back to the United States. In fact, 70 percent of the United States-

owned businesses which have gone to Mexico have done so for one very simple and basic reason: It is the only way they have been able to gain access to the Mexican consumer.

The chief executive officer of IBM has indicated that if the NAFTA carries, he will not have to move operations that they now have in California to Mexico because the 20 percent tariff that exists on computers will be coming down. If NAFTA fails, they will have little choice other than to move from California to Mexico. Why? Because the Mexican market is very great for computer products. They want to seize that opportunity.

Therefore, the quote that was provided in the Wall Street Journal that my friend, the gentleman from California [Mr. TUCKER] raised, and Mr. MARTINEZ raised it again, it is very clear, businesses have moved there. I am not saying that none will move following passage of NAFTA, but the fact of the matter is NAFTA provides a disincentive for U.S. businesses to move from the United States to Mexico.

□ 2140

I yield now to my colleague, the gentlewoman from the State of Washington, Mrs. JOLENE UNSOELD.

Mrs. UNSOELD. Madam Speaker, I thank the gentleman for yielding.

We have heard a lot of talk in the last few days about whether we are looking forward or looking backward, and you know, I have been trying for several years to have us look forward as to how we manage natural resources, shared international natural resources.

More than 2 years ago I introduced legislation that passed through the House that would have set as policy, and I will read that part of the provision that "It is declared to be the policy of the Congress that the United States shall address environmental issues during multilateral, bilateral and regional trade negotiations. In implementing the policy declared herewith, the President shall direct the United States Trade Representative to actively seek to reform articles of the General Agreement on Tariffs and Trade, GATT, and to take into consideration the national environmental laws of contracting parties and international environmental treaties, and to take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns."

Madam Speaker, this provision passed through the House, languished in the Senate, was watered down and has not, therefore, been the directive that it should have been as we entered into these negotiations for both NAFTA and GATT.

I include for the RECORD a legal opinion by Prof. Robert Benson, professor of law from Loyola Law School in Los

Angeles which buttresses some of the statements that I have been making in recent weeks on how this NAFTA will not support the enforcement of these provisions for the future, not only for protection of the environment, but to ensure that we have sustainable use of natural resources in the future.

I would just point out that the professor concludes that a pro-NAFTA specialist business attorney with a law firm addressing NAFTA wrote that "Challenges to environmental or health and safety regulations as trade restrictions are not uncommon, and it is difficult to imagine an environmental standard that could not be challenged by the industrial sector it affects based upon its impairment of unfettered economic activity," as found in NAFTA.

I include this analysis for the RECORD, as follows:

MEMORANDUM OF LEGAL OPINION RE WILL THE NORTH AMERICAN FREE-TRADE AGREEMENT JEOPARDIZE FEDERAL, STATE AND LOCAL LAWS?

(By Robert W. Benson, Professor of Law, Loyola Law School, Los Angeles)

I. QUESTION PRESENTED

The Bush Administration stated that the North American Free Trade Agreement (NAFTA)¹ "[m]aintains existing U.S. health, safety and environmental standards by allowing the U.S. to continue to prohibit entry of goods that do not meet U.S. standards" and "[a]llows the parties, including states and cities, to enact even tougher standards."² Similarly, the Clinton Administration, has said that, "No existing federal or state regulation to protect health and safety will be jeopardized by NAFTA."³

Are these statements accurate as a matter of law? Or, as critics allege, will NAFTA jeopardize federal, state and local laws, forcing different, possibly lower standards, particularly in matters involving health, safety, environment and labor?

II. SHORT ANSWER

NAFTA jeopardizes federal, state and local laws. Analysis of the texts of NAFTA, the Supplemental Accords, and the operation of U.S. and international law necessarily leads to the conclusion that the Bush and Clinton Administration statements are legally inaccurate. Although the NAFTA document itself will technically not have independent effect in U.S. law, it will be incorporated into a federal implementing statute which, like any other federal statute, has the power to prevail over other federal laws and to preempt conflicting state and local laws. While there is significant language in NAFTA that could shield domestic laws from attack if read alone, that language is modified by other provisions that could override domestic laws inconsistent with NAFTA norms. The Bush and Clinton administration statements selectively rely upon only the protective language and discount the overriding language.

If a domestic law is challenged as inconsistent with NAFTA, the conflict between the protective and the overriding language will not normally be resolved by American legislators or the judiciary but by arbitral panels composed of five lawyers and international trade specialists appointed by the U.S., Can-

ada and Mexico. Panel proceedings and documents will be secret. The proceedings will not be open to the public or to the local or state officials whose laws are in dispute. If a panel rules that a federal, state or local law is inconsistent with NAFTA, the U.S. government would have an international legal obligation either to accept trade sanctions, to pay compensation to the complaining nation, or to enforce the ruling by steps that could include legislation, litigation, or financial measures imposed against recalcitrant state or local governments. It is in this way that NAFTA jeopardizes laws, traditional democratic processes and sovereignty at each level of government in the United States.

III. ANALYSIS

A. Legal nature of NAFTA

NAFTA is not a treaty, but rather a non-self-executing congressional-executive agreement. It is entered into by authority of the Omnibus Trade and Competitiveness Act of 1984 (OTCA),⁴ which authorizes the President to negotiate trade agreements but requires implementing legislation by Congress before an agreement may enter into force. Such trade agreements "derive their domestic legal effect from the enacted implementing legislation and do not have independent effect in the U.S. law."⁵ Thus, it is technically not the NAFTA document itself but rather the federal statute that implements it that could supersede U.S. domestic laws.

B. Transcendent power of the federal implementing legislation

(i) Federal laws. It is hornbook law that whether one federal statute prevails ("preemption") would not be the term used here) over another depends upon Congressional intent in enacting the statutes. Intent is determined from the words of the statute itself, canons of construction, and legislative history and other extrinsic evidence reflecting the political and social context of enactment. If intent is not apparent and conflict is unavoidable, then the later enacted statute prevails.

Congress has tied all recent trade agreements to the provision in the Trade Agreements Act of 1979 which provides that "no provision of any trade agreement . . . which is in conflict with any statute of the United States shall be given effect under the laws of the United States."⁶ NAFTA's implementing statute will probably be tied in the same way. This explicit savings clause, plus evidence from the legislative and political history of NAFTA such as the Bush and Clinton administration statements quoted at the outset of this memorandum, do permit strong arguments that NAFTA would not threaten existing federal laws. In fact, in recent cases arising under analogous trade laws, U.S. courts have held that Congress did not intend to override the federal laws in dispute, though it could have done so had it wanted to.⁷

As a practical matter, however, the savings clause is thin protection of federal laws, for several reasons:

First, the clause would not stop Mexico and Canada from challenging laws that they believe conflict with NAFTA, and the challenges would put pressure on the U.S. to repeal or reinterpret the laws. Mexico, for example, challenged the U.S. ban on dolphin-endangering tuna, Canada challenged our ban on asbestos, and the European Community has challenged the U.S. "CAFE" standards for fuel economy in automobiles, despite the presence of the savings clause in the U.S. implementing legislation for the General Agreement on Tariffs and Trade

(GATT) and the U.S.-Canada Free Trade Agreement.⁸

Second, conflicts between NAFTA and other federal laws will not usually be resolved by U.S. courts, or by U.S. agencies working under the democratic openness requirements of the Freedom of Information Act,⁹ Government in the Sunshine Act,¹⁰ Federal Advisory Committee Act,¹¹ and Administrative Procedure Act.¹² They will usually be resolved by NAFTA arbitral panels of 5 trade specialists whose proceedings and documents are secret.¹³ These panels, inherently structured to favor trade, may well declare U.S. laws in violation of NAFTA despite the presence of the savings clause. This occurred in the tuna/dolphin case when a GATT panel found that the federal Marine Mammal Protection Act violated the U.S.'s obligations to Mexico.¹⁴

Third, under pressure from the White House, U.S. administrative agencies can be expected to tilt their regulations to favor trade at the expense of other federal statutes.¹⁵

Fourth, if the savings clause were rigidly applied, it would render much of the NAFTA text meaningless. If cases ever do come before U.S. judges, trade advocates will cite canons of construction urging the judges to avoid interpretations that lead to absurd results, that vitiate statutes, or that find conflicts. These canons would pressure judges, already under doctrinal pressure to defer to the President in foreign affairs, to uphold NAFTA norms in ways that erode federal statutes without flatly overturning them.

Fifth, future federal laws will be drafted to avoid conflict with NAFTA standards, causing legal criteria like the rational basis test, due process, environmental impact, open proceedings, open records, and public participation—criteria that were established over decades in epic battles—to be abandoned in favor of narrow tests that principally concern impact on trade and that require closed proceedings.

(ii) State and local laws. Under the Supremacy Clause of the U.S. Constitution¹⁶ a federal statute preempts state and local laws if Congress intends it to or if conflict is unavoidable. The Supremacy Clause also establishes that treaties (and executive agreements)¹⁷ preempt state and local laws. While NAFTA will preempt via federal statute rather than as a treaty or executive agreement, the strong tradition of preemption by treaties and executive agreements makes it all the easier to find preemption by NAFTA.

The NAFTA implementing statute may contain a provision expressly preempting state and local laws in conflict with it, like that in the Canada-U.S. Free Trade Agreement which states: "The provisions of the Agreement shall prevail over (A) any conflicting State law . . . The United States may bring an action challenging any provisions of State law . . . inconsistent with the Agreement."¹⁸ The legislative history of the Canadian agreement emphasizes Congress' intent: "These provisions implement the obligation . . . to take all necessary steps to ensure observance of provisions by State . . . and local governments, and are consistent with the Constitutional preemption doctrine. No problems with State measures are anticipated and court action would be only a last resort."¹⁹

Even if the NAFTA implementing statute is silent about preempting state and local laws, the threat persists. Preemption can be found by implication or by unavoidable conflict between the federal and state or local laws. Since the text of the NAFTA document

Footnotes at end of article.

requires the federal government to take "all necessary measures" to implement the terms of NAFTA, "including their observance . . . by state . . . governments,"²⁰ and since "reference to a state . . . includes local governments of that state . . .,"²¹ there will be both an implied and an unavoidable preemption of conflicting state and local laws. For certain NAFTA rules, the requirement is that "appropriate measures" be taken to enforce them against state and local governments.²² Under analogous requirements in GATT that "all reasonable measures" be taken, a GATT panel ruled in February, 1992 that the U.S. had to face trade sanctions or take action to change beer and wine tax and distribution practices in some 40 states:

Citing the treatises of the two leading U.S. legal scholars on international trade, Professor John Jackson of the University of Michigan and Professor Robert Hudec of the University of Minnesota, the GATT panel ruled that once adopted by Congress, international executive agreements become part of U.S. federal law, and as such trump inconsistent state and local law.

Further . . . the GATT panel ruled that ["all reasonable measures"] language required the U.S. federal government to take all steps within constitutional authority to force state compliance with GATT measures and panel rulings. This would include preemptive federal legislation, litigation to preempt the GATT-inconsistent state laws and withdrawal of all federal support (funding and other) for GATT-inconsistent state practices.²³

Reacting to the GATT ruling, the National Conference of State Legislatures issued an "Information Alert," noting correctly that "countries could use the case as a basis for challenging other types of state laws they have questioned in the past, including those involving the environment and product safety."²⁴

Even if the NAFTA implementing statute were to provide expressly that no state or local law is preempted, the threat persists. The situation would be the same already analyzed above with respect to the savings clause for federal laws, and the same problems recur. First, the clause would not stop Mexico and Canada from challenging state and local laws that they believe conflict with NAFTA. Second, conflicts between NAFTA and state and local laws will not usually be resolved by American courts or agencies working under open government requirements. They will usually be resolved by NAFTA arbitral panels of 5 trade specialists whose proceedings and documents are secret. State and local officials, represented only by U.S. federal officials, have no right to participate to defend their laws. These panels may well declare state and local laws in violation of NAFTA despite the presence of the savings clause. Third, under political pressure from Washington, state and local agencies can be expected to tilt their laws to favor trade at the expense of their other laws. Fourth, if the savings clause were rigidly applied, it would render much of the NAFTA text meaningless. If cases ever do come before U.S. judges, trade advocates will cite canons of construction that would pressure judges to uphold NAFTA norms in ways that erode state and local laws without flatly overturning them. Fifth, there will be pressure to draft future state and local laws to avoid conflict with NAFTA standards, causing legal criteria like the rational basis test, due process, environmental impact, open proceedings, open records, and public participation to be abandoned in favor of

narrow tests that principally concern impact on trade and that require closed proceedings.

C. The protective text vs. the overriding text

The fact that the Bush and Clinton administrations have been able to quote NAFTA language that appears to protect U.S. health, safety, environmental and other laws from threat, while opponents have quoted NAFTA language that appears to threaten U.S. laws, is explained by the simple fact that NAFTA contains two conflicting textual threads. Under political pressures from both sides, drafters wove both threads throughout. As the document was conceived primarily as a trade agreement, however, the trade thread overrides the thread protecting U.S. laws in virtually every chapter. To assure that trade trumps all laws, the drafters even inserted a general clause in Annex 2004 allowing challenge of whenever any party "considers that any benefit it could reasonably have expected to accrue to it" under most of NAFTA has been "nullified or impaired as a result of any measure that is not inconsistent with this Agreement." [Emphasis added.] Some of the more specific key provisions in the 1,140 pages of text are:

Chapter One: Objectives

Protective provisions:

Art. 104. Five international agreements on endangered species, ozone, hazardous waste and border cooperation prevail over NAFTA. Overriding provisions:

Art. 104. But only domestic enforcement which is "least inconsistent" with NAFTA is protected. And dozens of agreements to which one or several NAFTA countries are party are not listed are therefore not protected.

Art. 102. Parties "shall interpret and apply" NAFTA in light of a list of exclusively free trade objectives. Environmental, health, safety and other objectives are not listed.

Art. 105. Parties "shall ensure that all necessary measures are taken in order to give effect to this Agreement, including their observance, except as otherwise provided in this Agreement, by state [and local] governments."

Chapter three: National Treatment

Protective provisions:

Annex 301.3(C). Controls on log exports are exempted from "national treatment" and export restrictions.

Overriding provisions:

Arts. 301 and 309. Parties and their state and local governments "shall accord national treatment to the goods of another Party" and may not adopt "any prohibition or restriction" on goods of another Party, in accordance with GATT "including its interpretive notes." This incorporates the Tuna/Dolphin jurisprudence prohibiting restrictions on goods based on their production process methods, including methods harmful to health, safety, the environment or labor and human rights. It also proscribes certain domestic subsidies. Even the exemption for logs does not protect log export controls from attack under other NAFTA provisions. See analogous determination in the Softwood Lumber Products dispute, 57 Fed. Reg. 8812 (March 12, 1992).

Chapter Six: Energy and Basic Petrochemicals

Protective Provisions:

Art. 607. National security and defense may justify restrictions on imports and exports of energy goods.

Overriding Provisions:

Art. 605. Restrictions on energy exports permitted only under narrow circumstances.

Art. 606. Energy regulatory measures permissible only if they do not violate rules opening energy imports and exports, and only if they accord "national treatment" under Art. 301. They must "avoid disruption of contractual relationships" to maximum possible extent.

Art. 608. Subsidies for oil and gas are permissible. By implication, and in conjunction with Art. 606, incentives for solar, wind, and other alternative energy supplies appear to be prohibited.

Chapter Seven: Human, Animal and Plant Health Measures

Protective Provisions:

Art. 712. Each Party may adopt measures "for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation." Each party may "establish its appropriate levels of protection. . . ."

Art. 713. Measures shall be based on international standards "without reducing the level of protection," and may be "more stringent" than international standards.

Overriding Provisions:

Art. 712. Above right to more stringent standards must be "in accordance with this Section [Seven (B)]" which limits how the level of protection may be set.

Appropriate levels of protection must be in accordance with Article 715.

Any measure must be "based on scientific principles," and a scientific "risk assessment," must not "arbitrarily or unjustifiably discriminate" against foreign goods, must be applied "only to the extent necessary to achieve its appropriate level of protection," and must not be a "disguised restriction on trade. . . ."

Art. 715. In establishing its "appropriate level of protection," each Party shall take into account, among other things, "loss of production or sales that may result from the pest or disease," "the objective of minimizing negative trade effects," and the objective of avoiding "arbitrary or unjustifiable distinctions. . . ."

Art. 717. Inspection procedures of imported goods shall be completed "expeditiously." Parties "shall limit any requirement regarding individual specimens or samples" to those "reasonable and necessary."

Art. 718. Each Party proposing to adopt or modify a health standard at the federal, state or local levels must give early notice and opportunity to comment to other Parties.

Chapter Nine: Technical Barriers to Trade Protective Provisions:

Art. 904. Each Party may adopt any standards-related measure "including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers. . . ." Each Party may "establish the levels of protection that it considers appropriate. . . ." "Legitimate objectives" may be pursued, and are defined [Art. 915] as including "safety, protection of human, animal or plant life or health, the environment or consumers . . . [and] sustainable development."

Art. 905. Higher levels of protection than those in international standards may be established.

Overriding Provisions:

Art. 902. Parties "shall seek, through appropriate measures, to ensure observance of Articles 904 through 908 by state [and local] governments. . . ."

Art. 904. Standards must be "in accordance with this Agreement." Standards must accord "national treatment" under Art. 301.

Standards may not be adopted "with a view to or with the effect of creating an unnecessary obstacle to trade." Goods of another party meeting the "legitimate objective" may not be excluded. Definition of "legitimate objective" [Art. 915] calls for consideration of "technological" factors and "scientific justification."

Art. 909. Each Party proposing to adopt or modify a technical regulation at the federal or state level must give notice and opportunity to comment to the other Parties.

IV. CONCLUSION

American elected officials and their legal advisors need to take very seriously the assertions that their present and future laws are in jeopardy. NAFTA opponents such as the Sierra Club²⁵ and Public Citizen²⁶ have argued reasonably that NAFTA's language threatens such federal laws such as the Delaney Clause, other food, safety and pesticide laws, many wildlife and conservation statutes, state air and water pollution laws, labor laws, food, consumer, safety, energy, packaging and labeling laws, including California's Proposition 65, as well as local recycling, energy, transportation and other laws. Professor Robert Stumberg of the Georgetown University Law Center has released a chart of 45 types of typical state laws that could be challenged under NAFTA.²⁷ Lawyers for the Natural Resources Defense Council, one of six environmental groups supporting NAFTA, have analyzed the issue. Even relying heavily on unofficial interpretations and non-binding private assurances from the U.S. Trade Representative Mickey Kantor, they conceded that some U.S. laws are indeed threatened²⁸ and limited themselves to a relatively weak claim that the rest of NAFTA's threat is "highly unlikely."²⁹ Specialist, pro-NAFTA business attorneys with the law firm of Baker & McKenzie, addressing NAFTA, have written that "challenges to environmental or health and safety regulations as trade restrictions are not uncommon, and its difficult to imagine an environmental standard that could not be challenged by the industrial sector it affects based upon its impairment of unfettered economic activity."³⁰

The most disturbing aspect of NAFTA for state and local elected officials and their legal advisors, however, may be that they will have no right participate in the secret arbitral panel proceedings that challenge their laws, and no appeal. This may also be the most disturbing aspect of NAFTA for citizens and voters, constituting as it does perhaps the most radical shift of power from open, local government to closed, distant government that our nation has yet experienced.

FOOTNOTES

¹ North American Free Trade Agreement Between the Government of the United States of America, The Government of Canada and the Government of the United Mexican States (1992).

² Office of the U.S. Trade Representative, Environment: The North American Free Trade Agreement (Aug. 1992).

³ Executive Office of the President, The NAFTA, July 1993 at p. 8.

⁴ Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. §§2901 et seq.

⁵ Grimmett, Congressional Research Service, NAFTA: Some Legal Basics, Mexico Trade and Law Reporter, text accompanying notes 10 and 11 (Feb. 1, 1993).

⁶ 19 U.S.C. §2504 (a).

⁷ Public Citizen v. Office of USTR, 804 F Supp 385 (1992); Mississippi Poultry Ass'n v. Madigan, 992 F 2d 1359 (5th Cir. 1993); Suramericana de Aleaciones Laminadas v. U.S. 966 F 2d 660 (Fed Cir. 1992).

⁸ GATT, Dispute Settlement Panel Report on U.S. Restrictions on Imports of Tuna, 30 I.L.M. 1594

(1991); Corrosion Proof Fittings v. EPA, 947 F2d 1201 (5th Cir. 1991); GATT Panel to be Appointed to Resolve US Large Auto Tax Issue, USTR Announces, BNA Int'l Trade Reporter, June 9, 1993.

⁹ 5 U.S.C. §552

¹⁰ 5 U.S.C. §552b

¹¹ 5 U.S.C. App.

¹² 5 U.S.C. §§551 et seq.

¹³ "[T]he panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential." NAFTA, Art. 2012.1 (b). questions have been raised about the constitutionality of such panels. See Morrison, Appointments Clause Problems in the Dispute Resolution Provisions of the United States-Canada Free Trade Agreement, 49 Wash. & Lee L. Rev. 1299 (1992), and Chen, Appointment with Disaster: The Unconstitutionality of Binational Arbitral Review Under the United States-Canada Free Trade Agreement, 49 Wash. & Lee L. Rev. 1455 (1992).

¹⁴ GATT Report, supra note 8.

¹⁵ Public Citizen case (U.S. Trade Representative found by court to be "stonewalling" Freedom of Information Act requests), Mississippi Poultry case (U.S. Department of Agriculture ignoring statutory language requiring same inspection procedures for foreign and domestic poultry), supra note 7.

¹⁶ U.S. Constitution, Art. VI, Cl. 2.

¹⁷ United States v. Belmont, 301 U.S. 324 (1937).

¹⁸ United States-Canada Free Trade Agreement Implementation Act of 1988, §102(b), 102 Stat. 1851 (1988).

¹⁹ H.R. Rep. No 816, Part I, 100th Cong., 2d Sess. 11 (1988).

²⁰ NAFTA, Art. 105

²¹ NAFTA, Art. 201.2

²² NAFTA, Art. 902.2

²³ Lori Wallach, Staff Attorney, Public Citizen, Washington, D.C., Memorandum to Minnesota Fair Trade Campaign, May 3, 1993, at p. 2.

²⁴ NCSL, Washington, D.C., GATT Decision on Beer/Wine Threatens State Sovereignty (undated).

²⁵ Sierra Club, Washington, D.C., Analysis of the North American Free Trade Agreement and the North American Agreement on Environmental Cooperation (Oct. 6, 1993).

²⁶ Testimony of attorneys Lori Wallach and Patti Goldman, Public Citizen, Washington, D.C. before the Committee on Energy and Commerce, Subcommittee on Commerce, Consumer Protection and Competitiveness, U.S. House of Representatives, February 18, 1993.

²⁷ Stumberg, The New Supremacy of Trade: NAFTA Rewrites the Status of States (Center for Policy Alternatives, Washington, D.C., Sept. 24, 1993).

²⁸ NRDC, Washington, D.C., New Release, Sept. 14, 1993, attaching legal memorandum by Winthrop, Stimson, Putnam & Roberts, at text accompanying note 105.

²⁹ Id. at 18, §B

³⁰ McKeith and Hall, Environmental Compromise: Striking the Balance Between Trade and Ecology, 15 BNA Int'l Env. Reporter 724 (Nov. 4, 1992).

I thank the gentleman very much. Mr. BONIOR. I thank my colleague for her contribution and for the insertion of the views of the professor from Loyola University on this issue. I would just add briefly that I think the enforcement of the environmental concerns that the gentlewoman from Washington raises were well laid out in the comments that were made by Jaime Serra, the Commerce Secretary in Mexico, who basically was responsible for negotiating this treaty when he told Mexican political, social, and economic leaders in Mexico in selling this treaty to them that they have nothing to fear basically in terms of the sanctions and the enforcement mechanisms in this treaty, because they are too cumbersome, they are too long, they are too difficult, and we are beyond that, we are safe, we do not have to worry about that. That is what the Mexican leaders who negotiated this treaty are telling their own people.

At this point we have many people who have spent time and have thoughts that they want to get across, but I want to make sure everybody who wishes to speak here has time. We have about 25 minutes remaining, so if my colleagues could keep that in mind we can share this time equally.

I yield to the gentlewoman from Maryland [Mrs. BENTLEY].

Mrs. BENTLEY. Madam Speaker, I thank the gentleman. I want to thank the majority whip for taking this time on the eve of one of the most historic votes in this Congress.

A little while ago in my office I had a telephone call from a man in Wisconsin. He is about 47 or 48 years old. He said he had witnessed Congresswoman KAPTUR on "Crossfire" earlier tonight, and he said, "I want to take my hat off to you and her for being the women leading this fight." And he said, "I'm scared." He has four children. He had been in a factory before that had closed down about 4 years ago. There he had been earning \$11 an hour. He is now earning \$7 an hour working for a company that is owned by Swedish interests. He said, "The atmosphere here is such that I know as soon as this agreement goes into effect this company is going to be transplanted down into Mexico. They are pushing us to lobby for NAFTA. They put things on the bulletin board, but they will not let us put the other side of the story on the bulletin board." And he said, "It is a very scary area that we are in." And he pointed out that they have already some Mexican nationals up there studying the plant and doing work around there. And he said, "I just know what's going to happen, and I'm going to be out of work again because of the transplant."

This is what so many of us are so concerned about, is what is going to happen to the American workers.

We have been lobbied by the free traders to vote for the NAFTA. Members of this body have stated loud and clear—from the very first days of the NAFTA debate that they would not support a NAFTA which compromised the breaking down of the opening up of the Mexican market.

Where are they tonight in the vote tally. Agriculture is getting protection. Yes. Let's use that dirty word. The White House is giving glass and appliances protection. Sorry free traders, but that is what it is. I even understand that some Congressmen have been swayed to change their vote today by promises of protection in their districts of specific industries.

Are the free-trade voters walking the floor tonight struggling with their consciences—remembering with qualms their brave statements of 3 months ago?

And what of the fiscal conservatives? Remember those statements? They could not possibly support a NAFTA

that would break the budget. Is \$20 billion or possibly, an estimated \$50 billion enough to cause their consciences to be stirring over the big vote tomorrow night?

And what about the 17 new bureaucracies filled with international bureaucrats? Take note every U.S. Government bureaucrat as you are told to take early retirement, or face a possible RIF—because the U.S. Government will shrink even as we grow a whole new bureaucracy offshore out of control of this Congress responsible to no one in this Government.

Where are the good old conservatives of your who stood by their word—who really believed that government should be in control of the people of America.

Where is the control going? Who will lose the most out of this agreement? The workers of the United States? The American people? The courts of the United States? The Congress?

Well, listen to this and make up your own mind.

This is the list that I have in my hand of the deals that have been made that we know of so far that we have been able to uncover, lots of deals, and that is what I would say is not free trade.

I include that list for the RECORD as follows:

THE FOLLOWING IS A PARTIAL LIST OF THE SIDE DEALS BEING OFFERED TO MEMBERS OF CONGRESS FOR THEIR VOTE ON NAFTA

The side agreements on Labor, Environment, and Snap-back provisions.

Peanuts—protection of peanut butter from foreign imports as well as requiring all foreign peanuts to meet U.S. quality standards.

Citrus.

Sugar—definition of High Fructose Corn Syrup (HFCS).

Home appliances.

Wine.

Grazing fees for western range lands.

Protection of domestic durum wheat against Canada.

Limiting tobacco tax.

Appointment of regional trade officials.

Roads and bridges projects.

Center for Western Hemispheric Trade—Texas.

BART system—rapid transit system.

Two C-17 planes.

North American Development Bank—originally said it was too costly.

Flat glass.

Diversion of significant amounts of water.

Various other border projects.

Super 301 provision offered in Senate—rejected by White House.

Snapback provisions for Frozen Concentrated Orange Juice (FCOJ).

Protection against Mexican fruits and vegetables—Florida delegation.

Sunset Provision on travel tax for international passengers.

Worker retraining.

Textile Protection.

Extradition of accused rapist from Mexico.

Extradition treaty with Mexico—We have had an extradition treaty with Mexico for some time; however, officials have given up trying to enforcing it.

Asparagus.

Agricultural assistance grants for Midwest.

Bedding components.
Executive Order on Trade and Environment (Deals with endangered species).
Manhole covers.
Pipe and tube.
Honda tariff waiver in NAFTA agreement.
Total: 34.

I want to read one paragraph that comes out of a decision from a distinguished law firm in the District of Columbia, one that specializes in the Constitution, and this is what it has to say about what is going to happen to the powers of this Congress, this institution under this NAFTA.

Under NAFTA, the President can take sanctions against the other countries for violating the side agreements. Therefore, the President can unilaterally interpret or change provisions in the implementing legislation, which provisions were passed by the Congress, without a subsequent act of Congress. This would be in direct violation of Article I of the Constitution and would be a serious abrogation of the rights of the Congress. Essentially, the President would be assuming the right to legislate.

I just want to emphasize to those Members who may be wavering tonight that we are losing a lot of power in this institution in this agreement. And again, free traders, remember, there is an awful lot that has been happening here, and it is not free trade that is involved.

This is not an idle concern when one considers what these side agreements actually cover. The side agreement on labor provides for dispute resolution regarding a country's failure to enforce labor laws, respect health or safety standards, provide for adequate protection against child labor, or provide adequate minimum wages. The environmental side agreement covers all matters of the environment, including air and water pollution, fisheries and animal husbandry management, carbon emissions, acid rain, and the use of nuclear power. Therefore, the President could deny trade benefits enacted by Congress if a trilateral Commission ruled that a certain country's laws were inadequate concerning human rights, labor rights, the right to strike, women's rights, abortion rights, nuclear non-proliferation, protection of endangered species, and the like, all without any act of the Congress.

Madam Speaker, I want to thank the majority whip again for taking the time to be right on target on this particular issue, and again joining with my friends.

Mr. BONIOR. I thank my colleague for her vigilance and her strength on this issue. She has been an inspiration to all of us, and I thank her particularly for her concerns about the constitutional question and the question of sovereignty she has raised consistently throughout this debate.

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Mr. Speaker, I yield now to my friend, the gentleman from Michigan, and then I will share time with my other friends here. I yield to my friend, the gentleman from Michigan [Mr. STUPAK].

Mr. STUPAK. Mr. Speaker, I thank the gentleman from Michigan, the gen-

tlewoman from Maryland [Mrs. BENTLEY], the gentlewoman from Ohio [Ms. KAPTUR], the gentlewoman from Florida [Mrs. THURMAN], the gentleman from California [Mr. TUCKER], the gentleman from Wisconsin [Mr. BARCA], the gentleman from Ohio [Mr. BROWN], and all who shared with us these last few months we have come to this floor committed in our opposition to NAFTA. I hope that our comments have helped to enlighten, not confuse, the issues surrounding NAFTA.

We have talked again tonight a little bit about jobs. Some people say we will gain jobs. Other people say we will lose jobs under this NAFTA agreement.

It is much, much more than just jobs.

I am here as a freshman, and I am wrapping up my first year in this prestigious body. I came here last fall in hopes that we could change the normal way of doing business in this institution. I came here because I believe in this country. I came here because I believed in our Government, and I came here because I have some basic beliefs.

After watching all the wheeling and dealing, after watching all the side agreements, and after watching all the side promises, the what-you-want-for-your-vote attitude that prevails as we are on the eve of this vote has become to me the battle cry of proponents of NAFTA. It is not what you believe in but is what do you want.

I am on the eve of this vote very disappointed in the way some people have chosen to govern.

To govern, what does that really mean? Does it mean get whatever you can and who cares about principles and beliefs? Does it mean make the best deal for yourself personally, and who cares about principles and beliefs? To govern, does it mean to sell your vote for the largest, most expensive project in your district? To govern, does it mean that we cut side agreements for industry, be it sugar, citrus, small appliances, wheat, broom corn, or tomatoes?

Yes, I may only be a freshman, but I have some basic principles of belief, and I believe that all American workers are important, that principles and beliefs should not be traded or sold.

I believe in protecting our environment. I believe in democracy, the right of people to assemble, to come together, to collectively bargain with their employer. These are basic American beliefs and basic American rights.

I do not believe that these American beliefs can be suddenly traded away. I do not think they can suddenly be taken down to become a side agreement, and I do not think they can become the basis for a pork-barrel project in your district.

Mr. Speaker, and Mr. Majority Whip, I am of the opinion that you cannot trade away democracy to authoritative government. You cannot trade away our environment, and you cannot trade

away our American values and beliefs for our great American workers. You cannot cash them in in hopes of future economic gain based on an agreement that fails to guarantee basic American values.

I had concerns about this NAFTA just like everyone else here, and, you know, I wrote to the President. I asked him, coming from the Great Lakes State of Michigan, "Tell me, Mr. President, what assurance exists under NAFTA to guarantee that our Great Lakes water will not be diverted to Mexico as I and other environmentalists and environmental groups in the United States and Canada believe will happen under this NAFTA."

I received a response. If I could, I would like to read it into the RECORD, from the White House:

DEAR REPRESENTATIVE STUPAK: Thank you for your letter regarding the North American Free-Trade Agreement. I appreciate your sharing this information with the President. The President has been advised of your interest in this matter, and you will receive a response from him in the near future. In the meantime, if I can be of assistance to you, do not hesitate to contact my office.

Well, thank you for no answer, because my vote for NAFTA is not for sale, so I really did not expect a response, but I thought our environment needed a response. I thought the diversion of Great Lakes water needed a response. I thought that American beliefs needed a response.

Well, by the time I get an answer on something as critical as Great Lakes water, it will be too late. I will have voted against this NAFTA agreement, because I believe in some basic American principles.

If any of my colleagues are listening tonight and if they have made their deal, if they have made their side agreement, if they have a deal for their project in their district, I have a question, and I hope your answer comes before we vote tomorrow, before you vote tomorrow: I ask you, was it really worth your special interest to sell out our American beliefs? How do you go back home and face the American worker? How do you stand up for the environment? How do you believe in human dignity, human rights, if you vote for this NAFTA?

So those special-deal colleagues, I wish you goodnight, I hope you sleep tight, and I hope you do not sell out our American principles tomorrow night.

Thank you, Mr. Majority Whip, and thank you for your leadership on this issue.

Mr. BONIOR. I thank the gentleman from Michigan [Mr. STUPAK] for his comments and for his passion and his diligence on this, and I share your sentiments completely.

I would now yield to the distinguished gentlewoman from Ohio [Ms. KAPTUR], who has been a champion of workers and workers' families on this issue for a long, long time.

Ms. KAPTUR. I would like to thank the majority whip for spending the evening here again with us in the twilight hours of this great debate, to thank him for his leadership and, most of all, for his good heart and to know that the working people of our country and of Mexico have a real champion here in the Nation's Capital, and to join with our soldiers in this effort, the gentleman from Michigan [Mr. STUPAK], the gentleman from New York [Mr. OWENS], the gentleman from Wisconsin [Mr. BARCA], and the gentlewoman from Florida [Mrs. THURMAN], and the gentlewoman from the great State of Maryland [Mrs. BENTLEY], who was here with us a little bit earlier, and to our friend, the gentleman from Pennsylvania [Mr. KANJORSKI], and the gentleman from California [Mr. MARTINEZ]; we thank them so very much for their great commitment to the working people of our continent in their declarations this evening, and I want to say that as I have watched this debate occur, I do not think ever in my 11 years here in the Congress have I really felt as energized and as proud of the people that I serve with and the people of our country. This truly is a struggle for a better way of life for all people, and we consider this issue during a time when our own domestic economy has been sputtering and suffering the loss of millions of manufacturing jobs.

AN OPPORTUNITY

Mr. Speaker, in this post-cold war era, the United States confronts an historic opportunity as the preeminent world economy and the world's largest democratic republic and market. Our new challenge is to use our trading power to promote democracy and raise the standard of living for our own people, as well as people around the world. Our objective should be to engage in high wage/high productivity competition with other advanced economies, not to meet the competition of low wage/high productivity/nondemocratic societies. And we must place equal emphasis on prying open the closed markets of the world. The trade agreement that moves us into this new era of trade-linked advancement will be precedent setting.

NAFTA DOESN'T MEASURE UP

This NAFTA is not a fundamental realignment of trade policy. It is a narrowly drawn tariff and investment agreement with toothless side addenda. It is a throwback to post-1946 World War II era, when America tried to rebuild the world and stave off communism by absorbing imports into our economy from nations devastated by war and corrupt political systems. This program was wildly successful, and Japan, Korea, and Taiwan are now among our foremost competitors. But the world has changed. Their economies remain export driven, their production is still aimed at the United

States market, but they have continued to protect their own markets from United States exports. The result is a persistent trade deficit, and an erosion of our economic security. (Chart A—trade balance). Ours is still the largest national economy in the world, but it is threatened by a flood of imports from low wage countries, and persistent barriers to U.S. exports to other major markets.

THE ECONOMIC REALITIES

With the end of the cold war and the growth of the global economy, our security depends more than ever on economic strength, and our most critical challenges are in the marketplace. The history of the 20th century in our country has been one of "taming" our national marketplace to make room for social values. American workers fought hard for labor rights; the bleak years of the depression taught us important lessons about regulating the marketplace; and more recently we have worked to find effective ways to protect our environment and the health and safety of our citizens at home and at work. Canada, Japan and the nations of Europe have enacted many similar protections, but we compete in global markets with nations that do not have similar protections. They do not share our political and social values, and they are willing to accept conditions that we find unacceptable.

The challenge of trade policy in this unregulated global market is to use our market power to respect our workers and strengthen our economy. We cannot let the greed of the marketplace overwhelm the values that underlie our democracy. As we adapt to remain competitive and increase productivity, we must make sure that our policy reflects our fundamental values and contributes to a better standard of living for our citizens.

Since the 1970's, the American economy has been eroded by gaping trade deficits and devastating losses of high-wage manufacturing jobs. Our full-time high-wage job base continues to erode while part-time work increases.

During the last decade, United States manufacturing employment fell by 951,000 jobs, while employment in the maquiladora areas of northern Mexico exploded by 431,000 jobs.

Last year, U.S. employment fell by another 325,000 jobs.

Unemployment just ticked up again, and more than 400,000 layoffs have been announced since January 1.

General Motors will trim its U.S. workforce by 74,000 and close 21 plants over the next 4 years.

IBM has announced plans to cut its labor force by an additional 35,000 workers.

Industry restructuring may insure the long-term survival of the companies themselves, but we cannot ignore the significance of the job losses. Laid-off workers have not been able to find

comparable jobs, and communities are reeling from revenue losses from closed facilities and smaller payrolls.

Over 60 percent of the new jobs created during the first half of 1993 were part-time jobs.

The majority of new jobs were created in three categories—temporary work, restaurant work, and health care.

Service sector jobs are, in most cases, clearly inferior to the manufacturing jobs they replace—lower pay, lower benefits, less job security.

Something is fundamentally wrong with U.S. trade and economic policy that has allowed this set of circumstances to proceed unabated, while the economies of other nations have caught up to our own.

TARIFFS HAVE DROPPED

Since the early 1970's when most U.S. tariffs dropped to almost nothing (Chart B—Tariffs), the U.S. has been hemorrhaging jobs and accumulating historic trade deficits. Averaging over \$100 billion in many years, the trade deficit represents thousands of lost jobs in the manufacturing sector. Every one billion dollars of trade deficit translates into 23,500 lost U.S. jobs, so we can draw the direct connection between trade deficits and lost jobs.

For too long, our trade agreements have been "sweetheart trade deals" with too narrow a focus, often benefitting one industry or sector, that is the few at the expense of the many. U.S. trade agreements have resulted in harm to our workers, our farmers, and our economic health.

This debate is not really about tariffs in Mexico. Since 1985 most tariffs have dropped by 90 percent (United States tariffs average 3.5 percent and Mexico 8.2 percent). As a result we have witnessed the explosion of United States investment in northern Mexico with the bulk of production from more than 2,200 companies headed back here into our market. Business interests love Section 1110 of the Agreement, which provides strong investment guarantees.

No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment, except for a public purpose; on a nondiscriminatory basis; in accordance with due process; and on payment of compensation.

Compensation at full market value shall be paid without delay in a G7 currency, including interest from the day of expropriation until the day of payment.

These protections are designed to allay the fears of the international business community, which has never forgotten that the Mexican government nationalized the petroleum industry in 1976.

THE IMPORTANCE OF MANUFACTURING JOBS

Importantly, we are considering this proposal at a time when our domestic economy has been sputtering and suffering the loss of millions of manufacturing jobs. In fact, as a percent of Gross Domestic Product, high-wage manufacturing jobs in the U.S. have fallen below 20 percent of total jobs. This compares very unfavorably with our chief industrial and trade competitors Japan and Germany who maintain manufacturing as nearly one-third of their economic bases. (Chart C—Pie charts) Sinking U.S. wage levels are directly attributable to the loss of high-paying industrial jobs in the U.S. No other major industrial power has allowed itself to be diminished to this extent. No trade agreement can ignore this predicament.

THE SOCIAL DIMENSION OF COMPETITION

Countries with a commitment to democracy building and the best products—not the most exploited workers or the best special deals—should get our attention. Any trade agreement the U.S. signs must acknowledge this new global climate and fully address the social, political, as well as economic, dimensions of trade-related growth. To do less will harm our own people and fail to hold other nations to the lofty goals our own liberty commands.

ONLY THE THIRD FREE TRADE AGREEMENT

Never has the United States negotiated a free trade agreement with a nation whose standard of living and political system are as different from our own as Mexico's. In fact, the United States has only signed two "free trade" agreements in our history. The first, in 1985, was with Israel, and the second, in 1989, was with Canada. Both economies were far more like our own than Mexico's.

	Per capita GDP	Work force size
Israel	\$11,000	1,850,000
Canada	14,000	13,800,000
Mexico	3,200	27,400,000
U.S.	22,470	125,300,000

The United States comprises 85 percent of the North American market, Canada 11 percent and Mexico 4 percent, but Mexico provides one-sixth of the workforce. And with 40 percent of Mexico's population under the age of 15, each year 1-2 million new workers will join the workforce during the next decade. For the United States to not consider these demographic implications is indeed serious.

ASIAN INTEREST

There is only one aspect of Mexico that interests Asian investors: its proximity to the United States market. This has already lured Sony and Panasonic to set up maquiladora plants where parts imported from Japan are assembled in Mexico for export to the United States. Asian investment in Mexico has lagged far behind United

States investment, because of distance, cultural differences, and Asian uncertainty about Mexico's stability. They have preferred to invest in other parts of Asia, and there's no reason to believe that defeating NAFTA would change that.

With NAFTA, however, the benefits of access to the United States market would change the investment equation and redirect to Mexico Asian investment that would otherwise come to the United States. This investment diversion would redirect new employment to Mexico that would otherwise be located in the United States. The only study that looked at this issue predicted that \$2.5 billion of investment would be displaced from the United States to Mexico annually. That translates to 375,000 potential new jobs lost over 5 years—jobs manufacturing goods for the United States market, but redirected to Mexico by NAFTA.

THE COMMON MARKET EXAMPLE

The Common Market structure which Europe has adopted to achieve market integration rests on basic political freedoms, rights of ownership, labor rights and judicial safeguards, not just in theory but in practice. The European example provides a precedent for slowly phasing-in any type of trade agreement over decades, not years. And the European model also provides for a Social Charter to deal with job dislocations and other social repercussions arising from merging markets. But never in the history of Europe has that market had to absorb an economy as low wage as Mexico. Even Spain, Portugal, and Greece, whose standards of living are higher and whose political systems are not one-party states, have proven to be monumental challenges for absorption into the market.

To join the European Community market a nation first must be a functioning democracy. Why should the Americans frame the debate today in terms any less lofty? A comprehensive accord should have the goal of setting in place a long-term development strategy to build democracy and prosperity for all nations seeking entry into the trading union.

CANADA'S EXPERIENCE

The United States-Canadian Free Trade agreement, which I supported, did not provide any cushion for dislocation of workers. It has resulted in enormous job losses in Canada, 500,000—over 25 percent of its manufacturing jobs in 5 years. Trade agreements must reach beyond tariff and investment rules and anticipate the social and political consequences as well.

TRADE WITH MEXICO

To date, trade with Mexico has largely been composed of U-turn goods—United States parts destined for the maquiladora industry. That is, nearly half leave the United States for Mexico but then come back here for ultimate

sale in our market. This is not what is generally viewed as a new export market. The claim that NAFTA will increase United States exports to Mexico is truly exaggerated. Increasing United States exports to Mexico since 1987 until this year largely have been tied to the value of the peso, not to the growth of a middle class in Mexico [Chart D].

The distribution of income in Mexico is wildly unequal, and the benefits of the "Mexican economic miracle" have flowed into the accounts of a few very wealthy families. Instead of middle class, Mexico has developed a large new class of billionaires. Only the United States, Germany, and Japan had more billionaires in the July 1993 tally by Forbes Magazine. Instead of purchasing power for workers, the result of Mexico's growing output has enabled these new industrialists to consolidate their ownership of Mexico's productive capacity, and in some cases purchase United States corporations in cartel-like fashion.

FAST TRACK

The inadequate agreement we call NAFTA is actually a quagmire created by "fast track." Article I, Sec. 7(B) of the United States Constitution states: "The Congress shall have the Power to regulate commerce with foreign nations." The 1974 Trade Act set up the "fast track" procedure to facilitate negotiation of trade agreements and protect the credibility of the President when the Executive Branch enters into specific negotiations. But our highest responsibility is not to make it easy to negotiate an agreement, it is to ensure that the agreement is good for our country. This Congress ceded too much of our Constitutionally-mandated trade-making authority to the Executive branch. In effect, we substituted unelected negotiators and bureaucrats in the arcane world of trade for comprehensive Congressional deliberations. Now we see the results of our own abdication.

In fact, Congress' careful consideration is essential if we are to produce a comprehensive agreement that takes into account the fact that the Agreement will impact almost every aspect of United States life and law—wage standards, banking, environment, agriculture, immigration, and judicial review. Fast Track requires us to express our convictions with a single vote—up or down—with no amendments allowed. Only since 1974 has the Congress ceded its trade making authority under fast track. It does not seem proper to me that the Congress of the United States has turned itself into a Parliament that merely puts its stamp of approval or disapproval on the Executive Branch's handiwork, and left ourselves with the bleak alternative of voting only "yes" or "no." I ask: How can we do this to ourselves and to our country?

DEMOCRACY AND PROSPERITY

There remain fundamental differences between our respective systems that no trade agreement can ignore. These include wide and growing disparities in our standards of living, differences in our approaches to ensuring basic constitutional and political freedoms and widely varying experiences in expanding individual liberties including property ownership, small business enterprise, banking and entrepreneurship. Our two nations manage our judicial systems and federal systems of government quite differently. Unlike Mexico, the United States has a long history of sharing power with local and State governments—and checks and balances play a very prominent role in our system. We cannot proceed with an agreement that ignores these fundamental values. What America must do is negotiate expanding trade opportunities while representing human dignity through a North American Economic and Social Compact.

MEXICO IS NOT A DEMOCRACY

The proposed agreement is silent on the principles of democracy building and free elections in Mexico—and Mexico's democracy and attitude toward human rights are in grave need of strengthening. A single party, PRI, has, according to our own State Department, "dominated Mexico's politics for over 60 years. It maintains political control through a combination of voting strength, organizational power, access to governmental resources not enjoyed by other political parties, and—according to credible charges from the principal opposition parties and other observers—electoral irregularities." Mexico has been called "the perfect dictatorship." The Mexican government has consistently refused requests from opposition parties for electoral monitoring by international organizations. Just last month, PRI introduced a bill in the Senate to bar any international observers from Mexican elections. Even the participation of observers who are Mexican nationals would be severely restricted, and cannot be or have been a member of the leadership of a national, state or municipal political organization or political party within 5 years prior to the election.

According to the State Department, "... there continue to be human rights abuses in Mexico, many of which go unpunished, owing to the culture of impunity that has traditionally surrounded human rights violators. These violations include the use of torture and other abuses by elements of the security forces, instances of extrajudicial killing, and credible charges by opposition parties, civic groups, and outside observers that there are flaws in the electoral process." In a recent letter to President Clinton, Americas Watch stated:

Mexicans still endure serious human rights violations. Over the past four years, Human Rights Watch/Americas Watch and other human rights organizations have documented a consistent pattern of torture and due process abuses in a criminal justice system laced with corruption; electoral fraud and election related violence; harassment, intimidation, and even violence against independent journalists, human rights monitors, environmentalists, workers, peasants and indigenous peoples when they seek to exercise their rights to freedom of expression and assembly; and impunity for those who violate fundamental rights.

A trade agreement with Mexico offers the opportunity to use our close relationship with Mexico to encourage reform of these abuses. However, if, as in the current NAFTA, we fail to seize this opportunity, abuses will continue. And their effect—inhibiting justice and accountability, preventing Mexican citizens from enjoying the protection of their own laws—will not only hurt Mexicans, but will place U.S. citizens at a competitive disadvantage. We owe it to Mexico and to ourselves to do better. Why should the U.S. sign any such path-breaking accord with a nation that is not a functioning democracy?

IMPACT ON WAGES IN MEXICO

The proposed NAFTA accord and its side agreements are inadequate to encourage jobs creation in the United States largely because the agreement does not offset the cheap wages and the poor social benefits of Mexico's workers. Their standard of living is one-seventh of our own, and that gap is growing. In fact, Mexico's government purposely holds down wage increases to half the level of inflation, which decreases the purchasing power of Mexican workers. As Anthony DePalma of the New York Times commented:

The Mexican negotiators of the pact were careful not to commit themselves to wage parity with the United States. Mexico is going to try only to make up for some of the losses suffered by workers over the last decade, when the buying power of the minimum wage dropped sixty percent.

The productivity of Mexican workers has risen overall, most dramatically in the export sector, but wages have not risen accordingly.

Professor Harley Shaiken:

Overall, productivity has climbed from 30 to 41 percent between 1980 and 1992 while real hourly compensation has fallen by 32 percent.

There is no evidence to show that the significant investment that has occurred to date in Mexico has helped create jobs in the United States nor build a middle class in Mexico, nor raise their standard of living to purchase products they are assembling. This NAFTA does absolutely nothing to link rising productivity in Mexico to wage increases, which is the only way to create a real middle class and a real market for U.S. consumer goods.

LABOR RIGHTS IN MEXICO

Labor rights—the right to meet openly, to organize, to bargain collectively

and to strike—are recognized by democracies around the world. In our own country, they have provided a framework for workers to negotiate decent wages and working conditions. These rights are included in Mexico's own labor law, but the record is abysmal—the Government refuses to recognize independent unions; labor leaders are intimidated and even killed; wage agreements are negotiated by “union officers (who) support government economic policies and PRI political candidates in return for having a voice in policy formation.”

Thea Lee, Economist with the Economic Policy Institute:

The enforcer of the regressive wage policy is the Mexican Minister of Labor, Arsenio Farrell Cubillas. According to the U.S. Embassy in Mexico City “he has maintained pressure on the labor sector in an effort to hold the line on wage demands . . . Farrell has not hesitated in declaring a number of strike actions illegal, thus undercutting their possibility for success. These and other successful confrontations with unions have generally served to minimize the gains of labor activism and its use of strike actions.”

The government policy is wage restraint, but we could just as well call it wage regression. Real wages in Mexico—and buying power of most Mexican workers—have actually dropped during the Salinas administration. It is simply not acceptable to ask U.S. workers to compete with workers whose wage growth is suppressed, and it is even more unconscionable that our own government would enter into an Agreement that facilitates that suppression. Instead of effective mechanisms to ensure that Mexican workers benefit from their increasing productivity, we are left dependent on a press statement by Mexico's President that does not have the force of law.

Prof. Harley Shaiken:

Leaving labor relations out of the labor agreement is like leaving air and water out of an environmental agreement. It sends Mexico and multinational corporations a signal that maintenance of controls over unions and a distorted wage-productivity relationship is acceptable.

IMPACT ON WAGES IN THE UNITED STATES

Any agreement must uphold the highest living standards on our continent for the 21st century and ensure that wage standards are harmonized upwards. Because it does not provide any mechanism for linking wage increases to rising Mexican productivity, this proposed accord places tremendous downward pressure on U.S. and Canadian wages. It threatens the right of a worker to earn a fair day's pay for a fair day's work.

Shaiken:

. . . in the export sector Mexican wages are low for reasons that have little to do with productivity. Instead, wages are artificially depressed by government policies and constricted labor rights, among other factors. Unless this frayed link between rising productivity and wages is repaired, then Mexico will be much more attractive as an export

platform than as a consumer market. The result will not only throttle the development of Mexico's consumer market but could serve as a magnet for U.S. jobs and depress down on U.S. wage levels.

Thus any agreement must forthrightly address the rights of workers to better their conditions. These must be written into laws that are enforced. A good agreement should set in place a system that results in job creation, and increased investment in plants and equipment in both the high and low wage nations. Worker adjustment clauses for the different labor and benefit standards between our two nations must be incorporated ahead of time so this agreement can be called fair and just. Sadly, the side agreements on both labor and environment are not submitted to Congress as formal legislation and, therefore, are not only weak in themselves but are absolutely unenforceable.

MIGRATION/AGRICULTURE

The current NAFTA will accelerate the ongoing shift in Mexico from small-scale family farm agriculture to large-scale, corporate agribusiness. Not only will this have severe implications for the sustainable use of Mexico's resources, including water, but it will cause a vast migration from the farms to the cities and ultimately to the United States. The seriousness of this problem cannot be overestimated. Even the Economist magazine, known for its pro-NAFTA views, admitted in a recent article that “* * * the immediate impact of the double blow struck by agricultural reform and falling tariff barriers will be to cause many [Mexicans] to leave the countryside—and often the country, as they head north for the United States.”

Clearly, NAFTA should include—as it currently does not—an effective way to address the increased flow of Mexican agricultural workers seeking to immigrate into the United States. And equally clearly, NAFTA's negotiators should consider—as they have so far failed to do—the downward pressure this migration will place on Mexican manufacturing and farm wages and the negative consequences for U.S. workers.

On my recent trip to Mexico, our delegation met with an agricultural economist who discussed the devastating impact NAFTA would have on the Mexican agricultural sector. She reported to us about the “the great struggle * * * for the people who work the land to own the land,” and the fact that land reform is forcing peasants to leave the countryside.

This is a country that just up to two decades ago was mainly farmers. The free trade agreement is a death sentence for Mexican farmers. At present they want to do away with 30 million farmers. In this country, until 1992, when they changed Article 27 of the Constitution, the peasants were the owners of 60% of the resources of our country.

At present new modifications of Article 27 of the Constitution, pushed by the mer-

cantile associations and the courts, are privatizing the land * * * For years, the land was not able to be transferred or taken away. It was not in the market. It was not for sale, it could not be repossessed. But now peasants will have private ownership of their tiny piece of land. The land will be in the market. It can be transferred. The most probable thing that will happen is that they will lose it, through repossession by the bank or acquisition. The family estate has been lost, there is a huge crisis in the Mexican farmland.

THE NAFTA BUREAUCRACY

This NAFTA establishes a bureaucratic maze and a quasi-judicial system beyond the reach of ordinary citizens. The dispute settlement mechanism substitutes expert panels and super-national bodies to make decisions that should be made within our political system. It sets up closed-door processes that ignore the public's right to know. There is no means to involve interested parties, including states, groups or individuals, with expertise and interest in an issue. It does not recognize the rights of individuals to seek redress, nor does it provide for judicial review. As Chairman Waxman told the President:

* * * disputes would be decided by a process that is repugnant to basic concepts of due process and openness that are so fundamental to our democracy. The NAFTA expressly requires that the entire dispute resolution process be shrouded in secrecy. Article 2012(1)(b). The briefs are secret, oral arguments are closed to the public, and the NAFTA even prohibits disclosure of any dissent to a panel's decision.

Any agreement must set up a fair judicial system that assures individual rights and allows ordinary citizens and consumers to seek redress.

BORDER PROTECTION

We need guaranteed border inspection to control over 5,000 trucks that cross the United States-Mexican border daily bringing everything from tomatoes to cocaine, from melons to illegal immigrants. There must be strict provisions to stem the flood of drugs coming across our border. Any agreement must deal with the health and safety regulations for workers and fair distribution of profits. Any agreement must address the life-threatening problem of toxic waste from foreign-owned industries being dumped into Mexico's rivers, vacant land, and local sewage trenches. The agreement must address the question of security for our farmers from the influx of cheap produce and cushion Mexican farmers from divestiture of land. And the agreement must ensure that all Mexican produce will be safe and free of dangerous pesticides.

WORKER ADJUSTMENT

NAFTA supporters argue that the United States should concentrate on manufacturing the highest technology products here at home. But we need jobs for all Americans, not just nuclear engineers. We haven't seen the President's proposal for worker adjustment, but we know it is badly needed right

now to ease the adjustment of the defense industry and to help the thousands whose jobs have already been lost to foreign production. Do we have the resources to make NAFTA adjustments as well? And why should U.S. taxpayers pay the cost of corporate relocation to Mexico? We should spend our money on worker adjustment for those who are already in the unemployment lines and renew our commitment to preserving jobs which are at risk—and that means defeating this NAFTA.

Because the comprehensive worker adjustment program will not be ready, the Administration has proposed an interim program for NAFTA-related job dislocations only. The program extends for 18 months, and is based on Labor Department estimates of job losses of 22,500 over that time period. The Administration originally budgeted \$90 million over 18 months, or \$60 million annually, which would have accommodated only 8,000 workers in a full training program. The Senate bumped this figure up to \$177 million, still far short of the Bush administration proposal for NAFTA. The Bush plan specifically reserved \$335 million annually and provided an additional \$670 million annually in discretionary funding if needed.

AGRICULTURE—SANITARY AND PHYTOSANITARY STANDARDS

As we all know, there is no enforceable side agreement to deal with sanitary and phytosanitary standards, a gross deficiency in the accord by all accounts. NAFTA affirms the right or sovereignty of every member nation to establish the level of protection of human, animal, or plant life or health it considers appropriate. NAFTA also preserves the right of the U.S. to prohibit the entry of goods not meeting U.S. health, safety and environmental and other product standards. But who enforces the standards? And what recourse exists for our farmers and consumers when disputes arise? We have a byzantine dispute resolution system that will result in jobs for lawyers but will not provide the immediate protection necessary to the people whose lives and livelihood are in jeopardy.

Customs and inspection procedures along the border are already taxed well beyond their capacity. This means that the potential exists for large quantities of unsafe food and products to enter the U.S. In fact, the Food and Drug Administration at Nogales is able to inspect only one of every 600 trucks that line up by the thousands each week. We also know Mexico lacks the personnel, facilities, instrumentation, and funding to expand monitoring and inspection services to enforce adequate health and sanitary regulations affecting trade. Funds must be earmarked specifically for this purpose and firms benefiting from cross-border trade must pay this cost.

As tariff and nontariff barriers such as licenses and quotas are lowered, the

effect of sanitary and phytosanitary standards in restricting trade may become more noticeable. Our farmers will be forced to compete with a nation where DDT is legal and pesticide law enforcement is nonexistent. Protection of American consumers should not be secondary to the economic pressures of increasing trade.

The GAO found that "because of inefficiencies and resource limitations, FDA's programs provide only limited protection against public exposure to prohibited pesticide residues on imported foods. Since the Mexican government does not monitor residue levels for exported produce, United States inspections are all the more important."

Bovine Tuberculosis is another critical border inspection issue. Tuberculosis in cattle in the United States—a condition we had almost wiped out—increased from 70 in 1988 to 224 during the first six months of 1992. Ninety-two percent of these cases were from steers of Mexican origin. NAFTA would immediately eliminate the tariff on feeder cattle from Mexico, and the resulting surge in imports would overwhelm our inspection and monitoring system.

Ohio is one of 40 states in the U.S. with the status of an Accredited Free State for tuberculosis. The status is difficult to obtain, and can be suspended if only a single infected herd is discovered. Under NAFTA this status can be revoked if two or more herds are found to be infected in a 48-month period. Any inspections of Mexican cattle by a state can be challenged under the proposed treaty for being "trade distorting" and the state would have no recourse. In effect, the treaty would supersede the authority of any state to regulate for bovine tuberculosis.

FOOD SAFETY

NAFTA would subject United States food safety and environmental laws to legal challenge by Mexico and Canada. The Agreement would permit Canada or Mexico to challenge a standard adopted for public policy or precautionary reasons is the standard were perceived to cause economic injury to another Party to the Agreement. Under the General Agreement on Tariffs and Trade (GATT), Mexico and Canada have already challenged over 40 state laws on such issues as sales of alcoholic beverages and sales of non-dolphin safe tuna. NAFTA makes many more challenges inevitable.

WORKER HEALTH AND SAFETY

Worker health and safety are considered a necessary business expense in the U.S., and we have developed an effective regulatory system to insure that companies enforce the law. Mexico's health and safety standards are lower, and enforcement is far weaker. While in the U.S. the penalty for willful violation can be up to \$70,000 for each instance, the maximum fine for a repeated violation in Mexico is about

\$1,500. Substantial differences in standards and enforcement confer a competitive advantage to manufacturers located in Mexico, and companies that relocate are quick to exploit this advantage, despite the risk to workers.

On a tour of Mexican production facilities, I visited one Ohio company that had relocated production to Mexico where I saw women spraying glue on rings. I asked why they were not wearing masks and I was told, "Well, the women do not like to wear masks and the (one ceiling) fan probably pulls out the fumes anyway."

At another plant, I saw men pulling down machines that stamped out rubber parts. There were no guards on the machines. Their arms could get caught in the machines. I asked the manager of that company, a United States citizen who commuted to work across the border daily, whether or not the workers in that plant were covered by some form of Mexican social security. He told me he did not know the answer, because all he worried about was the bottom line.

Later, one of my own constituents saw a newspaper photo of a Mexican worker operating machinery that he had operated in a Toledo plant before it was shipped down to Matamoros. He noted that the equipment was being operated unsafely by the Mexican worker, because the emergency "off" switch had been covered.

DISPUTE SETTLEMENT

Many of us take for granted the protections embedded in our legal processes, including openness; public participation; balance; and subsidiarity. But the dispute resolution process embedded in NAFTA has none of these protections. Instead, it would commit us to a system that is closed, secret, highly partisan and empowered to run roughshod over lower level decisions. Legitimate grievances would be buried in red tape and delay.

North Dakota Commissioner of Agriculture Sarah Vogel identified these shortcomings:

The United States Constitution and the North Dakota Constitution provide for open courts. The Freedom of Information Act and state law counterparts provide for open records and open hearings with very limited exceptions. There is no good reason why NAFTA disputes should be treated any differently than antitrust cases, class action tort cases or complex administrative issues or any other kind of litigation.

There is no mechanism for "public participation." * * * the only "Parties" to NAFTA are the federal governments of the U.S., Canada, and Mexico * * * there is no means to involve states or individuals with expertise relevant to the issue.

When sanitary, phytosanitary, environmental or other "scientific" issues arise, the panel's appointment of a "scientific review board" is not subject to any standards other than what the parties "may agree." Any party can block another party's (or the panel's) request for scientific input by simply not agreeing to the scientist or technical expert or by limiting terms and conditions of

their employment * * * and the panel's appointment of experts will not necessarily result in balanced views.

NAFTA does not adhere to the historic deference that U.S. courts, state and federal, have provided to executive and administrative decisions * * * NAFTA panels may undertake a full de novo reexamination of the measure being challenged (with) complete discretion to second-guess an agency or state legislature.

The panel roster members are likely to be drawn from a few law firms with extensive ties to multinational corporations. By definition, labor lawyers, farm lawyers, plaintiff's trial lawyers, environmental lawyers and non-lawyers will be ineligible for service, as will individual citizens.

VISION OF A DEMOCRACY AND PROSPERITY IN THE AMERICAS

The original comprehensive vision for the Americas was articulated by President John F. Kennedy in 1962 as the Alliance for Progress. "We must not forget that our Alliance for Progress is more than a doctrine of development—a blueprint of economic advance. Rather it is an expression of the noblest goals of our society. It says that material progress is meaningless without individual freedom and political liberty. It is a doctrine of the freedom of man in the most spacious sense of that freedom."

The Alliance for Progress articulated a plan for linking social and political development with economic development. It failed in part because it was so ambitious, because funding never matched the need, and because of the resistance and even sabotage of the Latin American oligarchies. But it did incorporate a comprehensive vision of development. That comprehensive vision is still necessary if people throughout the Americas are to share a decent way of life.

When Europe integrated Portugal and Spain into its Common Market, that integration was part of an adjustment process that has continued over 40 years. The Common Market includes a "Social Charter" which establishes rights to social assistance, collective bargaining, vocational training, and health and safety protections. This Social Charter sets a realistic framework of shared values and insures that development in the EC does not pit workers in one country against those in another.

The EC also anticipated that integration require investment, and it continues to spend billions to mitigate the costs to individuals and communities.

\$20 billion will be spent over the next six years on the special "cohesion fund" designed to enable Spain, Portugal, Ireland and Greece to catch up with the rest of the Community.

\$183 billion in "Structural aid" will be available to regions of the EC whose output is 75 percent or less of the Community average GDP.

In 1992, transfers from the EC accounted for around 4% of Portugal's GDP.

VISION FOR THE FUTURE

Last May, I led a bipartisan Congressional delegation to Mexico. One of the many women leaders in that country with whom we met presented a very clear alternative to this NAFTA, which she termed "a continental agreement for development, equity and employment." She said that the lack of competitiveness in North America is not caused by barriers to trade, or by the lack of institutional stimuli to investment, but by deep structural imbalances brought by the unregulated and predatory attitudes of the multinational corporations.

This woman also had a vision of what a good agreement would contain, beginning with a focus not unlike the Alliance for Progress. She envisioned a pact that recognizes the differences in living standards, development and productivity of the various economies. She argued that continental integration also implies stimulating the Central American Common Market, the Andean Pact, Mercosur and other similar associations, and adjusting them to the basis of the Hemispheric pact. Realization of such an agreement is already in the minds of many organizations, and it should be the shared purpose of millions of people from the whole continent.

WHAT'S IN GOOD AGREEMENT

For our nations to reap the mutual benefits of trade expansion despite our differences, trade must be part of a larger strategy for growth and change in Mexico, and for adjustment here in the United States and Canada. Our trade agreement with Mexico is not only historic; it will set a precedent for America's future trade agreements with nondemocratic, low-wage societies. It must be carefully crafted so it addresses fundamental issues central to achieving true democracy and prosperity for all citizens of the continent.

A trade agreement worthy of our support will be comprehensive. It will take into account issues critical to the preservation of our own economic strength and will protect the long-term interests of American workers.

Will be phased in over several decades, as have Europe's integration;

Will acknowledge the propensity of many U.S. companies to cut costs and head South;

Will include a provision that ensures competitive advantage for our continent is not built on cheap labor nor escaping to tax havens nor avoiding environmental standards.

This NAFTA will not contribute to continental development, but will hurt small businesses, workers, families, communities, consumers, and the environment in all three countries. It will benefit traders, exports and Wall Street investment interests.

A trade agreement worthy of our support will preserve our fundamental democratic values and serve to advance them in our trading partners. Only a trade agreement that embodies the

best values of democracy and prosperity deserves our support. It should go without saying that the ongoing struggle of Mexicans to make their government a true democracy, rather than a democracy in name only, can and should be assisted. Democratic reforms should be an integral part of all U.S. trade policy—after all, in the post-Cold War world, international trade is the strongest link between our country with its strong democratic traditions and the rest of the world. We must never miss an opportunity to strengthen democracy.

A trade agreement worthy of our support will build real growth by improving the purchasing power of Mexico's citizens. Spreading the benefits of liberalized trade will improve the lives of workers and sustain economic growth throughout North America. Right now, NAFTA is a narrowly drawn tariff agreement and must be changed to an agreement that freely addresses the political, social and economic integration that must simultaneously occur.

FOREIGN POLICY

Rejection of this Agreement will not be the foreign policy disaster that supporters claim. In fact, rejection will serve a higher purpose by reaffirming our commitment to basic principles of democracy and fairness.

The people of Mexico know that rejection of this agreement is not a vote against them, nor does it deny the close economic and social ties between our nations. The people of Mexico will understand that rejection of NAFTA affirms their historic efforts to democratize their politics and improve their standard of living. Mexico does not yet have a functioning democracy, and the PRI does not appear ready to open the electoral system to accommodate the legitimate efforts of the two opposition parties. Rejection of NAFTA holds out the possibility of a linkage between our countries based on equal rights and a rising quality of life for citizens of all three countries.

Rejection of this agreement will send an important signal to other non-democracies that we will continue to link economic development with the development of just political and social institutions. It will help convince them of the strength of our convictions and it will help them understand the depth of the democratic process in our country. It will also give a strong signal that the American public insists on being part of the trade debate, that the days of delegating critical economic and trade negotiations to special interests and unselected specialists are behind us.

Any trade agreement that we negotiate must take into account fundamental values, the issues that affect our economic strength, and our commitments to human rights, fairness, accountability and environmental protection. This long and difficult debate

has served to illuminate the deficiencies of old style trade agreements. This NAFTA does not reflect new thinking and it does not move us forward to meet the challenges of the new economic order.

It's time for a realignment of U.S. trade policy toward developing nations that goes beyond the narrow tariff and investment focus of this Agreement. We must go back to the drawing board and develop a comprehensive that encompasses not only economic approaches toward low wage economics but economic concerns for our people here at home. We need to link expanded trade to democracy building and social development abroad.

□ 2200

Mr. BONIOR. I thank the gentlewoman for her passion and commitment on this. The gentlewoman has been just a great deal of inspiration to a lot of people; as exemplified by her willingness to stand by the working families of this country and lead them, she has been absolutely great, wonderful.

Madam Speaker, I yield to the gentleman from the State of Wisconsin [Mr. BARCA].

Mr. BARCA of Wisconsin. Madam Speaker, I thank the majority whip as well for his leadership; he has produced great leadership on this issue. I also thank the gentlewoman from Ohio [Ms. KAPTUR] for her optimism. I hope tomorrow, as we get ready for this vote, that people are still tuned in and we will follow the leadership and wisdom that has been presented here tonight, I believe, because there are so many key points that have been brought up in regard to this agreement.

But the one point I want to center on tonight, because tomorrow the first vote we take will be on the rule, it concerns me because I do not think the American public, much less the Members of this House, have fully reviewed all that is in this document, because just within recent days there have been items added into this document that Congressman BROWN talked about and other Members have referred to. These items are completely unrelated to anything whatsoever having to do with the terms of the tariff agreement; items like the development bank, like the study centers. It seems to me, I say to the majority whip, that the rule should be set in such a way so that people can bring up points of order. We do have rules in this House on germaneness, on the idea that the items related to the point itself, that we should be able to bring up these concerns and these points of order. But unfortunately we will not be able to do that tomorrow with the rule that has been approved. That concerns me. I think it should concern all Members.

Tomorrow I will be opposing the rule as I will be opposing this NAFTA. I do

not believe this NAFTA has been negotiated on the best of terms for the majority of the people of this country, for the workers of this country, or for the businesses of this country. I think it is a flawed document.

The terms of the agreement themselves have not been negotiated, the enforcement of labor and environmental laws is deficient, and, most importantly, the cost of this agreement is going to add into the billions. Unfortunately, those billions of dollars have not been counted. That is why I am so concerned about this rule, because we will not even be able to strike out items that add new billions of dollars into this agreement which have nothing to do with this NAFTA. That bothers me, I say to the majority whip, and that is why I wanted to bring this up tonight because we will be dealing with that tomorrow.

I oppose this NAFTA. I am somebody who believes strongly, and I have spoken publicly in the past on behalf of free trade; I strongly supported the Canadian-American Free-Trade Agreement. I strongly supported the Canadian-American Free-Trade Agreement, but this is a flawed document, it is going to serve as a pattern for the future trade agreements, and it is not the pattern that we want to set.

I hope that we can be successful tomorrow and we can move forward and negotiate a better and more prosperous and more promising NAFTA for the people of this country.

Mr. BONIOR. I thank my colleague for his comments and particularly his concerns about the future pattern that this NAFTA sets. In addition to that, his concern about the cost of this NAFTA. This NAFTA costs between \$20 billion and \$50 billion to the American taxpayer. We are losing the tax revenues just in the first year, anywhere between \$2.5 and \$3 million, which will have to be made up. And of course in this NAFTA that we will be voting on tomorrow, we will be voting also on a billion-dollar tax increase to pay for it. That is a small fraction of the overall cost this NAFTA will be to the American public, about 5 percent, quite frankly, if you use the higher figure that I just mentioned.

The question we have to face is where will we come up with those dollars? As the gentleman has indicated and many others have indicated, the supporters of NAFTA, of this NAFTA, are the same people who will be coming to the floor and argue passionately that we cut another billion dollars out of the budget. It seems to me that there is an inherent contradiction in both of those positions.

We have to move forward, obviously, to get control over our deficit, but we have to do it responsibly, we have to do it without putting the jobs of the working men and women of our country on the line.

This NAFTA will send our jobs south. More importantly, though, for many Americans it will lower our wage level in this country as the corporations will use the hedge on the Mexican low-wage base as a hedge and bargaining chip against our workers' wages. It will ask us to do all of that by increasing the American taxpayers' taxes.

I think it is an unconscionable position. The gentleman mentioned what we have here in this bill in terms of the research center in Texas for \$10 million; of course we have this new development bank that the gentleman from Wisconsin [Mr. OBEY] is so vigorously opposed to because we cannot even deal financially with the other international banks that we have which will cost us millions of dollars.

We have a \$17 million tax forgiveness for Honda Corp. in this bill. I could go on and on and on, let alone all the other deals that have been cut and probably are begin cut at this moment in time with respect to agricultural products and other things. It is not a good deal for the American taxpayers, it is certainly not a good deal for the American worker or for the Mexican worker who is striving to live in a free and democratic society but who has a long way to go.

I yield further to the gentleman from Wisconsin.

Mr. BARCA of Wisconsin. This issue of the tax break for the Honda Corp. concerns me enormously. It is my understanding that not only do they get a prospective tax break but they get a retroactive tax break. With all of the concerns that have been expressed about retroactivity with regard to taxes, it seems to me this issue of providing a retroactive tax break for a foreign corporation that is not even part of North America ought to concern all Americans.

Mr. BONIOR. I think the gentleman is absolutely right. If the member arguing vociferously against the budget bill that we had before us about 6 months ago, based on that retroactivity provision, they ought to look at this one because it is going to ring hollow in the ears of our constituents if they support this tomorrow with this retroactive tax break for a foreign corporation and then we are able to argue the other way on our own taxes for our own people.

I yield now to the gentlewoman from Florida [Mrs. THURMAN] who has been excellent on agriculture issues as well as consumer issues and, of course, the job issues. I thank her for her steadfastness and her passion and her being with us at so late an hour on so many evenings that we have come before the public.

Mrs. THURMAN. I appreciate the comments of the majority whip, but more importantly I appreciate all of us who have been sticking together. But most importantly, because we have

been trying to get out the right information, the best information, and that debate has not taken as good a turn as it should have. We hear a lot of things going on, but we have really been trying. I think with the gentleman's leadership and that of the gentlewoman from Ohio and all of us standing here trying to give good information, I hope the American public is listening and does listen to what we are concerned about. We are concerned that there is a lot of misinformation out there.

I really came tonight because I am somewhat concerned; there has been a lot of public media put on Florida today because of, you know, some meetings that have been held and some people who have changed over their votes now to go on the other side. You know, we have talked about the side agreement, the different issues that have been raised; and I remember when I started this, when I came here for NAFTA—actually 3 years ago in the Florida State Senate when some of these same people came to us about the issues as they related to Florida agriculture, we talked about not only the snap-back issues or the surge issues, but we talked about the labor issues and we talked about the environment issues.

Well, we got some snap-back, we got some surge issues, but we did not ever get to the labor or environmental issues as related to this free trade.

What I found today in this meeting was the conversation went on to talk about the two or three things, but then I just listened to the people who were not for it, still.

□ 2210

I think that has been missed in some of the stories that have been going out from the Florida delegation. The Florida Farm Bureau stood very strongly just in the last week coming up with another resolution still against NAFTA. That is all of the farm industry within Florida. Those are the little guys out there. Those are the guys with only 20 or 60 people they are employing.

We have the Tomato Exchange. You have fruits and vegetables with it.

Sure, I understand why they have done what they have done to a certain extent, but here is the tomato industry still standing very tall against it.

Indian River citrus, you know, we got a little bit of frozen concentrate, but we did not do anything with some of the fresh fruit part of it. So they have still stood strong and not in favor of it.

Then we actually had people within organizations who have suggested that we might ought to vote for this who have now said, "Wait a minute. We are still not there. We do not feel that way. We are the third and fourth generations farmers in Florida and we want our children to have that same feeling."

I have to tell you, I sat there listening to some of this and I remember the conversations that we had in the Government Operations Committee with some of the farmers in Mexico who talked about it being their soul, about being their morals, about what their families were about, and I was listening to that same American farmer saying exactly the same thing today, not the big guys, not the ones who got a few concessions, but the ones who work every day, who understand what it is.

So I just hope that people will really look at what these letters of agreement are. What did they really get? Were they really that important? Why at the very last minute, why were these things not put on the table earlier if these industries are so important to this country? I dare say that they are.

I got a letter from a well-known citrus grower, somebody I have known for years. I just want to quote what he said, and I think this sums it up for me:

If we could just be treated as well by our government as the French wine growers were by theirs when Spain became a part of the Common Market, we could be supportive. We haven't been. It isn't fair. Let's see if we can't make a better deal.

That thread runs through every letter. "Let's make a better deal."

Every one of us who have been on this side fighting have suggested that we are not giving up this fight. If this fails tomorrow, we are right back here standing in the same place, standing here fighting to make a better deal for our folks here in America.

Mr. BONIOR. Well, Madam Speaker, I thank my colleague. She should know, I am sure she does and I am sure her friends in agriculture know that these things do not happen overnight. We have only been at this for a couple years. The Europeans took 40 years to get where they are. It was slow. It was deliberate. It was thoughtful and they got to the point where they put something together.

We cannot do this overnight. Small agriculture, small farmers on both sides of the border will be terribly affected by this.

It has been guesstimated that we could lose 3 to 6 million small farmers in Mexico itself by this agreement, and that would cause great devastation to the communities in Mexico.

Madam Speaker, let me just conclude in 10 seconds and say thank you to my colleagues for joining me this evening. We look forward to the debate tomorrow.

ON LOYALTY

The SPEAKER pro tempore (Ms. MARGOLIES-MEZVINSKY). Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 60 minutes.

Mr. OWENS. Madam Speaker, I want to begin by congratulating the gen-

tleman from Michigan, our Majority Whip, for the magnificent leadership he has shown on this issue. We all have pressure on us in various ways, but as a Member of the leadership, I am sure the pressure upon him has been great indeed, but he has offered tremendous leadership and we certainly appreciate that and congratulate him for it.

I will vote against NAFTA, but I am not disloyal to the Democratic President we have now. I am not disloyal to the party. I am loyal to the party, I am loyal to the President, I am loyal to the Nation, because I think to vote for NAFTA would be to do the wrong thing, to lead the Nation in the wrong direction, to take steps to further strangle our economy. Our economy has already suffered a great deal from the free trade swindle.

We have a lot of experience to show what the so-called free trade does to the American economy.

I am loyal, and I think all those who vote against NAFTA are still loyal to the party, loyal to the President. We like to see him not make the mistake that he is making.

Now is the time to come to the aid of the American economy. To be loyal to the American economy is the most important step we must take.

We have watched what free trade has done to our economy in the last 12 years. NAFTA is just another step in the Reagan-Bush trickle-down economics, another aspect of it. The fact it is on the Fast Track is another example of the tactics they use to force upon the American people policies which are really harmful to the great majority of our people.

NAFTA is the next step in the process of strangling the economy. Free trade has done that to our economy already.

We have experience. You do not have to be a genius to know what has happened to our industries, not just heavy industry, not just the steel mills of Pittsburgh and the Midwest, not just the automobile industry, but a huge number of smaller industries have also gone overseas under the so-called Free-Trade Swindle.

Free trade as it has been practiced has meant that other nations could sell their products in our market, while they take all kinds of steps to block our products from entering their markets, and because other nations could sell their products in our markets, the manufacturers of products in our market, in our Nation, have picked up their plants, gone to the nations with the cheapest wage structures, employed slave labor, manufactured products at very low cost and then brought those products back into our market, which has a much higher standard of living, sold the products at levels commensurate with our standard of living, and made tremendous profits.

It is not that the Taiwanese or the people in Hong Kong or even in Japan

had such great ingenuity and forged industries by themselves which allowed them to come into our market and sell products to our market, thus destroying the manufacturing of goods and products in our market, it is not that they had such genius, it is that they also had the capital of the investors from our Nation.

General Electric may not be manufacturing television sets, VCR's and so forth in our Nation and other of the big electronic product producers may not be producing products here at home, but their capital, the money they made off of us for years was picked up, taken and invested in Taiwan, invested in Hong Kong, and they have plants there where they make products with American capital using slave labor wages and they bring it back into this market to sell it. This has been happening for the last 20 years, accelerated in the last 12 years.

At the same time, these products are brought back and sold easily in our market. Those who stayed here to manufacture goods in America found that when they tried to go sell the products in other nations, they had all kinds of barriers erected. Other nations were not as gullible, other nations were not willing to sell out their people. Their leaders maintained the kind of structures which made it very difficult for our products to be sold in many cases.

Even until now, this very moment, those barriers are still there in many of the nations which find it easy to come into our market and sell their products. Japan is the most highly visible example. Japan still maintains tremendous barriers against products which are made in America, starting with our magnificent agricultural industry. We produce like no other nation in the world. Because of the land grant colleges and our early application of science to the process of farming, there is no nation in the world which even comes close to the United States in the production of foodstuffs.

□ 2220

As my colleagues know, we have tremendous success in the production of foodstuffs. We have the cheapest food in the world for our own people, and we have a tremendous amount of surplus foods. They will not buy our rice. We cannot sell rice in Japan. We cannot sell oranges in Japan. We cannot sell apples in Japan. We cannot sell beef in Japan.

And then, if we leave foodstuffs and go to manufactured products, we were the original mass producers of automobiles. We know how to make automobiles. But we cannot sell American automobiles in Korea, we cannot sell American automobiles in Japan, unless we go through a tremendous gauntlet of barriers and requirements which greatly raise the price of our automobiles.

I was in South Korea for a week last summer in the city of Seoul which has about 12 million people. There are tremendous traffic jams, cars everywhere, but one can ride for an hour and not see an American car. One can ride for an hour and would not even see a Japanese car. One will see the cars that are made in Korea. My colleagues, 99 percent of the cars sold there are their own because they have barriers, they make it very difficult. An American car which costs \$20,000 here would cost \$40,000 in Korea. My colleagues, they have erected these barriers, and yet they come and sell their cars here, they sell their electronic products here, all kinds of products here, and on and on it goes.

So, Madam Speaker, free trade has been a great swindle, and it is said, "How did Americans ever begin to act so irresponsibly and gullible?" They are not gullible. The leaders on the top, the people who are in charge of our industry, the great investors, they are making a mint. As my colleagues know, they are getting richer all the time, and the people in Government who make it easy for them to get rich are the ones that are selling us out, whether they know it or not, and by now they should know it.

I am no great fan of Ross Perot, but there is one truth that we must all take a close look at, and that is who are the Washington lawyers who work for the foreign corporations, and where are they placed in our Government, what parties do they come from, what are their connections. We have allowed for too long a cabal of Washington lawyers, people inside the Government together, to make it easier for foreign firms and foreign entrepreneurs to exploit our market while we have not exercised the right kind of vigilance, have not been confrontational enough, have not given the things necessary to make sure our products also have the opportunities of the other markets.

The free-trade swindle has been there for too long. The free-trade swindle continues and accelerates in NAFTA. NAFTA brings it closer to home. I say, you don't have to travel all the way to Hong Kong or Taiwan. The transportation costs now will be cut down. It will be the slave labor which will be just across the border in Mexico. They will pick up the plants, the investment, and they will go there, and they can easily transport it across without having to pay the extra transportation costs, but still profiting from the very low wages. So, they will make even more profits as a result of selling products in a market area where the standard of living is high that they have produced in an area with very low wages where the standard of living is low.

How long are we going to take this? We have to draw the line somewhere. Tomorrow, when we consider NAFTA, it is a time to draw the line and stop

the strangulation of the American economy, stop the flight of our jobs, stop the lowering of our standard of living, stop the rich from getting richer at the expense of the great masses of the American people.

I yield to the gentleman from California if he would like to make a comment.

Mr. TUCKER. Madam Speaker, I thank the distinguished gentleman from New York [Mr. OWENS] for yielding. He had some interesting comments there, and I am sure the American people appreciate them, particularly on the eve of this NAFTA vote, as it relates to trying to get out some information that can put into some perspective the background and the history of trade in this country and this notion that, if you are against this NAFTA, or this North American Free-Trade Agreement, then by some bad deductive reasoning you have to be against free trade or a non-free trader.

Some of the gentleman's comments made me think of some of the ramifications, consequences, of our prior trade agreements, and the gentleman was mentioning the situation with Japan, and he was talking about not withstanding the barriers, but nontariff barriers, such as the quotas in agribusiness, for example. In truth and in fact, Madam Speaker, I think the gentleman made some good points because our trade agreement with Japan shows a \$50 billion deficit on our side. They have a \$50 billion surplus. So, obviously that is one of the vestiges, one of the evidences, of bad trade negotiations.

Mr. OWENS. I just want to make it clear to my constituents who might be listening that a \$50 billion deficit means that the Japanese are selling us \$50 billion more in products than we are selling to them. We are importing from them \$50 billion more in product than we are exporting to them. I just want to make sure everybody understands these terms, deficit, and they understand what the swindle is.

Mr. TUCKER. I appreciate the gentleman's amplification of that, the deficit as opposed to the surplus.

My question to the gentleman from New York has to do, once again, with that whole context of foreign trade.

Now earlier on the floor, Madam Speaker, I addressed the issue that many of the proponents of NAFTA have tried to marshal, and that is that, if we do not take this NAFTA tomorrow, if we do not embrace it, and take it to our bosom and adopt it, then in fact Japan, which we are talking about right now, will be waiting in the wings.

We heard in the big debate, which is now history, the debate of AL GORE and Mr. Ross Perot, AL GORE intimated, if we do not take this deal, we have got Salinas waiting to meet with the foreign trade representatives from Japan in the next week. Of course we have got the President going to Seattle to meet

with APEC, the Asian-Pacific Economic Countries, in a few days. The question now is: "Do you find any validity in that argument that, if we do not take this NAFTA, that Japan will take the deal? It will be doomed for the American economy? And that in essence Japan will come and export goods into Mexico and use that as a platform, or foundation, to then send goods into the United States and decimate our economy?"

Mr. OWENS. There is a very simple answer to that argument, and it is used to confuse the issue.

The prize in free trade or trade is the American market. Our consumer market is the prize. Everybody wants to get to our consumers, the people that have the money to buy the goods. That is what the prize is.

The Japanese are not interested in the Mexican economy because the Mexican consumers do not have the money to buy Japanese products. The Japanese are interested in getting to the American economy even more than they are already. The Japanese, the Germans, all of the industrialized nations, will move plants and invest in Mexico also for the same reasons that our plants go to Mexico. They will go in search of the cheap labor. They will benefit from the cheap labor. But they want to be close to the market where they can sell the products, so Japanese companies will be selling more products via Mexico into our economy or market as well as Germans and other industrialized nations.

So, Mexico is a prize for them only because it is close to the United States and only because the NAFTA lowers the barriers. There will be no tariff to stop products made in Mexico from coming across the border into the United States. So, they will be there to take full advantage of that. They will crowd out many of our industries. There is going to be a babble among the giants. The giant corporations of the world will all zero-in on Mexico as a place to get access to the American market. If we do not conclude an agreement with NAFTA, the Japanese are not interested. They can go to Mexico now, Germans can go to Mexico, all can go to Mexico. They will not be interested in accelerating the investment in Mexico if we do not pass NAFTA. If we pass NAFTA, they will greatly accelerate their investment and their movement into Mexico.

Mr. TUCKER. And the Japanese would not be interested in lowering their tariffs and zeroing-out their tariffs as we are saying we are going to do in the NAFTA agreement. Would the gentleman not agree with that as to Mexico is what I am saying.

Mr. OWENS. I do not know whether they would zero-out their tariffs if they had nothing to gain because they do not have the proximity.

□ 2230

They want our market. They do not want the Mexican market. Zeroing the tariffs would not get them the market, because the Mexican consumers do not have the capacity to purchase their products.

Mr. TUCKER. That is my point. It goes right to what you are saying, about the capacity of the Mexican consumer to be able to take advantage or exploit a Japanese market. They do not have that buying power. Not only that, but the Japanese market, as you have indicated earlier, is traditionally a protectionist market. Not only with tariffs, but also with quotas. That is why they have a trade surplus on almost everybody in the whole world.

Mr. OWENS. The Japanese do not let Americans into their market. They will not let the Mexicans into their market.

Mr. KLINK. If the gentleman would yield just one moment, my understanding of the maquiladora system, which has been in place for many, many years, is that under the current situation in trade between the United States and Mexico, that the parts that are sent down to the maquiladoras for final assembly for sale, many of those parts which are shipped, assembled and then shipped back to the United States, those parts are made now in the United States. But that under the NAFTA, in fact, Japan and other countries would be able to send their parts to Mexico for assembly, and therefore gain access to this United States market. Is that the gentleman's understanding?

Mr. OWENS. There is nothing to prevent them from setting up plants in Mexico and producing enough of the product there to meet the requirements. The rest of it would be parts that come from Japan to Mexico, and then end up in products that are brought into this market to sell.

Mr. KLINK. My understanding then is really there are some things within this NAFTA agreement which would weaken it. The proponents of NAFTA like to make the comment right now, what can stop these things from occurring now? But there are in fact elements of this NAFTA agreement in which we weaken the U.S. position. The lack of reciprocity, where our tariffs from exporting from the United States to Mexico are lowered over a 10-year period in flat glass, home appliances, and such products is an example. But whereas the same items coming from Mexico to the United States, they have an instantaneous dissolution of the tariffs, so that companies in fact are given an impetus to transfer their labor to Mexico beyond that of just lower labor costs.

Mr. OWENS. I think there will be a rapid flight from the United States of major companies into Mexico. It will happen very rapidly, a tremendous dis-

location in our economy over a very short period of time, added to the dislocation already taken place as we convert from defense industries to civilian industries, which we must do.

There are a number of things that are going to happen which will create an economic disaster in the next few years if NAFTA passes. We are on the verge of a major economic disaster if NAFTA passes.

Mr. COPPERSMITH. If the gentleman would yield for a moment, I think maybe we could get an interchange going. I think that the Speaker would appreciate that, because then maybe all of us could finish a little earlier.

But my colleague from Pennsylvania just gave the flat-glass example about the relative time it takes for the United States to zero-out its flat-glass tariff versus the number of years it takes Mexico to reduce the flat-glass tariff to zero. But part of that is because currently the Mexican tariff on flat glass is 20 percent, whereas the U.S. tariff on flat glass is 0.3 percent. The Mexican tariff is 66 times higher. Therefore, it might take more time for the Mexicans. But they have far more heavy lifting to do and give up far more of their tariff barrier than does the United States.

Mr. KLINK. If the gentleman will yield, I will tell you that industry projections are that Vitro S.A., which is one of the foremost international manufacturers of glass, which is deeply associated with the Salinas government, currently does less than 1 percent of the business of flat glass in the United States. But under this lack of reciprocity in the tariffs, they will, by the end of a 2-year period, take over 13 percent of the U.S. flat-glass market. This is particularly of interest to me, since I am from the Pittsburgh area and PPG Industries is very important to us.

This will cause, the gentleman from Arizona will be interested in knowing, the loss of 6,000 jobs in the flat-glass industry. This is not according to Congressman RON KLINK from Pennsylvania, but according to industry spokespeople from across the United States. Because Vitro, S.A., you will be interested in knowing, knows about this, and in fact have bought warehousing in Laredo, TX. They currently have also made investments in other glass production facilities in the United States. They are prepared for this.

The American workers need to understand that in flat glass, in home appliances, a 10,000-job loss is projected. This is not from those of us that are involved.

Mr. COPPERSMITH. If the gentleman will yield, I do not understand exactly how what the gentleman complains of is really necessarily the fault of the NAFTA. Because currently, whatever the Mexican manufacturer is,

they can export their flat glass to the United States and pay only a 0.3-percent tariff. The tariff is extremely low. I am not sure that our lowering the tariffs represents the barrier for the Mexicans coming into the United States market.

Mr. KLINK. If the gentleman will yield, why is Mexico so interested in having this agreement? If they are not gaining anything, if there is nothing for them to gain, then why are they putting \$30 million into lobbying in the United States of America to see that this NAFTA agreement is passed, far beyond what any other country has ever spent in lobbying to see that any kind of agreement is reached?

Mr. OWENS. I think the gentleman is saying they have it both ways. They already have a favorable situation in terms of the tariff differences, as well as you are saying they would even have greater advantages. What the discussion shows is that this is a very complicated treaty that we are dealing with, with many, many facets that have not been thoroughly discussed. If we had an opportunity to discuss this treaty in the same manner that we are dealing with the proposals for a national health program, then all of us would feel much better about going to a vote tomorrow, and probably the process would shape a document which we could all vote for.

We are not against trade with Mexico. We are not against expanding our trade horizons. We are not afraid of the future. What we are afraid of and against is this fast-track approach. What does it conceal? What is in this document? Why are we moving so fast? What is the great haste?

The President who is in the White House now chose to adopt an initiative that was launched by the previous President. The previous President was hostile toward labor and hostile towards workers in numerous ways. This treaty is hostile toward workers also.

The provisions which deal with worker adjustment are on less than a page, cover less than a page, in a treaty which goes on and on and on about other kinds of things. So there are many, many facets of it which have not been fully discussed, in which there are inadequacies which have not been addressed because of the fact it is on this fast track. And that is the greatest problem that we have with having to go to a vote tomorrow on such a far reaching document which will shape the American economy for years to come.

Mr. TUCKER. If the gentleman will yield, it reminds me in talking with many constituents in my district back over the weekend in a town hall meeting, it kind of reminds me of a metaphor, an example, of an owner and a prize fighter. The American people are like the prize fighter, and the owner is this administration and the great Unit-

ed States of America. And you get up to the big prize fight, and there comes a time when the owner looks and wonders if his fighter can take this guy or not. And all of a sudden he decides to bet on the other person, so that he hedges his bet both ways.

The multinational corporations in this country are in essence saying that yes, exports will go up from the United States to Mexico, but they will be producing them by capital goods factories down in Mexico. They will take advantage of their cheap labor and then export goods back to the United States of America. That is what Mexico is banking on. As you say, it takes two to make an agreement. Mexico is not just entering this agreement for nothing. It is looking for that foreign investment to come in, and then it is looking for those exports to go to the biggest market in the North American sector, and that is the U.S. market. Eighty-five percent of the market is the U.S. market.

So they will, in essence, shave away on the trade surplus, that \$6-billion trade surplus we have with them right now, one of the few countries we have a trade surplus with. But the multinational corporations once again will end up on top, because even though workers, American workers, may be displaced, this agreement will be good for the industrial elite.

□ 2240

Well, as to those who say, "Well, you-all are naysayers and you don't believe this agreement is going to make money, it is not going to do anything good," yes, it is going to make some money, but for the few, for the rich and the elite. But the average American worker is going to be left out in the dark, just like that prize fighter sitting on a corner with a tin cup and some pencils and wondering what went wrong and his owner sold him out just to take a dive.

Mr. OWENS. I would like to address that issue, the basic issue of the people who are the consumers, who must have the goods for their daily lives.

We have to purchase certain kinds of goods. We need them. The consumers ought to have some kind of right to participate in the production of those goods. What we have here is a major step toward a new world economic order where the people who are the consumers will not be able to participate in the production. Of course, eventually they will become less and less consumers. But there ought to be some kind of a right established, a human right established not to have to sit and watch your economy raped of its means of production. And when it is raped of the means of production, then your means of earning an income is also taken away. There has to be some kind of balance.

Previous speakers were talking about the fact that in the European Common

Market, how many years they took to work out these various arrangements between the countries, 40 years overall and 15 years before they began to let in the low-wage countries. It was a 15-year process letting in low-wage countries. Why? Because they were protecting the production industries and the right of their citizens within their countries to participate in the production process.

Are we going to move into a New World order where a dozen or more multinational corporations will control the plants and factories all over the world? They will move them around for the cheapest labor. They will manufacture at low cost and then, because you have no choice, you have to buy the product at whatever price they charge in the markets where the consumers are.

There is a basic principle at work here and a basic step being taken in the wrong direction.

I yield to the gentleman from Arizona [Mr. COPPERSMITH].

Mr. COPPERSMITH. Madam Speaker, I thank the gentleman for yielding. I assure him that if we do not finish during his hour, I will be extremely generous with the time I have following so that you will have the opportunity to finish your presentation.

I want to go back to the exchange I had with the gentleman from Pennsylvania. I fail to understand how the United States eliminating a 0.3 percent tariff on flat glass will be what unleashes this flood of imports into the United States and causes all the job loss.

I think flat glass is a good example of an industry where Mexico has a significantly higher tariff than in the United States. It is 66 times our tariff.

Mexico will reduce its tariff considerably more. In response to that, I heard a response about foreign lobbying, which I think befits more Ross Perot than RON KLINK, but if that is the nature of the argument, that will be the nature of the argument.

But if I could keep it on flat glass right now, I think the gentleman from New York discussed how the American market is a powerful one. It is a very attractive one to people from all over the world. It is actually one of our great advantages.

However, that market exists regardless of NAFTA. What we have right now is a situation where the flat glass tariff is extremely low on Mexican products entering the United States. It is the Mexican tariff on flat glass that is higher. And how does NAFTA, in this context, in this industry, how is changing our tariff from 0.3 percent to 0.0 responsible for the consequences described by the gentleman from Pennsylvania?

Mr. KLINK. Madam Speaker, the gentleman's figures are different than my figures are. My figures are that the

Mexican tariff is closer to 4 percent on flat glass and, in fact, they are going to drop from 4 percent to 0. And while it is going to take, as the gentleman said, 10 years, at 2 percent per year, for us to go from 20 percent down to 2 percent, again, it is industry figures.

I have had probably half a dozen meetings with people from Pittsburgh Plate Glass in Pittsburgh. They have already shut down facilities in Ford City, PA, South Greensburg, PA, and currently there is a labor dispute which has not been resolved in Creighton, which while not in my district is adjacent to my district. And this is something that is very, very bothersome.

Particularly to the gentleman, I will tell you that I am distraught by the fervor of this argument, because I know the gentleman's background, coming from the Pennsylvania district originally, and know of your family's interest with the labor unions. I will tell you that there is an extreme concern that when we do not have reciprocity, it is bad enough that the Mexican workers make one-ninth what the American workers make. That is enough of a handcuff to have behind our backs, as we compete internationally. But then to have a complete lack of reciprocity, for the sake of heaven, if there is any fairness in a fair-trade agreement, let it be a fair-trade agreement. Let us not have an agreement where American workers not only have to compete with those who are making one-ninth what they are making, but if we are going to lower the tariffs, let us lower the tariffs to zero for everyone across-the-board.

Let us not say, just because Mexico has been cheating and has had these unbelievably high tariffs for all these years, that we allow them to continue for the next decade.

A free-trade agreement should indeed be a free-trade agreement. It should be a free-trade agreement with a nation that allows its workers to freely be able to access their own level of earnings based on their productivity. It should not be a situation where those workers who have had their productivity increased steadily from the late 1970's and early 1980's have, in fact, seen their actual purchasing power in Mexican pesos go down by 30 percent.

It is a very dangerous situation. I would say to the gentleman, this is not acceptable.

Mr. COPPERSMITH. I thank the gentleman, but I would go back to the point that what we are talking about is reducing a U.S. tariff from 0.3 percent to 0 over a fairly short period of time. My understanding is the Mexican tariff is 20 percent. It takes longer to reduce. That difference, I think, has been pointed at by opponents of the agreement, because Mexico takes so much, takes longer to get to 0 than ours do, but that is because ours are so low already.

Some of these tariffs are so small that they essentially present no barrier to trade. That is the system of one-way free trade, where we let these products into our market even though we do not have access to their markets.

However, some of our protected products, sugar, glassware, and apparel, have far longer periods of time where we are worried about, where there is evidence for dislocations and where the Mexicans perhaps have a clear advantage. And some of those have 10-to-15-year phase-in periods.

I would say to the gentleman, if you are using flat glass as an example, I think that is not the best example to use. I understand the concerns of your district. Actually, we were both born, we grew up within about 25 miles, although it is in western Pennsylvania, where 25 miles from one place to another takes you 50 miles to drive.

Mr. KLINK. Correct.

Mr. COPPERSMITH. Flat glass is not the best example, because the U.S. tariff is so low already. I understand a lot of the concerns, but I think if you parse some of these agreements and parse some of these arguments and you look at what the tariff and the complaint here is, I do not think it stacks up.

That concludes the argument on flat glass, and I thank the gentleman from New York for his generosity with the time. I will certainly return the favor, if the need arises.

Mr. TUCKER. As to flat glass, I am not trying to speak for the gentleman from Pennsylvania, but I think his point is to the wage disparity. Ten to fifteen percent of that of the American wage earner, even in the flat glass industry, with a 0.3 percent tariff, that would be lowered. In other words, a negligible difference or reduction, that the wage disparity or the wage differential in Mexico will be the cause for this great influx of imports from Mexico or exports from Mexico, if you will, to the extent that that goes to the very heart of what is wrong with this agreement. And even though the tariffs on the American side are an average of 3.5 percent and on the Mexican side they are an average of 10 percent, this agreement does not speak to just the trade numbers there. It speaks to the fact that we are going to be investing money into Mexico, and these multinational corporations will be exporting back these products based on cheap labor in Mexico.

That is what is going to be the cause for this great influx of products coming back into this country. That is what is going to be the cause of the change in the balance of trade as we presently have.

Mr. OWENS. Madam Speaker, reclaiming my time, I just want to move rapidly through my arguments. I am dealing with basic principles, and I will conclude fairly rapidly. And the gen-

tleman, who has additional time, can then assume the floor.

□ 2250

Madam Speaker, I want to deal with the basic principles at work here. One point that I am trying to make is if we need a trade agreement with Mexico, and I think that is in order, why are we rushing so rapidly into such an agreement? Why do we not take the kind of time that we are taking with the President's health care plan?

We are going to be debating that for a long time. The concept really started at the beginning of this administration, and step by step, we have gone through a process where we will not be passing a bill until probably next summer. It is that big and that important. However, it is not any more important, with implications any greater, than this NAFTA, free-trade agreement. We should be moving much slower.

The whole concept of fast-track was a concept developed by a Republican President to rush it past the people, because he well knew that what is contained in that agreement would meet a great deal of displeasure if the American people fully understood it. It has been our job to try to make them understand it. We have worked very hard to do that.

Unfortunately, Madam Speaker, some things are very clear. We do not have to discuss that much. The consideration given to workers and the dislocation in the economy that will throw people out of jobs is one of the most scandalous portions of the agreement.

Very little is available. They talk about spending \$138 million over the next 5 years in a worker adjustment assistance program, where workers who are thrown out of work by any kind of trade arrangement which affects their plans and their places of employment have to go through a process of being certified by the Governor of the State, and then they apply to a program. It is a cumbersome process and very, very inadequate.

If, knowing that this is a huge change, a great movement within our economy, if there was any real consideration or concern for the workers, then there would have been an accompanying piece of legislation which dealt with the creation of new jobs, which dealt with a training program for workers. Very little attention has been paid because the assumption is that the masters of industry, the people who own the multinational corporations, have a right to manipulate the economy as they see fit. They are shaping the future of the American economy, and if we do not rebel, if we do not do something and do it right away, the great majority of our citizens stand to become urban peasants or suburban serfs, people who really have no control over their lives. They will

be at the beck and call of the corporate employers, being forced to work at wages that they set, regardless of the value of the labor that you give.

This does not just apply to workers in assembly line plants or entry-level workers. It applies across the board. People in the computer industry, the computer programmers, already we have seen how, from one nation to another, India, for instance, large numbers of computer programmers have been brought in at very low wages and undercut the wages of American computer programmers.

Those Indian workers speak the same language, they have the same competence, but they came out of a different economic system, and they worked at much lower wages, and they live a different standard of living.

However, when they are transported here or when our products are taken there and they do the computer programming there, it undercuts the salaries, undercuts the wages of our computer programmers here. The same thing will be true of technicians and scientists.

The whole question of can corporations have their way, manipulate the human factor, the wages earned by human beings, in ways which please them and have no kind of—the workers, the people have no redress; are the lives of the people of the world going to be controlled by corporations? If they want to survive, they will have to knuckle under to this pattern.

These are issues which I think have to be addressed. I would like to also comment on the fact that in the process of passing this monstrous piece of legislation, and as we know, it is a monster. It is a jerry-built piece of legislation. It is put together rapidly in order to be rushed past the American people, highly undesirable. In the push to pass it, there is a kind of solidarity within the establishment, among the power structure. All of the levers that they are able to push, they have pushed them.

As one speaker pointed out earlier, there are almost no newspapers on the editorial pages who are writing and editorializing against NAFTA. They are all pro-NAFTA, the whole establishment. All of the big industries are pro-NAFTA. Everybody is in line who has any power and any influence, pro-NAFTA.

The New York Times editorial page, which was quoted here before, has a very good article written by one writer about the fact that jobs are important and we have no right to neglect jobs and the loss of jobs in the rush to approve NAFTA. However, the New York Times itself has consistently editorialized in favor of NAFTA. They went so far today as to take a very cheap shot at all the Democratic legislators who are against NAFTA in the New York region. They went so far as to list on

their editorial page the contributions that the Congressmen who are against NAFTA have received from labor unions.

I think it is a very cheap shot when you consider that if we are going to talk about labor, political action committees, we must also look at the fact that the laborers live in the districts of the Congresspersons, and unlike contributions that come from corporations, they are contributions from the people who are constituents of that Congressman.

In my congressional district, for instance, I once added up all the union memberships. There were about 105,000 members of unions in my district. If 105,000 people singly gave me \$1 per year, it would be far more than I needed to run any set of campaigns, but they happened to make contributions through their unions, and the listing in the pages of the New York Times, when we divide the amount of money they listed by the 11 years that I have been in Congress, it comes out \$35,000 a year in contributions.

If I had gone to each member who belongs to a union and asked for \$1, I would have gotten far more than that. The only way we can reach those people, however, is through the contributions they give to their unions.

In representing their interests, I oppose NAFTA. They happen to be union members, and the unions happen to be trying to protect their jobs. It all comes together. I make no apologies for supporting a position which is against NAFTA, and which happens to be the position of most of the labor unions.

I want to give the gentleman from California [Mr. TUCKER] additional time, if he would like to take it, and I will conclude. If this gentleman also would like to participate, and then I will conclude my portion of this special order.

I yield to the gentleman from California [Mr. TUCKER].

Mr. TUCKER. Madam Speaker, I again thank the gentleman from New York, not only for yielding to me, but for his very lucid comments. Certainly, I must say, in conjunction with those comments about the listings by certain papers of labor contributions, that if they were to comparatively list the PAC contributions from corporate America, they would find some balance.

Mr. OWENS. They did not bother to list the one Democratic Member who is supporting NAFTA in the New York region. They did not bother to list her business contributions at all. That is why I say it was a cheap shot.

Mr. TUCKER. We would find some parity there, or for that matter, in more cases than not we would find that the business or corporate PAC contributions far outweigh the labor contributions for most Members.

However, getting back again to something that the gentleman was touching on in terms of the real impact of this agreement, the impact on the average American worker, the 75 industries that consist of 5.6 million American workers that are at risk by this NAFTA agreement, I think the gentleman has hit the nail on the head with the hammer, because these are the people who are going to be threatened, not only in terms of the projections that many studies show, that 500,000 jobs will be lost by this agreement, but the other very important issue of wage depression.

In other words, one of the single most important things that is wrong with this NAFTA agreement is that there is no guarantee for wages to be escalated in Mexico.

□ 2300

The whole notion of this NAFTA agreement is that American jobs will go up, the economy will go up because exports to Mexico will go up. It is just what the gentleman said earlier. That is all presupposed on the presumption that Mexican workers can afford to buy our goods. And when you look at their buying power right now of \$450, that is suspect at best.

But the point is let us assume for the moment that this agreement goes through. Not only will there be job dislocation, but there will be wage competition, meaning that because there is a 8 to 1 disparity in the wages, you will all of a sudden, because there is no mechanism in this NAFTA agreement to enforce the minimum wage in Mexico to go up to the average manufacturing wage, which is \$2.35, to go up, then when the unions and the organized labor in this country go to the bargaining table and say because of inflation, because of cost of living, because of all of these things we want our wages to go up, our wages to be commensurate with the high level of skill, the work that we are performing, if you look at the chart you will see that over the years in the last 10 or 12 years that is exactly what has happened in the United States and Canada. Wages have consistently gone up, except with our other trading partner in this agreement, Mexico. Wages have been consistently and unofficially kept low and kept down, and that is done because we are not talking about a democracy in Mexico. We are talking about a dictatorship. Let us call it what it is, a dictatorship that has had the same political party since 1920. This dictatorship would not allow in this agreement for any kind of enforcement for wages to go up in Mexico. So it totally undermines this argument about Mexican workers who are going to be able to raise their standard of living and their standard of income. At best, the highest per capita income in a year of the Mexican citizen or workers could be

\$2,500 compared with \$30,000 of annual income with the average American citizen.

So what I am saying here is that the gentleman from New York is exactly right. This NAFTA is not only a job killer, but it is a wage depressor, and it is a union buster in the sense that it is going to totally make impotent any organized labor in this country from being able to collectively bargain.

Some people will say well, what is that; you are just pro-union and all you care about is unions. No, I care about fairness. I care about the fact that people in this country should be able to negotiate for fair prices, for fair work. It is just that simple.

In conclusion I would say to the gentleman that he talked about the European Common Market and about how it took them 40 years to make a deal work because of countries like Spain, and Portugal, and Greece, and the wage disparity that they had with the other countries that were already in that economic community. Not only did it take that long to transition into this European Common Market, but \$120 billion had to be paid over 10 years, and \$25 billion in just this last year for those countries like Portugal, Greece, and Spain that had low wages or the high-wage disparity.

So what that means is that no matter what is said here, no one on either side of this issue can deny the fact that there is a wage disparity, that the minimum wage in Mexico is 58 cents an hour, and that the average manufacturing wage is \$2.35 an hour, and that the American people are going to have to pay for that. The low estimates are that we are going to have to pay \$20 billion, and the high estimate is it will be \$50 billion.

So what we are paying for is we are going to pay out of our pocket for somebody to take our jobs from the U.S. and to take them down to Mexico, and then they are going to send us the bill. And that is the most disgusting and shameful thing about this NAFTA agreement, and that is why I am saying that tomorrow this vote is a vote about the conscience of every legislator who is going to put the card in that machine and vote on this, because it will determine whether or not they care about the American citizen.

Mr. OWENS. I thank the gentleman for his comments.

Mr. TUCKER. I thank the gentleman from New York for the time.

Mr. OWENS. And I thank him for his informative statement.

I yield to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. Madam Speaker, I will tell the gentleman from New York that I have appreciated his leadership on the Education and Labor Committee. I appreciate his leadership on this issue of NAFTA, and I thank him for his time, and also for his straightforward

commentary and no-nonsense way of approaching this debate.

I just have to say I want to jump over to one of my other committee assignments for a second. One of the things that we have found out on the Committee on Banking, Finance and Urban Affairs, of which I am also a member, is that there are a lot of things about this NAFTA agreement across the board which many of us have not been privy to. One of the things that I want to get into and mention, the gentleman mentioned the fact of the newspaper in New York listing where the labor contributions of those who are opposed to NAFTA have come from. I will tell the gentleman that like many of my other colleagues who oppose NAFTA, it does not matter where the donations for your campaign come from. When labor was spending \$250,000 against this Congressman from Pennsylvania in his primary, I was still opposed to NAFTA. It had nothing to do with labor. It had to do with the fact as to whether it was right or wrong.

So when labor was putting a quarter of a million dollars against me in the primary, I was still opposed to NAFTA, because it is a bad idea. It will not work, and all of our parents, all of our grandparents, everything they fought for in labor rights will be undermined by this agreement if it is passed in this House tomorrow and goes on to fruition.

I want to talk about the banking issues for just a moment. I will tell the gentleman we had hearings 2 weeks ago in the Banking Committee, and I thought I had heard everything about this NAFTA agreement. We heard testimony from a woman by the name of Lucia Duncan. She described several accounts of Mexican courts which had allowed seizure without cause of property that is owned by Americans in Mexico.

We also heard from IBM's political agent in Mexico, Mr. Kaveh Moussavi. That is the gentleman who went down to Mexico and his entire purpose was to try to make the skies of Mexico, those who fly over the airspace of Mexico safer because IBM was going to sell an air traffic control system to the country of Mexico. And he was asked by the Salinas government for a payoff of \$1 million in American dollars to a special fund set up by President Salinas. He said no; IBM said no. And when he went public with this, he was declared by the Salinas government to be public enemy No. 1 of Mexico simply because he filed a formal complaint, a fraud complaint with the Mexican government.

Mr. Moussavi then went on to contact a Mexican attorney to try to obtain some judicial redress in this nation, and the attorney told him, and this is a direct quote before the Banking, Finance and Urban Affairs Committee here in the U.S. Congress, the

attorney in Mexico said, "Your naivete is touching. This is not the United Kingdom nor is it the United States."

Mr. Moussavi decided to go public with his case. He decided to talk to us in the U.S. Congress, to tell us in light of the oncoming NAFTA agreement about the dealings that IBM had in Mexico. He was threatened over the telephone in Great Britain, where he happens to live, that if he were to testify before the United States Congress about corruption in the Mexican Government, when he returned to Britain he would have one less child.

I say to the gentleman from New York, it is appalling to me, but we have heard these stories in committee after committee where we are dealing with an outlaw government. How can you have free trade when you are not dealing with a free government, where since 1988 over 200 opposition political people have been assassinated in Mexico, where 28 journalists have been assassinated in Mexico?

Now these things that I tell you about were reported to the authorities in the U.K., and they have followed up on them. Mr. Moussavi is following through on these issues.

We heard from Alejandro Argueta, a developer from Tucson, AZ. And he is living proof of a large centralized banking system, only 18 banks in Mexico who defraud their clients and who steal their savings. Mr. Argueta testified before our committee about what he called gangster tactics that were used against him after he obtained \$2 million from a Mexican bank. He said after that he was held incommunicado for 2 days because of a dispute with a Mexican bank, the owners of whom, by the way, had very close ties financially and politically with President Salinas. After he had a dispute with the owners of this bank, who were friends of President Salinas, he was held incommunicado for 2 days and was imprisoned for 16 months. Following his imprisonment he was released only after he signed a promissory note which had changed the terms of his loan, and subsequently the Mexican Government has deprived him of \$20 million of his own funds.

Now these are three stories of many stories that we have been told. We have been told about the upcoming devaluation of the peso. When the peso, as estimated by at least three or four people who testified before our committee, when the peso is devalued 10 to 20 percent, you will see that trade surplus diminish instantly. Why are they not depreciating the peso now? Because they are waiting for the vote tomorrow.

Ladies and gentleman, it is upon the vote of this NAFTA agreement that the Mexican Government is waiting, and they will, believe me, they will devalue the peso, and you will see this trade surplus with Mexico, pardon the expression, it will go south.

I yield back my time to the gentleman from New York.

□ 2310

Mr. OWENS. Madam Speaker, I thank the gentleman very much for the additional insight and special information that he has brought to bear on this subject.

I would like to conclude by stating again that I hold this President and his new administration in the very highest regard. Very important and far-reaching initiatives have already been launched by this administration, and I applaud the accomplishments of the President to date, and I am confident that the American people will enjoy exceptional benefits and realize a bountiful harvest of meaningful legislation including the establishment of a national health care system which provides coverage for all Americans. There are many things about this administration that I support and look forward to continuing to work with the administration.

But NAFTA is not an initiative of this administration. It is not an original initiative of this administration. NAFTA is something adopted by this administration as a holdover from the previous administration. NAFTA is a George Bush creation. NAFTA is a jerry-built monster with dangerous inadequacies.

I think we must all resolve that we will participate in the shaping of a new world economic order. We are not afraid of the future. We are not afraid of expanding trade. We are not afraid of change. We are ready to go into the new world order.

But what we are afraid of is being manipulated. We refuse to be the victims of a new world order.

Every Member of Congress should resolve to provide the leadership beginning with their vote on NAFTA tomorrow to provide the leadership which will help the American people remain the masters of their own fate. We must not be the victims of the new world order. We must be the masters of the new world order, and being the masters of the new world economic order means that we must protect the jobs, the incomes, and the standard of living of our society.

We begin that process tomorrow by voting "no" on NAFTA.

NAFTA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. COPPERSMITH] is recognized for 60 minutes.

Mr. COPPERSMITH. Madam Speaker, I thank you at some length, but before he leaves, I wish to thank the gentleman from New York who, while we are on opposite sides of this issue, respected the traditions of this House sufficiently to yield me some time during the course of that debate so I could enter into it. I appreciate it. He had reserved the time, and it was perfectly

acceptable for him to finish his arguments, and I appreciate very much him accommodating me during that time.

I now wish to thank you in advance, because the hour is late even though this is prime time for those of us in the mountain and Pacific time zones. I also beg your indulgence, because very rarely do I get to participate in history, but to the best of my understanding, this is absolutely, positively the last NAFTA special order, and you are there. Thank you, Madam Speaker,

I am joined tonight by two of my colleagues from the Pacific Northwest, the gentleman from Washington [Mr. INSLEE] and the gentleman from Oregon [Mr. KOPETSKI], and while I get an opportunity to collect my thoughts, and there are some specific points I wish to address in some of the presentations we heard earlier this evening, I would yield to my friend from Selah, the gentleman from Washington [Mr. INSLEE], as he is known throughout this NAFTA debate, the master of the metaphor, the Selah stretcher of simile.

Mr. INSLEE. I appreciate it, but I do not know if I can catch up with that monicker.

Madam Speaker and gentlemen, I think this debate has been illuminating, because what it has shown is the folks who want to kill this NAFTA, I believe, really are not understanding, if you will, or at least telling folks in America that we are not shielded by anything we are giving up right now. You know, the entire tenor we have learned of those who wish to kill this NAFTA is that somehow we are giving up this great shield which is protecting American jobs, protecting American men and women, protecting in my district, that somehow we have got a way that has prevented job loss, so we are going to give up.

The truth of that is that that is frankly just flat wrong. The truth of it is that we have got virtually nothing right now that we are going to give up as a result of NAFTA.

Let me tell you what we will get. You know, the average Mexican tax on the American worker is over 10 percent. If you looked on the C-SPAN screen, just before I drove down here tonight, I was with my family for a couple of hours before this special order, it says that the debate about NAFTA is a debate about an agreement that will reduce to zero taxes. If you look on the screen it says "Taxes," taxes imposed at the border by the Mexican Government and the American Government, and the fact of the matter is that the taxes imposed by the Mexican Government are over 10 percent which are an effective barrier to keep out our products, keep out our cars, keep out our flat glass, keep out our machinery, and that is a Berlin Wall that keeps out our products and keeps us from creating jobs in this country.

Now what will we give up to knock down that tax to zero? Because, as we know, NAFTA will knock down that Berlin Wall brick by brick, down to zero so we will have no walls to hop over to import or export our products to Mexico.

What are we going to give up? Are we going to give up some big wall that is protecting the American worker? You and I know we are not. We have a picket fence on flat glass, as the gentleman pointed out; 0.03 percent tariff, does that protect anyone in Ohio or Wisconsin or Washington or New York from anything? No. We have a 2-percent tariff on cars. Does that protect anybody in Detroit from losing their job to Mexico? No. We have got nothing.

A lot of people want to style this debate like somehow we have this asbestos suit that is protecting us from the flamethrower of international competition when, in fact, we are naked. We have virtually no protections right now, and we are giving up virtually nothing to get something from Mexico.

What we get from Mexico is destruction of their protectionist policies, destruction of that Berlin Wall, as you know, taking down their tariffs to zero.

I think anybody who has looked at this treaty should agree that if we knock down their Berlin Wall, and all we give up is reducing our picket fence with the gate wide open, we ought to take that arrangement, and that is what NAFTA does.

Now, I hope I have given you one story from Selah.

Mr. COPPERSMITH. Thank you very much. The gentleman points out that NAFTA, and many people forget this, requires much more from the Mexican Government in terms of reducing the tax they impose on United States goods at the border than it does from us, and even some of the horror stories that we have heard just do not make sense, if you look at what the current United States tariff is and what the current Mexican tariff is.

I think at this point I would like to yield to my colleague, the gentleman from Oregon [Mr. KOPETSKI], because there were a number of points, and I could only write down a couple, because we only have an hour, raised in some of the earlier debates about problems, about allegations about the agreement, but when you look at them, it is a lot like the flat-glass analogy, that somehow getting rid of this minuscule U.S. tariff is going to release all of these horrible consequences. It simply is not so.

One thing that came up earlier this evening is something about a tax break for Honda, and I think if I can yield to my colleague, the gentleman from Oregon, I think it is time we actually got the facts about this matter in the RECORD.

Mr. KOPETSKI. I thank the gentleman from Arizona for yielding on this issue.

I think it is important that we do clarify the allegations in terms of Honda, and so I am at this point in the record entering into the RECORD a letter from the chairman of the Subcommittee on Trade of the Committee on Ways and Means, the gentleman from Florida [Mr. GIBBONS].

But let me state also exactly what this letter has to say so that the RECORD is clear tomorrow before the Members vote:

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC, November 16, 1993.

THE FACTS ABOUT HONDA AND RULES OF ORIGIN
UNDER NAFTA

DEAR COLLEAGUE: Unfortunately, there is inaccurate information circulating in the Congress about how NAFTA will affect automotive trade among the United States, Mexico, and Canada. One particular story has it that the NAFTA implementing bill contains a \$17 million duty refund to Honda in connection with Honda automobiles exported from Canada to the United States. I think that the debate on NAFTA should be based on the facts and I would therefore like to set the record straight on these two matters.

With respect to the alleged \$17 million duty refund to Honda, the facts are the following. In 1991, the U.S. Customs Service announced that Honda automobiles exported from Canada to the United States did not satisfy the 50 percent U.S./Canadian content requirement of the U.S.-Canada Free Trade Agreement (CFTA). Both Honda and the Canadian government disputed the Customs Service's interpretation and indicated they would contest in both in U.S. courts and in bilateral dispute settlement proceedings. The \$17 million in disputed duties has therefore never been collected.

Before this matter could be litigated, negotiations were undertaken in the NAFTA on rules for automotive trade that would supplant the rules of the CFTA. After lengthy discussions with U.S. automotive companies and interested Members of Congress, U.S. negotiators made it a major objective of the United States in NAFTA negotiations to increase the required North American content rules from the 50 percent of the CFTA to 62.5 percent under NAFTA and to eliminate ambiguities in the CFTA rules. The United States achieved this objective in the Agreement.

As part of the agreement, however, the United States also agreed to provide Honda (and any other Canadian exporters similarly situated) the opportunity to settle any disagreement with the United States Government over the proper duties to assess on Canadian car exports to the United States from 1989 through 1993, either under the previous 50 percent content rules of the CFTA or under the newly revised and less ambiguous rules of the NAFTA (although the 50 percent content level would still apply for these disputed exports). If NAFTA goes into effect, therefore, Honda will have the option to settle its dispute with the United States Government either on the basis of the NAFTA rules (under which many believe Honda would prevail) or under the new and less ambiguous NAFTA rules. If Honda's cars meet the content requirement under the NAFTA formula for determining content they will not be subject to duty; if they fail to meet the content requirement duty is owed. There is no requirement in NAFTA to give duty-free treatment to Honda cars if they fail to meet the NAFTA content requirement.

In summary, NAFTA gives the U.S. a substantially higher auto content level and other changes beneficial to the U.S. auto parts industry in exchange for clarifying the CFTA rules for determining content and applying them to Honda's auto exports from Canada. Whether Honda meets those requirements remains to be determined.

Sincerely,

SAM M. GIBBONS,
Chairman.

□ 2320

I hope that that puts this matter to rest once and for all.

I thank the gentleman for yielding.

Mr. COPPERSMITH. I thank the gentleman.

So it appears there is no special tax break for Honda, this was a tariff issue that has been in dispute between the countries.

Mr. KOPETSKI. Absolutely.

Mr. COPPERSMITH. The rules that will apply under NAFTA in many ways require a higher domestic content than the U.S. Canadian Free-Trade Agreement that is in effect.

Mr. KOPETSKI. That is correct.

Mr. COPPERSMITH. And the idea that there was somehow a retroactive tax break for Honda just does not stand up.

Mr. KOPETSKI. The gentleman is absolutely correct. That is absolutely true. There is no tax break for Honda in this legislation. There is a matter in dispute. It will be resolved, as these kind of trade agreements allow for the first time. The gentleman is correct that the standard for the content rule is increased under NAFTA. I think that if we look at why this is a good agreement, we come right to the heart of the matter of why Japan opposes the NAFTA agreement. It is because they do not like content rules for their cars whose components could be manufactured in Japan, shipped to Mexico, shipped to Canada, assembled there and then receive beneficial treatment going into the United States consumer market.

NAFTA says in order to qualify for the reduced or eliminated tariffs, that product must be created or have in its content at least 62½ percent of it created, manufactured in the North American continent. And that is why the Japanese oppose the NAFTA agreement.

In other kinds of products, whether they are telecommunications or what, for example, with respect to France, that is why the Europeans oppose NAFTA, because it gives American industry, North American industry, a preference over them. It allows us to compete for the first time. I think it allows us to compete successfully against the Japanese, against Asia, against the French, the Germans and the Europeans.

Mr. COPPERSMITH. I thank the gentleman again. I think that is a good specific example of what we have

talked about before, that the North American Free-Trade Agreement not only reduces the barriers to the Mexican market, as my friend from Washington was explaining earlier, lowering that Berlin Wall to zero while we give up very low tariffs on some of these industries, but it also gives American companies, American producers, American workers, preferential access to one of the most rapidly growing countries in the world, the 13th largest economy in the world, the 10th largest consumer market.

It gives our companies preferential access because Mexico is going to zero its tariffs only with respect to the United States and Canada. It will keep its tariffs in place with respect to Japan and Western Europe.

So Mexico's high tariffs on semi-conductors, on computers, on telecommunications equipment will remain in place and give North American producers a 10 percent, 20 percent advantage in the Mexican market, which the Japanese will not have and the West Germans will not have.

I think former Senator Paul Tsongas said it well. When people said, "What about low-wage jobs moving to Mexico," he said, "I don't think any of us should be worried about Americans competing with Mexicans for low-wage jobs. We need to find ways that Americans can compete and win the high-wage jobs against the Japanese and the Europeans." That is exactly what this trade agreement does. That is exactly what is going on with the automobile provisions in the North American Free-Trade Agreement, with the North American content regulations. That is exactly why the Japanese do not like NAFTA, why the Western Europeans do not like NAFTA. Why? Because it is good for us.

I yield to the gentleman.

Mr. INSLEE. I thank the gentleman for yielding.

You know, we have talked to many folks that we represent, and there is controversy, there is concern about the NAFTA treaty, and I really believe it comes from a fundamental historical, sad story. That is that in our previous trade relationships with Asia, some of the European Community, we have been suckers. We are on the short end of the stick right now. The problem is that many of the folks that we represent believe that any trade agreement, because we have been burned in the past, must necessarily be bad. The reason I am supporting this agreement is that for the first time the American worker gets a fair shake, for the first time he or she gets a level playing field; for the first time we do not let the Mexican Government abuse the American worker. That is why we ought to support this agreement.

Let me give you an example: Who in this Congress would stand up and say, "I favor a situation where we allow the

Mexican Government to impose a tax twice as high on Americans as we impose on Mexicans"? Who would come and argue that is good for America? Yet that is the status quo.

That is exactly the short end of the stick we are on right now. Those people who come here tomorrow and argue we ought to kill this NAFTA because somewhere over the rainbow there is a better deal, ask them why they should vote for a status quo that lets the Mexican Government, people we never voted for, impose a tax twice as high on us as they do on them? The reason we got shortchanged in the past is we have been suckers, but finally we got an advantage against Japan, finally we got an advantage against France.

So all of those folks who are concerned about the history that we have had, and rightfully they should be, this is a different kind of treaty; it is one that gives us a distinct advantage. We talked about the concern people have about jobs leaving this country; it is no surprise that they have left this country. We have like what we used to call a skunk door; you know, a door in your door so the dog can get out but the skunks cannot get in. That is the kind of door that Mexico has on us right now; they can ship their products in but we cannot ship our products out.

We ought to close that skunk door. And that is what NAFTA is going to do.

Now, folks argue that we can wait; I heard people earlier saying it took the Europeans 40 years to do this, so I guess we can take 40 years too. Well, you know, we lose a million jobs a year and I do not feel like telling the American people we can lose a million jobs a year because of our bad trade policies and just let it go another 40 years.

I will yield to the gentleman if he thinks differently.

□ 2330

Mr. COPPERSMITH. Madam Speaker, I thank the gentleman. I think as the gentleman does on this issue.

I would like to quote from an editorial from the Portland Oregonian that speaks to the point that I think we were just discussing. The Oregonian said:

The United States would be foolish to turn its back on this opportunity for further export and domestic job growth, when it already faces multibillion dollar trade deficits with nations such as Japan and China, and to reject the treaty would only invite others again, such as Japan, to capture the Mexican market.

NAFTA will not solve all our economic problems. It is only one step, as the President has said forcefully, in a number of things we have to do to get our economy moving and to grow and increase it; but again quoting the Portland Oregonian:

NAFTA's passage would be a strong start for countering the economic strength of the United Europe and the industrial giants of Asia.

That is something we need to do and something we need to vote on.

Madam Speaker, I yield to the gentleman from Oregon [Mr. KOPETSKI].

Mr. KOPETSKI. Madam Speaker, I thank the gentleman for yielding to me.

I want to take a few moments to outline my beliefs about the NAFTA, the most comprehensive trade agreement ever negotiated by the United States.

There have been some charges that this was an Agreement that was negotiated in secret. Quite the contrary. In the last session of the Congress many of the committees received in public hearings testimony on the progress of both NAFTA and GATT negotiations as they progressed.

Members of the 102d Congress were given the opportunity to comment on the status of the negotiations, the issues important to their regions, to their districts, and that input was taken, and Ambassador Hills, our chief negotiator, then the head United States Trade Representative under the Bush administration took to heart those comments and took those to the negotiating table.

That does not mean that you get everything you ask for when you do negotiate.

Under the new President, of course, and Ambassador Kantor, that same sort of dialogue has occurred, so that the Congress has been well-informed continuously as the negotiations for NAFTA progressed.

We also had both in the 102d and 103d Congress private updates, not in public hearings, on the status of the negotiations, the issues on the table, the stumbling blocks, et cetera.

So the fact, the charges, I guess, that this as an agreement negotiated in secret is just clearly not true. Members if they took the time to attend their committee sessions and attended the private briefings that both Ambassadors under the Bush administration and the Clinton administration offered, they could have been kept abreast of the issues in dispute during the NAFTA negotiations.

These negotiations have led to what I think is not a perfect agreement, but one that is beneficial, especially to the United States. It will create the world's largest trading block with a population of over 360 million North Americans and a combined economy of over \$6½ trillion.

NAFTA will match the United States with our first and third largest trading partners, Canada and Mexico.

In addition, Mexico is also the largest growth market today for United States exports.

This powerful trade bloc will rival the European community and the Asian market where the movement is also toward creating a regional trading bloc.

European and Asian opposition to the NAFTA is one concrete example of

NAFTA's importance to the United States in a changing global economy.

For most of 1993, while the Clinton administration waged a budget battle and negotiated side agreements to strengthen the NAFTA, opponents of this agreement have had a free hand to rail against the NAFTA, and they have done a good job. In my opinion, an economically frightened American public has been spoon-fed a steady stream of misinformation and half-truths.

I understand and know the fear that many in my congressional district had regarding their jobs. This country continues to struggle through a seemingly jobless economic recovery. People do not have jobs out there. The people who have jobs or are underemployed or they are only working part time, or they have a job and they are worried about whether they are going to have that same job in that same profession the next day.

Unfortunately, many of the folks opposed to NAFTA I believe are trading on that very fear that is real and exists in the United States.

When I think that as we have tried to do, those of us who are proponents of NAFTA, are saying this ought to give us hope as a nation, that we will be able to compete in an international global economy.

A few weeks ago, I had the opportunity to attend the kickoff at the White House for passage of the NAFTA Agreement. Joining President Clinton in support of the NAFTA were former Presidents Bush, Carter, and Ford.

The battle for passage of the North American Free-Trade Agreement has been joined, and as the President exerts his influence in support, I am hopeful that we will have debate on facts and on vision as well.

At the kickoff, the President made two points that I want to share with you this evening.

First, President Clinton stated:

It is clear that most of the people that oppose this pact are rooted in the fears and insecurities that are legitimately gripping the great American middle class.

It is no use to deny that these fears and insecurities exist. It is no use denying that many of our people have lost in the battle for change, but it is a great mistake to think that NAFTA will make it worse. Every single solitary thing you hear people talk about that they are worried about can happen whether this trade agreement passes or not, and most of them will be made worse if it fails.

The President also went on to state:

But I want to say to my fellow Americans, when you live in a time of change, the only way to recover your security and to broaden your horizons is to adapt to the change, to embrace it, to move forward.

I am in complete agreement with President Clinton in his assessment of NAFTA.

Let us look at President Bill Clinton, or we should say candidate Bill Clinton, the candidate from organized

labor, the candidate of the environmental community, the candidate who was a candidate of virtually every group, of course, except for Ross Perot, who now opposes NAFTA.

As President, Bill Clinton has challenged the U.S. trade policy of the last dozen years, and particularly our trade deficit with the Japanese. He has taken them on.

The Clinton administration is closer to a GATT Agreement than the United States has ever been since the Uruguay Round began in 1986.

President Clinton negotiated the supplemental agreements to NAFTA. Who could argue that Bill Clinton has now taken a more aggressive stance toward insuring that U.S. workers compete in a fair, free, and open market?

Does one really believe that Bill Clinton is serious about pursuing a strategy that jeopardizes every single U.S. manufacturing job, as claimed by Ross Perot?

I think Bill Clinton deserves a lot of credit for standing up to his political base and making the case for NAFTA, making the case for job creation in our country.

In my estimation, NAFTA's harshest critics are defending the status quo. Clearly our present relationship with Mexico is unacceptable.

Mexico's tariffs remain 2½ times higher than United States tariffs. Mexico's nontariff trade barriers have encouraged United States firms to locate in Mexico to access the Mexican market.

The United States has even given firms in Mexico "sweetheart" deals to export their products back into the United States. That is the status quo.

Particularly in the border region, but also throughout Mexico, environmental protection and awareness has not been anywhere near what it ought to be, whether you are an American citizen or a Mexican citizen.

These are just a few of our problems in terms of our relationship with Mexico. The defeat of NAFTA will not change any of these problems. The status quo will remain and the United States will have lost an opportunity to work with and to influence Mexico's development.

I am not so foolish to think and to say that NAFTA will solve all our problems in our North American relations, but I am convinced the NAFTA will make this country and my State of Oregon and United States workers more competitive globally and provide a framework to address our problems in North America and particularly with Mexico.

□ 2340

My State is a trade State. One in five Oregon jobs is dependent currently on trade. According to our employment division, 90 percent of the jobs created in Oregon during the 1990's will be re-

lated to international trade, and we know that on average trade-related jobs pay 17 percent more than non-trade-related jobs.

Mexico represents an opportunity to Oregon, an opportunity many in Oregon are already taking advantage of. Since 1986, when Mexico reduced its tariffs on goods from 100 percent down to an average of 10 percent, meaning it is an average—there is still some at 20 and 30 percent for some products such as telecommunications—Oregon's exports to Mexico have quadrupled. I do want to stress this increase occurred despite the fact that Mexican tariffs still remain two-and-a-half times higher than United States tariffs.

Why? Why are we able to compete? Because Oregon and this country can make a quality product, a quality product that Mexican consumers want to purchase, and, yes, Mexican people are proud of the fact that they can buy American. We have that status in this world as a manufacturing nation.

Oregon's top five exports to Mexico are transportation equipment, industrial machinery and computers, scientific and measuring instruments, food products, and lumber and wood products as well. Importantly, NAFTA reduces tariffs on Oregon's leading exports to Mexico almost immediately upon implementation of the agreement. Here are several examples of Oregon companies expected to flourish under NAFTA:

Freightliner Corp. located in Portland, OR, with 3,000 union employees, good paying jobs; Freightliner already exports \$150 million of sales annually to Mexico. With reduced tariffs and Mexico's increased need for trucks that meet U.S. safety and weight standards, Freightliner is expected to prosper under the NAFTA. This Oregon company recently added a third shift and 500 new Oregon workers because of these increased sales, because of the increased truck traffic that is going to flow in between Mexico and the United States.

Last weekend, I went down to Laredo and Nuevo Laredo. Nine hundred American trucks a month crossed that border, taking American-made products from the United States into Mexico and selling them to Mexican consumers, and what is happily obvious, when you look at the line of trucks, is about a third of them, every third truck is a Freightliner truck, so it is not just the goods inside the truck. It is American workers who produce the truck that is shipping the goods, and that is what this agreement is about. You reduce the tariffs, we can ship even more American products down there, and I hope they do it on a Freightliner truck.

Next, we have CH2M Hill, the world's largest environmental consulting firm, with offices in Corvallis and across the country. In a letter to me, CH2M Hill Chairman Philip Hall wrote:

I believe the Mexicans are very serious about environmental cleanup, and those in leadership are anxious to use U.S. expertise and environmental know-how gained over the past decades of stringent environmental regulation in this country. Thus, provision of environmental services in Mexico is a potentially important market for CH2M Hill, which would be enhanced by NAFTA.

As the United States and Mexico seek to address our shared environment, CH2M Hill will be uniquely situated to provide assistance in dealing with an area that is largely without water and sewage facilities.

Over 80 Oregon firms are participating in USA/NAFTA, the nationwide industry group advocating passage of the NAFTA. Oregon business is stepping up efforts to reach the Mexican market of 90 million consumers.

Now this is an important point: Jobs are not finite; they are not. The way to increase jobs is you increase your markets. We have 280 million to 300 million people in the United States. Nowhere does it say that U.S. companies can only sell to them. We have a whole world out there, and what NAFTA does is it opens it up in a very positive fashion to add 90 million more consumers that U.S. companies can sell to. That is what this is all about, this agreement.

Consumers have a preference for U.S. goods and services, consumers who spend more on U.S. goods and services than either the Europeans and Japanese. Oregon expects to sell 1 million dollars' worth of Christmas trees into Mexico this year. The Oregon Department of Agriculture hosted recently a trade mission to Mexico. In 2 days, this show produced sales of Oregon products totaling over \$600,000. Two Salem area employers, Agripac and Norpac, are expected to sell several million dollars of product to Mexico over the next 2 years as a result of this trade show and market development efforts.

Oregon is a little State, 2 percent of this country, 2 percent in size, 2 percent in all statistics, the greatest State in the Nation, no question about it. But if we could do it, this tiny entrepreneurial State of 2.8 million people can go in and be aggressive and make jobs in Oregon by being involved in international trade, so can our Rust Belt, quite frankly.

Yes, it is hard. Yes, it is difficult. Yes, it takes learning. But if one wants their workers to work at home, our businesses are going to have to reach out not just to Mexico but to Europe and to Asia, and we will succeed. We will succeed because we have the know-how, we have the product, we have the reputation that consumers in the world know about and want.

Well, in one economic analysis of the NAFTA it was concluded that Oregon would be the third highest State in terms of job growth as a result of this. Twenty of the twenty-four responsible studies done, independent studies done on NAFTA, say this is a winner, this is

a winner for America, and it happens that, yes, every one of these studies in my State of Oregon is in the top five States that is going to benefit from this. I believe NAFTA will protect and enhance the jobs in Oregon already related to trade and provide new employment opportunities and good wages for Oregonians.

Now let me address my beliefs, talk just a moment about a NAFTA failure, what if we lose tomorrow. What if this country loses this agreement on the floor of the House tomorrow? What can the United States expect if NAFTA is rejected by Congress? A developing Mexico will certainly look elsewhere, whether it is Europe or Japan, for cooperation, growth, and expansion.

What kind of message will NAFTA's rejection send to Chile and the rest of Central and Latin America as these regions turn toward democracy following the cold war? What incentive will the Mexican Government have to work with in terms of working with the United States in terms of drug interdiction, and immigration issues and environmental pollution along the border? How will NAFTA's rejection create jobs in the United States and stop factories from moving offshore, whether it is to Mexico or to Asia or at some other point?

Well, a recent poll showed that 60 percent of the German people want the European communities to rival the United States in global affairs. This hits home. It is a vivid example of how our Nation economically is under attack. It is called competition in the global economy. The United States cannot pass on this challenge. NAFTA is one of the giant steps of many that will be needed to strengthen the U.S. economy for the benefit of our people, our workers and our standard of living.

Madam Speaker, I want to thank the gentleman for yielding, and I know that there is a number of other issues in this area that we could talk about and, I think, we ought to talk about. It is the fact that we were just talking about. Let us talk about not this NAFTA. The opponents say, "Well, let's negotiate another NAFTA down the road."

□ 2350

I wanted to point out that it is kind of interesting that many of the groups now opposed to NAFTA, vigorously opposed the fast-track process that we are utilizing to bring this debate quickly to the floor. Quickly, in congressional terms, of course, is months. I am not talking about days. When we talk about quickly in the Congress, we are talking months. But this process was opposed. These people, they opposed negotiating the treaty to begin with.

Opponents argued they did not trust the Bush administration. These same groups opposed the fast-track authority sought by the Clinton administra-

tion for GATT earlier this year. From the very beginning, organized labor and their protectionist policies have made it clear that they did not want any kind of trade agreement with Mexico or anybody else.

My friends in organized labor, the record is clear in terms of their position on international-trade agreements. They have never supported an international-trade agreement. They have opposed them all, save one, the Marshall Plan. That is it. That is their record. This is not something new. So if you look at their history, they have always said no. There is no expectation that the perfect trade agreement in terms of organized labor will ever come to the floor of a Congress. At least that is the history.

Many Members now state, "I support free trade, but this NAFTA, let's withdraw or defeat this agreement and start over." This logic is flawed, and Members clearly do not comprehend our historical relationship with Mexico.

NAFTA's rejection will not drive Mexico back to the bargaining table. NAFTA's rejection will be the lost opportunity for this generation of Americans and Mexicans to work together.

There is an age old saying common among the people in Mexico that goes something like, "So far from God, and so close to the United States." This characterizes the view of Mexicans toward the United States over the years, quite frankly, anti-gringo and anti-U.S.

A recent book in the early eighties called "Distant Neighbors, a Portrait of the Mexicans," a U.S. bestseller in the 1980s, states:

Contiguity with the United States has proved a permanent psychological trauma. Mexico cannot come to terms with having lost half its territory to the United States, with Washington's frequent meddling in its political affairs, with the U.S. hold on its economy and with growing cultural penetration by the American way of life. It is also powerless to prevent these interventions from taking place, and is even occasionally hurt by measures adopted in Washington that did not have Mexico in mind. And it has failed to persuade Washington to give it special attention. Intentionally or not, Mexico has been the target to American disdain and neglect and, above all, a victim of pervasive inequality of the relationship.

The emotional prism of defeat and resentment through which Mexico views every bilateral problem is not simply the legacy of unpardoned injustices from the past. Contemporary problems—migration, trade, energy and credits—also involve the clash of conflicting national interests, with Mexico approaching the bargaining table deeply sensitive to its enormous dependence on American credit, American investment, American tourists and even American food. Good faith alone could not eliminate these contradictions, but underlying tensions are kept alive by Mexico's expectation that it will be treated unfairly. Its worst fears are confirmed with sufficient regularity for relations to remain clouded by suspicion and distrust. As the local saying goes: What would we do

without the Gringos? But we must never give them thanks. Mexico must depend—but cannot rely—on its neighbor.

So Mexican politics have long been filled with anti-American rhetoric. Prior to 1986, this rhetoric surfaced frequently as United States-Mexican relations had a tenuous existence. President Salinas and his predecessor successfully convinced the Mexican people that closer ties to the United States are in their national interest. This is counter, of course, to their historical view of the United States.

So to reject NAFTA is to reject Mexico's extended hand of cooperation. To reject NAFTA is to rekindle an anti-American sentiment of Mexican political and cultural life. As an example of this point, a Nobel Prize winning Mexican poet wrote, "Rejection would unleash a wave of anti-U.S. sentiment that would quickly spread to the rest of Latin America." To reject NAFTA is to reject Mexico's offer to work cooperatively in many areas, ranging from drug interdiction to illegal immigration, to environmental concerns.

A scorned Mexico will not return to the bargaining table with the United States for many years, yes, generations. History demonstrates this fact. The opponents of NAFTA and trade in general cannot hide behind the vague claim of "Not this NAFTA" in the face of our history with Mexico.

Mexico will go elsewhere for economic growth if we fail tomorrow.

Opponents argue Mexico will return to the negotiating table because it must have NAFTA. This is not true. The Mexican government is committed to growing economically. The NAFTA question is about U.S. relations with this impending growth. Mexico has made it known that it will pursue other agreements if NAFTA is defeated. For example, President Salinas told me that he had been contacted by the Japanese expressing interest in Mexico should NAFTA fail. The Europeans also view NAFTA's failure as an opportunity to capitalize on this growing market. Let us not forget that Japan is Mexico's second largest trading partner behind the United States.

So it is nonsensical and illogical to think that Mexico would negotiate a new NAFTA if we kick dirt in their face tomorrow afternoon.

I want to thank the gentleman for his time and see if there are comments.

Mr. COPPERSMITH. Well, I thank the gentleman. I think you have spoken poetically of the argument, that somehow if not this NAFTA, there is some other NAFTA out there, some perfect agreement that all of the opponents could agree on.

I would like to talk a little more specifically about the economics. I mean, Mexico really has two options if NAFTA fails. Right now they have a \$20 billion trade deficit. It is financed because of people's confidence in Mexico's future growth. But that is not going to be there.

It would have two options. One is to severely devalue the peso. The other is to raise Mexican interest rates. Both of these would choke off the growth of the Mexican economy and would severely impact the rate of growth of one of the larger consumer markets for American goods.

That is what happens in the aggregate. Let me tell you what happens in the specific. Let me try to relate those economic statistics to one company in my State of Arizona. It is La Corona Food.

La Corona is a small business based in Glendale, AZ, that sells yogurt. About 3 years ago they began selling their product in Mexico. As it turns out, yogurt consumption in Mexico is about three and one-half times higher than in the United States. It is a good market.

This is a small business with 85 employees, \$15 million in annual sales. But currently 45 percent of their sales and one-third of their employees are making product that is sold in Mexico.

This is a small business that is competing with the giants in the yogurt market. They are competing and competing successfully with Dannon and Yoplait. They are the largest exporter of yogurt to Mexico.

Mr. Pritchard, who owns La Corona, told me that he knows, right now he is succeeding, despite a relatively high Mexican tariff. Between the Mexican regulations and the tariff, it relates to about a 20-percent tax on their product, more than Mexican yogurt.

They are succeeding right now. They are doing very well in that market. But they know that come Thursday morning, if this House does not pass the North American Free-Trade Agreement, that somehow, some way, the Mexicans will find a way to shut it off, to close the door. It might be a tariff barrier, it might be a nontariff barrier, but they will find some way to close the door to American producers. They just know that the wall will go up. It may be a tariff wall, it may be a nontariff wall. But that market, which is responsible for 45 percent of their sales and one-third of the jobs that that small business can provide, will disappear, will be gone. That is one small example of what is going to happen right here in this country, one small business, if this NAFTA is defeated. It will hurt what we have achieved to this point. It will foreclose further growth, and there is not the opportunity out there to somehow vote this down tomorrow and come back with some sort of NAFTA that will satisfy all the critics and gain approval in this Congress.

□ 0000

Mr. INSLEE. Perhaps I can give you another small story, which is a big story in my district. That is when I think about the people who have something at stake tomorrow. It is not the

Fortune 500 or the elites. I keep hearing this class warfare, that somewhere the only people at stake tomorrow are those who are chief executive officers of Fortune 500.

Let me tell you about another person who has a stake in making sure this passes tomorrow. She is my neighbor. She runs a little apple orchard. She gets up at 4 o'clock in the morning, puts on her overalls and goes out and gets on her Ford tractor, a tractor that cannot be sold in Mexico, by the way, because of the 22-percent tariffs that they now have. But she goes to work, and she sells apples to Mexico that we have not been able to sell until 4 or 5 years ago, which we now have been able to sell because we got Mexico to unilaterally reduce their tariff. And she has improved her financial situation.

I can tell you, tomorrow, when I come down here and vote, if I could vote twice, I would, because if this goes down, her livelihood is at stake. And she is no elite. She does not wear a tie. She wears overalls. She wears boots and works 14 hours a day in the freezing rain and the burning sun. And she has got a stake in this controversy.

That is why I am voting for NAFTA. Then am I supposed to tell her—I will not mention her name, I am not sure that she would want me to, she is a nice person. But if I said to her, "Not this NAFTA, I realize you are going to lose your job or your income as a result of killing NAFTA, but not this NAFTA, somewhere over the rainbow"—and I like the Wizard of Oz, it is one of my favorite movies—but to stake her economic future somewhere over the rainbow on another NAFTA would not be doing her a service.

I will tell you that tomorrow there is only two ways history goes. It goes forward for free trade in Mexico or it goes backward for protectionism in Mexico.

Let me tell you just a little thing I heard driving down here tonight on National Public Radio, a story out of Mexico City, an interesting political dynamic down in Mexico City, because in Mexico City they are having the same battle we are having here between the free traders, who want to reduce tariffs and let people trade with each other, free governmental taxes, and the protectionists, who believe that you can protect your jobs by putting on taxes by the government at the border.

The party out of power in Mexico is bashing the party in power over the head saying, this is a bad agreement.

Let me tell you why they say it is a bad agreement. They say it is a bad agreement down in Mexico, the opposition party, because it will allow us to get exports into Mexico and take advantage of the fact that their manufacturing facilities are inefficient. And we will be able to take their jobs away. That is what the opposition protectionist party says in Mexico.

And if you had a dollar, you would bet on the fact that if NAFTA goes down, those are the people who are going to rise to power in Mexico, the protectionists.

My neighbor is going to be out of a job and out of income, and that is why we are here tonight, to say that we ought to get Mexico to force them to knock down their walls, and that is why we are here.

Mr. COPPERSMITH. I think the gentleman is absolutely right. This is a vote, in many ways, over whether we face the future, whether we look forward, or whether we try to hold on to the past and not face that future. It is a debate not only in this country but also in the other countries of the North American Free-Trade Agreement, over those who think the economic pie always is the same size and what we do is argue over how it should be sliced, and those who realize our job as legislators, our job as Americans in this economy is to make the pie larger, to seek out new markets, new opportunities, create new jobs through growth.

I would like to shift at this point to something else I heard earlier in the evening. It raises some environmental claims against the agreement. Here is another perfect example of the people who say, not this NAFTA, there is some better NAFTA.

When you have people who are attacking it because it is too much for the environment, that it gives up, supposedly, too much U.S. sovereignty and somehow subjects U.S. manufacturers to far more environmental regulations, with those who say it does not go far enough. I do not see where the common ground is on that issue.

Let me give you one small example, which the issue came up about what about diversion of water. Does NAFTA require the United States to sell or permit diversion of water resources to Canada or to Mexico. What about the Great Lakes.

This came up earlier. And when you peel it away, there is nothing there. There is absolutely nothing there, because there is nothing in NAFTA that would change any law relating to water in the United States or in any way give Mexico or Canada or any person or business in those countries any right to water in our lakes or streams or other publicly owned water resources that does not exist already.

For boundary waters, there are treaties. There is not a word in NAFTA about those boundary waters. The existing treaties take care of those.

For nonboundary waters, State law applies. Whatever the States permit now will be permitted the day after NAFTA passes. It is just one of those stories.

When people say, is it true that NAFTA will do nothing to prevent male pattern baldness, and you have to admit that with respect to my colleague from Oregon that is probably

true. NAFTA has nothing to say about that.

That is totally outside the scope of the agreement. What NAFTA is about, is about growing this economy, is about seeking new opportunities and new markets, particularly those that are growing far more rapidly than the mature economy of the United States, seeking those out and making sure that our workers, our businesses have a leg up when they go out to compete with the Japanese and the Western Europeans.

Mr. INSLEE. There is a point that just has to be made, over and over and over again. The one thing I have not heard is the opponents have not accused NAFTA of precipitating additional Mississippi flooding either. But we have to continue to shoot down these balloons.

One of the balloons that the opponents of NAFTA have floated is this balloon that says that these rampant Hell's Angels Mexican truck drivers will be abusing and running us off the roads from North Dakota to New York. There is the same ability to enforce every single highway regulation of this country when NAFTA is passed on Wednesday that there is right now, and it is totally irresponsible for the fearmongers to run around and create this image of Kenworth trucks, which are sold in Seattle, by the way, and are going to be sold more in Mexico, once we get rid of these tariffs, that somehow they are going to be running people off the road.

It is inconceivable how many people have said that, and I get calls from my constituents. "Mr. INSLEE, are they going to be able to do this, these 6-year-old Mexican drivers with five felony convictions?"

No. The answer is absolutely no. Everybody in this Chamber knows it. We retain the exact same right to enforce every single law that we have on the books today to make sure that they have the same brakes, the same cars, the same drivers that we have today in this country.

I hope we shot that balloon down.

Mr. COPPERSMITH. There is another, that somehow NAFTA threatens existing U.S. environmental laws. In many of these cases, the opponents are simply dead-wrong.

According to Consumers Union, which has not taken a position on NAFTA in this debate, they have stayed out of it, they have just looked at the facts. And they say the characterization of the NAFTA text as providing a plausible basis for a successful challenge to the Delaney anti-cancer clause cannot be sustained.

In many cases, what NAFTA opponents are doing is confusing NAFTA with GATT and the Tuna-Dolphin case and other processing industries which are all related to GATT. And NAFTA treats the environment far greater than GATT.

I think there are so many of these environmental myths that my colleague from Oregon, I would be happy to yield to him at this time, can knock off a couple more of these that simply do not make sense.

Mr. KOPETSKI. Madam Speaker, I appreciate the fact very much that one of the things we are trying to do here this evening is to dispel a lot of the myths and misinformation that is surrounding the whole NAFTA debate, that we try to stick to the facts and provide information to the American public about exactly what the NAFTA agreement entails. There has been a lot of concern, and rightfully so, about some of the problems that Mexico has presented to us environmentally and whether Mexico has a commitment to the environment itself.

I think that we have to look and keep in perspective the fact that the true birth of the environmental movement in the United States just began 20 years ago, that for most of our Nation's history, we did not place an emphasis on the environment. Until just about in the early 1970's, did we take note of this and began creating such agencies as the Environmental Protectional Agency, building in environmental impact statements, whether at the Federal level, and imposing them on the local level as well, and States and local governments also got into the environmental movement as well.

Mexico, in many respects, is a new, emerging country. They, too, have the birth of their environmental movement taking shape there.

In the last 6 years, nearly 7,000 industrial inspections have been conducted resulting in the temporary or partial shutdown of almost 2,000 factories and the permanent closure of more than 100 facilities. I do not think that is a fact known by many Americans.

□ 0010

In 1992, Mexico created the Office of the Attorney General for Environmental Protection, the agency responsible for investigation, enforcement, and penalization for noncompliance of its environmental laws, environmental laws that, quite frankly, were adopted or borrowed from United States environmental laws. Along the border Mexico has increased its operating budget for border enforcement activities by over 400 percent. Yet only about 4 percent of the population resides in the border region. The Government is in the middle of a 3-year, \$460 million plan to clean up the most troubling border regions.

In Mexico City the government has embarked on a \$4.6 billion, 4-year program to combat air pollution. Included in this program was the 1991 closure of the city's largest oil refinery, at a cost of \$500 million, and it put 5,000 people out of work overnight then they shut down this oil refinery.

Mexico was the first country to ratify the Montreal Protocol, which calls for the reduction of use and production of CFC's. Mexico is a signatory to the Convention on International Trade and endangered Species. So these are some of the actions that have been going on within Mexico itself.

Just as in many nations in the world, including our own, the environmental movement is new, it is young, however, it is there to stay, and it will only blossom, in my estimation.

Mr. COPPERSMITH. I thank the gentleman for his comments. One other point to keep in mind is that in 1992 the Mexican environmental products market exceeded \$2 billion, and it is expected to grow significantly, so by 1995 the estimates are it is \$2.7 billion.

NAFTA opens up that market. As Mexico starts to deal with some of its environmental problems, to United States producers it is one of the best high wage, high value added type markets, environmental technology. Defeating NAFTA sends exactly the wrong message. Just as Mexico is starting to make headway on some of its environmental problems, just as it has a market for United States environmental technology which is starting to increase, it sends exactly the wrong message and turns its back on those trends and that market and those jobs.

PROGRESS IN MEXICO AND DEBUNKING MYTHS SURROUNDING NAFTA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon [Mr. KOPETSKI] is recognized for 60 minutes.

Mr. KOPETSKI. Madam Speaker, I think we ought to continue the debate in the environmental area. The gentleman from Washington [Mr. INSLEE] may have another comment.

I yield to the gentleman from Washington [Mr. INSLEE].

Mr. INSLEE. Madam Speaker, in regard to the environment, and perhaps just an extension of the gentleman's comments, countries progress. If we think about America, we have heard these dire statements about Mexico, many of which are true, many of which certainly do not comport with the American way of running a railroad or a democracy. If we recall our country, we are the country that did not used to let women vote, if we can imagine that. We are the country that had, as the gentleman pointed out, zero environmental protections, if we can imagine that. We are the country that used to shoot people that exercised the right to strike, the Government and the corporations used to do that.

However, we made progress in our history. The important facts we have to keep in mind, I believe, is that there is a struggle in Mexico, just like there

is always a struggle here. The struggle there is between the people who believe they want to move away from a centrally planned economy, away from a command economy, toward a more productive environment so they can trade internationally. Those are the people that want NAFTA to pass in Mexico.

There is another group in Mexico that wishes to go backward to the bad old days of Mexico. I think we have a mutual interest to make sure that we go forward together, and this treaty will make sure it does, particularly with fairness to us, with getting rid of their unfair barriers.

Mr. KOPETSKI. I think the gentleman is exactly right. I think there are a number of myths surrounding the whole environmental area that I think should be addressed so that people understand exactly what the environmental side agreement, which the President negotiated and had as part of the overall NAFTA agreement, contains.

One myth is that NAFTA will lead to a reduction in U.S. health, safety, and environmental standards to a least common denominator international norm. This is completely false. The NAFTA sections covering food safety and technical standards both have explicit language preserving parties' rights to set standards that meet as high a level of health, safety, or environmental protection as they desire, even if they are higher than international standards. This guarantee extends to States and local governments as well.

NAFTA discourages countries from lowering standards to meet international norms, and creates new mechanisms for enhancing standards.

Another myth is that NAFTA will lead to an exodus of United States companies to Mexico in search of lower environmental compliance costs. Objective studies have concluded that because the costs of pollution cleanup are a small fraction of total production costs, the average across industries is under 2 percent, few companies relocate to avoid them. NAFTA measures will actually reduce compliance cost differences between Mexico and the United States, both through enhancing standards and through increased commitments to enforcing environmental laws. These commitments are backed up by sanctions, dramatically increasing incentives for Mexico to toughen enforcement of its environmental laws.

Another myth is that NAFTA threatens conservation laws which protect wildlife, such as the dolphin. Again, this is false. NAFTA does not in any way change U.S. obligations regarding the use of trade measures to achieve environmental objectives outside U.S. territories, such as restricting tuna imports harvested in ways that kill dolphins. The environmental council actually offers a far more congenial forum

for changing internal opinion on this than any that we now have in place.

Another myth is that conditions at the United States-Mexican border will worsen under NAFTA. How could they? Border cleanup estimates run around \$8 billion, the amount that will go there under NAFTA and its innovative financing mechanisms. Without NAFTA, the process of deterioration that has taken place at the border will continue, with far less hope for fixing it.

Finally, another myth is that the dispute resolution process for countries that fail to enforce their environmental laws is too tortuous to ever be used. This is not true. The groups now criticizing it will make sure that they use it. The dispute resolution process emphasizes a cooperative approach designed to resolve problems without undermining the environmental commission's authority by enforcing too many contentious outcomes.

An important point is that environmental groups can initiate investigations by the Secretary of failure to enforce environmental laws, a remedy they have never had, and will surely use quite often, I am certain.

The gentleman from Washington [Mr. INSLEE] and the gentleman from Arizona [Mr. COPPERSMITH] mentioned the fact that as our neighbor from the south gets involved in environmental issues and environmental clean-up, for that matter, we in the United States have technologies and engineering companies that will benefit from the fact that they will move into this endeavor. Again, this is jobs for the United States in this area.

Finally, the alternative, the alternative if NAFTA fails, is that the environmental status quo continues. NAFTA did not create any of the environmental problems we have, but certainly it can put us on the right track toward fixing them.

I yield to the gentleman from Arizona [Mr. COPPERSMITH].

Mr. COPPERSMITH. Madam Speaker, that is a fact that even people opposing the NAFTA have to recognize. Let me quote from an article.

Citizens' groups opposed to NAFTA realize that defeating NAFTA isn't enough, "said John Cavanaugh, a fellow at the Institute for Policy Studies, a Washington think tank." Most of the problems we have highlighted—downward pressure on wages and working conditions, worker displacement and environmental deterioration—all of these problems remain even if NAFTA is defeated.

That is from an opponent. I think the gentleman from Oregon put it very eloquently earlier this evening when he said that a vote against NAFTA is a vote for the status quo. It is a vote for those environmental problems on the border that are getting worse.

□ 0020

It is a vote for the problems we have seen with immigration and job migration. Those problems exist today.

Those problems will only get worse if we do nothing to change the relationship between the United States economy and the Mexican economy and if we turn our back on really what is the only solution out there, the only thing on the horizon to start dealing with some of those environmental problems along the border, the only resources that I can see. None of the opponents are pointing at any effective way to start cleaning up the mess along the border to encourage Mexico to continue the trend of enforcement of its environmental laws. There is nothing else out there for the opponents. The problems will just be there, and defeating NAFTA is no solution to the problems of the status quo.

Mr. KOPETSKI. The gentleman is exactly correct again.

I would like to turn to another issue where there has been a lot of charge and allegations, and that is the human rights area in terms of Mexico and the status of the quest for civil rights within that emerging democracy.

Let me quote from the testimony of our Assistant Secretary for Human Rights and Humanitarian Affairs, Mr. John Shattuck before the House Foreign Affairs Subcommittee. His testimony begins with,

The condition of democracy and human rights in Mexico has improved significantly in the past few years, although substantial improvement is still needed. Mexican citizens have demonstrated increasing awareness of their rights, and concrete steps have been taken by the government to open the Mexican political system and reduce human rights violations. NAFTA will reinforce those within Mexico who are seeking reform and who are modernizing Mexico and its political system. We can promote these developments by encouraging reform efforts underway and strengthening bilateral ties both of which NAFTA would foster. To reject NAFTA would deprive Mexico of a strong incentive to continue reform and ourselves as a means to influence it.

Mr. Shattuck refers to the 1990 creation of the Federal Electoral Institute to administer and regulate elections. The institute has produced a new voter registry and a computerized tamper-resistant voter identification card system, has hired and trained more than 2,000 professional staffers to conduct fair and open and honest elections in that country. With the 1990 creation of the National Commission on Human Rights and the appointment of acknowledged and highly recognized human rights advocates to senior governmental positions, the commission has a mandate to investigate violations by government agencies, to report publicly those abuses, and to promote human rights education of the public. The commission sets up separate investigations into areas of special concern such as disappearances, treatment of indigenous peoples, attacks on journalists and prison conditions. From May 1992 to the present the commission's efforts resulted in disciplinary actions

against 1,031 government employees. In 348 of those cases criminal charges have been filed, and these cases are now in the judicial system.

Under judicial reform, President Salinas in January appointed Señor McGregor, the former president of the National Human Rights Commission as attorney general. Since his appointment 1,205 officials have left the attorney general's office either because they were forced to or because they were unwilling to abide by higher standards. Further, 300 officials have been prosecuted and 45 are now in jail for previous offenses.

Assistant Secretary Shattuck closes his testimony with, and I quote:

I would note that the generation taking its place in the leadership of Mexico has had far greater exposure to the world through advancements in telecommunications and travel than had previous generations. This has created a demand for better government and greater government accountability. The reforms that the Mexican government has instituted are indeed propelled by that change. NAFTA will hasten reforms, and by strengthening our bilateral relationship with Mexico will lead to an even more productive dialogue on continued improvements in human rights and democracy.

As I noted earlier, I had the opportunity to visit Mexico a little over 10 days ago, and I was able to meet Señor Antonio Peon who is president of the Mexican Commission on Human Rights. This organization is a non-profit governmental commission which was created in 1988, 2 years earlier than Mexico's Governmental Commission on Human Rights. And the purpose of this organization, this nongovernment organization was to promote the doctrine of human rights and to monitor corresponding developments of human rights principles in Mexico.

In this letter of November 9 to me, Mr. Peon states:

COMISION MEXICANA,
DE DERECHOS HUMANOS, A.C.,
Juárez, Mexico, November 9, 1993.

Mr. MICHAEL J. KOPETSKI,
Member of Congress, Fifth District, Oregon,
Washington, DC.

DEAR MR. KOPETSKI: It was a pleasure to meet you at the United States Embassy last Friday, November 5, particularly where we had the opportunity to discuss the current status of human rights in Mexico and the international perception of such status.

I would, thus, like to take this opportunity to reiterate the interest of the Comisión Mexicana de Derechos Humanos, A.C., (the "Comisión"), which I preside, in collaborating with you and the U.S. Embassy with respect to supporting the North American Free Trade Agreement ("NAFTA"), particularly at this critical time. As I informed you, the Comisión was created in 1988 (two years earlier than Mexico's governmental Comisión Nacional de Derechos Humanos) to promote the doctrine of human rights and to monitor the corresponding developments of human rights principles in Mexico. As depicted in the enclosed literature, the Comisión is a non-governmental organization not affiliated with any political, religious or sectarian organization and counting with the sup-

port of some of Mexico's most prestigious lawyers and professionals in general.

In addition, should future delegations of U.S. Congressmen decide to come to Mexico, we would be honored to cooperate with them in any manner you may deem appropriate and/or with whatever investigation or study they may wish to conduct with respect to the situation of human rights in Mexico. Ultimately, the goal of the Comisión is not only to monitor the protection and awareness of human rights in Mexico, but also, to ensure that there is an international understanding and awareness that human rights are taken seriously in Mexico and that, as in other countries, Mexico counts with governmental and non-governmental entities (like the Comisión) to guarantee the enjoyment of human rights in Mexico.

As promised, I am also enclosing a copy of the section dealing with human rights in President Carlos Salinas de Gortari's annual speech delivered to the Mexican Federal Congress and to the entire Nation on November 1, 1993. As you will read therein, with a National Human Rights Commission, but also, with a total of thirty-two human rights commissions at the state level, making Mexico the country with the largest ombudsman system in the world. In fact, in the last three years, the Comisión Nacional de Derechos Humanos has received over twenty-three thousand (23,000) complaints and has processed and concluded over twenty thousand (20,000) of said complaints.

By way of enunciation but not limited to, in recent years we have also seen substantial constitutional reforms to guarantee the procedural rights of accused parties such as the right not to make any declarations without the presence of a lawyer. In addition, prohibitions and sanctions concerning violations to the rights of detainees to communicate with their lawyers and/or relatives, as well as with respect to the practice of intimidating or torturing such detainees have obtained constitutional protection.

In connection with the protection of political rights in Mexico, several important steps have been taken by the Mexican Congress such as the creation of an electoral tribunal fully empowered to resolve electoral disputes. Furthermore, legislation has been expanded to allow for a broader range of evidence which can be submitted to the attention of such tribunal without the need of such evidence having to be embodied in the form of a public instrument (as had been the practice in Mexico prior to said reform). It is also important to underline that, through constitutional reforms, in Mexico it is no longer possible for the Partido Revolucionario Institucional ("PRI"), which has been in power in Mexico for the last sixty years, to modify on its own initiative the Mexican Constitution. Furthermore, while it is well known that in the past the PRI had used government funds in conducting its electoral campaigns as well as unlimited contributions from private entities and parties such as labor unions, this practice is now limited by new legislation restricting the amount of funds which can be accepted by any political party from said entities. Today we have been informed that the Instituto Federal Electoral has approved the creation of a special commission which will monitor the origin and application of funds to political parties. We hope that all these measures will result in a more democratic electoral process in Mexico.

In the area of civil liberties, after decades of neglect or even intolerance, Mexico's legal framework has now been more sensible to

the religious convictions of its people where, for instance, as of this date nine hundred (900) churches and religious organizations (out of a wide range of denominations) have obtained their certificates of incorporation and thus, legal recognition.

There is still a lot of work to be done with respect to the situation of human rights in Mexico and the enforcement of the laws protecting such rights. Notwithstanding the aforementioned, there has been an unprecedented movement towards the enhancement of human rights both at the government and Mexican community level. We are confident that the situation of human rights in Mexico will be further improved and fostered with the ratification of NAFTA, in view of the resulting closer relationship to be developed among Mexican and United States human rights related entities.

Once again, on behalf of the Comisión, I would like to pledge our support to NAFTA and to any activities which may further its approval by the U.S. Congress. I look forward to the possibility of the Comisión working with you in the aforementioned matters or in any other matter you may deem appropriate.

Sincerely,

ANTONIO M. PRIDA PEÓN DEL VALLE,
President.

This is not a government person. This is a watchdog organization of courageous individuals, many of them lawyers, who have led the human rights and civil rights movement in Mexico, and they are asking for our support.

Mr. COPPERSMITH. If the gentleman will yield on that point, I think anyone looking fairly at the historical records will see that Mexico in recent years has seen more often elections, for example, where the Pon opposition party now holds 180 of the congressional seats, and we have since seen in 1992 the National Commission on Human Rights, the CNDH that you referred to in Mr. Shattuck's testimony is starting to have an effect, you are starting to see prosecutions, you are starting to see standards being upheld.

I think it is obvious that Mexico may not be perfect, but neither are we. And there has been an unfortunate element of Mexico-bashing in this debate. It is not good for the debate, it is not good for our national interest. Mexico is our neighbor and always will be, and it is in our interest to keep them as friends, and to work with them, and cooperatively to better raise standards in both countries.

I think holding somehow this ideal that we will only trade with countries that meet somehow some high standard that we set for wages, for working conditions, for human rights would mean there would be very few countries in the world indeed with which we would trade. And I think not only those countries but this country and the consumers here would be the worse off for it if we were suddenly overcome with this paroxysm of morality that required us only to trade with people who were as moral or more moral than we are. That is not necessarily a mirror I think that we want to necessarily

hold up to our country or to other countries.

It is unfortunate that so much of this debate is taking this view and using it to bash Mexico, when real progress has been made and will continue to be made and will be accelerated with the ratification of the free trade agreement.

Mr. KOPETSKI. I think that it is important that we do examine, as we have, the intricacies and the involvements of who gains, who are the winners and who are the losers between the United States and Mexico with respect to the treaty itself. But I also think that it is important that we step back and look at the agreement, what it does, and come back to is this good for the American worker, is this agreement good in terms of the healthiness of the American economy.

□ 0030

We should not enter into or accept any trade agreement that is not good for the United States. That is what the No. 1 priority ought to be, and the issue is whether NAFTA reaches this for us, for the United States, for our workers, not for Mexico, not for Canada, but is it best for us, is this a good deal for us.

Over 30 years ago President Kennedy gave a major economic policy address. President Kennedy spoke of the new house of Europe and recognized the economic threat the Common Market posed to the United States. Then President Kennedy foresaw the future and called upon the United States to compete successfully to prosper.

In many ways the NAFTA debate is the answer to President Clinton's call for America to compete. NAFTA represents, and I think this is just as important as what is inside the agreement, for Mexico or the United States, and the whole environmental issues, the what is going on in human rights issues, labor standards issues, all of that is important, but you have to also say what else is in this for the United States, and I think what is critical that is even just as important as the agreement in terms within North America that NAFTA represents the first time since World War II that the United States is taking the offensive in terms of placing itself in a position to compete to aggressively in a global economy.

Yes, NAFTA is a trade agreement, but more importantly, it is a strategy, a strategy to sell American-made products to the American consumer. It is a strategy to sell American-made products competitively to a world market. That is what the heart and concept of this agreement is all about, nothing more, nothing less.

Are we going to remain reactive to actions taken by Europe and the EC? Are we going to react to what Japan may do, whether it is with their steel

or automotive industry or their high-technology industry? Are we going to react to Singapore or other nations and what they do? That is the status quo, and that is what creates fear in America today is that we do not have a game plan, that we are not being aggressive, that we are not taking the offense, that we are always responding to what Europe does, to what Japan does, that we do not have a game plan. That is what creates the fear is there is no road map for us. There is no leadership. There is no direction, and those that oppose NAFTA say we do not want one, we like the status quo, we want to remain defensive, we want to be vulnerable to our economy being dependent upon what the German manufacturers do, we want to be reactive to what Japan does. That is what they are saying when they oppose NAFTA.

Because there will not be another NAFTA. That is the reality. That is the reality. They ought to deal with it. If that is their only argument, then they have lost. They have lost the argument, because no one says this is the perfect agreement. It is not perfect for the United States.

Sure, there are provisions in it that say, gosh, it should be better, but this is what our best negotiators from a Republican administration and, yes, a Democratic administration could come up with, and all of Congress had the opportunity, if they wanted to, to take the time to go to committee meetings to participate, to have the input, and if they did, I am sure they got something. They were able to move that agreement along, and so now we have this before us, because now the issue is not the next NAFTA agreement. There will not be one.

The issue comes back to are we going to have a game plan, and the President of the United States, who was elected because he said we are going to do things differently in this country, that we are going to take a modern approach, that we are going to be competitive in an international economy, that we are no longer going to be defense-oriented, that we are going to be aggressive. Why? Because we have something to sell that we can sell to the world consumer, but we have the rules in place that allow us to do this competition, to compete, yes, for the American consumer, because the fact is the Japanese have control over 35 percent of the American automobile market. We can get it back, and NAFTA allows us that opportunity, because we create the rules, therefore, on the North American Continent.

It is not just the Democratic President that is saying that this is a good trade agreement for Americans. It is all the existing living Presidents as well, be they Republicans or Democrats. It is Nobel laureate economists, very smart people, who say that this is a great deal for America. That is the

emphasis. Why? Because they understand that we have got to have a strategy. Our competitors, our competitors are not Mexican workers, goodness. They know it. We ought to know it. Our competitors, our most serious competitive challenge to our jobs, to our living standards, comes from Europe and Japan. That is our competition, not from Mexico or other lower wage countries.

Europe and Japan have adopted aggressive regional trade strategies, and tomorrow on the floor of this House, we have the advantage to not only match them but one-up them and put us in a preeminent competitive position, and I am confident that if we have these rules in place that for the first time since the United States took the lead on the Marshall plan and said that we are going to rebuild Europe so that we can sell products to them, and they did respond, and now they are one of our major competitors, that if we defined the rules of the game on the North American Continent that we will succeed, because again we have the education, we have the creativity of product, we know how to market those products, we know how to manufacture them efficiently, we have a distribution system, a network, that is unmatched in the world, that our businesses will compete, will win, and that means profits for American companies and, more important, it means jobs, not welfare, not lower-wage jobs, but good-paying jobs, trade-related jobs that pay 17-percent more than a non-trade-related job, a job that provides health care for the family, a job that provides a retirement program for the worker and his or her spouse, a job that provides a vacation so you can take off time and be with your family a couple weeks a year. Those are the kinds of jobs we are talking about for this country.

We can either say not tomorrow on this floor and accept the status quo, accept the fact that we are going to play defense the rest of this decade and into the 21st century, or we can step forward as a Nation, as a Nation with Democrats and Republicans alike joining hands, joining forces, and saying no to all of the special-interest groups outside of this building, the hundreds and thousands of them that are surrounding us and pulling us this way or that way, and we are going to say we are doing this for America, because that is what it is all about, our economic future.

Our strategy for success begins on this floor tomorrow. It strengthens us here at home in North America. It will strengthen our bargaining hand in terms of the GATT negotiations, and we will be a leader, preeminently, for at least the next 50 to 100 years in this world.

I will be glad to yield to the gentleman from Arizona.

Mr. COPPERSMITH. I thank the gentleman for yielding.

Madam Speaker, I know all of us in this Chamber know that many people at home may not know that the gentleman from Oregon has announced he will not seek reelection to this body in 1994, but I think we have just heard some of the tremendous contribution he has made to the work of this House, and particularly to this debate, and I can think of no more fitting tribute to his service, and I would like to quote from an editorial in the New Republic on this issue.

□ 0040

And it is in the form of a speech, Madam Speaker, in the form of a speech to those of our colleagues who know in their hearts that the free-trade agreement is the right thing to do, the necessary thing to do, the absolutely vital thing to do, but still cannot bring themselves to vote for what is in our Nation's interest, what is absolutely vital for ourselves and for our children because they fear the political consequences or they fear the forces arrayed against them.

The article says:

There is an eerie familiarity about the forces arrayed against NAFTA: isolationism, protectionism, xenophobia. They prevailed after World War I. America turned inward, and the rest is history. Now we are again at the end of a war, and the world again waits for our definition of self. And again we vacillate. * * * Pivotal moments are hard to see except in retrospect. I know some would like to take refuge in this uncertainty: Maybe defeating NAFTA won't lead to a ruinous chain reaction. Well, maybe not. * * * We don't know which protectionist victory will be the fatal one this time around. That's why we must fight for free trade at every juncture. Uncertainty dictates obedience to conscience; and if you * * * use uncertainty to rationalize retreat, you betray yourself and your country.

Your president defined this vote as a matter of national security. Tell them that if NAFTA looks like a mistake three years from now, they can vote me out of office. I would rather face the judgment of voters after supporting NAFTA than face the judgment of history after opposing it. I urge you to make the same choice.

My friend from Oregon has shown great courage in his time here. He has cast many tough votes. He has cast many votes over which he has agonized. In many ways, I think he will join me tomorrow in casting what is really an easy vote because when it comes down to my country or politics, there is no choice, or it is a simple choice. It is a simple choice for America's future, it is a simple choice for a better country for my children. Those who would say "no" tomorrow are saying "no" to the future and "no" to the economic future for us and for our kids and for our children's children. We cannot let that happen.

Mr. KOPETSKI. I appreciate the gentleman's kind remarks. I do want to say that, yes, this is a difficult vote for

many people, and we ask on our side, of course, that people examine the fact, move away from the emotionalism, do not look at myths, look at reality, and then I am sure they will join us on the "aye" side of this.

There are those, clearly, who believe this is not the best, not in our best interests, not the best trade agreement that could be negotiated and hope that whether it is next year or 50 years from now that something different could be negotiated. I respect every Member's vote. The reality is we presume the people make informed votes in the best interests of their district, in the best interest of our great Nation. And I hope that the spirit of the debate will be based on fact tomorrow and reality, and I hope that we will prevail, but I know that all of us will continue to respect the other Members' vote and the reasons that are behind that vote.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BLACKWELL (at the request of Mr. GEPHARDT) for today, after 5:30 p.m., on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, as granted to:

(The following Members (at the request of Mrs. BENTLEY) to revise and extend their remarks and include extraneous material:)

Mrs. BENTLEY, for 5 minutes today, in lieu of previously approved 60 minutes.

Mr. TORKILDSEN, for 5 minutes, today.

Mr. COLLINS of Georgia, for 5 minutes, today.

(The following Members (at the request of Mr. WISE) to revise and extend their remarks and include extraneous material:)

Mr. SANDERS, for 5 minutes, today.

Mr. JEFFERSON, for 5 minutes, today.

Mr. SMITH of Iowa, for 5 minutes, today.

Mr. LAFALCE, for 30 minutes, today.

Mr. SYNAR, for 30 minutes, each day, on November 19 and 20.

Mr. VENTO, for 60 minutes, on November 17, 18, and 19.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HUTTO, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mrs. BENTLEY) and to include extraneous material:)

Ms. SNOWE.

Mr. GOODLING.

Mr. THOMAS of Wyoming.

Mr. PACKARD.

Mr. GILMAN in two instances.

Mrs. ROUKEMA.

Mr. HYDE.

Mr. OXLEY.

Mr. QUINN.

Mr. SMITH of Texas.

Mr. SOLOMON.

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Mrs. COLLINS of Illinois.

Mr. GEJDENSON.

Mr. REED.

Mr. HAMBURG.

Mr. BERMAN.

Mr. TRAFICANT in two instances.

Mr. DE LUGO.

Mr. SERRANO.

Mr. HOYER in two instances.

Mr. FINGERHUT.

Mrs. MALONEY.

Mr. PAYNE of New Jersey in two instances.

Mr. KENNEDY.

Mr. LEHMAN.

Mr. NADLER in four instances.

Mr. OBEY.

Mr. SANGMEISTER.

Mr. FAZIO.

Mr. OWENS.

Mr. CRAMER.

Mr. YATES.

Mr. BARCA of Wisconsin.

Mr. GLICKMAN.

Mr. ANDREWS of Texas.

Mr. DE LA GARZA.

Mr. KREIDLER.

Mr. SCHUMER.

Mr. MOAKLEY.

Mr. ENGEL in two instances.

Ms. FURSE.

Mr. HAMILTON.

ENROLLED JOINT RESOLUTION SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 79. Joint resolution to authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week."

SENATE ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to enrolled bills and a joint resolution of the Senate of the following titles:

S. 654. An act to amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations;

S. 1490. An act to amend the United States Grain Standards Act to extend the authority

of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, to extend the authorization of appropriations for such act, and to improve administration of such act, and for other purposes; and

S.J. Res. 19. Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii,

and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

ADJOURNMENT

Mr. COPPERSMITH. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 45 minutes a.m.), under its previous order, the House adjourned until tomorrow, Wednesday, November 17, 1993, at 9 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports and amended reports of various committees of the U.S. House of Representatives concerning the foreign currencies and U.S. dollars utilized for official foreign travel during the first, second, and third quarters of 1993, pursuant to Public Law 95-384, are as follows:

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Visit to Belgium, Poland, Hungary, and Italy, Feb. 6-11, 1993:											
Delegation expenses	2/9	2/11	Hungary				1,460.68		833.88		2,294.56
	2/11	2/14	Italy				838.21		1,739.15		2,577.36
Committee total							2,298.89		2,573.03		4,871.92

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RONALD V. DELLUMS, Chairman, Oct. 26, 1993.

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Visit to Italy, Turkey, Syria, and Morocco, Apr. 3-11, 1993:											
Delegation expenses	4/3	4/3	Italy				1,245.90		2,262.66		3,508.56
Committee total							1,245.90		2,262.66		3,508.56

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RONALD V. DELLUMS, Chairman, Oct. 26, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Tom Bevill	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
Hon. Jim Chapman	8/22	8/23	Okinawa		100.00						100.00
	8/23	8/26	China		591.00						591.00
	8/26	8/27	Hong Kong		987.00						987.00
	8/27	8/27	Vietnam								
Military air transportation											
Hon. Richard Durbin	8/10	8/20	Asia		3,354.00						3,354.00
Military air transportation											
Hon. Thomas Foglietta	8/22	8/23	Okinawa		100.00						100.00
	8/23	8/26	China		591.00						591.00
	8/26	8/27	Hong Kong		987.00						987.00
	8/27	8/27	Vietnam								
Military air transportation											
Hon. Jerry Lewis	7/3	7/10	France		2,415.00						2,415.00
Government air transportation											
Hon. Carrie Meek	8/15	8/19	France		1,068.00						1,068.00
	8/19	8/24	Netherlands		1,220.00						1,220.00
	8/24	8/27	England		786.00						786.00
Commercial air transportation							4,498.56				4,498.56
Hon. James Moran	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
Hon. John Myers	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
Hon. Neal Smith	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
Hon. Louis Stokes	7/3	7/10	France		2,415.00						2,415.00
Government air transportation											
Hon. Esteban Edward Torres	7/3	7/10	France		2,415.00						2,415.00
Government air transportation											
Sally Chadbourne	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
James Kulikowski	9/3	9/5	Bosnia		340.00						340.00
	9/5	9/6	Germany		173.00						173.00
Commercial air transportation							2,021.95				2,021.95
Richard N. Malow	7/3	7/10	France		2,415.00						2,415.00
Government air transportation											
John G. Osthaus	8/8	8/10	Russia		314.00						314.00
	8/10	8/12	Mongolia		336.00						336.00
	8/12	8/15	Kazakhstan		486.00						486.00
	8/15	8/18	China		579.00						579.00
	8/18	8/19	Japan		342.00						342.00
Military air transportation							10,000.00				10,000.00
Terry R. Peel	9/1	9/3	Switzerland		478.00						478.00
	9/3	9/5	Croatia/Bosnia		340.00						340.00
	9/5	9/7	United Kingdom		954.00						954.00
Commercial air transportation							4,089.50				4,089.50
John Plashal	10/13	10/14	Kenya		120.00						120.00
Military air transportation							7,490.00				7,490.00
Paul Thomson	7/3	7/10	France		2,415.00						2,415.00
Committee total					36,606.00		78,100.01				114,706.01

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

WILLIAM N. NATCHER, Chairman, Nov. 1, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, SURVEYS & INVESTIGATIONS STAFF, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Richard H. Ash	7/21	7/23	Panama		330.00		936.52				1,266.52
Michael P. Downs	7/5	7/7	Belgium		397.50				46.44		443.94
	7/7	7/9	Italy		336.00						336.00
Michael O. Glynn	7/11	7/15	Mexico		595.50		3921.40		183.98		4,700.88
	7/15	7/18	Argentina		660.00						660.00
	7/18	7/20	Paraguay		282.50						282.50
	7/20	7/24	Brazil		489.25						489.25
Jay K. Gruner	7/11	7/15	Mexico		595.50		3921.40		107.04		4,623.94
	7/15	7/18	Argentina		660.00						660.00
	7/18	7/20	Paraguay		282.50						282.50
	7/20	7/24	Brazil		489.25						489.25
Walter C. Hersman	7/5	7/7	Belgium		397.50		3495.45		30.50		3,923.45
	7/7	7/9	Italy		336.00						336.00
James J. Hogan	7/21	7/23	Panama		330.00		936.52				1,266.52
Thomas G. McWeeney	7/24	7/28	Japan		846.75		3,832.45		290.70		4,969.90
	7/28	7/31	Thailand		623.75						623.75
Douglas D. Nosik	7/24	7/28	Japan		846.75		3,832.45		160.43		4,839.63
	7/28	7/31	Thailand		623.75						623.75
Timothy W. O'Brien	7/21	7/23	Panama		330.00		936.52				1,266.52
Thomas R. Reilly	7/21	7/23	Panama		330.00		936.52				1,266.52
R. W. Vandergrift	8/10	8/12	Poland		292.50		5,416.47		181.68		5,890.65
	8/12	8/14	Hungary		295.75						295.75
	8/14	8/15	Croatia		212.50						212.50
	8/16	8/17	Macedonia		312.00						312.00
Committee total					10,895.25		28,165.70		1,000.77		40,061.72

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

WILLIAM H. NATCHER, Chairman, Nov. 1, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, SURVEYS & INVESTIGATIONS STAFF, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Visit to Austria and Hungary, July 2-7, 1993: Ronald J. Bartek	7/2	7/2	Austria		430.00						430.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, SURVEYS & INVESTIGATIONS STAFF, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
	9/1	9/2	Czech Republic		280.00						280.00
	9/2	9/5	United Kingdom		786.00						786.00
Commercial transportation							529.60				529.60
Carey D. Ruppert	8/27	8/29	Ireland		514.00						514.00
	8/29	8/30	Germany		358.00						358.00
	8/30	9/1	Italy		436.00						436.00
	9/1	9/1	Germany								
	9/1	9/2	Czech Republic		280.00						280.00
	9/2	9/5	United Kingdom		786.00						786.00
Charles L. Tompkins	8/27	8/29	Ireland		514.00						514.00
	8/29	8/30	Germany		358.00						358.00
	8/30	9/1	Italy		436.00						436.00
	9/1	9/1	Germany								
	9/1	9/2	Czech Republic		280.00						280.00
	9/2	9/5	United Kingdom		786.00						786.00
Delegation expenses	9/2	9/5	United Kingdom						55.45		55.45
Committee total					41,702.00		6,645.34		2,439.64		50,786.98

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RONALD V. DELLUMS, Chairman, Oct. 26, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Mr. Ray Almeida	8/26	9/7	Portugal		³ 1,687.00		2,327.45				4,014.45
Hon. Barney Frank	8/30	8/31	Portugal		⁴ 309.00						309.00
	9/1	9/2	Senegal		239.00						239.00
	9/2	9/4	Ivory Coast		⁵ 219.00						219.00
	9/4	9/7	Ghana		⁶ 630.00						630.00
Hon. Maxine Waters	8/30	9/2	Senegal		239.00						239.00
	9/2	9/4	Ivory Coast		⁷ 219.00						219.00
	9/4	9/7	Ghana		⁸ 630.00						630.00
Hon. Melvin Watt	8/30	9/2	Senegal		239.00						239.00
	9/2	9/4	Ivory Coast		219.00						219.00
	9/4	9/7	Ghana		630.00						630.00
Committee total					5,260.00		2,327.45				7,587.45

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.³ \$250.06 returned to Embassy.⁴ \$309.00 returned to Embassy.⁵ \$87.86 returned to Embassy.⁶ \$304.00 returned to Embassy.⁷ \$95.13 returned to Embassy.⁸ \$279.00 returned to Embassy; \$1,325.05: Total returned to Embassy.

HENRY GONZALEZ, Chairman, Oct. 22, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON THE DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Fortney "Pete" Stark ³	8/25	8/30	Italy	1,911,180	1,202		603.33				1,805.33
Committee total					1,202		603.33				1,805.33

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.³ Commercial air transportation arranged by Chairman Stark for himself.

FORTNEY PETE STARK, Oct. 29, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Cheryl A. Phelps	7/6	7/9	Canada		550.00		613.66				1,163.66
Theodore J. Jacobs	8/6	8/13	Russia		2,550.00		2,572.05				5,122.05
Committee total					3,100.00		3,185.71				6,285.71

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JOHN CONYERS, JR., Oct. 31, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Norman Y. Mineta	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Gretchen Biery	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. Robert Borski	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. Bob Clement	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. Jerry Costello	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
David Fuscus	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Ken House	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. John Mica	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
James R. Miller	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. George Sangmeister	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
David Schaffer	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. Tim Valentine	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Mary Walsh	8/23	8/27	Russia		1,600.00	(?)					1,600.00
	8/28	9/1	Germany		1,365.00	(?)					1,365.00
Hon. Barbara-Rose Collins	8/13	8/17	Korea		972.00						972.00
	8/18	8/21	Singapore		873.00						873.00
	8/21	8/25	Thailand		927.00						927.00
	8/25	8/26	Singapore		97.00						97.00
Commercial air transportation							6,330.45				6,330.45
Committee total					41,414.00		6,330.45				47,744.45

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

NORMAN MINETA, Chairman, Oct., 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Dan Glickman	8/10	8/21	Asia		3,354.00						3,354.00
Hon. Norman D. Dicks	8/10	8/21	Asia		3,354.00						3,354.00
Hon. James H. Bilbray	8/10	8/21	Asia		3,354.00						3,354.00
Commercial airfare							360.00				360.00
Hon. Nancy Pelosi	8/10	8/21	Asia		3,354.00						3,354.00
Richard Giza, staff	8/10	8/21	Asia		3,354.00						3,354.00
Greg Frazier, staff	8/10	8/21	Asia		3,354.00						3,354.00
Ken Kodama, staff	8/10	8/21	Asia		3,354.00						3,354.00
Jeanne McNally, staff	8/10	8/21	Asia		3,354.00						3,354.00
Michael Sheehy, staff	8/10	8/15	Asia		1,665.00						1,665.00
Commercial airfare							1,500.45				1,500.45
CODEL expenses							1,227.23		2,434.13		3,661.36
William Flesherman, staff	8/15	8/20	Europe		1,145.00						1,145.00
Commercial airfare							3,932.05				3,932.05
Calvin Humphrey, staff	8/15	8/21	Europe		1,407.00						1,407.00
Commercial airfare							3,932.05				3,932.05
CODEL expenses							453.73				453.73
Hon. Jack Reed	8/16	8/19	Africa								
Commercial airfare	8/19	8/27	Europe		1,554.00						1,554.00
Terry Ryan, staff	8/16	8/19	Africa								
Commercial airfare	8/19	8/27	Europe		1,554.00						1,554.00
Commercial airfare							4,310.25				4,310.25
CODEL expenses							116.47				116.47
Caryn Wagner, staff	8/25	9/3	Europe		1,158.00						1,158.00
Commercial airfare							3,647.25				3,647.25
Committee total					35,315.00		23,789.73		2,434.13		61,538.86

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DAN GLICKMAN, Chairman, Oct. 29, 1993.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2159. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving United States exports to the Republic of Korea,

pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking, Finance and Urban Affairs.

2160. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the original report of political contributions by David Nathan Merrill, of Maryland, to be Ambassador to the People's Republic of Bangladesh; also of Melvyn Levitsky, of Maryland, to be Ambassador to the Federative Republic of Brazil, and mem-

bers of their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

2161. A letter from the Director, Human Resources, Department of the Army, transmitting the U.S. Army nonappropriated fund employee retirement plan's year ended September 30, 1992, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

2162. A letter from the Chairman, Federal Maritime Commission, transmitting the semiannual report of the Office of the Inspector General for the period April 1, 1993 through September 30, 1993, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

2163. A letter from the Chairman, U.S. International Trade Commission, transmitting the semiannual report of the Office of the Inspector General for the period April 1, 1993 through September 30, 1993, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MILLER of California: Committee on Natural Resources. H.R. 1425. A bill to improve the management, productivity, and use of Indian agricultural lands and resources; with an amendment (Rept. 103-367). Referred to the Committee of the Whole House on the State of the Union.

Mr. NATCHER: Committee on Appropriations. H.R. 3511. A bill rescinding certain budget authority, and for other purposes (Rept. 103-368). Referred to the Committee of the Whole House on the State of the Union.

Mr. BEILENSON: Committee on Rules. House Resolution 311. Resolution providing for consideration of the bill (H.R. 3450) to implement the North American Free Trade Agreement (Rept. 103-369). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. NATCHER:

H.R. 3511. A bill rescinding certain budget authority, and for other purposes; to the Committee on Appropriations.

By Mr. STUDDS (for himself and Mr. DINGELL):

H.R. 3512. A bill to abolish the Council on Environmental Quality and to provide for the transfer of the duties and functions of the Council; to the Committee on Merchant Marine and Fisheries.

By Ms. BYRNE:

H.R. 3513. A bill to terminate the gas turbine-modular helium reactor program of the Department of Energy, and to dedicate the savings to deficit reduction; to the Committee on Science, Space, and Technology.

By Mr. DE LA GARZA (for himself, and Mr. ROBERTS):

H.R. 3514. A bill to clarify the regulatory oversight exercised by the Rural Electrification Administration with respect to certain electric borrowers; to the Committee on Agriculture.

By Mr. DE LA GARZA (for himself, Mr. STENHOLM, Mr. ROBERTS, Mr. LEWIS of Florida, Mr. BOEHNER, Mr. HOLDEN, and Mr. ENGLISH of Oklahoma):

H.R. 3515. A bill to amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990, to revise the operation of these acts, and to authorize

the establishment of a fresh-cut flowers and fresh-cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes; to the Committee on Agriculture.

By Mr. DEAL (for himself and Mr. DARDEN):

H.R. 3516. A bill to increase the amount authorized to be appropriated for assistance for highway relocation regarding the Chickamauga and Chattanooga National Military Park in Georgia; to the Committee on Natural Resources.

By Mr. LANCASTER (for himself, Mr. PRICE of North Carolina, and Mr. VALENTINE):

H.R. 3517. A bill to suspend temporarily the duties on ondansetron hydrochloride (bulk and dosage forms); to the Committee on Ways and Means.

H.R. 3518. A bill to suspend temporarily the duties on cefuroxime axetil (bulk and dosage forms); to the Committee on Ways and Means.

By Mr. THOMAS of Wyoming:

H.R. 3519. A bill to require the Secretary of the Treasury to mint and issue coins in commemoration of the 125th anniversary of Yellowstone National Park; to the Committee on Banking, Finance and Urban Affairs.

By Mr. COX (for himself, Mr. DOOLITTLE, Mr. BAKER of California, Mr. HUFFINGTON, Mr. MOORHEAD, Mr. HERGER of California, Mr. HORN of California, Mr. ROYCE, Mr. LEWIS of California, Mr. ROHRBACHER, Mr. PACKARD, Mr. CUNNINGHAM, Mr. GALLEGLY, Mr. HUNTER, Ms. HARMAN, Mr. CALVERT, Mr. DREIER, Mr. KIM, Mr. POMBO, Mr. McKEON, Mr. DORNAN, Mr. THOMAS of California, Mr. BALLENGER, Mr. MCCANDLESS, and Mr. WELDON):

H.R. 3520. A bill to amend title 18, United States Code, to provide increased penalties for damaging Federal property by fire, and for other purposes; to the Committee on the Judiciary.

By Mr. WHEAT:

H.R. 3521. A bill to establish a Commission on Crime and Violence; to the Committee on the Judiciary.

By Mr. HOYER (for himself, Mr. SMITH of New Jersey, Mr. CARDIN, Mr. McCLOSKEY, Mr. FISH, Mr. RICHARDSON, Mr. WOLF, Mr. PORTER, and Mr. MARKEY):

H. Con. Res. 181. Concurrent resolution expressing the sense of the Congress that leaders in the Middle East should consider establishing a Conference on Security and Cooperation in the Middle East; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

265. By the SPEAKER: Memorial of the House of Representatives of the State of Illinois, relative to summoning the Illinois congressional delegation to work with the Clinton administration to redirect some of its Federal funds to enhance local drug treatment centers; to the Committee on Energy and Commerce.

266. Also, memorial of the House of Representatives of the State of Illinois, relative to urging our Federal Government leaders to work together to designate the cemetery at Fort Sheridan a national cemetery for use by all veterans; to the Committee on Veterans' Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 35: Mr. UNDERWOOD and Mr. EVANS.

H.R. 93: Mr. SHUSTER, Mr. ARCHER, Mr. BARTLETT of Maryland, Mr. BEILENSON, Mr. CUNNINGHAM, Mr. DE LA GARZA, Mr. DREIER, Mr. EVERETT, Mr. FAWELL, Mrs. FOWLER, Mr. GIBBONS, Mr. GILCHREST, Mr. GILMAN, Mr. GOODLATTE, Mr. GOODLING, Mr. HANSEN, Mr. HERGER of California, Mr. HORN of California, Mr. HOUGHTON, Mr. HUNTER, Mr. KINGSTON, Mr. LINDER, Mr. MCDADE, Mr. MICA, Mr. MILLER of Florida, Mr. MONTGOMERY, Mr. POMBO, Mrs. ROUKEMA, Mr. SAXTON, Mr. SUNDQUIST, Mr. SKELTON, Mr. TAYLOR of North Carolina, Mr. WISE, Mr. WOLF, Mr. ZELIFF, Mr. KOLBE, Mr. PORTMAN, Mr. BLUTE, Mr. BONILLA, Mr. CHAPMAN, Mr. DARDEN, Mr. DICKEY, Mr. DOOLITTLE, Mr. ENGLISH of Oklahoma, Mr. HAYES, Mr. HOEKSTRA, Mr. HOKE, Mr. HUFFINGTON, Mr. ISTOOK, Mr. JACOBS, Mr. JEFFERSON, Mr. LAUGHLIN, Mr. LAZIO, Mr. LEWIS of California, Mr. MCCURDY, Mr. MACTLEY, Mr. MICHEL, Mr. MURPHY, Mr. RAVENEL, Mr. ROWLAND, Mr. SCHIFF, Mr. STENHOLM, Mr. SWETT, Mr. THOMAS of Wyoming, Mr. VOLKMER, Mr. YOUNG of Alaska, Mr. ZIMMER, Mr. SMITH of Oregon, and Mr. FRANKS of Connecticut.

H.R. 123: Mr. TORKILDSEN.

H.R. 162: Mr. GILCHREST and Mr. QUINN.

H.R. 163: Ms. DUNN.

H.R. 291: Mr. SISISKY, Mr. GILMAN, Mr. FIELDS of Texas, Mr. BARLOW, and Mr. TORKILDSEN.

H.R. 302: Ms. WATERS and Mr. HILLIARD.

H.R. 304: Mr. ENGEL.

H.R. 467: Ms. FURSE and Mrs. THURMAN.

H.R. 522: Mrs. THURMAN and Mr. LAZIO.

H.R. 624: Mr. BACHUS of Alabama, Mr. COBLE, Mr. BARTLETT of Maryland, Mr. WOLF, Mr. KLUG, Mr. INSLEE, Mr. BEREUTER, Mr. SCHIFF, Mr. HORN of California, Mr. ALLARD, Mr. MANN, Mr. CUNNINGHAM, Mrs. SCHROEDER, Mr. MARKEY, Mr. JOHNSTON of Florida, Ms. ENGLISH of Arizona, Ms. SHEPHERD, Mr. BARRETT of Wisconsin, Mr. INHOFE, Mr. HANSEN, Mr. PAYNE of Virginia, Mr. EDWARDS of California, Mr. ARMEY, Ms. LAMBERT, Mr. EWING, Mr. COSTELLO, Mr. VALENTINE and Mr. JACOBS.

H.R. 760: Mr. BLUTE.

H.R. 833: Mr. TORRES.

H.R. 840: Mr. ACKERMAN.

H.R. 911: Mr. TORRICELLI.

H.R. 961: Mr. SHARP and Mr. GOODLATTE.

H.R. 1133: Mr. CHAPMAN, Mr. GLICKMAN, Mr. JACOBS, Mr. NEAL of North Carolina, Mr. FAWELL, Mr. BLILEY, Mr. HAYES, Mr. DOOLEY, and Mr. FARR.

H.R. 1146: Mr. UPTON and Mr. ZELIFF.

H.R. 1176: Mr. FROST, Mr. BARLOW, and Mr. JOHNSON of South Dakota.

H.R. 1181: Mr. WISE and Mr. BEVILL.

H.R. 1276: Mr. FISH.

H.R. 1300: Mr. ZELIFF and Mr. ZIMMER.

H.R. 1362: Mr. ANDREWS of Maine.

H.R. 1552: Mr. WELDON.

H.R. 1627: Mr. PASTOR.

H.R. 1645: Mr. BARRETT of Wisconsin and Mr. FISH.

H.R. 1687: Mr. SERRANO and Mr. PASTOR.

H.R. 1863: Mr. MOORHEAD.

H.R. 1888: Mr. ENGEL.

H.R. 1900: Mr. BROWN of California and Mr. LEWIS of Georgia.

H.R. 1930: Mr. JACOBS.

H.R. 2042: Mr. BARRETT of Nebraska, Mr. PACKARD, Mr. SMITH of Texas, Mr. SUNDQUIST, Mr. BOEHNER, Mr. KYL, Mr. BARTON of Texas, Mr. SENSENBRENNER, and Mr. OXLEY.

H.R. 2135: Mr. HOEKSTRA.
 H.R. 2292: Mr. MINGE.
 H.R. 2424: Mr. REGULA and Mr. EVANS.
 H.R. 2447: Mr. VISCLOSKEY, Mr. FRANK of Massachusetts, Mr. FAWELL, and Mr. BOUCHER.
 H.R. 2455: Ms. KAPTUR, Mr. DICKS, Mr. GLICKMAN, Mr. BONIOR, and Mr. SKAGGS.
 H.R. 2484: Mr. PAYNE of New Jersey, Mr. MORAN, Mr. STOKES, Mr. DIXON, Mr. FISH, and Mr. HINCHEY.
 H.R. 2641: Mr. JOHNSON of South Dakota.
 H.R. 2666: Mr. COOPER.
 H.R. 2788: Mr. FRANK of Massachusetts and Mr. HINCHEY.
 H.R. 2859: Mr. BATEMAN, Mr. SPENCE, Mr. ARCHER, Mr. FIELDS of Texas, and Mr. FAWELL.
 H.R. 2863: Mr. HUGHES, Mrs. JOHNSON of Connecticut, and Mr. OLVER.
 H.R. 2898: Mr. LEWIS of Georgia.
 H.R. 2918: Mr. EVANS.
 H.R. 2921: Mr. NADLER.
 H.R. 2939: Ms. FURSE.
 H.R. 3039: Mr. GINGRICH.
 H.R. 3222: Mr. MINGE.
 H.R. 3293: Mr. GALLEGLY,
 H.R. 3306: Mr. DINGELL.
 H.R. 3364: Mrs. SCHROEDER, Mr. PASTOR, Mr. EDWARDS of California, and Mr. DURBIN.
 H.R. 3367: Mr. LIGHTFOOT, Mr. BOEHNER, Mr. FINGERHUT, Mr. MACHTLEY, and Mr. DOOLITTLE.
 H.R. 3373: Mr. HINCHEY.
 H.R. 3374: Mr. HINCHEY.
 H.R. 3414: Mr. HUGHES and Mr. FRANKS of New Jersey.
 H.R. 3457: Ms. ENGLISH of Arizona, Mr. HANCOCK, Mr. GENE GREEN of Texas, and Mr. SOLOMON.
 H.R. 3498: Mrs. ROUKEMA.
 H.J. Res. 90: Ms. SLAUGHTER, Mrs. THURMAN, Mr. JEFFERSON, Mr. DELLUMS, Mr. PORTMAN, and Mr. GENE GREEN of Texas.
 H.J. Res. 139: Mr. BACHUS of Alabama, Mr. THORNTON, Mr. CARR, Mr. GALLO, Mr. ANDREWS of Maine, Mr. WYDEN, Mr. SCHAEFER, Mr. FRANKS of Connecticut, Mr. TAYLOR of North Carolina, Mr. SMITH of Texas, Mr. BAKER of California, Mr. ACKERMAN, Mr. MARKEY, Mr. ROBERTS, Mr. MURTHA, Mr. BILIRAKIS, and Mr. KNOLLENBERG.
 H.J. Res. 159: Mr. HAMBURG, Mr. PASTOR, Mrs. LLOYD, Mr. VENTO, Mr. QUINN, Mr. ROSE, Mr. SERRANO, Mr. ROBERTS, Mr. HANSEN, Mr. HYDE, Mr. SAWYER, Mr. APPLIGATE, Mr. HALL of Ohio, Mr. BOUCHER, Mr. SARPALIUS, Mr. TRAFICANT, Mr. MCKEON, Mr. FAWELL, Mr. MENENDEZ, Mr. UNDERWOOD, Ms.

FURSE, Ms. ESHOO, Mr. DEFazio, Mr. VALENTINE, Ms. ROYBAL-ALLARD, Mr. DURBIN, Mr. YOUNG of Alaska, Mr. YOUNG of Florida, Mr. ROWLAND, Mr. BEVILL, Mr. LANCASTER, Mr. UPTON, Mr. DE LUGO, Mr. OBEY, Mr. SMITH of Texas, Mr. MINETA, Mr. SCHUMER, Mr. MFUME, Mr. BILBRAY, Mr. NEAL of Massachusetts, Mr. WILSON, Mr. HOAGLAND, Ms. ENGLISH of Arizona, Mr. FOGLIETTA, Mr. LEHMAN, Mr. PICKLE, Mr. CAMP, Mr. KLUG, Mr. SMITH of New Jersey, Mr. OBERSTAR, Mr. EMERSON, Ms. MOLINARI, Mr. VOLKMER, Mr. FORD of Michigan, Ms. LOWEY, Mr. CARDIN, Mr. STEARNS, Mr. GUNDERSON, Mr. CARR, Mr. COX, Mr. GALLO, Ms. BROWN of Florida, Mr. STENHOLM, Mr. COLEMAN, Mr. POSHARD, Mr. PETERSON of Florida, Mr. MATSUI, and Ms. WOOLSEY.

H.J. Res. 180: Mr. CALVERT.
 H.J. Res. 181: Mr. CALVERT.
 H.J. Res. 216: Mr. FRANK of Massachusetts.
 H.J. Res. 226: Mr. KLINK.
 H.J. Res. 247: Mr. CAMP, Mr. TORRES, Mr. GILLMOR, Ms. MCKINNEY, Mr. DARDEN, Mr. TAYLOR of North Carolina, Mrs. FOWLER, Mr. FRANKS of New Jersey, Ms. MARGOLIES-MEZVINSKY, Mr. BONILLA, Mr. HILLIARD, Mr. BALLENGER, Mr. CASTLE, Mr. GLICKMAN, Mr. LANTOS, Mr. GUTIERREZ, Mr. HOYER, Mr. LAROCOCCO, Mr. HAMILTON, Mr. KENNEDY, Mr. PAYNE of New Jersey, Mr. FORD of Tennessee, Mr. BROWN of California, Ms. CANTWELL, Mr. MURPHY, Mr. WHEAT, Mr. BARLOW, Mr. COOPER, Mr. RUSH, Mr. LEWIS of Georgia, Mr. KREIDLER, Mr. MILLER of California, Mr. JOHNSON of South Dakota, Mr. MARKEY, Mr. ACKERMAN, Mr. MONTGOMERY, Mr. RAVENEL, Mr. TOWNS, Mr. DIXON, Mr. BACCHUS of Florida, Mr. LEVIN, Mr. MATSUI, Mr. SERRANO, Mr. MOLLOHAN, Mr. OWENS, Mr. COYNE, Mr. TAUZIN, Ms. VELÁZQUEZ, Mr. NEAL of Massachusetts, Mr. DICKS, Mrs. KENNELLY, Mr. JACOBS, Mr. MAZZOLI, and Mr. SHAYS.

H.J. Res. 257: Mr. PARKER, Mr. JOHNSON of South Dakota, Mr. COPPERSMITH, Mr. KLEIN, Mr. PAYNE of New Jersey, Mr. POSHARD, Mrs. VUCANOVICH, Mr. STUMP, Mr. CLYBURN, Mr. SMITH of Oregon, Mr. QUINN, Mr. McNULTY, Mr. TALENT, and Mr. WELDON.

H.J. Res. 268: Mr. COBLE, Mr. GILCHREST, Mr. LAZIO, Mr. WELDON, Mr. KING, Mr. SCHIFF, Mr. BURTON of Indiana, Mr. MANZULLO, Mrs. BENTLEY, Mr. SAXTON, Mr. WYNN, Miss COLLINS of Michigan, Mr. STUDDS, Mr. MENENDEZ, Mr. EWING, Mr. BILIRAKIS, Mr. DICKS, Mr. APPLIGATE, Mr. SWIFT, Mrs. LLOYD, Ms. ENGLISH of Arizona, Mr. BARLOW, Mr. GORDON, Ms. SLAUGHTER, Mr. GLICKMAN, and Mr. MFUME.

H. Con. Res. 20: Mr. CONYERS and Mrs. CLAYTON.
 H. Con. Res. 37: Mr. BISHOP.
 H. Con. Res. 79: Mr. COX and Mr. KLUG.
 H. Con. Res. 91: Mr. ENGEL, Mr. EVANS, and Mr. DE LA GARZA.
 H. Con. Res. 107: Mr. ENGEL and Mr. SKELTON.

H. Con. Res. 126: Mr. BARCIA of Michigan and Mr. REYNOLDS.

H. Con. Res. 148: Mr. BOEHLERT.
 H. Con. Res. 177: Mr. CHAPMAN, Mr. GENE GREEN of Texas, Mr. BATEMAN, Mr. POMBO, Mr. SHAYS, Mr. McHUGH, Mr. EVANS, and Mr. CUNNINGHAM.

H. Res. 36: Mr. ZELIFF.
 H. Res. 191: Mr. JACOBS.
 H. Res. 227: Mr. ROGERS.
 H. Res. 234: Mrs. CLAYTON, Mr. CAMP, and Mr. MOLLOHAN.

H. Res. 281: Mr. ROGERS, Ms. DANNER, Mr. GENE GREEN of Texas, Mr. SARPALIUS, Mr. HASTERT, Mr. ZIMMER, Mr. JOHNSTON of Florida, Mr. SCHIFF, Mr. DREIER, Mr. LIVINGSTON, Mr. HALL of Texas, Mr. GOODLATTE, Mr. SCHAEFER, Mr. WALKER, Mr. GRAMS, Mr. BONILLA, Ms. ROS-LEHTINEN, Mr. MICA, Ms. MOLINARI, Mr. MYERS of Indiana, Mr. KLINK, Mr. PETERSON of Minnesota, Mr. BOEHLERT, Mr. STENHOLM, Mr. FINGERHUT, Mr. CRAMER, and Mr. MCCLOSKEY.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1697: Mr. INGLIS of South Carolina.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

68. By the SPEAKER: Petition of Western Legislative Conference, San Francisco, CA, relative to a national peace memorial at the atomic bomb loading pits on the Island of Tinian; to the Committee on Natural Resources.

69. Also, petition of the Suffolk County Legislature, New York, relative to mammography examinations for female veterans; to the Committee on Veterans' Affairs.

SENATE—Tuesday, November 16, 1993

(Legislative day of Tuesday, November 2, 1993)

The Senate met at 8 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

PRAYER

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

Let us pray:

My soul thirsteth for God, for the living God. * * *—Psalm 42:2.

Gracious God of love and mercy, the psalmist reminds us that there is, deep within us, a longing for God. In the word of one great philosopher, "There is a God-shaped vacuum in every heart which only God can fill."

Forgive us, Lord, for our indifference, our rejection, our denial, our fear to acknowledge this deep need within us. Forgive us for ignoring the only One who can satisfy the deepest hunger and emptiness of our hearts. In the words of Jeremiah, "Following hollow gods they became hollow souls."

Patient Lord, give us the grace to heed this profound longing. Help us to take time to consider this fundamental need and look to Thee for the satisfaction which Thou, alone, canst give.

We pray in His name Who is the Way, the Truth, and the Life. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 16, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 636, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 636) to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide abortion-related services engage in commerce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in *Bray v. Alexandria Women's Health Clinic* (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section 1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the *Bray* decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment of the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protest and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide abortion-related services, and the destruction of property of facilities providing abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing abortion-related services; or

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides abortion-related services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$15,000, for a first violation; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law;

"(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies; or

"(5) prohibit expression protected by the First Amendment to the Constitution.

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

"(1) ABORTION-RELATED SERVICES.—The term 'abortion-related services' includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

"(2) INTERFERE WITH.—The term 'interfere with' means to restrict a person's freedom of movement.

"(3) INTIMIDATE.—The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

"(4) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services or counselling or referral related to health or surgical services.

"(5) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a medical facility that provides abortion-related services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Utah [Mr. HATCH] or his designee is recognized to offer an amendment on which there shall be 90 minutes debate.

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Utah [Mr. HATCH].

Mr. HATCH. At this time I would like to say there will be no amendment on assaults during labor disputes; we have decided not to go with that amendment, which would ordinarily take 1½ hours.

At this time, I would like to request that the following two amendments be stricken from the list of remaining amendments: The amendment to strike State attorneys general's authority to sue, and the amendment to protect other constitutional rights.

I ask unanimous consent that they be taken from the list.

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

The Senator from Massachusetts [Mr. KENNEDY] is recognized.

MODIFICATION OF COMMITTEE SUBSTITUTE

Mr. KENNEDY. Mr. President, I have sent to the desk a modification of the committee substitute amendment to S. 636.

The ACTING PRESIDENT pro tempore. The Senator has that right. The amendment is modified.

Mr. KENNEDY. I would ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment is modified.

The committee substitute, as modified, is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide pregnancy or abortion-related services engage in commerce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in *Bray v. Alexandria Women's Health Clinic* (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section

1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the Bray decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to pregnancy or abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide abortion-related services, and the destruction of property of facilities providing abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

“SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

“(a) PROHIBITED ACTIVITIES.—Whoever—

“(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing abortion-related services; or

“(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides pregnancy or abortion-related services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

“(b) PENALTIES.—Whoever violates this section shall—

“(1) in the case of a first offense, be fined in accordance with title 18 United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

“(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302

of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

“(c) CIVIL REMEDIES.—

“(1) RIGHT OF ACTION.—

“(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) any commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

“(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

“(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

“(i) in an amount not exceeding \$15,000, for a first violation; and

“(ii) in an amount not exceeding \$25,000, for any subsequent violation.

“(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

“(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

“(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

“(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

“(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law;

“(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

“(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

“(5) prohibit expression protected by the First Amendment to the Constitution; or

“(6) create new remedies for interference with expressive activities protected by the First Amendment to the Constitution, occurring outside a medical facility, regardless of the point of view expressed.

“(e) DEFINITIONS.—As used in this section:

“(1) INTERFERE WITH.—The term ‘interfere with’ means to restrict a person’s freedom of movement.

“(2) INTIMIDATE.—The term ‘intimidate’ means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

“(3) MEDICAL FACILITY.—The term ‘medical facility’ includes a hospital, clinic, physician’s office, or other facility that provides health or surgical services or counselling or referral related to health or surgical services.

“(4) PHYSICAL OBSTRUCTION.—The term ‘physical obstruction’ means rendering impassable ingress to or egress from a medical facility that provides pregnancy or abortion-related services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

“(5) PREGNANCY OR ABORTION-RELATED SERVICES.—The term ‘pregnancy or abortion-related services’ includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

“(6) STATE.—The term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, I yield myself 15 minutes of the time.

Could I ask, Mr. President, how much time there is on the bill?

The ACTING PRESIDENT pro tempore. There is 1 hour for general debate on the bill.

Mr. KENNEDY. And that is equally divided?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. Mr. President, I yield myself 15 minutes.

Mr. President, this legislation will protect women, doctors and other health care providers from the tactics of violence and intimidation that are often used by antiabortion activists.

In the past 15 years, more than 1,000 acts of violence against abortion providers have been documented in the United States. Over 100 clinics have been bombed or burned to the ground. Hundreds more have been vandalized.

A recent survey by the Feminist Majority Foundation of clinics around the country showed that during the first 7 months of this year, fully half of the participating clinics had been the targets of arson, bomb threats, chemical

attacks, invasions and blockades, and other abuses.

It is not only the clinics that are being attacked. Doctors, nurses, and patients have all become targets. At least two doctors have been shot by antiabortion extremists.

Dr. David Gunn was murdered last March when he was shot at point-blank range outside a clinic in Pensacola, FL. At a Wichita clinic in August, Dr. George Tiller was shot and wounded in both arms.

In December 1991, a man in a ski mask opened fire with a sawed-off shotgun at an abortion clinic in Springfield, MO, and two clinic workers were seriously wounded.

And the worst is by no means over.

The Pensacola News Journal reported last week that Operation Rescue has announced plans to shut down two Pensacola clinics this month, using unspecified field activities that will undoubtedly include these tactics.

Attacks on clinics are not isolated incidents. Health care providers are living in fear for their lives. Many have received explicit threats against themselves and their families. One doctor in Texas received a letter in his mailbox at home that said, "Now you will die by my gun in your head * * *. Get ready [you're] dead."

A doctor in Rhode Island, who testified before the Labor Committee, was notified that a catastrophic health and dismemberment insurance policy was taken out for his wife.

Many physicians have found their faces, names, and addresses on "Wanted" posters. They take these threats seriously—especially after Dr. Gunn's murder, because he, too, had been targeted on wanted posters.

In addition to the violence and threats of violence, clinic blockades and invasions are disrupting the delivery of health care services throughout the country. Since 1977, over 30,000 arrests have been made in connection with clinic blockades and related disruptions.

Typically, in these incidents, dozens of persons—and sometimes hundreds, or even thousands—join together to barricade clinic entrances and exits. Often, they push their way into the clinics, then chain themselves to the furniture and equipment.

A widely used recent tactic is to inject toxic chemicals into the facility in the middle of the night. Acid to make staff and patients ill is sprayed into the clinic, where it seeps into carpets and furniture. The clinic is forced to shut down for days or weeks while it undergoes an expensive cleanup.

These are not peaceful protests. These attacks are more akin to assaults. The city manager of Falls Church, VA called them military assaults in testimony before the Labor Committee describing attacks on a clinic in his jurisdiction. Patients and

staff were held hostage for hours while the police tried to restore order, and a police officer was injured in the melee.

The consequences of this kind of conduct are unacceptable. The constitution guarantees the right of a woman to end a pregnancy, but the violence and blockades are designed to make it impossible for women to exercise that right.

Already, 83 percent of the counties in this country have no abortion provider. As clinics are burned down and the doctors are intimidated, it becomes harder and harder for women to obtain a safe and legal abortion.

The violence and blockades hurt others too. Many of the targeted clinics offer a wide range of health services. When these clinics are bombed, burned, blockaded or invaded, all of their patients suffer.

The Blue Mountain Clinic in Missoula, MT, was totally destroyed by arson last March. The clinic offered abortions, but it also provided prenatal care and delivery, childhood immunizations, diagnosis and treatment of sexually transmitted diseases, and contraceptive services. Many patients traveled over a hundred miles to obtain health care from the clinic. Now, that community has lost access to these needed services.

The perpetrators of this conduct believe that abortion is wrong, and they are entitled to their view. But no matter how strongly they feel, assaulting doctors and blockading and bombing clinics should not be tolerated.

This legislation is designed to prevent this reprehensible conduct and to ensure that it will be punished when it occurs.

It establishes a new Federal criminal offense prohibiting force, threat of force, physical obstruction, or destruction of property intended to interfere with access to pregnancy or abortion-related services. It also establishes the right to bring Federal civil suits to enjoin such conduct and to obtain damages to compensate the victims.

The language of the bill is drawn in part from Federal civil rights laws that prohibit force or threat of force to interfere with the exercise of other fundamental Federal rights—such as the right to vote, or to obtain Federal benefits, or to obtain housing without regard to race. Examples are found at 18 U.S.C. 245(b), and 42 U.S.C. 3631. Both of these laws were enacted as part of the Civil Rights Act of 1968.

The penalties in this bill are consistent with the penalties set forth in those laws: up to 1 year of imprisonment for the first offense; up to 3 years for subsequent offenses; up to 10 years if bodily injury results; and up to life in prison if death results.

The U.S. Criminal Code also provides for a range of maximum fines for Federal crimes, depending on the applicable maximum prison term, and such fines will be available here as well.

This measure prohibits four specific categories of conduct:

(1) It prohibits the use of force, including shooting or assaulting providers or patients.

(2) It prohibits the threat of force. This provision applies in the case of serious, credible threats of bodily harm, such as the explicit death threats that many doctors have received.

(3) It prohibits physical obstruction of the facilities.

This is carefully defined in the legislation to mean making the entrance or exit impassable, or making passage unreasonably difficult or hazardous.

(4) It prohibits the damage or destruction of property. This includes arson, firebombing, chemical attacks, and other serious vandalism.

The legislation does not restrict activities protected by the first amendment. Those who are picketing peacefully outside clinics, praying or singing, or engaging in sidewalk counseling and similar activities that do not block the entrances have nothing to fear from this law. Those activities are protected by the Constitution, and this legislation does not restrict them.

The violent conduct that this legislation does prohibit is not even arguably protected by the first amendment, even if it is intended to express a point of view. As the Supreme Court said last June in its unanimous opinion in the hate crimes case *Wisconsin versus Mitchell*:

[A] physical assault is not by any stretch of the imagination expressive conduct protected by the first amendment * * *. Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact * * * are entitled to no constitutional protection.

[*Wisconsin v. Mitchell*, 113 S. Ct. 2194 (June 11, 1993).]

The same is true of physical obstruction of access to a public or private building—it is entitled to no constitutional protection. [*Cox v. Louisiana*, 379 U.S. 536, 555 (1965).]

In short, this legislation will not penalize a point of view. It will not penalize conduct expressing that point of view in nonviolent, nonobstructive ways.

The only conduct it prohibits is violent or obstructive conduct that is far outside any constitutional protection. That is why the measure has been unequivocally endorsed by the American Civil Liberties Union and many others who have reviewed its constitutional implications.

Some may wonder why we need a Federal law, since such activities are normally a matter for State and local authorities. State and local laws against trespass, vandalism, assault and homicide, cover a large part of the conduct this legislation would address.

But in a number of incidents around the country, local officials, apparently

opponents of abortion rights themselves, have been unwilling to enforce the laws. A sheriff in Texas has stated unequivocally that he will not enforce the law against those seeking to stop abortions. A police chief in Minnesota was arrested for participating in a clinic invasion himself.

A Federal law is also needed because we are confronted with a nationwide pattern of conduct by persons and organizations who operate across State lines in a manner that often makes it difficult or impossible for local authorities to respond effectively. Anti-abortion activities of the most extreme kind have been reported in every part of the United States. When the organizers and their recruits move from one clinic to another in different jurisdictions, Federal investigative and law enforcement resources are essential.

Local authorities are often overwhelmed by the sheer numbers of clinic attackers. The Falls Church, VA, official who testified to the Labor Committee told us that his town had only 30 uniformed officers to arrest over 200 clinic attackers. It took hours for the police to clear the clinic. The lone city prosecutor handling the charges was swamped, and ultimately the trial had to be held in the community gym, because it was the only place large enough.

Clearly, these cases should be Federal cases.

Prior to the Supreme Court's decision in *Bray versus Alexandria Health Clinic* last January, in circumstances like this the clinic operators, staff or patients could apply to Federal court for an injunction, which could then be enforced by U.S. marshals.

For example, in the campaign against several clinics in Wichita in the summer of 1991, it was the Federal marshals who were able to restore order. But in *Bray*, the Court held that the civil rights law under which such injunctions had been issued does not apply to antiabortion blockades. That decision created an unfortunate gap in the Federal laws that this legislation will close.

Attorney General Reno, with her background in local law enforcement and her special sensitivity to the appropriate roles of Federal and local authorities, wholeheartedly concurs in the need for Federal help here. In fact, she testified that enactment of this legislation is one of the Justice Department's top priorities.

Some have asked why the bill singles out abortion-related violence and blockades. The answer is that this legislation singles out for new Federal penalties and remedies exactly the conduct that calls for a Federal response—no more, no less. Antiabortion violence and blockades that have been occurring across the Nation as part of a coordinated, systematic campaign to intimidate abortion providers and patients,

and State and local authorities have been unable to control it.

Nothing remotely comparable is happening that would justify a Federal law against violent demonstrations in other contexts. There is no record of any organized, nationwide pattern of violence or blockades by labor unions or any other group, let alone a pattern of conduct that local authorities have been unable to handle.

When a need for Federal legislation is shown, Congress should act. Last year we passed by voice vote a law prohibiting violence against animal research facilities. No one objected on the ground that it singled out animal research opponents unfairly.

Finally, S. 636 evenhandedly addresses the possibility of abuses by both sides of the abortion controversy. It provides exactly the same protection for pro-life counseling centers, staff, and clients that it provides for abortion clinics and their staff or clients. It does so by applying its prohibitions to conduct aimed at interfering with pregnancy or abortion-related services, and defining that term to include services relating to pregnancy or the termination of a pregnancy.

If abortion rights activists were to vandalize a pro-life counseling center, or use force against a counselor who works there, they would be subject to the same criminal and civil liability as pro-life activists who attack abortion clinics or use force against a doctor who works there.

This provision was added to S. 636 in the Labor Committee to respond to the desire for equal treatment of both sides. The even-handedness principle is further refined in the modified substitute I offer today. At the request of Senator WOFFORD, we have changed the name of the services covered from "abortion-related" to "pregnancy or abortion-related," to make it even clearer that pro-life pregnancy counseling is included in its protections.

In addition, as a further modification after discussions with Senators DURENBERGER and KASSEBAUM, the bill ensures that demonstrators—whichever side of the abortion debate they are on—do not obtain any right under this law to bring a civil suit. Only patients and clinic personnel will have that right.

As reported by the Labor Committee, S. 636 permitted any person aggrieved by the prohibited conduct to sue for damages or injunctive relief. That could have been read to permit suits against clinic attackers to be brought not only by a patient or doctor or clinic owner, but also by a pro-choice demonstrator or clinic defender. Pro-life demonstrators outside the same clinic would not have had a similar right to such relief.

As modified, the bill restores the evenhandedness principle. It permits suits only by persons involved in pro-

viding or obtaining services in the facility. If demonstrators outside a clinic engage in pushing, shoving, or other forceful conduct against each other, neither side can sue under this law.

This measure, in short, provides fair, evenhanded treatment for all concerned. It is urgently needed. It is not enough for Congress to condemn the violence.

We must act before more doctors are killed, or more clinics are blockaded or burned to the ground.

Law enforcement officials at all levels of government agree, including Attorney General Reno, who testified in strong support of this legislation. The consensus includes the State attorneys general, who adopted a unanimous resolution urging Congress to pass this law. It includes local officials throughout the country who need this Federal help.

All of the leading women's rights groups and groups concerned with women's reproductive health regard this measure as a top priority.

Health care providers, too, have joined in calling for passage of this legislation. The American Medical Association has endorsed it, and so has the American College of Obstetricians and Gynecologists. Their view is clear—no doctor should be forced to go to work in a bulletproof vest.

In addition, the respected British medical journal, the *Lancet*, in an editorial in its October 16, 1993 issue, addressed this issue in American medicine and stated, "Congress should act soon to end this terrorism."

The Senate should act, and act now. This measure has bipartisan support from Senators who are pro-choice and Senators who are pro-life. We may not agree on the issue of abortion, but we do agree that the use of violence by either side to advance its views is wrong. I urge the Senate to pass this legislation.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Lucy Koh, a fellow in my office, be afforded floor privileges.

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

AMENDMENT NO. 1190

(Purpose: To protect the first amendment right to exercise religion)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1190.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 6, between lines 2 and 3 insert the following as new section 2715(a)(2): "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of worship; or"

Renumber current section 2715(a)(2) as 2715(a)(3), and add the following at the end of line 7 on page 6: "or intentionally damages or destroys the property of a place of religious worship."

On page 11, line 15, add "or to or from a place of religious worship" after "services" and before the comma, and add "or place of religious worship" after "facility" on line 16 of page 11.

Mr. HATCH. Mr. President, before I talk about that amendment, we have an order of amendment here. Following my amendment, Senator SMITH will bring up his amendment. Then I am to offer one on limit protection to illegal abortions. I want to go to the White House for the bill signing of the Religious Freedom Restoration Act.

I will soon ask unanimous consent to take that out of order so that I can go.

Mr. President, 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. HATCH. 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.

Mr. HATCH. Mr. President, the religious liberty amendment that I am offering is very straightforward. It would ensure that the first amendment right of religious liberty receives the same protection from interference that S. 636 would give abortion. Simply put, anyone who votes against this amendment or who attempts to dilute it values religious freedom far less than abortion.

Religious liberty is the first liberty guaranteed in the Bill of Rights. As the lead cosponsor, along with Senator KENNEDY, of the Religious Freedom Restoration Act, I have worked to guarantee that religious liberty is protected against Government intrusion. Through this amendment, religious liberty would also be protected against private intrusion—in exactly the same way that S. 636 would protect abortion.

Make no mistake about it: The right of Americans of various religions to attend their places of worship in peace is under attack throughout the country. Various groups, acting on behalf of various causes, have undertaken an interstate campaign of harassment, physical assaults, and vandalism. Consider, for example, some recent episodes:

Just over a week ago, protesters disrupted Scripture reading at the Village Seven Presbyterian Church in Colorado Springs, CO, and pelted the congrega-

tion with condoms. Similar protests have occurred throughout the country, and organizers of the Colorado Springs protest said that they planned further disruptions in the future. [Gazette Telegraph, 11/8/93; Gazette Telegraph, 11/10/93].

In February of this year, the St. Jude's United Holiness Church in St. Petersburg, FL, was burned to the ground by an arsonist. Another arsonist set fire to at least 17 other churches throughout Florida and to churches in Tennessee and Colorado. [St. Petersburg Times, 2/2/93, 1/9/93].

Catholic services have been disrupted and Catholic churches have been vandalized in New York and other cities. In New York, activists exposed churchgoers at St. Patrick's Cathedral to a pornographically altered portrait of Jesus, invaded the cathedral, screamed, waved their fists, and tossed condoms in the air. [New Dimensions, July 1990]. Those responsible for these acts have planned similar disruptions throughout the country. [Doe letter]. In May of this year, protesters poured glue into the locks of five churches [Boston Globe, 5/21/93]. Other recent attacks against Catholic leaders have occurred in Washington, DC, Boston, Springfield, MA, Los Angeles, and New York.

In mid-September, in San Francisco, activists blocked access to the Hamilton Square Baptist Church, pushed and shoved churchgoers, threw rocks and eggs at them, and destroyed church property. The police failed to respond to calls for more assistance and made no arrests. [Statement by Dr. David C. Inness]

Synagogues have been victimized by defacement and vandalism on countless occasions.

Our Nation was founded on the principle of religious liberty. If any right deserves protection from private interference, it is religious liberty. The amendment that I am offering would do no more than give religious liberty the same protection that S. 636 would give abortion.

The choice for my colleagues is simple: Do they value religious liberty at least as much as abortion? If so, they should vote for my amendment.

Mr. President, I ask for the yeas and nays on this amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Is it possible for me to get that slight modification in the order so I can go to the White House?

Mr. KENNEDY. Mr. President, I would be glad to yield. I see my colleague, the Senator from Ohio, and the Senator from California, and I would like to yield to him. How much time remains on the bill itself?

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts has 14 minutes on the bill itself and 19 minutes on the amendment.

Mr. KENNEDY. I know the Senator from Utah wants to go to the White House for the signing of the Religious Freedom Restoration Act. If I could, I would like to ask a few questions and I will yield.

Mr. METZENBAUM. I would like to go, too.

Mr. KENNEDY. I would, too, but I am going to stay here. I will ask just a few questions, and then I would be glad to yield to the Senator from Ohio.

So I yield 7 minutes on the amendment.

As I understand the Senator's amendment, it would simply extend the bill's prohibitions to include the actual or temporary use of force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with anyone lawfully exercising or seeking to exercise the first amendment, the right of religious freedom at a place of religious worship and to intentionally damage or destroy property of a place of religious worship.

Am I correct that the amendment would cover only conduct actually occurring or, in the case of an attempt, intending to occur in place of religious worship, such as a church, synagogue or the immediate vicinity of a church?

Mr. HATCH. The Senator is absolutely right.

Mr. KENNEDY. So, to be clear on this, the amendment would cover only conduct actually occurring at an established place of religious worship, a church or synagogue, rather than any place where a person might pray, such as a sidewalk?

Mr. HATCH. That is correct.

Mr. KENNEDY. Mr. President, we can accept the amendment. With this understanding, we are prepared to accept the amendment.

Mr. HATCH. I asked for the yeas and nays on the amendment because I think we will have to have a vote on it. But I would like to have the yeas and nays stacked until after Senator METZENBAUM and I return from the White House.

Mr. KENNEDY. It will not be possible for me to agree to that until I consult with the leaders.

Mr. HATCH. I have no doubt the leaders will accommodate us because we are going to the White House at the President's request.

Mr. KENNEDY. The Senator would be surprised at what the leaders agree to or do not agree to.

I will be glad to try and recommend that.

Mr. HATCH. I am sure the Senator would.

Mr. KENNEDY. I am keenly aware of the leader on our side in terms of his interests.

Mr. HATCH. Let me just comment on that. I have no doubt that the leaders will accommodate us because we have given up a 1½-hour amendment here this morning.

What I would like to do and have our majority floor manager ask the leader when he arrives is to stack votes beginning at 10 o'clock so we have enough time to get back from the White House.

We have already disposed of three amendments and this one will be voted on, and I appreciate the Senator being willing to accept it. But I would like to have a vote on it because I think it is that important.

I yield the floor.

Mr. KENNEDY. Mr. President, on the amendment I will be glad to yield 10 minutes to the Senator from Ohio.

Mr. HATCH. Could I then still ask my request to allow my amendment—it would come right in the middle of the White House proceeding—to go after the Coats amendment? Right now it is stacked in front of the Coats amendment. I will ask unanimous consent to accommodate us in going to the White House and that I be permitted to offer the amendment on limit of protection on legal abortions after the Coats amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. KENNEDY. Mr. President, I have every intention of accommodating my friend from Utah. I have not seen the technical amendment, and I am not in a position to agree to any consent request.

Mr. HATCH. What is the Senator talking about?

Mr. KENNEDY. I thought he said this amendment.

Mr. HATCH. No. It is the amendment. We have these amendments stacked in order.

Mr. KENNEDY. All right. Do I understand that the measure that is before us now is the Hatch amendment?

Mr. HATCH. No. The next amendment will be the Smith amendment, punishing violent offenses more severely than nonviolent offenses, and then the amendment after that would be my amendment to limit protection of legal abortions, of which the Senator has a copy, and I would like that amendment to be stacked until later.

Mr. KENNEDY. I understand. But we now have before the Senate the religious freedom amendment. Labor disputes has been put aside. Now we have interfering with religious exercise. That is the measure before us. That has 40 minutes evenly divided. Am I correct on that?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. How much time do I have on that amendment?

The ACTING PRESIDENT pro tempore. The Senator has 16 minutes and 30 seconds.

Mr. KENNEDY. On that I yield 10 minutes to the Senator from Ohio, and I will consult with the majority leader about the request of the Senator.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator

from Ohio [Mr. METZENBAUM] for 10 minutes.

Mr. METZENBAUM. Mr. President, I rise in support of the Freedom of Access to Clinic Entrances Act. Whether they are pro-choice or pro-life, law-abiding people absolutely deplore the increasing number of attacks against women who seek to exercise their constitutional right to have a legal abortion, and the health professionals that help them exercise this right. As members of a civilized society we must strongly denounce any interjection of violence into this debate. Any suggestion that the use of violence is an acceptable way to settle our differences is repugnant and does a real disservice to all those involved in the abortion debate.

The murder of Dr. David Gunn of Florida and the shooting of Dr. George Tiller of Kansas because they performed legal abortions was simply barbaric. These shameful acts are the result of a national campaign against medical clinics, their employees and patients. This campaign includes bombings, acts of arson, clinic invasions, blockades, acts of vandalism, assaults, and death threats. Just last month, a family planning clinic in Bakersfield, CA, was destroyed by arson, causing \$1.4 million in damages.

In the past, doctors and patients threatened by intimidating activity aimed at clinics were able to obtain Federal injunctions to protect themselves under a Federal civil rights statute. But in January 1993, the Supreme Court ruled that this Federal law could no longer be used to protect medical employees and patients from clinic blockades.

At Senate hearings, Attorney General Reno testified that no adequate State or Federal remedy now exists to address this national crime wave. Local law enforcement is either unable or unwilling to deal with the massive protests that are designed to overwhelm the police, courts and jails in targeted cities. The Attorney General made it clear that Federal legislation is urgently needed to better address this situation.

The bill offered today would give Attorney General Reno the crime fighting tool she requested. Modeled on the Voting Rights Act, this bill prohibits the use or threat of force to interfere with obtaining or providing reproductive health services. It protects access to clinics that perform abortion services as well as access to clinics that counsel against the procedure. Lawful picketing and protests without force, threats of force or physical obstruction are not prohibited.

The Freedom of Access to Clinics Entrances Bill reaffirms that we are a Nation of laws and not vigilante justice. I urge my colleagues to support it.

Mr. President, I yield the floor, and I thank the Senator from Massachusetts for yielding the time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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.

Mr. KENNEDY. Mr. President, I ask unanimous consent that no second-degree amendment be in order to the pending Hatch religious freedom amendment.

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

Mr. KENNEDY. Mr. President, how much time remains on the amendment?

The ACTING PRESIDENT pro tempore. The Senator has 11½ minutes.

Mr. KENNEDY. I yield 10 minutes to the Senator from California.

Mrs. BOXER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from California, Senator BOXER.

Mrs. BOXER. Mr. President, I rise in strong support of the bill authored by my colleague, the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY. I thank him for his leadership on this issue. It is a very key issue today. Violence in America is a very key issue today and this bill addresses one part of that terrible problem.

Mr. President, America is proud of its democracy, and there is no question that our right to dissent is a precious and constitutional right. People have died for that right. I would not vote for anything that interfered with that right.

But violent dissent is not a right. Violent dissent is vicious, it is dangerous, and it is lethal. And what this bill is about is addressing violent dissent that, Mr. President, we see day after day in America.

In March, Dr. David Gunn was killed by an antiabortion protestor. In August, Dr. George Tiller was the victim of a similar attempt on his life. These tragedies sent shock waves through our communities and the Halls of Congress. But they are only the most recent developments in a crusade that goes well beyond the peaceful expression of opposite points of view.

Mr. President, every day, physicians and health care professionals face intimidation, harassment, and now—more than ever—violence.

When they come to work they face angry protestors blockading their front

doors. They receive hate mail, death threats, and harassing phone calls. Many are stalked, forced to wear bullet proof vests and work behind steel shutters. Their faces appear on "wanted" posters. Their clinics are bombed, vandalized, and set on fire.

Since 1977, radical opponents of choice have directed nearly 3,000 acts of violence at abortion providers.

Mr. President, I abhor violence wherever it comes from.

This bill is evenhanded. And that is important. This bill does not say you can promote violence if you are one way on choice and you cannot if you are another. This bill says that violence will not be tolerated at a clinic whatever the source.

In a recent survey of reproductive health care clinics released by the Fund for the Feminist Majority, 21 percent received death threats to clinic staff during the first 7 months of this year; 18.1 percent of clinics reported bomb threats; 16 percent of clinics were blockaded; 14.9 percent of clinics reported that their staff had been stalked—and anyone who has been stalked can tell you what an intimidating, frightening experience it is; 10.3 percent of clinics reported chemical attacks; and 2 percent reported arson.

Mr. President, in my home State of California, we have too many examples of this to report. On March 9, just 1 day before the brutal murder of Dr. Gunn, six medical clinics in San Diego and two in Riverside were sprayed with butyric acid—a foul smelling chemical that irritates the eyes and respiratory tract and often causes burns and nausea. Four health care workers were hospitalized after inhaling the fumes. I happened to be visiting the clinic that very day and I can report to this body, Mr. President, that people were shaken, good people, hardworking people, principled people. Mr. President, this is wrong.

Two months ago in Bakersfield, Family Planning Associates was set on fire, sustaining extensive damage and disrupting the delivery of important health care services to women.

And I need to stress, Mr. President, that these clinics that are being bombed, that are being sprayed, that we have doctors being stalked and nurses being stalked, and patients being intimidated, these clinics provide a potpourri of services to women. They provide many services, health services. For many of them it is the only health care they get. And they may not be going there about an abortion. They may be there to get help in becoming pregnant or to get their breast cancer exam. And yet, they are subjected, increasingly, to violence.

So, Mr. President, the doctors do get hurt. But so do American women who have seen these offices that they go to for help transformed from safety zones to war zones.

The fact is that the vast majority of the medical facilities which have been targeted, as I said, provide a range of vital health care services to women. And the very people who are protesting are sometimes interfering with prenatal care, so important to the baby that will come into this world.

We know that it is going to harm a baby if a mother inhales butyric acid at a health care clinic. So the very people who claim to stand up for the future children are injuring them by spraying these clinics with acid, by frightening these mothers, who need to take care of themselves at that very important time.

Ashley Phillips, executive director of the Womenscare Clinic of San Diego, wrote the following in the Los Angeles Times after her facility was sprayed with acid.

Like many other women's clinics in this country, the one I direct is not an abortion clinic. We are a nonprofit community clinic in San Diego offering a broad range of health care services. * * * Hundreds, if not thousands, of people were exposed to the lingering fumes [as a result of the acid attack]. Pregnant women, the very people the "pro-life" community says they want to protect, were endangered.

Attorney General Janet Reno has acknowledged that existing Federal law is inadequate to arrest and prosecute those who cross the line from peaceful protest to physical obstruction, vandalism, harassment, or worse, with the clear purpose of preventing women from exercising their right to choose.

That is why the bill before us is so critical. It will ensure that women are able to exercise their right to choose by having access to necessary health care services. And it will ensure that the health care professionals who serve them are protected from violence and harassment. At the same time, it in no way interferes with or penalizes the legitimate first amendment rights of antiabortion protestors.

And again I say, I value their right to protest, just as I value my right. But we are talking here about violence. We are not talking here about nonviolence.

We must act today to end this horrifying cycle of fear and violence in our nations. Whatever one's feelings on reproductive choice—and I have friends in this Chamber on both sides of this difficult issue—I know that we can all agree that the fear and the violence must be stopped.

Again, I want to thank Senator KENNEDY for his extraordinary leadership on this issue. And I want to thank my friends in this Chamber who do not happen to agree with my position on choice or Senator KENNEDY's position on choice but have joined with us today to stand together as Americans against violence.

I appreciate having this time.

I yield the floor at this time.

The ACTING PRESIDENT pro tempore. The Senator from California yields the floor. Who yields time?

The Senator from Massachusetts is recognized.

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

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

The bill clerk proceeded to call the roll.

Mr. KENNEDY. 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.

Mr. KENNEDY. Just so we understand where we are, I ask consent that the Hatch amendment be temporarily set aside.

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

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum and ask consent the time charged be evenly divided.

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

Mr. REID. 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.

Mr. REID. Mr. President, it is my understanding that the Hatch amendment has been withdrawn and we are now—

Mr. KENNEDY. It has been temporarily set aside.

Mr. REID. And that we are now debating S. 636?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. Mr. President, we are under a time limitation. How much time do I have?

The ACTING PRESIDENT pro tempore. The Senator has 12 minutes on the bill.

Mr. REID. Will the Senator from Massachusetts yield me about 3½ minutes?

Mr. KENNEDY. I yield 4 minutes to the Senator from Nevada.

The ACTING PRESIDENT pro tempore. The Senator is recognized for 4 minutes.

Mr. REID. Mr. President, last March I was the first Member of this body to stand on this floor and address a serious problem which was later to become my motivation for supporting this bill that is before us today.

When I spoke last March I was referring to the senseless killing of a man named Dr. David Gunn. Dr. Gunn was shot down in cold blood as he left his job at a health clinic in Pensacola, FL. Dr. Gunn was senselessly murdered. He was shot three times in the back with a .38 caliber revolver.

There is no question about my position on the issue of abortion. I am pro-life. But despite the feelings of anyone on this emotional issue, there is no

justification for the kind of senseless brutality that our Nation witnessed outside this clinic in Pensacola, FL, in March. We cannot as a society allow acts of violence to promote any cause—I repeat any cause—no matter how just the people promoting the cause believe their cause to be.

So I rise today in support of the measure before us as a fair and practical protection against undue violence. It protects those who seek access to clinics. But it also protects those who do not believe in the use of abortion services and who wish to demonstrate that belief as provided by the constitutional protections of peaceable assembly.

The key term is peaceable. No one whose aim is to demonstrate peaceably that they oppose abortion should fear this bill. The bill specifically affirms expressions protected by the first amendment to the Constitution of this country. Its aim is not to restrict the rights of people to demonstrate but to protect the rights of people to be free from the fear of violence against them. This is not unreasonable. I happen to believe that the majority of people who choose to demonstrate outside abortion clinics because of their conscientious beliefs are not violent people. They are not people who wish to do harm to others. They are trying to do good according to their beliefs. Those who seek access to clinics have nothing to fear from the vast majority of these citizens.

But, as in all things, a few bad apples in a barrel spoil the whole barrel. And, because of this as we know the whole barrel is lost. So a few bad apples demonstrating can ruin the whole ability to assemble peaceably, thus the need for the legislation that we are considering today—that becomes paramount.

Senator KENNEDY in conversations that I had with him earlier this year graciously agreed to remove earlier provisions of this legislation that I felt were unnecessary, provisions that would have, in the minds of some, constituted prejudicial treatment of anti-abortion demonstrators. The bill before us is what it should be: A protection for the rights of both sides of this controversial issue.

As I said on March 11, we are not singling out a particular group because of a few bad apples. I am a supporter of working men and women. Yet we have chosen in the history of this country, and presently, today, for good reason, to place some protections for businesses on the legitimate rights of workers to set up picket lines. We limit the number of pickets to so many pickets per block. There are all kinds of restrictions.

The ACTING PRESIDENT pro tempore. The time of the Senator from Nevada has expired.

Mr. KENNEDY. I will yield 3 more minutes to the Senator.

Mr. REID. I thank my colleague.

We limit the number of pickets to so many pickets per block. There are restrictions set on the ability of workers to demonstrate against the businesses that they feel they have a grievance against. This provision allows workers to demonstrate while protecting businesses from the potential for violence in sometimes a very emotional situation. The same principle applies to the issue before this body today.

In what has become an increasingly violent society, we must act as best we can to discourage this violence. To do otherwise is to encourage violence.

I commend the members of the Judiciary Committee and especially the chairman of the Judiciary Committee for trying to develop a fair approach to curbing one potential for violence in our society today. We must protect the constitutional right to demonstrate. We must also prevent the kind of senseless act that could take the life of another Dr. Gunn somewhere in our country.

I yield the floor.

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

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

I, first of all, commend the Senator from Nevada. He has, in his very brief but important statement, set out exactly what we are intending to do and that is to be evenhanded on this issue. That has been the point we have emphasized and stressed during this period of time. He has, through his urging, and the urging of Senator WOFFORD, Senator DURENBERGER, and others, indicated to us their strong view about violence in our society. He has absolutely captured the essence of this legislation and that is to deal with violence and to be evenhanded.

It was only on that condition that the Senator from Nevada indicated his willingness to support us. That is our purpose; that is our intention; that is what this legislation is all about. I know this is an issue that can be distorted and misrepresented, but he has captured, as I mentioned earlier, the essence of it in talking about violence. That is what this legislation addresses. We are very, very appreciative of both his statement and his support.

Mr. REID. Will the Senator yield for a brief comment?

Mr. KENNEDY. I do.

Mr. REID. I also want the record to reflect I enthusiastically support this legislation. To me, this was not a close call. We in this body and the other body must do everything we can do to prevent violence.

Our society is far too violent, and there is no cost that justifies violence.

So I repeat to the chairman of the committee, who I also congratulate for moving this bill to the floor, I enthusiastically support this legislation. It was not a close call for me.

Mr. KENNEDY. I thank the Senator. The PRESIDING OFFICER (Mrs. MURRAY). Who yields time?

Mr. KENNEDY. Madam President, I yield myself 1 more minute.

We are making very good progress. We are attempting to accommodate the different Members. If the membership will accommodate us, we are moving forward with the legislation. We want to protect everyone's rights, which we will. We also want to try to accommodate the different Members and their schedules in terms of permitting them to express what opinions they want about the legislation.

Our friend from New Hampshire is here and is prepared to offer an amendment. If he will permit a brief intervention at this point, because we are attempting to work that out, I think we could accommodate two Senators and then we could move on.

How much time does the Senator wish?

Mr. WELLSTONE. Madam President, I think 5 minutes at the most.

The PRESIDING OFFICER. Five minutes for the Senator from Minnesota. The Senator from South Carolina needs how much time?

Mr. THURMOND. I need 7 minutes.

Mr. KENNEDY. Madam President, I ask unanimous consent that we have 5 minutes for the Senator from Minnesota and 7 minutes for the Senator from South Carolina.

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

Mr. WELLSTONE. Madam President, I will be pleased to defer to the Senator from South Carolina if he would like to speak first on this.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Madam President, I rise today to oppose the so-called Freedom of Access to Clinic Entrances Act.

We have heard during today's debate discussion on the tragic killing of Dr. David Gunn in Pensacola, FL, in March of this year. This type of violence should be condemned, and clearly violence is not the answer when protesting at abortion clinics.

It is my concern that this narrowly drafted legislation, if enacted, will suppress nonviolent political demonstrations because of the subject matter of the conduct. The impact of this legislation will fall almost entirely on persons who are engaged in nonviolent civil protest and exercising forms of free speech that is lawful, but which supporters of this amendment find distasteful.

Many other organizations or groups engage in blockades and civil disobedience. Union workers block access to work sites during strikes and labor disputes. Homosexuals have engaged in sit-ins or disruptions of church services. The Mayor of Washington, DC, Mrs. Sharon Pratt Kelly, was recently arrested for participating in a

prostatehood street blockade. All of these activities interfered with the progress of people engaged in a number of legal activities. For this reason, I do not agree with the use of blockades as a form of protest. However, none of these participants were subject to the harsh and disproportionate penalties called for in this measure.

Madam President, this bill calls for both criminal and civil penalties. For a first offense, a person may be fined \$100,000 and imprisoned for 1 year. For any subsequent offenses, a person may be fined an additional \$250,000 and imprisoned for an additional 3 years.

This person would also be exposed to a number of civil penalties. First, anyone who feels they have been aggrieved under this measure may bring a suit to receive appropriate injunctive relief, punitive damages, and compensatory damages. With respect to compensatory damages, this measure will set a minimum award of \$5,000 if a plaintiff chooses this award prior to final judgment. Second, the Attorney General of the United States may commence a civil action against the same person and seek injunctive relief and compensatory damages. The court may also assess a civil penalty up to \$15,000 for a first violation, and \$25,000 for any subsequent violation. Finally, the State attorneys general may also commence a civil action and seek the same relief as the Attorney General of the United States.

The penalty here simply does not fit the crime. This measure will not only make those prosecuted under this measure criminal felons, but it will also subject them to enormous monetary exposure.

This does not draw on the peaceful civil disobedience that follow the traditions of Mahatma Gandhi or Dr. Martin Luther King, Jr. Civil disobedience is unlawful, and should be punished. However, acts of peaceful civil disobedience should be punished in the same manner as similar conduct engaged in by anyone else. The imposition of substantially more severe penalty presents the threat of viewpoint discrimination. Therefore, I believe this measure is likely to have a chilling effect on legitimate first amendment speech.

Unfortunately, this legislation would elevate the right to abortion above the first amendment. This is demonstrated by the testimony given by Attorney General Janet Reno on May 12, 1993 before the Senate Committee on Labor and Human Resources. Ms. Reno states that this bill "is an effort to protect individuals in the exercise of their right to choose an abortion and to eliminate the harmful effect on interstate commerce resulting from interference with the exercise of that right. That justification is surely sufficient to override any incidental effect that the bill may have on expression."

I do not believe that the criminal and civil penalties contained in this legis-

lation will have an incidental effect on pro-life expression. I believe that it will virtually eliminate such expression.

The supporters of S. 636 contend this is an answer to the violence surrounding the issue of abortion. S. 636 is not the answer. In fact, this act will create a new Federal criminal offense for conduct that the States are currently able to address.

Therefore, the so-called Freedom of Access to Clinic Entrances Act will raise the right of abortion above the constitutionally enumerated right of free speech. It will serve as a suppression of speech of those with heartfelt beliefs concerning issues surrounding abortion. It will expose those who peacefully protest to unreasonable penalties. It will also create another Federal offense, when States are currently able to address the issue of violence surrounding abortion.

I believe this legislation improperly addresses the issue, and I urge my colleagues to reject this measure.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, first of all, let me thank Senator KENNEDY, chairman of the Human and Labor Resources Committee, for his leadership on this issue. I think he has made every effort to reach out to other Senators and, for that reason, I believe this Freedom of Access to Clinic Entrances legislation will have tremendous support.

I am going to build on the remarks of my colleague from Nevada. I think it is quite possible for Senators to have very different positions in relation to pro-choice/pro-life, if we want to use those labels. I think people in good faith can have different positions on these issues. But many, many pro-life—and I call people what they call themselves out of respect—many pro-life people in Minnesota, my State, are absolutely horrified by the violent and destructive behavior that has taken place blocking access to clinics.

I want to be very clear about what this bill prohibits. It prohibits: "the use or threat of force or physical obstruction to intentionally injure, intimidate or interfere with any person because that person is or has been providing pregnancy or abortion-related services."

I could go on. But, Madam President, I just want to make three points in the brief period of time I have.

Point No. 1: Last winter, I spoke at the memorial service of Dr. David Gunn. I will never forget that service here in Washington, DC. I said to myself at that service that if there was any way as a U.S. Senator I could be part of passing legislation to end this violation, that is what I would do. I

think that is precisely what this piece of legislation is about.

Point No. 2: In my State of Minnesota, there is a woman, Gerry Rasmussen, who is the director of the Midwest Health Center for Women. It is sad that she has to train her staff in antiterrorist activities because of all of the threats of violence and threats of use of force against women who are coming in to really exercise their constitutional right. It is sad that she has to live with the threatening phone calls, the bricks thrown through her window, the stalking, and all of the rest. I think there is a kind of climate of terror in the country. Frankly, I think very good people, in very good faith, even disagreeing in relation to pro-life and pro-choice, want to see this ended. I really do think this is very comparable, very analogous to the exercise of civil rights legislation and giving the Attorney General and the Federal Government some machinery to work with to make sure that women are able to exercise this right.

A final point, and I could go on and on. I believe that if anyone was to examine my record—I certainly hope this would be the case—they would see strong support for first amendment rights. This piece of legislation in no way, shape, or form undercuts the right of any citizen to be involved in peaceful protest, undercuts the right of any citizen to speak out against what they oppose, undercuts the right of any citizen to speak out for what they favor. That is not what this legislation is about. This legislation prohibits the use or threat of force.

Madam President, for that reason alone, as we now think about the ways we in the United States of America can confront the violence that exists in our society, it seems to me it is more than appropriate the Senate pass this piece of legislation. For all too long we have turned our backs on this violence that has taken place all across the land. For all too long we have turned our gaze away from it. And finally, today, I think we are going to pass a piece of legislation that the vast majority of legislators and people in this country can and will support.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I suggest the absence of a quorum, the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

AMENDMENT NO. 1191

(Purpose: To differentiate between violent and nonviolent activities)

Mr. SMITH. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 1191.

Mr. SMITH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike page 6, line 14 through the end of page 9 and insert the following:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days for the first offense and 60 days for the second and subsequent offenses.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services. Any person aggrieved by reason of conduct prohibited by subsection (a) and not involving force or the threat of force may commence a civil action for temporary, preliminary, or permanent injunctive relief not to exceed 60 days against the individual or individuals who engage in the prohibited conduct. Such injunctive relief shall apply only to the site where the prohibited conduct occurred.

"(B) RELIEF.—In any action under subparagraph (A) involving force or the threat of force, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attor-

neys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgement, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

Mr. SMITH. Madam President, one of the fundamental problems with the underlying legislation, S. 636, is that it fails to differentiate between violent and nonviolent activities. I do not think there is any one of us who would take the position that violent activities under any circumstances should be condoned. But instead of making that vital distinction, S. 636 imposes the same severe penalties on both kinds of actions, violent and nonviolent.

Let me offer a hypothetical example to illustrate this problem. Let us suppose that a pro-life protester is sitting peacefully with others on a sidewalk outside an abortion clinic. Say it is a woman and she is quietly praying and perhaps singing a religious song. Let us suppose that this peaceful activity is interfering with the ability of the clinic personnel and the patients to enter the clinic. Let us make that assumption.

Under S. 636 that nonviolent protester would be in violation of the law because she is using "physical obstruction" to interfere with abortion services.

Let us suppose further that another antiabortion protester at another abor-

tion facility is hurling large rocks at the windows of the clinic. No bodily injury results. Under S. 636, that violent protester would likewise be in violation of the law because he is using violence in order to interfere with and intimidate persons who are engaged in providing abortion services and damage to the property of the clinic.

Madam President, I hope that my colleagues will agree with me that those two hypothetical situations involve acts of a fundamentally different character. But the bill does not say that. The bill does not say that. The nonviolent pro-life protester that I have described is engaged in a peaceful sit-in reminiscent of Ghandi and the civil rights movement of Dr. Martin Luther King. She is completely non-violent. The violent protester, on the other hand, is engaged in the use of lawless force that should not be tolerated or condoned in a society based on the rule of law.

But there is a distinct difference here. Under S. 636, what I believe to be a misguided approach, the peaceful pro-life protester that I have described is subject to exactly the same—very stiff, I might add—penalties as the rock-throwing violent political extremist.

Thus, under S. 636 the nonviolent protester, just like her violent counterpart, would face criminal penalties of 1 year in jail, and/or a substantial fine for a first violation, and 3 years and even more of a substantial fine for subsequent violations.

I ask my colleagues. Is that fair? Is that what you are trying to get at with this legislation? Is that really what you want to do? I ask you to think back to the days of the civil rights and the labor movements in which many of my colleagues who are supporting this legislation were some of the strongest proponents. And I ask you if that is fair? Is that really what you want to do?

For the peaceful protester the civil damages would be \$5,000 per violation, \$15,000 in civil penalties for a first violation, and \$25,000 in civil penalties for any subsequent violation. Using my hypothetical, that person on the third offense who was sitting and singing a religious song in front of an abortion clinic on the third offense would be fined \$25,000. Is that really what you want to do?

Madam President, the indiscriminate manner in which S. 636 penalizes both violent and nonviolent activities is contrary to the very spirit of American history and the essence of the Constitution of the United States of America, and, in essence, frankly, of the freedom to protest, to speak out about things that you believe very deeply in.

Our American tradition recognizes the fundamental distinction between lawlessness and violent acts, and acts of peaceful civil disobedience. We have seen that throughout our history.

Let me provide another illustration. If some of our States during the 1950's and 1960's had been able to impose the same kind of severe penalties on peaceful civil disobedience that S. 636 proposes, then the civil rights movement might very well have been stymied.

I say to my colleagues, some of my colleagues who are on the floor, Senator WELLSTONE and others, who were strong advocates of that movement, is that what you would like to have done to that movement in the fifties and sixties? That is what you are doing here to those people who legitimately believe that abortion is wrong, who simply want to protest that fact.

I urge my colleagues to think very carefully about that fact this morning as we consider my amendment, which I believe is much more reasonable.

Let me read some excerpts from the Encyclopedia of the American Constitution regarding civil disobedience and the civil rights movement. I ask you all to reflect upon this.

Civil disobedience is a public, nonviolent, political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. The idea of civil disobedience is deeply rooted in our civilization, with examples evident in the life of Socrates, the early Christian society, the writings of Thomas Aquinas and Henry David Thoreau, the Indian nationalist movement led by Gandhi, and the Civil Rights activities of Dr. Martin Luther King, Jr.

Further reading from the excerpts of the Encyclopedia of the American Constitution:

The fundamental justification for civil disobedience is that some persons feel bound by philosophy, religion, morality, or some other principles to disobey a law that they feel is unjust. As Martin Luther King, Jr. wrote in his "Letter from Birmingham": "I submit that an individual who breaks a law that his conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law."

Dr. King and his followers felt compelled to disobey laws that continued the practice of segregation; they opposed the laws on moral, ethical, and constitutional grounds. Although the movement initially attempted to change the system through conventional legal and political channels, it eventually turned to the tactics of civil disobedience in order to bring national attention to its cause.

And, finally, from the same encyclopedia of the American Constitution:

The civil rights movement's tactics included sit-ins, designed to protest the laws and the practice of segregated lunch counters and restaurants. Protesters would enter restaurants, demand to be served, and when service was refused, they would refuse to leave. As a result, many were arrested on grounds of criminal trespass.

The sit-ins, freedom rides, and continued demonstrating eventually swayed public opinion and contributed to the passage of the Civil Rights Act of 1964.

Madam President, we are not talking about the violent people who commit

the violent acts, who do the shootings and the violent property damage against the abortion clinics; we are talking about the peaceful protesters who peacefully would like to exercise their constitutional rights to show their opposition to what they believe to be—and I believe to be—an act of violence in and of itself inside the abortion clinic.

This is not "John Browns." These people are not John Brown. These people are the "Rosa Parks" and the "Martin Luther Kings" we are talking about here. Let us make sure we understand that. I hope my colleagues will understand it and consider this amendment to reduce the penalties for those nonviolent people under this act.

This Senator recognizes that acts of civil disobedience are unlawful by definition, but I firmly believe—and we did not change that—that acts of politically motivated, peaceful civil disobedience should only be punished in generally the same manner as with the same underlying unlawful conduct when engaged in by anybody else. All we are asking for is reason.

If, for example, pro-life protesters commit an unlawful trespass, then they should be subjected to the same kind of penalties as other trespassers who have no other political motivation. To impose a more severe penalty on a politically motivated trespasser than on the ordinary trespasser for the same conduct is viewpoint discrimination; pure and simple, that is what it is. Moreover, it is, I submit, viewpoint discrimination that is fundamentally inconsistent with the first amendment to the Constitution of the United States.

Madam President, the committee report contends that S. 636 is modeled on Federal civil rights laws. That is what their report says—that it is modeled on Federal civil rights laws. But I note that the Federal civil rights laws cited by the committee report do not include the term "physical obstruction," because that is the key in the language of the bill on page 5 under section 2715, "Prohibited Activities": "Whoever by force or threat of force"—no problem, I agree with you—"or by physical obstruction intentionally injures, intimidates," et cetera.

What is physical obstruction? Is it the young woman I talked about who was sitting on the ground in front of the clinic singing and praying? Is that physical obstruction? If she does that three times, should she spend up to a year or two in jail and pay a \$25,000 fine? Is that really what you want? Would you have supported doing that to Rosa Parks and Martin Luther King and so many others during the civil rights movement?

My amendment addresses this flaw—and it is a flaw, a very serious flaw—in a straightforward manner. We have all debated the issue of abortion on this

floor before. It is a contentious issue, and I think we all have respect for each other's views. I am trying to appeal here to reason, to let you understand how far we are with this legislation—though well-intentioned—and I think all of us on this side agree with the violent portion.

But my amendment addresses this in a straightforward manner by drawing a clear and a very distinct line between violent and nonviolent protest activities. First, my amendment preserves the bill's tough penalties on the violent activities. We do not touch it. Second, it does so by making absolutely clear that the stiff fines and prison terms specified under the bill apply to the offenses involving force or the threat of force or any violent activity. No problem with that.

My amendment recognizes that nonviolent civil disobedience is unlawful by providing jail terms of not more than 30 days—that happened during the civil rights movement, and it can continue to happen here—for the first offense, and 60 days for the second and subsequent offenses, if it continues. Our amendment deals with that. We change the legislation to make it 30 and 60 for those who violate the act in a manner that does not involve force or the threat of force but, rather, peaceful protest.

Madam President, under my amendment, acts of violent lawlessness will be punished with appropriately severe penalties. We do not change the underlying legislation. But acts of civil disobedience like the mass sit-ins that draw on the rich traditions of Gandhi and King are not, under my amendment, subject to harsh penalties. They are under this bill. Read it. But, at the same time, those acts of civil disobedience are punished under my amendment, because they are unlawful, with a reasonable punishment.

It is critical and fair, Madam President, that we make a fundamental distinction between these two: violent and nonviolent demonstrations. And for that reason, I believe that this bill is aimed at preventing pro-life protesters from obstructing the entrances to abortion clinics, because this bill is abortion specific. There is no such law aimed at preventing strikers in labor unions from protesting a factory or a business. It does not apply to them. It does not apply to the civil rights people, and I am not advocating that it should.

But why does it specifically mention abortion clinics? Why are we discriminating against one group of people who feel deeply about an issue? If they commit a violent act, put them in jail and give them the penalties they deserve. If they are peacefully protesting, as others have done, then treat them with the respect they deserve and the rights they have under the Constitution of the United States. That is all I am asking.

I want to say that I appreciate the work of and the discussions the Senator from Massachusetts and I had in trying to work toward some compromise on the language regarding the peaceful protesting. I have made some changes in my amendment as a result of those conversations. I think we still may be a little bit apart on the injunctive aspect of this legislation and also on the penalties. But I have moved some to try to accommodate him, and I hope that perhaps we will be able to reach a compromise on this. If we cannot, then I will be prepared at the appropriate time to seek the yeas and nays on my amendment. I will withhold that for the moment, but I would like to reserve that right.

At this time, Madam President, I yield the floor.

Mr. KENNEDY. Madam President, I yield myself 5 minutes on the amendment.

Madam President, first of all, I want to thank the Senator from New Hampshire for his willingness to enter into a dialog and discussion. I talked to him last evening about his amendment, I think he stated very well that he is most concerned about the nonviolent aspects of this legislation and has, in a good-faith effort, tried to address those with his amendment. I appreciated the opportunity to talk with him about it.

As the amendment has been put before the Senate, it would not be acceptable in terms of the objectives that we are attempting to achieve.

Basically, we are trying to go back to the prior Bray decision which did not limit, for example, injunctive relief. There are certain circumstances where injunctive relief has some terms, but prior to Bray there was no overall limitation and many areas were covered by injunctive relief in order to ensure the protection of constitutional rights. The amendment of the Senator from New Hampshire would put a limitation on that.

Therefore, for that reason, and others that I will mention briefly, it would be unacceptable.

Madam President, Dr. King did not seek to block entry into places where he engaged in protest. Those who sat at the lunch counters did not seek to block access to the counters. They merely wanted to be served.

Here the protesters are seeking to block exercises of constitutional rights. That is not what Dr. King was really all about.

He was not interested in closing the door. He was interested in opening the door. That is the very fundamental and significant distinction.

Finally, Madam President, what we are talking about is a constitutional right. With all respect to my friend from New Hampshire, we do not want to trivialize the penalties in terms of individuals being able to achieve those constitutional rights.

I am very much concerned that with the amendment of the Senator from New Hampshire has offered, we would be in danger of trivializing those kinds of protections.

I will talk further about the amendment. But I see my friend from Minnesota seeks recognition.

How much time does the Senator wish?

Mr. WELLSTONE. I think 2 or 3 minutes.

Mr. KENNEDY. I yield 4 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, I just wanted to respond to my good friend from New Hampshire, and he is a good friend. We differ on views, but he is someone I really respect. Sometimes we agree on issues.

I do think that one major difference was the one that the Senator from Massachusetts pointed out. Having been in North Carolina and having been a small part of that civil rights movement, we were involved in trying to make sure that, in fact, each and every citizen had a constitutional right. We were trying to overturn the system of apartheid which we had in the South which meant we were trying not to block people being able to eat at restaurants regardless of color or use a restroom but to make sure each citizen could do so.

I think the civil rights analogy is precisely the opposite. It is the law of the land that women have a right to go to the clinic and have a right to choose to have an abortion.

What is happening is that constitutional right is being blocked much like the right to be able to eat at a lunch counter regardless of the color of one's skin was really being denied a group of citizens. Thus, there is a need for a Federal role.

I would say to my friend from New Hampshire that, as we speak here today on the floor of the Senate, it has been brought to my attention that at the Milwaukee clinic Dr. Paul Simers right now as we debate this amendment on the floor of the Senate is being blocked from being able to enter his clinic by 20 blockaders. Police are not able or are not enforcing the restraining order. As a result, there is a patient with an incomplete miscarriage. She needs treatment. She is inside the clinic. My understanding is that there is one staff person with her but not a nurse.

This you could argue is nonviolent. You could argue that within the framework of the amendment of the Senator from New Hampshire you have 20 blockaders. I assume that they are not being violent. I would certainly hope so. But as a matter of fact, the result of what they are doing is that you have a woman who is in dire need of care inside the clinic and you have a doctor

who is being blocked by 20 blockaders who are nonviolent, but it is certainly the use of force in the sense they are blocking the doctor from being able to go in and provide this woman with care.

So, I think as we think about what is at stake here there is a compelling reason for this legislation. Therefore, in the absence of further changes in language, I would certainly oppose the amendment proposed by the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from New Hampshire controls 3 minutes 32 seconds.

Mr. SMITH. Madam President, I wish to respond to a couple of points made by my colleague.

I repeat again that in the legislation there is no distinction between force or threat of force or physical obstruction. There is no distinction between those terms in terms of penalties. That is my objection.

I would certainly say that as to anyone who is a perhaps a young woman, with three children, who opposes abortion, who happens to sit down and sing and pray in front of an abortion clinic, who gets 30 days in jail away from her family as a result of doing this, I hardly think that is a trivial penalty. That is a very serious penalty, and it is a disruptive penalty to that young woman and her family who believes very deeply about what she cares for and cares about.

I strongly disagree with my colleague from Massachusetts that this is a trivial penalty. As a matter of fact, if it is done a second time, it is 60 days. So they are serious penalties.

Again, in relation to the comparison of the civil rights movement with this situation, they wanted equal treatment. Martin Luther King, Rosa Parks, and all of those, wanted equal treatment.

The issue is the same. Pro-lifers want equal treatment. They want equal protection of the lives of unborn children under the Constitution of the United States. They are doing it peacefully. They have a right as peaceful people to not be treated like criminals for the same reason that those people who protested in those restaurants, on those buses, and in the streets of Atlanta and Selma for that same reason, that they should not have been treated like criminals. There is no difference.

Let us not cloud this by saying it is one issue of wanting to get into a restaurant or to be seated at a restaurant. Let us not be so specific that we lose sight of the real issue here.

The real issue here is: Do you respect the right of civil disobedience, peaceful protesting? Do you make a distinction between peaceful protesting and criminal activity? That is the issue before us

on this legislation, and that is the difference in my amendment that I am adding to this legislation. If you support a peaceful protest being a criminal activity, then you would be opposed to my amendment because that is the distinction here.

Madam President, I ask for the yeas and nays on my amendment and yield back the remainder of my time.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Madam President, I think I have time on the amendment. Am I correct?

The PRESIDING OFFICER. The Senator from Massachusetts has 14 minutes. The Senator from New Hampshire has 28 seconds.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, it is my intention, when the Senator from New Hampshire concludes, to offer a second-degree amendment.

How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes 18 seconds. The Senator from New Hampshire has 28 seconds.

Mr. SMITH. I yield back the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 1192 TO AMENDMENT NO. 1191

(Purpose: To lower the maximum penalties applicable for offenses not involving force or threat of force)

Mr. KENNEDY. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1192 to the Smith amendment numbered 1191.

Mr. KENNEDY. Madam 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 1 of the amendment, line 1, strike out "page 6" and all that follows through the end thereof and insert in lieu thereof the following: "page 7, line 6, insert after 'that,' the following: 'for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than 6 months for the first offense and not more than 18 months for a subsequent offense.'"

Mr. KENNEDY. Madam President, the Senator from New Hampshire has made, I think, a useful and valid point, and that is drawing a distinction between the civil and criminal penalties with regard to nonviolent demonstrations. We have moved in his direction to recognize that distinction but not to the extent that it is acceptable to the Senator from New Hampshire.

I believe, under his amendment, it would severely restrict both the criminal and civil remedies in a way that was not there prior to the Bray decision. It is our intention to go back prior to the Bray decision, and that is why I offer this second-degree amendment.

Madam President, the pending Smith amendment would severely limit the availability of civil remedies for nonviolent blockades of abortion clinics and would effectively gut the authority in the Federal courts that the Federal courts had prior to the Bray decision to enjoin blockades.

Injunctions would be limited in duration to 60 days in length. That was not there prior to the Bray decision. And, also, under the amendment of the Senator from New Hampshire, it is targeted just to the particular clinic. Prior to the Bray decision it could be more expansive.

What we are trying to do is to ensure that in a particular area, should the injunction be granted, it would be applicable to the area and to the region. Under the law prior to the Bray decision, those injunctions could be altered; they could be adjusted to accommodate the conditions at that particular time. The amendment of the Senator from New Hampshire is a good deal more restrictive.

The second-degree amendment I have sent to the desk will preserve the important civil remedy while reducing the criminal penalties for nonviolent offenders. It would provide for a maximum criminal penalty for nonviolent first offenders of 6 months. Those are maximum criminal penalties. Under the sentencing guidelines, of course, nonviolent first offenders would often get lower sentences.

A comment has been made that 30 days and 60 days are a long period of time. What we are talking about is the maximum 30 days in the legislation and very, very few—I inquired of staff about how many instances actually required that amount of time. It is very difficult to imagine, quite frankly, that that amount of time was applicable to any of the offenders.

But the pending Smith amendment would cap the criminal penalty to 60 days no matter how many times the offender acted to violate the criminal law—which is what we are really driving at. You could say the first time was an experience. But what is happening in many different communities is the fact that you have individuals that go out time in and time out, time in and time out, and involve themselves in these kinds of activities.

Clearly, we are not breaching the legitimate first amendment rights or the rights of protest and demonstration in this. What we are talking about is the violence. That happens to be the thrust of this legislation.

The pending Smith amendment would, as I mentioned, cap criminal

penalties at 60 days no matter how many times the offender acted to violate the criminal law.

Our second-degree amendment strikes a fair balance. It reduces the criminal penalty for nonviolent offenders to a maximum of 6 months. It falls within the sentencing guidelines to take into consideration any aggravating or mitigating circumstances, clearly, and 18 months for subsequent offenses.

I think it would be a clear indication that if an individual does violate this law for the first time, it is not a felony, but if they are going to be involved in repetitive violations, it is going to be a felony.

What we are talking about, as was stated very clearly by the Senator from Nevada, is basically violence, and what we are talking about are constitutional rights. And we are intending that there be a distinction between the violent and the nonviolent, as the Senator has pointed out. But we also want to make sure when we are talking about constitutional rights we are talking about ensuring that those rights are going to be protected. And violating someone else's constitutional rights is a fundamental and serious matter.

Madam President, I hope our amendment will be accepted.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I reserve the remainder of my time.

Mr. SMITH. Madam President, I rise in opposition to the second-degree amendment offered by the Senator from Massachusetts.

First of all, let me say I appreciate that he moved somewhat from the very extreme position that he had in the original legislation. But he has not moved far enough in order to be fair.

Under the underlying bill, if you peacefully protested and did not commit any violent act or in any way attempt to create or threaten to commit any violent act, under the underlying bill the penalty was 1 year. Senator KENNEDY has moved that to 6 months. On the second offense he moves from 3 years to 18 months.

But the bottom line is you are still a felon. You are a convicted felon under the Kennedy bill.

Our amendment, our first-degree amendment says 30 days, and 60 days; 30 days for the first offense, even in a peaceful protest—we accept that as the penalty—and 60 days for the second offense. But, again, let me remind my colleagues of what we are doing here. I will use another example.

A young woman, housewife perhaps, who has three children, who has never had any type of criminal activity in her life, she simply believes morally that abortion is wrong, comes to an abortion clinic, peacefully protests—perhaps with a sign, perhaps by sitting

in the street singing or praying, whatever the case may be. That is her crime.

The second time she does that under the Kennedy amendment she could be sentenced to a maximum of 18 months in jail, become a felon, be away from her family for 18 months for exercising her constitutional right of civil disobedience. That is the penalty here. That is what we are doing.

I cannot for the life of me understand why anyone would want to do that to an individual in the example that I gave. Again, the debate has been focused on the violent portion, on the murder of Dr. Gunn, on the other violent acts that have taken place. I do not condone those acts. Neither does anyone else. Those acts were senseless acts of violence that were wrong just like the act of abortion is a senseless act of violence inside the clinic. That is another issue.

The point is, we do not condone those violent acts and my amendment does not discuss those violent acts. We do not change the penalties for those violent acts in the underlying bill with my amendment. They stay the same. We are looking at this portion of this bill which says, "by force or threat of force or by physical obstruction." No one in this debate, in spite of my challenge, has come forth and said what physical obstruction is.

A young woman with children, responsibilities at home, sits down in the street in front of a clinic and says, "I really wish that we could stop the abortions that are going on in that clinic because those are my religious principles"—she is going to be sentenced to a maximum of 6 months in jail for the first time she does it.

Some of the people who are standing up here today have been the strongest proponents of the rights of women in the United States of America—they say they are. They would put a woman in jail for 18 months for simply saying and protesting peacefully that she does not think a life should be taken in the act of abortion. Something strange is happening here. This debate has taken on a twist that is just beyond this Senator, I guess, because I simply do not understand it.

I yield the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1192 AS MODIFIED

Mr. KENNEDY. Madam President, I send a modification to the desk.

The PRESIDING OFFICER. The Senator has a right to modify his amendment and the amendment is so modified.

The amendment (No. 1192), as modified, is as follows:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than six months for the first offense and not more than 18 months for a subsequent offense, and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$15,000, for a first violation; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may com-

mence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

Mr. KENNEDY. Madam President, I indicate to the membership it is basically a conforming amendment and a technical one.

This bill does not cover constitutionally protected protest. Peaceful expression of a person through picketing, leafleting, or praying outside a clinic, counseling center, et cetera—it does not cover that, No. 1. Only when a view is expressed through force or threat of force or physical obstruction or destruction of property would there be a violation of law. It is important that we understand what this legislation is about and what it is not about.

It is clear that clinic blockades involving the physical obstruction of access to the facilities are not constitutionally protected conduct. As the Supreme Court said in the Cox versus Louisiana, a group of demonstrators could not insist upon the right to cord off a street or entrance to a public or private building and allow no one to pass who did not agree to listen to their exhortations. That is what we are talking about.

Even where the blockades and invasions do remain peaceful, they still obstruct access to the facility depriving women of the ability to exercise their constitutional right to choose or to obtain other health care offered by the facility. There is no first amendment protection for obstruction of public or private facilities and no reason to exempt it from punishment.

It is critical that this legislation prohibit and penalize such obstructions.

Equating these clinic blockades and invasions with the tradition of civil disobedience practiced by Mahatma Gandhi and Martin Luther King is an insult to both of these great leaders. These clinic assaults, and that is what we are talking about, assaults, are intended to block—not enhance, not to achieve—but to block the exercise of a constitutional right. Dr. King and the civil rights activists of the fifties and sixties, by contrast, used peaceful civil disobedience in their effort to guarantee the constitutional right to equal protection of the laws; not to interfere with anyone else's constitutional right. That is a basic and fundamental distinction.

I hope at the appropriate time the Senate will accept my amendment.

I reserve the remainder of my time.

Mr. SMITH. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. There are 15 minutes 4 seconds remaining.

Mr. SMITH. I yield Senator HATCH whatever time he wishes to consume.

Mr. HATCH. I thank my dear colleague.

Madam President, the Smith amendment meaningfully distinguishes between violent and nonviolent conduct. The Kennedy second-degree amendment would effectively wipe out this distinction. I believe the American tradition of dealing with peaceful civil disobedience requires support for the Smith amendment. I am kind of alarmed by what is going on here on this particular issue.

A major defect in S. 636 is that, notwithstanding all the rhetoric you will hear about violence, S. 636, this bill, entirely fails to differentiate between violent and nonviolent activity. Under S. 636, a person who commits an entirely peaceful violation, a grandmother, for example, quietly sitting with a group of others on a sidewalk outside an abortion clinic, is subject to the same stiff penalties as a person who brandishes a gun. That is ridiculous. I respectfully submit this failure to differentiate between violent and nonviolent activity betrays all the core principles we all cherish. Our American tradition recognizes the fundamental distinction between acts of violent lawlessness and acts of peaceful civil disobedience.

Acts of violent lawlessness appropriately invite severe penalties. But acts of peaceful civil disobedience, mass sit-ins, for example, that draw on the tradition of Gandhi and Martin Luther King, Jr., should not be subjected to such steep penalties. Such acts are, of course, not privileged. Civil disobedience is, by definition, unlawful. Acts of peaceful civil disobedience should, however, be punished roughly in the same manner and to the same extent as like conduct engaged in by anyone else.

For example, if protesters commit unlawful trespass, they should be subject to roughly the same penalties that other trespassers face. To impose a substantially more severe penalty presents the threat of viewpoint discrimination, no matter how cleverly disguised.

Had States during the fifties and sixties been able to impose and uphold such severe penalties on peaceful civil disobedience, the civil rights movement might well have been snuffed out in its infancy.

A broad range of peaceful anti-abortion activity may be disruptive and interfere with lawful rights of others. The same, it must be noted, was true of civil rights protests: They were, and they were intended to be, disruptive and they interfered with the then lawful rights of others. But they were right.

It is not my point to debate the relative moral standing of the anti-abortion and civil rights movements. Nor do I suggest that peaceful civil disobedience should not be punished. I would simply like to emphasize the

grave danger of viewpoint discrimination inherent in imposing the same severe penalties on civil peaceful disobedience as on violent lawlessness.

It has been, and undoubtedly will be, contended that S. 636 is modeled on Federal civil rights laws. I must point out, however, that, among other things, the Federal civil rights laws that have been cited do not contain the term "physical obstruction," and they have been construed to apply only to acts of violence or threats of violence. In extending its severe penalties to peaceful civil disobedience, S. 636 departs radically from the models on which it purports to rely.

To sum up my first major objection, violent activity is fundamentally different from peaceful civil disobedience. S. 636 utterly fails to recognize that particular difference and, therefore, I think should be defeated.

Senator KENNEDY, the distinguished chairman of the committee and manager of the majority on this bill, has said that S. 636 is necessary to restore the situation to what it was before the Bray case. But as the ninth circuit ruling last week shows, the very statute that was at issue in Bray is still being used to block pro-life protests. So it is simply not true to say that the severe penalties under S. 636 are needed to restore the status quo before Bray. That Ninth Circuit Court of Appeals case makes that clear.

Madam President, I yield back the remainder of my time to my colleague from New Hampshire.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. KENNEDY. If the Senator will just yield, obviously the Senator is entitled to how much time he wishes to use. I note that the Senator from California wants to make a brief comment. It is related to both this amendment and the general bill. So whenever it is suitable, I will yield to her at that time.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. SMITH. How much time remains?

The PRESIDING OFFICER. Nine minutes forty seconds.

Mr. SMITH. Madam President, again, let me repeat what we are talking about in terms of the difference between the second-degree amendment and the first-degree amendment, which I have offered. The second-degree amendment by the Senator from Massachusetts does pull back from the original bill, and I have already complimented him on that in terms of the criminal penalties for those who may be peacefully protesting in front of an abortion clinic. But it still makes them a felon: Second offense, maximum of 18 months in jail; first offense, 6 months in jail.

If we want to talk about physical obstruction, we certainly would have to agree that the sit-ins and protests of the civil rights movement resulted in physical obstruction, but they were also civil disobedience. Those people in the 1960's who conducted those sit-ins were heroes to many of my colleagues who today are on the floor favoring this underlying legislation. And today, by those same colleagues, those same proponents of the civil rights legislation, they are felons. Heroes yesterday; felons today.

What is the difference? The difference is what you are protesting against. That is the only difference; that is the only difference. The civil rights movement protested against discrimination and segregation, and rightfully so. The protesters we are talking about today are protesting against abortion. Heroes yesterday; criminals today.

The Senator from Massachusetts said it was an insult to the memory of King and Gandhi to use that comparison. I would be willing to challenge the Senator from Massachusetts or anyone else. If Dr. King were here today and could speak out, Dr. King would be pro-life. Dr. King would be for the protection of innocent human life, and he would also be standing up for those people who want to physically sit down and protest in front of an abortion clinic.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SMITH. In one moment I will. That is really the issue. It is hard to say because Dr. King is not here to speak, but Dr. King, in my opinion, would speak in behalf of the unborn and Dr. King would speak for the right of those people to peacefully protest.

We are hearing a lot of discussion here which is off the subject, which is what happens around here too much. The subject of this legislation that deals with the violent protesters and the violent people we do not differ with. My amendment does not touch that. My amendment is talking about the physical obstruction clause in this bill which is linked with force or threat of force. A sit-in was physical obstruction. I really do not understand the logic of making one person a felon today who would have been a hero yesterday, and you are doing it on the basis of what the protest is about. Examine your conscience and think about that. It is really the issue.

I will be happy to yield to the Senator.

Mrs. BOXER. Madam President, I thank the Senator very much. I would just say to the Senator, I think we really do a disservice to Dr. King, his memory, and his beliefs to assume what he would be saying in this debate. I find it, frankly, insulting.

I could think, because Dr. King was one of my heroes, that Dr. King, if he

was here, would stand up and say people have a right to their constitutional protections, but I do not know that he would say that. But I will say to the Senator that if—I ask the Senator, does he have any direct knowledge that Dr. Martin Luther King would come out on this side of the issue? Because, again, I certainly do not think that anything was ever written by Dr. King about this, and my own view is he would be standing on the side of freedom and the constitutional rights that we have.

Mr. SMITH. If I can reclaim my time and respond briefly to a rather facetious remark made by the Senator from California, I am not a psychic and I am not communicating with Dr. Martin Luther King, lest somebody think I may be. Maybe someone else is, but I am not.

I also will say, Dr. King—it is a matter of record—believed in nonviolence. Can anybody stand here on the floor and tell me that abortion is not a violent act against the unborn child?

Mrs. BOXER. Is that a question to this Senator?

Mr. SMITH. I will ask the Senator from California to answer that question specifically. Is it a violent act against an unborn child?

Mrs. BOXER. I think that a woman's right to choose is—

Mr. SMITH. Answer my question. Is abortion a violent act against an unborn child?

Mrs. BOXER. I think the question is a loaded question, and that a woman's right to choose is about her constitutional rights. I think that if the Senator thinks I was being facetious, let me tell the Senator, I was not. I was hurt by the Senator's comments because Dr. Martin Luther King is a hero of mine. He is one of the reasons I am in politics. And to suggest that the Senator from New Hampshire knows what he would be saying I think is an insult to his memory.

Mr. SMITH. If I can reclaim my time, Madam President, I did not say I knew what Dr. Martin Luther King would say. I said I believe if Dr. Martin Luther King were here today, he would be defending the rights of the unborn. He would also be defending the rights of those people who want to peacefully protest in front of an abortion clinic just like he defended the rights of those who wanted to sit in and peacefully demonstrate for the end of segregation and discrimination. I believe that is a fair comparison.

The comment was made by the Senator from Massachusetts that it was an insult to the memory of Dr. King. I simply responded to that comment. That is really the extent of it.

I believe that Gandhi and King would be very much in favor of supporting unborn children. I think we also have to realize that unborn women are also part of this. We are now getting back

into the content of the issue of abortion when in fact the issue here is whether or not the Senator and I, all of us on the Senate floor, wish to make a criminal out of a woman or a man, but let us talk about a woman for a moment since that seems to be the focus here—a woman having the right to simply sit down peacefully in front of a clinic and say through prayer perhaps or through a placard, whatever she chooses, that abortion is wrong.

Now, it is interesting that in the New York Times this morning we had an editorial which basically pointed out, "By holding to the basic bill, Congress can rise to its duty of safeguarding the constitutional rights of women who choose to have abortions and the safety of those who provide them."

But it also should have added another line which would say that in doing so, we will trample the rights of those who oppose abortion and the rights of unborn women in the process. That is what should have been added to the New York Times editorial.

This issue is really quite simple. Let us not cloud it with a lot of emotional debate. The issue is do you want to make a criminal out of a person, including young women, many of whom are going to be arrested, prosecuted, convicted, and placed in jail for up to 6 to 18 months, for simply saying in a peaceful way that abortion is wrong? If that is what you want to do, then you should vote for the Kennedy substitute and vote for the underlying amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President and the Senator from Massachusetts, I thank you.

I stand for Senator KENNEDY's second-degree amendment. I stand for this basic act. I have been to these Operation Rescue situations. I have seen the dynamics that take place. Seeing it on television, or reading about it in the newspaper cannot really convey all that is involved in a clinic blockade.

Let me outline the national situation for a moment: In the last few years, and especially this year, there is a disturbing trend of increasing violence at family planning clinics—not lessening violence. Threatening letters are sent to doctors. Patients are blocked from safe access to clinics. Clinics are invaded. They are sprayed with toxic chemicals. They are burned to the ground. One doctor has been shot and killed; other murders have been attempted. And the organizers of these protests often go from State to State to participate in the organization, the strategizing, and the implementation

of these blockades. These are more than just peaceful protests. They are very often actual blockades, strategized and put together in a way to prevent access, to discourage access by threat, by intimidation, or by force.

So these are not necessarily peaceful protests. Sometimes they are really examples of vigilante extremism, and they often mirror the spread of hate crimes and random violence across our society.

This year alone, there have been more than 1,400 acts of violence against abortion providers and patients, and cases of arson and vandalism directed at clinics have more than tripled over the past 3 years.

A report found that, in 1993, more than 50 percent of clinics surveyed have experienced some form of violence: Death threats, stalking, arson, bomb threats, blockades. The economic impact of clinic violence is also large. Just through September of this year, in the first 9 months, there was \$3.7 million of damage to clinics throughout our country.

Let me talk about my State, California, where there has been a tremendous amount of violence. Let me cite the following examples from the past 9 months: 5 clinics in San Diego sprayed with butyric acid, a chemical that causes painful irritation to the skin and eyes; facilities in and around Riverside doused with the same chemical, causing \$100,000 in damage; throughout the summer, clinics in San Jose targeted for blockades and invasions—not peaceful protests, but blockades and invasions, that cost public agencies over \$1 million in overtime, costs for prosecution, and other expenses.

At a blockade, antiabortion activists storm and surround a clinic. They often use military-style tactics to prevent women from entering.

These are not peaceful civil rights sit-ins. Women who seek abortions in blockaded clinics must attempt to run the gauntlet of pushing, verbal abuse, and physical obstruction. State and local law enforcement agencies have often attempted to prevent clinic blockades, but their efforts have been undercut by minimum penalties and limited resources available to them.

One incident in particular stands out from the many examples of clinic violence this year. On September 20, in Bakersfield, CA, someone poured gasoline around the perimeter of the only clinic in town that provided a full range of reproductive and medical services. That clinic was burned to the ground. The \$1.4 million fire also demolished eight other businesses, including one that provides home health care to the terminally ill.

Before the arson, doctors in the communities had been sent threatening questionnaires. Let me read from the Los Angeles Times to tell you exactly how this works.

In April, the letters and questionnaires started to arrive at certain obstetricians' offices inquiring whether the doctor performs abortions or refers patients to clinics that perform them.

Dr. Tracy Flanagan, 36, an ob/gyn physician then in private practice, received such a letter and was outraged at the implied intimidation and threat. She refused to answer, and received a second letter, which gave her a deadline and warned: "If we do not receive a response from you, we will consider this to be an indication that you perform abortions."

So, in other words, you either answer the questionnaire or these groups target you. They assume you perform the abortion.

The article goes on to say that:

[The letters] also said she would be "outed"—a tactic that involves publishing names of doctors who allegedly perform abortions and picketing at those doctors' homes and offices. In a small city like this, with about 50 ob/gyns for a population of 200,000, such publicity could ruin a practice.

In fact, Dr. Flanagan left Bakersfield out of fear. She now practices in San Francisco at the University of California Medical Center.

She said, and I quote:

"Some colleagues said I shouldn't answer. Others said I should take a public stand [to protest the letter-writers' methods]. But Dr. [David] Gunn had already been shot in Florida, and it was unclear to me just how far these people would go. So I sent a letter saying I did not perform abortions, which was correct at the time.

This is the kind of threat and intimidation that is going on in California at present. Doctors are sent letters and they are expected to reply. If they do not, they are threatened. If they do not respond a second time, they are "outed."

These are the many reasons it is important to have substantial penalties, to say we are not going to tolerate these kinds of things. If I may quickly conclude, I think, Madam President, the point here is that acts that I have talked about are not nonviolent; moreover, these acts are intended to block women's rights to privacy.

So I am proud to support the second-degree amendment and to support this legislation. I believe it is legislation that is necessary and overdue.

Ms. MIKULSKI. Madam President, will the Senator yield for a question?

Mrs. FEINSTEIN. I certainly will.

Ms. MIKULSKI. I thought that the Senator's statements were well taken, and I know the Senator's devotion to the cause of nonviolence. I too am troubled by the fact that we would never want to stop a nonviolent protest. A group of nuns saying a rosary across the street from a clinic I believe—is it the Senator's understanding that would be acceptable under this framework that we are passing; that it will continue to allow the nonviolent protest?

Mrs. FEINSTEIN. That is correct.

Ms. MIKULSKI. Is it also the Senator's belief that this is so narrowly

drawn and therefore would allow both first amendment, literally first amendment rights, but also the figurative first amendment rights which is the nonviolent protest; that does not harass, intimidate, or exacerbate? Violence would be prohibited?

Mrs. FEINSTEIN. That is correct.

Ms. MIKULSKI. I thank the Senator for clarifying that. I believe we want to continue to allow that nonviolent protest but at the same time stop the violence and the harassment.

Mrs. FEINSTEIN. I thank the Senator very much. I thank her for her very good work.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Massachusetts has 1 minute remaining.

Mrs. FEINSTEIN. If I might just conclude.

Mr. KENNEDY. I yield the remaining minute to the Senator.

The PRESIDING OFFICER. The Senator is recognized.

Ms. MIKULSKI. Mr. President, I rise today to support the Kennedy amendment to the crime bill. I believe that the Freedom of Access to Clinic Entrance Act, which Senator KENNEDY is offering as an amendment, is a perfect complement to the crime bill. In fact, passing this amendment is essential—if we are going to curb the escalating pattern of terrorism, harassment, vandalism, and violence that is being committed against health clinics across this Nation and protect health care providers from violent attacks.

Nine months ago almost to the day—Dr. Gunn was killed in front of a Pensacola clinic that provided abortion services. His death was shocking. And it sent an urgent message to Congress that it was time for action. Within weeks we had a bill. That legislation is now before this body for immediate consideration.

The problem we are seeking to address is clear: State and local law enforcement are being overwhelmed. Radical pro-lifers have elevated the war against the freedom to choose to a new level of domestic terrorism. And our local officials do not have the capacity to fight this coordinated national campaign.

From 1977 through April 1993 more than 1,000 acts of violence—including: 36 bombings, 81 arsons, 131 death threats, 84 assaults, 2 kidnappings, 327 clinic invasions, and 1 death have been reported. Doctors in my State have been forced to wear bulletproof vests to work. And women live in fear that they may not be able to gain access to the medical services they need.

It is a fundamental tenet of this country that we all have the right to lawful demonstration—whatever our beliefs. All of us here support that. But opponents of abortion have substituted vigilantism for lawful demonstrations. They have interfered with a woman's

constitutionally protected right to obtain an abortion. They have destroyed clinic facilities—leaving women without access to health care facilities. And they have threatened the safety of individuals providing health care services.

This terrorism must be stopped. These violent and lawless actions have made a mockery of the Constitution.

We must be able to protect health care providers like Dr. Gunn. We must assure them that they do not have to risk their life—or the sanctity of their homes—and the safety of their families—because of the health care services they provide. The Government has a historic role to play in protecting the health and safety of its citizens.

But according to our new Attorney General—the highest law enforcement official in this country—current Federal law is inadequate—

We need new Federal authority to help local law enforcement put a stop to the large-scale, national, systematic campaign of terrorism and violence going on today.

This amendment is especially urgent because of recent Supreme Court action earlier this year in *Bray versus Alexandria* that severely curtailed the effectiveness of an existing statute to remedy abortion clinic blockades. The Supreme Court left Congress with the responsibility of ensuring that women are able to exercise their right to get an abortion free from intimidation or violence.

This bill would do that. It would authorize civil and criminal penalties for interference with access to abortion service—regardless if that interference occurred at the site of a clinic—as part of a large scale action—whether it involved sabotage in the middle of the night—or if it involved an attack on an abortion provider in his or her home or car. And it meets the Reno test—

It is narrowly drawn and contains strong, but necessary medicine to address the specific problem of interference with access to abortion services;

It protects the expression of free speech and does not violate the first amendment; and

It establishes sufficient civil and criminal penalties to give law enforcement officials sufficient tools for curbing the violence.

The Attorney General has urged us to pass this bill. So has the American Medical Association and countless women's groups from across the country. I call on my colleagues to do the same.

This bill says no to violence. No to harassment. And no to terrorism. It says yes to free speech. Yes to legitimate demonstrations. And yes to the protection of women seeking access to health care services and the dedicated men and women who provide those services at clinics across this country.

I yield the floor.

Mr. KENNEDY. Madam President, how much time remains?

The PRESIDING OFFICER. There is no time remaining on the side of the proponents of the amendment, and there are 17 seconds remaining on the side of the opponents.

Mr. KENNEDY. In the general debate I understand I have 4 minutes left. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield that time to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. I thank my friend for yielding.

Madam President, I rise today as an original cosponsor of S. 636, the Freedom of Access to Clinic Entrances Act, to express my strong support for immediate action on this important legislation. In many places across this Nation, including communities in my own State of Rhode Island, physicians, medical clinic workers and patients have been subjected to violence—or the threat of violence—because they perform abortions, or work at clinics that perform abortions, or are seeking an abortion.

While I recognize and strongly support the right to protest peacefully, I do not believe that this right allows any individual to inflict fear, violence, or pain on others, or to destroy property. And I firmly believe that crime cannot masquerade as free speech or free expression, subjecting individuals who are involved in a constitutionally protected activity—abortion services—to murder, arson, stalking, and other heinous crimes.

During Labor Committee consideration of this measure, concerns were raised about the measure's constitutionality and breadth. The committee made several modifications which were intended to ensure that the legislation is fair—by including medical clinics that provide pregnancy-related services as well as abortion-related services—and protective of the constitutional right to free speech. I firmly believe that the bill before us draws a fair, reasonable, and constitutional line between the right of protesters to protest, and the right of women to obtain reproductive services, including abortion services, and of medical personnel to provide these services.

Madam President, it is important for Senators to realize that this is not some abstract debate on a point of law that may or may not affect real people. This is of great importance to many Americans and many Rhode Islanders. On November 3, 1993, Ms. Barbara Baldwin, executive director of Planned Parenthood of Rhode Island, described in a speech some of what she and other Rhode Islanders, including Rhode Island Planned Parenthood's courageous

medical director, Dr. Pablo Rodriguez, have had to face in recent months.

I would like to quote for a moment from the remarks of Barbara Baldwin, executive director of Planned Parenthood—and a good friend, well known to this Senator—from Rhode Island.

In December our waiting room was invaded twice. * * *

In January our Medical Director's face appeared on a wanted poster, and they sent the poster to his home, his office and our clinic.

In March our clinic was blockaded twice by minute men blockades, small but effective. [Also], our Medical Director's driveway was mined with nails. He got 4 flat tires, and his wife stepped on a nail when she went jogging. He has two small children and lives in a remote area of the state.

In April I walked from work to a neighborhood restaurant for lunch, was followed unknowingly, and after being seated two men began yelling, calling me a murderer [sic], and then telling everyone in the restaurant I had blood on my hands and murdered babies for a living. [Also] * * *, our building was splashed with red xerox toner and we were forced to repaint the entire building. Later it was painted with green fluorescent paint.

[Also] [i]n April I was followed in my car on two different occasions as I was going home. I diverted my route and hid once at the airport and once at McDonald's.

In May we were picketed * * *, and our staff were identified by name, and often told their homes would be picketed. * * *

This kind of treatment is simply not right, and should not be permitted, and is not legal.

Madam President, no one engaged in a constitutionally protected activity should have to endure the fear, harassment, and prospect of violence that the Rhode Island Planned Parenthood staff and patients have had to endure. Thank goodness, no one has been seriously hurt in our State as a result of these tactics. But people in other States have been hurt, and, as we all know, Dr. David Gunn died in Florida after being shot by a protester.

I firmly believe that the legislation before us today is necessary to prevent this kind of orchestrated violence and harassment, to protect medical clinic personnel and patients, and to ensure that women continue to be able to exercise their constitutional right to reproductive freedom.

I hope that the Senate will approve this legislation today and send a message that we will no longer tolerate this attack on the rights of American women.

I congratulate the Senator from Massachusetts for his leadership in this battle.

Mr. HATCH. Madam President, I yield 2 minutes off the bill in addition to my 17 seconds to the distinguished Senator from New Hampshire.

Mr. SMITH. Madam President, I would like to respond briefly to the Senator from Maryland, who I see is still on the floor, because I know she is concerned about this as well. I want to read from the report language.

The act is carefully drafted so as to not prohibit expressive activities that are con-

stitutionally protected, such as peacefully carrying picket signs, making speeches, handing out literature, or praying in front of a clinic, so long as these activities do not cause a physical obstruction.

Using your analogy of the nuns, if 10 nuns obstruct access to that clinic, praying with the rosary, they can be sentenced to 6 months in jail. So the bottom line is that this bill, as written, can result in nuns going to jail for peacefully protesting if they obstruct access. How do we define obstructing access? Is it sitting in front of the clinic or sitting in the street? What is obstruction? It is not clearly spelled out. I want to make it clear that if you want it to result in the possibility of putting nuns in jail, maybe we ought to vote for the underlying amendment.

Madam President, I am concerned about the time. Has the time expired on the other side on the Kennedy amendment?

The PRESIDING OFFICER. It has expired.

Mr. SMITH. How much time do I have?

The PRESIDING OFFICER. All time on the amendment has expired on both sides. Four minutes were yielded by the Senator from Massachusetts from the bill. Four minutes were yielded by the Senator from Utah on the bill. There are now 39 seconds remaining on that 4 minutes for the Senator from New Hampshire. There are no seconds remaining for the Senator from Massachusetts.

Mr. KENNEDY. Parliamentary inquiry. What is the current matter before the Senate?

The PRESIDING OFFICER. The pending question is the Kennedy amendment No. 1192, as modified.

AMENDMENT NO. 1193 TO AMENDMENT NO. 1191
(Purpose: To differentiate between violent and nonviolent activities)

Mr. SMITH. Madam President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 1193 to amendment No. 1191.

Mr. SMITH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after "PENALTIES" and insert in lieu thereof the following:

"—Whoever violates this section shall—
"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damage, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as *parens patriae* on behalf of natural persons residing in such State, in appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or

permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

The provisions of this amendment shall take effect one day following the enactment of this Act.

Mr. SMITH. Madam President, this second-degree amendment is substantively identical to the first-degree amendment, which I have already offered. It is the same amendment.

My purpose in offering it is simply so that I have the opportunity to have a vote on my amendment. In the event that the Kennedy amendment should be agreed to, I would not have a vote on my first-degree amendment. That is the purpose for offering the second-degree amendment to the Kennedy amendment.

I ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Ms. MIKULSKI. Will the Senator yield while I try to clarify the parliamentary situation?

Mr. SMITH. If I have any time left.

Ms. MIKULSKI. I ask unanimous consent that the time of the Senator be extended by 2 minutes.

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

Ms. MIKULSKI. The Senator from New Hampshire and I are absolutely committed to the concept of non-violent protesting. I would like to bring to the Senator's attention that when I used my point about the nuns walking and saying their prayers or singing a hymn, the Senator mentioned that they could be placed in jail.

I want to bring to the Senator's attention that it is my understanding from the bill that prohibited activities would be "by force or threat of force," or by physical obstruction that intentionally injures, intimidates, or interferes; or attempts to injure, intimidate, or interfere with the person. And then it goes on.

Even if nuns were in front of the door, I cannot believe that they would be threatening by force or threatening to intentionally injure. Therefore, their type of protest would be in the spirit that has been common practice in nonviolent demonstration activity. It is the intentional injuries or the threat of force that I believe are the operational concepts. Is that the Senator's understanding, or do we have two different understandings of the bill?

Mr. SMITH. I will respond with whatever time is left. I agree that I think the motive of the Senator is the same. I do not question that. I think that the language does not handle that. I think that physical obstruction is physical obstruction. If 10 nuns are sitting in front of an abortion clinic and people cannot get in, I assume that under the underlying bill, without my amend-

ment being agreed to, those nuns could be arrested, could be sentenced to 6 months in prison. And were it to be the second offense, they could be sentenced to 8 months in prison and could be felons. That is my understanding, and it is also the understanding of counsel regarding this matter. So I say we ought to be very careful here.

I think my amendment is very reasonable. I think we ought to take a good, hard look at what we are doing here on the Senate floor today.

Mr. KENNEDY. Madam President, as I understand it, we are back to 20 minutes a side on the Senator's amendment.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Madam President, we want to point out, for the benefit of the Members, what effectively we are doing in this amendment. As I understand it, what was in the initial amendment of the Senator from New Hampshire—and that is what is before the Senate—is unacceptable, because that effectively undermines what we were attempting to do to return to the Bray decision, which would permit, for example, in the areas of injunction, no time limitation. He provides a time limitation on it. That did not exist prior to Bray. We are trying to go back to the situation prior to that Bray decision at which time effectively there was no violence. There was no violence, or limited violence.

The Senator from New Hampshire can talk all he wants about the ability of people to demonstrate and protect their first amendment rights. They are protected. It is clear. It is specific in the language of the bill as well as in the report.

All of us have been around here long enough to understand what often happens in the U.S. Senate, sometimes intentionally, sometimes not. But in a number of instances, people do not describe accurately what is in the bill and then differ with it.

I must say, Madam President, what we are attempting to do is to go back to the situation where we have permitted the injunctions that were available and utilized when there was the real possibility of danger and physical violence, and to ensure that constitutional rights are going to be protected. I know that the Senator differs with that and will describe a different situation, but that is what we are doing, what we intend to do, and that is what this bill is effectively about.

We had attempted, in good faith, to draw a distinction between the civil and criminal penalties. That was not acceptable to the Senator from New Hampshire. But we believe if you are going to violate a constitutional right, you do not trivialize it by talking about 30 or 60 days and a misdemeanor; you make it a felony on the second offense. We either consider this a fundamental or basic right, or we do not.

If we do, you have to put in the teeth. I was around here when we passed the 1968 Housing Act. It was wonderful. You could read that legislation, and it effectively, on the face of it, eliminated discrimination in housing. But it did not do it because it had no real teeth. If we are talking about doing something in this area, we ought to do it.

We waited until the mid-1980's to try to pass a housing bill that did something against discrimination.

It is not acceptable. The Senator's amendment is not acceptable if we are serious about protecting fundamental rights.

I reserve the remainder of my time.
The PRESIDING OFFICER. Who yields time?

Senator SMITH addressed the Chair.
The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, I ask for the yeas and nays on the underlying Kennedy amendment No. 1192, as well.

The PRESIDING OFFICER. The request is not in order at this time.

Mr. KENNEDY. Madam President, I ask unanimous consent that it be in order at this time to accommodate the Senator.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered on the underlying Kennedy amendment No. 1192, as modified.

Mr. KENNEDY. Madam President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided.

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

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

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

PRIVILEGE OF THE FLOOR

Mr. PACKWOOD. Madam President, I ask unanimous consent that Steve Grimaud, a participant in the legislative fellowship program working in my office, be granted floor privileges on the freedom of access bill and on the crime bill.

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

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

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

Mr. KENNEDY. Madam President, as I understand, all the other time has been yielded.

The PRESIDING OFFICER. The time on this amendment has expired.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is advised that the amendment of the Senator from New Hampshire numbered 1193 is technically not in order at this time. The yeas and nays, however, have been ordered on amendment No. 1192.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1192, AS FURTHER MODIFIED

Mr. KENNEDY. I send a modification of the amendment to the desk and ask unanimous consent that it be in order.

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

The amendment is so modified.

The amendment (No. 1192), as further modified, is as follows:

In lieu of the language proposed to be inserted, insert:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall not be more than six months, or both, for the first offense; and the fine shall be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations; and

"(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000, for any other subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

Mr. KENNEDY. I ask unanimous consent to have 2 minutes, 1 minute for the Senator from New Hampshire, if he has a question, and for explanation.

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

Mr. KENNEDY. Madam President, what we have basically done is adjust the penalty in this legislation with regard to the amendment itself. That, I think, makes it more consistent with what the Senator originally was desirous of. In the legislation it was \$100,000, and \$250,000 for the second offense. We are down to \$10,000 and \$25,000 maximum.

There was one other provision talking about maximums and minimums, and they have been adjusted in a similar way. We did it with civil penalties.

That is the extent of the modification. So I just wanted the Senator to understand that.

Mr. SMITH. Madam President, I say to the Senator, I appreciate the modification. I think the modification certainly does move a long way, from \$100,000 and \$250,000 penalties down to \$10,000 and \$25,000. However, the point is that these are still criminal offenses and very stiff fines. But I appreciate the fact that the Senator has made those modifications, which he did not have to do. We appreciate that.

The PRESIDING OFFICER. All time has expired on the amendment. The yeas and nays have been ordered. The clerk will call the roll on amendment No. 1192, as modified.

Mr. SMITH. May I ask for one clarification of the Senator from Massachusetts? Are those just for the peaceful, nonviolent? Are the criminal penalties the same criminal penalties?

Mr. KENNEDY. The Senator is correct. It is only for the peaceful, non-violent.

Mr. SMITH. I thank the Senator for that clarification.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1192, as further modified, to amendment No. 1191. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from North Dakota [Mr. DORGAN], and the Senator from Tennessee [Mr. MATHEWS] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 40, as follows:

[Rollcall Vote No. 369 Leg.]

YEAS—56

Akaka	Glenn	Murray
Baucus	Graham	Nunn
Biden	Harkin	Packwood
Bingaman	Hollings	Pell
Boxer	Inouye	Pryor
Bradley	Jeffords	Reid
Bryan	Kennedy	Riegle
Bumpers	Kerrey	Robb
Byrd	Kerry	Rockefeller
Campbell	Kohl	Sarbanes
Chafee	Lautenberg	Sasser
Cohen	Leahy	Shelby
Daschle	Levin	Simon
DeConcini	Lieberman	Simpson
Dodd	Metzenbaum	Specter
Dole	Mikulski	Stevens
Durenberger	Mitchell	Wellstone
Feingold	Moseley-Braun	Wofford
Feinstein	Moynihan	

NAYS—40

Bennett	Faircloth	Lugar
Bond	Ford	Mack
Breaux	Gorton	McCain
Brown	Gramm	McConnell
Burns	Grassley	Murkowski
Coats	Gregg	Nickles
Cochran	Hatch	Pressler
Conrad	Hatfield	Roth
Coverdell	Heflin	Smith
Craig	Helms	Thurmond
D'Amato	Hutchison	Wallop
Danforth	Johnston	Warner
Domenici	Kempthorne	
Exon	Lott	

NOT VOTING—4

Boren	Kassebaum
Dorgan	Mathews

So the amendment (No. 1192), as modified further, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Madam President, I would like to say a few words explaining why I voted for the Kennedy amendment to the pending bill.

As this amendment was originally drafted, the maximum criminal penalties for those who engage in non-violent activities obstructing access to abortion clinics would remain at \$100,000 for first-time violations and \$250,000 for each subsequent violation. I thought these penalties were too high, particularly for nonviolent protestors, and sought to reduce them substantially. For purposes of establishing criminal penalties, it is important that we distinguish between violent activities and peaceful, nonviolent protests.

After discussions with my colleague from Massachusetts, he agreed to modify his amendment so that the maximum criminal penalties would be reduced by 90 percent—to \$10,000 for first-time violations and \$25,000 for each subsequent violation. Keep in mind, they were \$100,000 to \$250,000.

In addition, the original Kennedy amendment made no distinction between violent protests and nonviolent protests for purposes of the civil actions available to the U.S. Attorney General and the attorneys general of each of the States. Senator KENNEDY agreed to modify his amendment so that the maximum civil penalties that may be awarded are reduced to \$10,000 for first-time violations and \$15,000 for each subsequent violation. Under the original Kennedy amendment, the maximum fines were \$15,000 for first-time violations and \$25,000 for each subsequent violation.

I still think they are too high, do not misunderstand me. But I think we made a big, big change for the better. In my view, it is a step in the right direction.

Madam President, I am not totally satisfied that these modifications go far enough. But, in my view, they are a step in the right direction. Since the amendment, as modified, substantially reduces the maximum criminal penalties that can be imposed on non-violent protestors, I voted for its adoption.

AMENDMENT NO. 1191, AS AMENDED

Mr. KENNEDY. Madam President, I have conferred with the Senator from New Hampshire. He has agreed that a vote on the underlying amendment now is not necessary. And so I ask unanimous consent to vitiate the vote that was previously ordered.

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

The question is on agreeing to amendment No. 1191, as amended.

The amendment (No. 1191), as amended, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, may we have order, please?

The PRESIDING OFFICER. There will be ordered.

AMENDMENT NO. 1190

Mr. HATCH. Madam President, in order to expedite this, it is my understanding that both sides can agree on the Hatch amendment. So I ask unanimous consent that the yeas and nays be vitiated.

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

Mr. HATCH. I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment numbered 1190.

The amendment (No. 1190) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Madam President, I wish to express my strong support for the Freedom of Access to Clinic Entrances Act, which has been reported by the Committee on Labor and Human Resources.

It is interesting to note that this came out of that committee on a bipartisan vote. In other words, while there were four Republicans who voted against it, there were three Republicans who voted for it in the committee.

In my view, this bipartisan compromise does a careful job of balancing the right to peaceful protest with a woman's right to reproductive health services.

The House, as I understand it, is also taking up the legislation this week. So the chances are good that we can put a bill on the President's desk in rather short order.

The amendment by the Senator from New Hampshire, as I understand it, would reduce the penalties. It seems to me that the second offense penalty suggested by the Senator from New Hampshire appears to be very mild. It goes to a maximum of 60 days as opposed to the length of time that is provided within the legislation.

S. 636 would make it a Federal offense to impede access to abortion-related services, including pregnancy counseling services.

It would also make the damage or destruction of property of such facilities a Federal crime.

Moreover, S. 636 would enable victims of clinic violence to seek injunctive relief in civil damages. These are very, very important steps. To confront the escalating tide of violence around the country, the bill also gives the Attorney General and the State attorneys general critical enforcement roles through our Federal and State courts.

Madam President, this issue is not about a woman's right to choose or

about free speech. Indeed, some of the bill's very supporters count themselves among the pro-life movement. This issue is about violence; it is about destruction of property; it is about intimidation; and it is about terrorism. And, indeed, it is even about murder.

Should we wait for more innocent victims to join Dr. Gunn, the Florida physician who was shot to death this past March? Or are we prepared to say, "Enough is enough"?

Now, I would like to bring to the attention of the Senate those tactics that have been used in my home State of Rhode Island against Planned Parenthood and its staff just over the past 12 months.

In December, the medical director began receiving subscriptions to magazines and other unwanted publications.

In January, the medical director's face appeared on a wanted poster that was sent to his office and home. "Wanted for murder" and the medical director's face appeared on it.

In March, the clinic was blockaded twice by activists, and the director's driveway was mined with nails which blew out four tires and caused his wife an injury.

In April, a clinic employee was intimidated at a restaurant by two men who began yelling that she was a murderer, and had blood on her hands for murdering babies. That same woman was also followed in her car by another car on two occasions.

In April, the clinic was splashed with red xerox toner and had to be repainted—only to face another assault with green fluorescent paint.

In May, the clinic was picketed every day, and staff were identified by name by the picketers and told their homes would also be picketed.

The clinic ultimately went to court, and a restraining order was granted to one of its employees to stop two individuals from talking to, following, or approaching her. The order was later violated by one of those individuals. Here is the interesting fact and why I think we need Federal legislation. Both of the men covered under the restraining order have been arrested in Texas, Ohio, New York, the District of Columbia, Wisconsin, Georgia, and Arizona.

In other words, this is a calculated conspiracy. Both of the men covered under the restraining order that was granted in Rhode Island had been arrested in Texas, Ohio, New York, the District of Columbia, Wisconsin, Georgia, and Arizona, and they had also served time in North Dakota and North Carolina.

From 1977 to April of this year, more than 1,000 acts of violence have been committed against reproductive health services personnel in the United States. These acts include some 36 bombings, 81 arsons, 131 death threats, 84 assaults, 2 kidnappings, 327 clinic invasions and 1 murder, and people say

we do not need to take some action? Another 6,000 blockades and other disruptions were reported over that same period.

Madam President, these are not the tactics of passive resistance; they are the acts of emboldened extremists who believe society will continue to tolerate their illegal behavior under an ambiguous mantle of free speech. I say, "enough is enough." It is time for us to draw the line, and restore needed balance by passing S. 636, and by rejecting the amendments that will be offered to this bill.

Ms. MOSELEY-BRAUN. Madam President, I support this legislation because it will protect reproductive health care providers and their patients from the deliberate campaign of terror and violence that has been targeted toward them.

As is all too obvious from any cursory review of our Nation's newspapers, there is a history of violence perpetrated against health care clinics that provide comprehensive reproductive services. In the last 16 years, more than 1,000 acts of violence have been reported. These acts of violence include at least 36 bombings, 18 arsons, 84 assaults, 131 death threats, 2 kidnappings, 327 clinic invasions, and 1 murder.

I am sad to say that these acts of violence are not on the wane, Madam President, but continue to grow in number and in intensity. Six weeks ago, a clinic in Peoria, IL, which has been providing women's health care services for 19 years, was firebombed. Property damage was estimated at \$10,000. Thank goodness, no one was hurt.

Despite the best intentions, State and local law enforcement officers have been unable to adequately safeguard medical providers, patients, and clinics against this dangerous activity. State and local laws against trespassing, vandalism, assault, and homicide are not adequate. A national response is necessary because this is an interstate problem. Offenders routinely plan their activities in one jurisdiction and then cross State lines to carry them out. In many localities, offenders grossly outnumber the police and local facilities, including jail cells and courthouses. This legislation is therefore critically necessary to fully shield law-abiding physicians and women from continued interference with their constitutional rights.

This is a narrow piece of legislation; it has been carefully crafted. It fully protects the rights of peaceful protesters to demonstrate. It is modeled after Federal civil rights laws that prohibit unlawful interference with an individual's attempt to exercise the right to vote. It does not cover peaceful picketing, praying, singing, leafleting, or sidewalk counseling. Moreover, this legislation is even handed. It protects

centers that counsel against abortion, staff, and patients, as well as clinics that offer abortion services, their staff, and their patients.

This legislation targets any act of force, threat of force, or physical obstruction involving reproductive health centers only if there is intentional injury, intimidation, or interference with a person trying to obtain or provide pregnancy or abortion-related services.

It does not punish anyone for their views. It punishes only when a person acts to obstruct a clinic entrance, harm a doctor, or intimidate a woman trying to access health care services.

Law enforcement officials support this legislation as an important and necessary tool to discourage this violence. That is why this amendment has been endorsed by Attorney General Reno, as well as the National Association of Attorneys General.

To conclude, Madam President, I would like to affirm that abortion is legal in this country. Some people do not believe in abortion, and they have the right to protest, and to educate the public of their viewpoint. But this debate is not about abortion. It is about violence. Those who do not believe in abortion do not have the right to murder, commit arson, or harass medical providers or women who seek medical care from clinics that provide full reproductive services. I thank the Senator from Massachusetts for offering this legislation, and urge its passage so that we can send a clear message that this kind of violence and terror will not be tolerated.

Mr. WOFFORD. Madam President, I wish to engage in a short dialogue with my distinguished colleague from Massachusetts, Mr. KENNEDY, about the Freedom of Access to Clinic Entrances Act.

When I first became aware that Senator KENNEDY was introducing this legislation I was pleased because, like so many others, I was appalled by the events in Wichita, KS in 1991 in which those opposed to abortion blockaded the entrance of health clinics that offered the procedure.

Since that time we have witnessed a number of painful incidents across the country in which violence has been perpetrated against abortion providers and facilities. Most recently in my home State of Pennsylvania, in the town of Lancaster, a Planned Parenthood clinic was firebombed. These incidents and the potential for others like them illustrates that there is a need for S. 636.

During the Labor Committee markup of the bill, I expressed my general support for S. 636 but also raised my serious concerns regarding the use of the term "abortion-related" to describe the type of services protected by the legislation.

Madam President, I would like to clarify this issue regarding the bill. It

is my understanding that when this bill is brought to the Senate floor the term "abortion-related" services will be changed in S. 636 to "pregnancy or abortion-related" services. Am I correct in my understanding?

Mr. KENNEDY. The Senator is correct. The term "abortion-related" services has been changed to "pregnancy or abortion-related" services. I believe this change refines the language of the legislation to make clear that it protects access to services relating to pregnancy without diminishing its protection of a woman's access to health clinics that perform abortions.

Mr. WOFFORD. As I stated during the markup, it is my belief that this legislation should serve as a rule of reason to persuade people on all sides of this deep controversy not to move beyond peaceful protest and truly civil disobedience, over the threshold into physical obstruction, intimidation and violence. It is my further belief that this change addresses the concerns I raised in committee, and with it, I offer my name as a cosponsor of S. 636. I look forward to working for its passage.

Mr. KENNEDY. I would like to thank my distinguished colleague from Pennsylvania for his support. I too look forward to working with him for immediate passage.

Mr. WOFFORD. Let me close by thanking my distinguished colleague from Massachusetts for his clarification and his willingness to work with me in crafting a piece of legislation that I can fully support. I yield the floor.

Mr. BAUCUS. Madam President, I rise today to express my support for S. 636, the Freedom of Access to Clinic Entrances Act. This legislation would make obstructing access to clinics a Federal crime and would establish criminal and civil penalties for acts of violence and threats of force that seek to intimidate women from obtaining abortion services or doctors and nurses from providing abortion services.

An example from my State of Montana illustrates the desperate need for this legislation. One of my constituents is Dr. Susan Wicklund. Dr. Wicklund, a practicing physician in Bozeman, received many threatening and graphically violent letters over a period of a few months. Fearing that the situation could turn violent, I contacted the Attorney General's office and asked them to investigate.

Imagine my shock and outrage when the Attorney General's office responded that there was nothing they could do; there was "no cause of action prosecutable under current Federal law." This is wrong. A woman's right to choose is a constitutional right in this country. The Federal Government must be allowed to protect health care providers whose lives are threatened merely because they help women exer-

cise their constitutional right. Dr. Wicklund should not have to live in fear simply because she is doing her job and abiding by the law. This legislation would offer Dr. Wicklund, and many doctors like her around the country, protection and relief from the constant harassment they face just because they are doing their job.

Madam President, this legislation would also address the difficulties faced by State and local police when confronted by clinic blockades. For example, in Missoula, MT, most of the protesters arrested last year after blockading the Blue Mountain Woman's Clinic were not from the community. Since local authorities often have trouble sharing information with other jurisdictions, it is important for Federal agencies to step in and coordinate the response if necessary.

Sadly, that same Missoula clinic was recently burned to the ground at the hands of an arsonist, becoming the second Montana clinic closed due to arson in the last 2 years. Under S. 636, arson, if committed because a clinic provides abortion services, would be classified as a Federal criminal offense, with strict penalties for the individuals responsible. Strong penalties would help deter future criminal acts. The Blue Mountain Woman's Clinic might still be intact today if stiff federal penalties had been in place. This bill deserves broad support from all who are opposed to this kind of senseless violence.

As we all know, the spread of violence surrounding the choice issue is on the rise in this country. We need to address it head on. We cannot stand by any longer and watch as more doctors are murdered like Dr. Gunn in Florida.

The first amendment to the Constitution guarantees all Americans the right to peaceful assembly. This bill is carefully crafted to ensure that this right is not violated. Peaceful expression of anti-abortion views will not be penalized by this legislation. However, as should be the case, violent and intimidating behavior will be punished in a strict, but fair manner.

I ask my colleagues to help deter violence in this country by voting for this important legislation.

Mr. LAUTENBERG. Madam President, I rise in support of the Freedom of Access to Clinic Entrances Act. As an original cosponsor of this legislation, I have long supported efforts to stop violence and harassment at our Nation's reproductive health clinics.

Madam President, the Supreme Court has upheld a woman's constitutional right to choose in numerous court cases beginning with *Roe versus Wade*. Despite these legal assurances, the right to choose has been greatly eroded recently.

States have enacted waiting periods, so-called informed consent laws, and other impediments to reproductive health services that do not apply to

people seeking other health services. On top of all of this, clinic violence, harassment, and obstruction have increased dramatically. This was dramatized by the cold-blooded murder of Dr. David Gunn earlier this year outside of a Pensacola, FL, health clinic. His murder took place after years of harassment and posting of "wanted signs" with his picture on it. But this was no isolated incident.

Since 1977, opponents of choice are responsible for more than 1,000 acts of violence against abortion providers, including bombing, arson, death threats, kidnappings, assaults, shootings, and clinic invasions.

Also during this time period, antichoice protesters have committed over 5,000 acts of disruption, including clinic blockades, bomb threats, hate mail, harassing phone calls, and demonstrations.

Madam President, this legislation will make it a Federal crime to prohibit someone from obtaining abortion services or assisting someone who desires these services by force, threat of force or physical obstruction.

This legislation does not make it illegal for people to protest civilly. It does not restrict freedom of speech. It simply prevents violence, obstruction and harassment of women and health care professionals.

Madam President, the women of this country must have a real right to choose, not an abstract one. If we allow violence, vandalism, and harassment to continue at reproductive health clinics, women will not be able to exercise this constitutional right.

I urge my colleagues to support this legislation.

Mr. HARKIN. Madam President, I rise in support of the Freedom of Access to Clinic Entrances Act. This important legislation, which I have cosponsored, provides for Federal action to address the wave of violence and harassment of health care facilities that provide abortion services. It is time for a Federal response to the blockades of clinics, and the violence, and harassment directed at clinic employees, health professionals, and patients.

The statistics tell the story. There have been hundreds of cases of clinic invasions, vandalism, death threats, arson, and bombings. Most distressing is the tragic case of Dr. David Gunn, who was brutally shot in the back by an antiabortion extremist. In 1992 alone, some 194 violent incidents were documented, with 16 cases of arson, 116 cases of vandalism, 9 assaults, 8 death threats, and 26 invasions. This is a problem of national scope, requiring a national response.

Attorney General Janet Reno has testified that current Federal law is inadequate to address this problem. After the assassination of Dr. Gunn, 16 of my Senate colleagues joined me in calling

for an investigation of these activities by the Federal Bureau of Investigation on March 18, 1993. On April 9, Director William Sessions responded to our letter.

Director Sessions stated that, "The Department of Justice concluded that current Federal criminal laws are not adequate to address the issues of denial of access and related violence at abortion facilities." Therefore, the FBI is precluded from undertaking the kind of comprehensive investigation demanded by this pattern of abuse and violence.

But beside the violence directed at clinics, clinic blockades are being used to prevent patients from entering these clinics, or to harass them if they attempt to enter. The Federal Government must respond to these incidents as well as incidents involving the use of force.

Some argue that clinic blockades are an exercise of the constitutional right to free speech. I believe that a person's right to swing his fist ends where my nose begins. The same is the case in this instance. I strongly defend the right of antiabortion protesters to picket, pray, or otherwise oppose the performance of abortions. These protesters have strongly held views, and they have the constitutional right to express them.

However, as with the fist, their rights ends where another person's rights begin. These protesters have the right to express their views. But others who disagree with those views, or who choose not to listen to them, have an equal right to ignore their protests.

Some suggest that this issue should be handled by State and local officials, rather than the Federal Government. But the national campaigns of Operation Rescue and other antiabortion extremist groups are calculated precisely to overwhelm the resources of local law enforcement agencies. In 83 incidents in 1992, some 2,580 arrests were made in clinic blockades. Protesters converge on protest sites from across the Nation, and some people travel from protest to protest. The flood of protesters gathering around the country often overwhelms the local capacity to jail blockaders. Often, blockaders who are released immediately return to the blockade. Adequate detention facilities are needed to address these tactics.

Blockades are not analogous to the nonviolent protests of the civil rights movement. There is a fundamental difference between people protesting to vindicate their rights to be treated as equal citizens, and people whose protest is intended to prevent others from exercising their lawful rights. Unlike the protests at lunch counters in the 1960's, which were intended to ensure equal access for all, and to force a change in law, these protests are intended to force the blockaders' views on those who disagree, regardless of the others' legal rights.

But let me also state what this bill is not about. It is not about preventing people from praying in public. It is not about silencing protests. It does not prohibit sit-ins, except if those sit-ins physically obstruct access to a clinic. And it is not about whether abortion is right or wrong.

The right to choose is protected under the Constitution, as a part of the fundamental right to privacy, and this measure is intended to ensure that women may exercise that right. This legislation is a law enforcement measure, not an abortion rights measure. I strongly support this bill, and I urge its adoption.

Mr. SIMPSON. Madam President, I am and always have been pro-choice, and I also firmly support the right of a woman to have free and unrestricted access to all necessary health care facilities.

I am in whole-hearted support of the principle which the sponsors of this legislation are addressing. I also join with them in condemning in the strongest manner possible the violent acts that have occurred—murder, bombing, physical threats, and violence have absolutely no place in our society. In particular, such acts have no place associated with political debate on issues as important and as contentious as the choice or antiabortion issue. In my view, such criminal behavior should be punished very severely, indeed.

This is a very thorny issue: In its pure sense, this legislation addresses certain forms of physical obstruction—in the form of political protest—and imposes sanctions on that behavior.

As I stated, Madam President, I am strongly pro-choice. I am also strongly pro-free speech. And I have been listening most attentively to the debate on this legislation. I have been weighing the various concerns raised by our colleagues, and I want to commend them on a most thoughtful and thought-provoking debate.

However, Madam President, one thing has become clear to me. This really is not an issue of pro-choice or pro-life. What we are faced with is legislation responding to the actions of extremists.

Extremists have abused their constitutional rights in a manner which has prevented other, innocent citizens, from availing themselves of their own rights.

The fact is that all of the rights we speak of here are based in the first amendment. And that has made the debate much more contentious.

In any area of our life, if one group uses their rights to abuse or to limit the rights of others, the Government has been called upon to act. That is our duty and that is why we are here posed to act.

The level of interference with the rights of others—women in this in-

stance—has reached such extremes that we in Congress must act. It is my view that this legislation is appropriate. The fact that it is needed, however, is most regrettable.

Mrs. MURRAY. Madam President, throughout the debate on the crime bill last week, we heard over and over again about the horrible consequences of violence in our society today. Like many people across this Nation, I believe that it is time for us to demonstrate to our children that we do not condone these acts of violence, and that we will not tolerate them.

The bill before us today is necessary because of the campaign of terror being perpetrated against abortion clinics, doctors, and patients across the Nation.

Madam President, I fully support our first amendment rights under the U.S. Constitution. However, it is time for us to acknowledge that violence is not a mode of free speech. It is not a way to express an opinion about a woman's constitutional right to choose.

Since 1977, more than 1,000 acts of violence have been directed at abortion providers. Women's health care providers across the Nation have faced bombings, arson, death threats, kidnappings, assaults, and shootings.

Just 2 months ago, the Family Planning Associates clinic in Bakersfield, CA, was destroyed by arson, causing \$1.4 million in damage. Also in September, a Planned Parenthood office in Lancaster, PA, was severely damaged by a firebomb. In August of this year, Dr. George Tiller of Kansas was shot. In March, Dr. David Gunn was murdered in Florida.

Madam President, I have heard from physicians in my home State of Washington. They are alarmed at the increasing violence against women's health care providers. One doctor wrote:

Every time I walked toward the building, I thought to myself that some anti-choice terrorist could have set a bomb and that my life could be on the line. Fortunately, so far I have been able to work unimpeded, but with every assault on a clinic around the country I have worried about the safety of my staff as well as that of my patients. The next time a gun is fired, it could well hit a patient or staff member. The psychological toll all this takes on clinic staff is enormous, as you can well imagine.

Attorney General Janet Reno says that Federal legislation is necessary. According to the Attorney General, "The problem is national in scope, local law enforcement has been unable to deal effectively with it, and existing Federal law is inadequate to provide a complete response."

Madam President, the Freedom of Access to Clinic Entrances Act is a response to violence. This legislation is necessary, and long overdue. It outlaws clinic violence while protecting legitimate free speech activities.

This bill contains a message that we as responsible adults must send today.

No more violence. I urge my colleagues to vote for this bill, and I thank Senator KENNEDY for his leadership in bringing it before us.

Mr. PACKWOOD. Madam President, I rise today to voice my strongest support for the Freedom of Access to Clinic Entrances Act. I am proud that I have been a cosponsor of this legislation for three consecutive Congresses.

This act would provide a critical safeguard to the right of all women not only to choose to have an abortion but in many cases to seek basic health services. At the same time, this legislation works evenhandedly to protect providers of pregnancy counseling and adoption services from unlawful protest activities.

I commend Senators KENNEDY and KASSEBAUM and the Senate Labor Committee for their diligent work and diplomacy in drafting a bill that I hope will be agreeable to most Senators, whether they identify themselves as being pro-choice or pro-life.

For at least the last 15 years, a contract campaign of violence has been waged against providers of abortion, a legal medical procedure. Antiabortion activists have used blockades, bombings, intimidation, and even murder as tools to close clinics.

My home State, Oregon, has been disproportionately affected. In 1 year alone, three torchings of clinics caused more than a half a million dollars in damages. In Forest Grove, OR, fliers were distributed offering a \$1,000 reward for any information leading to the arrest of a doctor who performs abortions, and a death threat was sent to a clinic. During the blockage of a Portland clinic, patients were struck in the face and knocked against a car. These are just a few examples from a long unfortunate string of incidents.

The time has come to put an end to this madness. Violence is reprehensible for any reason. In our democratic system, the protesters clearly have the right to disagree with *Roe versus Wade* and pursue legal means to reverse this decision. This bill protects the rights of those on all sides of this controversial issue to peacefully exercise their rights under the first amendment. But those who use extreme and often criminal tactics to express their views must be stopped.

Madam President, I hope this legislation will be enacted in the near future. Its enforcement will help put behind us a tragic chapter in our history where disagreements between citizens have led to bloodshed. I thank the Chair.

Mr. LEVIN. Madam President, I am pleased to be a cosponsor of the Freedom of Access to Clinic Entrances Act of 1993, and welcome the opportunity to support this bill today on the Senate floor.

On January 13, 1993, the Supreme Court handed down its decision on *Bray versus Alexandria Women's*

Health Clinic. In this decision, the Court struck down a lower court ruling which had held that a Federal civil rights law could be used to stop abortion protesters from blockading reproductive health clinics. In overruling the lower court decision, the Supreme Court held that the Ku Klux Klan Act does not provide a Federal cause of action against persons obstructing access to abortion clinics.

Prior to the Supreme Court's ruling, several Federal courts had issued injunctions against clinic blockages based on the Ku Klux Klan Act. These injunctions proved highly effective in curbing large blockades. In ruling that this Federal law does not apply to clinics, the Supreme Court removed the possibility that those affected by clinic violence could invoke this law to obtain Federal court injunctions.

The incidence of clinic violence is on the rise. Recently, the Feminist Majority Foundation concluded a nationwide survey of clinic violence that occurred during the first 7 months of 1993. Of clinics participating in the survey, 50.2 percent experienced violent acts including death threats, stalking, chemical attacks, arson, bomb threats, invasions, and blockades.

Clinics located in Michigan were among those that faced the most acute violence. Of 13 Michigan clinics who responded to the survey, four reported receiving death threats, three received bomb threats, four experienced chemical attacks, and clinic staff were stalked at three clinics. One Michigan clinic was the victim of attempted arson, and an organized blockade was conducted at another clinic.

With the intensification of clinic violence and the lack of effective alternatives to address this violence, the need for the Freedom of Access to Clinic Entrances Act is clear. This bill would prohibit the obstruction of access by women to pregnancy or abortion-related services. More specifically, it would prohibit the use of force, threat of force, or physical obstruction to injure, intimidate, or interfere with a person seeking private abortion or pregnancy-related services. It would also prohibit the destruction of clinic property and ensure that persons injured by clinic obstruction, as well as State attorneys general, could seek redress in the Federal courts.

Concerns have been raised that this legislation, if passed, would restrict the first amendment rights of anti-abortion protesters to peacefully demonstrate. This is not true. The bill would prohibit only acts or threats of force, physical obstruction, and destruction of property. Picketing, distributing pamphlets and other materials, and peacefully expressing views would not be affected by this legislation whose activities are protected. The Clinic Access Act addresses conduct—not speech—and draws a strict delineation between the two.

This bill is even-handed in that it would extend identical protection to both clinics that offer abortion-related services, their staff, and patients and pro-life counseling centers and their staff and patients. Intentional care has been taken in the bill language to clarify this point.

The fact remains that the right to terminate a pregnancy remains a constitutional right under the right to privacy as ruled by the Supreme Court. Individuals should not be threatened, harmed, or prevented from exercising this right. Similarly, individuals performing legal abortion services should also be protected from harm.

For these reasons and others, I will support passage of this legislation.

Mr. DANFORTH. I am a pro-life Senator. I have always been pro-life and I remain strongly pro-life. I believe that abortion on demand is the wrongful destruction of life and that *Roe versus Wade* was decided incorrectly. If I could change the decision in that case, I would do it without hesitation. Abortion on demand cheapens life and the skyrocketing incidence of abortion in America is a national tragedy.

Those are my personal, deeply held opinions. I recognize that many Americans disagree vehemently with me. Abortion is a complex issue. They are entitled to their opinion as I am to mine. Unfortunately, tragically, the law now sides with them.

As the Senate considers the Freedom of Access to Clinic Entrances Act, the debate will revolve around many issues. For me, the issue is not abortion. It is how we conduct the debate about abortion and whether we can continue to allow violence and intimidation to be used as weapons in that debate. I do not see that as a complex issue at all.

So I will vote for passage of S. 636. Because when I vote, I do so as a Senator, sworn to uphold the Constitution. And as long as the Government of this country protects the right to an abortion it is my obligation to protect from violence Americans who seek to exercise their rights—even if I am personally dismayed that such a right is held to exist.

I have fought to change the law's permissive view of abortion and will continue to do so. As Missouri's State attorney general, I even argued before the Supreme Court to uphold the right of my State to impose restrictions on abortion. But my fight will always remain within the bounds of the law. We are a nation of laws. Those who break the law—those who use violence—no matter how they try to justify it, must be stopped. That is the essence of the rule of law.

I believe Americans of conscience must not be denied the right to decry abortion. They must be permitted to protest and lobby and pray and carry signs. Even if what they say offends people. Congress must protect their

right to speak and assemble peacefully while they struggle to change the law.

What they cannot do is threaten people, harass people, intimidate people. Certainly they cannot hurt people. But the committee report which accompanies S. 636 tells of arsons, bombings, shootings, death threats, assaults, kidnappings, even a murder—acts of violence aimed at Americans who seek to exercise a hotly debated but constitutionally protected right. The report tells of the inability and unwillingness of some local authorities to enforce State laws and the coordination of such activities across State lines.

In such circumstances, it is appropriate for the Federal Government to act. I believe that S. 636 will not hinder legal protests. It will limit the genuine debate to lawful civil discourse, where it belongs.

Mr. McCAIN. Madam President, I oppose the Freedom of Access to Clinic Entrances Act, S. 636. As strongly as I believe in the sanctity of life, I am as strongly opposed to violence as a means by which to prevent or intimidate a woman from obtaining an abortion or a practitioner from performing an abortion. As objectionable as abortion is to me personally, violence can never be the answer. I completely and unequivocally condemn the March 1993 killing of Dr. David Gunn and all other acts of violence against abortion clinics and providers of abortion services.

However, S. 636 is not the appropriate vehicle to address these outrageous and indefensible acts. As drafted, it is overbroad and infringes upon the constitutionally protected free speech of our citizens. It imposes harsh Federal penalties on those who engage in protests, even if entirely nonviolent, on the basis of a specific disfavored viewpoint—opposition to abortion. While the bill's sponsors have made efforts to create the pretense that it is evenhanded, protecting both abortion and antiabortion activities, in fact it is specifically devised to stifle the expression of those opposed to abortion. Mr. President, this measure will have a profoundly chilling effect on free speech. I am also deeply concerned that it singles out a class of citizens—those who seek or perform abortions—and gives them protections beyond those available to other Americans.

Because I believe that this bill is fundamentally flawed, I supported amendments to improve it by penalizing only violent behavior, and creating a legal cause of action against individuals who react violently against those who are peacefully protesting. I also supported an amendment by Senator HATCH to penalize violent behavior against religious institutions such as churches and synagogues. We should use our limited Federal law enforcement resources to protect our citizens against violence, not against free speech.

Mr. GORTON. Madam President, the issue before us today is one of how we

can prevent violence which surrounds some demonstrations at health clinics which provide pregnancy or abortion-related services. Persons on both sides of the abortion issue agree that the violence must stop.

Few will deny that the gross acts of violence against abortion clinics, pro-life counselling centers, and places of religious worship are unconscionable. Each of these types of facilities have experienced arson, bombings, and other types of destructive attacks. The persons who seek and the persons who provide the services of these facilities have been physically harassed and, at times, have even had their lives threatened or endangered.

I support the Freedom of Access to Clinic Entrances Act, in order to ensure safe access of legal services provided at medical facilities and at places of religious worship.

Equally important, however, is that we treat all sides equally and do not trample on fundamental constitutional rights such as the freedom of speech. This bill has come a long way toward reaching that fair equilibrium.

This bill achieves a balance between two diametrically opposed points of view. It is of vital importance that we send a clear message that the violence which has occurred at some demonstrations will not be tolerated, and must end. It is also of great importance that we not infringe upon the constitutionally protected freedoms of speech, assembly and protest.

Mr. DANFORTH. I would like to ask the chairman a few questions about the Freedom of Access to Clinic Entrances Act. Many of my constituents from Missouri Right to Life whom I have supported for a long time have communicated certain concerns about the underlying legislation. They are concerned that this legislation will "suppress pro-life picketing, leafleting and sidewalk counseling outside abortion clinics by use of * * * lawsuits and injunctions" made possible by this act. Is it the intent of the drafters of this legislation to allow lawsuits to be filed against peaceful picketers who are not attempting to prevent ingress or egress from an abortion clinic and are conducting their protests in a peaceful and orderly manner?

Mr. KENNEDY. Although we cannot control the filing of lawsuits, it would not be our intention that a lawsuit of this type be successful as long as the picketers were not threatening or obstructing or attempting to injure, intimidate, or interfere with a person or a provider's access to the abortion clinic in question.

Mr. DANFORTH. By the chairman's response, I assume that the same would be true with peaceful leafleting and noncoercive counseling outside of an abortion clinic.

Mr. KENNEDY. Subject to the same conditions, I would agree with the Senator from Missouri.

Mr. DANFORTH. If I might ask the chairman one additional series of questions about the legislation. My pro-life constituents have also voiced another related concern. Many of them participate in nonviolent "sit-ins" at abortion clinics to demonstrate their heartfelt, intense opposition to the wrongful taking of human life occurring there. These "sit-ins" may make it more difficult for an individual to gain entrance to the clinic, just as civil rights marchers in the 1960's made it more difficult to gain entrance to certain stores, which had discriminatory policies. For example, sit-ins were held at Woolworths in which participants took every available seat at the lunch counter. Now, I am sure that this action made it difficult to gain entrance to the lunch counter to purchase food. But, is it the chairman's intention to make nonviolent sit-ins, in which a person still has access to a building, albeit access is made more difficult, a violation of Federal law?

Mr. KENNEDY. I would answer the Senator that it is not the intention of the sponsors of this bill to make nonviolent sit-ins a violation of Federal law, unless the sit-in is arranged in such a way as to constitute a physical obstruction, defined in the legislation. As long as a person has access to and egress from an abortion clinic and as long as the protest is not arranged so as to make it unreasonably difficult or hazardous to gain that ingress and egress, then I do not believe that the situation in question would violate this legislation.

Mr. DANFORTH. The chairman's response raises the central concern of this Senator about the legislation in question—the meaning of the term "unreasonably difficult or hazardous." I understand that if this legislation becomes law, this term will be defined on a case-by-case basis in the courts. But, I am wondering if the chairman would indulge me in a few hypotheticals to give the courts some guidance. If a group of pro-life Missourians with placards in their hands and prayers on their lips, created a line across the front of an abortion clinic and left room for one individual to pass, without physically restricting that individual's freedom of movement, does the chairman believe that these demonstrators would have made ingress or egress from the abortion clinic unreasonably difficult or hazardous?

Mr. KENNEDY. As the Senator from Missouri properly pointed out, the ultimate definition of this term will be left to the courts. But, I do not mind explaining my understanding of the term "unreasonably difficult or hazardous." In the hypothetical which you have presented, I do not believe that the protesters would have made access to the clinic unreasonably difficult or hazardous as long as they left a reasonable amount of room for a person to enter and leave the building.

Mr. DANFORTH. Would the chairman's analysis change if the same group of protesters were heatedly and forcefully telling the person wanting access to the clinic about the facts that her action would be the wrongful taking of human life, and that in their eyes, it would amount to murder? If the protesters still allowed the person access, albeit more limited access than would be available without any protesters, would the chairman agree with me that this scenario should not be considered as making access to the clinic unreasonably difficult and hazardous?

Mr. KENNEDY. As long as the protesters left a reasonable amount of room for a person to enter and leave the building I do not believe that their voicing of their opinions regarding abortion would change my analysis. Of course, this law would make it a violation of Federal law for those protesters to threaten a person with violence or to place them in reasonable apprehension of bodily harm because of their desire to gain entrance or egress from an abortion clinic.

Mr. DANFORTH. I thank the chairman for taking the time to discuss this matter with me.

Mr. BRYAN. Madam President, earlier this year, this Nation experienced a most unfortunate escalation of people's differences on the issue of abortion. The murder of Dr. David Gunn outside the medical clinic where he worked and had provided legal abortion services, sickened Americans on both sides of the issue.

We have all seen on television women seeking legal medical services being physically prevented from gaining access to the facilities where those services are provided. We have all heard about health care providers throughout this country who literally put their lives on the line to provide that legal health care to those women.

We have all heard of the bombing and destruction of family planning clinics. We have heard the experiences of health care providers who work in those facilities whose houses have been picketed, whose children have been harassed at school, and whose phones have become the vehicle for threats of all kinds.

This violence and intimidation cannot be tolerated. Women who are simply trying to exercise their legal right to choose abortion-related services without interference, without fear, and without intimidation must be protected. Today we can ensure their access to those services are protected.

Let me make it clear that this bill will not interfere with anyone's right to peacefully express themselves in protest—regardless of which side they are on in the abortion debate. I would not support this legislation if it did. This bill will, however, ensure women seeking legal medical services can get

those services without fear for their physical safety.

The abortion issue will continue to be debated and protested. But that debate and those protests must be conducted without the violence and the intimidation that have characterized the issue recently.

Today we must take action to protect women seeking legal abortion-related services, and health care workers who provide those legal services. As a cosponsor of the Freedom of Access to Clinic Entrances Act of 1993, I urge my colleagues to support this legislation, and take the step necessary to guarantee the right to choose can be exercised.

Mr. DURENBERGER. Before we vote on this bill, I have some questions about the operative language, contained in section 2715(a).

My purpose in offering these questions to the chief sponsor of this legislation is to clarify what activities will be allowed and which will be prohibited if this legislation becomes law.

My understanding is that facilities covered by this legislation include both those facilities providing abortion-related services or other pregnancy-related medical services to women and pro-life counseling centers or so-called pro-life crisis centers. Is that correct?

Mr. KENNEDY. Yes, that is correct. The bill is even-handed in that it protects both those facilities providing abortions or abortion counseling and those that counsel women not to terminate their pregnancy. I should also point out that a significant number of patients at clinics providing abortions are seeking medical attention—such as pap smears, birth control, and so forth—that are entirely unrelated to the termination of a pregnancy. These patients are protected too.

Mr. DURENBERGER. I thank my colleague for that response.

My understanding is that, under this bill, a person or group of people could not physically block access to a facility that provides abortion-related services or pro-life counseling services. Is that correct?

Mr. KENNEDY. That is correct. The bill prohibits physical obstruction, which is defined to mean rendering ingress to or egress from the facility impassable, or unreasonably difficult or hazardous. Blockades and invasions of facilities that block access obviously are prohibited by this language. Human gauntlets that impede access are also prohibited. Other examples include pouring glue into locks, chaining people and cars to entrances, strewing nails on areas leading to doors, and blocking entrances with immobilized cars.

Mr. DURENBERGER. I also understand this bill would not interfere with constitutionally protected rights of free speech and lawful assembly.

Mr. KENNEDY. That is correct. The conduct that this bill prohibits—acts

and threats of force, physical obstruction, and damage or destruction of property—is not constitutionally protected. Activities that are protected by the first amendment—peaceful expression of views in nonthreatening, non-obstructive ways—are not restricted by this legislation.

Mr. DURENBERGER. As I understand it, under this bill, pro-life protestors gathering outside a medical facility could picket, pray, chant, wail, yell, sing, hold signs, wave banners, hand out pamphlets, sidewalk counsel and carry on similar activities protected by the first amendment. That would all be perfectly legal. They could not be sued or be subject to criminal penalties for that activity.

Mr. KENNEDY. That is right. As long as those activities did not threaten force or physically block access to the facility.

Mr. DURENBERGER. Would it be allowable under this bill for a group of pro-life protesters to sit down in the path of people trying to get into a facility?

Mr. KENNEDY. They could, as long as they were not physically obstructing the entrance. If a patient is forced to walk over strewn bodies, for example, ingress could well become unreasonably difficult or even hazardous, in which case there would be a prohibited physical obstruction. On the other hand, ingress and egress would not be considered "unreasonably difficult or hazardous" if people trying to enter or leave a facility could easily get past protesters who may be sitting in the sidewalk approaching a clinic entrance.

Mr. DURENBERGER. Under this bill, you define "intimidate" to mean placing a person "in reasonable apprehension of bodily harm." Is that definition meant to encompass emotional damages?

Mr. KENNEDY. "Bodily harm" as used in the definition of intimidate is intended to have the same meaning that is given in other Federal laws, such as 18 U.S.C. 1365: "a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ or mental faculty; or any other injury to the body, no matter how temporary." These are not the only kinds of injuries that are compensable under the law, however. If a use or threat of force or a physical obstruction intended to injure, intimidate, or interfere with a patient or provider causes purely emotional injury, for example, that injury would be compensable. For example, if someone fires a weapon at a doctor but misses, the doctor could recover if he could prove that he had suffered an emotional injury. On the other hand, conduct that is not prohibited by this legislation, but that nonetheless upsets someone—for example, nonobstructive sidewalk counseling, taunts of "baby

killer," holding up disturbing photographs—could not result in criminal or civil liability.

Mr. DURENBERGER. So, in the latter example, the individual who was upset by a taunt or a photograph or some other legitimate exercise of First Amendment expression could not obtain damages for emotional distress?

Mr. KENNEDY. That is correct.

Mr. DURENBERGER. I also have two questions about the new language contained section 2715(c) of the bill. I understand that that language limits those that may bring lawsuits under this bill to persons involved in obtaining or providing or seeking to obtain or provide pregnancy or abortion-related services.

Mr. KENNEDY. That is right. Before this modification was made, there was no limitation on who might have a private cause of action under S. 636. In fact, that language was broad enough to cover protesters. Now, only those involved in obtaining or providing services have a private right of action under subsection (a)(1).

Mr. DURENBERGER. By defining "aggrieved person" in this way, was it your intention to exclude clinic escorts or so-called clinic defenders?

Mr. KENNEDY. That is correct. Demonstrators, clinic defenders, escorts, and other persons not involved in obtaining or providing services in the facility may not bring such a cause of action.

Mr. DURENBERGER. I thank my colleague for his responses.

Mr. FEINGOLD. Madam President, I rise to speak in support of S. 636 which would ensure freedom of access to clinics while protecting the right to peacefully demonstrate.

Although some of my colleagues might want to characterize this issue as solely about abortion, it most certainly is not. It is primarily a response to a nationwide pattern of violence that ranges from murder and woundings to bombings, arson, chemical attacks, and other vandalism. Local authorities have either been unable, or in some cases, unwilling to curb this spread of violence, and it is the responsibility of the Federal Government to step in now to help ensure that women seeking to exercise their constitutional right to an abortion are not denied access to clinics which provide these services.

The violent crimes I speak of are systematically directed as denying women their constitutionally protected right to choose, and are not unlike the pattern of violence we witnessed during the civil rights unrest of the 1960's.

In fact, Attorney General Janet Reno recently said the following in providing testimony on this legislation:

The reluctance of local authorities to protect the rights of individuals provides a powerful justification for the enactment of federal protections that has been invoked pre-

viously by Congress in passing laws to protect civil rights.

Just as our current circumstances closely parallel those of the 1960's the legislation we are now considering is patterned after civil rights legislation from that time—the voting rights act of 1965.

Madam President, I would like to take a moment to talk about the kinds of violence I have seen take place in my home State.

At least two recent Milwaukee Journal articles outlined the incidents which have occurred at Wisconsin clinics or to Wisconsin abortion providers in 1993: According to these articles:

Bullets were fired into one clinic on four separate occasions;

A Wisconsin doctor received a letter saying the anonymous writer would "hunt you down like any other wild beast and kill you";

Butyric acid was poured at the entrance of another clinic forcing the clinic to close for 4 days and costing an estimated \$48,000 for clean-up by a hazardous materials unit;

Protesters bound themselves together inside of a van that was then used to ram a clinic entrance; and

Three protesters jumped on top of a patient's car as she drove through the parking lot.

This is by no means an inclusive list, nor are these incidents as violent as what has occurred in some other States, but they do illustrate the need for swift action.

Are all of the protesters from Wisconsin? Many are not. The offensive letter sent to the Wisconsin doctor I just mentioned had a California postmark. The woman who was charged with the attempted murder in the shooting and wounding of Kansas doctor, George Tiller, was also wanted in Wisconsin in connection with a blockade at a Milwaukee clinic, and unpaid citations are on file in Milwaukee for residents of Florida, Kansas, Washington State, New York, and several of Wisconsin's bordering States.

I do not mean to say that every clinic incident or demonstration is violent or illegal. Quite the contrary. Wisconsin planned parenthood reported to me they have been the object of picketing 301 times thus far in 1993. They characterize these incidents as "mostly lawful," and the lawful, peaceful expressions of free speech will continue to be protected.

Madam President, I am a cosponsor of the Freedom of Access to Clinic Entrances Act, because I believe we have a serious problem with escalating violence during what should be peaceful demonstrations at abortion clinics. Though I disagree with them, I respect deeply the beliefs and convictions of those who oppose abortion. I also respect deeply the rights of women to seek this legal medical procedure. This amendment does not curtail the rights

of abortion opponents to protest peacefully at abortion clinics. It does reduce the chance for violent confrontation and it does restrict appropriately the blocking of clinic entrances. It has been carefully crafted to avoid interferences with peaceful protests or expressive conduct which is protected by the first amendment. For these reasons, I support and urge passage of this legislation.

Mr. RIEGLE. Mr. President, I rise in support of Freedom of Access to Clinic Entrances Act. Congress needs to enact this legislation to ensure that all individuals have free and unhindered access to reproductive health facilities.

America has a long history of protecting the rights of individuals to peacefully protest and assemble in public. Recently however, some forms of protest have crossed the line between organized protests and infringement on the rights of others. These instances have become increasingly more frequent in protests involving abortion facilities.

Some protesters have blockaded abortion facilities, physically preventing women from entering the facility. These obstruction tactics effectively deny women access to medically legal services. Additionally, some protesters have embarked on organized campaigns of harassment and intimidation of health care providers who work in abortion clinics. Patients and staff at abortion clinics deserve Federal protection from physical obstruction, intimidation, and harassment.

The Freedom of Access to Clinic Entrances Act prohibits blockades or protests intended to injure, intimidate or interfere with individuals seeking entrance to a facility that provides reproductive services. The act protects those who legally provide abortion services from similar forms of protest. Violation of this act would be punishable by Federal law. The act is modeled after existing law which prohibit behaviors that prevent others from exercising their right to vote or enjoying the benefits of Federal programs.

The act is limited in scope. The Freedom of Access to Clinic Entrances Act will not deny any individual their first amendment right of freedom of speech. Peaceful activity such as picketing and distributing information will not be affected. Public protests at reproductive health facilities will continue to be legal so long as such protests do not injure or obstruct individuals entering abortion facilities.

Mr. President, the Freedom of Access to Clinic Entrances Act continues to preserve the first amendment right of all individuals to engage in peaceful protest while ensuring that women have access to reproductive health centers without fear of physical harassment or intimidation. I support the Freedom of Access to Clinic Entrances Act and encourage my colleagues to support this important legislation.

Mr. DOLE. Mr. President, I would like to say a few words about the access to abortion clinic bill, which passed the Senate earlier today.

In 1991, the city of Wichita was the site of one of the largest abortion clinic protests ever. The protest literally tore the city apart, disrupting lives, interfering with businesses, and transforming much of Wichita into a media circus of protestors, police, and camera crews, and needless to say, the protest experience served only to deepen the already deep divisions separating the pro-life and pro-choice citizens of the Wichita community.

Even today, the memory of the protest experience still lingers. These memories will not fade away, as the citizens of Wichita remain hopeful they will not have to endure a repeat of the disruptive events that took place in 1991.

Now, Mr. President, my record is clear: I have consistently voted in support of the pro-life position.

But like the overwhelming majority of Americans, I do not condone violence either, whether the violence is directed at an abortion clinic or at a counseling center that promotes alternatives to abortion like adoption. And for this reason, Mr. President, I voted for the bill.

In my view, violence serves only to promote more violence, more mutual distrust, more anger, and less understanding.

Obviously, abortion is one of the great moral and political dilemmas of our time. But if, at some point in our Nation's history, we are to solve this dilemma and put the abortion debate behind us, the key to our success will not be violence and hate, but a reconciliation borne out of mutual understanding and respect.

Mr. President, earlier today, I endorsed the Hatch substitute amendment, which I believe strikes a fair balance between the competing interests at stake here. Unfortunately, this amendment was not adopted by the Senate.

I also supported two other amendments that the Senate failed to adopt—a second amendment, offered by my distinguished colleague from Utah, limiting the protections of the bill only to clinics that perform legal abortions, and an amendment offered by my distinguished colleague from Indiana, Senator COATS, that extends the bill's prohibitions to those who engage in violence against pro-life activists.

Finally, throughout this debate, I thought it was important that the abortion clinic access bill distinguish between violent activities and peaceful, nonviolent protests. Our country has a rich tradition of nonviolent civil disobedience and this is one tradition that should be preserved.

As a result, I was able to prevail upon my colleague from Massachu-

setts, Senator KENNEDY, to reduce by 90 percent the maximum criminal penalties for nonviolent protestors blocking access to abortion clinics—from \$100,000 for first-time violations and \$250,000 for each subsequent violation, to \$10,000 for first-time violations and \$25,000 for each subsequent violation.

Although these new, lower penalties are still too punitive, I do believe they represent a step in the right direction.

If and when the bill is brought to conference, it is my hope that these monetary penalties, as well as the maximum terms of imprisonment proposed in the bill, will be reduced even further. The penalties for engaging in nonviolent civil disobedience should not be as severe as those that have been proposed. The punishment should fit the crime, not exceed it.

In the coming weeks, I will be working with my colleagues to inject more balance into the bill by attempting to reduce the severity of these penalties.

Mr. President, violence will never, ever untie the Gordian knot of abortion. Our only hope for ultimately resolving the abortion issue lies in the power of persuasion—peaceful, non-violent, persuasion. It is my hope that this debate will serve to remind us of this truth.

Mr. FORD. Madam President, may we have order, please.

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. Just for the benefit of the membership, I would like to inquire of the Senator from Utah as to the status of the additional amendments. I think we have made good progress this morning and I am grateful to all of our Members for their cooperation. I wonder if the Senator might be able to indicate what amendments are outstanding and what the intention of the Senator is so that we all would be advised.

Mr. HATCH. Madam President, it is my understanding that we are going to go to the Coats amendment now, with 40 minutes equally divided, subject to a second-degree amendment. And then a Hatch amendment, which I hope we will not use all the time on, and then another Hatch amendment, which will be a substitute that I hope we do not use all the time on.

Mr. KENNEDY. Just so we do understand, then, we will go to the Coats amendment rather than the Hatch amendment which had been ordered, and we will ask consent to be able to do that, then we will come back to the Hatch amendment, and then another Hatch amendment; is that the Senator's understanding?

Mr. HATCH. Yes.

Mr. KENNEDY. And then to final passage.

And we obviously reserve our right for a second-degree amendment.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER (Mr. BREAU). The Senator from Indiana.

Mr. COATS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order. The Senate will be in order before business will proceed.

The Senator from Indiana is recognized.

Mr. FORD. Mr. President, I believe unanimous consent is necessary to go to the amendment of the Senator from Indiana. Therefore, I ask unanimous consent that his amendment be taken out of order.

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

The Senator is recognized.

Mr. COATS. Mr. President, the issue that we are debating today is a part of a broader issue—the issue of abortion. It is an issue that has divided our Nation, divides neighbors and families and friends and has led to incidents of violence, which we all regret. We have discussed that this morning.

Mr. KENNEDY. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator will suspend. Those Members desiring to engage in conversation will please retire to the cloakrooms. Discussions will please cease so that the Senate can be in order.

The Senator from Indiana.

Mr. COATS. Mr. President, I think if there is something that we can all agree on here in the Senate this afternoon, it is that we want to stop the violence that occurs around this particular issue. We want to stop the violence in whatever form and for whatever reason that occurs as a result of the passions that are raised as people engage in this issue.

In fact, our whole discussion last week on the Senate floor was over the matter of how we can reduce the level of crime and reduce the level of violence in this country. We talked about increasing penalties. We talked about guns. We have spoken of the success of boot camps. We talked about providing new prison space and putting policemen on corners in streets across this country. And we passed a number of amendments in that regard.

Today, however, we are debating a bill that will potentially seek to fill some of those newly created prison spaces with ordinary, law-abiding citizens who happen to care very deeply and passionately about an issue of conscience and who dare to express their views.

On initial glance, S. 636 leaves the impression that violence that occurs in terms of access to health facilities or abortion-related facilities is all one-sided; that the only force or threat of force or intimidation or coercion that exists exists on the side of those who are preventing access.

And while that has happened, and while we lament that that has happened and regret that that has happened, and while we are taking appropriate steps to try to prevent that from

happening, it is important to understand that there is violence that occurs on the other side of the equation, on the other side of the protest line.

Let me quote from one of the witnesses who appeared before our committee in discussing this issue. Donald McKinney, an attorney from Wichita, testified to us about the numerous acts of violence he has seen perpetrated by the so-called clinic support individuals. I quote from him:

I witnessed a woman assaulted by a male clinic supporter who blindsided her with a body block. That same abortion supporter lit a cigarette and held it near the hair of women pro-lifers as they sang worship songs. They blew smoke in their faces and berated them with obscene language. One prolife sidewalk counselor was shot in the back with a pellet gun. A window on my vehicle was shot out. Many pro-lifers have been physically assaulted or have had property damaged.

This individual, Donald McKinney, continued:

There is a need for Federal legislation to protect constitutional rights at abortion clinics, but the need is for legislation to protect first amendment freedom of speech and religious expression. This need exists also.

The incident that was related to our committee unfortunately is not an isolated incident. We have heard a number of descriptions of incidents that have occurred that I regret and that I believe we should do everything we can to prevent from occurring in the future. But we also need to understand that these incidents occur to individuals on both sides of this issue and both sides of this protest.

In late January 1992, a New Jersey abortion clinic agreed to pay two prolife demonstrators \$15,000 in settlement of their assault and battery—

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order. Those Senators wishing to engage in conversation should retire to the cloakroom. The Senator deserves to be heard by his colleagues. The Senate is not in order. The Senator from Indiana.

Mr. COATS. Mr. President, I thank you for the order. I am flattered so many Senators are on the floor. I cannot take too much pleasure in that, however, because none of them are listening to what I am saying, but at least they are on the floor.

Let me go back to my description of some of these incidents that have taken place and the violence that has occurred that has affected those who are seeking to demonstrate their convictions on the pro-life side of the question.

In January 1992, a New Jersey abortion clinic agreed to pay two pro-life demonstrators \$15,000 in settlement of their assault and battery claims arising from an incident in which the clinic personnel tried to rip away signs the two were carrying and swung at one of them.

In January 1993, an abortionist in Clive, IA, was arrested for punching a pro-life organizer and for damaging his car.

In December 1992, a judge gave probation to two male proabortion activists who assaulted a female prolife demonstrator. Pro-life activists have been pushing and shoving pro-life protesters, including clergymen, outside clinics.

On March 11, 1993, the day after Dr. Gunn was murdered, a death threat was left on the answering machine of Tennessee Right to Life. The threat stated that a person with a gun would shoot people at the next pro-life gathering.

In June 1990, five pro-life advocates in the Knoxville area found fake pipe bombs in their driveways in an apparent attempt to intimidate them from protesting.

This goes on and on and I could point out a number of other instances. I do not point them out because I condone them. I do not. I do not condone any form of violence related to this issue. In fact, threatening life or taking life in the name of defending life is hypocritical at best and certainly something that we cannot condone. But I point these out merely to demonstrate that this disarming and trampling of free speech rights on one side of the debate will not solve the problem.

The question that we as a Senate body need to ask is: Should Congress be in the business of protecting people from messages that disturb their conscience? In light of the first amendment, I think that answer has to be no. Should we make sure that the penalties that are applied for force or threat of force or intimidation be equally applied to the rights of individuals regardless of which side of the political issue that they happen to come down on?

In testimony presented to our Labor Committee, Attorney General Janet Reno stated, and I quote:

The right of individuals in that minority—
Referring to pro-lifers—

to express their views must be respected. The freedom that our society affords individuals to express even the most unpopular opinions is the bedrock upon which our democracy rests and makes us virtually unique. Peaceful antiabortion protesters—

Attorney General Reno went on to say—

fit within this tradition.

Mr. President, this bill, if not amended by the Coats amendment, will put a real chill on the exercise of free speech by pro-life activists.

The authors of the Kennedy amendment attempt to alleviate what I consider a serious overbreadth and vagueness problem in the bill by a "rule of construction," which says:

Nothing in this section shall be construed or interpreted to prohibit expression protected by the first amendment of the Constitution.

According to constitutional experts who have looked at this question, the conclusion is, and I quote:

One cannot simply write a bill that encroaches on free speech rights and then add a disclaimer in this fashion. In the area of abortion rights, for example, a State could not save a criminal prohibition of abortion by disclaimer that "nothing in this section that shall be construed to prohibit conduct protected under the law." This kind of absurd approach to drafting—

He goes on to say—

includes constitutionally protected conduct within its sweep but then leads citizens to read and interpret Supreme Court opinions and determine which applications of the statute are actually in effect.

Mr. President, someone would say, "Well, the bill may indeed be unconstitutional; we'll have to let the Supreme Court make that final determination." But how many people will have to go to jail or be prosecuted under the terms of this legislation before this constitutionality is decided on?

The committee report to S. 636 fails to shed any light on the problem of the bill's application as well. Because on page 28, the report states:

The act is carefully drafted so as not to prohibit expressive activities that are constitutionally protected, such as peacefully carrying picket signs, making speeches, handing out literature, or praying in front of a clinic (so long as these activities do not cause a "physical obstruction" making ingress to or egress from the facility impassible or rendering passage to it difficult or hazardous).

Mr. President, that is precisely the point. Activities that are otherwise legal and protected by the first amendment will, under the bill before us, be subject to an additional requirement that they not physically obstruct. The addition of the phrase "physical obstruction" is troublesome as it does not appear in any of the existing laws that S. 636 is said to be modeled after. This is a new term, and while the bill now includes a definition for its application, it is unclear.

Mr. President, the amendment I will shortly be sending to the desk is intended to recognize that there is a delicate balance which exists that protects both first amendment interests and a woman's right to privacy. The amendment I am sending to the desk creates a cause of action for protesters who are injured, intimidated or interfered with when they are attempting to exercise legally protected free speech rights near a medical facility, that facility being defined in the bill before us.

My amendment simply says that those penalties that are applied to individuals who violate the act in the name of protecting and expressing pro-life sentiments will be applied to those who are seeking to express pro-choice sentiments if they, by force or threat of force or intimidation, interfere with the lawful protests of those seeking to express their opinion on the pro-life side of the question.

In brief, the amendment reads: Whoever by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to do the same with any person who is participating lawfully in speech or peaceful assembly concerning reproductive health services shall be subject to the penalties provided in the act.

The amendment also strikes a rule of construction in the Kennedy amendment which prohibits any additional causes of action for protesters.

Mr. President, the amendment that I am offering here is narrow in scope—in fact, narrower than I would like. However, I believe it is a critical addition to this bill before us because under its provisions individuals who interfere with persons engaged in lawful and peaceful protest will be subject to the penalties of the act.

The inclusion of protections for protesters is vital if we are serious about alleviating the violence that takes place in these protests.

Mr. President, I wish to make sure that Members understand I am not equating the incidents of violence or force or threat of force that have occurred against pro-life demonstrators with those that have occurred against those seeking to ensure access to this facility. I do not know if there is a balance. I do not know if there is an equation. Certainly on the basis of media reports and things that I have heard, there is more violence that occurs on the access side of the question than on the protest side of the question. But that does not mean there is not violence that occurs on the other side of this equation.

If we are truly sincere in eliminating, or reducing to the extent that we can, violence that occurs at these clinics, we need to understand and apply sanctions to violence wherever it occurs by whomever it occurs. We have to reduce hostility on both sides of the issue. Failure to address this in a meaningful yet fair way amounts to a form of content discrimination that I do not think we should support.

Passing the Kennedy amendment in its present form would set a precedent. If its logic were broadly applied, who knows what methods of peaceful protest are denied to a movement of conscience in the future. It is simply not our job to pick and choose who should be denied tools of expression still available to others. My amendment intends to equalize the penalties that apply under this legislation to those who by force or threat of force intimidate or attempt to intimidate those seeking to express their opinions on this most volatile and divisive issue that faces us.

I see no reason why the Coats amendment cannot be supported by Members of this body who are on either side of this issue—pro-life, pro-choice, pro-access, antiaccess. I see no basis for ob-

jecting to this amendment regardless of where you come down on this question from a philosophical or political basis. Therefore, I hope we can have solid support for the amendment that I am offering.

AMENDMENT NO. 1194

(Purpose: To add a cause of action relating to infringement on exercise of lawful speech or assembly)

Mr. COATS. With that, Mr. President, I send this amendment to the desk and ask for the yeas and nays.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Indiana.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS] proposes an amendment numbered 1194.

Mr. COATS. 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:

Notwithstanding any other provision in this Act add the following:

The language on page 6, between lines 7 and 8 is deemed to have inserted the following:

"(3) by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding lawful reproductive health services at or near a medical facility (as defined in this section)."

Mr. COATS. I again repeat my call for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are requested. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

The Senator yields the floor.

The Senator from Minnesota seeks recognition?

Mr. DURENBERGER. Mr. President, I rise to offer my support for the bill offered by my colleague from Massachusetts, and if I may to respond to the statement made by my dear friend and colleague from Indiana right near the end of his comments before he introduced his amendment, and that is why would anyone on either side oppose this particular amendment.

Mr. KENNEDY. Mr. President, I yield 10 minutes of my time to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DURENBERGER. I thank my colleague.

Mr. President, some are characterizing the legislation before us as an abortion bill. I can sort of tell from some of the lobbyists lined up out in the corridors as we are coming to and from these votes that is a characteristic. A lot of them are trying to line this up between prochoicers and proliferers, as

we characterize them in political terms.

But having been through this now for a year, I must say I do not share that view. In its earlier versions, the case could be made that this bill took sides in that controversy, but the bill that we are voting on today does not. I view this bill as an attempt by the Congress and the Nation to endorse an old-fashioned notion, one might call it, of civility in our national debates. Call it what you will, civility or nonviolence or respect for human dignity, it is something that is too often lacking in our society.

Ask anyone who has been in Washington as long as I have or ask the good people who engage in peaceful protest, and they will tell you that in Washington or in our political campaigns or in demonstrations across this country, we are witnessing the deterioration of legitimate debate into mean-spirited attacks and sometimes physical confrontation.

In the abortion controversy, a minority of activists on both sides have engaged in an increasingly violent, and I would say increasingly dangerous, form of protest. The fundamental right of a people to express themselves in peaceful protest is constitutional. We must protect the rights of every citizen to live in this country and to go about their business without fear for their personal safety.

While the bill does not address the deep moral and constitutional conflict in this country about abortion, it does declare it is our policy that this conflict will be addressed by peaceful, civil, and nonviolent means.

I supported the passage of S. 636 in the form it was voted out of the committee, but I voted for it at the time in the hope and, as the chairman knows, with the expectation that it would be improved subsequently. The chairman has, indeed, made every effort since that time to make this a bill which needs and deserves all of our support and without amendment.

Let me outline some of the ways in which Senator KENNEDY has improved the bill. We were concerned that the bill might be constitutionally "overbroad" under the first amendment, that it might be held void for vagueness, as they say, by the courts. To address this concern, they have added in relatively strict definitions for some of the key terms in the bill.

The words "physical obstruction" are now defined as making access to or from a medical facility impassable, unreasonably difficult, or hazardous. The word "intimidate" means to place a person in reasonable apprehension of bodily harm, and the words "interfere with" mean to restrict a person's freedom of movement.

These definitions mean that the bill makes specific acts illegal. It is not an assault on anyone's speech or self-expression on the issue of abortion. In

fact, the legislation now states expressly, it shall not be construed or interpreted to "prohibit expression protected by the first amendment of the Constitution."

My colleague from Massachusetts has also added a section that provides legal protection for parents and legal guardians. Under this amendment, parents and guardians cannot face legal penalties for counseling their children not to have an abortion.

Some were concerned that the initial legislation was not even-handed. It looked like a pro-choice bill, pure and simple, and I was one of these people.

To respond to this concern, Senator KENNEDY has broadened the definition of "abortion-related services" to include "pregnancy and abortion-related services." Now the bill not only protects facilities that perform abortions but also those that provide a broad range of health and pregnancy-related services, including counseling about adoption and other alternatives to abortion.

The Senator also deleted a section that would have given the Secretary of HHS broad investigative power to determine whether the provisions of S. 636 had been violated and, where appropriate, to refer the matter to the Attorney General for civil action.

And now to the point. Most significantly, this bill now allows only clinic patients and personnel to obtain legal relief. Only clinic patients and personnel are entitled to obtain legal relief. This change makes it clear that people outside a facility who are there for ideological reasons, for or against the abortion, as we saw all summer long during the exercise of Operation Rescue in Minneapolis and St. Paul, do not have a private right of action under the law.

This is the issue raised by the amendment of my dear colleague from Indiana. During the committee markup, I voted for an amendment just like it because, as drafted then, protesters who were at the clinic because they felt strongly against abortion and wanted to express that could be arrested potentially for their protest. But somebody who showed up on the other side, on the other side of the street, to protest the protesters and to express their views could not be. And I supported the amendment by my colleague from Indiana because it evened out the treatment. It made it more balanced.

At that time the bill, as drafted, would allow pro-choice protesters, those protecting the right of entrants, or the demonstrating, if you will, against the other demonstrators, a private right of action under private law.

What the bill now does, because of the modifications that were worked out after the bill left the committee, is to take away that private right or course of action under Federal law. Now there is no need to extend that

same right to pro-life protesters or demonstrators. The bill, as currently drafted before us, allows legal relief only to clinic patients and personnel. And this is the critical, if you will—not the only, but the critical—change that has been agreed to by the proponents of this legislation and by the Senator from Massachusetts.

We have recognized that Federal law should be extended narrowly to protect only those who were actually attempting to obtain or provide medical or counseling services. It does not protect the escorts. It does not protect the antidemonstrators, if you will.

I am convinced now, Mr. President, that this legislation strikes the right balance between protecting clinic patients and protecting the legitimate rights of clinic protesters. No one will be jailed for gathering in front of a clinic picketing, praying, chanting, shouting, holding signs, waving banners, or sidewalk counseling. That would all be perfectly legal under this bill.

The legislation has been greatly improved. It is a serious solution to a real problem of clinic violence which many of us have experienced in our communities. The Supreme Court has consistently held for over two decades now that the right to terminate a pregnancy is protected by the U.S. Constitution. I have voted many, many times to change that constitutional interpretation. But it remains the law of the land.

I cannot stand here and condone the harassment, violence, and blockades against women and doctors who are exercising, or attempting to exercise their constitutional right, even though I may disagree with them.

I firmly believe that violence in the name of a cause accomplishes little more than to damage that cause. We are all on the side of life. We are on the side of peace. That is why we all ought to join the effort to eliminate the violence and the fear of violence that is poisoning our attempt to foster a true pro-life ethic in this country.

There is just no escaping this conclusion. Some say the bill is a Federal solution to a State problem, that we, in Congress, have no business meddling in what is essentially a local government responsibility.

But I must say to my colleagues the record is by now very clear, whether it is Wichita, Minneapolis, or wherever you want to go. There are many times when the problem is too big for local authorities to deal with. State and local law enforcement agencies have been outmanned and overwhelmed by national scale, nationally orchestrated attempts to close abortion facilities by physically blocking access to them and promoting violence against patients.

Local police departments in the Minneapolis-St. Paul area are being forced—in our case, this summer—to

make substantial dollar investments in the policing of clinic protesters. I cannot tell you how many hundreds of thousands of dollars have been invested in our community in anticipation of something that we all know has occurred in other instances.

The PRESIDING OFFICER. The Chair informs the Senator that his 10 minutes allocated have expired.

Mr. KENNEDY. Mr. President, I have talked with the majority leader. He has indicated that he would want us to proceed for a reasonable period of time. So I would be glad to yield another 3 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. Without objection, the hour will be extended. The Senator is recognized for an additional 3 minutes.

Mr. DURENBERGER. Mr. President, I appreciate the chairman yielding.

I will be brief.

One clinic administrator in our community had to spend \$12,000 in legal fees to get restraining orders against activists who threatened and stalked her.

I would love to put in the RECORD, except it is too personal, the fear expressed by a lot of these people who have been stalked, have garbage dumped on their lawn, who month after month, week after week, year after year are waiting for somebody to appear in the middle of the night and blow them away.

This is happening on both sides. I think the most egregious this summer in Minneapolis-St. Paul were by the other side, not the pro-life side. I mean recognizable folks in our community showed up to do the same thing to the other people. That is my only point for getting involved as I have in all of this.

We have had two efforts to blow up an abortion clinic in Robbinsdale, MN. I do not think it is right. I do not think it is reasonable. I do not think it is pro-life.

So, Mr. President, I think the reality is that the Senator from Indiana and I both have the same end and the same objective in mind. I believe that over time his amendment in the committee, Senator HATCH's effort in the committee, and so forth, have persuaded the chairman to change this bill in ways that I would argue that all of us should oppose the amendment, and that we should all support the passage of this bill.

I believe it is time for people of good will on both sides of the issue to make every possible effort to put their common interest first. And our common interest I think is to reach a peaceful, democratic, and constitutional solution to this problem. With our votes today let us honor the principle that violence is no solution to the issues that divide us. That is what the vote is all about. I hope we look beyond the abortion issue and support the kind of compromise that this is, which will

help us in our efforts to combat violence.

Local police departments in the Twin Cities are being forced to make substantial dollar investments in the policing of clinic protests. One clinic administrator had to spend \$12,000 in legal fees to get restraining orders against activists who have threatened and stalked her. One of whom has actually signed a statement endorsing violence as an appropriate antiabortion tactic.

The restraining order against that proviolence activist expires next month.

There have already been two attempts in the last year alone to blow up an abortion clinic in Robbinsdale, MN. The people who work there have been harassed, both at work and at their homes.

Let me note, in fairness, that there have been abuses by those on both sides of the abortion debate. This past summer, during operation rescue's 12-week training session in the Twin Cities, Minnesotans received a forceful reminder that harassment, vandalism, and lack of respect for the rights of individuals are not the exclusive province of either extreme in this debate.

But it is clear that we need to look for a solution. We need to put an end to this climate of fear that is poisoning the debate on abortion.

I believe that this bill will help us find the answer. The actions of too many individuals on both sides have not been about rational discourse and changing people's minds. They have been about hate and fear and physical violence.

I believe that it is time for individuals of good will on both sides of this issue to make every possible effort to put their common interest first—and our common interest is to reach a peaceful, democratic, and constitutional solution.

Senator KENNEDY, Senator KASSEBAUM, and I have been able to put aside our differences on the underlying issue of abortion, and reach agreement on a bill that we believe will help curb abuses by both sides. Again, my vote is an antiviolence vote—it is not a vote to support one side or the other.

Let me stress once again that this legislation is not perfect. It is a compromise that does not satisfy either side.

But it is fair. And, it will help create an environment in which we can work toward a peaceful, democratic, and constitutional solution to the abortion controversy.

With our votes today, let us honor the principle that violence is no solution to the issues that divide us. That is what this vote is about. I hope you will look beyond the abortion issue and support a compromise which will help us in our efforts to combat violence.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, how much time is on this side?

The PRESIDING OFFICER. The Senator controls 20 minutes. The Senator spoke for 15, and retains 20 minutes.

Mr. COATS. Mr. President, I yield myself two minutes to respond to the Senator from Minnesota.

The Senator from Minnesota is correct when he says that the bill does now limit the right to bring civil actions against protesters. And from that standpoint, the bill has been improved. But what the Senator did not say was that peaceful protesters will still be subject to criminal penalties and fines if they fall under the physical obstruction definition.

In the report which was submitted with the bill, it states that, on page 28, the act is carefully drafted so as now to prohibit expressive activities that are constitutionally protected such as the peaceful carrying of picket signs, making speeches, handing out literature or praying in front of a clinic.

What the Senator from Minnesota said, left out when he quoted this, is the parentheses which follow which says, "so long as these activities do not cause a 'physical obstruction' making ingress to or egress from the facility impassable or rendering passage to it difficult or hazardous."

That is what the crux of the argument has been this morning: Should the application of criminal penalties be applied to those who are engaged in what is defined as lawful peaceful protest?

As events have proven, those protesters' constitutional rights are interfered with on both sides of the issue. They are spat upon, beat, pushed, shoved. There is violence that occurs, and yet no criminal punishment is available against the perpetrators of the action.

So it is not evenhanded, as the Senator has suggested. What we are simply trying to do is make sure that it is an evenhanded application of both civil and criminal rights of action under this legislation.

Mr. DURENBERGER. Will the chairman yield me 2 minutes?

Mr. KENNEDY. I yield 2 minutes to the Senator.

Mr. DURENBERGER. I probably did not include all of the language, but I was not trying to read the report. It is not to be interpreted as trying to give half a definition. The reality is that the penalties are for physically obstructing, intimidating, or interfering with access to health clinics.

Therefore, anyone on either side of the protest who is guilty of physical obstruction, intimidation, and interfering with access to the clinic is going to potentially be guilty of a crime and can be arrested. The assumption I make is that somebody who is there to sort of protect, by protest or by demonstration, access to the clinic is not going to commit a crime against those

who are physically obstructing, intimidating, or interfering with access.

Mr. COATS. Mr. President, if I may respond to that, I just read off a list of threats of force and intimidation and of crimes that have been committed against those who are peacefully protesting. I think the fallacy in the Senator's argument is that he assumes that that does not happen. It happens, regrettably, on both sides of this question. There is a long list of incidents of violence that have occurred against those who were there protesting peacefully and lawfully.

I am not in any way condoning unlawful protest. I do support the language in Senator KENNEDY's bill that provides the penalties, both civil and criminal, against those who are unlawfully denying access to the clinic and taking away the rights of those women seeking entrance into the clinic or those performing the legal services of the clinic.

What I am simply saying here is that our goal ought to be to reduce violence wherever it occurs and however it occurs and by whomever it occurs relative to these reproductive health service clinics or these medical clinics. And since violence occurs both ways, let us have the bill apply an evenhanded application of penalties both ways, with the goal, again, of reducing or hopefully eliminating whatever violence might occur at these facilities.

Mr. DURENBERGER. Maybe 30 seconds to reply, Mr. President, if I might. What the bill does now—the extension of Federal jurisdiction here is only to the act of physically obstructing access to the clinic. So if somebody on either side of the issue physically obstructs access to the clinic, they are guilty of a crime. That is the narrow definition of this bill—obstructing access to the clinic.

Mr. COATS. Our whole debate has been over the definition of physical obstruction and what that means. We just went through that debate with Senator SMITH. It appears that if a group of nuns are on a public sidewalk in front of a clinic, lawfully so, protesting, and are sitting there saying prayers or singing songs, they are going to be subject to the penalties of this legislation, and subject to not only fines but imprisonment for their activities.

I am simply trying to say that we ought to protect those who are lawfully protesting what they in deep conscience believe to be their right to do, and that is the purpose of this amendment.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

Mr. President, I want to thank the Senator from Minnesota for both his comments and for the very constructive suggestions he has made and for his responses to these last inquiries.

The Supreme Court indicated in a unanimous opinion last June in the

case of Wisconsin versus Mitchell, upholding a hate crimes law, that physical assault is not by any stretch of the imagination expressive conduct protected by the first amendment. Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection.

In the famous case of Cox versus Louisiana, it was pointed out that a group of demonstrators could not insist upon the right to cordon off a street or entrance to a public or private building and allow no one to pass who did not agree to listen to their exhortations.

What we are talking about in these cases are violence, threats of violence, or obstruction to prohibit entrance into these facilities. I think any fair reading of the various cases decided by the Supreme Court of the United States would substantiate the position that those of us who support the legislation are expressing here today.

Mr. President, I understand now the leaders are on the floor and wish to address the Senate. So we will defer action on this measure. There is a short time left on the amendment of the Senator from Indiana. There will be a short debate on the amendment of the Senator from Utah and a short debate on the substitute and, hopefully, we will get to final action in the early afternoon.

I see my friend from California and also the Senator from Illinois on the floor. At the request of the majority leader, I will withhold our time and address this issue shortly after the caucuses.

LEAVE OF ABSENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from North Dakota [Mr. DORGAN] be granted leave of the Senate under the provisions of paragraph 2 of rule VI to be absent from the session of the Senate today and tomorrow, November 16 and 17, to accompany a member of his family who was scheduled to have major surgery during this time.

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

THRIFT DEPOSITOR PROTECTION ACT OF 1993

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on (S. 714) an original bill to provide funding for the resolution of failed savings associations, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 714) entitled "An Act to provide funding for the resolution of failed savings associations,

and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Completion Act".

SEC. 2. FINAL FUNDING FOR RTC.

Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) in paragraph (3), by striking "until April 1, 1992"; and

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

"(4) CONDITIONS ON AVAILABILITY OF FINAL FUNDING IN EXCESS OF \$10,000,000,000.—

"(A) CERTIFICATION REQUIRED.—Of the funds appropriated under paragraph (3) which are provided after April 1, 1993, any amount in excess of \$10,000,000,000 shall not be available to the Corporation before the date on which the Secretary of the Treasury certifies to the Congress that, since the date of the enactment of the Resolution Trust Corporation Completion Act, the Corporation has taken such action as may be necessary to comply with the requirements of subsection (w) or that, as of the date of the certification, the Corporation is continuing to make adequate progress toward full compliance with such requirements.

"(B) APPEARANCE UPON REQUEST.—The Secretary of the Treasury shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the respective committee, to report on any certification made to the Congress under subparagraph (A).

"(5) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Corporation pursuant to this subsection exceeds the amount needed to carry out the purposes of this section or to meet the requirements of section 11(a)(6)(F) of the Federal Deposit Insurance Act, such excess amount shall be deposited in the general fund of the Treasury.

"(6) FUNDS ONLY FOR DEPOSITORS.—Notwithstanding any other provision of law other than section 13(c)(4)(G) of the Federal Deposit Insurance Act, funds appropriated under this section shall—

"(A) be used only for the purposes of protecting insured depositors or the administrative expenses of the Corporation; and

"(B) not be used in any manner to benefit shareholders of an insured depository institution in connection with any type of resolution by the Corporation or the Federal Deposit Insurance Corporation of an insured depository institution for which the Corporation has been appointed conservator or receiver or any other insured depository institution in default (as defined in section 3(z)(1) of the Federal Deposit Insurance Act) under any provision of law, or the provision of assistance in any form under section 11, 12, or 13 of the Federal Deposit Insurance Act."

SEC. 3. RTC MANAGEMENT REFORMS.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(w) RTC MANAGEMENT REFORMS.—

"(1) COMPREHENSIVE BUSINESS PLAN.—The Corporation shall establish and maintain a comprehensive business plan covering the operations of the Corporation, including the disposition of assets, for the remainder of the Corporation's existence.

"(2) MARKETING REAL PROPERTY ON AN INDIVIDUAL BASIS.—The Corporation shall—

"(A) market all assets consisting of real property (other than assets transferred in connection

with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver) on an individual basis, including sales by auction, for no fewer than 120 days before such assets may be made available for sale or other disposition on a portfolio basis or otherwise included in a multiasset sales initiative; and

"(B) prescribe regulations—

"(i) to require that the sale or other disposition of any asset consisting of real property on a portfolio basis or in connection with any multiasset sales initiative after the end of the 120-day period described in subparagraph (A) be justified in writing; and

"(ii) to carry out the requirement of subparagraph (A).

"(3) DISPOSITION OF REAL ESTATE RELATED ASSETS.—

"(A) PROCEDURES FOR DISPOSITION OF REAL ESTATE RELATED ASSETS.—The Corporation shall not sell real property or nonperforming real estate loans which the Corporation has acquired as receiver or conservator, unless—

"(i) the Corporation has assigned responsibility for the management and disposition of such assets to a qualified person or entity to—

"(I) analyze each asset on an asset-by-asset basis and consider alternative disposition strategies for such asset;

"(II) develop a written management and disposition plan; and

"(III) implement that plan for a reasonable period of time; or

"(ii) the Corporation has made a determination in writing, that a bulk transaction would maximize net recovery to the Corporation, while providing opportunity for broad participation by qualified bidders, including minority- and women-owned businesses.

"(B) DEFINITIONS.—

"(i) IN GENERAL.—The Corporation may, by regulation, define any term in subparagraph (A) for purposes of such subparagraph.

"(ii) SPECIAL RULE.—In defining terms pursuant to clause (i) for purposes of subparagraph (A), the Corporation may define—

"(I) the term 'asset' so as to include properties or loans which are legally separate and distinct properties or loans, but which have sufficiently common characteristics such that they may be logically treated as a single asset; and

"(II) the term 'qualified person or entity' so as to include any employee of the Thrift Depositor Protection Oversight Board or any employee assigned to the Corporation under subsection (b)(8).

"(C) IMPLEMENTATION.—The Corporation may implement the requirements of this paragraph in such manner as the Corporation considers, in the Corporation's discretion, to be appropriate.

"(D) EXCEPTIONS.—This paragraph shall not apply to—

"(i) assets transferred in connection with the transfer of substantially all the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(ii) nonperforming real estate loans with a book value equal to or less than \$1,000,000;

"(iii) real property with a book value equal to or less than \$200,000; or

"(iv) real property with a book value in excess of \$200,000 or nonperforming real estate loans with a book value in excess of \$1,000,000 for which the Corporation determines, in writing, that a disposition not in conformity with the requirements of subparagraph (A) will bring a greater return to the Corporation.

"(E) COORDINATION WITH PARAGRAPH (2).—No provision of this paragraph shall supersede the requirements of paragraph (2).

"(4) DIVISION OF MINORITIES AND WOMEN'S PROGRAMS.—

"(A) IN GENERAL.—The Corporation shall maintain a division of minorities and women's programs.

"(B) VICE PRESIDENT.—The head of the division shall be a vice president of the Corporation and a member of the executive committee of the Corporation.

"(5) CHIEF FINANCIAL OFFICER.—

"(A) IN GENERAL.—The chief executive officer of the Corporation shall appoint a chief financial officer for the Corporation.

"(B) AUTHORITY.—The chief financial officer of the Corporation shall—

"(i) have no operating responsibilities with respect to the Corporation other than as chief financial officer;

"(ii) report directly to the chief executive officer of the Corporation; and

"(iii) have such authority and duties of chief financial officers of agencies under section 902 of title 31, United States Code, as the Thrift Depositor Protection Oversight Board determines to be appropriate with respect to the Corporation.

"(6) BASIC ORDERING AGREEMENTS.—

"(A) REVISION OF PROCEDURES.—The Corporation shall revise the procedure for reviewing and qualifying applicants for eligibility for future contracts in a specified service area (commonly referred to as 'basic ordering agreements' or 'task ordering agreements') in such manner as may be necessary to ensure that small businesses, minorities, and women are not inadvertently excluded from eligibility for such contracts.

"(B) REVIEW OF LISTS.—The Corporation shall—

"(i) review all lists of contractors determined to be eligible for future contracts in a specified service area (commonly referred to as 'basic ordering agreements' and other contracting mechanisms; and

"(ii) prescribe appropriate regulations and procedures,

to ensure the maximum participation level possible of minority- and women-owned businesses.

"(7) IMPROVEMENT OF CONTRACTING SYSTEMS AND CONTRACTOR OVERSIGHT.—The Corporation shall—

"(A) maintain such procedures and uniform standards for—

"(i) entering into contracts between the Corporation and private contractors; and

"(ii) overseeing the performance of contractors and subcontractors under such contracts and compliance by contractors and subcontractors with the terms of contracts and applicable regulations, orders, policies, and guidelines of the Corporation,

as may be appropriate for the Corporation's operations to be carried out in as efficient and economical a manner as may be practicable;

"(B) commit sufficient resources, including personnel, to contract oversight and the enforcement of all laws, regulations, orders, policies, and standards applicable to contracts with the Corporation; and

"(C) maintain uniform procurement guidelines for basic goods and administrative services to prevent the acquisition of such goods and services at widely different prices.

"(8) AUDIT COMMITTEE.—

"(A) ESTABLISHMENT.—The Thrift Depositor Protection Oversight Board shall establish and maintain an audit committee.

"(B) DUTIES.—The audit committee shall have the following duties:

"(i) Monitor the internal controls of the Corporation.

"(ii) Monitor the audit findings and recommendations of the inspector general of the Corporation and the Comptroller General of the United States and the Corporation's response to the findings and recommendations.

"(iii) Maintain a close working relationship with the inspector general of the Corporation and the Comptroller General of the United States.

"(iv) Regularly report the findings and any recommendation of the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

"(v) Monitor the financial operations of the Corporation and report any incipient problem identified by the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

"(9) CORRECTIVE RESPONSES TO AUDIT PROBLEMS.—The Corporation shall maintain procedures which provide for a prompt and determinative response to problems identified by auditors of the Corporation's financial and asset-disposition operations, including problems identified in audit reports by the inspector general of the Corporation, the Comptroller General of the United States, and the audit committee.

"(10) ASSISTANT GENERAL COUNSEL FOR PROFESSIONAL LIABILITY.—

"(A) APPOINTMENT.—The chief executive officer shall appoint, within the division of legal services of the Corporation, an assistant general counsel for professional liability.

"(B) DUTIES.—The assistant general counsel for professional liability appointed under subparagraph (A) shall—

"(i) direct the investigation, evaluation, and prosecution of all professional liability cases involving the Corporation; and

"(ii) supervise all legal, investigative, and other personnel and contractors involved in the litigation of such claims.

"(C) REPORTS TO THE CONGRESS.—The assistant general counsel for professional liability shall submit semiannual reports to the Congress not later than April 30 and October 31 of each year concerning the activities of the counsel under subparagraph (B).

"(11) MANAGEMENT INFORMATION SYSTEM.—The Corporation shall maintain an effective management information system capable of providing complete and current information to the extent the provision of such information is appropriate and cost-effective.

"(12) INTERNAL CONTROLS AGAINST FRAUD, WASTE, AND ABUSE.—The Corporation shall maintain effective internal controls designed to prevent fraud, waste, and abuse, identify any such activity should it occur, and promptly correct any such activity.

"(13) FAILURE TO APPOINT CERTAIN OFFICERS OF THE CORPORATION.—The failure to fill any position established under this section or any vacancy in any such position, shall be treated as a failure to comply with the requirements of this subsection for purposes of subsection (i)(4).

"(14) REPORTS.—

"(A) DETAILED DISCLOSURE OF EXPENDITURES.—The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) a detailed itemization of the expenditures of the Corporation during the year for which funds provided pursuant to subsection (i)(3) were used.

"(B) PUBLIC DISCLOSURE OF SALARIES.—The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) a disclosure of the salaries and other compensation paid during the year covered by the report to directors and senior executive officers at any depository institution for which the Corporation has been appointed conservator or receiver.

"(C) COMPREHENSIVE LITIGATION REPORT.—The Corporation shall develop and provide semiannually a comprehensive litigation report of all civil actions which—

"(i) are filed by the Corporation pursuant to section 11(k) of the Federal Deposit Insurance Act or any other provision of applicable law as-

serted by the Corporation as a basis for liability of—

"(1) directors or officers of depository institutions described in subsection (b)(3)(A); or

"(11) attorneys, accountants, appraisers, or other licensed professionals who performed professional services for such depository institutions; and

"(ii) have been filed before January 1, 1993, and remain open, or are initiated, on or after January 1, 1993.

"(15) MINORITY- AND WOMEN-OWNED BUSINESSES CONTRACT PARITY GUIDELINES.—The Corporation shall establish guidelines for achieving a reasonably even distribution of contracts awarded to the various subgroups of the class of minority- and women-owned businesses whose total number of registered contractors comprise not less than five percent of all minority- or women-owned registered contractors.

"(16) CONDITIONS ON DISCRETIONARY WAIVERS OF CONFLICTS OF INTEREST.—The Corporation may not grant any waiver from the requirements of any regulations prescribed by the Corporation relating to conflicts of interest to any minority or nonminority contractor who is otherwise eligible (under such regulations) for such waiver unless the contractor is under subcontract with a minority- or women-owned business, or is part of a joint venture described in subsection (r)(2), for the performance of a portion of the contractor's obligation under the contract.

"(17) CONTRACT SANCTIONS FOR FAILURE TO COMPLY WITH SUBCONTRACT AND JOINT VENTURE REQUIREMENTS.—The Corporation shall prescribe regulations which provide sanctions, including contract penalties and suspensions, for violations by contractors of requirements relating to subcontractors and joint ventures.

"(18) MINORITY PREFERENCE IN ACQUISITION OF INSTITUTIONS IN PREDOMINANTLY MINORITY NEIGHBORHOODS.—

"(A) IN GENERAL.—In considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under subsection (s)), the Corporation shall prefer an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation as determined under section 13(c)(4)(A) of the Federal Deposit Insurance Act.

"(B) CAPITAL ASSISTANCE.—

"(i) ELIGIBILITY.—In order to effectuate the purposes of this paragraph, any minority individual, minority-owned business, or a minority depository institution shall be eligible for capital assistance under the minority interim capital assistance program established under subsection (u)(1) and subject to the provisions of subsection (u)(3), to the extent that such assistance is consistent with the application of section 13(c)(4)(a) of the Federal Deposit Insurance Act under subparagraph (A).

"(ii) TERMS AND CONDITIONS.—Subsection (u)(4) shall not apply to capital assistance provided under this subparagraph.

"(C) PERFORMING ASSETS.—In the case of an acquisition of any depository institution or branch described in subparagraph (A) by any minority individual, minority-owned business, or a minority depository institution, the Corporation may provide, in connection with such acquisition and in addition to performing assets of the depository institution or branch, other performing assets under the control of the Corporation in an amount (as determined on the basis of the Corporation's estimate of the fair market value of the assets) not greater than the amount of net liabilities carried on the books of the institution or branch, including deposits,

which are assumed in connection with the acquisition.

"(D) FIRST PRIORITY FOR DISPOSITION OF ASSETS.—In the case of an acquisition of any depository institution or branch described in subparagraph (A) by any minority individual, minority-owned business, or a minority depository institution, the disposition of the performing assets of the depository institution or branch to such individual, business, or minority depository institution shall have a first priority over the disposition by the Corporation of such assets for any other purpose.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) ACQUIRE.—The term 'acquire' has the meaning given to such term in section 13(f)(8)(B) of the Federal Deposit Insurance Act.

"(ii) MINORITY.—The term 'minority' has the meaning given to such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"(iii) MINORITY DEPOSITORY INSTITUTION.—The term 'minority depository institution' has the meaning given to such term in subsection (s)(2).

"(iv) MINORITY-OWNED BUSINESS.—The term 'minority-owned business' has the meaning given to such term in subsection (r)(4).

"(19) SUBCONTRACTS WITH MINORITY- AND WOMEN-OWNED BUSINESSES.—

"(A) IN GENERAL.—The Corporation may not enter into any contract for the provision of services to the Corporation, including legal services, under which the contractor would receive fees or other compensation or remuneration in an amount equal to or greater than \$500,000 unless the Corporation requires the contractor to subcontract with any minority- or women-owned business, including any law firm, and to pay fees or other compensation or remuneration to such business in an amount commensurate with the percentage of services provided by the business.

"(B) LIMITED WAIVER AUTHORITY.—

"(i) IN GENERAL.—The Corporation may grant a waiver from the application of this paragraph to any contractor with respect to a contract described in subparagraph (A) if the contractor certifies to the Corporation that the contractor has determined that no eligible minority- or women-owned business is available to enter into a subcontract (with respect to such contract) and provides an explanation of the basis for such determination.

"(ii) WAIVER PROCEDURES.—Any determination to grant a waiver under clause (i) shall be made in writing by the chief executive officer of the Corporation.

"(C) REPORT.—Each quarterly report submitted by the Corporation pursuant to subsection (k)(7) shall contain a description of each waiver granted under subparagraph (B) during the quarter covered by the report.

"(D) DEFINITIONS.—For the purposes of this paragraph—

"(i) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(ii) MINORITY- AND WOMEN-OWNED BUSINESS.—The terms 'minority-owned business' and 'women-owned business' have the meaning given to such terms in subsection (r)(4).

"(20) CONTRACTING PROCEDURES.—In awarding any contract subject to the competitive bidding process, the Corporation shall apply competitive bidding procedures no less stringent than those in effect on the date of the enactment of the Resolution Trust Corporation Completion Act."

(b) BORROWER APPEALS.—Section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)) is amended by adding at the end the following new subparagraph:

"(C) APPEALS.—The Corporation shall implement and maintain a program, in a manner acceptable to the Thrift Depositor Protection Oversight Board, to provide an appeals process for business and commercial borrowers to appeal decisions by the Corporation (when acting as a conservator) which would have the effect of terminating or otherwise adversely affecting credit or loan agreements, lines of credit, and similar arrangements with such borrowers who have not defaulted on their obligations."

(c) GAO STUDY OF PROGRESS OF IMPLEMENTATION OF REFORMS.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the manner in which the reforms required pursuant to the amendment made by subsection (a) are being implemented by the Resolution Trust Corporation and the progress being made by the Corporation toward the achievement of full compliance with such requirements.

(2) INTERIM REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit an interim report to the Congress containing the preliminary findings of the Comptroller General in connection with the study required under paragraph (1).

(3) FINAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress containing—

(A) the findings of the Comptroller General in connection with the study required under paragraph (1); and

(B) such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

(4) DISCLOSURE OF PERFORMING ASSET TRANSFERS.—

(A) REPORT REQUIRED.—The Comptroller General of the United States shall submit an annual report to the Congress on transfers of performing assets by the Corporation to any acquirer during the year covered by the report.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

(i) the number and a detailed description of asset transfers during the year covered by the report;

(ii) the number of assets provided in connection with each transaction during such year; and

(iii) the fair market value, as determined by the Comptroller General, of each transferred asset at the time of transfer.

SEC. 4. EXTENSION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following new paragraph:

"(14) EXTENSION OF STATUTE OF LIMITATIONS.—

"(A) TORT ACTIONS FOR WHICH THE PRIOR LIMITATION HAS RUN.—

"(i) IN GENERAL.—In the case of any tort claim—

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has expired before the date of the enactment of the Resolution Trust Corporation Completion Act,

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

"(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from fraud, intentional misconduct resulting in

unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

"(B) TORT ACTIONS FOR WHICH THE PRIOR LIMITATION HAS NOT RUN.—

"(i) IN GENERAL.—Notwithstanding section 11(d)(14)(A) of the Federal Deposit Insurance Act, in the case of any tort claim—

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has not expired as of the date of the enactment of the Resolution Trust Corporation Completion Act,

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

"(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from gross negligence or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct relating to the institution.

"(C) DETERMINATION OF PERIOD.—The period determined under this subparagraph for any claim to which subparagraph (A) or (B) applies shall be the longer of—

"(i) the 5-year period beginning on the date the claim accrues (as determined pursuant to section 11(d)(14)(B) of the Federal Deposit Insurance Act); or

"(ii) the period applicable under State law for such claim.

"(D) SCOPE OF APPLICATION.—Subparagraphs (A) and (B) shall not apply to any action which is brought after the date of the termination of the Resolution Trust Corporation under subsection (m)(1)."

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)(A)(ii)) is amended by inserting "(other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act)" after "any tort claim".

SEC. 5. LIMITATION ON BONUSES AND COMPENSATION PAID BY THE RTC AND THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding after subsection (w) (as added by section 3(a) of this Act) the following new subsections:

"(x) PERFORMANCE-BASED CASH AWARDS.—

"(1) ESTABLISHMENT OF PERFORMANCE APPRAISAL SYSTEM REQUIRED.—The Corporation shall be treated as an agency for purposes of sections 4302 and 4304 of title 5, United States Code.

"(2) PROCEDURES FOR PAYMENT OF PERFORMANCE-BASED CASH AWARDS.—

"(A) IN GENERAL.—Section 4505a of title 5, United States Code, shall apply with respect to the Corporation.

"(B) LIMITATION ON AMOUNT OF CASH AWARDS.—For purposes of determining the amount of any performance-based cash award payable to any employee of the Corporation, under section 4505a of title 5, United States Code, the amount of basic pay of the employee which may be taken into account under such section shall not exceed the amount which is equal to the annual rate of basic pay payable for level I of the Executive Schedule.

"(3) ALL OTHER BONUSES PROHIBITED.—Except as provided in paragraph (2), no bonus or other cash payment based on performance may be made to any employee of the Corporation.

"(4) EMPLOYEE DEFINED.—For purposes of this subsection, subsection (y), and sections 4302 and

4505a of title 5, United States Code (as applicable with respect to this subsection), the term 'employee' includes any officer or employee assigned to the Corporation under subsection (b)(8) and any officer or employee of the Thrift Depositor Protection Oversight Board.

"(y) LIMITATIONS ON EXCESSIVE COMPENSATION.—

"(1) COMPENSATION.—Notwithstanding any other provision of this section, no employee (as defined in subsection (x)) may receive a total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, in excess of the total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, which are provided to the chief executive officer of the Corporation.

"(2) NO REDUCTION IN RATE OF PAY.—Notwithstanding paragraph (1), the annual rate of basic pay and benefits, including any regional pay differential, payable to any employee who was an employee as of the date of the enactment of the Resolution Trust Corporation Completion Act for any year ending after such date of enactment shall not be reduced, by reason of paragraph (1), below the annual rate of basic pay and benefits, including any regional pay differential, paid to such employee, by reason of such employment, as of such date.

"(3) EMPLOYEES SERVING IN ACTING OR TEMPORARY CAPACITY.—Notwithstanding paragraph (1), in the case of any employee who, as of the date of the enactment of the Resolution Trust Corporation Completion Act, is serving in an acting capacity or is otherwise temporarily employed at a higher grade than such employee's regular grade or position of employment—

"(A) the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such capacity or at such higher grade shall not be reduced by reason of paragraph (1) so long as such employee continues to serve in such capacity or at such higher grade; and

"(B) after such employee ceases to serve in such capacity or at such higher grade, paragraph (2) shall be applied with respect to such employee by taking into account only the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such employee's regular grade or position of employment.

"(4) ALLOWANCES DEFINED.—For purposes of paragraph (1), the term 'allowances' does not include any allowance for travel and subsistence expenses incurred by an employee while away from home or designated post of duty on official business."

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) Section 5314 of title 5, United States Code, is amended by striking the item added to such section by section 315(c) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991.

(2) Section 21A(a)(6) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(6)) is amended by adding at the end the following new subparagraph:

"(K) To establish the rate of basic pay, benefits, and other compensation for the chief executive officer of the Corporation."

SEC. 6. FDIC—RTC TRANSITION TASK FORCE.

(a) ESTABLISHMENT REQUIRED.—The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall establish an interagency transition task force for the purpose of facilitating the transfer, in accordance with section 21A of the Federal Home Loan Bank Act, of the operations and personnel of the Resolution Trust Corporation to the Federal Deposit Insurance Corporation or the FSLIC Resolution Fund, as the case may be, in a coordinated

manner which best preserves and utilizes the operational systems and personnel teams of the Resolution Trust Corporation which have successfully performed management, conservatorship, receivership, or asset-disposition functions.

(b) MEMBERS.—

(1) IN GENERAL.—The transition task force shall consist of such number of officers and employees of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation as the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation may jointly determine to be appropriate.

(2) APPOINTMENT.—The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation shall appoint the members of the transition task force.

(3) NO ADDITIONAL PAY.—Members of the transition task force shall receive no additional pay, allowances, or benefits by reason of their service on the task force.

(c) DUTIES.—The transition task force shall have the following duties:

(1) Examine the operations of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to identify differences in the operations of the 2 corporations which should be resolved to facilitate an orderly merger of such operations.

(2) Evaluate the differences in the operational systems of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation.

(3) Recommend which of the operational systems of the Resolution Trust Corporation should be preserved for use by the Federal Deposit Insurance Corporation.

(4) Recommend procedures to be followed by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation in connection with the transition which will promote—

(A) coordination between the 2 corporations before the termination of the Resolution Trust Corporation; and

(B) an orderly transfer of assets, personnel, and operations.

(5) Evaluate the management enhancement goals applicable to the Resolution Trust Corporation under section 21A(p) of the Federal Home Loan Bank Act and recommend which of such goals should apply to the Federal Deposit Insurance Corporation.

(6) Evaluate the management reforms applicable to the Resolution Trust Corporation under section 21A(u) of the Federal Home Loan Bank Act and recommend which of such reforms should apply to the Federal Deposit Insurance Corporation.

(d) REPORTS TO BANKING COMMITTEES.—

(1) REPORTS REQUIRED.—The transition task force shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate no later than January 1, 1995, and a 2d report no later than July 1, 1995, on the progress made by the transition task force in meeting the requirements of this section.

(2) CONTENTS OF REPORT.—The reports required to be submitted under paragraph (1) shall contain the findings and recommendations made by the transition task force in carrying out the duties of the task force under subsection (c) and such recommendations for legislative and administrative action as the task force may determine to be appropriate.

(e) FOLLOWUP REPORT BY FDIC.—Not later than January 1, 1996, the Federal Deposit Insurance Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the

Committee on Banking, Housing, and Urban Affairs of the Senate containing—

(1) a description of the recommendations of the transition task force which have been adopted by the Corporation;

(2) a description of the recommendations of the transition task force which have not been adopted by the Corporation;

(3) a detailed explanation of the reasons why the Corporation did not adopt each recommendation described in paragraph (2); and

(4) a description of the actions taken by the Corporation to comply with section 21A(m)(3) of the Federal Home Loan Bank Act.

SEC. 7. AMENDMENTS RELATING TO THE TERMINATION OF THE RTC.

(a) AMENDMENT RELATING TO TRANSFER OF PERSONNEL AND SYSTEMS.—Section 21A(m) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(m)) is amended by adding at the end the following new paragraph:

"(3) TRANSFER OF PERSONNEL AND SYSTEMS.—In connection with the assumption by the Federal Deposit Insurance Corporation of conservatorship and receivership functions with respect to institutions described in subsection (b)(3)(A) and the termination of the Corporation pursuant to paragraph (1)—

"(A) any management, resolution, or asset-disposition system of the Corporation which the Secretary of the Treasury determines, after considering the recommendations of the interagency transfer task force under section 5(c)(3) of the Resolution Trust Corporation Completion Act, has been of positive benefit to the operations of the Corporation (including any personal property of the Corporation which is used in operating any such system) shall, notwithstanding paragraph (2), be transferred to and used by the Federal Deposit Insurance Corporation in a manner which preserves the integrity of the system for so long as such system is efficient and cost-effective; and

"(B) any personnel of the Corporation involved with any such system who are otherwise eligible to be transferred to the Federal Deposit Insurance Corporation shall be transferred to the Federal Deposit Insurance Corporation for continued employment, subject to section 404(9) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and other applicable provisions of this section, with respect to such system."

(b) AMENDMENT RELATING TO DATE OF TERMINATION.—Section 21A(m)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(m)(1)) is amended by striking "December 31, 1996" and inserting "December 31, 1995".

SEC. 8. SAIF FUNDING AUTHORIZATION AMENDMENTS.

(a) AMENDMENT TO SAIF FUNDING PROVISION.—Section 11(a)(6)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(D)) is amended to read as follows:

"(D) TREASURY PAYMENTS TO FUND.—To the extent of the availability of amounts provided in appropriation Acts and subject to subparagraphs (E) and (G), the Secretary of the Treasury shall pay to the Savings Association Insurance Fund such amounts as may be needed to pay losses incurred by the Fund in fiscal years 1994 through 1998."

(b) CERTIFICATION OF NEED FOR FUNDS AND OTHER CONDITIONS ON SAIF FUNDING.—Section 11(a)(6)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(E)) is amended to read as follows:

"(E) CERTIFICATION CONDITIONS ON AVAILABILITY OF FUNDING.—Notwithstanding subparagraph (J), no amount is authorized to be appropriated for payments by the Secretary of the Treasury in accordance with subparagraph (D) for any fiscal year unless the Chairperson of the Board of Directors certifies to the Congress,

at any time before the beginning of or during such fiscal year, that—

"(i) such amount is needed to pay for losses which can reasonably be expected to be incurred by the Savings Association Insurance Fund during such year;

"(ii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to cover, from such additional assessments, losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default);

"(iii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default);

"(iv) as of the date of certification, the Corporation has in effect procedures designed to ensure that the activities of the Savings Association Insurance Fund and the affairs of any Savings Association Insurance Fund member for which a conservator or receiver has been appointed are conducted in an efficient manner and the Corporation is in compliance with such procedures; and

"(v) with respect to the most recent audit of the Savings Association Insurance Fund by the Comptroller General of the United States before the date of the certification—

"(I) the Corporation has taken or is taking appropriate action to implement any recommendation made by the Comptroller General; or

"(II) no corrective action is necessary or appropriate as a result of such audit."

(c) AVAILABILITY OF UNEXPENDED RTC FUNDING FOR SAIF.—Section 11(a)(6)(F) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(F)) is amended to read as follows:

"(F) AVAILABILITY OF RTC FUNDING.—At any time before the end of the 2-year period beginning on the date of the termination of the Resolution Trust Corporation, the Secretary of the Treasury shall provide, out of funds appropriated to the Resolution Trust Corporation pursuant to section 21A(i)(3) of the Federal Home Loan Bank Act and not expended by the Resolution Trust Corporation, to the Savings Association Insurance Fund for any year such amounts as are needed by the Fund and are not needed by the Resolution Trust Corporation if the Chairperson of the Board of Directors has certified to the Congress that—

"(i) such amounts are needed by the Savings Association Insurance Fund;

"(ii) any amount transferred shall be used only for losses incurred by the Fund;

"(iii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under sec-

tion 7(b) during such year at the assessment rates which would be required in order to cover, from such additional assessments, losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default); and

"(iv) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default)."

(d) APPEARANCES BEFORE THE BANKING COMMITTEES.—Section 11(a)(6)(H) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(H)) is amended to read as follows:

"(H) APPEARANCE UPON REQUEST.—The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the respective committee, to report on any certification made to the Congress under subparagraph (E) or (F)."

(e) AMENDMENTS TO AUTHORIZATION OF APPROPRIATION.—Section 11(a)(6)(J) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(J)) is amended—

(1) by striking "There are" and inserting "Subject to subparagraph (E), there are"; and

(2) by striking "of this paragraph, except" and all that follows through the period and inserting the following: "of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed \$8,000,000,000."

(f) RETURN OF TRANSFERRED AND UNEXPENDED AMOUNTS TO TREASURY.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by adding at the end the following new subparagraph:

"(K) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Savings Association Insurance Fund under subparagraph (D) or (F) exceeds the amount needed to cover losses incurred by the Fund, such excess amount shall be deposited in the general fund of the Treasury."

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 11(a)(6)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(G)) is amended by striking "subparagraphs (E) and (F)" and inserting "subparagraph (D)".

(2) The heading of section 11(a)(6)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(G)) is amended by striking "SUBPARAGRAPHS (E) AND (F)" and inserting "SUBPARAGRAPH (D)".

SEC. 9. MORATORIUM EXTENSION.

(a) CONVERSION MORATORIUM UNTIL SAIF RECAPITALIZED.—Section 5(d)(2)(A)(ii) of the Federal Deposit Insurance Act is amended—

(1) by striking "before the end" and inserting "before the later of the end"; and

(2) by inserting "or the date on which the Savings Association Insurance Fund first meets

or exceeds the designated reserve ratio for such fund" before the period.

(b) CLARIFICATION OF DEFINITION.—Section 5(d)(2)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(B)) is amended—

(1) by striking the period at the end of clause (iv) and inserting "; and"; and

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

"(v) the transfer of deposits—

"(I) from a Bank Insurance Fund member to a Savings Association Insurance Fund member; or

"(II) from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

in a transaction in which the deposit is received from a depositor at an insured depository institution for which a receiver has been appointed and the receiving insured depository institution is acting as agent for the Corporation in connection with the payment of such deposit to the depositor at the institution for which a receiver has been appointed."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Clauses (ii) and (iii) of section 5(d)(2)(C) of the Federal Deposit Insurance Act and section 5(d)(3)(1)(i) of such Act are each amended by striking "5-year period referred to in" and inserting "moratorium period established by".

SEC. 10. REPAYMENT SCHEDULE FOR PERMANENT FDIC BORROWING AUTHORITY.

Section 14(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(c)) is amended by adding the following new paragraph:

"(3) INDUSTRY REPAYMENT.—

"(A) BIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) for purposes of the Savings Association Fund.

"(B) SAIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) for purposes of the Bank Insurance Fund."

SEC. 11. DEPOSIT INSURANCE FUNDS.

Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) in subparagraph (C) by striking the period and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) notwithstanding any other provision of law other than section 13(c)(4)(G), used only for the purposes of protecting insured depositors and shall not be used in any manner to benefit shareholders of an insured depository institution in connection with any type of resolution by the Corporation or the Resolution Trust Corporation of any insured depository institution for which the Corporation or the Resolution Trust Corporation has been appointed conservator or receiver or any other insured depository institution in default under any provision of law, or the provision of assistance in any form under this section or section 12 or 13."

(4) by striking "and" at the end of subparagraph (D) and inserting "and" at the end of subparagraph (E).

(5) by striking "and" at the end of subparagraph (E) and inserting "and" at the end of subparagraph (F).

SEC. 12. MAXIMUM DOLLAR LIMITS FOR ELIGIBLE CONDOMINIUM AND SINGLE FAMILY PROPERTIES UNDER RTC AFFORDABLE HOUSING PROGRAM.

Section 21A(c)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(9)) is amended—

(1) in subparagraph (D), by striking clause (ii) and inserting the following new clause:

"(ii) that has an appraised value that does not exceed—

"(I) \$67,500 in the case of a 1-family residence, \$76,000 in the case of a 2-family residence,

\$92,000 in the case of a 3-family residence, and \$107,000 in the case of a 4-family residence; or

"(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act, except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,500 in the case of a 4-family residence.";

(2) in subparagraph (G)—

(A) by moving subclause (I) two ems to the left and redesignating such subclause as clause (i); and

(B) by striking subclause (II) and inserting the following new clause:

"(ii) that has an appraised value that does not exceed—

"(I) \$67,500 in the case of a 1-family residence, \$76,000 in the case of a 2-family residence, \$92,000 in the case of a 3-family residence, and \$107,000 in the case of a 4-family residence; or

"(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act, except that such amount shall not exceed \$101,250 in the case of a 1-family residence, \$114,000 in the case of a 2-family residence, \$138,000 in the case of a 3-family residence, and \$160,500 in the case of a 4-family residence."

SEC. 13. CHANGES AFFECTING ONLY FDIC AFFORDABLE HOUSING PROGRAM.

(a) INCLUSION OF SUBSIDIARIES' PROPERTIES IN PROGRAM.—Section 40(p) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)) is amended in paragraphs (4)(A), (5)(A), and (7)(A), by inserting before "and" each place it appears the following: "(including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property)".

(b) IMPLEMENTATION OF PROGRAM.—Notwithstanding any provisions of section 40 of the Federal Deposit Insurance Act or any other provision of law, in carrying out such section 40 during fiscal year 1994 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 in carrying out such section 40 during fiscal year 1994.

SEC. 14. CHANGES AFFECTING BOTH RTC AND FDIC AFFORDABLE HOUSING PROGRAMS.

(a) NOTICE TO CLEARINGHOUSES REGARDING PROPERTIES NOT INCLUDED IN PROGRAMS.—

(1) RTC.—Section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)) is amended by adding at the end the following new paragraph:

"(16) NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.—

"(A) IN GENERAL.—Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall provide written notice to clearinghouses.

"(B) CONTENT.—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under paragraph (2)(A) contains with respect to eligible single family properties. For ineligible multifamily housing properties,

such notice shall contain the same information about such properties that the notice required under paragraph (3)(A) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under paragraph (14)(A) contains with respect to eligible condominium properties.

"(C) AVAILABILITY.—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) INELIGIBLE CONDOMINIUM PROPERTY.—The term 'ineligible condominium property' means a condominium unit, as such term is defined in section 604 of the Housing and Community Development Act of 1980—

"(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(D)(ii)(II); and

"(III) that is not an eligible condominium property.

"(ii) INELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'ineligible multifamily housing property' means a property consisting of more than 4 dwelling units—

"(I) to which the Corporation acquires title in its capacity as conservator (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed, for such part of the property as may be attributable to dwelling use (excluding exterior land improvements), the dollar amount limitations under paragraph (9)(E)(i)(II); and

"(III) that is not an eligible multifamily housing property.

"(iii) INELIGIBLE SINGLE FAMILY PROPERTY.—The term 'ineligible single family property' means a 1- to 4-family residence (including a manufactured home)—

"(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(G)(ii)(II); and

"(III) that is not an eligible single family property.

"(iv) INELIGIBLE RESIDENTIAL PROPERTY.—The term 'ineligible residential property' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties."

(2) FDIC.—Section 40 of the Federal Deposit Insurance Act (12 U.S.C. 1831q) is amended by adding at the end the following new subsection:

"(g) NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.—

"(I) IN GENERAL.—Within a reasonable period of time after acquiring title to an ineligible resi-

dential property, the Corporation shall provide written notice to clearinghouses.

"(2) CONTENT.—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under paragraph (1)(1) contains with respect to eligible condominium properties.

"(3) AVAILABILITY.—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) INELIGIBLE CONDOMINIUM PROPERTY.—The term 'ineligible condominium property' means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(B) INELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'ineligible multifamily housing property' means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(C) INELIGIBLE SINGLE FAMILY PROPERTY.—The term 'ineligible single family property' means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(D) INELIGIBLE RESIDENTIAL PROPERTY.—The term 'ineligible residential property' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties."

(b) PREFERENCE FOR USE FOR HOMELESS FAMILIES.—

(1) RTC.—Section 21A(c)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(5)) is amended—

(A) by striking "(5) PREFERENCE FOR SALES.—When" and inserting the following:

"(5) PREFERENCES FOR SALES.—

"(A) LOW-INCOME USE.—When"; and

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

"(B) USE FOR HOMELESS FAMILIES.—In selling any eligible residential property, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer to purchase the property for use in providing housing or shelter for homeless individuals (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families."

(2) FDIC.—Section 40(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(f)) is amended—

(A) in paragraph (1), by striking "IN GENERAL" and inserting "LOW-INCOME USE"; and

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

"(4) USE FOR HOMELESS FAMILIES.—In selling any eligible residential property, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer to purchase the property for use in providing housing or shelter for homeless individuals (as such term is defined in section 103 of the Stewart B.

McKinney Homeless Assistance Act) or homeless families."

(c) **AFORDABLE HOUSING ADVISORY BOARD.**—(1) **ESTABLISHMENT.**—There is hereby established the Affordable Housing Advisory Board (in this subsection referred to as the "Advisory Board") to advise the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation on policies and programs related to the provision of affordable housing, including the operation of the affordable programs.

(2) **MEMBERSHIP.**—The Advisory Board shall consist of—

(A) the Secretary of Housing and Urban Development;

(B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or the Chairperson's delegate), who shall be a nonvoting member;

(C) the Chairperson of the Thrift Depositor Protection Oversight Board (or the Chairperson's delegate), who shall be a nonvoting member;

(D) 4 persons appointed by the Secretary of Housing and Urban Development not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, who represent the interests of individuals and organizations involved in using the affordable housing programs (including nonprofit organizations, public agencies, and for-profit organizations that purchase properties under the affordable housing programs, organizations that provide technical assistance regarding the affordable housing programs, and organizations that represent the interest of low- and moderate-income families); and

(E) 2 persons who are members of the National Housing Advisory Board pursuant to section 21A(d)(2)(B)(ii) of the Federal Home Loan Bank Act (as in effect before the date of the effectiveness of the repeal under subsection (c)(2)), who shall be appointed by such Board before such effective date.

(3) **TERMS.**—Each member shall be appointed for a term of 4 years, except as provided in paragraphs (4) and (5).

(4) **TERMS OF INITIAL APPOINTEES.**—

(A) **PERMANENT POSITIONS.**—As designated by the Secretary of Housing and Urban Development at the time of appointment, of the members first appointed under paragraph (2)(D)—

(i) 1 shall be appointed for a term of 1 year;

(ii) 1 shall be appointed for a term of 2 years;

(iii) 1 shall be appointed for a term of 3 years; and

(iv) 1 shall be appointed for a term of 4 years.

(B) **INTERIM MEMBERS.**—The members of the Advisory Board under paragraph (2)(E) shall be appointed for a single term of 4 years, which shall begin upon the earlier of (i) the expiration of the 90-day period beginning on the date of the enactment of this Act, or (ii) the first meeting of the Advisory Board.

(5) **VACANCIES.**—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(6) **MEETINGS.**—

(A) **TIMING AND LOCATION.**—The Advisory Board shall meet 4 times a year, or more frequently if requested by the Thrift Depositor Protection Oversight Board or the Board of Directors of the Federal Deposit Insurance Corporation. In each year, the Advisory Board shall conduct such meetings at various locations in different regions of the United States in which substantial residential property assets of the

Federal Deposit Insurance Corporation or the Resolution Trust Corporation are located. The first meeting of the Advisory Board shall take place not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

(B) **ADVICE.**—The Advisory Board shall submit information and advice resulting from each meeting, in such form as the Board considers appropriate, to the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation.

(7) **ANNUAL REPORTS.**—For each year, the Advisory Board shall submit a report containing its findings and recommendations to the Congress, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The first such report shall be made not later than the expiration of the 6-month period beginning on the date of the enactment of this Act.

(8) **DEFINITION.**—For purposes of this subsection, the term "affordable housing programs" means the program under section 21A(c) of the Federal Home Loan Bank Act and the program under section 40 of the Federal Deposit Insurance Act.

(d) **TERMINATION OF NATIONAL HOUSING ADVISORY BOARD.**—

(1) **TERMINATION.**—The National Housing Advisory Board under section 21A(d)(2) of the Federal Home Loan Bank Act shall terminate upon the expiration of the 90-day period beginning on the date of the enactment of this Act.

(2) **REPEAL.**—Paragraph (2) of section 21A(d) of the Federal Home Loan Bank Act is repealed upon the expiration of the period referred to in paragraph (1).

(e) **PROVISION OF INFORMATION REGARDING SELLER FINANCING TO MINORITY- AND WOMEN-OWNED BUSINESSES.**—

(1) **RTC.**—Section 21A(c)(6)(A)(ii) of the Federal Home Loan Bank Act is amended by adding at the end the following new sentences: "The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which are held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this clause; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this clause, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in subsection (r), and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

(2) **FDIC.**—Section 40(g)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(g)(1)(B)) is amended by adding at the end the following new sentences: "The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which are held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subsection; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regu-

larly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

(f) **AUTHORITY TO CARRY OUT UNIFIED AFFORDABLE HOUSING PROGRAM.**—

(1) **RTC.**—Section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

"(17) **UNIFIED AFFORDABLE HOUSING PROGRAM WITH FDIC.**—

"(A) **RTC AUTHORITY.**—During the period ending at the end of September 30, 1994, the Corporation shall have the authority and shall carry out the responsibilities of the Federal Deposit Insurance Corporation under section 40 of the Federal Deposit Insurance Act, subject to the agreement under subparagraph (B). To the extent practicable, the Resolution Trust Corporation shall coordinate its activities under this subsection with activities involved in carrying out such responsibilities to provide for effective and efficient management and operation of all such activities.

"(B) **AGREEMENT AND CONSULTATION.**—Not later than 60 days after the date of the enactment of this Act, the Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall enter into an agreement for the Resolution Trust Corporation to carry out the responsibilities described in subparagraph (A) during the period referred to in such subparagraph. Such agreement shall provide—

"(i) for the Resolution Trust Corporation to act as a contractor of the Federal Deposit Insurance Corporation for the purpose of carrying out such responsibilities of the Federal Deposit Insurance Corporation;

"(ii) for the payment of fees for administrative costs incurred by the Resolution Trust Corporation in carrying out such responsibilities;

"(iii) a method for determining the extent to which the provisions of section 40 of the Federal Deposit Insurance Act shall be effective, in accordance with the limitations under subsection (b)(2) of such section;

"(iv) for the disposition of proceeds from the sales of properties under such section 40; and

"(v) a method for making seller financing available to purchasers of properties, in accordance to the provisions of section 40(g)(1) of such Act.

The Resolution Trust Corporation shall consult with the Affordable Housing Advisory Board under section 13(c) of the Resolution Trust Corporation Completion Act in preparing to carry out such responsibilities.

"(B) **TRANSFER TO FDIC.**—On and after October 1, 1994, the authority and responsibilities of the Resolution Trust Corporation under this subsection shall be carried out by the Federal Deposit Insurance Corporation. Beginning not later than April 1, 1994, the Resolution Trust Corporation shall consult with the Federal Deposit Insurance Corporation and such Advisory Board to prepare for the Federal Deposit Insurance Corporation to carry out such authority and responsibilities."

(2) **FDIC.**—Section 40(n) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(n)) is amended to read as follows:

"(n) **RESPONSIBILITY TO CARRY OUT PROGRAM.**—

"(1) **AFFORDABLE HOUSING PROGRAM OFFICE.**—The Corporation shall establish an Affordable Housing Program Office within the Corporation

to carry out the provisions of this section after October 1, 1994, and to carry out the provisions of section 21A(c) of the Federal Home Loan Bank Act after such date with respect to any eligible residential properties and eligible condominium properties under such section not disposed of by the Resolution Trust Corporation before such date. The Federal Deposit Insurance Corporation shall dedicate certain staff of the Corporation to the Office and shall consult with the Resolution Trust Corporation and the Affordable Housing Advisory Board under section 13(c) of the Resolution Trust Corporation Completion Act in carrying out its responsibilities. Beginning not later than April 1, 1994, the Federal Deposit Insurance Corporation shall consult with the Resolution Trust Corporation and such Advisory Board to prepare for the Affordable Housing Program Office of the Federal Deposit Insurance Corporation to carry out the authority and responsibilities of the Resolution Trust Corporation under such section 21A(c).

(2) UNIFIED AFFORDABLE HOUSING PROGRAM WITH RTC.—During the period ending at the end of September 30, 1994, the authority and responsibilities of the Corporation under this section shall be carried out by the Resolution Trust Corporation pursuant to the agreement entered into under section 21A(c)(17)(B) of the Federal Home Loan Bank Act by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation.

(g) LIABILITY PROVISIONS.—

(1) RTC.—Section 21A(c)(11) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(11)) is amended by adding at the end the following new subparagraph:

(D) CORPORATION.—The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or of any subsidiary corporation of a depository institution under conservatorship or receivership, or any claimant against such an institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this subsection affects the amount of return from the assets.

(2) FDIC.—Section 40(m)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(m)(4)) is amended—

(A) by inserting after "receiver," the following: "or of any subsidiary corporation of a depository institution under conservatorship or receivership,";

(B) by inserting "or subsidiary" after "an institution"; and

(C) by inserting "or the subsidiary" after "the institution".

SEC. 15. RIGHT OF FIRST REFUSAL FOR TENANTS TO PURCHASE SINGLE FAMILY PROPERTY.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by inserting after paragraph (14) (as added by section 4 of this Act) the following new paragraph:

(15) PURCHASE RIGHTS OF TENANTS.—

(A) NOTICE.—Except as provided in subparagraph (C), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under subparagraph (B).

(B) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

"(i) such offer is substantially similar in amount to other offers made within such period

(or expected by the Corporation to be made within such period);

"(ii) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

"(iii) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(C) EXCEPTIONS.—Subparagraphs (A) and (B) shall not apply to—

"(i) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(ii) any eligible single family property (as such term is defined in subsection (c)(9)); or

"(iii) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage."

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

(u) PURCHASE RIGHTS OF TENANTS.—

(1) NOTICE.—Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

"(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

"(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

"(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to—

"(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(B) any eligible single family property (as such term is defined in subsection (c)(9)); or

"(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage."

SEC. 16. PREFERENCE FOR SALES OF REAL PROPERTY FOR USE FOR HOMELESS FAMILIES.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

(16) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to paragraph (15), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in subsection (c)(9)) to which the Corporation acquires title, the Cor-

poration shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families."

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

(v) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families."

SEC. 17. PREFERENCES FOR SALES OF COMMERCIAL PROPERTIES TO PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS FOR USE IN CARRYING OUT PROGRAMS FOR AFFORDABLE HOUSING.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

(17) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

(A) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

"(i) that is made by a public agency or nonprofit organization; and

"(ii) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (I) homeownership and rental housing opportunities for very-low, low-, and moderate-income families, or (II) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term "eligible commercial real property" means any property (I) to which the Corporation acquires title, and (II) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in subparagraph (A)(ii).

(ii) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms "nonprofit organization" and "public agency" have the meanings given the terms in subsection (c)(9)."

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

(w) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

(1) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers

to purchase the property that will result in the same net present value proceeds, to any offer—

"(A) that is made by a public agency or non-profit organization; and

"(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term 'eligible commercial real property' means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

"(B) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms 'nonprofit organization' and 'public agency' have the meanings given the terms in section 40(p)."

SEC. 18. FEDERAL HOME LOAN BANKS HOUSING OPPORTUNITY HOTLINE PROGRAM.

The Federal Home Loan Bank Act (12 U.S.C. 1422 et seq.) is amended by inserting after section 26 the following new section:

"SEC. 27. HOUSING OPPORTUNITY HOTLINE PROGRAM.

"(a) ESTABLISHMENT.—Each of the Federal Home Loan Banks shall establish and operate a program substantially similar (in the determination of the Board) to the 'Housing Opportunity Hotline' program established in October 1992, by the Federal Home Loan Bank of Dallas.

"(b) PURPOSE.—Each program established under this section shall provide information regarding the availability for purchase of single-family properties that are owned or held by Federal agencies and are located in the Federal Home Loan Bank district for such Bank. Each Federal Home Loan Bank shall consult with such agencies to acquire such information.

"(c) REQUIRED INFORMATION.—Each program established under this section shall provide information regarding the size, location, price, and other characteristics of such single family properties, the eligibility requirements for purchasers of such properties, the terms for such sales, and the terms of any available seller financing, and shall identify properties that are affordable to low- and moderate-income families.

"(d) TOLL-FREE TELEPHONE NUMBER.—Each program established under this section shall establish and maintain a toll-free telephone line for providing the information made available under the program.

"(e) DEFINITIONS.—For purposes of this section:

"(1) FEDERAL AGENCIES.—The term 'Federal agencies' means the Farmers Home Administration, the Federal Deposit Insurance Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the General Services Administration, the Department of Housing and Urban Development, the Resolution Trust Corporation, and the Department of Veterans Affairs.

"(2) SINGLE FAMILY PROPERTY.—The term 'single family property' means a 1- to 4-family residence, including a manufactured home."

SEC. 19. CONFLICT OF INTEREST PROVISIONS APPLICABLE TO THE FDIC.

(a) IN GENERAL.—Section 12 of the Federal Deposit Insurance Act (12 U.S.C. 1822) is amend-

ed by adding at the end the following new subsection:

"(f) CONFLICT OF INTEREST.—

"(1) APPLICABILITY OF OTHER PROVISIONS.—

"(A) CLARIFICATION OF STATUS OF CORPORATION.—The Corporation shall be an agency for purposes of title 18, United States Code.

"(B) TREATMENT OF CONTRACTORS.—Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for the purposes of title 18, United States Code, and this Act. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation shall be deemed to be a public official for the purposes of section 201 of title 18, United States Code.

"(2) ESTABLISHMENT OF REGULATIONS.—The Board of Directors shall prescribe regulations governing conflict of interest, ethical responsibilities, and post-employment restrictions applicable to officers and employees of the Corporation.

"(3) USE OF CONFIDENTIAL INFORMATION.—The Board of Directors shall prescribe regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41, United States Code.

"(4) DISAPPROVAL OF CONTRACTORS.—

"(A) IN GENERAL.—The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

"(B) PROHIBITION FROM SERVICE ON BEHALF OF CORPORATION.—The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

"(i) entering into any contract with the Corporation; or

"(ii) being employed by the Corporation or any person performing any service for or on behalf of the Corporation.

"(C) INFORMATION REQUIRED TO BE SUBMITTED.—The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

"(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person's control defaulted on a material obligation to an insured depository institution; and

"(ii) such other information as the Board may prescribe by regulation.

"(D) SUBSEQUENT SUBMISSIONS.—

"(i) IN GENERAL.—No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

"(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

"(II) the Corporation does not disapprove of the direct or indirect employment of such person.

"(ii) FINALITY OF DETERMINATION.—Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation's sole discretion and shall not be subject to review.

"(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under sub-

paragraph (A) shall require the Corporation to prohibit any person who has—

"(i) been convicted of any felony;

"(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

"(iii) demonstrated a pattern or practice of defalcation regarding obligations to insure depository institutions; or

"(iv) caused a substantial loss to Federal deposit insurance funds,

from service on behalf of the Corporation.

"(5) ABROGATION OF CONTRACTS.—The Corporation may rescind any contract with a person who—

"(A) fails to disclose a material fact to the Corporation;

"(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

"(C) has been subject to a final enforcement action by any appropriate Federal banking agency.

"(6) PRIORITY OF FDIC RULES.—To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation."

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)) is amended to read as follows:

"(2) OTHER DEFINITIONS.—

"(1) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

"(2) COMPANY.—The term 'company' has the meaning given to such term in section 2(b) of the Bank Holding Company Act of 1956."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 20. RESTRICTIONS ON SALES OF ASSETS TO CERTAIN PERSONS.

(a) IN GENERAL.—Section 11(p) of the Federal Deposit Insurance Act (12 U.S.C. 1821(p)) is amended by redesignating paragraphs (1) and (2) as paragraphs (2) and (3) and by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, DEPOSITORY INSTITUTIONS.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

"(A) any person who—

"(i) has defaulted, or was a member of a partnership or an officer or director of a corporation which has defaulted, on 1 or more obligations the aggregate amount of which exceed \$1,000,000 to such failed institution;

"(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

"(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

"(B) any person who participated, as an officer or director of such failed institution or of

any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

"(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

"(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 11(p) of the Federal Deposit Insurance Act (12 U.S.C. 1821(p)) is amended—

(1) in paragraph (2) (as so redesignated by the amendment made by subsection (a) of this section)—

(A) by striking "individual" and inserting "person"; and

(B) by striking "paragraph (2)" and inserting "paragraph (3)";

(2) in paragraph (3) (as so redesignated by the amendment made by subsection (a) of this section)—

(A) by striking "individual" each place such term appears and inserting "person"; and

(B) by striking "Paragraph (1)" and inserting "Paragraphs (1) and (2)";

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

"(4) DEFINITION OF DEFAULT.—For purposes of paragraphs (1) and (2), the term 'default' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon."; and

(4) by striking the heading and inserting the following new heading: "(p) CERTAIN SALES OF ASSETS PROHIBITED.—"

SEC. 21. WHISTLEBLOWER PROTECTION.

Section 33(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(a)(2)) is amended—

(1) by striking "or Federal Reserve bank" and inserting "Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation";

(2) by striking "or" at the end of subparagraph (B);

(3) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(4) by adding at the end the following new subparagraph:

"(D) the person, or any officer or employee of the person, who employs such employee."

SEC. 22. FDIC ASSET DISPOSITION DIVISION.

(a) IN GENERAL.—Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended—

(1) by striking "There is hereby created" and inserting "(a) ESTABLISHMENT OF CORPORATION.—There is hereby established"; and

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

"(b) ASSET DISPOSITION DIVISION.—

"(1) ESTABLISHMENT.—The Corporation shall have a separate division of asset disposition.

"(2) MANAGEMENT.—The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

"(3) POWERS AND DUTIES OF DIVISION.—The division of asset disposition shall exercise all the powers and duties of the Corporation under this Act relating to the liquidation of insured depository institutions and the disposition of assets of such institutions."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1995.

SEC. 23. PRESIDENTIALLY-APPOINTED INSPECTOR GENERAL FOR FDIC.

(a) IN GENERAL.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ", the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation," after "Chairperson of the Thrift Depositor Protection Oversight Board"; and

(2) in paragraph (2), by inserting "the Federal Deposit Insurance Corporation," after "the Resolution Trust Corporation".

(b) NO REDUCTION IN RATE OF PAY OF EXISTING EMPLOYEES OF THE OFFICE OF THE IG OF THE FDIC.—

(1) IN GENERAL.—Notwithstanding paragraphs (7) and (8) of section 6(a) of the Inspector General Act of 1978, the annual rate of basic pay and benefits, including any regional pay differential, payable to any employee of the office of the inspector general of the Federal Deposit Insurance Corporation who was an employee of such office as of the date of the enactment of the Resolution Trust Corporation Completion Act for any year ending after such date of enactment shall not be reduced, by reason of the amendment made by subsection (a) of this section, below the annual rate of basic pay and benefits, including any regional pay differential, paid to such employee, by reason of such employment, as of such date.

(2) EMPLOYEES SERVING IN ACTING OR TEMPORARY CAPACITY.—Notwithstanding paragraph (1), in the case of any employee described in such paragraph who, as of the date of the enactment of the Resolution Trust Corporation Completion Act, is serving in an acting capacity or is otherwise temporarily employed at a higher grade than such employee's regular grade or position of employment—

(A) the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such capacity or at such higher grade shall not be reduced by reason of the applicability of paragraph (7) or (8) of section 6(a) of the Inspector General Act of 1978 so long as such employee continues to serve in such capacity or at such higher grade; and

(B) after such employee ceases to serve in such capacity or at such higher grade, paragraph (1) shall be applied with respect to such employee by taking into account only the annual rate basic pay and benefits, including any regional pay differential, payable to such employee in such employee's regular grade or position of employment.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 8E(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "the Federal Deposit Insurance Corporation,"

(2) Section 5315 of title 5, United States Code, is amended by adding at the end the following new item:

"Inspector General, Federal Deposit Insurance Corporation."

SEC. 24. DEPUTY CHIEF EXECUTIVE OFFICER.

Section 21A(b)(8) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(8)) is amended by adding at the end the following new subparagraphs:

"(E) DEPUTY CHIEF EXECUTIVE OFFICER.—

"(i) IN GENERAL.—There is hereby established the position of deputy chief executive officer of the Corporation.

"(ii) APPOINTMENT.—The deputy chief executive officer of the Corporation shall—

"(I) be appointed by the Chairperson of the Thrift Depositor Protection Oversight Board, with the recommendation of the chief executive officer; and

"(II) be an employee of the Federal Deposit Insurance Corporation in accordance with subparagraph (B)(i) of this paragraph.

"(iii) DUTIES.—The deputy chief executive officer shall perform such duties as the chief executive officer may require.

"(F) ACTING CHIEF EXECUTIVE OFFICER.—In the event of a vacancy in the position of chief executive officer or during the absence or disability of the chief executive officer, the deputy chief executive officer shall perform the duties of the position as the acting chief executive officer."

SEC. 25. DUE PROCESS PROTECTIONS RELATING TO ATTACHMENT OF ASSETS.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) by striking subsection (i)(4)(B) and inserting the following new subparagraph:

"(B) STANDARD.—

"(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

"(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State."; and

(2) in subsection (b), by adding the following new paragraph:

"(9) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate."

SEC. 26. GAO STUDIES REGARDING FEDERAL REAL PROPERTY DISPOSITION.

(a) RTC AFFORDABLE HOUSING PROGRAM.—The Comptroller General of the United States shall conduct a study of the program carried out by the Resolution Trust Corporation pursuant to section 21A(c) of the Federal Home Loan Bank Act to determine the effectiveness of such program in providing affordable homeownership and rental housing for very low-, low-, and moderate-income families. The study shall examine the procedures used under the program to sell eligible single family properties, eligible condominium properties, and eligible multifamily housing properties, the characteristics and numbers of purchasers of such properties, and the amount of and reasons for any losses incurred by the Resolution Trust Corporation in selling properties under the program. Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the results of the study under this subsection, which shall describe any findings under the study and contain any recommendations of the Comptroller General for improving the effectiveness of such program.

(b) SINGLE AGENCY FOR REAL PROPERTY DISPOSITION.—The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such

single agency to efficiently carry out such disposition activities. Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the study under this subsection, which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency.

SEC. 27. EXTENSION OF RTC POWER TO BE APPOINTED AS CONSERVATOR OR RECEIVER.

Section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)(A)(ii)) is amended by striking "October 1, 1993" and inserting "April 1, 1995".

Amend the title so as to read: "An Act to provide for the remaining funds needed to assure that the United States fulfills its obligation for the protection of depositors at savings and loan institutions, to improve the management of the Resolution Trust Corporation ('RTC') in order to assure the taxpayers the fairest and most efficient disposition of savings and loan assets, to provide for a comprehensive transition plan to assure an orderly transfer of RTC resources to the Federal Deposit Insurance Corporation, to abolish the RTC, and for other purposes."

Mr. MITCHELL. Mr. President, I move that the Senate disagree to the House amendments, agree to the request of the House for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed Mr. RIEGLE, Mr. SARBANES, Mr. DODD, Mr. D'AMATO, and Mr. GRAMM conferees on the part of the Senate.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. MITCHELL. Mr. President, tomorrow the House of Representatives will vote on the North American Free-Trade Agreement, one of the most important issues that this Congress will address. This trade agreement provides the United States with historic opportunities for the future: Expanding markets in the hemisphere, increasing U.S. exports to emerging markets, and promoting social and economic stability throughout the Americas.

But the issue of the North American Free-Trade Agreement transcends even these broad economic opportunities provided to U.S. businesses and workers. The agreement is more important even than the promise of environmental cooperation with our neighbors and economic stability for Mexico and the rest of the Americas. It will define the U.S. role in the global economy and in world affairs well into the 21st century.

This is a historic vote, and the issue will be decided by the Members of the House of Representatives. Let me make it clear and unmistakable: The Senate will pass the North American Free-Trade Agreement. There should be no uncertainty about that. There is no uncertainty about that. The Senate will pass the agreement.

If Congress approves this agreement, the United States will affirm its leadership role in this hemisphere and around the world. The United States economy will reap the benefits of expanded markets in Mexico, the Caribbean, Central and South America. The United States and Mexico will work cooperatively to improve the border infrastructure, and all three nations will work to protect the environment of North America.

If the House rejects the agreement, however, it will send an ominous signal to the world: The United States fears the challenges of this post-cold war global economy.

We must have the courage and the confidence to lead this country into the next century. We cannot relieve or remake the past.

Our economic security depends on providing American companies and workers with access to foreign markets. In 1992, this Nation exported goods valued at over \$420 billion, a 36-percent increase over 1988 exports, and more than 7 percent of U.S. gross domestic product. The future of the American economy is closely linked to its ability to respond to the demands of the global marketplace.

Our trading competitors already recognize the importance of seizing new opportunities in the international marketplace. Japan is developing new markets in the Far East. The European Community is searching out new opportunities in Eastern Europe and the nations of the former Soviet Union. The United States must compete with our trading partners in these and other emerging markets.

The North American Free-Trade Agreement presents the United States with an opportunity to create an economy of \$6.5 trillion and 370 million people. In the past 7 years, United States exports to Mexico have grown sharply, from approximately \$12 billion in 1986 to over \$40 billion in 1992. The United States trade balance with Mexico has improved from a \$5.7 billion deficit in 1987 to a \$5.4 billion surplus in 1992. Mexico is now our third largest trading partner.

The principal purpose of the North American Free-Trade Agreement is the removal of trade barriers between the three nations. Over time, the agreement will eliminate Mexican tariffs, which average roughly 10 percent—more than 2½ times the average United States tariff of 4 percent. The agreement also eliminates numerous non-tariff barriers that require United States companies to invest or manufacture in Mexico in order to supply the Mexican market. Simply put, Mexico now provides many incentives for United States companies to move to Mexico. This trade agreement is a good deal for the United States because it replaces unfair trading practices with fair trading rules.

If the United States does not capitalize on this opportunity, our competitors will. Our trading partners in Asia and Europe will sell their consumer products, commodities, capital goods and services in the Mexican market. And the United States, its companies and its workers will lose exports and jobs.

Maine companies and workers have already benefited from expanded trade with Mexico. Maine exports to Mexico have increased 774 percent from 1987 to 1992. Maine companies now are selling to Mexico a wide range of products, from leather to metal products to electronics to apparel.

A close examination of the agreement reveals that it will help Maine industries sell more of their goods and services in Mexico. For example, the Mexican tariffs on Maine sardines, solid wood products, lumber, pulp and paper will be eliminated over a 10-year period. Mexico also will eliminate its 10-percent tariff on semiconductor and its 20-percent tariff on computers.

Mexico now prohibits access for all fresh and seed potatoes. This agreement will allow United States and Maine potato growers to challenge—and eliminate—this unfair ban on United States potatoes. Also, the Mexican tariffs on potatoes will be eliminated over a 10-year period.

There are just a few examples of Maine industries that will benefit under this trade agreement. Many Maine companies have contacted me, urging me to support it.

Hardwood Products Co. of Guilford, ME, wrote:

The Mexican market is essentially closed to us by restrictions, although our products could compete. With the passage of NAFTA, our business projects an estimated 13 percent increase in sales, equivalent to approximately 40 jobs.

That is one small company in a small Maine town.

UNUM Life Insurance Co., a large Maine insurance company, has written:

At this time, UNUM does not market in Mexico. The Mexican market has been essentially closed to foreign providers of financial services. The NAFTA represents a significant potential opportunity for UNUM and the life insurance industry. As the economy and standard of living in Mexico grows, so will the demand for financial services.

That is a large company in a large city.

These companies support the agreement not because it provides a new labor market, but because it provides an important new export market for Maine products.

The global economy is continually changing. Tomorrow, the House of Representatives will decide whether the Nation will actively engage the challenges of this post-cold war world, or whether this Nation will reject new opportunities for the future. I believe that the North American Free-Trade

Agreement will provide historic opportunities for both Maine and the Nation in the 21st century.

I hope and urge that it be approved. The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I thank the majority leader for a very fine statement.

I wonder, before I make a brief statement, if I could pose a question to the majority leader.

In the event the House passes NAFTA tomorrow, would it be the intention of the majority leader to move as quickly as we could, or is there some other matter that might intervene?

Mr. MITCHELL. Mr. President, as always, I will consult with the distinguished Republican leader and the appropriate committee chairmen before making any scheduling decisions.

It remains my hope and intention that we will be able to complete this session of Congress by the close of business next Tuesday, one week from tonight. There are a number of other measures which we must act on prior to then, besides NAFTA, and I will discuss the best way to proceed to get all of them done with the Republican leader at any time of his convenience.

Mr. DOLE. I thank the majority leader. It might be maybe at sometime this afternoon the two of us might get together. We had a discussion on our side with the leadership, and I want to accommodate the majority leader wherever we can. Perhaps when we have any time this afternoon we could discuss it.

Mr. MITCHELL. I look forward to that. I would simply say that, without making any decision on precisely when we will do it, I am determined that if the House approves the North American Free Trade Agreement tomorrow, the Senate will not adjourn until the Senate has also approved it. That is something on which I can state without any hesitancy or equivocation.

Mr. DOLE. Mr. President, I share the views of the majority leader.

If the House does act favorably, as I believe they will, I certainly think we have an obligation to stay here until it is completed.

Mr. LEVIN. Mr. President, if the Republican leader will yield for a unanimous consent request, I ask unanimous consent that after he complete his statement I be allowed to proceed as though in morning business on NAFTA for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. Senator BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the same allowance be made to the Senator from Montana. I frankly have about 8 min-

utes. I would like to speak on the same subject.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 2:30 P.M.

Mr. MITCHELL. Mr. President, I ask unanimous consent that following Senator BAUCUS' remarks the Senate stand in recess to accommodate the respective party conferences until 2:30 p.m.

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

The Republican leader.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. DOLE. Mr. President, as the majority leader has stated, tomorrow is going to be a big day in the House of Representatives. It is going to be a day where I believe the Members of the House in a bipartisan way are going to approve the North American Free-Trade Agreement, I think with a few votes to spare.

I thank, first of all, my House colleagues who looked at this carefully, looked at the agreement carefully, and decided it is in America's best interest to vote in the affirmative on the North American Free Trade Agreement.

A lot of Members are still undecided, but I think now we are seeing most undecided Members say: "We are going to vote aye. We are going to vote for the agreement."

It is my hope that more will do that in both parties, because, as someone said, it is the right thing to do. This is not a partisan debate. It never has been a partisan debate. Nobody knowingly wants to put anybody out of work.

We think we are going to create more jobs and opportunities. There probably have been exaggerations on both sides of the debate on what it will do or what it may not do.

We have had debates on the Larry King show last night and last week. I am not certain how many votes were changed, but there has been a lot of focus on the North American Free-Trade Agreement. There has been a lot of focus in our State of Kansas where it is supported, I think, by the great majority of people.

I would say, as the Senator from Maine has indicated in his State, when you go out and take a look and talk to some of the businesses that say they are going to increase their employment if NAFTA is approved, it gives you a pretty good idea of why it ought to be supported.

And the same is true in the agricultural sector in my State and other States. Nearly every ag group in the State of Kansas supports the free-trade agreement because they believe it is going to benefit them. It may also ben-

efit Mexico. It may also benefit Canada. But, as our first and third largest trading partners, that is fine.

And I think we just need to continue to keep in mind that every time a dollar is spent in Mexico for imports, 70 cents of that comes back to the United States. And they are a fast-growing market.

It seems to me that our success in job opportunities and the future for growth in America is not going to depend just on Mexico, because, as has been pointed out many times, their economy is about one-twentieth of ours, but there are other countries in Central and South America sort of standing in line wanting to do the same thing.

What do they want to do? They want to trade with the United States. When they trade with the United States, it is going to create jobs and opportunities.

And if it fails—we have heard the arguments and I think they are fairly accurate—I do not believe that Mexico is going to show great sympathy. They will not announce sort of global amnesty for American companies. They will celebrate our frightened rejection of new trade opportunities. Then they will move to conquer markets we could have dominated.

It seems to me this is what is going to happen with the countries from the outside, maybe the Japanese, maybe somebody else.

Mexico, in the meantime, is going to continue to pursue free-trade arrangements with other Latin American countries, if NAFTA fails. Without NAFTA, Mexico will continue to pursue policies of growth and economic modernization.

It just seems to me we do not want to announce our retreat tomorrow, or whenever the vote is in the Senate, that we are going to retreat in the global marketplace. We do not want to huddle on the sidelines while the rest of the world decides where economic opportunities may be. We do not want to give up the fruits of 40 years of leadership in the world as champions of free trade, open markets, and rising standards of living.

Any way you pose the question, Mr. President, I think the answer is no. We do not want to do those things.

So I believe that NAFTA will be approved. I want to commend the President of the United States for his efforts. I want to commend, as I said, particularly my colleagues in the House for their efforts.

And I want to stand here as a Republican and praise Republicans for their support for the North American Free-Trade Agreement. They have recognized that this agreement was negotiated in the Bush administration and is going to be implemented in the Clinton administration; that it is totally bipartisan; that there is no time for partisanship. I commend my colleagues

on the Republican side in the House as I anticipate what the vote may be tomorrow.

I suggest we will even do better in the Senate. I think the percentage of votes in favor of the North American Free-Trade Agreement will be better in the Senate.

So I urge my colleagues who have not yet made a determination on our side of the aisle—the Republican side of the aisle in the Senate—that this might be a good day to do that, to indicate your strong support. Because every time somebody stands up over here and sends a positive message, it might help increase the margin in the House of Representatives.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Michigan.

NAFTA

Mr. LEVIN. Mr. President, on a number of occasions I have taken this floor to explain my opposition to NAFTA; that there are many reasons to oppose it, one of the many reasons being that Mexico was allowed to continue, at a slightly reduced level, discriminatory restrictions on American autos and auto parts for 10 years.

Now, if you are pro-NAFTA, you say, "Well, after 10 years, they are going to get rid of their discriminatory restrictions on those products." But I do not think we ought to tolerate those restrictions for 10 more months, much less for 10 more years. And that is one of the many reasons why I stated my opposition to NAFTA.

The same thing is true with many other products in other parts of the country where under NAFTA, Mexico is allowed to continue discriminatory restrictions on our goods for 10 years.

But today I want to focus on the numbers game which the administration is playing about how many jobs will be created by NAFTA. The administration claims over and over again that NAFTA will create 200,000 new U.S. jobs by 1995. In fact, it is one of the central selling points of NAFTA. Way up in front of the literature that is produced to sell NAFTA you will almost always see that figure—200,000 new U.S. jobs will be created by 1995.

President Clinton said, "I believe NAFTA will create 200,000 American jobs in the first 2 years." Secretary Bentsen said, "We calculate that we'll pick up 200,000 more jobs in the next 2 years alone." Secretary Brown said, "The administration forecasts that NAFTA will create an additional 200,000 high-wage jobs by 1995." Ambassador Kantor said, "We estimate a gain of 200,000 [jobs], just in the first 2 years."

So the 200,000 jobs claim is a central selling point of the administration.

We decided to test that out in the Governmental Affairs Committee. We

invited the administration to come. We invited Ambassador Kantor, but he did not make it. Instead, they sent up the Acting Under Secretary of Commerce for Economic Affairs, Paul London. We held a hearing in the Governmental Affairs Committee and asked Mr. London to explain the basis for the 200,000 figure. He made some important revelations as to exactly how the administration bases its claim that NAFTA will result in 200,000 U.S. jobs by 1995.

Mr. President, I call the math that is used by the administration to make their 200,000 jobs claim "NAFTA math." The principles of NAFTA math would make most elementary school-teachers wince. For instance, NAFTA math only counts jobs claimed to be created by increased exports—that is the 200,000 jobs—while totally ignoring jobs that are displaced by increased imports from Mexico.

Now here is the way President Clinton and Secretary Bentsen came up with the 200,000-job figure. President Clinton says, "Every time we sell \$1 billion of American products and services overseas, we create 20,000 jobs." Treasury Secretary Bentsen then arrives at the 200,000 new jobs number based on a hoped-for increase of \$10 billion in United States exports to Mexico by 1995.

According to the administration's math—or NAFTA math—since each billion in exports is claimed to create about 20,000 jobs, \$10 billion in exports equals about 200,000 jobs.

That claim is a gross distortion. It looks at only half the story. If you use the whole picture and look at both exports and imports, jobs which will be lost because of the job displacement effect of increased imports from Mexico should be deducted from any jobs claimed to be created by increased exports.

But what the administration is doing is like looking at half a ledger—the revenue side—while ignoring the other half of the ledger—the expenses—and then claiming great profits.

In last Wednesday's hearing, Commerce Under Secretary London admitted that the 200,000-job gain number is a gross number based solely on hoped-for increased exports to Mexico. The Commerce Department, he acknowledged, has not deducted jobs displaced by imports from the 200,000-job gain claim that the administration is making. When I asked how many jobs would be lost from increased imports from Mexico, Mr. London said that some would be lost but no attempt was made to quantify that number.

So the administration has not even done the calculation regarding how many jobs are lost from imports, although they admit that some jobs will be lost. They do not even have a formula or a methodology to do the estimate on jobs lost from imports. But they have a very elaborate formula to calculate jobs gained from exports.

What we confirmed at this hearing, Mr. President, is that every single United States export to Mexico is counted as a job creator. By the way, even those exports which are not job creators in the normal sense, such as parts and components, that now shift to Mexico and that previously were assembled in the United States.

In looking at the 1992 United States trade balance with Mexico—exports and imports—the administration takes the export number—one-half of the ledger—and says that every single export is a job creator. They totally ignore the other half of the picture, the imports. Not one single import is counted by the administration as a job loser—not one. The import half is ignored. Every single dollar in the export half is given a job-creating number—every dollar. Every dollar on the import half is ignored. No losses or jobs are subtracted from the gains. One-half of the picture is presented to the American people in that 200,000 job claim of the administration.

Mr. President, it is time for the administration to play it straight and stop using distortions and NAFTA math to sell this agreement. If the administration is really as confident as it appears to be about its case for NAFTA, it should be willing to make that case without resorting to creative math.

Look at both sides of the picture, not just half. If you are going to attribute job gains to exports—and obviously many of them are job creators—then you have to look at the job losses that some imports create and deduct the job losses from the job gains when talking about NAFTA-created jobs. Otherwise, it is half the ledger, half the picture and a distortion which gives a false impression to the American people.

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

(Mr. LEVIN assumed the chair.)

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

RESOLUTION OF CANADIAN WHEAT ISSUE

Mr. BAUCUS. Mr. President, I first want to compliment the majority leader and the minority leader for their recent statements very enthusiastically supporting the North American Free-Trade Agreement and also stating unequivocally the North American Free-Trade Agreement, if passed by the House, will definitely be passed by the full Senate. I think they are right in that assessment.

I also believe Senator DOLE, from Kansas, is correct in suggesting that with momentum moving toward those in favor of passage of the North American Free Trade Agreement, that passage in the House is not only likely but it is probably going to pass by more than one vote.

Mr. President, I rise to discuss the benefits of the North American Free-Trade Agreement as it applies to U.S. agriculture, particularly for wheat. Unfortunately, wheat farmers got a poor deal in the 1988 United States-Canada Free-Trade Agreement. They got a poor deal because the administration that negotiated the agreement cared little about the trade problems of wheat farmers. They cared a lot about a lot of the problems of other people but little about the problems of wheat farmers. As a result of their experiences with the Canadian Free-Trade Agreement, wheat farmers across the country, especially those in the State of Montana, have been especially concerned about free-trade agreements in general and specifically about the North American Free-Trade Agreement.

Most of us have a relatively positive image of Canada as a neighbor and a trading partner to the north, and in most areas this positive image is justified. More goods and services are traded between the United States and Canada than are traded between any other two nations in the world. The \$200 billion-plus annual trade between our two countries dwarfs trade between any other two nations, and both nations—the United States and Canada—benefit tremendously from bilateral trade.

But there are some problems. Canada has a penchant for erecting trade barriers in the form of subsidies that often spark trade disputes when the United States responds. I am hopeful that this dispute will not grow worse with the new liberal government in Canada.

But by far, the largest problem we have with Canada is agriculture. The Reagan administration largely declined to cover agriculture in the United States-Canada Free-Trade Agreement because they anticipated a successful conclusion to the GATT negotiations on agriculture; that is in the Uruguay round of negotiations on the General Agreement on Tariffs and Trade. Seven years later, however, these GATT negotiations still have not been concluded.

Not surprisingly, the United States-Canada Free-Trade Agreement is a very poor agriculture agreement. Wheat farmers have borne the burden. Both United States and Canada are world-class wheat producers, but the Canadians are allowed, under the Canadian Free-Trade Agreement, to use transportation subsidies to ship wheat to the United States, but the United States is forbidden from using these same export subsidies on shipments to Canada.

Further, Canada is able to maintain a Government-controlled monopoly to purchase all wheat grown in Canada and sell it on the world market. All transactions of the Canadian Wheat Board are secret, but knowledgeable observers have contended for years

that the Wheat Board consistently and intentionally undersells United States export prices to the detriment of American farmers. Our prices, our offers of sales overseas are not secret; they are essentially public.

Given these substantial competitive advantages built into the Canadian Free-Trade Agreement, it is not surprising that Canadian wheat exports to the United States have more than tripled in the last 5 years to reach 1.32 million metric tons last year. But United States exports of wheat to Canada have held steady at zero.

In addition, Canada has managed to keep United States wheat out of the Canadian market with a combination of import licenses and end use certificates and Wheat Board maneuvering.

Canada has also periodically been able to displace wheat exports to Mexico even though the United States has an obvious geographic advantage over shipping wheat to Mexico. Canada must actually ship wheat through or around the United States wheat fields to reach Mexico. Thus, the Wheat Board has been able to export wheat to Mexico using a combination of transportation subsidies and predatory pricing.

On November 4, the Canadian Wheat Board announced its intention to continue to export wheat to Mexico even if it means heavier unfair subsidies and more predatory prices.

The Bush administration failed to address all these problems by allowing Canada to unilaterally withdraw agriculture from the NAFTA negotiations. But the Clinton administration has reversed this pattern of neglect and taken four steps to address these inequities.

First, several months ago the Clinton administration announced that it would employ the Export Enhancement Program on exports of wheat to Mexico to counter Canadian subsidies. The use of EEP, the Export Enhancement Program, has been helpful in regaining United States market share in Mexico. Use of the EEP must continue until Canada agrees to end its subsidies to Mexico.

Second, the Clinton administration has agreed to include end-use certificates on wheat and barley imports from Canada in the legislation to implement the NAFTA.

These end-use certificates are essentially identical to the end-use certificates that Canada imposes on imports from the United States. They are essentially certificates that follow imports of shipments of wheat to their final destination. Their purpose is to ensure that imported wheat is not commingled with U.S. wheat and reexported at American taxpayer expense.

Wheat producers have insisted on these certificates for years, and now my colleagues from wheat States should understand a vote against

NAFTA is a vote against end-use certificates. If the NAFTA is turned down, there will be no end-use certificate program.

In light of the difficulty we have had passing these certificates over the last several years, we may not be able to locate another vehicle to pass this very important legislation.

Third, the Clinton administration today announced that it is prepared to take strong action to stop Canada's unfair trade practices. President Clinton has given Secretary of Agriculture Mike Espy 60 days to consult with Canada to bring an end to these practices. If the consultations are not successful, the administration will initiate a section 22 action to restrict Canadian wheat imports in the United States. This strategy is the only realistic approach to addressing unfair Canadian practices.

According to a recent study by USDA, imports of wheat from Canada have cost the United States \$600 million over the last 4 years in higher farm program costs. This is exactly the problem that section 22 is designed to prevent, and the United States specifically reserved the right to employ section 22 in the United States-Canada Free-Trade Agreement. Action is long overdue.

Finally, the administration has agreed to begin discussions with Mexico and Canada to define unfair trade of wheat. The administration will also press the Mexican Government to employ its unfair trade laws against Canadian wheat entering Canada to ensure a level playing field for American wheat farmers. Hopefully, these discussions will lead to a final solution to the wheat dispute in which all three countries agree to truly free-trade of wheat in North America.

In light of this impressive show of attention to their concerns, the National Association of Wheat Growers has now enthusiastically endorsed the NAFTA.

Many of us who represent sugar-producing interests should also be pleased to note that in the last few weeks an arrangement has been worked out with Mexico on sugar. The Bush administration, unfortunately, left a glaring hole in their version of the NAFTA that would have allowed Mexico to game the United States sugar program with bookkeeping tricks. The Mexicans could have gained almost unlimited access to the United States sugar market simply by substituting corn sweetener for sugar in its domestic soft-drink industry.

But once again, the Clinton administration worked effectively and quickly to address this loophole. A meaningful fix is now in place that is enthusiastically endorsed by the American sugar producers.

Over the last few weeks, the administration has been criticized by some, mostly opponents of the NAFTA, for

making changes to win NAFTA's passage.

The three biggest arrangements involve wheat, sugar, and citrus, but these deals are hardly cynical, back-room deals that sacrifice the public interest. In fact, in each case they strengthen the NAFTA and further the objectives of free and fair trade. I repeat, they strengthen the objectives of free and fair trade.

In the case of wheat, the arrangement actually advances the cause of free-trade by pressing Canada to eliminate transportation subsidies and other unfair trading practices. The action under section 22 is in direct retaliation for these unfair subsidies and will be lifted if Canada ends these practices. The NAFTA is strengthened by this so-called deal. It was entirely appropriate for the administration to seek to address these and other legitimate trade problems in the context of the NAFTA.

Further, the measures the administration has taken on wheat actually save taxpayers some \$600 million over 4 years. Those are figures according to the USDA.

In my part of the Nation, the debate about the NAFTA is primarily a debate about trade with Canada, not with Mexico. And the biggest trade problem with Canada involves agriculture, most notably wheat. By responding substantively to the problems ignored by previous administrations with regard to wheat, the Clinton administration has demonstrated that they are willing to defend American trading interests. The Clinton administration will implement the NAFTA in a manner that maximizes benefits to the United States.

The Clinton administration's actions demonstrate that it is capable of conducting a strong trade policy and promoting American interests. This administration has repaired the weaknesses of the United States-Canada Free Trade Agreement and the Bush administration's NAFTA.

I want my colleagues representing wheat and sugar farmers to make no mistake. The NAFTA is now a good deal for wheat and sugar farmers. Wheat farmers will be immensely better off with the NAFTA than without it, no longer at the mercy of unfair Canadian trade barriers.

I am confident the Clinton administration will do an equally fine job implementing the NAFTA, and I urge my colleagues in both the House and the Senate, particularly those concerned with the fate of wheat and sugar farmers, to support the NAFTA.

Mr. President, I yield the floor.

RECESS UNTIL 2:30 P.M.

The PRESIDING OFFICER. The Senate will stand in recess until 2:30.

Thereupon, the Senate, at 1:26 p.m., recessed until 2:30 p.m.; whereupon, the

Senate reconvened when called to order by the Presiding Officer (Mr. KERRY).

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut, [Mr. DODD], is recognized.

ORDER OF PROCEDURE

Mr. DODD. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for a period of 6 minutes.

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

NAFTA

Mr. DODD. Mr. President, I want to rise this afternoon to spend a couple of minutes talking about the North American Free-Trade Agreement. I realize that tomorrow the other body will consider the North American Free-Trade Agreement and that there is a lot of discussion in this town about the merits and demerits of that proposal.

Let me, at the outset, say that a lot of attention has been paid, properly so, rightfully so, to the impact of the North American Free-Trade Agreement on the American economy and on the economies of our respective States and districts. I pointed out in this Chamber that for my State of Connecticut, I believe that the North American Free-Trade Agreement is a net plus in terms of the jobs that will be created. We have thousands of jobs in my State today that are directly tied to trade with Mexico.

I think the likelihood of expanding economic opportunities for those smaller high-technology firms and for larger companies will be enhanced with the adoption of the North American Free-Trade Agreement.

I want to put aside for a couple of minutes the impact on the North American Free-Trade Agreement on our domestic economy, as important as those issues are, and refer, if I may, to a column written the other day by someone I do not often find myself in agreement with. I speak of Charles Krauthammer who wrote a column called "The Liberal Betrayal." As I said, I do not normally find myself in agreement with Mr. Krauthammer on these issues. But I think the point he makes in his editorial is one that ought not be lost in the closing hours of the debate on NAFTA.

It was 10 years ago, in April 1983, Mr. President, that I was asked by then minority leader, ROBERT BYRD, of West Virginia, to provide the Democratic response to President Reagan's speech to a joint session of Congress on Central America.

At that time, I pointed out that I thought the problems that were confronting Nicaragua, El Salvador, and Guatemala were based, not on an East-West confrontation, but on the absence

of food, jobs, and decent shelter for families in those countries. If we could address the underlying problems that were causing so much difficulty in these nations, I argued that the kind of violent activities that we saw would by and large not be taking place.

I made a very strong case for it. I believed in it then, and I believe in it now. It is one of the reasons why I support NAFTA. It is not a perfect agreement. It has its problems, and it has its flaws. But I recall over the decade of the eighties the blood that was spilled on this floor as we fought over El Salvador, Nicaragua, and other countries in the region, arguing about what the source of their difficulties were.

The Reagan administration, in many regards, thought that a military solution was the answer. Many of us on this side argued just the opposite—that, if you deal with the underlying problems of social inequities, you could really provide some answers to the violence and unrest down there.

The great irony today in my view, is that the North American Free-Trade Agreement and future free-trade pacts that may follow are our best hope for raising the standard of living in this hemisphere. I do not think it is going to do it next year, or in 5 years, or in 10 years. But it can begin the process of providing a better life for people in these countries. I think it may help alleviate the economic problems that have been the source, in my view, of much of the turmoil that has plagued this hemisphere for a good part of this century and the previous one.

So I hope that as Members of the other body and this body, particularly on my side of the aisle, consider the North American Free-Trade Agreement they would not be unmindful of how important these issues are. If during the 1980's you agreed that the problems of Latin America ought to be focused on and dealt with on a social, economic, and political basis, here is your opportunity; maybe the only opportunity we will get before the close of this century to address exactly those issues that we thought were the cause of the problems.

So, Mr. President, I think there are good reasons for supporting this North American Free-Trade Agreement on the basis of what it does economically for our States and this country. But there are other good reasons to support this agreement as well.

For those who argue during the 1980's that Marxism and communism were not the sole reasons for the problems in Central and South America, here is your opportunity to finally be able to do something in a concrete way that will actually address the very issues you thought were important during the 1980's.

For that reason, I sincerely hope that the people who are still undecided on this issue will consider this aspect as

they weigh the merits and demerits in the closing 24 hours of debate before they will have that vote tomorrow in the other Chamber. And consider, just consider what a difference this might make in the future of the people who are seeking a better tomorrow for themselves and their families.

We are not going to do it through aid. There is not enough money in the appropriations process to make a difference that way. Trade can make a difference. It can raise the standard of living.

My hope is that argument will convince some who are undecided on this agreement and move them to support it.

Mr. HELMS. Regular order, Mr. President.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Regular order is amendment No. 1194.

Who yields time?

ORDER OF PROCEDURE

Mr. BOREN. Mr. President, could I ask unanimous consent, if I might, to proceed as if in morning business just to respond for 3 minutes to what has been said by the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I will not object to this request. We all want to try to accommodate our Members. We are under a tight time limit on these other amendments. We want to, and indeed both leaders indicated, bring this to a conclusion. So I will not object at this time.

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

NAFTA

Mr. BOREN. Mr. President, I will be very brief and to the point.

I want to commend my colleague for the remarks he has just made. The Senator from Connecticut and I spent many hours in the past debating policies related to Central and South America. We have not always been on the same side. We both understood the importance of economic improvement of that region if we are going to have political and social stability. This is our own hemisphere we are talking about. This is our own neighboring nation that we are talking about in terms of the trade agreement with Mexico.

If we miss this historic opportunity to build this long-term economic relationship and to improve the economic strength of both nations, we are simply asking for additional economic insta-

bility in the region, more pressures on our border in terms of immigration, and more strains in our relationships in many other ways.

This will be a tragedy for this country if NAFTA is rejected by this Congress. It is important for the United States of America to be part of the largest market in the world. It is important for political reasons. It is important for economic reasons. Other nations want access to the largest market in the world. We will not have the largest market in the world if NAFTA is rejected. It is important in terms of our whole stance in terms of building a competitive economy that will provide jobs for our children and our grandchildren.

If we allow ourselves to give in to the tactics of fear in this debate, if we allow ourselves to be convinced that an economy 5 percent of the size of our own is so strong and can be so overwhelming in terms of our economy that we will shrink from competing with it, where will we have the courage to compete in the international marketplace anywhere else in the world?

Finally, we should stop to consider this point. If the American people truly believe that all the jobs are going to flee this country, to move to Mexico, or someplace else where there are far lower wages than there are in the United States, those jobs can go right now under existing law. Jobs can be moved across the border, plants can be moved across the border where there are lower wages, and those products that are produced under existing law can be sent back into the United States duty free right now.

So if the jobs are going to be lost, they are already going to be lost. In fact, in the future, as labor and environmental standards are improved in Mexico under this agreement, it will become less attractive, not more attractive for jobs to be moved out of the United States.

Let us think about something else. Mexico is now our second largest market in the world for manufactured products. It is the third largest market in the world for all products. Here is one example: I spoke to a manufacturer in Tulsa, OK, recently, who employs 250 people. His largest market now for the product he makes is Mexico. He has to pay a 15- to 20-percent tariff on all of the products he produces in Tulsa to ship into Mexico. He indicated to me that now he can move across the border, put his plant across the border, sell in Mexico duty free and still sell to the American marketplace duty free. If NAFTA does not pass, that is exactly what he will do, move his plant across the border so he can sell into the Mexican market without having to pay the Mexican tariff. If NAFTA is adopted, he will keep the 250 jobs in Tulsa, OK, because he will be able to sell into the Mexican marketplace without that tariff.

Let us think about the facts and not be led by fear. Let us take the long view, and let us have enough vision to understand what is in the true national interest of this country. Let us, instead of playing politics, act in the long-range interests of this country by ratifying the NAFTA agreement.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. COATS. Mr. President, under the time remaining on my amendment, which I believe is 15 minutes, I yield 10 minutes to the Senator from North Carolina.

Mr. HELMS. Mr. President, naturally, I support the Coats amendment, but I want to talk in general terms about the underlying bill.

Talk about double standards. What this Senate is about to do is so flagrant, so devoid of logic and fairness, that it defies comprehension. Is this the world's greatest deliberative body that so many talk about so often? Or is it merely a politically correct outfit that is more interested in the next election than in the next generation?

Think about it, Mr. President. The Senate is rushing to declare that non-violent protests by one group of American citizens are criminal acts—but this same Senate is silent in seven languages about the advocates of every liberal cause that comes down the pike which is equally disruptive.

You name it, Mr. President, and in every case the political liberals are left untouched—the animal rights activists, the antinuclear power crowd, the antiwar zealots.

And then there are those motley people who constantly march in the streets for what they call "homosexual rights." By the way, Mr. President, I have never once heard one of the sponsors of the pending legislation voice a critical syllable about the vulgar people who parade up and down America's streets demanding that sodomy be regarded as "just another lifestyle." No, sir, they focus on the pro-life people, the people who are objecting to the deliberate destruction of innocent human life.

Then there are the noisy advocates of women's rights, D.C. statehood, so-called civil rights—and, of course, the advocates of the deliberate destruction of the most innocent, most helpless humanity imaginable—unborn babies. These advocates chant that they are pro-choice and the Senate never gives a thought to the question about the choice to do what.

So while the rhetoric of supporters of this bill, S. 636, focuses heavily on the issue of violence, the bill's language is in fact aimed at all pro-life protesters, not just the handful who are violent—and, incidentally, whose activities I oppose. There are and always have been

laws to punish violent and unlawful protests at abortion clinics or anywhere else, and these laws must be enforced.

But the sweeping language of this bill stipulates that even persons engaged in nonviolent sit-ins at abortion clinics, or who picket or distribute pro-life literature outside of abortion clinics shall be subjected to harsh criminal and civil penalties. You cannot find a mention of any other group.

This bill goes far beyond discouraging and punishing the reprehensible acts of a few violent extremists in the pro-life movement. This legislation seeks to silence the entire pro-life movement by forbidding, in effect, the willingness of individual pro-lifers to speak out, even peacefully, for fear of being selectively and aggressively prosecuted and/or sued in court by the U.S. Attorney General no less, and the State attorneys general, no less, or by any and all self-proclaimed "aggrieved" pro-abortion claimants.

Even if one assumes that the same penalties for nonviolent as well as violent political activities are necessary, the double standard of applying them only to pro-life protests is not. This double standard should lead the United States Supreme Court to find this bill unconstitutional on its face, because restricting and criminalizing an individual's motivation for his acts in this way, as opposed to outlawing the acts themselves, is a clear violation, I believe, of the Constitution's protection for freedom of expression under the First Amendment.

But, Mr. President, where is the Senate's indignation about other protest groups that, like the pro-life protesters, have a few extremists in their ranks? Why is the Senate silent in the face of actions such as the December 10, 1989, protest by 4,500 ACT-UP members who interrupted mass inside St. Patrick's Cathedral in New York; where 111 protesters were arrested for trespassing, disorderly conduct, and resisting arrest for acts such as chaining themselves to pews, spitting on and throwing condoms at church members, and desecrating the cathedral and the holy communion.

How about the firebombing of the Right to Life office in Gainesville, FL, this past February?

This past March 15, an abortion rights protector, while protesting outside a pro-life meeting at Holy Family Catholic Church, in South Bend, IN, was arrested for spitting on a Catholic priest.

On March 13 of this year, in Fremont, CA, pro-abortion rights protesters "taunted, yelled, kicked at, scratched, and chased a small group of men from the parking lot of Bethel Baptist Church where a statewide meeting of Operation Rescue had been planned. They also blocked entry to and exit from the church." I am quoting from

the San Francisco Examiner of March 14 of this year.

On September 19 of this year 75 to 100 homosexual protesters descended on Hamilton Square Baptist Church in San Francisco, banging on the church doors, destroying church property and jostling members of the church to protest the church's public opposition to homosexuality. No charges were brought against the protesters by the police.

Mr. President, not one of these types of protesters is covered by the enhanced penalties this bill sets up for both violent and nonviolent pro-life protesters.

I could go on and on and on, Mr. President. But where do we get off practicing double standards as being politically correct and important? I pray that this bill, when it is passed, will quickly end up in the U.S. Supreme Court, because I am eager to see how the justices will rule.

Mr. President, this is how the underlying bill works. The penalties established in the legislation apply only if the prohibited actions are committed because—because—a facility, or the services rendered or sought by an individual, are abortion-related. For example, the committee report, on page 24, states that the bill's penalties and prohibitions are not invoked if the protest activity is motivated by concerns about the environment, or for other reasons—making it clear that a protester's opposition to abortion, not the nature of his or her actions, is what will trigger their punishment under this legislation.

For instance, as the bill was originally reported out of committee and before the vote on the previous amendment, all pro-lifers violating this law would have been subject to a criminal fine of up to \$100,000, or imprisonment up to 1 year, or both, for a first offense. And for a second offense there is a fine up to \$250,000 or up to 3 years in prison or both.

These criminal penalties are draconian enough, but this legislation also allows anyone providing or seeking an abortion—or the U.S. Attorney General, or the States attorneys general—to sue pro-life protesters in Federal court for civil damages including compensatory and punitive damages, attorneys fees, and costs. And even if compensatory or punitive damages cannot be proved, this law gives pro-abortion plaintiffs the right to seek \$5,000 in statutory damages in lieu of actual damages. However, a pro-life defendant who successfully prevails in such a lawsuit is not entitled to collect attorney's fees, costs, or damages from the pro-abortion plaintiff under the bill, even if the pro-life protection proves the case was frivolous to begin with.

Mr. President, another egregious aspect of this bill is the fact that it does not distinguish between, on the one hand, nonviolent sit-ins and picketing by pro-lifers and, on the other hand, actual violence—which the majority of

the pro-life movement abhors as being inconsistent with the core of pro-life beliefs.

Under this bill, even nonviolent pro-life picketers will be forced to defend themselves in court. Pro-lifers will be hauled into court on the mere assertion of an aggrieved party that they were interfered with in obtaining or providing an abortion since—in their subjective judgment—even nonviolent picketing makes passage to or from an abortion clinic unreasonably difficult.

Even if a court later exonerates a pro-life protester on the basis that passage was not made unreasonably difficult in the court's judgment, the enormous cost in time and money to prove their innocence will discourage any participation in future protests even though they may be legal.

I say again, Mr. President, that under this bill, even nonviolent pro-life picketers will be forced to defend themselves in court. How much will that cost them in time and money?

Does this bill do that to labor union protesters or any of the other protesters who clog our streets from time to time?

Oh, of course, that is all right. Boys and girls will be boys and girls. Do not pay any attention to them. But, get those pro-lifers. And that is the real intent of this legislation.

I noticed in a letter from Janet Reno, Attorney General of the United States, to Senator KENNEDY, that was passed out just this morning, that Ms. Reno says: "I understand that S. 636, the Freedom of Access to Clinic Entrances Act, will be considered by the Senate," so forth so on. "I wish to restate my strong support for S. 636 and urge its enactment."

She goes on to say that she opposes "amendment of the bill to expand its coverage to other situations." Of course, what she means is she opposes expanding the bill to include any type of protester other than pro-life protesters.

So you see, Mr. President, she is going after the pro-lifers and no one else.

Now let us look at the issue from a different perspective—which brings us to the letter from the Secretary of Labor, Robert Reich, that was also passed out this morning. He says:

DEAR SENATOR KENNEDY: I am writing to express my opposition to an amendment proposed by Senator Orrin Hatch that would make it a Federal offense to physically intimidate or interfere with a person in connection with a labor dispute. The amendment would impose criminal and civil penalties and subject individuals to damages, including statutory damages of \$5,000.

Of course, Senator HATCH never offered this amendment, but look at what Secretary Reich goes on to say about applying the penalties for pro-lifers in this bill to labor protesters and strikers as well as the Hatch amendment would have done. He says:

The [Hatch] amendment is also unfair. It would permit the imposition of heavy federal fines and damages for one kind of wrong in a labor dispute while leaving others under the current rules, which make such conduct subject to injunctive relief, but not to civil money penalties, damages or criminal prosecution. * * *

[If the aggrieved employees respond by picketing and blocked a truck making deliveries to the employer's property, they would each be liable under the Hatch amendment for \$5,000 in statutory damages, plus costs, fees, compensatory damages, and punitive damages. In addition, they could be subject to one year's imprisonment and fines.

Mr. President, Secretary Reich makes the very point that we are trying to make on the floor today. Applying such draconian criminal and civil penalties to just one side of a political dispute, or one kind of protestors and not all protestors, is blatantly unfair. And that is precisely the point Senator HATCH intended to drive home with his amendment, if he had offered it, to include labor protesters under this bill's penalties.

Mr. President, I ask unanimous consent that the entire text of Secretary Reich's letter, as well as a detailed analysis of the bill from the Republican Policy Committee both be printed in the RECORD at the conclusion of my remarks.

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

DEPARTMENT OF LABOR,
SECRETARY OF LABOR,

Washington, DC, November 15, 1993.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: I am writing to express my opposition to an amendment proposed by Senator Orrin Hatch that would make it a federal offense to physically intimidate or interfere with a person in connection with a labor dispute. The amendment would impose criminal and civil penalties and subject individuals to damages, including statutory damages of \$5,000.

The amendment is unnecessary. There has been no showing of a nationally organized, interstate campaign of violence directed at a class of people in the context of labor relations as there has been in the context of abortion rights. Strike violence and picketline misconduct are generally handled by the National Labor Relations Board and local police authorities without the need for state intervention, let alone the intervention of the Justice Department. The vast majority of collective bargaining contracts are settled without strikes, and only a small number of strikes and lockouts involve violence of any kind.

The amendment is also unfair. It would permit the imposition of heavy federal fines and damages for one kind of wrong in a labor dispute while leaving others under the current rules, which make such conduct subject to injunctive relief, but not to civil money penalties, damages or criminal prosecution.

For example, under the terms of the amendment, an employer who threatened to fire his 100 employees if they voted for a union would not be subject to damages or criminal and civil penalties—only to a cease and desist order. If the employer carried out

his threat and did fire them, he would be liable only for back pay. But if the aggrieved employees responded by picketing and blocked a truck making deliveries to the employer's property, they would each be liable under the Hatch amendment for \$5,000 in statutory damages, plus costs, fees, compensatory damages, and punitive damages. In addition, they could be subject to one year's imprisonment and fines.

I urge the Senate to reject the Hatch amendment to the Freedom of Access to Clinic Entrances Act of 1993.

Sincerely,

ROBERT B. REICH.

U.S. SENATE,

REPUBLICAN POLICY COMMITTEE,
Washington, DC, November 15, 1993.

DEAR SENATOR HELMS: This is in response to your request for an assessment on the constitutionality of S. 636, the so-called Freedom of Access to (Abortion) Clinic Entrances Act. S. 636 imposes steep federal penalties (up to \$100,000 and/or one year in jail for a first offense, up to \$250,000 and/or 3 years for repeaters) on persons impeding access to medical facilities providing abortion of abortion referral, even in cases where there is no violence or threat of violence. In addition, expansive private civil remedies are provided for those "aggrieved by reason" of such conduct.

PUNISHMENT OF PRO-LIFE THOUGHT

The criminal standard of S. 636 is only met if the offender is acting because the facility provides abortion services. Thus, the opinion or viewpoint or thoughts of the offender directly constitute an element of the crime. This is clearly pointed out in the Committee Report (p. 24), which states that the operative section of the bill—

"... prohibits the intentional damage or destruction of property of a medical facility *only* if the offender has acted "because" the facility provides abortion-related services. Thus, for example, if an environmental group blocked passage to a hospital where abortions happen to be performed, but did so as part of a demonstration over harmful emissions produced by the facility, the demonstrators would *not* violate this Act (though their conduct might violate some other law, such as local trespass law). In that example, the demonstrators' motive is related to the facility's emissions policy and practices and not its policy and practices on abortion-related services." [Emphasis added.]

[Note: The Committee's hypothetical example of a protest over emissions policy does not address the applicability of the Act if emissions were the product of an incineration facility to dispose of aborted infants.]

A footnote to the above excerpt goes on to explain that the offender's motive constitutes "an element of the offense." In other words, the subjective intention of the offender to stop abortions is a necessary element of the crime, without which the Act does not apply. In short, the motivating thought is punished.

The constitutional infirmity of this aspect of S. 636 is pointed out by two noted scholars (Michael Stokes Paulsen of the University of Minnesota Law School and Michael W. McConnell of the University of Chicago Law School) in their written testimony to the Committee on May 20, 1993 (pp. 16-19):

"The most fundamental premise of First Amendment law is that government may not penalize speech or conduct on the basis of its content or viewpoint [according to a 1992 U.S. Supreme Court decision, *R.A.V. v. City*

of St. Paul; cited below as *R.A.V.*]. . . . [T]his principle applies even to government regulation of the *unprotected* aspects of expression: government may not regulate even unprotected speech or conduct out of hostility to the views being expressed by such conduct. . . . As the [Supreme] Court explained in *R.A.V.*, "nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses." [original emphasis]

S. 636 WILL NOT PROTECT PRO-LIFE DEMONSTRATORS

The Committee Report (pp. 24-25) states (rather unconvincingly) that even pro-life counselling centers would be protected by S. 636. To address that issue, Senator Kennedy will substitute a Committee amendment for the original text when the bill is considered on November 16, in which "pregnancy" services are also covered. However, nothing in the bill's origin suggests that there is any other goal but protecting abortion clinics and that inclusion of other services in purely pro forma.

This is illustrated by the fact that S. 636 affords pro-life demonstrators have absolutely no protection from attack by pro-abortion activists. As Profs. Paulsen and McConnell point out:

"These hearings have shown (and far more evidence could be supplied) that lawful pro-life demonstrators often are assaulted by pro-choice activists and mistreated by local law enforcement authorities—in violation of their civil rights. If the drafters of this legislation were concerned about constitutional violations in the abortion context, they would provide redress against these unlawful acts, no less than against the unlawful acts of anti-abortion protesters. The one-sidedness of the proposed bill strongly suggests that it is an instrument of partisanship—of strong preference for one side in this rancorous public debate." [original emphasis]

Indeed, when it was recently proposed to add language to S. 636's companion bill in the House (H.R. 796) that would have extended civil remedies to pro-lifers assaulted by pro-abortion activists, the ACLU weighed in with a letter (July 29) stating the following:

"[W]e believe that clinic providers rightly fear that this amendment could be used to harass them. The expense of time and energy needed to defend these types of lawsuits would be enormous, and an onslaught of new federal nuisance suits would be extraordinarily burdensome to clinics who [sic] already find themselves under siege." [cited in October 25 letter to Senators by Doug Johnson of the National Right to Life Committee; his notation of grammatical error]

Not only does this illustrate the one-sidedness of S. 636—that its intent is to hit only pro-life, not pro-abortion, protesters—but it reveals what may be the more important intent of the bill: to have a "chilling effect" on perfectly legal picketing and leafletting activities at abortuaries. The same kind of nuisance suits from which the ACLU seeks to protect clinics would be greatly facilitated by S. 636 if brought against pro-lifers. If protesters who had no intention of committing trespass or otherwise engaging in lawful conduct were subject to such suits—even if they ultimately were vindicated—the legal costs and jeopardy of homes and property would be sufficient for many to decide to not take that risk. Many critics of S. 636 allege that this, even more than the unlawful trespass activities, is the more potent intention of the bill.

This is further highlighted by the fact that under S. 636 only the plaintiff (i.e., the

abortion) can be reimbursed for attorney and expert witness fees. The pro-life defendant cannot receive reimbursement, even he is vindicated in court. This is an open invitation to punitive, even spurious, lawsuits.

"RIGHT" TO ABORTION ONLY RIGHT PROTECTED

To return to the selectivity of the bill: not only is it squarely aimed at pro-life, versus pro-abortion, activities, it does not at all address non-abortion-related activities that also interfere with the exercise of legally protected rights. These include, in Paulsen and McConnell's summary: animal rights raids on research labs, anti-nuclear and anti-war sit-ins at nuclear power plants and blockades at campus recruitment offices, and "gay rights" interference with church services. They observe:

"If the drafters of this legislation were genuinely concerned about the effects of unlawful political protest tactics in general, they would broaden the statute to encompass all such instances of unlawful protest that interferes with the rights of others, irrespective of the object of the protest." [original emphasis]

The Committee Report attempts to defend the "thought crime" aspect of S. 636 by pointing out (p. 29) that the Supreme Court, in upholding a Wisconsin "hate crime" statute, stated that it is permissible to punish— "... conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason." [Wisconsin v. Mitchell; cited below as Mitchell]

Mitchell involved a Wisconsin statute upheld by the Court, whereas R.A.V., cited earlier, involved a similar city ordinance in the same state which the Court had struck down. The difference, according to law professor David M. Smolin of the Cumberland Law School (Alabama), is that the Mitchell statute—

"... involve[d] the enhancement of the penalty for a separate and preexisting crime against the person, aggravated battery, such enhancement being based on the intentional selection of the battery victim because of his race. The ordinance invalidated in R.A.V., by contrast, specifically targeted the expressive nature of certain symbols, such as a Nazi swastika, because of the hateful message sent by such symbols." [written testimony submitted to the Committee on May 18]

Finally, though this is not directly suggested by any of the authorities, I think it is permissible to distinguish the Mitchell statute from S. 636 in the following way. In Mitchell, the Court was dealing with what was already a crime of violence, where the hate thought component, as it related to selection of a victim, was treated by the statute as an aggravating factor. Indeed, the hate thought is intimately connected with the violence committed. In S. 636, on the other hand, we are dealing (in the case of physical obstruction) with a non-violent act, which would not constitute a Federal offense at all except for the thought motivating the behavior. The thought in question, moreover, has no natural connection to commission of violent acts, and indeed sees itself as preventing violence. In this respect, the case of *Bray v. Alexandria Women's Health Clinic*, 1993, is significant in its holding that 19th century anti-Ku Klux Klan statutes could not be applied to blockades of abortion clinic, because the effort was not to deprive women of their civil rights but to save infants. (Indeed, it was the finding of the *Bray* Court that the anti-Klan statutes were not applicable to abortion protests that gave birth to S. 636.)

OVERBREADTH AND VAGUENESS

Thus, it appears that the validity of S. 636 on this point would largely hinge on whether it appeared more directed at extending harsher punishment to already criminal activity, because of an aggravating circumstance (i.e., targeting), or whether it was really directed at the expressive content. The answer to this question, according to Smolin, may be related to the issues of "overbreadth and vagueness":

"Thus, for example, if S. 636 only covered acts of violence or actual violence, it would be more like the penalty enhancement statute . . . upheld in . . . Mitchell. By contrast, if S. 636 extends to political protests, or focuses on the message, then it is more like flag burning at a political protest, or like the ordinance invalidated in R.A.V."

Clearly, there are reasons to see S. 636 as quite broad. For example, the Committee Report claims that S. 636 is "modeled" on Federal civil rights laws, such as 18 U.S.C. Sec. 245 "which prohibits force or threat of force to willfully injure, intimidate, or interfere with any person" regarding voting. The Report neglects to mention, however, that S. 636 prohibits "physical obstruction" (as well as force and threat of force), a standard not found in the cited statute. As Prof. Smolin points out, this leads to a vagueness question:

"A sidewalk counselor stepping in front of a pregnant woman to offer her literature cannot know, as the Act is currently written, whether a momentary 'physical obstruction' violates the Act. As Judge Learned Hand once noted, '[o]ne may obstruct without preventing, and the mere obstruction is an injury * * * for its thrown impediments in its way.'"

Prof. Smolin notes the invalidation by the courts of statutes seeking to prohibit animals rights activists from getting in the way of hunters:

"[T]he Second Circuit [has] held that a Connecticut statute making it criminal to 'interfere with the lawful taking of wildlife by another person' was unconstitutionally vague on its face. The Second Circuit stated that the term 'interfere' 'can mean anything' and 'is so imprecise and indefinite that it is subject to any number of interpretations.'" [Dorman v. Satti, 1988]

I hope the foregoing is of use to you.

Sincerely,

JAMES GEORGE JATRAS,
Policy Analyst.

The PRESIDING OFFICER. The 10 minutes yielded to the Senator from North Carolina has expired.

Who yields time?

Mr. KENNEDY. Mr. President, I understand that I have 4 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself that time.

Mr. President, the amendment of the Senator from Indiana is really unnecessary. Our bill does not address peaceful protest by either side. A protester who is assaulted has remedies under State law.

There is no nationwide pattern of violence against the protesters. That has really not been the case. There may be anecdotal stories and information, some of which have been referred to. But there is no nationwide pattern of

violence against protesters, and that has not been established.

Our bill is evenhanded. It does not give demonstrators on either side the right to sue. It does not give either the prochoice or the prolife demonstrators the right to sue.

As reported by the Labor Committee, S. 636 permits any person aggrieved by the prohibited conduct to sue for damages or injunctive relief.

That could have been read to permit suits against abortion clinic attackers brought by a patient or doctor or also a clinic defender or prochoice demonstrator.

Some felt this unfair because prolife demonstrators who have assembled outside the same clinic would not have the same right to sue for interference with their rights.

As modified, the bill will permit suits only by the persons involved in or obtaining or providing, or seeking to obtain or provide services in the facility.

Thus, the measure now makes clear that it creates no new remedies for activists on either side who claim that demonstrators on the other side have been interfering with their rights.

The pending Coats amendment would give prolife demonstrators a chance to bring harassment suits against providers, clinics, and doctors—those we are trying to protect. Any time there is any jostling between the demonstrator on either side of the abortion debate there will be a suit. There is a real basis for this fear.

Randall Terry recently set up a new Legal Offense Fund dedicated to filing multiple lawsuits against anyone alleged to have abused prolife demonstrators. His fundraising letter says:

Your gift today will help the American Anti-Persecution-League establish a \$100,000 Legal Offense Fund. Notice I didn't write legal defense fund.

Instead, AAPL will fund attorneys to go on the offensive against anyone who abuses prolife demonstrators. They are going to play legal hardball. They are going to win.

Our weapon will be multiple civil lawsuits.

So a cause of action for prolife demonstrator will transform the bill from a clinic access bill to a clinic harassment bill, further clogging the Federal courts in the process. Since the bill now provides no private right of action by demonstrators on either side of the abortion debate, it would be particularly unfair to expand it to provide prolife demonstrators with a cause of action for alleged interference with their rights.

I will include the letter from Janet Reno, a copy of which is at each Senator's desk. She says there is no record demonstrating the need to expand the bill to cover this situation Senator COATS has talked about, and she knows this expansion of the bill would be inconsistent with the proper distribution of law enforcement responsibilities between local and Federal authorities.

I ask unanimous consent that the letter from Attorney General Reno be printed in the RECORD.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, November 15, 1993.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that S. 636, the Freedom of Access to Clinic Entrances Act, will be considered by the Senate on Tuesday, November 16. I wish to restate my strong support for S. 636 and urge its enactment.

As I stated in my testimony before the Committee on Labor and Human Resources, this legislation is essential to curb an escalating pattern of interference with the access of women to abortion services. This interference has gone beyond the legitimate expression of opposing views as opponents of abortion have resorted to force, threats of force, physical obstruction and destruction of property. These activities have occurred in all parts of the country and have overwhelmed the ability of local law enforcement to respond.

The Department of Justice is fully committed to using all of the tools now at its disposal to address this problem. The limits to our existing authority, however, make enactment of S. 636 essential.

S. 636 is narrowly drawn to address this problem. It contains strong, but necessary medicine to address the specific problem of interference with access to abortion services. The creation of a new federal crime and civil cause of action is justified by the nationwide scope of this problem, its severity, the inadequacy of local law enforcement to address it, and the important constitutional right that is being protected. A strong legislative record has been created that justifies this expansion of federal authority.

The narrow focus of this bill on activities that interfere with access to services related to pregnancy or abortion is important to the justification for its enactment. I oppose amendment of the bill to expand its coverage to other situations. No record exists demonstrating that expansion is necessary to address equally serious interference on a nationwide scale with another constitutional right, which local authorities are not equipped to protect adequately. Without such a record, expansion of the bill's coverage would be inconsistent with the proper distribution of law enforcement responsibilities between local and federal authority. Such expansion would weaken the bill. The Department of Justice, therefore, supports enactment of S. 636 in its current form.

In conclusion, I urge the Senate to pass this important legislation.

Sincerely,

JANET RENO.

Mr. KENNEDY. I hope the amendment is not accepted.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Indiana.

Mr. COATS. Mr. President, it is my understanding the Senator from Massachusetts will be offering a second-degree amendment to my amendment shortly. I think we should move to that fairly expeditiously.

I will just say, in the time that I have remaining, that what we are at-

tempting to do here is to balance two rights.

One is the legal right of access to an abortion clinic for women seeking services from that clinic.

The second is the right of those who have convictions to the contrary to protest same through legal means.

A cause of action exists against those who block that access if they violate the standards as set forth in Senator KENNEDY's bill. But no cause of action exists for those who are legally protesting that action if the same actions occur against them as occur against those seeking access.

So we are attempting to balance those two rights. We think those rights are guaranteed under the Constitution and that we ought to try to find some semblance of balance.

We do not believe that Senator KENNEDY's rule of construction as outlined in the legislation has the effect of law in balancing that right, and it certainly does not do anything toward providing the cause of action which we hope by providing cause of actions on both sides will eliminate the violence that has occurred at these clinics that everyone on this floor wants to try to reduce or eliminate.

That is the argument I will be making against the Senator's second-degree amendment and in favor of my amendment.

If the Senator from Massachusetts wants to yield back his time under the underlying Coats amendment, I will yield back the remainder of my time, and we can go to the second-degree amendment.

Before I do that, I will be happy to yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague because I appreciate the battle that is waged here. This is never an easy issue. I really appreciate the effort that he has made.

I was concerned about part of the earlier debate when one of our very dear Senators came on the floor, who I do not think understands the bill very well, because the bill does not address at all the problem of pro-abortion violence at abortion clinics. Remember what I said. It does not address at all pro-abortion violence. That is pretty important because this is hardly a neutral bill under constitutional law.

In the context of protests at abortion facilities, the bill's criminal and civil penalties will only apply against pro-life people. We all know there is violence on both sides from time to time. I do not countenance violations from wherever it comes. I think it is a denigration of the pro-life cause for anybody who claims to be pro-life to be violent or to create violence. But there is some pro-choice violence at these clinics too, and there is nothing done in this bill to take care of that.

The bill, as I view it, will, therefore, give pro-abortion activists a virtual license to harass pro-life people without any consideration at all to the other side of this question.

I think the Coats amendment is needed to achieve peace on both sides. I commend the distinguished Senator for being willing to come here and make this point.

In their understandable eagerness to protect abortion clinics from violence, the drafters of this bill have, I am afraid, been insufficiently attentive to first amendment values and rights. I believe that it is possible both to protect against violence at abortion clinics and to safeguard first amendment rights.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. I yield myself 2 additional minutes from the bill.

The PRESIDING OFFICER. The Senator has that right. The Senator is recognized.

Mr. HATCH. As I said, I believe that it is possible both to protect against violence at abortion clinics and to safeguard first amendment rights. The Coats amendment would do just that, and I urge my colleagues to support it.

Let us begin with the fact that violence and abuse at abortion clinics comes from both sides of the line. I am not going to argue over which side is nastier. On different occasions, one side or the other may be. The important point is to put an end to the violence and abuse on both sides. This bill is one-sided and that is the problem and that is what the distinguished Senator is pointing out. Imagine for a moment that S. 636, in its current form, were to become law. Suddenly, those on the clinic side of the battle would have a virtual license to harass and provoke peaceful pro-life protesters, since they would know that the slightest bit of retaliation would subject to pro-lifers to the severe penalties of the bill. Contrary to what has been said by some, recent revisions to S. 636 do not remedy this imbalance. History teaches us clearly that you do not achieve peace by disarming only one of the combatants. The way to achieve peace is to treat both sides equally, and to make clear that conduct that is unacceptable by one side will be unacceptable by the other.

This common sense is reinforced by the first amendment. Just as persons seeking abortion are exercising a protected right, so are persons speaking out on abortion. The Coats amendment would simply ensure that first amendment rights are protected as much as the right to abortion.

In short, anyone who values first amendment rights at least as much as abortion should support the Coats amendment.

I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I am prepared at this time to send an

amendment to the desk. The Senator from Indiana has yielded back his time, as I understand it, and I would be prepared to do so also.

The PRESIDING OFFICER (Mr. WELLSTONE). The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I believe my time has expired as well, and, if not, I yield back the remainder of my time.

AMENDMENT NO. 1195 TO AMENDMENT NO. 1194
(Purpose: To protect rights guaranteed under the first amendment)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mrs. BOXER, proposes an amendment numbered 1195 to amendment No. 1194.

In lieu of the matter proposed to be inserted, insert the following:

SEC. . RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

Mr. KENNEDY. Mr. President, if there are concerns that have been expressed about interfering with first amendment rights, what we are saying very clearly here is we are not trying to add, we are not trying to detract. Whatever is out there now with respect to first amendment rights, we have included in the legislation, and we are glad to restate it again here this afternoon.

Mr. President, I yield myself 5 minutes.

Mr. President, I am somewhat amazed at the statements of my friend from Utah about the one-sidedness of this legislation, because nothing could be farther from the truth, or any reference to the legislation itself.

It talks about pregnancy or abortion-related services—pregnancy services on the one hand and abortion-related services on the other. And then in the definitions of pregnancy or abortion-related services, the term "pregnancy or abortion-related services" includes medical, surgical, counseling, or referral services provided in a medical facility relating to pregnancy or the termination of a pregnancy.

That was very well crafted to include pro-life centers and counseling centers, referral centers, as well as those that are going to provide abortion services to women.

So, quite frankly, we have tried to demonstrate—not tried to demonstrate; we have made sure that this legislation would be balanced in that particular way, even though we were

hard-pressed to find any evidence other than anecdotal evidence about the threats to pro-life facilities.

So I think that is very important to just mention at this time.

Mr. President, the amendment that I have just sent to the desk is to eliminate any doubt that this bill will not interfere with any person's right under the first amendment or limit any existing legal remedies against forceful interference with anyone's lawful participation in speech or peaceful assembly. There are remedies now in the law for people who are protesting and exercising their first amendment rights who may be injured in the process by counterdemonstrators. They can sue for damages under State tort laws.

My amendment makes clear that nothing in this bill limits those remedies. And the amendment on behalf of myself and the Senator from California further makes clear that no new Federal suits can be brought by either side, demonstrators or counterdemonstrators. And I believe that certainly addresses any misunderstanding or misapprehension that Members may have on that issue.

It is not a new issue. It is one that we have faced during the course of the development of the legislation in the committee and as we were debating and discussing it or with our colleagues. Senator DURENBERGER and Senator KASSEBAUM have a very clear understanding as to exactly what we are doing in terms of the balance of this legislation and in relation to these first amendment rights.

So I am hopeful, Mr. President, that we will have acceptance of this amendment, which has been offered by the Senator from California and myself.

I yield 7 minutes to the Senator from California.

Mrs. BOXER. I thank the chairman for yielding to me. I am very pleased to be working with him on this amendment.

The Kennedy-Boxer second-degree amendment is a unifying amendment. It is bringing us together as Americans. It is saying quite clearly that every single person in this country has a right to have their first amendment rights protected and that, in fact, notwithstanding anything in this law, anyone can sue if their first amendment rights have been interfered with.

It does not talk about who is anti-choice or pro-choice, Mr. President. It just says all of us as Americans, whatever our view on any subject, have a right to free speech and to have that right protected.

So I really do believe that we should vote for this second-degree amendment.

Now, the Senator from Utah says that the legislation without the Coats amendment is one-sided. I refer my friend, the Senator from Utah, to page 5 and 6 of the bill where it is clearly

stated in section 2715 that anyone who commits violence, either at an abortion clinic or at a pregnancy counseling center—which, by the way, includes both sides of this equation—shall be subjected to penalties. So the bill applies quite equally, as you can see on page 6, both to abortion-related services or pregnancy-related services.

I am very pleased to be a cosponsor of this particular amendment. I am proud to be a part of it because I think where the Senator from Indiana is taking us is on a very divisive path. He is singling out one group, when, in fact, the bill itself, Mr. President, is quite even-handed. It warns all of our citizens, whatever side you are on on this subject, pro-choice or anti-choice, that you better respect people's first amendment rights, and that you better respect people's right to live in peace without violence.

So I hope that we will adopt this amendment. I want to read it again:

Notwithstanding any other provision of this act, nothing in this act shall be construed to interfere with the rights guaranteed to an individual under the first amendment to the Constitution or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

I call this, in my opinion, the unifying amendment, and I hope that it will be adopted. I hope we can then move on with this very important bill. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Will the distinguished Senator yield some time?

Mr. COATS. I will be happy to yield some time to the Senator from Utah. We are operating on a 40-minute equally divided timeframe. How much time does the Senator wish?

Mr. HATCH. If I can have 5 minutes.

Mr. COATS. I yield 5 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, as I read this amendment:

Notwithstanding any other provision of this act, nothing in this act shall be construed to interfere with the rights guaranteed to an individual under the first amendment to the Constitution or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

If that read that we intend to give the same rights to pro-life protesters as we do to pro-abortion protesters, then I could see there was fairness here. But apparently there is no desire to give exactly the same protections to those who are pro-life people as they want to give to pro-abortion people. That is the difference here.

I guess the authors of the amendment are hoping that the courts will not see this subtle difference. Why not give the same first amendment protection to the pro-life people as you are giving to the pro-abortion people in this bill? The only answer is that some

people appear to value abortion more than they do the first amendment.

Mrs. BOXER. Will the Senator yield for a moment?

Mr. HATCH. If I can just make these points and then I will be happy to.

Mrs. BOXER. Sure.

Mr. HATCH. The second-degree amendment does not address the problem of pro-abortion violence at abortion clinics. It protects the abortion facilities and this bill probably protects pro-life facilities. What it does not do is protect pro-life protesters the same as it protects pro-abortion protesters at abortion clinics.

What Senator KENNEDY has said is beside the point when he talks about other respects in which the bill is arguably neutral. It is not neutral in that respect, and that is the defect in this bill; it is a constitutional defect in this bill. The second-degree amendment of the distinguished Senators from Massachusetts and California does not give those whose first amendment rights are interfered with any right to enforce those rights. That is the constitutional point that I am making.

If you read on page 5, it says:

Prohibited Activities. Whoever (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from obtaining or providing pregnancy or abortion-related services.

It is limited to protect those who are pro-abortion at or near these facilities, but it does not protect the pro-life people from vicious attacks or violence by pro-abortion people at abortion clinics. That is the point that I am making. It is an important point. It is one you just cannot cast aside because you write an amendment that looks like you are protecting everybody's first amendment rights and freedom. The fact is that amendment does not do that. It does not resolve that particular problem.

The inequality in this bill is at the abortion clinics. That is where the inequality is.

I yield back the remainder of my time to the distinguished Senator from Indiana.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator is just incorrect. If he would look at page 7 of the legislation, it talks about rights of action: Any person aggrieved by reason of the conduct, who is a person "involved in providing or seeking to provide or obtaining or seeking to obtain services in a medical facility that provides pregnancy or abortion-related services."

So it limits the rights of action. Then the legislation in the rules of construction talks about "Nothing in

this section will be construed or interpreted to prohibit expression protected by the first amendment or create new remedies for interference with expressive acts protected by the first amendment occurring outside of a medical facility regardless"—regardless—"of the point of view expressed."

The Senator can keep saying that it only does it for one and does not do it for the other and can take up all the time. We are certainly satisfied, and not only are we satisfied, but we have the support of Senator DURENBERGER and Senator KASSEBAUM, who originally took that position, who were careful in terms of making sure that it was going to be balanced and fair, evenhanded. That is what their letter is all about. How much time do I have?

The PRESIDING OFFICER. The Senator has 11 minutes 26 seconds.

Mr. KENNEDY. I yield 4 minutes to the Senator from California.

Mrs. BOXER. Mr. President, I thank the chairman for yielding. Again, it is strange to have legislation in front of you which is clearly evenhanded which has the support of people who feel the same way as the Senator from Indiana and the Senator from Utah on the issue of abortion and believe that the Coats amendment is wrong and the Kennedy-Boxer approach is correct. It is like we are debating two different things.

Again, I urge my colleagues and friends to simply read the underlying bill. Page 5, page 6, page 7 repeats the appropriate language over and over again. What it basically says is this: If you commit violent acts or you intimidate, harass or hurt people, no matter what your views are, you are going to be in trouble for it. That is what this bill ought to do. It should stop violence no matter what your philosophical point of view is on the issue of abortion. And that is what the bill does.

The second-degree amendment should put the Senators' minds to rest. If they are not happy with the legislation, my goodness, it is clear enough, as Senator KENNEDY has explained over and over and over again. He now offers this amendment which clearly states that every single person in the United States of America is entitled to first amendment rights, and notwithstanding this legislation or any other, they have the right to bring action if their rights are interfered with.

So, Mr. President, I do not mind debating it on the facts. It is fair to disagree with one another on the facts, but I have to second the Senator from Massachusetts, the chairman of the committee, on his point, which simply says that this bill is evenhanded. To stand up here and say that it is not goes against the very words in this bill which clearly show that it relates to pregnancy or abortion-related services. So we are covering both aspects here. I cannot imagine how a Senator, like Senator DURENBERGER would be with

us on this bill, and others, who happen to share the view of the two Senators from Utah and Indiana; that they would not be with us if they felt we were not being evenhanded. I yield the floor.

Mr. HATCH. Will the Senator yield to me?

Mr. COATS. I will be happy to yield the Senator from Utah additional time to respond.

Mr. HATCH. I would like to ask the question. Can either the Senator from Massachusetts or the Senator from California answer this question? Can pro-abortion protesters be punished for violence at abortion clinics? And the answer, I might as well give to you, is no, under this bill. Abortion protesters may be protected at pro-life clinics or pro-life facilities, but pro-abortion protesters cannot be punished under this bill for violence at abortion clinics the way it is written. And the answer to that is no, even if they are violent against the pro-life people.

No matter what they do at abortion clinics, they are not punished under this bill. That is as clear cut as I can make it, and that is what your bill says and that is why the COATS amendment is so needed.

I yield back the remainder of my time.

Mr. KENNEDY. I yield myself 1 minute. That is the most cockamamie reasoning I have heard in the Senate.

Mr. HATCH. Show me in the bill.

Mr. KENNEDY. What we are talking about is the ability to gain entrance. We are staying away from the protesters outside, pro-life or other protesters outside of a clinic. We are staying away from that. The Senator might like to get into that, but we are staying away. We have a very targeted, limited guarantee to individuals who want to be able to go into that facility. That is what we are talking about. Now you can debate all afternoon if you want to and say this is dealing with protesters here and protesters there. If that protester is threatening with violence and committing violence or obstructing the entrance there, then they are covered in here.

What happens out across the street we are not saying; we are not getting involved in that. We are saying whatever the law is on the first amendment now is the law when we pass that bill. So if the Senator wants to say, "Well, what happens if there are pro-choice demonstrators, where in the bill are you handling pro-choice demonstrators; show it to me." If they commit violence at a facility, they are included. If they do not, and fall outside the definitions, they are not. That is true whether it is a pro-life facility or a facility that offers abortion. That is the answer.

Mr. HATCH. Then the answer is "no," that it is not true that pro-abortionists can be punished for violence at

abortion clinics. What we are asking here is can you punish pro-abortion protesters or pro-choice protesters, whatever you want to call them, if they attack pro-life protesters at an abortion clinic, and the answer is "no" under this bill.

Mr. KENNEDY. Excuse me. Yes, they are, under this bill.

Mr. HATCH. Show me the language, because it is not in here.

Mrs. BOXER. If I could just say—

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 3 more minutes.

Mrs. BOXER. I thank the Senator.

I would just add my voice to the incredulous response of the Senator from Massachusetts to some of these statements.

Whether or not this bill passes, there are laws in each and every State against violence, against abuse, against attack. What we are looking at in this bill is the clinics themselves, regardless of whether they are providing abortion services or whether they are providing pregnancy counseling and alternatives to abortion.

But for the Senator to stand up and say that people who commit violent acts are not going to be arrested or detained—in other words, what I am saying to the Senator is that we have laws in this land that deal with this. The Senator from Massachusetts says we are talking about clinics, we are talking about people having the right to move forward, to gain entrance to a pregnancy counseling center, as you may call it, or to a health facility where abortion is provided. This is evenhanded.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. People who break the law will pay the consequences.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. HATCH. Many States have laws that would provide some action against it. We are talking about a piece of legislation here you are trying to pass that is unconstitutional in this respect because it is not neutral. The point I am making is the bill does not provide any remedies for pro-abortion violence at abortion clinics. Pro-choicers will not be subject to the same penalties as pro-lifers engaged in identical conduct at the same site.

Now, that is the problem with this bill. That is the problem that the distinguished Senator from Indiana is trying to correct. If he does not correct it, this bill will not be neutral, this bill will not be constitutional, and all the efforts that you are putting forth at this point will be in vain.

What is the problem with clarifying the language and saying that if pro-abortion or pro-choice protesters attack pro-life protesters at an abortion clinic, they can be subject to the same penalties as pro-life protesters who at-

tack pro-abortion protesters? I do not think the pro-life protesters should do that. I do not think that they should be able to get away with that. But neither do I think that pro-choice protesters ought to be able to get away with that. That is a fundamental weakness of this bill. To his credit, the distinguished Senator from Indiana is pointing that out very clearly. That is what his amendment is about. Frankly, I do not see any argument. To just say everybody has the first amendment rights does not cure the defect.

Mr. COATS. Mr. President, may I inquire how much time remains?

The PRESIDING OFFICER. The Senator from Indiana has 14 minutes and 51 seconds remaining.

Mr. COATS. And the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator from Massachusetts has 4 minutes remaining.

Mr. COATS. Mr. President, let me make a couple of points. No. 1, what Senator KENNEDY has attempted to do is utilize a rule of construction to address the concern that has been raised by myself and the Senator from Utah and others, and particularly in regards to that rule of construction I would like to raise the question as to whether or not that validly addresses the issue the authors think it does.

We received in committee written testimony from two distinguished professors, Professor Paulson from the University of Minnesota Law School, as well as a recognized constitutional scholar, Prof. Michael McConnell from the University of Chicago Law School, and I quote from them. They say:

Such a savings provision—

That is, this rule of construction—

does nothing to save the statute from vagueness or overbreadth problems. It does not define more precisely the terms being used, nor does it narrow the scope of constitutional applications of the statute. Indeed, Senate bill 636 omits language contained in the House version of the bill which, while insufficient, at least makes clear that certain expressive activity is not sought to be regulated. The House bill, as marked up in committee, provides that this section does not prohibit any expressive conduct including peaceful pickets or peaceful protests protected by the first amendment.

So point No. 1 is we question whether or not a rule of construction can be the savings provision that the authors intend it to be to deal with this problem of providing the first amendment rights to individuals protesting the actions taking place at the abortion clinics. And some distinguished constitutional law professors have said it does not serve that purpose.

Second, we are in trouble here today because the Kennedy amendment adds a new standard by which individuals can be held accountable and subject to civil and criminal penalties. It adds the standard of physical obstruction. Much of our debate today has centered

around this new standard, but people have not realized that this was added to the standards outlined in the original Civil Rights Act.

Now, physical obstruction gets us into trouble here in defining just how we apply these penalties, because we get into the situation talked about this morning of a nun or group of nuns or religious protesters or any protesters occupying a public place, say, a sidewalk, in front of an abortion clinic in a peaceful protest, say, sitting on the sidewalk singing hymns or praying, and constituting physical obstruction because those who are seeking access to the health clinic have to step around or step over or step through those individuals.

That now is a cause of action against those individuals who are lawfully protesting and subjects them to both civil and criminal penalties and may find themselves in jail paying a very substantial fine.

"Physical obstruction" is the term that is new to civil rights law. The bill presented here by the Senator from Massachusetts is modeled on the 1964 civil rights law, but that law did not contain the phrase "physical obstruction," and therefore we are dealing with a new standard.

I would like to get back to the point everyone was talking about this morning in terms of the goal of this bill. The goal of this bill, as proponents of the bill talked about this morning, was to end the violence; we have to find a way to stop the violence that is occurring at these abortion facilities.

We all abhor that violence, and we all are seeking to find a remedy for that violence, to at least reduce it, and hopefully eliminate it.

The Senator from Massachusetts has proposed that we apply portions of the 1964 Civil Rights Act with very tough penalties. He said we have to have something with teeth in it in order to stop this violence. So we have these very tough civil and criminal penalties that are applied.

But as the Senator from Utah has repeated, and I have said over and over, they are not applied in an equitable manner. So violence that might occur at an abortion facility—force, intimidation, interference—which is conducted by pro-life individuals protesting the action taking place at that clinic against pro-abortion activists, that violence raises causes of action with very severe civil-criminal penalties against persons perpetrating that violence. But if the tables are turned and the pro-abortion individuals do exactly the same thing to the pro-life individuals at that clinic, no new cause of action arises.

That is the inequity which exists in the substitute amendment offered by the Senator from Massachusetts, which we are trying to remedy with these amendments. Senator SMITH offered an

amendment earlier, which, unfortunately, was rejected, trying to separate the penalties for violent and non-violent. It was amended by Senator KENNEDY and they are reduced thankfully, but the penalties still exist.

What I am trying to do is simply say that those individuals who are exercising lawful protest, who are guaranteed them under their first amendment rights, if those individuals are subject to the same kind of threat of force, attempt of force, intimidation by proabortion activists, if they are subject to that same action, they ought to also have a cause of action that provides equity on both sides. It is only when we have that equity on both sides that we will reduce the violence or hopefully eliminate the violence that is currently taking place which we all do not condone and we all abhor.

That is the reason, in order to get to that question, in order to get to a vote on the Coats amendment, that we have to defeat the second-degree amendment offered by Senator KENNEDY which I contend—the Senator from Utah and many others contend—will not address the question.

So, Mr. President, at the appropriate time, when the debate is finished, I will move to table that, and we will have a vote on it.

At this point I yield, reserving the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

Mr. President, I know that the Senator from Indiana is troubled by the words "physical obstruction." The Senator used that very term in his own bill at the time of the markup, justifiably so.

I will include in the RECORD the justification for that, the United States Code and the Supreme Court cases which define that as a definable term.

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

KEY TERMS IN BILL ARE NOT UNCONSTITUTIONALLY VAGUE OR OVERBROAD

1. PHYSICAL OBSTRUCTION

In *Cameron v. Johnson*, 390 U.S. 611 (1968), the Supreme Court held that a statute prohibiting picketing in such a manner as to "obstruct or unreasonably interfere with free ingress or egress" to and from court-houses was not vague or overbroad under the First Amendment. The Court held that the statute "clearly and precisely delineates its reach in words of common understanding. It is a precise and narrowly drawn regulatory statute." Id. at 616. The term used in our bill—"physically obstruct"—is narrower than "obstruct or unreasonably interfere," and therefore clearly valid under *Cameron*.

Many other statutes prohibit "obstructions" of various kinds. For example,

43 U.S.C. 1063, prohibiting obstruction of transit over public lands by the use of "force, threats, intimidation . . . or other unlawful means" has been on the books since 1885, and was upheld by the Supreme Court in 1922.

See also 18 U.S.C. 1507, prohibiting "interfering with, obstructing, or impeding the administration of justice";

18 U.S.C. 112, prohibiting "obstruction" of a foreign official in the performance of his duties;

18 U.S.C. 1752, prohibiting "obstructing or impeding ingress or egress" to or from designated federal grounds.

Mr. KENNEDY. Second, Mr. President, a pro-choice activist who blockades or bombs a pro-life counseling center is subject to the exact same criminal and civil liability as a pro-life activist who blockades or bombs an abortion clinic, period.

Finally, Mr. President, I will include in the RECORD the resolution of the State attorney generals, the National Association of Attorney Generals, a resolution that was passed without opposition that endorses this legislation.

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

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL RESOLUTION TO SUPPORT LEGISLATION TO PROTECT PATIENTS AND HEALTH CARE PERSONNEL AT FAMILY PLANNING CLINICS

Whereas, as chief legal officers for our respective states, we take pride in our diverse communities, their historic respect for life and property, and the American tradition of open and peaceful discussion of issues of public policy; and

Whereas, we strongly support every citizen's constitutional freedom of speech, which includes peaceful, legal public witness, assembly and picketing; and

Whereas, we recognize that many citizens of the country hold deep convictions regarding the abortion issue; and

Whereas, bombing, arson, murder and any other acts of criminal violence are clearly not appropriate means of addressing issues of public policy in the United States; and

Whereas, the recent murder of Dr. Gunn outside his clinic in Florida is the latest example of violence against family planning clinics; and

Whereas, since 1980 in the United States, over 400 bombings, arsons and acts of vandalism have been directed against family planning clinics; and

Whereas, the recent United States Supreme Court ruling in *Bray vs. Alexandria*, holding that federal courts have no jurisdiction under existing civil rights laws to act to protect patients and employees of family planning facilities, made clear the need for Congress to act; and

Whereas, the Congress is considering legislation such as H.R. 796, The Freedom of Access to Clinic Entrances Act of 1993, which would, among other things;

1. Make assaults and attacks on medical personnel and property at family planning facilities a federal criminal offense and make clear the federal law enforcements' power to act.

2. Establishes a private right of action for parties injured by such criminal conduct.

3. Authorizes the United States Attorney General to bring civil suits to obtain injunctions against offensive conduct, seek damages for the victims, and impose stiff fines on the perpetrators; and

Whereas, many individuals including United States Attorney General Janet Reno have already spoken out forcefully in support of this sensible legislation;

Now, Therefore, Be It Resolved That the National Association of Attorneys General:

1. While not taking a public position on the abortion issue, condemns any and all acts of

criminal violence directed against family planning clinics; and

2. Urges Congress to adopt legislation designed to protect women, physicians and other health personnel from violence aimed at family planning clinics across the country where abortions are performed, without unduly infringing on the right to peaceful protest; and

3. Commends those who pursue peaceful, legal discussion of the abortion issue and appeals to all citizens concerned about the abortion issue to conduct all public discussions in a peaceful and legal manner; and

4. Urges Congress to expressly authorize state Attorneys General to enforce in the federal courts in their states the provisions of any federal law aimed at violence at family planning facilities; and

5. Authorizes its Executive Director and General Counsel to transmit these views to appropriate members of the Administration, Congress, and other interested individuals and associations.

Mr. KENNEDY. Mr. President, I think that we have responded to these questions both in the legislation and with the second-degree amendment.

I yield my remaining time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President. I appreciate the Senator yielding.

Mr. President, this amendment is no remedy at all. In fact, this amendment is what might be called sometimes a killer amendment. It seeks to change the legislation by expanding it to unenforceability. It expands the language of the legislation to cover demonstrators and their activities in regards to the whole clinic access issue.

What about the principles, Mr. President? What about the people who are actually using the clinic, seeking to use the clinic, the people who work there? The principles of women, the clinic owners, the doctors—those are the individuals to whom the bill is addressed. And the whole idea behind this legislation and the specific language of the legislation protects access to the clinics, protects the woman in the exercise of her constitutional rights.

Neither side with regard to third parties, the demonstrators, is addressed or protected in this bill. This does not say you can be a pro-life demonstrator or a pro-choice demonstrator, and you are going to have a private right created under this legislation. It only creates a right of action with regard to the specific individuals who are directly affected, to the principals in this whole debate, not to third parties.

This amendment would expand it to third parties, and would thereby give rise to the unenforceability of the law. But probably as insidiously or even more insidiously, it will expand and change this from a clinic access bill to a clinic harassment bill by further clogging the Federal courts in the process.

I point out, Mr. President, that there is evidence and we have seen letters

from fundraisers on the pro-life side of this issue, the larger controversy involved here, that says quite simply, that lawsuits will be used to continue the harassment and the violence as a way to continue to promote that particular cause.

Quite frankly, the organization which sent out a fundraising letter said:

Your gift today will help the American Anti-Persecution League establish a legal offense fund. Notice I did not write legal defense fund. Instead AAPL will fund attorneys to go on the offensive against anyone who abuses pro-life demonstrators. They are going to play legal hardball and they are going to win. Our weapons will be multiple civil lawsuits.

This amendment gives them the right to file those multiple civil rights lawsuits.

I will just say, Mr. President, this is a killer amendment. This is a hostile amendment.

I encourage the Members of the Senate to vote against it.

Thank you.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I just simply state that once again we are talking about two rights here, a woman's right to an abortion, and first amendment right guaranteed to every American to freedom of speech, freedom of assembly, and the right to protest actions that they in good conscience do not believe in.

What we are trying to do with this bill is to find a balance between both of those rights. No one is seeking to deny women their constitutionally court-ordered guaranteed right to abortion. I do not agree with that. But it is a legal right available to them, and nothing that we are doing seeks to take that away.

By the same token, we do not want to jeopardize the first amendment rights which, after all, are first amendment rights that we hold very dear and very precious. Therefore, the Coats amendment seeks to address that question I think in the only valid way.

I urge our colleagues to give us an opportunity to have a straight up-or-down vote on that question; whether or not we are going to balance those rights or whether they are going to be one-sided.

We cannot have a vote on that unless we table the Kennedy second-degree amendment. Again, at the appropriate time, I will offer a motion to do so.

In response to the argument of the Senator from Illinois about clogging up the courts, I think back to the time of the march for racial equality and the civil rights protests of the sixties. I do not think anybody worried too much about clogging up the courts. In fact, instead of clogging up the courts, we ended up providing the very guarantees of rights to minorities in this country that were long overdue.

So I do not think we should use the argument of clogging up the courts as a way of saying the rights are not available to Americans who are protesting issues that they feel very passionately and very deeply about and are doing so in a legal manner.

Therefore, I hope that we can get to the underlying question, and solve this so that we can move forward and do what we all really want to do, collectively, and that is to end this violence that is occurring at these abortion clinics around the country and related to the whole issue of cause of abortions.

This is a debate that deeply divides us. We need to have this debate. It is important that individuals from both sides of the debate have the opportunity to express their deeply-held views. It is also important that we do not do anything to deny their right to express those views.

Hopefully we can conduct that debate on a national basis and on a civil basis and not in a way that incites or promotes any kind of violence. That is what we are really all about here. There really should be no disagreement on this issue.

Mr. President, I yield reserving whatever remaining time I might have.

The PRESIDING OFFICER. All the time of the Senator from Massachusetts has expired on the amendment.

Mr. COATS. Mr. President, I yield back all my time.

I move to table the Kennedy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 370 Leg.]

YEAS—36

Bennett	Exon	Lott
Bond	Fairecloth	Lugar
Brown	Ford	Mack
Burns	Gramm	McCain
Coats	Grassley	McConnell
Cochran	Gregg	Murkowski
Coverdell	Hatch	Nickles
Craig	Hatfield	Pressler
D'Amato	Heflin	Roth
Danforth	Helms	Smith
DeConcini	Johnston	Thurmond
Dole	Kempthorne	Wallop

NAYS—63

Akaka	Breaux	Conrad
Baucus	Bryan	Daschle
Biden	Bumpers	Dodd
Bingaman	Byrd	Domenici
Boren	Campbell	Durenberger
Boxer	Chafee	Feingold
Bradley	Cohen	Feinstein

Glenn	Leahy	Reid
Gorton	Levin	Riegle
Graham	Lieberman	Robb
Harkin	Mathews	Rockefeller
Hollings	Metzenbaum	Sarbanes
Hutchison	Mikulski	Sasser
Inouye	Mitchell	Shelby
Jeffords	Moseley-Braun	Simon
Kassebaum	Moynihan	Simpson
Kennedy	Murray	Specter
Kerrey	Nunn	Stevens
Kerry	Packwood	Warner
Kohl	Pell	Wellstone
Lautenberg	Pryor	Wofford

NOT VOTING—1

Dorgan

So the motion to lay on the table the amendment (No. 1195) was rejected.

(Later the following occurred:)

Mr. BREAUX. Mr. President, on rollcall No. 370, I was present and voted "no." The official record has me listed as absent. Therefore, I ask unanimous consent that the official record be corrected to accurately reflect my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I think yeas and nays had been ordered earlier. I would be glad to proceed with voice votes on these two amendments, if it is agreeable. I have talked to the Senator from Indiana, and it is acceptable to him. If there is no other objection by the membership, I ask unanimous consent that the votes that were ordered earlier be vitiated.

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

The question is on agreeing to the second-degree amendment.

The amendment (No. 1195) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment, as amended.

The amendment (No. 1194), as amended, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I understand my friend from Utah has an amendment that will be offered by him and then a substitute; am I correct?

Mr. HATCH. That is correct. And I do not think we need to take all the time on this amendment. We will try to be as short as we can.

Mr. KENNEDY. We will try to expedite this. We may have a second-degree amendment, but we will try to expedite this and get an early resolution of these matters.

I thank the membership.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 1196

(Purpose: To prevent S. 636 from being used as a vehicle to protect illegal abortions)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1196.

Mr. HATCH. 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 6, lines 1 and 6, amend proposed sections 2715(a) (1) and (2) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

On page 10, line 8, change "and" to "or".

On page 11, line 7, add the following new subsection 2715(e)(3):

"(3) **LAWFUL.**—The term 'lawful' means in compliance with applicable laws and regulations relating to pregnancy or abortion-related services."

Remember the remaining provisions of subsection 2715(e).

The PRESIDING OFFICER. There will be order in the Chamber. The Senator from Utah has the floor. There will be order in the Chamber. All conversation will desist.

The Senator may proceed.

Mr. HATCH. Mr. President, I offer an amendment that would remove the protections that the current version of S. 636 would accord illegal abortions. The current version of S. 636, unlike the original version, would provide blanket protection to illegal abortions. Indeed, S. 636 might well effectively cripple most or all State regulation of abortion, including regulation that serves solely to protect the health of women. For example, an unlicensed late-term abortionist would have a civil cause of action for at least \$5,000 in compensatory damages and for punitive damages against State officials who attempted to prevent him from performing illegal abortions.

The stated rationale for S. 636 is that those exercising a legally protected right should be protected in exercising that right. That rationale plainly does not extend to unlawful conduct such as illegal abortions.

My amendment would remedy this defect in S. 636 by ensuring that it does not cover illegal abortions.

The supporters of S. 636 may claim that it would not create any liability for enforcement by State or local law enforcement authorities of State or local laws. This claim, however, is not supported by the unambiguous text of the bill. Nothing in the provision defining prohibited activities exempts enforcement activities by State officials. Likewise, the relevant rule of construc-

tion set forth in S. 636 provides merely that the amendment shall not be construed to "prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section" and I want to emphasize that it does not provide that S. 636 shall not be construed to subject State officials to liability for enforcement activities.

In short, S. 636 would nominally permit enforcement of State laws regulating abortion, but it would give those subject to enforcement a separate, and extremely potent, civil cause of action against State officials. Moreover, S. 636 would also give illegal abortionists the same extremely potent civil cause of action against any Good Samaritan citizen who responsibly attempted to deter an imminent and dangerous illegal abortion.

It has been suggested by the supporters of S. 636 that protection of illegal abortions is necessary to prevent the possibility of abusive litigation discovery.

But the danger of abusive discovery exists in every piece of litigation. Our system has developed a workable method of preventing such abuses.

The trial judge will control what discovery is and is not permissible. It is disturbing, to say the least, that the amendment would protect illegal abortions in order to eliminate routine aspects of litigation that all other litigants in this country face.

So I urge my colleagues to support this amendment. Basically, all that it does is prevent blanket protection for illegal abortions. I think that is a worthy objective. That is why I offer it. I reserve the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, I oppose inserting the word "lawful" to make the bill apply only when force or obstruction is used against lawful abortion services. The amendment may sound uncontroversial, even appealing on its face. In reality, however, it is unnecessary and would seriously undermine the bill.

First, this is unnecessary to ensure that State law enforcement officials cannot be sued for enforcing State abortion laws. This bill does not authorize such suits. It applies only to private, not official, conduct.

In the legislation on page 10, it points out:

Nothing in this section shall be construed or interpreted to deprive State and local law enforcement of responsibility for prosecuting the acts that may be violations of this section that are violations of State or local law.

So if there is illegal activity, the States still have the requirement and the responsibility for that kind of enforcement and they are the ones who

ought to consider it. If there are parties that know of illegal activities, they ought to be in a position of reporting them to the State authorities to enforce those laws. That is the way, basically, our Federal system works.

The committee report states the act creates no civil or criminal liability for the enforcement by State or local law enforcement authorities of State or local laws, including those regulating the performance of abortion or availability of abortion-related services.

This could not be much clearer as to what is expected and not expected in terms of State authority.

There is, Mr. President, no evidence, in any event, that the providers that are being targeted with blockades, arson and assault are providing illegal abortions. You would think you would want to be able to make the case that this is a problem if we are going to try and address it. But we do not believe that case has been made; neither does the Attorney General believe that that case has been made. That is not really the problem, as we understand it.

As the Senator pointed out, the problem with inserting the word "lawful" in the legislation, as this amendment would do, is that it would give every defendant in both criminal and civil cases a chance to argue that his or her conduct did not violate this law because the provider that was targeted was not acting lawfully. Defendants would routinely argue that the clinics they were blockading or bombing or doctors they assaulted were not complying with the State regulations on such matters as parental notice, informed consent or waiting periods. And to assert this defense, the defendant then would ask for discovery of all the provider's records on these matters.

The Justice Department believes that this would be a litigation nightmare, and I agree. Every prosecution of someone who blockaded a clinic or assaulted a doctor would be converted effectively into a fishing expedition and into the practices of the victim, the clinic or the doctor. It is not enough to argue the rules limiting discovery might help to prevent abuses when there is no reason to enact the law in the form that is subject to such abuse.

So, Mr. President, there is no reason that private parties charged with violating this law should not be able to defend themselves by claiming that they were merely trying to enforce State laws and prevent unlawful abortions. The States can do that job themselves. No matter how some might feel about abortion, they should not be permitted to take the law into their own hands.

What we do not want to encourage are vigilante movements in various communities. We have that now with Operation Rescue. Just to give them another opportunity to go ahead with their harassment that they are involved in and threatening the lives and

the well-being and the health of our fellow citizens is not something that this bill is about or that we in this Senate should be about.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, my amendment simply remedies a major defect in this bill by ensuring that it does not cover illegal abortions. Why not limit protections of this bill to lawful abortions? I cannot imagine any rationale that could be used to rebut the import of that question.

This whole debate shows how extreme this bill is on the proabortion side. I think it would have a lot more support if it was not so extreme, if it did not rush to support illegal abortions and illegal abortionists, to avoid the mere risk of abusive discovery, which is about the only argument they can make. That is a risk every litigant faces. I have been in all kinds of litigation in my lifetime as an attorney. Every case involves the potential abuse of discovery. But to use that as an excuse to not knock out illegal abortions in this bill shows how extreme this bill is.

S. 636 very simply protects illegal abortion. It is that simple. Why is it so difficult to want to knock it out? Why is it the Holy Grail of all abortion legislation, that you cannot knock out illegal abortions? I do not know, but that is all that is involved in this amendment. We are making the bill apply only to lawful abortions. That seems to be fair. It seems to be right. It seems to be legal. It seems to make sense. It certainly is a good argument to make.

There is not much more I care to say about it. I am prepared to go to a vote. I am prepared to yield back the remainder of my time.

Mr. NICKLES. Will the Senator yield?

Mr. HATCH. I will be happy to yield whatever time the Senator needs.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 13 minutes 54 seconds.

Mr. NICKLES. Mr. President, one, I wish to congratulate and compliment Senator HATCH. I, frankly, am shocked and surprised that the manager of the bill will not accept this amendment. It is a heck of a thing to say that we want to have this additional Federal protection, including criminal penalties and civil remedies, even for illegal abortion.

When I heard Senator HATCH had this amendment, I thought this was an amendment that would not really be debated; that it would be accepted. I hope that the Senator from Massachusetts will accept this amendment. Even from his perspective, I do not see that

this amendment would be detrimental to his case or his cause because I know—or I think I know—that the Senator from Massachusetts does not advocate in any way, shape or form illegal abortion.

So I hope that the Senator will agree with the Senator from Utah and accept this amendment. Maybe that is not a possibility. Maybe the Senator has the votes to kill any amendment that is offered on this side. But I hope that some of our colleagues will listen to some of the debate that has been raised by my friends and colleagues from New Hampshire and Indiana.

I will just touch on a couple of the comments that were made and a couple of the amendments offered. My friend and colleague from New Hampshire offered an amendment that said, "Well, wait a minute, let's look at these penalties. The penalties do not apply to any civil rights disturbances; they apply only to ones related to abortion services and only to those people who might be involved in obstruction of access to an abortion clinic."

What about the so-called proabortion rights people who are harassing people who are on the pro-life side? The Senator from Indiana raised this question. I know I heard my friends and colleagues who were debating the other side of the issue say this was an even-handed bill. It is not. The criminal penalties and civil remedies protect only those persons on the proabortion rights side.

I think most of our colleagues are aware of the fact that many times, when these debates and demonstrations take place outside of a clinic, you have groups on both sides of the issue. Unfortunately, this bill only has remedies and protections for those on the proabortion rights side and it increases penalties—criminal penalties—felonies applicable to those who are engaged in demonstrations, peaceful demonstrations, lawful demonstrations on the prolife side of the question. That is not equitable. That is not fair. This bill is not balanced.

My colleague from New Hampshire said that the penalties were extreme, and they are. To have 6 months' and then have 18 months' penalties for individuals who are lawfully, peacefully demonstrating their objection to abortion is extreme. I cannot help but think that there are some inequities. I can see a case where at a hospital, if they were picketing or demonstrating against a hospital because they performed abortion services, they could have the full weight of this new Federal law thrown against them, fines of \$10,000 for the first offense and \$25,000 for the second offense and 18 months in jail. And there might be a couple of nuns who are there praying together trying to change the policy of this hospital. They could be put into jail for 18 months and fined \$25,000, and my guess

is for most nuns that is a very significant fine. My guess is that the \$25,000 fine for most people who would engage in this type of demonstration is a very significant fine.

But I believe it is also legal if the nurses' union wanted to demonstrate and picket outside that hospital for higher wages. That would be legal, no restrictions whatsoever. I just find this to be very one-sided, very unbalanced, and certainly not fair. No question about it, it is definitely a suppression of freedom of speech and freedom of assembly. I do not have any doubt it is going to be declared unconstitutional. But I am bothered by a lot of the debate, and I am bothered by this amendment because this amendment seemed so acceptable. I have a hard time seeing why we want to have a new Federal statute to improve access for illegal abortion.

Again, I encourage the proponents of this bill to accept this amendment, and I compliment my friend and colleague from Utah for offering it. I hope it would be accepted and included as a small improvement on a bill that I think needs a lot of improvement.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized for up to 5 minutes.

Mrs. BOXER. I thank the Chair very much.

I call the amendment that has been offered the vigilante amendment, Mr. President. If people want to put an end to violence at clinics, you have to vote against this amendment, or for the substitute, if one is offered. Let me tell you why.

Any protester who might be violent—and as you know, we support the right of peaceful protest, but any protester that might be violent at a clinic, who wanted to attack a doctor or a nurse, could simply say in defense: I shot that doctor because I thought there was an unlawful abortion going on.

Let me repeat that. Any violent protester who is determined to commit violence, Mr. President, under this amendment could commit this act of terror and violence and say as an excuse that I thought there was an illegal abortion going on.

I would like to point out how ironic this particular amendment is because those who offer it always talk about States rights and how important States rights are, and about how the Federal Government should not trample on States rights.

The fact is we have State laws that regulate these clinics. We have State laws that tell us what a legal abortion is. To take away that right and put it in the hands of the people who have shown they support violence undermines this bill that has been worked on

so long and so hard by the Senator from Massachusetts and his committee, and which has bipartisan support in the Senate—and I might add support from those who call themselves pro-choice and antichoice. This is a killer amendment, and we have to defeat it.

What we need to do is to make sure our States enforce the law, not give the law over to people who could under this amendment kill and then use it as an excuse by saying that they thought there was something illegal going on. That is vigilantism. Anyone who is for law and order and for the States being able to enforce the law will vote this down.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator controls 12 minutes 22 seconds.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, the Senator from California has stated this very well. No. 1, different States have different laws governing these kinds of procedures. In Massachusetts, they are different from California, and they are different from New York. So the question is who is going to enforce them. Are we going to let the States enforce them or are we going to have private parties enforce them? And beyond that, there was no representation during the course of the hearings, there has been no representation by any of the law enforcement officials, there has been no pleading by the States attorneys general that they cannot control their situations with regard to illegal abortions. They are not asking the Congress of the United States for this kind of authority and power.

We have made it very explicit in the legislation that they have the responsibility to enforce their State laws, and that is what is important.

In listening to the argument here, to say how in the world can you possibly support a bill if there is going to be illegality going on in the State, we just had the crime bill. Why do we not say we are not going to provide funding to the State of Oklahoma until they stop all crime?

Let us deal with the issues, Mr. President. The issues are targeted; they are focused. They deal with facilities that are going to provide counseling for prolife, and we are also going to have protections for individuals who want to exercise their constitutional rights on abortion. It is targeted and balanced. That is why we have the unanimous support of the State attorneys general and why we have been able to gain the strong bipartisan support on this particular measure.

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

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH].

Mr. HATCH. I have to say that I am always impressed whenever the distinguished Senator from Massachusetts stands up and argues for the rights of the States; it is always an elevating and very good thing to hear, but the fact is that all I am trying to prevent is benefits to the illegal abortionists from this bill.

Why is it so difficult for the sponsors of this bill to outlaw illegal abortion and to not allow the benefits of this bill to go to illegal abortionists? To me it makes sense. I think it would make sense to any fair person. Why should we be worrying about protecting the rights of illegal abortionists and how can we let the sponsors get away with their own excuse that the amendment might lead to abusive discovery in litigation or it might lead to more litigation? It will not, anyway. This amendment does not override States rights in any degree. On the contrary, it simply makes sure that Federal law does not give any benefits for what is unlawful under State law.

You cannot listen to this debate without worrying about this bill and how radical it is. The fact is it is a very radical bill. And when they stand here and fight against getting benefits to illegal abortionists or for illegal abortion out of the bill, you know something is wrong.

I think this bill could have a lot more support if they would fine tune some of these things. I have to say the amendments we have been bringing up are very good ones. But I cannot imagine a better amendment than one that says that illegal abortions should not benefit from this bill, and illegal abortionists should not benefit from this bill.

There are no State laws being overriden here. The fact of the matter is that the very arguments being made by the proponents of this bill are so radical that you have to question an awful lot of other things in this bill as well. But right now, I am limiting my questioning to just one thing. Let us get rid of illegal abortion, and let us not give rights to illegal abortionists. Let us not protect illegal abortion. Let us not worry about whether it is going to cause abusive discovery because judges are very capable of taking care of that as they do in every litigation case.

I just do not understand the arguments from the other side. All we are simply saying is that the Federal law should not give benefits for what is unlawful under State law. This bill allows it. This bill permits those benefits.

I have to say I am appalled at the way our colleagues do not seem to un-

derstand that. All we are going to do is just try to make whatever benefits come from this bill come from lawful things rather than illegal things.

I yield the remainder of the time to the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 5 minutes 18 seconds.

Mr. NICKLES. Mr. President, I wish to make a couple of comments. I thank my friend and colleague from Utah. I know I heard Senator KENNEDY state that this bill is balanced. I ask the Senator to correct me if I am wrong, but this bill is not balanced, at least in my opinion, because it allows people who are engaged in a peaceful sit-in to be sued, to be subjected to criminal penalties. And the counter of that, if you had people on the pro-abortion side who would harass or intimidate or get engaged in pushing or shoving or some types of violence, the pro-lifers do not have civil remedies available. There are no criminal penalties against anyone who would be on the pro-abortion side of an argument that might turn violent.

So there are civil and criminal penalties against people engaged in demonstrating outside of abortion clinics but not the other way around. That is not balanced. That is one-sided. That is not fair.

I ask my friend and colleague from Massachusetts if I am incorrect, and I would also ask him—this bill protects persons who are providing or obtaining pregnancy or abortion-related services. I ask my colleague. Does that also include demonstrators on the pro-abortion rights side? Again there are many cases. Demonstrations have people on the pro-life side. But does the bill protect escorts? Does it protect people who would be demonstrating in favor of abortion rights? Could they be designated as escorts for the day? And would they have protections, enhanced protection under this bill?

Mr. KENNEDY. The response is that we were debating that about 4 or 5 hours ago. We are glad to come back and revisit it, if that is the desire of the Senator from Oklahoma.

It provides the protections for the individuals and for the doctors and medical team at the particular facility, whether it is a facility that is counseling and conferring on the pro-life on pregnancy matters or whether on the abortion services as well. Those are protected in terms of the pro-life counseling and those that are involved in the clinical services.

Mr. NICKLES. If the Senator will yield further, would that mean—again, in big demonstrations, could the clinic use escorts, 40 or 50 escorts? Can they put on a shirt that says they are working at the clinic? Would this give them protection for that day or that purpose?

Mr. KENNEDY. No, it would not.

Mr. NICKLES. I appreciate my colleague's answer.

In my opening comment I said in response to the Senator's question as far as the bill being balanced, suppose you have a large group of pro-life demonstrators and a large group of pro-abortion rights demonstrators, and they are engaged in singing, or they are engaged in shouting. Now, correct me if I am wrong, but under the Senator's bill the people on the pro-abortion rights side would be able to file civil actions against the pro-life demonstrators, but the pro-life demonstrators could not file civil or criminal actions against the pro-abortion rights demonstrators.

Mr. KENNEDY. That is not an accurate characterization. We have just debated those allegations for the last 2 hours. Pro-choice activists who blockade or bomb a pro-life counseling center are subject to the exact same criminal and civil liability as a pro-life activist who blockades or bombs an abortion clinic. That is parity.

Mr. NICKLES. If the Senator will yield, he did not answer my question. That was assuming a different scenario. I said if you had a pro-life activist group engaged in heated discussion with a pro-abortion rights group outside the same abortion clinic, and they are both engaged in a significant, heated discussion—and some people would say that would qualify under this bill—correct me if I am wrong, but the pro-abortion rights demonstrators have legal rights against the pro-life group and the pro-life group does not have legal rights under this bill against the pro-abortion rights group.

Mr. KENNEDY. No, that is not correct.

Mr. NICKLES. So the pro-life group would have legal action against—

Mr. KENNEDY. This bill does not apply in terms of the demonstrators. I do not know how many more times we have to say it. It does not apply in terms of the demonstrators. That is what the last vote was on. We are saying whatever is going to be the appropriate kinds of first amendment rights—

The PRESIDING OFFICER. All time controlled by the Senator from Utah and yielded to the Senator from Oklahoma has expired. The Senator from Massachusetts controls 10 minutes and 11 seconds.

Mr. KENNEDY. I yield myself 3 minutes.

The fact of the matter is this does not create those kinds of rights in terms of those that are going to be out there picketing on the pro-life side and those that are pro-choice. Whatever applies in terms of first amendment rights, in Oklahoma or Massachusetts, they will be protected. Whatever the tort law is in Massachusetts or Oklahoma, they will be protected. This bill

is about access. It is not about demonstrators.

I know that there are those who say, no matter how many times we say it and no matter how many times we refer to the legislation, no matter how many times we go to the report, no matter how many times we refer to the good work that has been done by Senators DURENBERGER and KASSEBAUM, no matter how many times we refer to the State attorneys general, there are just some people that say that is not the case. It is the case.

If the Senator has another question, I would be glad to yield him my time.

Mr. NICKLES. Mr. President, I appreciate my colleague's response, but I do not concur with his answer, much to his surprise. There has been significant debate on this point.

Mr. President, the Senator from Massachusetts just mentioned that this bill is about access. And the points are, I believe, that the civil remedies or the criminal penalties will only apply to those persons who are under this bill perceived to be denied access.

My point is that there are some real inequities because you have many people who might be determined to deny access, who want to demonstrate on statehood on behalf of the District of Columbia. They are not going to be penalized under this bill. You have people that might be demonstrating for equal rights for gay rights activities. Well, they are not subject to these penalties. This singles out only those persons who are demonstrating, even in a peaceful way, against or around an abortion clinic. It does not even say it has to be in the vicinity of the abortion clinic. This is a very far-reaching bill, Mr. President.

I compliment my colleague from Utah for his amendment. I hope my colleagues will support his amendment.

I yield the floor. I thank my friend from Massachusetts for yielding the time.

AMENDMENT NO. 1196, AS MODIFIED

Mr. HATCH. Mr. President, I send a modification to my amendment to the desk.

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

The amendment (No. 1196), as modified, is as follows:

On page 6, line 1, amend proposed sections 2715(a)(1) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

Mr. KENNEDY. Mr. President, I will yield the remainder of my time.

The PRESIDING OFFICER. Is there further debate on the amendment?

AMENDMENT NO. 1197 TO AMENDMENT NO. 1196
(Purpose: To clarify that nothing in this Act affects State regulation of abortion)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mrs. BOXER, proposes an amendment numbered 1197 to amendment No. 1196.

Mr. KENNEDY. 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:

In lieu of the matter to be inserted insert the following: "pregnancy or abortion-related services: *Provided, however,* That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of".

Mr. KENNEDY. Mr. President, I offer this amendment on behalf of myself and Senator BOXER from California. I yield myself 3 minutes.

Mr. President, the second-degree amendment makes it crystal clear that this law will not expand or contract the authority of States to regulate abortion. It will not affect State abortion laws at all or the ability of the State or local authorities to enforce those laws. The second-degree amendment I sent to the desk says this expressly, so there can be no misunderstanding about that.

States have the responsibilities, and the States have not requested any additional kind of authority. There has been no representation, in terms of the development of this legislation, that that kind of an additional authority is necessary, and this puts the responsibilities where the responsibilities should be, which is with the State authorities and with the local communities. I hope that this amendment will be accepted.

I yield 3 minutes to the Senator from California.

Mrs. BOXER. Mr. President, again, I just want to say that the chairman of the committee, Senator KENNEDY, has reached to the heart of the issue in question. If this is really a legitimate amendment, then I think it ought to be supported. If the makers of the initial amendment are serious about making sure that there are standards at these clinics and that only legal abortions are performed, I think they should embrace this amendment. Because what this amendment essentially says in plain English is that nothing in the bill can be construed as expanding or limiting the authority of the States to regulate the performance of abortion, or the availability of pregnancy or abortion-related services.

Again, my friends who put forward the initial amendment are always arguing for the States to have this opportunity, and here the Senator from Massachusetts says that nothing in this bill changes that. The States can enforce the laws and determine what is legal and act on what is illegal.

Mr. President, the proper way to deal with the performance of illegal abortions is to call the police, not blockade the clinic, not to take the law into your own hands and say: I think something is happening inside there and it gives me a license to put someone's face on a wanted poster and use violence to get what I cannot get legally.

So I think that this substitute is very important, because we are in essence saying very clearly: Let the message go out from this U.S. Senate, that the States have the right to pass the laws that affect these facilities and to enforce those laws. What this bill is doing, and why it is so important, is it is saying to both sides of the abortion debate: You cannot be violent. You cannot hurt people who are exercising their constitutional rights.

Anything that would undermine this premise of the bill, which has been so carefully crafted by the chairman—and which has so much bipartisan support—we should defeat. I think that Senator KENNEDY, by putting forward this second-degree amendment, is doing what needs to be done. He is saying it loud and clear. If there are any illegal activities going on in these clinics, the States should enforce the law. But we are not going to give over law enforcement to vigilantes on either side of this debate. So let us support the Senator from Massachusetts. I yield back to the Senator.

Mr. KENNEDY. If the Senator will yield for a question. Does the Senator not agree that what we are attempting to deal with is the incidents of violence and even death or murder, firebombing, the throwing of acid? There have been 30,000 arrests in incidents which have taken place in recent years. We are trying to deal with the blockades and violence.

Does the Senator agree with me that unless we take this amendment that we now have, the second degree, if an individual believed there was some kind of noncompliance with State laws in terms of parental consent or other regulations—just believed that to be true—he could go out and throw the acid, could attack the individuals, and there would be no protections under this legislation for the innocent people who need the protection; is that the understanding of the Senator?

Mrs. BOXER. Absolutely. The Senator has presented it for all to hear that if we do not accept this second-degree amendment and the underlying amendment is adopted, we are essentially saying—I have heard the word radical used here in this debate by those on the other side. Let me tell you what is radical. What is radical is putting acid through a clinic door and injuring innocent people. What is radical is forcing doctors to wear bulletproof vests. What is radical is killing people who do not agree with you. That is what is radical.

What this underlying legislation is saying is no more to both sides, no more violence. The Senator is exactly right. If we do not pass this substitute, I fear the message that will come out of this Senate will be an invitation to those who want to take the law into their own hands, to continue the violence, and as an excuse to say: I thought something illegal was going on.

That is my long answer to the Senator's short question.

Mr. KENNEDY. I think the Senator made an excellent answer.

Mr. NICKLES. Will the Senator from Massachusetts yield?

Mr. HATCH. Mr. President, let me make a couple of comments, and then I will yield some time to ask any questions.

This second-degree amendment will do absolutely nothing to change the fact that this bill would give Federal protection to acts that are illegal under State law. How can you justify that? I would like to vote for something that prevents violence against abortion clinics and against the prolife facilities. But this bill is very flawed. One of the biggest flaws is that it protects acts that are illegal under State law. I might add that this second-degree amendment is another false cosmetic change.

My amendment has nothing to do with vigilantes. I do not know how anybody can use that language with regard to the amendment. This is not a question of subjective belief, whether somebody thinks that an illegal act is being performed. It is actual illegality that matters. This bill protects actual illegality; it gives protection to it. How can we justify it? How can anybody justify that? It is a defective bill.

Frankly, why are we in the business of protecting illegality and using it as an excuse that it might involve abusive discovery. That is no argument. The fact of the matter is that there is no reason why we should be allowing illegality in any way. It has nothing to do with vigilantism. This amendment of mine, which they are now trying to amend with this cosmetic change, simply makes sure Federal law does not give benefits for what is unlawful under State law. It is simple. It would benefit this bill and would help to correct it. I do not know how anybody can argue against it.

I yield whatever time the Senator from Oklahoma might need.

Mr. NICKLES. Mr. President, I will ask my friend and colleague from Massachusetts. I am trying to decide what this second-degree amendment is. It says:

In lieu of the matter to be inserted—

So he strikes the Hatch language or the Hatch amendment. And then he says:

insert the following:

Nothing in this section shall be construed as expanding or limiting the authority of

States to regulate the performance of abortions or the availability of * * *.

Does this mean the Senator from Massachusetts is now in favor of allowing the States to have parental notification laws or a 24-hour waiting period? Is he affirming the State's right to have regulation of the performance of abortions?

Mr. KENNEDY. This does not attempt to dictate to the States any procedures on those particular matters.

As the Senator by his question points out, there is enormous variety in all of the States in terms of the limitations. Obviously, the Roe versus Wade and Webster decisions are controlling in certain aspects, but there are different provisions in State laws, and this does not expand or contract those.

Mr. NICKLES. Would my friend from Massachusetts agree with me that we shall allow those States that wish to have regulations, such as a parental notification or a 24-hour waiting period, to have the ability to pass these regulations?

Mr. KENNEDY. The Senator knows very well what the Roe versus Wade decision has provided and what is permissible and what is not permissible under that decision.

That decision in a very clear way demonstrated the particular rights of privacy and liberty under this Supreme Court holding, and the States, within those guidelines, have made decisions that are consistent, by and large, with the decision of the Supreme Court. This does not affect that in one way or the other.

Mr. NICKLES. If the Senator will yield for one additional question, then I was hoping when I read this language that maybe my friend and colleague from Massachusetts—and maybe my friend and colleague from California—would be opposing the so-called Freedom of Choice Act, because the Freedom of Choice Act would expressly prohibit the waiting period and parental notification legislation and other legislation that States have enacted. It would preempt those. I was hoping maybe by reading this language my friend and colleague would now be opposing that legislation and be in support of the State's right in making some now legal restrictions on abortion. I am not sure that my colleague went that far, but I was hopeful that maybe he might.

Mr. KENNEDY. I appreciate the good will the Senator expressed toward us, but I do not intend to take the time of the Senate to further express my strong commitment on the issue of choice. That is not what this is about.

What this is really about is about violence and whether the amendment that was being offered by the Senator from Utah is going to fundamentally lessen the issue of violence or enhance it, as I think appropriately stated by the Senator from California, with vigilante actions.

We have tried to address this in a way which I believe is consistent with the underlying thrust of the legislation.

I yield the remainder of my time.

Mr. NICKLES. I think I still have the floor.

Mr. President, I ask the Senator from Massachusetts one additional question. I tried to hone this down. I heard my friend and colleague say that this is not about protesters. I am afraid that this language is about protesters. I know he said it is about access.

Again I heard my colleague say that he thinks this legislation is balanced. I stated—and my colleagues on this side have stated—that we feel it is not balanced.

Let me ask him a very defined question. At an abortion clinic—correct me if I am wrong—pro-life protesters are subject to criminal penalties and pro-abortion rights protesters are not. Am I correct?

Mr. KENNEDY. Anyone who obstructs the entrance for the reasons defined in this legislation—because of the pregnancy services or abortion services provided inside—will be in violation.

Mr. NICKLES. The Senator did not answer my question.

Mr. KENNEDY. I heard the question, because we have been hearing the same question all afternoon, and we have been answering. It might not be the answer that the Senator wants to hear but, nonetheless, it is what the legislation is about.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator retains the floor.

Mr. NICKLES. Mr. President, I shall make a couple comments. My colleague says "anyone who obstructs." My comment is that many times and at many places where you have a confrontation between pro-lifers and people who are pro-abortion rights people, you have a conflict. The facts are that the people who are on the pro-life side of the equation are subject to criminal penalties but not the other way around. Those who are on the pro-abortion rights side are not subject to criminal penalties. So this is not fair or balanced legislation.

Mr. President, concerning this second-degree amendment, this amendment says nothing. This amendment is like most of the other second-degree amendments that we have had on almost every single amendment. It is nothing but cover. It is nothing but a fig leaf. It basically says:

Nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of * * *.

In other words, it does not do anything. It is one or two sentences that say nothing. It is cover. It maybe will help people vote with my friend and colleague from Massachusetts.

I compliment him and his staff for coming up with such great legal ambi-

guities that maybe will confuse people and give people cover for voting against this amendment and against the amendment of our friends and colleagues from New Hampshire and Indiana. It is a fig leaf. It does nothing. This language very clearly does nothing. It says:

Nothing in this section shall be construed as expanding or limiting the authority of States * * *.

It does nothing.

The amendment of my friend and colleague from Utah says: Make sure we do not give an expanded Federal right for civil and criminal penalties for illegal abortions. There are some clinics that specialize in late-term abortions. They make more money that way. There are some clinics that are mills that specialize in the destruction of unborn human beings in the seventh, eighth, and ninth month, well after viability and in most cases quite illegal. My friend and colleague from Utah is saying: Wait a minute. Let us not give them this special protection.

Unfortunately, the proponents of this legislation will not agree.

This is a very common sense amendment, and I am bothered by the fact that it is being opposed.

Mrs. BOXER. Mr. President, will the Senator yield for a question?

Mr. NICKLES. I will yield in a minute.

Mrs. BOXER. I thank the Senator.

Mr. NICKLES. I am bothered by the fact that this is opposed, because I would like to share with my friend and colleague a story that I read by a person who worked in a clinic in Wichita that specializes in late-term abortions—specializes in them. They do lots of them, and they make a lot more than the \$250 or \$300 that is made for abortions that are performed quite commonly in the first trimester. They make a lot more money. I am bothered by the fact of what is happening in a lot of States.

As a matter of fact, looking at State laws, 30 States have laws regulating and prohibiting post-viability abortions; 25 States have some form of parental notification or consent laws; and about 20 States have some form of informed consent or waiting period.

I am bothered by the fact that you would have some States that do have laws that say we do not want abortions after viability, and my friend and colleague says let us not give special Federal protection to violation of those laws.

I heard my friend and colleague from California make some comment: Wait a minute. If we pass the amendment of the Senator from Utah this is going to be vigilante time.

I just make mention that the case in point where Dr. Gunn, who was murdered—and I denounce that criminal activity. That happened in the State of Florida. The State of Florida has laws

against murder. The individual who committed that crime could receive penalties all the way up to, and including, death.

There are State penalties. There is State enforcement. There are State laws against arson. There are State laws against using acid on and destroying private property.

So to insinuate that if we do not pass this bill there will be no protection—and that some type of vigilante activity will be OK—is absurd.

As a matter of fact, the individual who committed that crime is now in prison and is awaiting trial. Again, that penalty could go all the way up to the death penalty.

I make comment that we are creating a very special class and saying that it is illegal under Federal criminal penalties, with fines of \$10,000 for the first offense, and a felony and a fine of \$25,000 for a second offense, for someone to engage in demonstrating outside an abortion clinic. That may be holding a sign and saying "abortion kills," or "it is a child not a choice," and they may be holding hands, praying. And we are going to subject them to that kind of penalty. I find that to be very, very unfair; very unequal.

I would just urge my colleagues to support the amendment by my friend from Utah and to defeat the underlying bill, as well.

I am happy to yield for a question.

Mrs. BOXER. I thank the Senator very much for yielding.

Mr. NICKLES. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator controls 6 minutes and 18 seconds.

Mr. NICKLES. I reserve the remainder of my time. I would be happy to respond to a question on the time of the Senator from California.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Massachusetts controls 13 minutes and 14 seconds.

Mr. KENNEDY. I yield 7 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for up to 7 minutes.

Mrs. BOXER. Thank you very much. And I thank the Senator for being willing to engage in a respectful dialog with me.

The Senator has stated that he is aware that there are clinics that are routinely providing abortions that are illegal. I wonder if the Senator from Oklahoma would tell me if he has reported those clinics to the police, the proper authorities in those States?

Mr. NICKLES. I would respond to the Senator, I personally have not. But I will also respond to the Senator that those statements have been made to the police and there have been attempts to prosecute, or there have been

attempts to try to get the States to prosecute individuals for their illegal abortions.

Mrs. BOXER. I would say to the Senator that the appropriate way to deal with this is to call the police, not to have an amendment here that essentially sends a message to people that they should take the law into their own hands. And that is really the essence of the debate on this particular amendment.

And I think, if I might say, that the Senator from Massachusetts has in the underlying bill been very careful to be evenhanded. Philosophical preferences do not come into play here. If you are violent and you are pro-choice, or if you are violent and you are anti-choice, the fact is you are covered under this bill.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. Let me just finish my point.

If there are clinics that are breaking the law, an appropriate call should be made to the police.

I am shocked to hear the Senator say that this amendment is a fig leaf. I cannot believe that the Senator from Oklahoma thinks his State's laws are fig leaves. I know he does not. I certainly do not believe California's State laws are fig leaves. It is serious law.

What we are saying here very clearly is that we support the language in this bill. We point out that nothing in this bill should be construed as expanding or limiting the authority of States to regulate the performance of abortion or the availability of pregnancy or abortion-related services.

We could not be clearer here. And the Senator tried to say, "Well, does that go for other issues, as well?" This bill deals only with violence at clinics. Whether the clinic is a pro-life clinic or a clinic that provides abortions, the law applies.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. I am happy to yield, but I would like to yield on the Senator's time.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, on our time—

The PRESIDING OFFICER. Without objection, the Senator from Oklahoma is recognized on time chargeable to the Senator from Utah. The Senator has 6 minutes and 5 seconds remaining.

Mr. NICKLES. Mr. President, I will just mention that I think my colleague from California is wrong.

My colleague from California said, "Hey, this bill outlaws violent activity," and she said it applies to pro-choice people or pro-abortion rights people as well as to pro-life people.

I will ask my friend and colleague from California, if you are outside of an abortion clinic and if you have a

pro-life demonstration—if I could have my colleague's attention—

Mrs. BOXER. Yes. I know what you are going to ask me, because you asked it several times.

Mr. NICKLES. If you are outside of an abortion clinic and you have a confrontation, these criminal penalties apply only to pro-life demonstrators. They do not apply to the so-called pro-abortion rights demonstrators.

Mrs. BOXER. Let me just repeat: A pro-choice activist who blockades or bombs a pro-life counseling center is subject to the exact same criminal and civil liabilities as a pro-life activist who blockades or bombs an abortion clinic.

This bill deals with access to clinics, I say to my friend. It does not deal with an omnibus crime bill.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. My colleague from California read the same scripted answer that my colleague from Massachusetts read, and it does not answer the question. The question is very simple. If you have a confrontation outside of an abortion clinic, pro-life demonstrators are subjected to criminal penalties and pro-abortion rights demonstrators are not. That is not equal. That is not fair.

Mr. KENNEDY. And that is not the bill.

Mr. NICKLES. Madam President, I have the floor.

The PRESIDING OFFICER (Ms. MIKULSKI). As I understand it, the Senator from California has the floor.

Mr. NICKLES. Madam President, I have the floor.

Mrs. BOXER. I would say, I reserved the remainder of my time and the Senator wanted to ask me a question, so he has the time at this point.

The PRESIDING OFFICER. The Senator from Oklahoma is using his time yielded by the Senator from Utah, but the Senator from California has the floor.

Is that correct?

Mr. NICKLES addressed the Chair.

Mrs. BOXER. Madam President, if I have the floor, I would like to respond.

The PRESIDING OFFICER. The Chair wishes to clarify that the Senator from California has the floor. If the Senator from California wishes to yield to the Senator from Oklahoma, it should be for the purposes of a question. If the Senator from Oklahoma wishes to speak when the Senator from California concludes her statement, then the Chair will look for recognition for the Senator.

Mrs. BOXER. Madam President, how much time is left for the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mrs. BOXER. Madam President, I would like to respond to the Senator,

because we are getting to the point where we are having some interruptions, and we are equally guilty of that.

The Senator from Oklahoma is posing the question again. It is about, I think, the seventh or eighth or ninth time that this Senator has heard it. He is posing the question about whether or not a pro-life person is treated in the same manner as a pro-choice person.

I think we have stated over and over that the answer is yes, because we are dealing in this bill, Madam President, with safeguarding the right of every individual in America to have access to a clinic, whether they are going for pregnancy counseling in a pro-life center or whether they are going for abortion counseling in a family planning clinic. And in the exercise of that right, we say in this bill, anyone who interferes with it in a violent fashion, seeks to intimidate or harm or hurt, will be prosecuted.

Now we are not talking about an argument that is going on three blocks away. This is not an omnibus crime bill. There are laws of this land that prohibit violent activity. But in this bill, we are targeting these clinics.

I think the amendments that have come before this body from the people who do not like this bill—and they are very clear that they do not like this bill—these amendments are undermining the underlying legislation. I understand that. They are trying to gut this legislation. They are trying to make it worthless.

So it is important to stand up and defeat these amendments and pass the substitute amendments.

The Kennedy amendment is very clear. Again, it says nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of pregnancy or abortion-related services.

Madam President, we are not reaching to other questions and other issues that the Senator from Oklahoma would like us to. Those debates we will have in the future.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. I will be happy to yield to the Senator on his own time.

Mr. NICKLES. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes and 54 seconds.

Mr. NICKLES. How much time remains on the other side?

The PRESIDING OFFICER. There remains 6 minutes and 42 seconds.

Mr. NICKLES. Madam President, I would like to ask my friend and colleague from California a question and I would like to see if I cannot clarify this issue.

Am I correct that if, at an abortion clinic, pro-lifers block entrance to the clinic, they are penalized under this bill? Is that correct?

Mrs. BOXER. If my colleague reads the section, it is anyone who intimidates or tries to use violence, be they pro-choice or anti-choice. So we do not say one side or the other. I am trying to answer the Senator. I am not trying to use up his time, I am just trying to answer the Senator.

Mr. NICKLES. The answer is yes?

Mrs. BOXER. That is not what I said. I said anyone who intimidates, interferes, or uses violence, whether they are pro-choice or pro-life.

Mr. NICKLES. Let me ask my colleague another question. If pro-abortion demonstrators attack the proliferators who are blocking the clinic entrance, are they penalized under this bill?

Mrs. BOXER. I am giving the Senator the same answer that he keeps rejecting and he says is scripted, which is that a pro-choice activist who blocks the gates—

Mr. NICKLES. But your—

Mrs. BOXER. When the Senator asks me a question and then interrupts me as I answer, it is hard for me to answer.

Mr. NICKLES. But your scripted answer applies to a different issue. That applies to a pro-life clinic, if pro-choicers are demonstrating against that. I did not ask that question.

I said if you have pro-lifers demonstrating outside an abortion clinic and they are attacked by pro-choicers, would the pro-choicers be subjected to the penalties under this bill?

Mrs. BOXER. Attacks from demonstrators on either side are not the subject of this bill. I repeat to my good friend from Oklahoma, this bill deals with access to clinics.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma continues to hold the floor.

Mr. NICKLES. Madam President, I appreciate my friend and colleague's statement, because she is right. People who block access to a clinic, either type of clinic—they are subjected to the penalties of this bill. If those people are attacked, the attackers are not subjected to the penalties of this bill.

I make mention of that because they are not. So I have heard people say we are against violence outside of clinics. But, frankly, it is only those people who could be characterized as proliferators, or anybody blocking access to a clinic—and, frankly, that is only going to be pro-lifers blocking access to an abortion clinic—but if they are attacked by people who support abortion rights, and sometimes these things unfortunately do become confrontational, there is no action or cause of action under this bill. So it is inequitable.

I make that point. I would say the inequity is so stark, and so unreal, and so unfair, and so unbalanced that, really, we ought to be ashamed. I do have some confidence, though, that the Supreme Court is going to throw this en-

tire bill out as being unconstitutional and a gross infringement on first amendment rights.

Unfortunately, it looks like the Senate is going to pass it. I hope that is not the case. But I think we have made our point, and the point is very clear that this bill, unfortunately, would allow people to attack some people who are demonstrating—maybe even demonstrating peacefully, maybe holding hands praying, and saying, "Let us not destroy innocent, unborn human beings"—and unfortunately this bill only attacks them and their civil liberties. I think that is a gross injustice.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I am prepared to yield back the remainder of my time.

Mr. HATCH. Madam President I am prepared to yield back the remainder of my time. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NICKLES. Madam President, I move to table the KENNEDY amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

JOINT REFERRAL—THE NOMINATION OF OLIVIA A. GOLDEN TO BE COMMISSIONER ON CHILDREN, YOUTH, AND FAMILIES

Mr. KENNEDY. Madam President, as in executive session I ask unanimous consent that the nomination of Olivia A. Golden to be the Commissioner on Children, Youth, and Families, Department of Health and Human Services, be jointly referred to the Committee on Labor and Human Services and the Committee on Finance.

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

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Madam President, I yield back the remainder of my time.

Mr. HATCH. I yield back the remainder of time.

The PRESIDING OFFICER. The question now occurs on the motion to lay on the table the amendment of the Senator from Massachusetts. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 371 Leg.]

YEAS—35

Bennett	Exon	Mack
Bond	Faircloth	McCain
Breaux	Gramm	McConnell
Burns	Grassley	Murkowski
Coats	Gregg	Nickles
Cochran	Hatch	Pressler
Coverdell	Hatfield	Reid
Craig	Helms	Roth
D'Amato	Johnston	Smith
Danforth	Kempthorne	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	

NAYS—64

Akaka	Glenn	Moseley-Braun
Baucus	Gorton	Moynihan
Biden	Graham	Murray
Bingaman	Harkin	Nunn
Boren	Heflin	Packwood
Boxer	Hollings	Pell
Bradley	Hutchison	Pryor
Brown	Inouye	Riegle
Bryan	Jeffords	Robb
Bumpers	Kassebaum	Rockefeller
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Sasser
Chafee	Kerry	Shelby
Cohen	Kohl	Simon
Conrad	Lautenberg	Simpson
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dodd	Lieberman	Warner
Durenberger	Mathews	Wellstone
Feingold	Metzenbaum	Wofford
Feinstein	Mikulski	
Ford	Mitchell	

NOT VOTING—1

Dorgan

So the motion to lay on the table the amendment (No. 1197) was rejected.

Mr. KENNEDY. Madam President, I move to reconsider.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, I have talked to the Senator from Oklahoma. I understand he is agreeable to vitiate the yeas and nays on the two amendments. Therefore, I would ask unanimous consent that the order for the two rollcall votes be vitiated.

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

The question is now on agreeing to amendment 1197.

The amendment (No. 1197) was agreed to.

The PRESIDING OFFICER. The question is now on agreeing to amendment No. 1196, as amended.

The amendment (No. 1196), as amended, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, if we could have the attention of the Members, I think I state correctly that the Senator from Utah will offer a complete substitute, and I do not expect to speak on that for 2 minutes literally.

Mr. HATCH. I only intend to speak roughly 2 minutes. But I have the distinguished Senator from Oregon who

would like to take 5 minutes. I think we can keep our side below 7 minutes.

Mr. KENNEDY. Just for the information of the Members, we do not anticipate a second-degree amendment. We will not offer that, which ought to be news for the Members. We hope others do not, as well. Then we expect to go right to final passage. There has been a request for a rollcall, just so we have some understanding for the Members about what the timing would be.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I agree with the Senator from Massachusetts. I do not want a second-degree amendment on this. This is a substitute amendment.

AMENDMENT NO. 1198

(Purpose: To provide for a substitute amendment)

Mr. HATCH. Madam President, I send a substitute 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 Utah [Mr. HATCH] proposes an amendment numbered 1198.

Mr. HATCH. Madam 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 1 of the amendment, strike out line 1 and all that follows through the end thereof and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. PURPOSE.

It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide reproductive health services (including protecting the rights of those engaged in speech or peaceful assembly that is protected by the First Amendment to the Constitution), and the destruction of property of facilities providing reproductive health services, and to establish the right of private parties injured by such conduct, as well as the Attorney General of the United States, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person who is or has been seeking to obtain or provide lawful reproductive health services;

"(2) intentionally damages or destroys the property of a medical facility or in which a

medical facility is located, or attempts to do so, because such facility provides lawful reproductive health services; or

"(3) by force or threat of force intentionally injures, intimidates or interferes with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding reproductive health services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c). Nothing in this subsection shall be construed to subject a parent or legal guardian of a minor to any penalties or civil remedies under this section for activities of the type described in this subsection that are directed at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1)(A) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(B) in the case of a second or subsequent offense involving force or threat of force after a prior conviction for an offense involving force or threat of force under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both; except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life; or

"(2) in the case of an offense not involving force or the threat of force, be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) involving force or threat of force may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000 for any subsequent violation involving force or the threat of force.

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it

would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section or that are violations of State or local law;

"(3) provides exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) unreasonably interfere with the right to participate lawfully in speech or peaceful assembly.

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

"(1) INTERFERE WITH.—The term 'interfere with' means to intentionally and physically prevent a person from accessing reproductive health service or exercising lawful speech or peaceful assembly.

"(2) INTIMIDATE.—The term 'intimidate' means intentionally placing a person in reasonable apprehension of immediate bodily harm to him- or herself or to a family member.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a facility that provides reproductive health services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(5) REPRODUCTIVE HEALTH SERVICES.—The term 'reproductive health services' includes medical, surgical, counselling or referral services relating to pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. HATCH. Madam President, I do not intend to take a lot of time.

Mr. BUMPERS. Parliamentary inquiry, Madam President. What is the time agreement on this? Is there a time agreement?

The PRESIDING OFFICER. Forty minutes equally divided.

Mr. KENNEDY. It is the intention of the two managers to take 2 minutes each.

Mr. HATCH. The Senator from Oregon wants 5 minutes. Madam President, I intend to be brief. There is no reason to have a lengthy debate here. We all understand what has been going on. This substitute amendment contains the same tough penalties as the original bill for any violent activity in or near an abortion clinic. It makes a differentiation between violent activity and peaceful civil demonstrations and peaceful civil disobedience. So it clarifies that.

It protects first amendment rights on both sides, and it removes the protection for illegal abortion. It is basically the same bill with the corrections that

I think will make it constitutional, that I think would get 100 percent of the Senators to vote for it and, frankly, would show that everybody in this body is against the violence that has been occurring. If it is not accepted, we will be split, and naturally we will not have the unanimity and the support for the bill that all of us would like to see.

That is all I have to say about it. I do not intend to say anything else.

I yield 6 minutes to the distinguished Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Madam President, several years ago, I supported a resolution in the Senate which condemned the violent attacks that were being carried out against health care facilities, especially those that provided abortions. At that time I said "the use of violence is never permissible and those who engaged in such acts must accept the full penalty of the law for their actions." I still believe that today. I have always felt that one should work within the law to bring about change—whether it's to stop a war one does not believe in, or to stop the taking of a life through abortion.

As one who opposes abortion, I have worked to change our Nation's law with regard to abortion. I have tried to refocus the debate away from abortion toward the circumstances that lead women to have abortions. As a society, we must address the important causes—the root causes—that force women to choose abortion. We have the tools to make abortion a moot issue, if only we can move beyond the issue of whether abortion is right or wrong, to the real life situations that force women to make that choice. We have made progress, but we still have a long road ahead of us.

Madam President, it is after much thought and consideration that I rise today to oppose the legislation before us. I do so not because I support or condone in any way the violent attacks that are being carried out—I do not—it is because I oppose creating Federal penalties that focus primarily on those individuals who oppose abortion by singling out abortion-related facilities for special treatment. Those who support this legislation do not dispute this fact, although changes have been made in the bill so that these penalties extend to pro-life counseling centers as well. They argue that the attacks and violence are directly attributable to those individuals in the pro-life movement. To me, by creating this special category we are perpetuating the divisions between pro-life and pro-choice supporters and making it more difficult to focus on the root causes of abortion.

Although there is precedent in the law for the creation of Federal criminal penalties to protect a specific industry, this legislation was only passed

last year. It is important to note that although Federal law regulates labor disputes that interfere with the flow of commerce, State penalties apply to acts of violence that result from labor disputes. With this limited history, I am not convinced that creating a new Federal cause of action targeted to a specific enterprise with both criminal and civil penalties is the appropriate response.

In fact, at this time I am inclined to support new Federal penalties only in the broadest of perspectives; that is, to protect public access to all commercial enterprises. Drawing upon the idea put forth by our distinguished colleague from Kansas, Senator KASSEBAUM, why should we tolerate any acts of violence whether they be against health care facilities, medical research facilities, churches, or small businesses? If we are going to create a Federal cause of action, let us send the message that we, as a society, will not accept violent attacks which prevent people from exercising their constitutional rights in any setting.

Supporters of this legislation have argued vigorously against broadening the scope of the bill beyond abortion services. They state that problems with violence have not been sufficiently documented to warrant such an expansion, and where problems exist State and local laws have provided adequate deterrents. For me it is an issue of fairness. How can one differentiate between violence that results from a clinic blockade versus the violence that results from a labor dispute? What about violent attacks by environmentalists, or antiwar protesters. Is tree spiking any worse than spraying noxious fumes into a clinic? I do not think so. They are both acts of violence that disturb the flow of commerce. And if we are going to create a Federal cause of action to address these acts, we should not treat them differently.

Madam President, I understand the ramifications of the violence to which many health care facilities have been subjected. In my own State of Oregon during 1992 three clinics were attacked by arsonists who caused substantial damage. That is why the Oregon Legislature recently revised the State's criminal mischief statute to provide stronger criminal penalties for acts of violence that damage, disrupt, or interfere with access to essential public services, including medical services obtained at doctors offices and places where licensed medical practitioners provide health care services.

I might also say that I believe that the State and Federal authorities should work together to prosecute those who are responsible for violent acts that prevent individuals from accessing those services.

Such disruptions now constitute a class C felony under Oregon law. This

law gives State prosecutors a stronger means to punish those who interfere with a woman's right to seek a legal abortion. I fully support Oregon's legislation to protect access to essential public services because it applies broadly to all public services. And, I believe State and Federal authorities should work together to prosecute those who are responsible for violent acts that prevent individuals from accessing these services. This violence cannot be tolerated.

As I stated earlier, this type of legislation should be broader in scope, aimed at preventing violence in all places of commerce.

I hope that before supporting this legislation, my colleagues will carefully weigh the issue of fairness and evenhandedness in crafting Federal penalties as a deterrent to acts of violence. Instead of singling out abortion-related facilities for special treatment, let us work together to address the causes of abortion in order to remove the need for protests and blockades and to make abortion a moot issue.

Madam President, let me also say until we begin to talk about contraception and the perfectability of contraception and medical research, until we begin to talk about sex education in our schools and elsewhere, we are still dealing with only the results that force women into actions of abortion.

Mr. HATCH. Madam President, I have been informed that I need to yield 5 minutes to the distinguished Senator from New Hampshire. I believe he will be the last to speak on our side.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, the debate today, unfortunately, has gotten off the focus. All of us who have spoken out on this bill are supportive of what Senator KENNEDY has in his legislation regarding violence. But we are not talking about violence in some of the examples we have seen here. We are talking about nonviolence.

You would think that all of the people who have been out there in the pro-life movement and have protested against abortion clinics were murderers and violent criminals, to hear the debate. Unfortunately, though, there has not been a lot of focus on some of the comments that have been made by those on the other side.

I have here with me a copy of a booklet called "Clinic Defense, A Model, First Edition," March 1990, which was published by the Bay Area Coalition Against Operation Rescue. It might be interesting to hear some of their comments.

Here is their basic philosophy:

Our philosophy is that our first line of defense for protection of reproductive rights is self-defense. We cannot rely on courts, police or legislators to protect our fundamental rights to control our bodies and reproductive options.

We have heard that many organizations tell people not to "touch" Operation Rescue,

but this, of course, is not really clinic defense.

We are prepared to pick 'em up and move 'em out. This can be done in a concerted way, using several or all of us at a time, to maximize effectiveness, and to minimize danger to individual defenders from police. * * *

Work with defenders around you to focus on a person or persons who need to be removed; identify them, and push the Operation Rescue out from one defender to the next until they are put out of the defense line.

Listen to this:

Rescuers have an inordinate sense of modesty and "honor" about being accused of touching women. There are innumerable instances of clinic defenders neutralizing male OR's by shouting, "get your hands off me, don't you dare touch me," all the while they are tugging or pushing Operation Rescue out of the line.

These are the tactics coming from the other side—and that is not everybody, and I do not imply that it is everybody. It even gets worse. I quote again from the booklet, which reads as follows:

Clinic Escorting. As Operation Rescue has shifted to picketing and blockading, we've learned that we can't relax and just let them "just" picket.

Mr. President, I ask unanimous consent that this document be printed in the RECORD, because it speaks for itself.

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

[Bay Area Coalition Against Operation Rescue (BACAOR)]

CLINIC DEFENSE: A MODEL

BACAOR STRATEGY

Our philosophy is that our first line of defense for protection of reproductive rights is self defense. We cannot rely on courts, police or legislatures to protect our fundamental rights to control our bodies and reproductive options.

CLINIC DEFENSE TACTICS

We have heard that many organizations tell people not to "touch" OR [Operation Rescue], but this of course is not really clinic defense.

We are prepared to pick em up and move em out. This can be done in a concerted way, using several or all of us at a time, to maximize effectiveness, and to minimize danger to individual defenders from police, OR, or OR cameras.

Work with defenders around you to focus on a person or persons who need to be removed; identify them, and push the OR out from one defender to the next until they are put out of the defense line.

[Rescuers] have an inordinate sense of modesty and "honor" about being accused of touching women. There are innumerable instances of clinic defenders neutralizing male OR's by shouting "get your hands off me, don't you dare touch me" all the while they are tugging or pushing OR out of the line.

THE POLICE

We do not call police ourselves during a hit. Our best work is done before police arrive, or when there are not enough police there to prevent us from doing what we have to do. Get in place before cops can mess with

it; establish balance of power early, do key acts requiring physical contact with OR as much as possible before cops have enough people to intervene.

Try to keep them out of it. If they are cruising by, wave them on. Be a voice of authority and reason; let them know we have it all under control and everything is just fine, thank you, officer. (Another good argument for official vests or shirts is that it gives us a tremendous amount of authority.)

CLINIC ESCORTING

As OR has shifted to picketing more than blockading, we've learned that we can't relax and let them "just" picket. It's critical to keep pushing, to not lend any legitimacy to their harassment of women on any level. As much as we can, we are drawing lines, saying, no, you cannot picket on the sidewalk in front of the clinic; this is our territory. Go across the street, go away, go wherever—but as far away from the clients as is possible to assert. Even if the sidewalk is "public," we've had success at putting enough of us out, early enough, to basically bully the ORs into staying across the street.

OR DOGGERS

We assign one or two escorts to be with [sidewalk counselors] at all times—one on one if we can. These "doggers" are there to focus on and engage the OR, and to place ourselves physically between them and the client. We may use handheld cardboard signs * * * to put up a visual block between the OR and a client.

There are also the marchers * * * who walk around in small groups, pray and harass women from the periphery * * * We assign several escorts per group of these ORs—the object is to round them up and neutralize them.

TACTICS WITH THE ORS

The way people cope with the ORs when there is not a client present runs the gamut from having long philosophical conversations to doing sexual and religious baiting. * * * Having explicitly sexual conversations can really make an anti uncomfortable without directly engaging him. Singing "Goddess" songs while they do their Hail Marys is a lovely way to affirm an alternative view of appropriate religious activities.

Isolate and Humiliate. It is critical to separate in some way the resident OR leader or troublemakers. We assign them a particular escort and do our best to isolate them from the others by getting them to lose their cool, look foolish, argue with us, etc. Although in general sexual jokes or extreme harassment are not useful with the OR picketers (they tend to settle right into martyrdom) if baiting an OR about his treatment of women, his sexuality, and how many times he masturbates will keep him from bothering clients and from being able to effectively direct the others, do it.

Remember, we are under no obligation to be polite to these people. They are here to harass women and torment them, and no matter how nice they are to you, that agenda doesn't change. They have already broken Miss Manners code by being at the clinic at all—don't let them think they can make up for it by being "polite."

TEMPORARY RESTRAINING ORDERS

A Temporary Restraining Order (TRO) is a legal device currently in use by several clinics across the country. * * * One example of a TRO's application to certain situations is to prevent a picketer from walking or standing in a given area. This is useful when the sidewalk area fronts the clinic closely, and a

"legal" moving sidewalk picket by OR in that area would legally allow OR to get very close to incoming clients. Some clinics have been successful in getting the court to authorize a "free zone," such as a 5-foot wide space from a clinic entrance to the street where picketers are prohibited from stepping. One clinic obtained a TRO to keep picketers out of a private parking lot. Restraining picketers from approaching the client's cars has also been granted.

We believe the clinics are not a legitimate forum for anti-abortion harassment, and it is not a "free speech" issue. Of course in some instances, a TRO may act as a deterrent to picketers and reduce their presence or effect at the clinic, but in cases where determined groups of OR have made it clear they will be there every single week, the struggle to abide by the arbitrary "rules" set forth by a TRO can be prohibitive of other tactics escorts may need to effectively keep OR at bay.

Mr. SMITH. I will conclude my portion of the debate, since I have been here engaging in it since 8 o'clock this morning.

To sum up, Mr. President, there are five reasons why S. 636 should be defeated. First, it is extreme. Second, it sets a terrible precedent. Third, it is vague. Fourth, it is hypocritical. And fifth, it is unconstitutional.

Let me be specific. There is no distinction in the bill between the violent and the peaceful protesters. You can conduct a sit-in peacefully, as a nun might do, praying with her rosary, and be put in jail for as long as 18 months, and can be fined \$25,000 for simply sitting and saying the rosary if you block the entrance.

Read the legislation if you do not think that is true.

Second, it is a terrible precedent. It is going to come back and bite some of the very people who have been such strong proponents of this legislation today. That is because some day, somewhere along the line in the future, there is going to be another social or political protest movement that you are going to want to support. And those who oppose that movement will be back out here opposing these kinds of harsh penalties on that movement. When that happens, you are not going to see this Senator out here saying you cannot do that. I am not going to be that hypocritical.

S. 636 does not define "physical obstruction"; it is very vague. There is no distinction. It is hypocritical for the very reason I gave. We did not see this same protest against the civil rights movement—and rightfully so—or for labor's right to protest in front of a business. We do not see it with the environmentalists, who are perhaps protesting against logging or some other matter.

S. 636 is unconstitutional, very simply, because freedom of speech and assembly is protected in the first amendment and it is being denied under this legislation. This is a very radical bill, and it is very unfortunate, frankly,

that the amendment offered—the substitute by Senator HATCH—is not going to pass and that many of the amendments that Senators NICKLES, COATS, myself and Senator HATCH have offered all day have been defeated. It is unfortunate. I think we are going to see a serious constitutional challenge to this bill, and rightfully so. I hope that challenge is successful.

I yield the floor.

Mr. KENNEDY. Madam President, first of all, I want to express, on behalf of Senator BOXER and others, our appreciation for the cooperation that we have received here. We hope that the Senate will reject the amendment of the Senator, the substitute amendment. Effectively, what it represents is an assembling of all of the other amendments we have rejected during the course of the day. That is the bottom line. It is another vote on everything that we have rejected earlier today.

A final point. I will put into the RECORD a list of all of the organizations that have embraced and support our current underlying legislation, which represent the State attorneys general; various religious organizations; business and professional; various women's organizations; medical and health organizations.

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

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

ENDORSERS OF S. 636

WOMEN'S ORGANIZATIONS

- American Association of University Women
- Black Women's Agenda, Inc.
- B'nai B'rith Women
- Center for Women Policy Studies
- Clearinghouse on Women's Issues
- Coalition of Labor Union Women
- Fund for the Feminist Majority
- General Federation of Women's Clubs
- Mexican American Women's National Association
- National Association of Commissions for Women
- National Council of Jewish Women
- National Displaced Homemakers Network
- National Organization for Women
- NOW Legal Defense and Education Fund
- National Women's Conference Center
- National Women's Conference Committee
- National Women's Law Center
- National Women's Party
- National Women's Political Caucus
- Older Women's League
- Women for Meaningful Summits
- Women of All Colors
- Women's Action for New Directions
- Women's Activist Fund
- Women's International League for Peace and Freedom
- Women's Legal Defense Fund
- YWCA of the USA

REPRODUCTIVE RIGHTS ORGANIZATIONS

- National Abortion Federation
- National Abortion Rights Action League
- Planned Parenthood Federation of America

MEDICAL AND HEALTH ORGANIZATIONS

- American College of Obstetricians and Gynecologists

- American Medical Association
- American Medical Women's Association
- American Nurses Association
- American Psychological Association
- National Black Women's Health Project
- Society for the Advancement of Women's Health Research
- Women's International Public Health Network

CIVIL LIBERTIES ORGANIZATIONS

- American Civil Liberties Union
- People for the American Way
- Women's Institute for Freedom of the Press

BUSINESS AND PROFESSIONAL ORGANIZATIONS

- National Federation of Business and Professional Women
- National Association of Negro Business and Professional Women's Clubs, Inc.
- National Association of Social Workers

RELIGIOUS ORGANIZATIONS

- American Ethical Union
- American Humanist Association
- American Jewish Committee
- American Jewish Congress
- Americans For Religious Liberty
- Catholics for a Free Choice
- Methodist Federation For Social Action
- National Service Conference of the American Ethical Union
- Presbyterian Church (USA), Washington, D.C. Office
- Presbyterians Affirming Reproductive Options
- Religious Coalition for Abortion Rights
- Union of American Hebrew Congregations
- United Church of Christ, Board for Homeland Ministries
- United Church of Christ, Coordinating Center for Women
- United Church of Christ, Office for Church and Society
- United Methodist Church, General Board of Church & Society, Ministry of God's Human Community
- United Synagogue of Conservative Judaism
- Women of Reform Judaism: National Federation of Temple Sisterhoods

STATE ATTORNEYS GENERAL

- National Association of Attorneys General
- PUBLIC POLICY ORGANIZATIONS
- Center for the Advancement of Public Policy

Mr. KENNEDY. It is my hope that we reject the substitute and move to final passage. I am prepared to yield my time.

Mr. HATCH. I am prepared to yield my time, but I will make one last comment. Yes, this contains corrections, but it is exactly the same bill as Senator KENNEDY's with the corrections made. I hope that we can accept this amendment.

I yield the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on amendment No. 1198 offered by the Senator from Utah. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER (Mr. CAMPBELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—38

- | | | |
|-----------|------------|-----------|
| Bennett | Faircloth | Lugar |
| Bond | Ford | Mack |
| Breaux | Gramm | McCain |
| Burns | Grassley | McConnell |
| Coats | Gregg | Murkowski |
| Cochran | Hatch | Nickles |
| Conrad | Hatfield | Pressler |
| Coverdell | Heflin | Roth |
| Craig | Helms | Smith |
| D'Amato | Hutchison | Thurmond |
| Danforth | Johnston | Wallop |
| Dole | Kempthorne | Warner |
| Exon | Lott | |

NAYS—61

- | | | |
|-------------|---------------|-------------|
| Akaka | Glenn | Moynihan |
| Baucus | Gorton | Murray |
| Biden | Graham | Nunn |
| Bigman | Harkin | Packwood |
| Boren | Hollings | Pell |
| Boxer | Inouye | Pryor |
| Bradley | Jeffords | Reid |
| Brown | Kassebaum | Riegle |
| Bryan | Kennedy | Robb |
| Bumpers | Kerrey | Rockefeller |
| Byrd | Kerry | Sarbanes |
| Campbell | Kohl | Sasser |
| Chafee | Lautenberg | Shelby |
| Cohen | Leahy | Simon |
| Daschle | Levin | Simpson |
| DeConcini | Lieberman | Specter |
| Dodd | Mathews | Stevens |
| Domenici | Metzenbaum | Wellstone |
| Durenberger | Mikulski | Wofford |
| Feingold | Mitchell | |
| Feinstein | Moseley-Braun | |

NOT VOTING—1

Dorgan

So the amendment (No. 1198) was rejected.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, like millions and millions of other Americans opposed to abortion, I categorically and unequivocally condemn acts of violence against abortion clinics and their personnel. Such desperate acts of violence are no answer to the violence of abortion itself.

S. 636 is not, however, a well-honed or appropriate Federal response to the problem of violence outside abortion clinics. I will identify some of the major defects in S. 636, but before I do, let me offer a couple observations prompted by our ongoing consideration of the crime bill.

We have heard much over recent days from both the majority leader and Senator BIDEN about the need to recognize the primary role of States in criminal law enforcement. I agree very much with this, and have worked hard to make sure that State and local law enforcement will have the resources that they need to combat the growing problem of violent crime on our streets.

The need to recognize the primary role of State and local law enforcement is especially compelling on such matters as trespass. Unfortunately, S. 636 betrays this principle. Lending Federal enforcement assistance where needed is

one thing; federalizing local trespass law is quite another. S. 636 would do the latter, and it thereby contravenes the sound counsel that the majority leader and the Senator from Delaware have been offering.

We have also heard much in recent days about the shortage of prison space in this country and the need to make sure that violent offenders serve their full sentences. Here again, S. 636 violates this counsel, as it would subject large numbers of people who have engaged in entirely nonviolent activity to Federal prison terms.

Let me now highlight the core provisions of S. 636, and then identify the major defects that I see in that bill. S. 636 would make activity that is already illegal under State law also a crime under Federal law, and would subject such activity to extremely harsh penalties. Under the bill, anyone who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been * * * obtaining or providing pregnancy or abortion-related services" would face a criminal penalty of 1 year in jail and a large fine for a first violation, and 3 years in jail and a larger fine for any subsequent violation. In addition, S. 636 would also authorize private parties, the Attorney General and State attorneys general to seek large civil penalties against such person. For example, private parties could obtain \$5,000 per violation plus unlimited private punitive damages, and both the U.S. Attorney General and State attorneys general could obtain civil penalties of thousands of dollars per violation.

These extremely harsh penalties might well be warranted if S. 636 addressed only violent activity. Here again, however, it must be emphasized that States already have and impose even more severe penalties for violent activity, and a slew of Federal statutes is also available to address violent conduct.

A major defect in S. 636 is that, notwithstanding all the rhetoric you will hear about violence, S. 636 entirely fails to differentiate between violent and nonviolent activity. Under S. 636, a person who commits an entirely peaceful violation—a grandmother, for example, sitting silently with a group of others on a sidewalk outside an abortion clinic—is subject to the same stiff penalties as a person who brandishes a gun.

I respectfully submit that this failure to differentiate between violent and nonviolent activity betrays core principles that we all should cherish. Our American tradition recognizes the fundamental distinction between acts of violent lawlessness and acts of peaceful civil disobedience. Acts of violent lawlessness appropriately invite severe

penalties. But acts of peaceful civil disobedience—mass sit-ins, for example, that draw on the tradition of Gandhi and Martin Luther King, Jr.—should not be subjected to such steep penalties.

Such acts are, of course, not privileged. Civil disobedience is, by definition, unlawful. Acts of peaceful civil disobedience should, however, be punished roughly in the same manner and to the same extent as like conduct engaged in by anyone else. For example, if protesters commit unlawful trespass, they should be subjected to roughly the same penalties that other trespassers face. To impose a substantially more severe penalty presents the threat of viewpoint discrimination, no matter how cleverly disguised.

Had States during the 1950's and 1960's been able to impose and uphold such severe penalties on peaceful civil disobedience, the civil rights movement might well have been snuffed out in its infancy. A broad range of peaceful antiabortion activity may well be disruptive and may interfere with the lawful rights of others. The same, it must be noted, was true of civil rights protests: they were, and were intended to be, disruptive, and they interfered with the then-lawful rights of others.

It is not my point here to debate the relative moral standing of the anti-abortion and civil rights movements. Nor do I suggest that peaceful civil disobedience should not be punished. I would simply like to emphasize the grave danger of viewpoint discrimination inherent in imposing the same severe penalties on peaceful civil disobedience as on violent lawlessness.

It has been and undoubtedly will be contended that S. 636 is modeled on Federal civil rights laws. I must point out, however, that, among other things, the Federal civil rights laws that have been cited do not contain the term "physical obstruction," and they have been construed to apply only to acts of violence or threats of violence. In extending its severe penalties to peaceful civil disobedience, S. 636 departs radically from the models on which it purports to rely.

To sum up my first major objection: Violent activity is fundamentally different from peaceful civil disobedience. S. 636 utterly fails to recognize this difference.

The second major problem with S. 636 is that it elevates the right to abortion above even first amendment rights. Let me explain carefully, for this point is critical. I am not here arguing that S. 636 itself violates the first amendment; I will discuss that point shortly, and ultimately the courts would have to decide it. What is beyond dispute is that in the clash between abortion and free speech, S. 636 would provide special protection to abortion that it would not provide to the constitutional guarantee of free speech.

As the testimony at a Labor Committee hearing this spring amply demonstrated, violence and abuse at abortion clinics come from both sides. If this problem is to be dealt with, it must be dealt with evenhandedly.

If S. 636 in its current form were to become law, those persons confronting peaceful, lawful pro-life demonstrators would suddenly have a virtual license to harass and provoke them, since they would know that the slightest bit of retaliation would subject the pro-life demonstrators to the severe penalties under the bill. The clear lesson of history is that peace is not achieved by disarming only one of the contestants. The way to achieve peace is to treat both sides equally and to make clear that conduct that is unacceptable by one side will be unacceptable by the other.

Consistent with these principles, it is imperative that those exercising their lawful first amendment rights to speak out against abortion have the same protections from violence and abuse as those seeking abortion. Unless the right to abortion is to be elevated above even the first amendment, the penalties under the bill should be extended to those who, by force or threat of force, injure, intimidate, or interfere with persons lawfully exercising their first amendment rights at abortion-related facilities.

The third major problem with S. 636 is that it would surely chill the exercise of first amendment rights. In practice, of course, those who would have to take account of the prospect of the draconian penalties under S. 636 would be not simply those who would actually engage in the activities prohibited by it, but also those who might even possibly be alleged—rightly or wrongly—to have engaged in those activities. Because S. 636 delegates an astonishing amount of what is in essence prosecutorial authority to State attorneys general and to private parties—including abortion clinics—and because it offers them the bonanza of substantial monetary penalties, it is a virtual certainty that innocent persons who have done nothing more than engage in the lawful exercise of their first amendment rights will be targeted and pursued. The chilling effect on legitimate first amendment speech is therefore likely to be intense.

Another glaring defect of S. 636 is that it would protect illegal abortions. As a result, it could effectively cripple most or all State regulation of abortion, including regulation that serves solely to protect the health of those obtaining abortions. For example, an unlicensed late-term abortionist would, under the plain language of the bill, have a civil cause of action for at least \$5,000 in compensatory damages and for punitive damages against State officials who attempted to prevent him from performing illegal abortions.

The supporters of S. 636 may claim that it would not create any liability for enforcement by State or local law enforcement authorities of State or local laws. This claim, however, is not supported by the text of S. 636. Nothing in the provision defining prohibited activities exempts enforcement activities by State officials. Likewise, the relevant rule of construction provides merely that S. 636 shall not be construed to "prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section"; it does not provide that S. 636 shall not be construed to subject State officials to liability for enforcement activities.

In short, S. 636 would nominally permit enforcement of State laws regulating abortion, but it might well give those subject to enforcement a separate, and extremely potent, civil cause of action against State officials. Moreover, S. 636 would clearly give illegal abortionists the same extremely potent civil cause of action against any good samaritan citizen who responsibly attempted to deter an imminent and dangerous illegal abortion.

The stated rationale for S. 636 is that those exercising a legally protected right should be protected in exercising that right. That rationale plainly does not extend to protection of unlawful conduct, such as illegal abortion.

It has been suggested by the supporters of the bill that protection of illegal abortions is necessary to prevent the possibility of abusive litigation discovery. But the danger of abusive discovery exists in every piece of litigation, and our system has developed a workable method of preventing such abuses: the trial judge will control what discovery is and is not permissible. It is disturbing, to say the least, that S. 636 would protect illegal abortions in order to eliminate routine aspects of litigation that all other litigants in this country face.

My final major objection to S. 636 is that it discriminates against the pro-life viewpoint. Granted, this discrimination is cleverly disguised. But, as the Supreme Court recently reemphasized in *Church of Lukumi v. Hialeah* [(U.S. June 11, 1993)], "[f]acial neutrality is not determinative" of a statute's compliance with the first amendment. *Id.*, at 12. While the *Church of Lukumi* case concerned the free exercise clause of the first amendment, there is every reason to believe that its analysis applies equally to the first amendment's free speech clause. Among the lessons of the *Church of Lukumi* case are that the first amendment "protects against government hostility which is masked, as well as overt," slip op., at 12, and that "the effect of a law in its real operation is strong evidence of its object," *id.* at 13.

S. 636 clearly masks a hostility to the pro-life viewpoint. While facially

neutral as between abortion facilities and pro-life facilities, it fails to provide pro-life speakers the same needed protection from violence and abuse as those seeking and providing abortion. It also singles out abortion-related activity for harsh penalties that do not apply to many other causes engaged in similar conduct. The clearly intended effect of S. 636 in its real operation would be to disadvantage pro-life speech significantly.

I have many more substantive objections to the bill. For example, the delegation of so much enforcement authority to private and State entities undermines a stated rationale for the bill: the asserted need for careful, coordinated Federal action.

Finally, Mr. President, one of my concerns with this bill is that it would treat violence differently depending on the cause engaged in the violence. In other words, any action, from the mundane to the deadly, would be covered by the bill if the targets of this action provide abortion services.

The same is not true for those who do not provide abortion services. If a striking union member kills another employee, if a group of strikers goes on a rampage and burns and destroys property, if they blockade traffic, harass local citizens, and threaten spouses and children—the bill is silent. According to the proponents, the only violence worth addressing in Congress is violence committed against those who provide abortion services. All other victims are somewhat less important.

What makes this proposition even more incredible is that the record of union violence in recent decades is so pronounced. Even this year, we have seen an incredible degree of violence in connection with an ongoing strike by the United Mine Workers of America.

Mr. President, I ask unanimous consent that a list of examples of the kind of violent acts that have marred United Mine Worker strikes be included in the RECORD at the conclusion of my remarks. This union is not alone, however. There are many other examples of union violence over the past decades.

The point is, Mr. President, that I believe labor violence in recent years equals if not surpasses the degree and amount of violence against abortion clinics.

There should be not politically acceptable violence. Killings, shootings, beatings, countless threats and millions of dollars in property damage should not be ignored simply because they are committed in connection with a labor dispute. There is no logical reason while the millions of Americans who have been victimized by labor violence should not enjoy the same protections that my colleagues are so ready to provide to those who run abortion clinics.

Mr. President, I was prepared to offer an amendment to correct this failure

in the legislation but I have been told that one of my colleagues will offer the striker replacement bill as a second degree amendment to mine. My only recourse under the existing unanimous-consent agreement would be to offer second degree amendment after second degree amendment, which would violate the spirit of the agreement.

Consequently, I will not offer my amendment. Instead, my colleagues will be asked to vote today to endorse the notion that those who provide abortion services are more important than any other Americans. We will be asked to endorse the inexplicable position that violent acts against abortion clinics deserve congressional attention but killings, beatings, and rampages during labor strikes do not. That is simply not acceptable.

EXAMPLES OF VIOLENCE

In September 1979 during a United Mine Workers strike in Wayne County, KY, a coal company's security guard was shot only 2 hours after an injunction was ordered prohibiting violence at the facility.

In June 1980 a United Mine Worker official was arrested for shooting a mine security guard in the back with a high-caliber hunting rifle.

In April 1981 striking mine workers and coal truck drivers engaged in a gun battle that wounded four men.

In May 1981 striking coal miners went on a destructive rampage in West Virginia, burning trucks, smashing office windows, and setting fire to the office of a coal company.

Also in May 1981 a nonunion mine was assaulted by heavy gun fire coming from striking United Mine Workers.

In February 1982 the home of the chief negotiator for a coal company was hit by dynamite bombs 2 days in a row.

In May 1985 a 35-year-old man was killed by snipers as he drove a truck that had been hauling nonunion coal. The man left behind two children and a pregnant wife.

Also in May 1985 another coal truck driver was shot and injured by sniper fire as he was transporting coal during a strike.

In August 1985 an owner of a strike-bound coal company was hit by sniper fire at his facility.

A State court in Virginia issued a restraining order against the United Mine Workers following union violence during the Pittston strike. Fines stemming from that order have exceeded \$50 million. The union has appealed the order to the Supreme Court. The Clinton administration has filed an amicus brief in support of the right of the State court to impose the order and the fines.

In 1987, the Fourth Circuit Court of Appeals issued an order against the United Mine Workers as a result of the union's violence against subsidiaries of the A.T. Massey Coal Co. Under the

order, which was intended to curb future violence, the union is required, among other things, to train its members about appropriate conduct during a strike, to teach them that firearms are not allowed on the picket line, and that blockades, attacks on motor vehicles, and similar conduct was not permissible.

During February 1993 it is reported that at several mines, windows were broken in trucks and cars; rocks were thrown at supervisors and guards; steel balls and bolts were fired from slingshots at guards and supervisors; a supervisor was shot with a pellet gun; a truck was burned by a Molotov cocktail; and gunshots were fired into the side of a mine office.

On May 18, 1993, a train, which had left a mine in Perry County, IL, was derailed outside of Coulterville. Several strikers had placed flares on the track, forcing the engineer to stop the train. While some of the strikers were asking the engineer to return the train to the mine, someone tampered with the emergency braking system. When the engineer focused on fixing the braking system, the bottoms of several of the cars were opened, dumping more than 500 tons of coal on the tracks. When the train began to move again, five cars were derailed. It took the railroad over 12 hours to clean up the coal, reset the cars on the track, and reopen the rail line. The railroad will have to pay for these damages. Several days later, supervisors discovered that several spikes holding rails in place had been removed or loosened minutes before another train passed over a track on company property.

On the night of June 1, 1993, a pipe bomb exploded outside a mine supervisor's home in Perry County, IL. Metal fragments from the bomb struck the side of the house, blew a hole in the yard and damaged a fence. The supervisor, his wife, and children were at home at the time of the explosion. The Bureau of Alcohol, Tobacco, and Firearms is investigating the bombing.

On June 3, 1993, after dropping off wire rope at a mine in Perry County, IL, a truck driver was followed by a pickup truck with Illinois license plate, "UMWA 12." The driver of the pickup repeatedly attempted to pass the truck, while his passenger threw jackrocks at the truck's tires. The truck was followed into Missouri, where the truck driver was able to call the police. The police arrested the driver and owner of the pickup, who was also the president of the United Mine Workers local at the mine. When they searched the pickup, the police found an M-1 carbine, a .38 automatic pistol and clip, a .22 caliber pistol, firecrackers, a slingshot, ball bearings, jackrocks, a radio scanner, a two-way radio, electronic eavesdropping equipment, an ice-pick, a variety of camouflage clothing, and a ski mask.

On June 8, 1993, a convoy of supply trucks attempted to enter the premises of another mining operation. The lead trucks came under attack. The windshield of a petroleum products truck was broken and six of its tires were flattened. Fearing additional damage, the convoy was forced to turn around and not enter the mine.

On June 9, 1993, a striker at another mine attacked a vendor's truck with a baseball bat, while another striker destroyed the truck's radiator. A third striker pointed a pistol at the driver.

On June 13, 1993, an electrical transformer at a mine came under gunfire. The repairmen who arrived to fix the damage caused by the bullets were bombarded with rocks. The local union president and vice president were identified. Later that day, some 21 picketers threw rocks at security guards.

On Sunday, June 13, 1993, at approximately 8 p.m., near a West Virginia mine, a caravan of supervisors in both personal cars and a bus were driving on a public road on their way back to the mine from a weekend break. At a point where the road was being repaired and only one lane was open, more than 20 people dressed in camouflage, hoods, and masks attacked the cars, breaking windshields and damaging the vehicles. The cars driven by women were damaged the most. One person was seriously injured when an individual ran directly up to one car and threw a large rock through the passenger window, striking the passenger on the shoulder and arm.

On June 14, 1993, a fire broke out at a coal company's preparation plant in West Virginia. The fire began when someone opened a valve on a diesel storage tank and set it afire. The fire also destroyed a bulldozer. Jackrocks were placed around five trucks. The damage cost almost \$300,000.

On June 18, 1993, a mining supervisor was driving on a public road when he noticed he was being followed. The car sped in front of him and pulled over to the side of the road. The supervisor stopped his car and got out in order to film the other car with his camcorder. When he turned the camcorder on, he was attacked by two employees, whom he recognized. He was knocked to the ground and kicked, and his camcorder was stolen.

Late at night on June 19, 1993, some 200 picketers massed at a wooden bridge near the entrance of a West Virginia mine. The security guards became worried and called for reinforcements. The strikers dumped tires and other debris on the bridge and set them on fire in an attempt to burn down the bridge. The local fire department was called but refused to cross a picket line. The guards fired tear gas into the mob to disperse it and shots were fired. The 12 guards were able to put out the fire, but 1, who has responded to the call for reinforcements, was struck in

the head by a rock. An ambulance was called but the ambulance was unable to cross the bridge. The emergency personnel were allowed to walk to the injured guard, and he was taken to the hospital, where he received 13 stitches to his face and head. Some 2 hours after being called, the local police arrived at the mine and promptly searched the guards. No weapons were found, since the guards are not armed. The strikers were not searched and finally dispersed at daylight.

On June 23, 1993, rifle fire at a West Virginia coal mine damaged the mine's large, electrical transformer, which provides most of the power for the facility. The cost of the damage was more than \$300,000.

On June 30, 1993, at a mine in West Virginia, rifle fire damaged the main electrical transformer, creating more than \$500,000 worth of damage.

On July 14, 1993, a 70-ton electrical transformer, which provided power to a mine in Pike County, IN, was vandalized, and the substation was disabled. Electrical service to the mine was lost, but nearly 2,000 other utility customers also lost their power, including 8 people who are on life support systems. The utility was able to make arrangements with the local Red Cross and the sheriff's department to provide temporary shelter and relief for these individuals. It will take a week to replace the transformer, at a cost of more than \$500,000 to the utility.

On July 19, 1993, at a mine in West Virginia, strikers threw rocks, damaging several buildings and vehicles and an electrical transformer was ruined by rifle fire. When a tow truck arrived on the scene to remove the damaged vehicles, a striker attempted to throw jackrocks under the truck and was arrested by the police.

On July 21, 1993, at a mine in West Virginia, the electrical transformer was shot several times and disabled, cutting off power to the mine. This mine has been known as a gaseous mine, making electrical ventilation to avoid methane gas buildup especially critical. Several individuals who were underground at the time were forced to evacuate the mine on foot.

On July 22, 1993, Ed York, an employee of an independent contractor, was shot and killed as he tried to leave Arch of West Virginia Ruffner mine. Mr. York had been cleaning out a pond, a job he had performed for years, to make sure that mine was in compliance with various environmental rules and regulations. This was not work performed by the union. Mr. York was killed when a four-car convoy he was in came under attack by camouflaged strikers wearing masks. The strikers hurled rocks at the lead vehicle, slowing it down. Several shots were fired and Mr. York was hit in the back of the head and killed.

On October 1, 1993, a foreman at a coal mine in Illinois had his home vandalized. His truck tires were slashed, paint was thrown on the vehicle, and a container of antifreeze was put in the backyard, so that it could be reached by the foreman's prize show dog. The show dog was the mother of 23 championship puppies. Antifreeze is deadly and painful poison for a dog, because it has a sweet aroma and taste that dogs love, but it can cause total kidney dysfunction. Despite the efforts of local veterinarians, the dog finally died after several extremely painful days. Four other company supervisors had their homes vandalized the same night.

This month, up to 75 United Mine Workers blocked salaried employees from entering a Blacksville, WV, mine for 2½ hours. The homes of two foremen were vandalized, causing more than \$5,000 worth of damage at one home. Bricks were thrown through one window, landing on a bed where a 12-year-old child was sleeping.

Recently, a Federal grand jury in West Virginia indicted eight people for various criminal acts stemming from the murder of Edward York. The indictment contains the following assertions:

On or about July 22, 1993, defendant Jerry Dale Lowe discharged the Colt Trooper Mark III .357 caliber magnum revolver, serial No. 30259U, striking and killing John Edward York, also known as Eddie York, the driver of a Deskins vehicle.

The PRESIDING OFFICER. If all time is yielded back, the question is on agreeing to the committee substitute amendment, as amended.

The committee substitute amendment, as amended, was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—69

Akaka	Brown	Danforth
Baucus	Bryan	Daschle
Biden	Bumpers	DeConcini
Bingaman	Byrd	Dodd
Bond	Campbell	Dole
Boren	Chafee	Domenici
Boxer	Cohen	Durenberger
Bradley	Conrad	Feingold

Feinstein	Lautenberg	Pryor
Ford	Leahy	Reid
Glenn	Levin	Riegle
Gorton	Lieberman	Robb
Graham	Mathews	Rockefeller
Harkin	McConnell	Roth
Hollings	Metzenbaum	Sarbanes
Hutchison	Mikulski	Sasser
Inouye	Mitchell	Shelby
Jeffords	Moseley-Braun	Simon
Kassebaum	Moynihan	Simpson
Kennedy	Murray	Specter
Kerrey	Nunn	Stevens
Kerry	Packwood	Wellstone
Kohl	Pell	Wofford

NAYS—30

Bennett	Gramm	Lugar
Breaux	Grassley	Mack
Burns	Gregg	McCain
Coats	Hatch	Murkowski
Cochran	Hatfield	Nickles
Coverdell	Heflin	Pressler
Craig	Helms	Smith
D'Amato	Johnston	Thurmond
Exon	Kempthorne	Wallop
Faircloth	Lott	Warner

NOT VOTING—1

Dorgan

So the bill (S. 636), as amended, was passed, as follows:

S. 636

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide pregnancy or abortion-related services engage in com-

merce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in *Bray v. Alexandria Women's Health Clinic* (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section 1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the *Bray* decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to pregnancy or abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to pregnancy or abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide pregnancy or abortion-related services, and the destruction of property of facilities providing pregnancy or abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing pregnancy or abortion-related services: *Provided, however,* That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of pregnancy or abortion-related services;

"(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to

injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of worship; or

"(3) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides pregnancy or abortion-related services, or intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations; and

"(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000, for any other subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law;

"(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) create new remedies for interference with expressive activities protected by the First Amendment to the Constitution, occurring outside a medical facility, regardless of the point of view expressed.

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

"(1) INTERFERE WITH.—The term 'interfere with' means to restrict a person's freedom of movement.

"(2) INTIMIDATE.—The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services or counselling or referral related to health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a medical facility that provides pregnancy or abortion-related services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

"(5) PREGNANCY OR ABORTION-RELATED SERVICES.—The term 'pregnancy or abortion-

related services' includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

SEC. 4. RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. I want to extend my appreciation to the staff who did such an excellent job on developing and facilitating passage of this legislation, particularly Judy Appelbaum of my staff who did outstanding work on her first major piece of legislation. I offer my thanks to the following staff for all their efforts: Senator KENNEDY: Judy Appelbaum, Jeff Blahner, Ron Weich, Lucy Koh; Senator BOXER: Rebecca Rozen; Senator HATCH: Ed Whalen, Sharen Prost; Senator MIKULSKI: Robyn Lipner; Senator FEINSTEIN: Alexander Russo; Senator MURRAY: Helen Howell; Senator MOSELEY-BRAUN: Dana Bender; Senator KASSEBAUM: Kimberly Barnes-O'Connor; Senator DURENBERGER: Dean Rosen.

ORDER OF BUSINESS

Mr. SPECTER. Mr. President, parliamentary inquiry. Under the pending unanimous consent agreement, is S. 1657, the Specter bill on habeas corpus, now the business of the Senate?

The PRESIDING OFFICER. The Senator is correct, with 3 hours for debate, 2 hours under the control of the Senator from Pennsylvania [Mr. SPECTER], and 1 hour under the control of the Senator from Delaware [Mr. BIDEN].

Mr. SPECTER. Mr. President, my distinguished colleague from Alaska, Senator STEVENS, has asked for 5 minutes on a matter relating to his State.

I ask unanimous consent at this time that he be permitted to speak without the time charged to the bill and without my losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska.

TWENTIETH ANNIVERSARY OF TRANS-ALASKA PIPELINE AUTHORIZATION ACT

Mr. STEVENS. Mr. President, today marks the 20th anniversary of the

Trans-Alaska Pipeline Authorization Act. It was signed into law by President Nixon on November 16, 1973. That momentous occasion was of great importance to our entire Nation and really of absolute importance to my State of Alaska. It came about after a long battle on the floor of the Senate. That battle was finally won when the then-Vice President, Vice President Agnew, broke the tie. It was the only vote he ever cast.

In November of 1973, our Nation was in the grips of a crisis, an energy crisis. Just a few weeks earlier, on October 17, 1973, Arab oil-producing states began cutting exports of oil to the United States. Within a few days, they enforced a total embargo of oil exports to our country. Petroleum supplies were disrupted and gasoline and heating oil prices increased dramatically. Soon there were shutdowns of gas stations and talk of rationing gasoline. Heating oil shortages in the East, followed by escalating prices caused some Americans to literally go without heat.

The energy crisis of 1973 was one of the reasons the Trans-Alaska pipeline system was authorized. The benefits our country received from that important decision 20 years ago exceeded all of our expectations.

It was one of the major projects that helped us climb out of the economic problems that plagued us in the 1970's.

It is hard to imagine the incredible expansion in the economy that the Trans-Alaska Pipeline—we call it TAPS—has provided our Nation over the last 20 years, and the positive impact it continues to produce. There were many ways this project helped our economy.

It boosted the economy during construction of the pipeline.

It reduced imported crude oil which greatly decreased our trade deficit.

It stimulated the economy on the west coast through refining of the crude oil.

It brought in a U.S. fleet to carry the Alaska crude oil to the lower 48. The 800-mile, 48-inch pipeline was built between November 1973 and June 1977. It was an outstanding accomplishment, achieved by 70,000 workers at a cost of \$8 billion. Parts and materials to build the project were purchased in all 50 States.

As an example of the amount of private expenditures this pipeline has generated, I ask unanimous consent to submit for the RECORD a list of the amounts that have been spent in each of the States for North Slope oil development between 1980 and 1991. These are actual dollars spent in all 50 States.

Back in 1973, critics claimed that the oil from Prudhoe Bay represented only a 600-day supply of oil for our country. But Prudhoe Bay currently accounts for one-fourth of all U.S. production—or about 1.7 million barrels per day.

The peak throughput was during the Persian Gulf war. TAPS was pumping nearly 2.2 million barrels a day at the President's request to help offset the decline in imports due to the war. It has been pumping steadily for over 16 years—more than 5,900 days straight.

That does not mean there are no problems with TAPS. The Bureau of Land Management recently commissioned an audit of the pipeline and they did find some problems. And those problems should not be taken lightly. I support efforts to make sure that TAPS continues to run smoothly, efficiently, and safely.

The BLM audit team also found that TAPS has moved "extremely large quantities of oil * * * without creating lasting environmental problems." There is no doubt about that. The Trans-Alaska Pipeline has been operating over 16 years and has delivered 9 billion barrels to our Nation—with no major mishaps.

The BLM audit team rightly cited the commitment of the many workers as the reason for the Trans-Alaska Pipeline's good record for transporting oil to our Nation. Remember, all of that oil is consumed in the United States. We owe those workers our gratitude for the many years of fine work that has helped deliver 9 billion barrels of oil.

But how soon some people forget about the importance of the Trans-Alaska Pipeline to our Nation. The Department of Energy's recent publication "The U.S. Petroleum Industry: 1970-1992" does not even mention the authorization, the construction, or the production from the TAPS as a significant event affecting the U.S. petroleum industry.

TAPS helped boost our economy and our petroleum industry. But now our petroleum industry is in desperate trouble—and I believe it will lead to serious economic problems similar to those experienced during the energy crises of 1973 and 1978.

Domestic crude oil production is dropping, and now stands at less than 7 million barrels per day, the lowest in 30 years. The Prudhoe Bay field currently provides 25 percent of the total production—but is declining by 10 percent per year.

In 1992 the United States imported 50 billion dollars' worth of oil—accounting for more than half of our trade deficit. In 1989, the United States only imported \$45 billion in oil accounting for only 40 percent of the trade deficit.

The United States is perilously dependent on foreign oil. During the Arab oil embargo in 1973 when oil prices skyrocketed, we imported 36 percent of our crude oil and petroleum products. Today that figure has grown to more than 43 percent and is rapidly climbing.

At any moment, world events beyond our control could create another economic disaster like we had in 1973.

We need to revive the domestic oil industry. The oil and gas industry has been given a bad name—much like the timber industry—and it is not deserved. The oil industry is not just a few large companies. It is many small independent oil and gas producers that are an integral part of our country's economy.

Between 1982 and 1992 the electronics industry lost 166,000 jobs, the steel industry lost 150,000 jobs, and the textile industry lost 62,000 jobs.

But the oil and gas industry lost more than 400,000 jobs. More than any other industry.

So I would like to pay tribute on the 20th birthday of the Trans-Alaska Pipeline to the many fine men and women who helped build the pipeline and those who now work day-in and day-out to keep it running smoothly. They deserve our recognition and our thanks.

I ask unanimous consent that a table showing the dollars spent in each State for North Slope oil development between 1980 and 1991 be printed in the RECORD, along with two articles from the New York Times in 1973 that describe the conditions that existed in our country at the time we did authorize this enormous project in my State.

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

Dollars spent in each State for North Slope Oil Development between 1980 and 1991

Texas	\$6,740,000,000
Alaska	4,900,000,000
California	3,100,000,000
Pennsylvania	1,590,000,000
Washington	1,350,000,000
New York	680,000,000
Oklahoma	517,000,000
Colorado	292,000,000
Illinois	218,000,000
Oregon	209,000,000
Wisconsin	187,000,000
Louisiana	172,000,000
Utah	157,000,000
Georgia	105,000,000
Ohio	98,000,000
Missouri	90,000,000
Idaho	86,000,000
Kansas	86,000,000
Michigan	85,000,000
Minnesota	81,000,000
Nebraska	76,000,000
New Jersey	61,000,000
Massachusetts	60,000,000
Arkansas	54,000,000
Indiana	51,000,000
North Carolina	48,000,000
South Carolina	44,000,000
New Mexico	41,000,000
Iowa	39,000,000
Maryland	34,000,000
Florida	31,000,000
Connecticut	25,000,000
Delaware	21,000,000
Wyoming	16,000,000
Kentucky	14,000,000
Arizona	10,000,000
Nevada	10,000,000
North Dakota	10,000,000
Alabama	7,000,000
Rhode Island	7,000,000
Maine	6,000,000

New Hampshire	6,000,000
Tennessee	6,000,000
Hawaii	5,000,000
Virginia	5,000,000
Montana	4,000,000
Mississippi	2,000,000
Vermont	2,000,000
West Virginia	2,000,000
South Dakota	1,000,000

[From the New York Times, Oct. 22, 1973]

FOUR MORE ARAB GOVERNMENTS BAR OIL SUPPLIES FOR U.S.

(By Richard Eder)

BEIRUT, LEBANON, Oct. 21—Four Persian Gulf oil producers—Kuwait, Qatar, Bahrain and Dubai—today announced a total embargo of oil to the United States.

The announcements made the cutoff of Arab oil to the United States theoretically complete. Of the 17 million barrels of crude and heating oil and refinery products used by the United States each day, approximately 6 per cent has been imported from the Arab states.

At the same time, the Netherlands, which has been accused by the Arabs of being pro-Israel, was the object of reprisals today. Iraq announced the nationalization of Dutch oil holdings in the country. Previously Iraq has nationalized American holdings.

Not even the Arab producers themselves believe that the use of the oil weapon against the United States will have much immediate effect, although if maintained for a long period it could prevent serious problems. There is, for example, no simple way to prevent oil sold to European countries from finding its way to the United States.

Today's moves completed a second phase of Arab governments' decision to use oil to put pressure on the United States to abandon or reduce its support of Israel.

Last Wednesday, meeting in Kuwait, the Arabs announced that each nation would cut oil production by 5 per cent each month. These escalating cuts would continue, it was declared, until Israel evacuated the lands taken in 1967 and made restoration to the Palestinian refugees. This over-all squeeze on oil consumers was to be applied flexibly. Countries that gave "concrete assistance" to the Arab cause, it was announced, would not suffer cuts. Countries considered unfriendly—the United States in particular—would be made to bear the effect of the progressive curtailment.

The formula was purposely unclear and flexible. It was designed not simply to punish countries for supporting the Arab insufficiently, but also to encourage them to change their policies. Countries that adopted a stiffer line toward Israel could find themselves placed in a more favored category.

At the same time, the use of the over-all reduction in production, especially as it escalated each month, would make it less and less likely that the European countries, for instance would allow oil sold to them be sent to the United States.

The Kuwait meeting was followed by announcements of more United States military aid to Israel and President Nixon's request for a \$2.2-billion appropriation to pay for it. This seems to have set in motion the second phase of the oil squeeze.

Several states, among them Saudi Arabia and Qatar, announced that the first production cuts would be 10 per cent rather than 5 per cent. In the case of Saudi Arabia, whose production dwarfs that of the others, the 10 per cent cut would replace the first two monthly 5 percent reductions.

The results would be roughly the same, but the initial bite would be much harder.

Then over the last three days, the oil states began successively announcing a total embargo on oil to the United States. By tonight these included Saudi Arabia, Libya, Kuwait, Abu Dhabi, Qatar, Algeria, Bahrain and Dubai.

The total embargo on the United States could mean that the other form of pressure, the production cut, will begin to be felt in Europe and Japan somewhat later than it otherwise would have done. This is because the United States took close to 10 per cent of the Arab output.

[From the New York Times, Dec. 3, 1973]

TRAFFIC OFF SHARPLY ON GASLESS SUNDAY

(By David A. Andelman)

Millions of drivers, facing padlocked gas pumps and warnings of an energy crisis, kept their cars at home yesterday.

While city streets in New York, in Los Angeles and in between, carried their light Sunday traffic, many of the country's major superhighways and parkways were barren stretches of asphalt and concrete, their service islands bare, their toll-takers inactive.

It was a day when more than 90 per cent of the nation's 220,000 service stations closed, observing the first voluntary nationwide shutdown to conserve gasoline.

The pattern that emerged was one of a conservative motorist, willing to venture a short distance from home to visit friends or relatives but unwilling to risk a long Sunday drive into the country.

There were the cases, too, of those stranded without gas, of others siphoning fuel out of parked cars, of private planes standing at municipal airports, and of the few gas station owners who stayed open being flooded, even mobbed, by those who needed their fuel.

In the New York area, all reports from officials of the American Automobile Association, police officials and toll-takers showed traffic on the major arteries significantly lighter than normal.

The Verrazano-Narrows Bridge had a 25 per cent drop in traffic, and on the Goethals and Bayonne Bridges and Outer-bridge Crossing between Staten Island and New Jersey, that drop reached 35 per cent.

On the Gov. Thomas E. Dewey Thruway in New York, Joseph Guardino, a supervisor at the Hawthorne interchange, said that traffic was lighter than on any Sunday in his 18 years with the Thruway Authority.

By nightfall, most police officials on the major arteries, bridges and tunnels were continuing to report lighter traffic. "There were hardly any cars on the roads at 4 P.M.," said a spokesman for the Long Island State Parkway Police.

And officials of the Port Authority of New York and New Jersey reported that traffic on the George Washington Bridge was 18 per cent lighter than last Sunday.

Throughout the country, the pattern was repeated again and again. The North Carolina Highway Patrol reported a 50 to 75 per cent drop in the usual Sunday traffic; the Florida Turnpike reported travel off 60 per cent; the California Highway Patrol estimated traffic off 30 per cent on major arteries, and a Massachusetts State Police dispatcher said traffic was "way down" for a Sunday on the Massachusetts Turnpike.

But there were many who did venture out and some ran into trouble almost immediately.

At the Slootsburg service islands on the New York thruway, Vernon Stevens and Sal Angilletta, who had been hunting in Decatur, N.Y., coasted their gasless car into the service area.

"We filled it right up to the nozzle last night," Mr. Stevens moaned. "But we just couldn't make it home to Mamaroneck."

With a State Highway Patrolman standing by, a red and white service truck pumped five gallons into their tank.

For others improvident enough to run out, the process was more expensive, however. William Varian, the afternoon tow-truck operator on the Bronx River Parkway, covering the area outside of Yonkers, said that if anyone did run out of gas, and none had by mid-afternoon, he would get one dollar's worth, for a dollar, plus a \$7.50 service charge, plus tax. The total bill—\$9.05.

But most of the automobile clubs in the metropolitan area reported that it appeared that individuals were generally not venturing forth unless they had carefully calculated all the distances involved and the gas they had on hand.

Dean Zellner, of Ramsey, N.J., who was waiting with his wife and two children in front of the Radio City Music Hall for the start of the Christmas show, observed:

"I made sure I had a full tank yesterday, and I checked the mileage [35 miles each way] to make sure I'd have enough. If I didn't have the gas, I wouldn't be here."

In Rockland County and on Long Island, others couldn't wait. The Palisades Parkway police arrested 17-year-old Kevin Iscarino of Massapequa, L.I., on charges of siphoning gas from a parked car. He was released on \$50 bail.

The Suffolk County police reported that some motorists, unable to find open gas stations, were siphoning gas from the tanks of parked school buses in open lots and from cars parked at private homes.

The Connecticut Automobile Club began a special crisis program for A.A.A. members and all drivers—a toll-free hotline number (800-922-1633) and an 18-member task force to answer queries and refer drivers in Connecticut to the handful of that state's service stations that remained open.

"Because this is the first weekend of the closing, there is a lot of confusion," said Richard Herbert, the club's president. "We live in a seven day-week world where people will go on driving."

Elimination of all but the most vital of this Sunday driving was the announced intention behind the decision by President Nixon last Sunday to request all of the country's service stations to close down between 9 p.m. Saturday and midnight Sunday—a decision he said that would conserve 2.1 million gallons of oil each week.

EFFECTIVENESS QUESTIONED

For the present, the closings are voluntary, but passage of the National Energy Emergency Act, now before Congress, will mandate the gasless Sunday. Until then, some gas stations are still pumping gas.

The Jantzen Beach Shell station on Interstate 5 in Portland, Ore., figured to pump 12,000 gallons of gas yesterday—three times as much as normal. And in remote Arlington, Ore., all three dealers stayed open yesterday.

"We're in the middle of nowhere," explained Al Pollentier, a Shell station owner. "If they run out of gas they are out of luck. Why, we have people here who have to travel 50 miles to go to church."

It was such instances of gasoline stations that remained open pumping vast quantities of gas and the long lines queuing up well into the night on Saturday wherever stations remained open—motorists stocking up for the gasless Sunday and the possibility of vastly diminished stocks even Monday morning—

that caused some to question the over-all effectiveness of the shutdown in terms of total savings in gas consumption.

"When the figures come in, we're going to find this was merely a symbolic gesture," said Edward L. Weidenfeld, former counsel to the House Committee on Interior and Insular Affairs, now a leading Washington lawyer. "Much weekend driving is done on one tank of gas—and that's the tank they're selling Saturday night."

For many it was a vast inconvenience, but for others it was an economic catastrophe as well. Shirley Richardson, desk clerk in a motor lodge at Hollywood and Ventura Freeway in North Hollywood, Calif., said occupancy was off nearly one-third last night.

And at Schmidt's Motor Lodge in a ski area north of Duluth, Minn., business was poor. "People had the gasoline to get here, but they were worried about returning home tonight."

Thomas A. Warren of Warren's Garden Center in Water Mill, L.I., was even more worried. Business, particularly Christmas tree orders, was down 75 percent from last year.

Mr. STEVENS. My thanks to my good friend from Pennsylvania for allowing me time.

HABEAS CORPUS REFORM

The PRESIDING OFFICER. Under the previous order, the Senate will now consider S. 1657, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1657) to reform habeas corpus procedures.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

Mr. SPECTER. Mr. President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. SPECTER. Mr. President, this amendment is designed to speed up the process of Federal court proceedings which review the death penalty from State courts where those proceedings have become so long that they consume as much as 17 years and destroy the ability of the death penalty to serve as a deterrent to crimes of violence.

I submit, Mr. President, the evidence is compelling that the death penalty is an effective deterrent against crimes of violence, the proposition that I shall develop at some length. But it is indisputable that 37 States of the United States have decided as a matter of public policy that the death penalty is the law of those 37 States.

The current crime bill, which is virtually finished, has the imposition of the death penalty based on its deterrent effect and based on its being a just punishment. Seventy percent of the American people have repeatedly sup-

ported the death penalty, and when this Chamber has voted on the death penalty for acts like terrorism, to stop terrorism and the murder of U.S. citizens abroad, more than 70 U.S. Senators customarily say they are for the death penalty. So there is no doubt that is the law of the land in a majority of the States and has been sanctioned in the current crime bill as Federal law to impose the death penalty.

But what happens when there are challenges to the constitutionality of the death penalty, when those cases are taken to the Federal court under a procedure known as habeas corpus, which is a Latin phrase which means to have the body. Its purpose is designed to make sure that the constitutional rights of the defendant are observed, a proposition to which I am thoroughly dedicated, to preserve the constitutional rights of the defendants to make sure they are thoroughly examined and thoroughly protected. But at the same time there are rights that society has to have its laws carried out, and the effect of the long delays has been unfair to everyone.

An international tribunal has declared that American practices, where someone is kept on death row for more than 8 or 9 years, violates cruel and unusual punishment; that it is unfair to the defendant to be kept on death row in a state of suspended animation not knowing what is going to happen to him or her and when. The studies have shown that it is unfair to the families of the victims of crime to have these cases pending for 10, 12, 17 years without a resolution of the matter. It is a basic factor of human nature that it is important to have matters resolved, to have them resolved fairly, but to have them resolved.

The consequence of this extended Federal procedure has been really sort of an incredible tale. The best way to depict it so people can understand the scope of the problem is to put it on large charts. Behind me I have a chart which summarizes the proceedings in one case. This is the case of the State of California versus Robert Alton Harris.

The Harris case began in July of 1978 when Harris was arraigned for a double murder. And in 104 entries in this case Harris challenged the death penalty in the State courts of California and in the Federal courts.

On 10 separate occasions, as these five charts show, Harris filed petitions for what is called the writ of habeas corpus in the State courts; and interspersed, he filed petitions for writs of habeas corpus in the Federal courts on five occasions; and, interspersed with that, on 11 occasions the Supreme Court of the United States entertained petitions to influence the outcome of his case. At the same time, there were several petitions in the State courts pending; there were several petitions in

the Federal courts pending; and there were multiple papers filed in the U.S. Supreme Court.

This has led the criminal justice system in California into a state of virtual anarchy. The attorney general of the State of California wrote to me by letter dated October 28 complaining bitterly about the central problem in this case involving unnecessary delay, thwarting the will of the State of California in carrying out the death penalty, and keeping the defendant, Robert Harris, on death row in a state of suspended animation on what an international court has categorized as cruel and unusual punishment, as being fundamentally unfair to the defendant.

This case is not unusual. We have a series of charts which set forth other cases. The case of Beasley versus the Commonwealth of Pennsylvania, which originated in 1980 with two murders in Philadelphia, and is pending some 13 years later and is unresolved; the case of Lesko versus Lehman, where the defendant and codefendant were charged with the murder of a police officer in 1980, and 13 years later the case is unresolved; the case of Charles Campbell, charged in 1982 with a triple murder, and 11 years later, having wound its way through the courts of the State of Washington, the case is unresolved; the case of La Rette versus Delo, charged with murder in 1980, and now 13 years later the case is still unresolved.

I ask unanimous consent, Mr. President, that the chronology of these cases and the full text of the letter from Attorney General Lungren appear at the conclusion of my statement as if read in full on the Senate floor.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, this chart is worth 100,000 words in depicting the kind of delay present as a result of habeas corpus. The blue lines which appear on the chart on Harris, Beasley, Lesko, Campbell, and La Rette represent the State court delay; the red lines represent the Federal court delay; and the green lines represent the State hearings.

The expense is enormous, really incalculable. When you figure the cost of maintaining prisoners on death row, it is a half million dollars a case. When you consider the cost of the legal services, it is in excess of that figure. When you consider the cost of the court time in the district court, circuit court, Supreme Court, the State courts, it is in excess of any of those figures.

Mr. President, I do not base my argument on the factor of cost. I do not believe that there is any price for a human life or any cost to do justice. But when a defendant has been fairly convicted of murder in the first degree and capital punishment has traditionally been reserved for the most heinous and outrageous of those crimes, it is

fair and just that after the legal issues have been considered and the constitutional issues have been considered that the case would come to a close.

I have had experience as an assistant district attorney in trying murder cases. I have had experience in the appellate courts of Pennsylvania, my home State, in arguing cases before the Supreme Court of Pennsylvania in upholding the death penalty, and have had experience on the habeas corpus cases in the State courts, in the Federal courts, and have seen a very careful and judicious use of the death penalty.

My practice was—and I think this is a practice of people across the country—not to ask for the death penalty unless it was reviewed personally by me as the elected district attorney of the city and county of Philadelphia. And in a jurisdiction which had some 500 homicides a year, the death penalty was requested two or three or four or five times.

At the present time, there are almost 2,500 inmates on death row in the United States. The precise figure, Mr. President, on the statistics gathered at the end of 1991, which are the most recent statistics available, are 2,482 cases. During the course of 1977 to 1993, when the death penalty was reimposed, for those years, the death penalty has been carried out in 1977 once; 1978, none; 1979, twice; 1980, none; 1981, once; 1982, twice; 1983, five times; 1984, 21; 1985, 18; 1986, 18; 1987, 25; 1988, 11; 1989, 16; 1990, 23; 1991, 14; 1992, 31; and 1993, 31.

That is against almost 2,500 cases where juries and courts, after due deliberation, have concluded that the death penalty is the appropriate penalty. Why, Mr. President, is the death penalty imposed? It is imposed because of the judgment by the legislatures of most of the States of the United States; and by the judgment of the U.S. Senate, in the bill which is currently pending, where we have imposed the death penalty, for example, for the assassination of a President; or where the death penalty is imposed in Pennsylvania for cold-blooded murder of a police officer, or for a robbery. I had cases where a person committed 10, 15 robberies, and murdered in the course of those robberies—where the people were absolutely incorrigible.

And the experience has been that the death penalty is an effective deterrent.

One of the cases which illustrates this very well was a matter that I argued in the Supreme Court of Pennsylvania 30 years ago, when there were three young men, Williams, Cater, and Rivers, ages 19, 18, and 17, and they decided to commit a robbery of a grocery store in north Philadelphia.

Williams was the oldest of the three. He was 19 years old. He had a gun. He and Cater and Rivers made plans to commit the robbery, and Williams brandished his gun. Cater and Rivers,

who had marginal livelihoods, said they were not going to go on the robbery if Williams carried his gun. They said they were not going to go on the robbery because they did not want to run the risk of having someone murdered and face the possibility of the death penalty.

How do we know that? We know that because all three confessed, and their confessions were corroborated; that is, there was evidence which supported and substantiated their confessions. And it was undisputed that two of them—Rivers and Cater—did not want to go along because Williams was going to carry the gun and the death penalty might result.

Williams put the gun in the drawer, closed the drawer, and unbeknownst to Cater and Rivers, as they were walking out, Williams reached back into the desk drawer, got the gun, took it along; and as you might suspect, during the course of the robbery, the grocer resisted and Williams used the revolver and shot and murdered the grocer. Williams was executed. Ultimately, Cater and Rivers received a life sentence. They received a life sentence because the facts of the case show that they were really not culpable to the same extent.

There are many cases compiled by the experts which have confirmed the deterrent effect of capital punishment. A week ago Thursday, when this bill was on the floor in its early stage on November 4, I set forth in some detail a long line of cases, evidence of capital punishment being a deterrent: The opinion of Justice McComb in *People versus Love* in California; the statistical studies from the Los Angeles Police Department for a book written by a noted authority, Frank Carrington, a book entitled "Neither Cruel nor Unusual," testimony given by the Assistant Attorney General for the U.S. Department of Justice, Henry Peterson; an article by the Houston district attorney, Carol Vance, who was a contemporary of mine when I was district attorney of Philadelphia—all on the experience that the death penalty is a deterrent.

Mr. President, whether that conclusion is accepted or not, it is undisputable that 37 States in the United States have enacted the death penalty and as a matter of their determination, it was not carried out. The course of these cases depicted on this chart shows the enormous and inordinate delays and the impossibility of carrying out the death penalty.

The pending legislation provides for the Federal court to take jurisdiction of the case, to review the constitutional issues as soon as the case is decided.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator has spoken for 20 minutes.

Mr. SPECTER. I thank the Chair. I now yield myself 10 additional minutes

as a guide to the time limits which are available for the argument and presentation of this matter.

This legislation provides that the Federal Government will have jurisdiction after a defendant has exhausted his direct appeals in the State court, which means after the defendant has taken an appeal to the State supreme court and has applied to the U.S. Supreme Court for a writ of certiorari, at that stage, the Federal courts would have jurisdiction. It would not be necessary for the defendant to go back to the State courts to challenge the conviction by what is called State habeas corpus. But as soon as the direct appeal is finished, there would be a time requirement, which is identical with the bill advanced by the Senator from Delaware, chairman of the Judiciary Committee, Senator BIDEN, for 180 days to file a petition.

The district court would then have a time limit of 180 days to consider the constitutional issues raised. There would be an opportunity for the defendant to present all legal and factual arguments, without limitation. And this is important, Mr. President, because, under existing law, if it is determined that the defendant has not exhausted the State habeas corpus, it goes back to the State and frequently back to the Federal court and frequently back to the State, as it was done in the Harris case, with 10 State habeas corpus petitions, 10 Federal habeas corpus petitions and 11 times in the U.S. Supreme Court and 1 full hearing in the U.S. district court; then an appeal to the circuit court, which would have a time limit of 120 days; then a Supreme Court petition for cert, which have traditionally been handled expeditiously. That timetable, Mr. President, would complete the entire process of Federal court review in less than 2 years and in a full and a fair way.

One of the reasons why there is so much delay is because of successive petitions, where the defendant goes back to the State court and then goes back to the Federal court, and the Federal court says there has not been an exhaustion of remedies in the State court, and the delay is interminable.

Under this legislation, a successive petition would be permitted only if there was an intervening decision which involved a fundamental constitutional right, and only if that would affect the outcome of a case on the determination of guilt or the determination of sentence, or if there is newly discovered evidence which genuinely was not available from when the first petition was filed. The procedural safeguard or guarantee that there will not be an abuse of this system is that a subsequent petition can only be permitted if the court of appeals allows it, two judges on the court of appeals, which is a rigorous standard. That standard was suggested to me by a very

distinguished Federal judge, Chief Judge John Newman of the Court of Appeals for the Second Circuit.

This procedure, Mr. President, is substantially the same that was passed by the Senate on May 24, 1990 under a bill which was introduced by Senator THURMOND, Senator HATCH, Senator SIMPSON, and myself, where we dealt with the tough issue of retroactivity, which has been a major stumbling block by provision that intervening decisions which involve fundamental constitutional rights would be considered, even if they came down after the death sentence was imposed.

After a great deal of deliberation, it was decided that this was a realistic and reasonable standard to be imposed without unduly infringing on having cases heard and so many cases relitigated.

Bear this in mind: There have been very few matters on retroactive application coming down. In a timespan where there is only an interval of 2 years or less, it is not as if you have 15 years where there are a lot of decisions coming down which could affect the pending litigation. This is the essence of the proposal.

I am going to ask that the distinguished managers of the bill come to the Chamber so we can discuss some of the specifics on my time. But before I do so, I wish to make a couple of generalized comments as to where the habeas corpus provisions fit into the overall plan of a criminal justice system.

Mr. President, more than two decades ago, in 1972, a national commission on which I served established a blueprint to reduce violent crime in America by more than 50 percent. Regrettably, in the intervening 21 years, relatively little has been done and America is plagued by crimes of violence which are really unnecessary if the Congress and the State legislatures would take the action necessary to combat crime and combat crime effectively.

That blueprint involves these steps:

First, there has to be a diversion of lesser cases from the criminal justice system so that the courts can concentrate on the serious cases. The Philadelphia model was used on what is called preindictment probation, later labeled ARD, accelerated rehabilitative disposition, a real tongue twister, which takes first offenders on non-violent crimes out of the system, which eliminated from my criminal docket, when I was district attorney in Philadelphia, 8,000 cases a year.

The second step was the abolition of plea bargaining so that you did not have aggregated robbery cases going out on probation, which happens again and again and again in this country, or where you have first-degree murderers who were sentenced to the death penalty, as Senator KAY BAILEY HUTCHISON

pointed out to me, and several dozen were released in 1976 when the Supreme Court of the United States overturned the death penalty and their sentences were commuted, and now some of them cannot be found.

The critical aspect of the criminal justice system is the sentence. If an adequate sentence is not imposed the whole process is meaningless.

Then there has to be realistic rehabilitation for the juvenile offenders, for first offenders, and for second offenders. I have had legislation pending in the Senate, and this bill does provide some significant advances on the issue of rehabilitation.

This bill provides \$1.2 billion to establish early intervention teams of police, social workers, school teachers, and doctors to identify troubled youngsters and work with juvenile offenders. This is an enormous addition from the few dollars which I had as the district attorney of Philadelphia for a program of juvenile justice.

The PRESIDING OFFICER. The 10 minutes have expired.

Mr. SPECTER. I thank the Chair and ask for a reminder at the expiration of an additional 10 minutes.

The current bill further provides that the Justice Department would finance police athletic leagues, Big Brothers and Big Sisters programs, and Girls and Boys Clubs in high crime areas. This kind of crime prevention is indispensable.

Then there has to be realistic rehabilitation for those who are in jail. It is no surprise that if someone leaves jail as a functional illiterate, cannot read or write, has no trade or skill, is drug dependent, and walks out of that jail, that person, man or woman, is soon going to be caught in a revolving door and is soon going to be back in jail.

I have had legislation pending for 12 years on this subject, and for 4 years when I had the opportunity to serve as chairman of the District of Columbia Appropriations Committee that committee took the lead, Congress passed, and the President signed education and job training programs which were relatively substantial but regrettably they have not been carried out.

What has to be undertaken is a program of realistic rehabilitation which is obviously going to benefit the defendant, but what the people do not realize is that a primary purpose is to stop criminal repeaters. Violent criminals, who are criminal repeaters, who are habitual offenders, commit 70 percent of the violent crimes in America.

So when we make an effort to deal with the criminal repeater by intercepting that recidivism and stopping repeaters by realistic rehabilitation, we are really dealing with the benefit of society at large as well as trying to help the individual.

Once the individual becomes a career criminal at that juncture, in my opin-

ion, the courts have to throw the book at him or her, and there has to be a life sentence.

More than 40 States have habitual offender statutes where someone convicted of three or four major felonies gets a life sentence. One of the first bills which I introduced in 1981 was the armed career criminal bill, which was passed by the Senate in 1984 and has been widely noted as one of the most effective, if not the most effective tool in dealing with criminal repeaters by a provision which says that if someone has been convicted of three or more crimes of violence and that person is caught in possession of a firearm, then that person goes to jail for life.

Now, under the Federal system, life means 15 years to life. So if someone is eligible for parole, that is a determination made by the prison authorities. It is unrealistic to keep people in jail forever. That may be right or that may be wrong, but that is the system. It may need reconsideration. But we have not dealt with the career criminals and the habitual offenders in a tough enough way once that determination has been made.

This bill puts up substantial money, some \$3 billion, for regional prisons, an idea long advanced by the Senator from Delaware, the chairman of the Judiciary Committee, and advanced by myself to have Federal jails house habitual criminals.

When I was district attorney of Philadelphia, I frequently made applications to the trial court to have people sentenced under the Pennsylvania habitual offender statute, and it was virtually impossible to get the courts to act because of jail overcrowding.

These are criminals who move in interstate commerce. These are criminals who are really involved in drugs. And these are criminals who really ought to be a Federal responsibility in the Federal leadership role.

This bill finally provides some \$3 billion to provide regional prisons which can house such career criminals.

There are other provisions of this bill, which are excellent provisions. There will be \$3 billion for boot camp correctional facilities for nonviolent offenders, which would stress self discipline, remedial education, job training, and drug treatment.

There is another \$870 million in grants to communities to provide funds to fight violence against women to be used to operate rape crisis shelters, battered women shelters, counseling for victims of sexual abuse and domestic violence, and the training of law enforcement specialists who work with abused women.

Mr. President, the current bill is a significant step in the right direction, taking some \$22 billion which the Congress calculates is available as a result of reductions in governmental operations and directing it to crime.

Mr. President, this is a significant step forward on quite a number of lines which were outlined in 1972 by the national commission where they dealt with realistic rehabilitation, where the 1972 commission outlined the blueprint for realistic rehabilitation dealing with vocational training, job training, educational training, drug dependency, and when dealing with repeat offenders and habitual criminals to have life sentences.

But this is only a start, Mr. President. We have the material resources in the United States of America to reduce violent crime by more than 50 percent if we ever make up our minds to do so. We have the wherewithal to deal with criminal repeaters by locking them up and throwing away the key. But that can only be done in our society if we first give a chance to the juveniles and the first offenders and some second offenders to have realistic rehabilitation.

The other aspect of concern, Mr. President, is an attack on the underlying causes of crime. There are some who disagreed with the total use of \$22 billion. It is important to fight crime, but there is a real question as to whether some of that money might be directed to an urban agenda on job training and housing and education.

There is a real need in this country for Americans to attack the crime problem themselves. This was brought into sharp focus just a few days ago on Saturday when President Clinton delivered an emotional appeal on stopping crime from the pulpit of the church where Dr. Martin Luther King delivered his last sermon in Memphis, TN. President Clinton sounded the clarion call with his so-called bully pulpit, saying that people have a responsibility for the rise in violence. President Clinton expressed his concern, in a way which captures more attention than a speech by a Senator on this floor, about the social ills in our country and his determination to address the crime problem head on and his concern for the thousands of murders which are committed each year.

He did not talk about the death penalty, at least in the reports that I read, but he might have because President Clinton supports the death penalty as a deterrent against violent crime. But he did comment about the 160,000 children who stay home from school each day in fear of violence. And when those 160,000 children stay home every day because of fear of violence, they are not getting the education, they are not getting the background, they are not getting the job training.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. SPECTER. I calculate that I have used 40 minutes of my 2 hours.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. I ask for another reminder at another 10-minute mark.

Mr. President, when those 160,000 children are afraid to go to school, we are destroying a large part of their opportunity to achieve an education and to be productive citizens and really to avoid the crime cycle.

I speak from my own personal experience and the experience of my brother and two sisters and our immigrant parents and the opportunity for the Specter family to have a share of America as a result of education. When I went to school in Wichita, KS, as a child; in Russell, KS, as a high school student; and at the University of Oklahoma and the University of Pennsylvania in college, I was not afraid of being mugged or shot on the street. That is the sort of thing we have to take a stand on.

Now, I have been somewhat elaborate, Mr. President, in spelling out the outline, really the blueprint, of a crime control system in this country. But I have worked in the criminal justice system for years as an assistant district attorney and then administered a large office with 165 assistant district attorneys in Philadelphia, with some 30,000 crimes, some 500 homicide cases, and I am convinced that if we really set our minds to realistic rehabilitation, we could take many out of the crime cycle. Where there are habitual offenders, they have to have life sentences. It would be a saving to have the kind of resources dedicated to education, drug education for youngsters, job training for people in jail, literacy training for people in jail, job opportunities so they do not go back to a life of crime in a crime industry which is incalculable, in excess of \$500 billion estimated by some and probably in excess of \$1 trillion on a gross national product of this country of some \$6 trillion. We can do the job if we make up our mind to do so.

Mr. President, the symbol and the flagship for law enforcement in the United States is the death penalty. Now, I know that there are many people who disagree with me about whether the death penalty ought to be imposed. I respect those who are against the death penalty on grounds of conscientious scruples.

There are some people who argue that the death penalty is not a deterrent. Now, that is a subject for debate. For reasons I have already specified this evening and on November 4 in an earlier speech, an opening statement on the crime bill, I submit that the evidence is overwhelming that capital punishment is a significant deterrent and that law-abiding citizens ought not to be deprived of capital punishment.

Whatever anybody may say about the issue of conscientious scruples or whatever anybody may say about whether the death penalty is a deterrent, it is a fact that 37 States have the death penalty, and in our system of laws, those 37 States are entitled to have the penalty enforced.

Under the crime bill which the Senate is about to pass, the death penalty is present for many serious offenses, like the assassination of a President. And it is true, Mr. President, that the defendant has rights and it is the Federal court which is the final arbiter, the final decisionmaker to see to it that the defendant has his full constitutional rights.

When I was district attorney of Philadelphia and an assistant district attorney, I was very concerned that the full range of the defendant's rights be accorded, and I have maintained in this body a keen interest and stiff advocacy for civil rights and an appropriate balance on defendants' rights.

But the legislation which is proposed here removes what the Congress imposed. The Congress, by legislation, said there had to be an exhaustion of State remedies, but that has exhausted the system. The legislation proposed would have the full appellate procedure in the State courts and after being upheld by the State Supreme Court and after cert is denied by the U.S. Supreme Court, which is customary, then to come to the Federal courts, full hearing, a timetable which is realistic and which can be extended if cause is shown.

But there can be a balance for society's interest, and the defendant would not be in a state of suspended animation, the families of the victims would not be in a state of suspended animation, and the most visible part of the American criminal justice system—the capital punishment cases—would not be the laughingstock of the country when they take up to 17 years to be decided with repetitive appeals; many, many cases, like the Harris case, some 15 years, with 10 habeas corpus proceedings, 5 Federal proceedings, 11 petitions to the Supreme Court of the United States.

I close this portion of my presentation with a letter which I have just received from the Attorney General of the State of Arizona, and it is like the letter from the attorney general of California which I read earlier where Attorney General Lungren was complaining bitterly about the delays in the Federal courts.

These cases are really not well understood by many people. It is a difficult matter to wade through these habeas corpus cases in hearings in the Judiciary Committee and it takes a lot of sitting through these cases when a person is an assistant district attorney.

I recall vividly as a young assistant district attorney having State habeas corpus cases where a person would be convicted of murder in the first degree, get the death penalty or life imprisonment, and then, before going to the Federal court, would come back to the State court and file the petition for a writ of habeas corpus and put all the materials in which the State supreme court had already decided.

It would come to the trial court judge and it would sit on his desk for days and weeks and months and years, because it was a matter of no importance. It had already been decided. Finally, it would wind its way through the courts taking several years—5 years like the Harris case, 10 years like the Beasley case. Then I would go to the Federal court and as assistant district attorney would argue a case in the Federal court on habeas corpus, and the judge would come upon an issue which he said might not have been raised in the State court. Then the Federal judge would have to send the case back to the State court, because that was the law which is on the books to this day. It would go back to the State court, like the Harris case, and be there for a long time again, and then come back and have to be reexamined.

I will take an additional 10 minutes now, Mr. President, to take up one more case which I think is very important—the distinguished chairman of the committee is on the floor at this time—before getting to the letter from the attorney general from Arizona.

This case is an illustration of the interminable delay in the judicial system. It is a case which was decided unanimously by the Supreme Court of the United States in a case captioned *People versus Castille*.

In this case, which was not a death case but the principle is the same, the defendant was convicted of a serious crime in the Philadelphia Common Pleas Court. He took an appeal to the State supreme court. Then he went back to the district court and the district court said he had not exhausted his State remedies so they sent it back to the State court. But the defendant decided to take an appeal to the Court of Appeals for the Third Circuit. So he took an appeal to the court of appeals and they disagreed with the district court and said you have exhausted your State remedies and sent it back to the district court. But then the district attorney took an appeal to the U.S. Supreme Court.

Mr. Justice Scalia wrote an opinion saying that, on the record, the first time it went through the Supreme Court of Pennsylvania it was unclear on the record whether the supreme court dismissed the case as a matter of their discretion or whether the supreme court dismissed the case after considering the merits. And the Supreme Court of the United States sent it back to the circuit court and the circuit court then wrote a long opinion on the procedural nuances and sent it back to the district court.

That kind of a tennis game makes absolutely no sense. It is up to the Congress to deal with the issue.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that upon the use or yielding back of time on S. 1657, Senator BIDEN be recognized to move to table the bill; that the bill then be laid aside and the Senate resume consideration of S. 1607, the crime bill; that the vote on Senator BIDEN's motion to table S. 1657 occur at 9:30 a.m. on Wednesday, November 17; that upon the disposition of S. 1657, the Senate resume consideration of S. 1607 and vote on Senator FEINSTEIN's amendment No. 1152 to be followed by a vote on Senator LEVIN's amendment No. 1151, as amended, with both actions occurring without any intervening action or debate; that the agreement governing consideration of the crime bill be modified to provide for the remaining 10 listed amendments, except for Senator DOLE's amendment, shall be considered this evening in the order provided for in the existing consent agreement; that any votes ordered in relation to these amendments be stacked to occur on Wednesday, November 17, immediately following the disposition of Senator LEVIN's amendment No. 1151; that these remaining 10 floor amendments, except for Senator DOLE's amendment, must be offered by the close of business today or they will no longer be in order; and that all other provisions of the existing consent agreement governing S. 1607 remain in effect.

I further ask unanimous consent that the time for debate previously agreed upon with respect to S. 1657 be reduced this evening by a total of 30 minutes, 15 minutes off Senator SPECTER's time, 15 minutes off Senator BIDEN's time; and that at 9 a.m. tomorrow, Senator SPECTER be recognized to address the Senate for 15 minutes and at 9:15, Senator BIDEN be recognized to address the Senate for 15 minutes and the vote to occur at 9:30, as previously stated.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object, I just ask one point of clarification. I do not believe that the majority leader means I have to use 15 minutes first, but I have 15 minutes after 30 and can speak for 5 and yield to Senator BIDEN and reserve the remainder of 10 minutes. So the total is 15 minutes.

Mr. MITCHELL. It is my intention the Senator will speak from 9 to 9:15, and it means Senator BIDEN would not have to come at 9 and could come at 9:15 and respond.

Mr. SPECTER. That is of concern to me because it is necessary, in my view, to have an exchange with Senator BIDEN.

Mr. MITCHELL. The Senator has 1 hour and 45 minutes to do that tonight.

Mr. SPECTER. If the time is to be meaningful tomorrow, I would like to have that opportunity then as well.

Does that pose some problem for the majority leader?

Mr. MITCHELL. No, it does not. I would just like to get this over with.

Mr. SPECTER. I would, too. I have been waiting for 10 days to try to bring this up. I finally have. I have been on tap all the time but to have—

Mr. MITCHELL. If it is agreeable with Senator BIDEN, I am agreeable with it.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, in view of this agreement, there will be no further rollcall votes this evening. Senators should be aware, however, that there will be a series of rollcall votes beginning promptly at 9:30 a.m. tomorrow, with the first vote to be on Senator BIDEN's motion to table S. 1657; the second vote to be on Senator FEINSTEIN's amendment; the third vote to be on Senator LEVIN's amendment; and then additional votes to be stacked with respect to the amendments that will be debated this evening, including the amendment by the Senator from North Carolina, which has just been briefly discussed and the other amendments listed in the order which is Order No. 260 printed at page 2 of today's Calendar of Business.

So there will be no further rollcall votes this evening. There will be a series of rollcall votes tomorrow beginning at 9:30. Senators should be prepared for a long evening tomorrow as we attempt to complete action on this bill and take up other matters on which we must make good progress if we are to meet our objective of completing this session prior to Thanksgiving.

I thank all of my colleagues for their cooperation, and I yield the floor.

Mr. SPECTER addressed the Chair.

HABEAS CORPUS REFORM

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1657.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 52 minutes remaining this evening.

Who yields time?

Mr. SPECTER. I yield myself an additional 10 minutes at this time.

Mr. President, prior to the interruption, I was referring to the procedures which, I submit, make absolutely no sense and are very time consuming, an expense to the taxpayers to run the judicial system and having sentences of the court not carried out.

I will return to that point as briefly as I can to make the point with this case of *People versus Castille*, which reached the Supreme Court of the United States in 1989.

This is a case where the defendant raised four objections. The district court said he had not exhausted his remedies in the State court. The court of appeals reversed, saying that he had. The Supreme Court reversed the court of appeals saying that he had exhausted his remedies in the State court on two points but not as to two others, in a very lengthy opinion which took the time of nine Justices and arguments in the Supreme Court at a high cost to the taxpayers.

So they split the four hairs, two on one side and two on the other. The case then went back to the court of appeals for the third circuit. Again, more briefs, more arguments, and if you are a Philadelphia lawyer you can understand this opinion, if you read it three times. The court of appeals distinguished the two claims, said as to one it had been exhausted because it was procedurally barred. It would take a half-hour to explain that. But the second claim as to ineffective assistance of counsel could be maintained, and they sent it back to the district court.

What should have been done, Mr. President, was when the case got to the Federal court the first time, the district court, the court should have had a hearing on all four points. I have been at many of those hearings, and it would have taken probably a day-and-a-half or 2, 3 at the most, and the court could have written an opinion in another day or 2 or 3, and it would have been finished. But because of these convoluted, really ridiculous rules the case goes back and forth, court to court to court, like a tennis ball.

We have the power in the Congress to correct that. These are not constitutional issues. It is not a matter for constitutional amendment. It is a question of procedure, statute. And if we change the Federal statute which requires so-called exhaustion of State remedies and say that the Federal court will take up the case at an early stage and under a time limit, we can solve this problem.

As I said a few moments ago, the concluding comment is a letter from the attorney general of the State of Arizona, Grant Woods, dated October 27, which I received just a few days ago, and it says this:

Dear Senator SPECTER. As the United States Senate takes up the issue of habeas corpus reform, and specifically the issue of excessive delays, please do not forget the single most important problem facing the majority of States today under the present system—the failure of Federal courts to rule once the cases are issued. In Arizona, nearly one-third of Arizona's 110 death row inmates have petitions for habeas corpus relief pending in the Federal court. In 56 percent of those cases, the petition was filed more than

5 years ago. In five of those cases, the petition was filed nearly 10 years ago.

And when Attorney General Woods points out in an attempt to get these 10-year-old cases moving, the State of Arizona asks the Ninth Circuit Court of Appeals, the ninth circuit "summarily denied the State's petition without even so much as requesting the district court to respond."

That is what is happening. It is not a matter, Mr. President, of the Federal court having a minuscule effect on State court proceedings. It is true that only a small number of cases are prosecuted in the Federal courts, but all of the State court convictions are reviewable under Federal court habeas corpus, and these convoluted rules are trying up 2,400 death cases, and attorneys general around the country are tearing their hair, and district attorneys are, and it is a system which works to everyone's disadvantage. The defendant is kept waiting on death row in a way which a European court said was cruel and unusual punishment. The will of a majority of the States of the United States cannot have their sentences carried out. The whole criminal justice system is a mockery with the flagship of the symbol being held in disrepute by cases which are pending for up to 17 years.

Mr. President, I ask at this time unanimous consent that cosponsors be listed on the bill including Senator SIMPSON, Senator WARNER, Senator D'AMATO, Senator GORTON, Senator BROWN, Senator FAIRCLOTH, Senator HUTCHISON, and I believe there are other Senators who have made inquiries and I would welcome any additional cosponsors.

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

Mr. SPECTER. I yield the floor, Mr. President.

I ask how much time I have remaining out of the full 2 hours?

The PRESIDING OFFICER. The Senator has 45 minutes remaining this evening.

Mr. SPECTER. I thank the Chair. And 15 minutes for tomorrow?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

If no one yields time, it will be deducted equally for both sides.

Mr. SPECTER. I object to that, Mr. President.

The PRESIDING OFFICER. That is the regular order.

Mr. SPECTER. I am about to propound a unanimous-consent request, but I will not do it until either the chairman or the ranking member come to the floor, so I do not have to propound a unanimous-consent request.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I am not going to take much time. I am going to be very blunt.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. First of all, let me compliment the Senator for tackling this subject, which he accurately points out I think very few people have either had the opportunity, the experience, or the inclination to know or learn much about.

When we have discussed habeas corpus in the context of prior crime bills, if you listened to the debate, most people would think habeas corpus was the name of a criminal, a guy named habeas corpus who is somehow crouched behind a garbage can in an alley of one of our center cities about to reach out and molest someone or deprive someone of their valuables when in fact anyone who files a habeas corpus petition is someone already in jail, already having been convicted, and already out of harm's way, doing no harm to society other than the nuisance he or she may in fact cause the system.

I might also add that a significant number of these habeas corpus petitions—and the Senator has pointed out some of the outrageous delays, and there are numerous outrageous delays, but as the Senator knows better than most on this floor, in capital cases about 40 percent of the habeas petitions filed are granted; 40 percent of the time the petitioner is viewed to be right by the Federal court, and in fact is not at all frivolous and in fact either has that point and/or their case or a portion of their case or the sentence re-heard or retried.

So the Senator has pointed out the worst cases, and he is correct. He is absolutely correct. But as he knows better than most, being a first-rate lawyer and a practitioner of some years of the art of prosecution under our constitutional system, he also knows 40 percent of the time there is nothing frivolous at all about them. So I think we should keep that in perspective, No. 1.

No. 2, I quite frankly think the habeas situation and the abuse of it has to be remedied. I spent the better part of the last 4 years attempting to come up with what I think is a remedy.

I have in the past introduced and had passed, at least in the conference report of previous crime bills, the Biden habeas corpus provisions or some form of it. This year I started back as early as January—I am not being solicitous when I say this—with my able staff who knows this subject inside and out and have been prosecutors themselves, I might add, in the U.S. court system, in the U.S. attorneys offices, and we spent the better part of 7 or 8 months negotiating with the district and National District Attorneys Association, and the Attorneys General Association, the Association of Attorneys General. I do not know the actual name, but the attorneys general in each of the 50 States.

We reached a compromise, with notable exceptions like Mr. Lungren who

does not think there is such a thing as habeas corpus, in my view. We debated for years former Congressman, now California attorney general, who I say respectfully I think has the most wrong-headed notion of habeas corpus of any human being I know who understands the subject. But I respect his view. It is, I think, seventeenth century, but I respect it. He is one of the few attorneys general who disagreed with the compromise of the majority of the attorneys general in the Nation. But it is a longstanding debate, I might say to my friend, Attorney General Lungren of California. He used to be Congressman Lungren. We used to have these debates on a regular basis.

But there are those like Congressman Lungren and others on this floor who argue that what we should do is eliminate Federal habeas corpus, period, in the so-called "full and fair doctrine."

So we have extremists at both ends. We have those, in my view, who think the system works just fine now, that there is no abuse, that there is no unnecessary delay. We have folks like Mr. Lungren who think we should do away with habeas corpus at the Federal level altogether, both wrong-headed.

I compliment my friend from Pennsylvania doing what he has always done, recognizing a hard fought and seriously considered and legislatively refined constitutional remedy called habeas corpus.

As the Presiding Officer knows, who is a first-rate lawyer and served in the legislature of his State as chairman, I believe, on the Judiciary Committee of his State senate, it has been called, as we three lawyers know the great writ. It has been around a long time in our English juris judicial system.

So I compliment my friend for trying to connect and come up with a solution.

I might add, the Specter amendment, as I read it, is the Biden amendment—with a few changes, important changes, significant changes—that Biden took out of the crime bill.

The reason I did is not because we had not reached agreement after painstaking negotiation that literally took tens of hours of my time and literally several hundred hours of the time of staff and individuals, of our attorneys general and their staffs, as well as DA's and their staffs, and their organizational staffs and mine. We, notwithstanding that, withdrew the legislation, the so-called Biden-Reno habeas corpus fix from this bill, very bluntly, because we could not get a crime bill with it in it; real simple.

In order to get the unanimous-consent agreement that is going to allow us to finish this massive crime bill tomorrow, the chairman, speaking, had to agree, under some considerable pressure from those who indicated they would not likely let this bill come to a vote were we not able to work it out,

that I would withdraw the habeas corpus language that I had and, in effect, fight another day; leave the law as it is now, as interpreted by the Supreme Court.

An interesting phenomena occurred. A number of the people who are viewed, as I have up to now, at least, been viewed, as a defender of the writ of habeas corpus and called the Emergency Committee to Save Habeas Corpus—and some of the leading editorial writers in America and the leading papers in America, it might be an exaggeration to say vilified, but at a minimum strongly castigated me for having reached this compromise with the attorneys general and the DA's, only to find out when I agreed to take it out of the bill in order to get the whole bill moving, I received a letter saying, please do not take it out of the bill, leave it in the bill because it is a good provision.

I hope that they remember that next year when we revisit this issue so we can come along with what I believe to be a genuine fix, in the best sense of that word, for habeas corpus, eliminating the excesses, as well as preserving, I might add—40 percent of the time that a prisoner convicted of a capital offense has sent a piece of paper through the bars out to the Federal court, and said, "My constitutional rights have been violated, I need a new trial,"—you have to reconsider this point—4 out of 10 times the Federal court has said, "You are right."

So there is nothing frivolous about the need for the existence of Federal review of habeas corpus petitions in State capital cases.

So, having said that, I find myself in an unusual position. Ordinarily what I would do, if this were still in the crime bill, I would negotiate with my friend from Pennsylvania, who I think would acknowledge the need and legitimacy of Federal review, as a matter of fact, eliminate State review at the front end of habeas corpus petitions after the direct review process has been completed at the States to go directly to Federal courts.

So this is not a Senator who is trying to do away with Federal review of Federal habeas. This is a Senator who acknowledges the importance of it, and in the front end does away with State review in order to speed the process up. Because, as a practical matter, if you must file in Federal court, as the Senator's legislation, which is a modification, an important modification, what the so-called Biden habeas review was, what you have to do is you have to do that, I believe, in 6 months. The prospect of you exhausting your remedial opportunities for State habeas corpus in this 6 months is not real, so you are going to go straight to Federal court. That is the intention.

My problem with it is, though I think it just turns federalism on its ear, I

think what you have happen is since, as the Senator knows better than I, constitutionally we cannot pass a law that denies the State the right to have Federal or State habeas review under the State constitution or under State law, they can go back and review it. So we cannot say to States, you cannot ever review under State habeas corpus the conviction and/or the sentence of a defendant.

So what I fear may happen is that in the effort to speed things up, we will just reverse the process; that the Senator will, in fact, get us immediately into Federal court. I understand his rationale for doing so. I understand his attempt to speed the process up, which I wish to do, and in the so-called Biden habeas fix which I have taken out of the bill for other reasons, as I have mentioned earlier, I attempt to do the same thing, speed up. But not by eliminating at the front end, in effect, State habeas review.

So what will happen is, I fear, after the Federal claim has been heard, the petitioner can go right back into State court and file a State habeas review petition under the State constitution, for example. I do not know that it saves much time.

But the truth of the matter is, out of respect for the Senator from Pennsylvania and his knowledge and deep interest in this issue, I am responding not because I think it makes much sense to respond now. If I wanted to have Federal habeas corpus reform pass now, I would have never withdrawn the Biden bill. The one I am for is the Biden bill, or I would come along and amend the Senator in the second degree, essentially, with the Biden habeas bill.

But that would be bad faith on my part because, in order to get the compromise here, I had on the entire crime bill—this must be confusing as the devil to anybody watching this on C-SPAN—but in order to get a compromise on this 500 page, \$22.6 billion bill, I had to swallow my ego, and I had to put off to another day the BIDEN compromise that had been painstakingly negotiated by me and my staff with the attorneys general and the district attorneys and ultimately supported by not only attorneys general and the DA's, but by the liberal habeas corpus community.

It is the only time I am aware of, ever, since I have been here in 20 years, that the DA's, the AG's, and so-called liberals have all agreed on how to fix habeas. Not all DA's agree; not all attorneys general, but a majority of attorneys general and the National District Attorneys Association voted on the Biden-Reno compromise. So I am in a strange position. If I were to push and amend the Senator's legislation to make it more palatable to me and were I to succeed, I would have violated the spirit of the agreement I have made

with my colleagues on the Republican side to withdraw habeas from consideration at this moment and take it up the way the House wishes to take it up. The House did the same thing. They said: We are not going to consider habeas corpus reform in calendar year 1993. We are going to take it up in calendar year 1994. So my Republican friends—not all of them—said: BIDEN, do not go with your habeas corpus in this bill—and I think it is a legitimate point they made—because we do not want to fight that and get it tangled up in this bill. The House is not going to do it anyway until next year. So let us take habeas corpus out and put it over until next year, and when the House considers it, we should consider it. Then we can fight it out.

My friend from Utah, who is an able trial lawyer, has a very different view on habeas corpus than the Senator from Delaware and the Senator from Pennsylvania. He does not like BIDEN's proposal or SPECTER's. He has his own. So this is a very long way of saying what I can say in a compound sentence. We made an agreement in order to pass an important \$22 billion crime bill—to put off deciding how to reform habeas corpus until next calendar year.

Therefore, notwithstanding that the Senator from Pennsylvania has some very good suggestions, most of which I agree with, there are three important points I disagree with. One, eliminating State review, front end. Two, what he does not do with Teague versus Lane in not reversing it. Three, elimination of the exhaustion doctrine. With those three exceptions, I agree with the bill.

Rather than fight it out now, as part of a much larger agreement to move on and do something about the crime problem in America, I have agreed to withhold. Therefore, I am not going to take anymore of the time. I am going to be prepared to yield back but for the 15 minutes I have tomorrow morning. I am not going to do it at the moment.

But I will be prepared to yield back my time, or at least not speak more on it myself and assure the Senator from Pennsylvania that I will debate with him and, under our rules, joust with him next year on this bill to try to get a bill that he and I both can agree with, because I am sure anything he and I can agree with, the Senator from Utah and the Senator from South Carolina will not be able to agree with.

So we will have a nice little fight about it next year. That is as blunt and as honest as I can be with the Senator about why I am either, A, not going to attempt to amend you to make it more what I want or, B, vote for you, which is better than what many of my colleagues want to see happen with habeas corpus.

In fact, I am going to move to table it at the appropriate time under the unanimous-consent agreement at 9:30 tomorrow morning.

Mr. SPECTER. Mr. President, there are a number of things on which I disagree with my distinguished colleague from Delaware, but none where I disagree with him more than when he said it was confusing for the people watching this on C-SPAN, because I do not think anybody is watching this on C-SPAN.

Mr. BIDEN. I am certain my mother is.

Mr. SPECTER. Because I think after we got through with the way the U.S. Supreme Court handled the remand to the circuit court after the circuit court had reversed the district court, which had denied exhaustion of remedies, I think the automatic changers went wild across America for the few sets who were watching C-SPAN 2.

I do not think this is confusing to anybody. I say "anybody," because when I made my presentation, there were no Senators on the floor. The staffs were here and they understood everything because they are highly intelligent. I do not think anybody has been confused so far.

Mr. BIDEN. I did not mean to imply the Senator from Pennsylvania confused anyone. What I was suggesting was the rationale the Senator from Delaware is offering as to why he is going to move to table something he thinks should be fixed, which may be confusing to people, not the Senator's proposal. I just think the Senator's proposal is misguided, not confusing.

Mr. SPECTER. I understood what the Senator meant. I was trying to add a little lightness for a short sound bite to this discussion.

Let me take up the serious issues. When the Senator from Delaware says that 40 percent of the cases are granted and that the writ of habeas corpus is not frivolous, I agree totally. But I think he is making my case. When 40 percent of the habeas corpus petitions are granted, why is there so much delay and why are so many defendants' rights being delayed by this obscure, convoluted system, instead of dealing with the merits as opposed to having procedural matters occupy the totality virtually of the court opinions? Why not deal with whether there was the ineffective assistance of counsel, whether there was a violation of the line-up rule, or whether there was a violation of search and seizure?

The bill which I have proposed preserves Federal habeas corpus in its entirety. When my distinguished colleague from Delaware talks about some who want to eliminate Federal habeas corpus because of the full and fair doctrine, that is not this Senator. I believe that the full and fair doctrine would just result in more remands to the State court to decide what was full and fair. And there is an opinion by the sixth circuit on the full and fair doctrine where the three judges gave three different interpretations of the full and

fair doctrine, which is why I do not believe in that and why I have not advocated it.

When my colleague from Delaware says bluntly that he has taken habeas corpus out of the crime bill, I understand Senator BIDEN's blunt talk because I have heard a lot of it in the course of the past 12½ years on the ride from Washington, DC, to Wilmington—frequently on the ride from Wilmington to Washington, DC. The Senator gets off a little soon, and I go on to Philadelphia. I think it is time some of the blunt conversations of JOE BIDEN and ARLEN SPECTER were put in the CONGRESSIONAL RECORD.

This is not the highlight of our conversations, and it is a little hard to take a court reporter on the Metroliner, but I welcome this chance to deal with the specifics as to what my colleague from Delaware has raised.

The Senator from Delaware says that my bill does away with State review and my bill turns federalism on its ear.

I say that is not so for a very direct reason, and that is that the State courts can review death penalty cases as long as they want to, but I do not want the Federal courts to review death penalty cases forever. The Federal system is that the Federal courts make the decision on what constitutional rights really mean.

Without getting into details of offending people, we have had a long history in this country where the State courts were inadequate. This is why we have come to the Federal courts since *Brown v. Mississippi* in 1936, where the Federal courts first stepped into State criminal practice on an outrageous beating and a coerced confession case. But in the Congress we decide what the Federal court jurisdiction will be.

When my colleague from Delaware talks about a deal made with the district attorneys and the attorneys general, I wonder why I ran for the United States Senate. I should have stayed as a district attorney in Philadelphia so I could have had a voice in determining what Federal habeas corpus would be. If I were a powerful district attorney, I could negotiate with the chairman of the Judiciary Committee. But I am not prepared to accept what the State DA's do or the national DA's do or the attorneys general do. I think that is a matter for Senator BIDEN, Senator HATCH, Senator THURMOND, the 100 Senators and 435 Members of the House. I know my colleague from Delaware agrees with that. I understand the considerations on the negotiations.

I had some discussions with some of the negotiators, which I talked to my colleague from Delaware about, where some of us were not included, and I am not disagreeing with that. I just do not want to be preempted by that. I want to have an opportunity when this bill comes to the floor to offer an amendment, and I think my colleague from

Delaware will agree with me that it was tough going for me to get the floor to talk about this subject. I did not succeed in getting it on the bill. That is all right with me.

It is off the bill, and it is off the bill because the Senator from Delaware wanted to get this crime bill passed with a minimum of controversy. I salute him for that. This is an important bill. I went through a long list of provisions on prevention, education, drug treatment, rehabilitation, and extra jail space, which are good provisions, coming to some extent to grips with the 1972 commission which laid out a blueprint to fight violent crime, and there is no one in the Senate who is more determined to do that than the Senator from Delaware.

But now we have a separate bill, and what happens on this bill will not influence or foul up the crime bill from being passed without the controversy of habeas corpus.

We had a big fight about this in 1990. We had a petition for reconsideration of this amendment, the essential provisions of this amendment. There are some changes. I submit they are slight, but someone might debate that. It passed by a vote of 52 to 46. I want to take this up with my colleague from Utah in a minute.

Now we have a separate bill. And when we have a separate bill, I say to my colleague from Delaware, it does not affect this very good bill, mostly good bill. Some things have to be changed like the 13-year-old jurisdiction which we talked about from Philadelphia to Baltimore or Washington to Baltimore. Some things have to be changed, but it is a good bill.

Mr. BIDEN. Mr. President, will the Senator yield on the point about this is a separate bill on my time?

Mr. SPECTER. Do it on the Senator's time?

Mr. BIDEN. Yes.

Mr. SPECTER. Fine.

Mr. BIDEN. Mr. President, part of the unanimous-consent agreement and the rationale the Senator from Delaware agreed to withdraw his—when I speak of myself in the third person I begin to worry—my habeas corpus bill, in return for doing that it was agreed by the opponents of the Brady bill that they would not attach a habeas corpus provision to the Brady bill.

So, notwithstanding the fact that it is a separate bill, this agreement extends to separate pieces of legislation. The Brady bill is a freestanding bill we will take up after this bill, not part of the crime bill.

Some of the opponents of the Brady bill in the past have done what Democrats who opposed other legislation might do as well. I am not in any way criticizing. They attempted to add to the Brady bill things that supporters of Brady could not swallow. We use the terminology in the Senate "killer

amendments." You amend a bill which the majority of the body likes very much with an amendment that a plurality could not accept, thereby killing the underlying bill.

One of the reasons I withdrew the Biden habeas corpus provision was my concern, and I only mentioned the negotiation with the attorneys general and the DA's, not to suggest that they should have more say than any Senator for they did not run for the Senate and they are not Members of the Senate, but only to point out how hard I worked on trying to get a sound habeas corpus provision in the crime bill. But my concern was not only that the crime bill would be delayed and/or not passed if I did not withdraw my provision but that another thing I feel very strongly about the Brady bill, that the Brady bill would become mired in the habeas corpus debate, which I think would have been close to a guarantee that that would have happened.

One of the things that one of the former chairmen of the Judiciary Committee, with whom I had a great friendship but almost never agreed with anything about, and that was the former distinguished Senator, now deceased, from Mississippi, Senator Eastland. Senator Eastland asked me when I first got here 20 years ago, when I asked him for help on an issue he said with a deep southern accent, "Son, did you count?"

And I asked him what he meant by that. He said: "Did you count, c-o-u-n-t? Did you count where the votes were?"

The one thing I have gotten relatively good at doing in the Senate is counting votes.

I observed that on a half dozen occasions over the last 5 or 6 years, when we voted in the Senate on habeas corpus my team has lost. My side of the argument has been defeated.

Now, I think my bill had a much better chance this time because now I had as allies at least the majority of attorneys general and DA's, who were my opponents last time, and they do affect how Senators vote. When 2, 5, 10 or 20 district attorneys in the States of Texas, Illinois, California, Pennsylvania, or whatever, call their United States Senator and say, "I am unalterably opposed to this," I found in my experience Senators pay attention to this and it tends to lose me that Senator's vote.

This time I had DA's and attorneys general calling Senators saying vote for this.

But the point is that I cared a lot about the Brady bill as well as the crime bill, something my friend from Utah and I disagree on substantively. I was very concerned, I say to my friend from Pennsylvania, because the House has no habeas corpus provision in the crime bill and/or freestanding, that there is no realistic possibility of getting habeas corpus passed this year, any reform, period.

If the Senator's bill passed tomorrow there is nothing to conference. The House will not even take it up.

The other thing I hoped I learned to do over the years in addition to count is to be practical and not waste a lot of time. So since the House was not bringing it up until next year and since it could be attached to something that would ruin the chances of that something passing, for instance, the Brady bill, I agreed to withdraw my provision in the Biden crime bill that related to habeas corpus in return for a commitment that my friends, who have a very much more narrow view of habeas corpus than I do, would yield and not attach any habeas corpus, which they are entitled to do. They are entitled under the rules of the Senate to add habeas corpus and their version to any bill that they want to come to the Senate.

If they attach it to the Brady bill, it means the Brady bill does not pass. I have counted. The last six times they attached it to something, they won.

Now it would have been closer this year, but let me recap quickly since, no matter what we do on this floor between now and Christmas regarding habeas corpus, it means nothing in terms of getting a change in the law on habeas corpus because the House will not have acted, has no intention of acting, and will not act until next year; and because, if they attached it to something I cared deeply about—that is, the Brady bill—it might confuse the issue so much that the Brady bill would not pass this year.

And since I like the Biden habeas corpus provisions much better than I like the Specter habeas corpus provisions, for all of those reasons, I see no sense in taking a lot more of the Senate's time debating the merits and demerits of the Biden position on habeas corpus and the Specter position on habeas corpus.

So, consequently, I am still of the view that what we should do is we should take up habeas corpus next year, next calendar year, debate it with my friend from Utah, who disagrees with me on this—we agree on a lot, but we disagree on habeas corpus and how to "fix" it—debate it with my friend from Pennsylvania, with whom I am much closer on what the fix should be for doing away with frivolous claims under habeas corpus, and then debate it with the House of Representatives and come up with a solution.

So for all those reasons, Mr. President, I believe that, although the Senator is making a genuine contribution here tonight in reminding our colleagues, and those who are listening in the press who do know a fair amount about this issue, that there are some legitimate and important changes that must be made in the present system of habeas corpus, that that ultimately will not be resolved, notwithstanding that contribution, until next year.

Because I want to see the Biden crime bill—which, hopefully, before it is over will be the Biden-Hatch crime bill, because we are getting awful close on this issue—the \$22 billion Biden crime bill, or the bill, whatever you want to call it—I just happen to have introduced it—the crime bill passed, and I want to see the Brady bill passed. I will withdraw to fight another day on the habeas corpus bill, because the worst that happens, from my perspective, on habeas corpus is the present law remains as it is. We do not get, as a Nation, the much more conservative position on habeas corpus that has been proposed by my friends from Utah and South Carolina, Senator THURMOND, and many others, but we do not get what I think should be done, the Biden habeas corpus provision. We end up with the status quo as it is on habeas corpus, and we put off fixing that to next year.

I am satisfied to try to fix the fact that we are 100,000 cops short, that we need to spend tens of billions of dollars, literally—we are going to spend over \$22 billion on dealing with the crime problem. In addition to that, that we put in—and I will put in the RECORD what I refer to—a thing I had my staff put together for me. It is entitled, "The Biden Bill: Beyond Crime and Punishment." It talks about the things that we recognize that there are two sides to solving the crime equation; that is, punishing violent criminals is one part of the solution and reaching out to those who have not committed crimes but were at risk of doing so is the other part.

Although much of the floor debate in the Senate is focused on penalties and punishment because of the amendments offered by other Senators, the underlying Biden crime bill contains many initiatives that are still intact, and considerable funding that is still intact to deter crime by helping at-risk youth and nonviolent offenders from getting permanently into the crime stream in this country.

The provisions of the bill that address the underlying causes of crime—not just the punishment for it—but the causes. We can punish everybody, but if we do not do something about that cadre of children between the ages of 5 and 15 who have no parents, who are on drugs, who are unsupervised, who are clearly the future predators, the violent criminals in America, if we do not do something about that cadre of black, white and Hispanic youth who are being ignored now, we can have 500,000 cops and we are still going to be at risk in this country.

And so, in addition to being the toughest crime bill we have ever passed by putting 100,000 cops in the street, by putting in \$6 billion for prison and boot camp construction, by increasing penalties, by doing all these things, we also provide \$1.2 billion for early inter-

vention teams—police, social workers, educators, doctors, working together to take kids who have not committed any crimes but are clearly in the at-risk group and identify them now.

We do that for children with learning disabilities. We do that for children with medical problems. We should do that for children who we know as sure as we are standing here are going to be the violent criminals of tomorrow, left unattended as they have been.

Mr. SPECTER. Will the Senator yield?

Mr. BIDEN. I will yield in just a second.

I will yield after I ask unanimous consent that all those provisions in the underlying Biden crime bill, which have not been altered, which relate to prevention and treatment and alternatives to incarceration, be printed in the RECORD at this point.

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

THE BIDEN BILL: BEYOND CRIME AND PUNISHMENT

The Biden Crime bill recognizes that there are two sides to solving the crime equation: punishing violent criminals is one part of the solution; reaching out to help those who have not committed crimes, but are at risk to do so, is the other part. Although much of the Senate floor debate focused on penalties and punishment because of the amendments offered by other Senators, the Biden Crime Bill contains many initiatives and considerable funding to deter crime by helping at-risk youth and nonviolent offenders.

The provisions in the Biden bill that address the underlying causes of crime include:

COMMUNITY POLICING PREVENTION AND TREATMENT PROGRAMS

Of the total \$8.9 billion authorized for community policing programs, \$1.2 billion may be used to fund innovative prevention programs, such as:

Early intervention teams: police, social workers, educators and doctors working together to intervene early in the lives of juvenile victims and offenders—to help them turn their lives around.

Proactive Prevention: police involvement in prevention programs for youth, such as:

The Police Athletic League.
Big Brothers/Big Sisters programs.
Girls' and Boys' Clubs.

ALTERNATIVES TO INCARCERATION

Boot Camps: Up to \$3 billion dollars for boot camps as an alternative to prisons to help get young, non-violent offenders back on their feet. Offenders assigned to boot camps receive a reduced sentence—boot camp terms lasts no more than six months.

Boot camps must provide intensive drilling and supervision, involving work programs, education and job training, and drug treatment.

Boot camp participants must receive aftercare services, to be coordinated with human service and rehabilitation programs, such as:

Educational and job training programs.
Drug counseling or treatment.
Halfway house programs.
Job placement programs.
Self-help and peer group programs.

Drug Courts: \$1.2 billion in grants to states for Drug Court programs to provide an alter-

native to prison and to help non-violent drug offenders get the treatment they need to get their lives back on track.

Instead of serving time, a drug offender agrees to participate in a "Drug Court" program with drug testing and treatment. If an offender fails the tests, he or she becomes subject to graduated alternative punishments, which intensify treatment and supervision, but stop short of traditional incarceration. Such alternatives include:

Community service programs which employ offenders with nonprofit and community organizations.

Community-based incarceration like halfway houses, weekend incarceration, and electric monitoring.

Boot camp programs.

If an offender fails the Drug Court program completely and is sentenced to prison, they receive treatment there—in facilities set apart from general prison population. These programs must address the offender's social, behavioral and vocational problems, as well as drug addiction.

Preference in making grants is given to states providing assurance that offenders are provided with aftercare services, such as:

Educational and job training programs.
Self-help and peer group programs.

JUVENILE DRUG TRAFFICKING AND GANG PREVENTION

Authorizes \$100 million in state grants for drug and gang prevention programs, such as: Education, prevention, and treatment programs for at-risk juveniles.

Academic, athletic, and artistic after-school activities.

Sports mentor programs where athletes serve as role models and counselors for kids at risk for gang and drug activity.

Alternative activities in public housing projects, such as Girls' and Boys' clubs, scout troops, and little leagues.

Education and treatment programs for juveniles exposed to severe violence.

Pre- and post-trial drug abuse treatment for juvenile offenders.

Treatment for drug-dependent pregnant juveniles and drug dependent juvenile mothers:

Training for judicial and correctional agencies to identify, counsel, and treat drug-dependent or gang involved juvenile offenders.

DRUG TREATMENT AND PREVENTION

Community Substance Abuse Prevention Grants: \$60 million over three years for coalitions of community organizations (such as schools, health and social service agencies, parents, civic groups, academics) to:

Plan and implement comprehensive long-term strategies for drug abuse prevention.

Coordinate drug abuse services and activities, including prevention activities in schools.

Drug Treatment in Prisons: Establishes a schedule for drug treatment for all federal drug-addicted prisoners.

VIOLENCE AGAINST WOMEN

Grants to fight violence against women: Authorizes \$870 million over 3 years for state grants to combat violence against women, with a special earmark for high intensity crime areas. Programs can include:

Expanding or strengthening victim services programs, such as:
rape crisis centers.
battered women's shelters.
rape and family violence programs, including nonprofit organizations assisting victims through the legal process.

Training law enforcement officers to more effectively identify and respond to violent crimes against women.

Expanding units of law enforcement officers specifically to target violent crimes against women.

Victim Counselors: Authorizes \$1.5 million for federal victim/witness counselors in sex and domestic violence cases.

Indian Tribes: Authorizes \$30 million over 3 years for grants to Indian tribes for programs to reduce violence against women.

Rape Education: Authorizes \$65 million for rape prevention and education programs, starting in junior high school, such as:

Educational seminars for students and training programs for professionals.

Public awareness programs in under-served racial, ethnic, and language minority communities.

Help for the Homeless and Runaways: Provides \$10 million for education and prevention grants addressing the problem of homeless and runaway women and girls, such as: street-based outreach and education programs.

treatment and counseling programs for runaway, homeless and street youth who are at risk of being subjected to sexual abuse.

Battered Women's Shelters: Provides \$300 million in grant money specifically for the operation of shelters for women and their children who are fleeing violent homes.

National Family Violence Hotline: Authorizes \$1.5 million.

Youth Education: Provides \$400,000 for programs to educate youth about family violence and abuse.

Safe Colleges: Targets \$20 million for rape and violence prevention and education on college campuses.

SAFE SCHOOLS

\$100 million for local school and community grants, to be used for:

Drug and alcohol education and training programs.

Counseling programs for children who are victims of school crimes.

Programs to provide alternative, constructive programs for youth at risk for gang recruitment.

SEXUAL VIOLENCE AND CHILD ABUSE

The "Oprah" bill: Authorizes \$40 million to develop a national criminal background check system for those who provide care to children, the elderly, or the disabled.

The Child Safety Act: Authorizes \$60 million in state grants for the establishment of supervised child visitation centers for families with a history of violence or abuse.

Mr. BIDEN. Lastly, Mr. President, I would point out that the vast majority of the bill, a significant majority of the bill that adds up to about \$4 billion, the things I am talking about, there is another \$18 billion which is just flat, old, undeniably needed, in my view, tough law-and-order provisions. We must take back our streets.

I think this bill has to pass. That is why I took the habeas corpus provisions out of it.

Second, we are going to go, hopefully tomorrow or the next day, to the Brady bill. I think that bill must pass to make us safer in this country. And I did not want habeas corpus attached to that, thereby killing it. That is why I withdraw the habeas corpus provision to debate it and fight it next year.

I am in no way attempting to criticize the Senator for bringing up his proposal. I think he is totally within

his rights. He has been attempting to do it for over a year and a half. He is totally committed to it. He understands it as well or better than anybody in the U.S. Congress, let alone the Senate, and we are much closer on the solution than we are apart, the Senator from Pennsylvania and I.

But I just suggest we lock arms next year to try to defeat my equally as informed colleague from Utah and my colleague from South Carolina and my colleagues from other States who do not agree with the Senator from Pennsylvania and me about the need to preserve, enhance, and correct the Federal habeas corpus part of this petition. They would like to, in large part, do away with Federal habeas, with some notable exceptions.

So that is why we did what we did. I hope my colleague does not take offense that I did not spend more time with him debating the details of the differences he and I have on this bill, because, to put it very bluntly, it is not going anywhere.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time does the Senator from Delaware have remaining?

The PRESIDING OFFICER. Twelve minutes.

Mr. BIDEN. I will reserve the remainder of that time for tomorrow morning.

Mr. SPECTER. Does the Senator from Delaware have 15 minutes, in addition to the 12 minutes?

The PRESIDING OFFICER. The Senator has 12 minutes remaining this evening and then 15 minutes tomorrow.

Mr. BIDEN. Mr. President, if the Senator will yield, I would be delighted to yield the remainder of my time, when he wishes to have it, to my distinguished colleague and ranking member of the Judiciary Committee, the remaining 12 minutes. And I apologize to him.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Thirty-six minutes.

Mr. SPECTER. I thank the Chair.

If I may have the attention of my colleague from Delaware, it has not been a year and a half. It has been more than 3 years. We last took up this matter on the Senate floor on May 24, 1990, when substantially this amendment was agreed to 52 to 46.

My colleague from Delaware points out that the House would not take up this bill anyway. I understand that and I agreed to this arrangement in order to break the logjam and let the crime bill, the Biden bill, go through. Because when the Senator from Delaware has put those provisions in by unanimous consent, I had recited most of

them, all of them I could think of, and had a long list, because they are good provisions.

But I would say to my colleague from Delaware that I do want to take up the three narrow points which he mentions. And I also want to take up with the Senator from Utah, his concerns. Because I suggest to my colleague from Delaware that my bill is very close to the bill of the Senator from Delaware and is not too far from the bill of the Senator from Utah. I say it is not far from the bill of the Senator from Utah because the Senator from Utah cosponsored this bill in 1990. There are some changes but I think they are relatively minor. When the Senator from Utah returns to the floor—but while the Senator from Delaware is here I want to take up the three changes which he articulates.

One is that I eliminate habeas corpus at the front end; second, that he disagrees with me on the Teague issue; and, third, that he disagrees with me on the exhaustion rule.

I suggest to my colleague from Delaware that points 1 and 3 are about the same. The point I was on when the Senator from Delaware asked me to yield was my point that this bill does not affect State habeas corpus. This bill does not affect State habeas corpus, and I think under our federal system, the Federal Government cannot affect habeas corpus in the State, or at least properly so. But this bill only deals with a question of when the Federal courts have jurisdiction, and we may decide that.

I think my colleague from Delaware will agree with me that the Congress can decide that question.

Mr. BIDEN. Will the Senator yield on that point? He is absolutely correct. If I can have 30 seconds—

Mr. SPECTER. But only 30 seconds.

Mr. BIDEN. Just 30 seconds. The point I was making was the purpose of skipping, at the front end, States' habeas corpus, was to save time, I thought. My point is it is not going to save any time.

Mr. SPECTER. That is conclusory and you may be right or you may be wrong. And I suggest you are not correct because the big delay comes in when you have Federal habeas corpus and States habeas corpus mixed up. I argue and submit to my colleague from Delaware that if the Federal courts got out of habeas corpus and the States could do whatever they like, there would be a tremendous clamor in the courts of South Carolina and the courts of Delaware and the courts of Pennsylvania and certainly the courts of Utah to get the State habeas corpus fixed, finished, if the Federal Government was not involved.

So when you talk about eliminating it at the front end, I leave State review on direct review. State courts have to review the conviction, the State supreme court has to affirm the sentence,

penalty of death. But what I do not do is allow the States to go back again on State habeas corpus, as I sat through as a young assistant DA, again and again and again, these mountains of meaningless State habeas corpus. That is, they cannot do that without having Federal jurisdiction attached under a timetable.

Then you come to the exhaustion point, which I think is essentially the same as point 1. On the exhaustion point, I submit to my colleague from Delaware that this Congress ought to decide when the Federal courts are going to take up these cases. And that the overwhelming logic is not the logic of the Supreme Court in *People versus Castille*, a never-ending tennis ball, but the logic of the federal system is for us to say as Members of Congress, and maybe the Senator from Delaware will agree with this in 1994 when he does not have the collateral considerations of the other matters—but I say the logic is forcefully on the side of this Congress saying when the Federal court takes it up—and it makes sense to take it up early, not too early—let the State court decide it, and then the Federal court takes it up.

Then there is the question of Teague. I submit to my colleague—

Mr. BIDEN. If the Senator will yield 5 seconds, he is probably correct on the second point. I can see my way clear to probably agree with him on the point he just made. On the point he is about to raise I doubt we can agree.

Mr. SPECTER. I heard the point about agreeing with me. What was the last part?

Mr. BIDEN. The point you are about to raise relative to Teague, I doubt we can agree on.

Mr. SPECTER. Fine. I said to my friend from Delaware I knew he would listen, and my object was to convince him that my amendment ought to be adopted. I think my bill cannot be conferenced this year, 1993, even if it passes like it did in 1990. I am prepared to wait until 1994. I think we are going to have to wait until 1994 to conference the Biden bill; perhaps wait until 1994 for a lot of matters.

Mr. BIDEN. I agree.

Mr. SPECTER. Now I want to take up the issue of Teague where the Senator from Delaware thinks he will not agree. The Teague issue is a little different in my bill from Senator BIDEN's bill, but not much different. And the Teague provision was crafted in this cloakroom to win the support of the distinguished Senator from Utah.

Mr. BIDEN. If the Senator will yield, if you throw him over to me maybe we can work something out.

That was humor, attempted humor.

Mr. SPECTER. I did not hear you. Well, I laughed retroactively.

This point on fundamental constitutional rights was crafted in the cloakroom very late one night. My colleague

from Utah will remember, I think, the Senator from Delaware popped in occasionally in the spirit of ecumenicism to help us along on our efforts.

For those who may have turned on C-SPAN—they could not have been watching this too long or they would have turned it off—the issue on Teague, which is a U.S. Supreme Court decision which is very tough on retroactivity, says that if constitutional rights are decided by the Supreme Court in, say, 1989, they will not be applied to a case when the death penalty was imposed in 1985.

My own view is that, where the death penalty is as final and as extreme, that we ought not to try to avoid retroactive application. But I understand that my friend from Utah has a different view. That is why, when Senator HATCH, Senator THURMOND, Senator SIMPSON, and I hammered out this agreement in the Republican cloakroom in 1990, we came up with language which appears in section 304 of this bill as follows. And it is: "In cases subject to this chapter"—well, that is not the operative sentence. It is the next sentence.

A court considering a claim under this chapter shall consider intervening decisions by the Supreme Court of the United States which establish fundamental constitutional rights.

At this point I am not going to get involved, but I will come back to it at a later time for the Senator from Delaware, on his language, to discuss with him what I submit is the closeness and virtual practical identity between that language and the language in the Biden bill.

And the other language on successive petitions I have taken from the Biden bill. And I accept the statement of the Senator from Delaware that my bill is very similar to his. It differs on exhaustion and it differs on time limits.

Mr. BIDEN. If the Senator will yield, I did not mean that as a criticism. I am delighted he did.

Mr. SPECTER. No, I took it as a compliment. I had enough sense to openly adopt. I did not copy, I adopted, openly adopted.

But the differences were what I saw as an assistant DA on the problems of exhaustion, which is a change, and on the time limits. But aside from that on the successive petitions with the gatekeepers is different with the court of appeals, but the standard for successive petitions was the same and that standard was agreeable to the Senator from Utah.

What we are really talking about with the Senator from Utah—which is different in this bill from the one he cosponsored in 1990—is the issue of exhaustion of remedies.

I know, as I said, my colleague from Delaware was determined and zealous in his interest to promote the interest of justice and have an effective crimi-

nal justice system, but that same statement applies to the Senator from Utah. They have been a team, Senator BIDEN and Senator HATCH. I hope neither takes umbrage at that.

What the Senator from Utah will get from this amendment is something that he has long yearned for, when he took this floor and eloquently spoke on many occasions about the 17-year-old case in Utah—if I can have the attention of my colleague from Utah—on the times when he spoke about a case which lasted 17 years, a horrendous murder case, first degree, where death penalty was not imposed for 17 years. When Senator THURMOND spoke first on the amendment, which is substantially the same as the one I am talking about now, because the distinguished Senator from South Carolina, Senator THURMOND, was the lead sponsor, this is what Senator THURMOND said on May 23, 1990:

I rise today to offer, along with Senator SPECTER, a tough habeas corpus reform proposal which strikes at the heart of our Nation's habeas corpus problem: Delay.

Then he goes on to say a little later:

... A new proposal which appropriately addresses the need to establish a definite timeframe for Federal consideration of death penalty cases.

Then he refers to the tremendous number of habeas corpus petitions filed from 127 in 1941 to 1,020 in 1961 to 9,880, almost 10,000, by 1988. Then he points out, again quoting Senator THURMOND:

This amendment would, for the first time, establish a definite timetable for completion of Federal habeas corpus cases within 1 year from the time the death sentence becomes final in the State court.

And this is the critical language, if Senator HATCH will listen to this:

It would bypass State habeas corpus proceedings which currently invoke so much delay.

I ask my colleague from Utah, with a tremendous time savings here, with the elimination of the delays which troubled him so much with the case from his home State of Utah for 17 years and with a bill which is the same as the one he cosponsored in 1990, except for this one change on exhaustion—and bearing in mind that the State still has the ultimate control as a matter of State rights to bring it back for more State habeas corpus, the State still has the ultimate pardoning authority, the State still has the control over the imposition of the death penalty—that it is only the congressional determination as to when the Federal court has jurisdiction, why not remove the provision in the Federal Code which requires a State to exhaust remedies when, as illustrated by *Peoples v. Castille*, it is a never-ending tennis game, when illustrated by Harris, which is not as bad as the case you cited, but the exhaustion issue results in 10 State habeas corpus, 5 Federal habeas corpus, 11 petitions to the Supreme Court of the United

States, interminable costs and enormous delay?

I know my colleague agrees with me on this proposition that the delay on capital punishment cases makes a mockery of the criminal justice system and that capital punishment is an important tool for law enforcement and a deterrent. In order to utilize this flagship issue, this symbolic issue, this important issue for criminal law enforcement, why not make the change in the Congress to allow the Federal courts to take up these cases after the State has had the first review up on direct appeal?

Mr. HATCH. Actually, I want to compliment the distinguished Senator for bringing this debate to a head. I agree with him. It is a travesty of justice to have the repetitive frivolous appeals that currently occur under current law. He cited the Utah case, the Andrews case, where we had 18 years and 28 appeals, up through the State and the Federal courts, time and time again. Every one of them frivolous, every one found to be frivolous. He had committed the murders. They were heinous crimes. They were brutal crimes. They were torture crimes. Frankly, those appeals cost my State millions of unnecessary dollars.

The goal of the distinguished Senator from Pennsylvania is exactly the same as mine, and that is to make sure that people are constitutionally protected in their rights—these criminal defendants—and that they have one complete shot up through the system. There is much in what the distinguished Senator is arguing for that I can agree with, and he knows that. With regard to the differences between 1990 when his amendment passed by 51 votes—

Mr. SPECTER. 52 to 46—

Mr. HATCH. With my support, we were trying to compromise that matter and trying to pacify and get people together. I much prefer what happened in 1991 when I brought the Hatch habeas corpus amendment to the floor on a major crime fight then. Frankly, I felt it was a stronger bill than the 1990 bill. That passed 58 to 40, with the support, I might add, of the distinguished Senator from Pennsylvania.

There is much within his bill that I certainly agree with, and I want to commend him for it. In my opinion, I do not think there is anybody in this body who has more knowledge about these matters than he does. Some of us have dealt with them, some of us have worked on them, but I do not think anybody exceeds his ability. He certainly has had plenty of prosecutorial experience with regard to how the laws can be convoluted and misused with regard to habeas corpus.

As a matter of fact, if you look at a number of the things the Senator talks about—the time requirements, I agree with those in his bill. He sets time limitations for the Federal courts' consid-

eration for determination of habeas corpus provisions.

Mr. SPECTER. Will the Senator yield to me? I want to be sure this is on the Senator's time.

Mr. HATCH. I do not think it is. Let me just answer your question then.

Mr. SPECTER. Parliamentary inquiry. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. SPECTER. Is Senator HATCH speaking on my time?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor and the time is being charged to him.

Mr. HATCH. If I am talking too long, I will be happy to answer a specific question.

Mr. SPECTER. You answered my question.

Mr. HATCH. Basically I am saying—

Mr. SPECTER. I want the time to go to you.

Mr. HATCH. I do not have anything more to say than I have said. We have our differences. I think the amendment in 1991 was a far better, tighter amendment than the one in 1990, and it was adopted by a larger majority, 58 to 40. I believe it would be adopted again. That is one reason why we are willing to take habeas down because I believe the courts are moving in the direction of the 1991 Hatch amendment. But be that as it may, I want to commend the Senator from Pennsylvania for raising our consciousness on this.

Mr. SPECTER. If I may focus the question even more narrowly, which I attempted to do before, but let me repeat that: What is wrong with eliminating the exhaustion requirement of the U.S. Code saying that Federal jurisdiction attaches at the time the direct appeal is finished by the State Supreme Court and cert denied by the U.S. Supreme Court?

Mr. HATCH. The only things I can think of there is that it does prohibit States from first addressing the constitutional error before the Federal Government is involved.

Mr. SPECTER. If I may suggest to my colleague—

Mr. HATCH. I do not think the States would be able to determine the facts either.

Mr. SPECTER. The State does have the opportunity to address all the issues before the direct appeal. The appeal goes to the State Supreme Court and cert is denied, so the State has full review on direct appeal.

I ask my colleague to amplify the question again with my experience, when I handled these cases as an assistant District Attorney in the appeals division, we would take the case to a State supreme court. It could be a murder conviction, death penalty; it could be life imprisonment.

The case would come back and there would be a State habeas corpus pro-

ceeding filed with the trial judge. It would raise all the same issues, and it would lie on the trial judge's desk and nothing would be done because the State supreme court had decided it. Why not say at that point, with the State supreme court having decided all the issues, that it goes to the Federal court?

Mr. HATCH. Well, as the Senator knows, there are some issues that cannot be decided on direct appeal, they have to be decided on collateral appeal, ineffective assistance of counsel and other similar issues. That is one reason why I have some difficulty with it.

Mr. SPECTER. Suppose you use the California system where the only issue is advocacy of counsel at trial. In California, they have a proceeding to determine adequacy of counsel after the verdict, before the appeal. If we had the issue of adequacy of counsel—and bear in mind, I say to the Senator, that we are talking about a very tight timeframe. We are not talking about 17 years, 18 years like the Utah case—

Mr. HATCH. No, the Senator is not.

Mr. SPECTER. Where they think up a lot of different issues. But we are talking about a direct appeal, and if you had the California system to consider adequacy of counsel—

Mr. HATCH. I have to say to the distinguished Senator that I think his approach is worth studying. It is certainly worth consideration. We ought to have hearings on it. It is worth looking into, and I think we ought to have hearings on it. We ought to make some determinations with regard to it. Adequacy of counsel has to be determined at some point—it may be the California system will work, but adequacy of counsel has to be determined before you can subject a person to the death penalty.

Mr. SPECTER. The California system takes up the issue of adequacy of counsel—

Mr. HATCH. That is right.

Mr. SPECTER. Which my colleague has raised and appropriately so. If you cover that, why not let the Federal court take the case?

Mr. HATCH. At that point it may very well be that a good review of this would indicate that that would be the step to take.

Mr. SPECTER. I suggest to my colleague that he is as expert on habeas corpus as we are going to find in the Congress in this millennium. The Senator has read the cases. He has had the hearings, and he knows the field. I think Senator BIDEN does, too. There are a number of us who do. I suggest that the time has come for us to make the judgment. Every day we wait these cases like Harris and cases like the 18-year-old Utah case keep going and going and going.

Mr. HATCH. I agree. I agree. One of my major problems with the Senator's habeas provision is the overruling of

Teague and really the overruling of the Sawyer case as well. In both of those cases, I think the way the Senator is approaching it will actually lead to as many, if not more, habeas corpus appeals, because he continues to allow retroactivity if there is a question of fundamental rights.

Mr. SPECTER. I ask my colleague, as we discussed informally a few days ago, what cases have come down on retroactivity since Teague? I do not believe there has been a single one that has come down which would provide a problem for the prosecution on retroactivity. Can my colleague identify any?

Mr. HATCH. Well, Penry versus Lynaugh, which was in 1989, Butler versus McKellar in 1991. Those were cases that were the result of Teague, or the cases that followed Teague.

Mr. SPECTER. What principles on retroactivity were established there that were problems?

Mr. HATCH. In the Teague case the Supreme Court established two exceptions to the bar against retroactive new rules in habeas litigation. One was that if the new rule places the kind of conduct or class of defendants beyond the power of the general law making authority such as the death penalty for rape as being declared unconstitutional; or, two, if the new rule addresses the bedrock procedural element of criminal procedure on a matter which so significantly changes its law that the rule is watershed, the rule has to be applied retroactively.

Mr. SPECTER. That is where they said you could apply them retroactively.

Mr. HATCH. Teague and its bookend case, the Griffith case, both establish a bright line rule of law which ensures the uniform application of new rules. And I think you have to admit that Teague has improved the landscape of habeas litigation.

Mr. SPECTER. If I may just say, and then I wish to reserve the remainder of my time, I believe that you will find since Teague there have not been rules which could be applied retroactively which would raise a problem for what my colleague from Utah is raising. But even if so, I would say that there will have to come a day in this Chamber, and especially with the House, where, if we are to have the utility of the death penalty—if I could have the attention of my colleague from Utah—if we are going to have the availability of the death penalty and not keep going around in circles, then we are going to have to make an accommodation, a compromise. And I suggest that the language my colleague from Utah, Senator SIMPSON, Senator THURMOND, and I hammered out—Senator SIMPSON has cosponsored the bill again—is a conservative compromise. And that is why I hope my colleague would accept this amendment.

Mr. HATCH. If the Senator will yield, it is an improvement on the Biden habeas approach. There is no question about it. What I do not want to do is go back to the old Linkletter standard where really there were no rules.

Mr. SPECTER. I agree with my colleague we should not return to that, but I would say that the language which he and I agreed upon in 1990, carefully crafted language, is what we should accept here this evening.

I yield the floor, Madam President, and ask how much time I have remaining.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator has 9 minutes 20 seconds.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I will just say this, that the Specter bill overturns the Supreme Court's decision in Teague versus Lane. That was a 1989 decision. Now, in that case the Court held that once the criminal's conviction became final, new rules of civil procedure are not retroactively applicable. In other words, you are not going to be able to just continue to take every new rule that comes down the line. The Specter bill provides that the new rules are retroactive if they involve fundamental rights. This, according to the attorneys general with whom I have consulted, will increase the litigation and delay the surrounding capital litigation as well.

Now, in addition, the Specter bill, as I understand it, also overturns the Supreme Court decision in Sawyer versus Woodley. That is a 1992 case, a year ago. The Court in Sawyer held that successive petitions can only be heard where actual innocence is established. And to show actual innocence, the petitioner has to show, one, innocence of the crime or, two, show but for constitutional error no reasonable juror would find the petitioner eligible for the death penalty.

Now, the Specter bill repudiates Sawyer, as I view it, in two respects. No. 1, the burden of proof required of the petitioner, clear and convincing, is abandoned. That has been the burden of proof. And No. 2, new mitigating evidence could be raised and presented to set aside a death sentence after the death sentence has been issued.

Now, I have great problems with that approach to things. And admittedly the Specter bill will not get us back to Linkletter in the eyes of many people, but I am afraid that if we go back to the cases of Linkletter versus Walter or Stovall versus Denno, where the courts were required to apply balancing tests, we are going to get into worse shape than we are in today. Frankly, in some respects, I think because of the overrule of Teague and Sawyer, we would wind up in worse shape than we are today. So I am very concerned about it.

I agree with the distinguished Senator from Pennsylvania, this is a worthwhile matter to investigate, to hold hearings on, and to really look into in every way we can to try to resolve. But I have to tell you, I do not think that either the BIDEN or the SPECTER approach toward habeas corpus is going to stop these excessive appeals when they overrule or partially overrule the Teague and Sawyer cases.

I think they guarantee that we are going to have incessant bills and the concomitant delays, and the failure to implement the death penalty as it should be implemented, and of course all of the concomitant costs that the States have to go through.

The Hatch amendment that was passed in 1991, 58 to 40, would pretty much put an end to it. It would give them the right through the process one time. You go through the State process, you go through the Federal process one time, and that is it. If their claim was "fully and fairly litigated," that is it, unless they really can show a true constitutional issue or a true injustice or proof of innocence, that it would have to come from new, undiscovered evidence. Frankly, it needs to be done in that way.

But I am willing to put that up against the bill of the distinguished Senator from Pennsylvania, and, of course, the bill of my friend from Delaware, the chairman of the committee.

This is an important issue. There is no use kidding about it. We would not be spending this time if it was not important.

But last, let me say one other thing. I believe the Supreme Court is moving in the right direction. That is one of the reasons I am willing to have habeas stricken from this bill, because it is a matter of great contention, it is a matter that is difficult to understand, and difficult to explain. Yet, it is causing problems all over this country. I would like to see the Court continue to move in this direction where these frivolous appeals are going to be ended once and for all. I believe they are getting there, and I believe they will get there because they themselves realize it is ridiculous what is going on right now.

Madam 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. SPECTER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Madam President, I am pleased at this time to yield to my distinguished colleague from Washington, a cosponsor of the bill, Senator GORTON, for 3 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, on the charts which my colleague from Pennsylvania has submitted, the death penalty delay in the State court which is of the shortest duration, 3 years, is the Campbell case which arises in the State of Washington. It also has the dubious distinction of having the second longest such delay in Federal court of collateral habeas corpus proceedings, one in which there was apparently a deliberate or a near deliberate delay on the part of an antideath penalty judge simply delaying the imposition of that death penalty by refusing to make any decision, by refusing to sign a decision of the court.

That, it seems to me, focuses attention on what, to lay people, is the key issue here: How long should it take to provide justice in connection with the most serious of the crimes which come before our courts? To what extent can we permit total technicalities and a constant claim of newly discovered evidence to delay the final imposition in a death penalty case?

Clearly, the Senator from Utah has improved the situation in which we found ourselves when this bill was reported to the floor. The Biden amendment would have added a complexity to the system. By striking the Biden amendment we at least leave the system in its present status quo. I agree with the Senator from Utah, the Supreme Court is probably gradually improving the situation on its own.

It is the view of this Senator that the Specter amendment will once again, if only modestly, lessen the multiplicity of collateral appeals and somewhat shorten the outrageous nature, the endless nature, of the appeals which we see here on this chart.

The costs to society are high, as a result, in dollar figures. The fact is that justice delayed is justice denied. Justice is not generally speaking accomplished by these kinds of delays, but the greatest single vice is the constant erosion of trust and confidence in our system of justice on the part of the people of the United States. They become increasingly cynical when they see horrendous murders, death penalty sentences delayed, delay after delay.

The people of the United States want to do justice. They do not wish to execute innocent persons. But they do wish an end to delays which seem to them never to come to termination at all.

So there are questions which have little to do with the justice or the accuracy of the original verdict or sentencing. In that connection, the Specter amendment will provide an improvement, and deserves our support.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I thank my distinguished colleague from Washington for those very cogent

statements. He has said in the course of 3 minutes what others of us have not said in 30 minutes or more.

I think it is worth a moment also of reflection as to how many cases my colleague from Washington argued in the United States Supreme Court in his distinguished career as the attorney general of the State of Washington—if he would yield for a question—14 cases. I have been there on two occasions myself. There are many lawyers who have not gotten to the Supreme Court of the United States to argue cases. I think some who are sitting there have not gotten there to argue cases.

I think that Senator GORTON has put his finger on the crux of the issue which I was trying to develop with the Senator from Utah; that is, that if we are going to stop the 10-, 12-, 15-, 18-year proceedings, that we are going to have to come to grips with this issue on some of the tough matters and not have 100 percent our own way; and, that if we are to have the death penalty imposed, we ought not to go back to hearings but we ought to take a bill which has been worked out.

I would submit, Madam President, in response directly to what the Senator from Utah has said, that this bill meets his concerns. When he talks about Teague—and he read from the Teague case, he was reading from the section where retroactivity was permitted where it was fundamental—the Teague case did impose a tough standard of disallowing retroactive application.

In 1990, the Senator from Utah agreed with the language which is in the Specter amendment. He deemed that adequate on the issue of retroactivity, and I think any fair reading would say that was adequate to protect the concerns which he has articulated.

When he has objected to some terms of the Specter amendment on the Sawyer case, let me just say that the district attorneys, and the attorneys general who were looking after the prosecution side, found this language sufficient. I would suggest to the Senate, Madam President, and to the public at large, when you have a successive petition which would "demonstrate that no reasonable sentencing authority would have found an aggravated circumstance or other condition of eligibility for a capital or noncapital sentence or otherwise would impose the sentence of death," that that is a mighty tight standard.

When you talk about aggravating and mitigating circumstances and the underlying Biden bill allows a jury not to impose the death penalty in its discretion, they do not have to weigh aggravating or mitigating, that is different from what happens on habeas corpus. This is technical, but it is important.

I submit that this standard is not too lenient when it would demonstrate that no reasonable sentencing author-

ity could impose the death penalty. How can we ask that the death penalty stand if no reasonable sentencing authority would have found the death penalty? This is a standard which has been approved and sanctioned by the prosecutors, the national district attorneys and the attorneys general. And I do not think we ought to look for a tougher standard, if it is tougher as to what the Senator from Utah asks for.

Parliamentary inquiry, Madam President. How much time is remaining?

The PRESIDING OFFICER. There is 1 minute 24 seconds.

Mr. SPECTER. How much time does the other side have?

The PRESIDING OFFICER. There are 7 minutes 3 seconds.

Mr. SPECTER. I inquire of my colleague from Utah if he intends to use more of his time.

Mr. HATCH. I do not. I am prepared to yield the remainder of my time.

Mr. SPECTER. I ask if we might have the distinguished Senator from Delaware present because there is one other subject I would like to discuss with him, if he is on the premises.

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

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

Mr. SPECTER. Madam President, in conclusion with the minute I have left—and the Senator from Delaware has a few minutes left—I will conclude by saying that I think this has been an instructive debate. I think that the essential points are very close. The Senator from Delaware has said that he thinks we are very close on the exhaustion issue. The Senator from Utah agrees that in 1990 he was with me on the retroactivity point. And the issue about successive petitions where no reasonable person could say the death penalty should be imposed, I think, speaks strongly for my amendment. We have 15 minutes more. I think that the case has been presented in a very strong fashion in support of my amendment. In the remaining time, I would like to explore with the Senator from Delaware the language which is contained in—

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. SPECTER. I ask for 30 seconds to complete the question as to the applicable law and retroactive portion of the Biden bill, if it is not substantially similar to the retroactive provision in the Specter bill, section 2257.

Mr. BIDEN. I believe, yes. I did not hear the first part of the question.

Mr. SPECTER. The question is: Is not the language from the Biden bill, which essentially provides—the new rule constitutes a watershed rule of criminal procedures implicating fundamental fairness and accuracy of the criminal proceeding; is that not substantially the same as the language in my bill which says the court, considering the claimant for this chapter shall consider intervening decisions by the Supreme Court of the United States which established fundamental constitutional rights? Is not the issue of fundamental constitutional rights very close to the language of implicating fundamental fairness?

Mr. BIDEN. I think not, Senator. I think it goes beyond fundamental constitutional rights. That is why I chose the language I did. Assuming that we succeed—the Senator from Utah and I—tomorrow in tabling the amendment, I would be delighted to, in the context of the committee and/or on the floor and prior to going to committee and the floor, to discuss that in great detail. If it is helpful, I will be happy to enter into the RECORD the way in which I think there is still a very wide gap, as I see it, because we toyed with the idea of using similar language and concluded that it did not encompass all I wished. I will hold it until tomorrow so my staff does not have to spend all evening coming up with the explanation. Tomorrow I will put in the RECORD a more detailed explanation of the distinction between the language the Senator from Pennsylvania has and what was in the underlying Biden bill.

Mr. SPECTER. I thank my colleague. The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. HATCH. I may soon yield the remainder of our time, but I will withhold that to see if Senator THURMOND wishes to speak.

Mr. BIDEN. If the Senator will yield me 30 seconds. I believe it is appropriate for me at this time under the unanimous consent—I am sorry, we still have some time then. When all time is yielded back or used, I will then ask for the yeas and nays on the motion to table, and the vote is to take place tomorrow.

Mr. HATCH. I will now be happy to yield the remainder of our time.

Mr. BIDEN. All time has been yielded back, Madam President. Therefore, I ask for the yeas and nays on the motion to table the Specter amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Parliamentary inquiry, Madam President. I want to be sure that the motion to table has not yet been made. There are 30 minutes for argument tomorrow.

Mr. BIDEN. That is the intention of the manager, Madam President.

The PRESIDING OFFICER. The order would permit the 30 minutes of debate notwithstanding the motion.

Mr. BIDEN. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, S. 1657 is laid aside to occur at 9 a.m., Wednesday, followed by 30 minutes of debate and a vote on the motion to table.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1607, the crime bill.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1607) to control and prevent crime.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Madam President, I believe under the unanimous-consent agreement, the next amendment that we are to take up is the amendment of the distinguished Senator from Texas, Senator HUTCHISON. While she is preparing to make her case, I have been trying to clear her amendment on our side. I may be able to save her a considerable amount of time. The last Democrat who had an objection to her amendment has now agreed that I can accept the amendment. I do not mean for her not to speak to it. But on our side, we will be prepared to accept the Hutchison amendment, once offered and explained by the distinguished Senator from Texas. I assume the Republican manager may accept it.

Mr. HATCH. We are prepared to accept the amendment, as well, and are very pleased to do so.

Mr. BIDEN. I will, at the appropriate time, after the Senator from Texas is finished, ask unanimous consent to vitiate the vote tomorrow on the Hutchison amendment as soon as she is willing to have her amendment accepted.

AMENDMENT NO. 1158

Mrs. HUTCHISON. Madam President, last year Congress prohibited the distribution of Pell grant funds to prison inmates who are under death sentences or serving sentences of life without parole. This was a step in the right direction, Mr. President, but during the past year those who are serving lesser sentences—for offenses like carjacking, armed robbery, rape, and arson—received as much as \$200 million in Pell funds, courtesy of the American taxpayer.

This is not right. This is not fair to the more than 1 million eligible students who were denied Pell grants last year because there was not enough

money in the program. It is not fair to the millions of parents who work and pay taxes, and then must scrape and save and often borrow to finance their children's educations.

My amendment is aimed at stretching every possible dollar for those young people who stay out of trouble, study hard, and deserve a chance to further their education, fair to working Americans who pay their taxes and do without in order that their children will have advantages they never had: a better education, more opportunities, a better future.

The American people are frustrated by a Federal Government and a Congress that cannot seem to get priorities straight. They are frustrated and angry by a Federal Government that sets rules that put convicts at the head of the line for college financial aid, crowding out law-abiding citizens.

One police officer whose daughter couldn't qualify for a Pell grant summed up his frustration when he said recently, "Maybe I should take my badge off and rob a store."

I believe people who have made a mistake, who have been convicted of a crime and are serving time in jail, generally deserve a second chance. To provide that second chance, the Federal Government spends \$100 million or so each year on prisoner education and training programs. State governments add to this total. This educational assistance money, however, is available only to prison inmates—to provide a second chance.

But the issue I raise is whether we will act to provide for a first, perhaps only, chance for 100,000 young people who qualify for Pell grants but who are denied educational assistance because there isn't enough money.

Congress created the Pell Grant Program in 1972, in order to help the children of poor and working class families have a chance to go to college. We have appropriated ever increasing sums of money for the program ever since, because higher education is an investment in our children's and our Nation's future. For recipients of Pell grants, 95 percent of whom come from families with annual incomes of less than \$30,000, 70 percent below \$15,000, financial aid is very often the difference between going to college and building a better future, and going to work in lower paying jobs.

For more than 10 years, however, Congress has looked the other way while increasingly large amounts of Pell grant money has been diverted from the students for whom it is intended, to imprisoned convicts.

As I said at the outset, this is not fair. It is not fair to taxpayers. It is not fair to law-abiding citizens. It is not fair to the victims of crime. But we can set things right. We only need to make a choice. And for me, it is an easy choice.

My amendment would put \$200 million in the hands of more than 100,000 students and their parents, who have worked and studied and saved and scrimped for a chance at more schooling. They are my choice. I hope a majority of my colleagues also will choose to support them, to put at the head of the line, not the end, Americans who work and raise families and pay taxes.

Madam President, I would like to make an inquiry of the chairman. I would be happy not to make a talk. I do understand when you declare victory and go home. I would be happy to give back the time if the chairman would prefer that, or I would be happy to talk if the next Senator is not ready.

Mr. BIDEN. The distinguished Senator from Texas has worked very hard on this amendment. If she would be willing to summarize her amendment it would facilitate. She is entitled to take the time to summarize her amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I certainly appreciate the Senator from Delaware accepting my amendment and certainly appreciate the Senator from Utah for all the work that he has done to make this possible.

Let me just summarize my amendment and say that what we are going to be able to do, because of the acceptance of this, is reserve Pell grants, which are stipends, for children of low-income working families. Ninety-five percent of the grants for these children to be able to go to college come to parents of children in families that make under \$30,000 a year. Seventy percent of those come from families that earn under \$15,000 a year.

So this is a very important grant for these families to give their children the opportunity to go to college, many times something they could not do for themselves.

What has happened is that because prisoners have zero income they have been able to step to the front of the line and push law-abiding citizens out of the way to get these grants for college educations. In fact, what this amendment will do is free up the \$200 million that was going to prisoners to have their educations funded, and it will now go to the children of these low-income families for whom the Pell grants were originally intended.

Let me say that I think that prisoners who want to get an education deserve a second chance, and, in fact, the Federal Government does put up almost \$100 million to do that, and States do supplement that program. I am very much a supporter of that.

But these are a different type of grant. They are educational grants. They are for the children of low-income families, and many of these families have to borrow to send their chil-

dren to school anyway, but these Pell grants give them that extra boost. It may be \$1,500 or \$2,000 a year, depending on the family.

So this is going to give 100,000 young people, Madam President, the opportunity to have that first chance, that chance that may make the difference in their lives.

I thank the Senator from Delaware and the Senator from Utah for accepting this amendment and giving these kids a chance.

Thank you, Madam President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, let me again compliment the Senator from Texas and thank her for doing what a number of those of us who are more senior around here have not learned to do, and that is be gracious enough, as she always is, when she prevails to yield back her time. I wish everyone could take a lesson from her, and I thank her for her consideration as it relates to the time.

Madam President, I ask unanimous consent that the unanimous consent agreement that calls for us acting on the Hutchison amendment tomorrow morning be vitiated, not the whole request, only the amendment.

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

Mr. BIDEN. Madam President, I urge adoption of the amendment.

Mr. HATCH. The amendment is acceptable and I urge its adoption.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BIDEN. We yield back all our time, Madam President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1158) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. HATCH. 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 Utah.

Mr. HATCH. As I understand it we are going to move to the Boxer amendment at this time. So I ask unanimous consent that—

The PRESIDING OFFICER. It is difficult to hear the Senator from Utah. Order, please.

Mr. HATCH. Madam President, I was concerned about the Senator from New York. I did not think he was here. He is next up on the amendment train.

Mr. BIDEN. Madam President, what is the business before the Senate?

The PRESIDING OFFICER. The crime bill.

Mr. BIDEN. Madam President, let me be more specific.

The PRESIDING OFFICER. The amendment of the Senator from New York is the next amendment.

Mr. BIDEN. Madam President, let me ask my friend from New York if he would consider yielding for the following purpose: In order for us to accommodate an immediate need of the Senator from North Carolina, we allowed the Senator from North Carolina, who had an amendment that was the Helms-Graham amendment on prison caps, we allow the Senator from North Carolina to make his plea for his amendment earlier this evening and move ahead of the line.

I would respectfully suggest that since the Senator from Florida is a cosponsor of that amendment and he is only going to speak, as I understand, roughly 5 minutes on that amendment, that we allow the Senator from Florida to take 5 minutes and then the Senator from Delaware will not use the 15 minutes to respond but 5 minutes to respond. So we will be delaying the Senator from New York a total of 10 minutes, but it seems to me a more orderly way to do it.

Mr. D'AMATO. I certainly have no objection.

Mr. BIDEN. I ask unanimous consent that we move back to the Helms-Graham amendment and, as I understand, the Senator from Florida is going to seek to use 5 minutes of 15 minutes he has on another amendment to make his case. Is that correct?

Mr. GRAHAM. Madam President, it had been my intention at the appropriate time to offer another amendment, No. 8 on the list of amendments to be offered. I can defer that and speak on both of those items at that time or I can speak on the prison caps amendment at this time, whichever would be preferable.

Mr. BIDEN. If the Senator would be willing to speak on the prison caps amendment now and then we will go back to the regular order of how the UC suggests we take up amendments, that would be I think the most orderly way if he would be willing.

The PRESIDING OFFICER. Without objection, the Senator from Florida is recognized for 5 minutes.

AMENDMENT NO. 1159

Mr. HELMS. I call up the amendment and ask it be stated.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina has 5 minutes on the amendment.

Mr. HELMS. Do you not wish to state the amendment?

The PRESIDING OFFICER. The clerk will report the amendment for the information of Senators.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. GRAMM, and Mr. GRAHAM, proposes an amendment numbered 1159.

Mr. HELMS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

Mr. HELMS. Madam President, I ask unanimous consent the following Senators be added as original cosponsors of the amendment, in addition to Mr. GRAMM of Texas, Mr. GRAHAM of Florida and myself, add these Senators: Senators MACK, FAIRCLOTH, DOLE, THURMOND, HATCH, KASSEBAUM, BURNS, MCCAIN, MCCONNELL, and STEVENS.

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

Mr. GRAHAM. Madam President, I would speak briefly on the amendment that has been offered by the Senator from North Carolina, and the Senator from Texas, and myself relative to the Federal role in establishing the maximum population in local jails and State prisons.

The Federal Government's involvement in this is a function of the eighth amendment to the Constitution which prohibits cruel and unusual punishment.

Our amendment is simple and straightforward. It says that the Federal courts enforcing that provision shall establish those standards that assure that the constitutional prohibition against cruel and unusual punishment is not violated but that the court shall not exceed that standard.

There has been great concern that the pattern of Federal court orders relative to prison construction and operation and population have been setting higher and higher standards that have gone far beyond those necessary to assure that the constitutional standard of cruel and unusual is not violated.

The effect of this has been to reduce the ability of States to provide housing for those persons who are committed to local jails or State correctional facilities for incarceration.

The effect of that limitation has been that many States, including my own, have had to turn serious offenders out onto the streets in order to open a bed space for a person who is being admitted into that institution.

In our State of Florida, it is estimated that less than 50 percent of the time that should have been served based on court order is in fact being served because of the necessity to move people through the system in order to stay consistent with court ordered limitations and to create space for those persons who have been ordered into the system.

I believe, Madam President, that one of the things that we ought to be doing as we, the Federal Congress, debate a Federal crime bill is to be sensitive to the fact that has been reiterated time and time again during this debate. That is that the vast majority of responsibility in America's criminal justice system rests with local communities and the States. The Federal role is a relatively narrow one.

One of the things the Federal Government can do is to avoid imposing

excessive mandates on States and local communities which inhibit their ability to carry out responsible programs.

Madam President, I do not believe that local communities and States are in the position or are inclined to conduct their correctional facilities in inhumane, barbarous ways. They have a sense of responsibility to their communities. They understand that most of the people who are once incarcerated are eventually going to return to their communities and that effective programs inside the correction institutions can be some of the most determinative steps in what will happen to those people once they are released from prison.

What I object to is the Federal Government using the eighth amendment to impose standards that are even higher than the standards which the Federal Government uses in its own penal institutions. I believe that that is Federal Government run amuck, where it is imposing a standard that results in a turnstile type of justice. Things like the use of double bunking in prisons, things like the use of the kinds of less expensive corrections facilities, such as the Senator from Ohio was demonstrating during the debate last week. Those are the types of innovative activities that ought to be allowed and should not be, but, in fact, are, in many instances, prohibited because of overzealous Federal court orders.

So I strongly urge the adoption of this amendment which will in fact strike an immediate blow to the States' ability to provide housing for those persons who are violent and should, for the period of the sentence imposed by the court, be separated from society and society protected from them. Hopefully, something positive will happen while they are incarcerated. At least while they are incarcerated they will not be inflicting their violence on law-abiding citizens.

I urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I yield myself 5 of the 15 minutes I have in opposition.

I do oppose this amendment. I understand the desire and instincts of my friend from Florida and, I might add, the Senators probably from 31 other States who are under some form of court order, or most of them, or many of them, if not all of them, Federal court order for prisoner overcrowding.

The Senator is correct that generally we leave this to localities to determine. But one thing, since the adoption of the incorporation doctrine about 65, 70 years ago, roughly the one thing we have not left to the States or local communities is interpreting the eighth amendment. That is a matter for the Federal courts to make a judgment on.

The fact of the matter is that the amendment of the Senators from North Carolina and Florida I believe, is, at least arguably, and I think in fact is, an unconstitutional encroachment on the separation of powers as a matter of policy.

The Senators' amendment does three things:

First, it eliminates the use of class action lawsuits to resolve claims that prison overcrowding violates the eighth amendment prohibition on cruel and unusual punishment.

Second, it limits the remedies that a Federal court may impose for prison overcrowding that violates the Constitution.

And, third, it requires the courts to reopen orders remedying violations of the eighth amendment every 2 years if the defendant prison system—which has been previously found in violation of the Constitution—requests reopening of the case.

I might add, we have debated on a number of other occasions, as I know the Senator from Florida, and the former Governor of Florida and Harvard Law School graduate and accomplished lawyer knows, we have debated these court-stripping amendments a number of times. Fortunately, in my view, we have never stripped the court of jurisdiction over such a fundamental, basic constitutional question as what remedy should flow from a finding of a violation of a constitutional amendment, in this case the eighth amendment.

We attempt to remedy the very things the Senator is concerned about legitimately, and that is the fact that violent criminals are let out of jail because the Federal court concludes that there is a cruel and unusual situation within the jail because of the overcrowding. But we have attempted to remedy that without running the risk of violating the Constitution.

That is why we have accepted, through the urging and the leadership of the Senator from Florida, about close to 3 billion dollars' worth of amendments in this bill to deal with prison overcrowding.

And so, I believe, although it is more expensive to do it by paying for additional prison spaces, it is the wise, constitutional, and humane way.

And I am going to sound like I am being facetious, but I am not, in what I am about to say.

The Senator indicated that he believes that localities are not inclined and do not engage in and are not desirous of engaging in cruel and unusual treatment of prisoners. I am prepared to accept as a matter of fact the assertion made by my friend from Florida. As of this moment, today, let me stipulate that there is no city, State, or county prison system in the Nation that, in fact, imposes cruel and unusual punishment upon its prisoners

due to overcrowding. I will stipulate to that for now.

But I am sure the Senator from Florida would stipulate with me there have been many States that have done just that in the past. The prison system in the State of Florida in the distant past was nothing to be proud of. It was outrageous. The prison system in the State of Delaware was outrageous. The prison system in the State of Mississippi and a number of other States—I could name almost all 50 States.

So the one place we found that there is not much of a constituency to argue against cruel and unusual treatment is in a prison system. Not many folks out there rally behind them. And understandably, because these folks are in prison because they have done something bad.

Quite frankly, the only last refuge—and I realize they say the last refuge of scoundrels is—well, the way the Constitution was written is, even scoundrels have refuge within the Constitution. Prisoners are scoundrels. They have refuge within the eighth amendment of the Constitution of the United States.

I think this is an unnecessary encroachment upon the jurisdiction of the Federal courts. To be more blunt about it, I think it can be remedied another way. The way to remedy it is the right way. Do not tamper with the Constitution and court stripping.

Although, if the Senator had the time, he would point out to me—and I will do it in the interest of fairness—that there are constitutional scholars who would argue that arguably what he is suggesting is constitutional. I think the preponderance of the weight of the authority is the opposite direction.

But there is no need to chance it. There is no need to deal with it. We correct it in the \$22 billion crime bill by providing a means by which we keep prison systems—State, local, and Federal—straight and not succumbing to what prison systems have succumbed to in our past history by being the agents for cruel and unusual treatment of prisoners within the system.

I doubt whether Americans today would conclude that someone who had not committed a violent offense or even a violent offense should be put in a cement cell with no mattress and no facilities and no heat and so on. None do that, now, I might add, that I am aware of.

But, if our prison system were able to do that, went ahead and did that, and the Federal court were stripped of the jurisdiction of making a judgment whether or not that is a systemic violation of the law by the prison system, I suspect we would all say they should be able to look at that and make that judgment—not on a case-by-case basis of each prisoner.

Madam President, I oppose the amendment offered by the senior Sen-

ator from North Carolina, both because I believe it may be an unconstitutional encroachment on the separation of powers and as a matter of policy.

The Senator's amendment does three things:

First, it eliminates the use of class action lawsuits to resolve claims that prison overcrowding violates the eighth amendment prohibition on cruel and unusual punishment;

Second, it limits the remedies that a Federal court may impose for prison overcrowding that violates the Constitution; and

Third, it requires the courts to reopen orders remedying violations of the eighth amendment every 2 years if the defendant prison system—which has been previously found in violation of the Constitution—requests reopening of the case.

Let me state at the outset why I believe the Senator's amendment may be unconstitutional. This amendment restricts authority of the Federal courts to interpret a part of the Constitution and limits the courts' remedial powers. In my view, the amendment is constitutionally infirm in each respect.

The Senator's amendment states:

A Federal court shall not hold prison or jail crowding unconstitutional * * * except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

What that really means is that courts presiding over class action lawsuits would not be permitted to hold that prison overcrowding violates the Constitution unless the court made particularized findings of cruel and unusual punishment respecting an individual plaintiff.

If we adopted this amendment, we would be stating in effect that the Federal courts—which, since the landmark case of *Marbury versus Madison*, have been considered the final arbiters of what the Constitution requires—may not make determinations of what is or is not constitutional with respect to eighth amendment litigation over prison crowding.

That is because the amendment effectively prevents a court from making a finding of system-wide constitutional violation or from remedying that constitutional infirmity—even if the court believes that is the correct result.

In so doing, this amendment flies in the face of our national history and understanding of the court's role in the constitutional system.

Moreover, this amendment does more than merely tell the courts they may not fashion a specific remedy for a constitutional violation; it further seeks to define the limits of the law under the Constitution.

It says that a Federal court may not hold that certain prison conditions violate the Constitution unless the claim is brought by an individual plaintiff—

even where other aspects of a case are properly before the court.

If a class of plaintiffs demonstrates pervasive unlawful prison conditions, this amendment says that the Federal courts may not find those conditions unlawful, and, therefore, may not fashion a remedy for the constitutional infirmity.

In addition, this amendment—in my view, unconstitutionally—restricts the ability of the Federal courts to remedy cruel and unusual punishment resulting from prison overcrowding.

Congress has never granted a Federal court subject matter jurisdiction over a particular class of claims and then stripped away the court's jurisdiction to fashion a particular remedy—although such legislation has been introduced over the years.

Therefore, the Supreme Court has never ruled on the question of whether Congress improperly intrudes on the judicial power by restricting the Federal courts' ability to fashion appropriate remedies for constitutional wrongs.

Constitutional scholars are not unanimous in the view that such a restriction would violate the Constitution, although several scholars whose opinion I respect believe such a law would, in fact, be unconstitutional.

Because of this uncertainty, I am not prepared to support an amendment that would make such novel changes in the relationship between Congress and the courts without a thorough airing of the potential constitutional problems. I submit that 30 minutes of debate on the Senate floor is not an appropriate airing of these issues.

There is another possibility. Perhaps the Senator's amendment does not purport to dictate to the Federal courts how they should and should not interpret the Constitution in this area.

The amendment provides that a court may not hold that certain conditions violate the Constitution unless an individual plaintiff proves that cruel and unusual punishment results from the condition of overcrowding.

That is already required under the law. Under the Federal Rules of Civil Procedure, rule 23, class action lawsuits are authorized. But class actions require a representative, or named, plaintiff who must prove the case on behalf of the entire class.

In the prison context, a named plaintiff would prove that a particular prison condition violated the Constitution. Of course, that showing would require that the plaintiff demonstrate injury to himself as an individual.

Thus, every class action lawsuit would already satisfy the requirements of the Senator's amendment, and, thereby, permit courts to make findings under the Constitution. That is because, in every class action, an individual plaintiff must make the showing required by the amendment.

If this is the intent of the amendment, it is entirely consistent with existing law and would, therefore, have no effect. I cannot believe, however, that the Senator from North Carolina would offer an amendment having no effect.

Therefore, I am compelled to construe his amendment as a limitation on the powers of the Federal courts to find and remedy violations of the Constitution.

Because I believe such a statute would violate the delicate separation of powers in our Federal Government, I oppose the Senator's amendment and urge my colleagues to do likewise.

Let me add that I oppose the Senator's amendment for an independent reason: The Supreme Court has already restricted the lower courts' ability to hold that prison overcrowding violates the eighth amendment.

I am aware of no case in which prison overcrowding, without more, has been held to violate the eighth amendment. Supreme Court precedents dictate that overcrowding must be combined with other problems such as unsanitary conditions, lack of medical treatment, or inadequate air filtration to support a finding of an eighth amendment violation.

Moreover, as a matter of policy, I believe it would be inappropriate to eliminate the use of class action litigation in this area of the law. If adopted, this amendment would create inefficiency in the judicial system.

Under this amendment, prison overcrowding claims would each have to be brought individually, imposing substantial burdens on scarce judicial resources.

I reiterate, I think the concern stated by the Senator from Florida is absolutely, totally legitimate. I think his remedy, that is, denying the Federal court the right to use a remedy when an eighth amendment violation is found, is the wrong way to remedy the problem. The right way to remedy the problem is what he did in the first instance in this bill. The Senator from Florida was one of the leaders in making sure that this bill provided for additional space to take nonviolent offenders out and put them in boot camps, provide space for nonviolent offenders in those boot camps. Whether it was his intention or not, that goes a long way to remedying the problem relating to overcrowding.

But ultimately the eighth amendment is the domain of the Federal court system to determine whether or not it has been violated. There is an argument, "Deny the remedy, you deny the right." This denies a remedy that I think, arguably, would render it deficient constitutionally.

So at the appropriate time when all time has been yielded back, I am going to move to table the amendment, ask for the yeas and nays, which, as I un-

derstand it under our unanimous consent agreement, means not that that vote would take place tonight but it would take place tomorrow morning in the appropriate order. But I will wait until time is yielded back.

Mr. HELMS. Madam President, there is nothing complicated or difficult to understand about this amendment and its purpose. All over America, innocent citizens are being murdered, raped, robbed, beaten, sometimes all of the above. These crimes are being committed by violent felons who have been turned loose on society by Federal judges, set free after the criminals have served only a fraction of their prison terms they received for previous acts of violence.

Most Members of the Senate can relate to the shocking stories involving their own States, but let me speak for North Carolina where Gov. Jim Hunt is doing his best to cope with this awesome problem. Last year in North Carolina alone, more than 26,000 prisoners were given early releases from prisons. These 26,000 included 88 felons convicted of murder and 37 rapists. The father of basketball star Michael Jordan, Mr. President, was killed by one such felon who had been given an early release.

This amendment proposes to set a standard for the Federal courts precisely as the Congress did in the Religious Freedom Restoration Act, which President Clinton today signed into law.

Under the pending amendment, some prisoners may have to do with a few square feet less of cell space, but that is far better than to continue to turn loose violent felons to kill or rape innocent citizens or, as happened in Charlotte last month, shooting in cold blood two fine young Charlotte police officers.

Madam President, here is the point: Those young police officers and others whose lives have been snuffed out by violent felons returned to the streets by Federal courts, these victims each will occupy a 6-foot hole in the ground for eternity because of violent criminals having been set free because prison cells were not quite large enough to suit some Federal judge.

For a change, let us think about the rights of victims of violent crimes, and this amendment will do exactly that.

I thank the Chair.

Madam President, I ask unanimous consent that it be in order for me to ask for the yeas and nays on my amendment.

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

Mr. HELMS. 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. HELMS. I yield the floor.

Mr. BIDEN. I yield back the remainder of my time.

Madam President, is all time yielded back on the Helms-Graham amendment? I do not think there was any time remaining.

The PRESIDING OFFICER. All time has been yielded back.

Mr. BIDEN. Madam President, I move to table the Helms-Graham amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will occur tomorrow after the disposition of the Levin amendment.

AMENDMENT NO. 1199

(Purpose: To amend the Controlled Substances Act to provide the death penalty for engaging in a continuing criminal drug enterprise involving a large quantity of drugs)

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself and Mr. HATCH, proposes an amendment numbered 1199.

Mr. D'AMATO. Madam 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 30, after line 6, insert the following sections, (b) and (c):

"(b) a defendant who has been found guilty of—

"(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(3) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the

violation or from the use of the controlled substance involved in the violation;

shall be sentenced to death if, after consideration of the factors set forth in section 3592, including the aggravating factors set forth at (c) below, in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

“(c) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section (b) above, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

“(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

“(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

“(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

“(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person.

“(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant.

“(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant.

“(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant.

“(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

Mr. D'AMATO. Madam President, I do not intend to spend a long time ex-

plaining this amendment. Indeed, we have considered it, or an amendment very similar to it, back in 1989; again in 1990; again in 1991. What it does is provide for the death penalty for major drug dealers. Major drug kingpins are killing and maiming Americans. What our amendment does is provide for the death penalty for major drug dealers or traffickers, whether there is a murder or not.

Make no mistake about it, as defined pursuant to this section of the law, anyone who deals with the quantities that we set forth, which are 600 times over that which is required to bring about a felony, will be contributing to the death of scores and scores of Americans.

In order for that death penalty to be applicable, that person has to be involved in the sale or distribution of 132 pounds of heroin in a year. If you are involved in the sale or distribution and you had that rank and are selling 132 pounds of heroin—and that is the minimum—you are responsible for the deaths of untold numbers of people either directly or indirectly, whether through HIV, or whether the heroin addict shoots up and overdoses, or the heroin addict who unfortunately, to support his habit, uses that gun that we speak about and kills an innocent bystander or robs that variety store at night and shoots down someone or was involved in a battle over turf and kills an innocent child. And 660 pounds of cocaine must be involved in order for this to meet the threshold; 13 pounds of PCP, 66 tons of marijuana, or 7 pounds of crack.

We talk about crack addiction. We talk about the crack-addicted babies who are born into addiction. I have to tell you something, the death penalty is too good for those who bring this situation about.

The major trafficker would also be defined as one whose enterprise has gross receipts of \$20 million or more. Again, if you are dealing in that kind of drugs in those quantities, certainly you have been responsible for the death of people.

Our amendment also provides for the death penalty for the drug kingpin who engages in an attempted murder of a person with the purpose of obstructing justice, a principal leader who directs others to attempt to kill any public official, juror, witness, or member of such a person's family or household in order to obstruct the investigation or prosecution of the enterprise or an offense involved in that enterprise.

How often have we heard, unfortunately, in our urban centers today, the drug hits that are put out, the contracts that are put out by the drug kingpins. This amendment also provides for the death penalty for those members of the drug kingpin's organization that dispense, supply, or sell the stated amount of substance that directly causes the death of a person.

Drugs are one of the leading causes of crime today. I believe this amendment can make a difference. There have been some questions as relates to just how many people would be involved. According to a Justice Department study of this amendment, it is estimated that there are 50 to 75 offenders annually who will violate the drug kingpin category as it relates to the amounts—50 to 75. It is estimated that there would be 200 drug offenders satisfying the criteria of members of a continual criminal enterprise who engage in attempted murder to obstruct justice; a principal leader who directs others to kill. This comes from the Justice Department in their study. We are now saying there are at least 200 to 250 people annually who the Justice Department understands would fit this category. Let me suggest that when we talk about how many homicides come about as a result of the drug kingpins ordering assassination of other people, we are talking about 1,350.

I know Senator HATCH will speak to some of the underlying arguments. It has been said that this may be unconstitutional because there is not a death directly attributable as it covers certain of these sections. The United States has provided death penalties for cases where there is not a death actually attributable because we understand, for example in areas of espionage, that while you may not prove a direct correlation, there is that danger to the community, to the Nation. There are those people who are not killing great numbers of people through drug trafficking, but it seems to me they certainly are in an indirect way, and in a very direct way are killing our neighborhoods, our communities, and our youngsters.

Madam President, I ask unanimous consent Senator DOMENICI and my colleague from Virginia, Senator WARNER, be added as cosponsors.

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

Mr. D'AMATO. Madam President, I ask for the yeas and nays.

Mr. BIDEN. Has all time been yielded back?

The PRESIDING OFFICER. All time has not been yielded back.

Mr. BIDEN. I thank you.

Mr. D'AMATO. Madam President, 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. D'AMATO. Madam President, I do not know whether or not Senator HATCH—I believe he is going to speak to the amendment for several minutes.

I have concluded my remarks.

Mr. WARNER. Madam President, if the Senator will allow me just about a minute and a half.

The PRESIDING OFFICER. Does the Senator from New York yield?

Mr. D'AMATO. Yes, I do.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

Mr. WARNER. Madam President, I spent a good deal of the recess period this summer and well into the fall taking a series of unusual trips, in the sense that I went down into my State and visited with every single Federal judge in his or her chambers.

I found it to be a very rewarding experience. I do not wish to compliment myself, but several of the old-time judges who had been there some time said they have no recollection of a U.S. Senator doing this before. I urge other colleagues to do it because you have to go down and sit in the front lines of those judges' chambers and in their courtrooms and let them recount to you the experiences they have each and every day in the implementation of our Federal criminal statutes.

Time and time again, the subject which has been addressed by the distinguished colleague from New York, Mr. D'AMATO, was raised on the need to get to those individuals who have primary responsibility for so much of this drug trafficking.

The members of the judiciary are concerned about the gofers, as they are called, the young people who are roped into these nets, lured into the nets. The Senator from Virginia has included in this bill legislation, as has the Senator from Wisconsin, and others, to stop the transfer to these gofers of handguns as part remuneration for their participation in this lowly drug trafficking. All too often, the gofers are caught and they have not the faintest idea about the implication of the kingpin. I think this statute begins to focus the proper attention on the need to get to the kingpins, as well as the gofers, but get to the kingpins and hold them accountable in a way that I feel will be a deterrent for participation in such activities.

I compliment my colleague from New York. I compliment the distinguished ranking member of the Judiciary Committee, Mr. HATCH.

I yield the floor.

The PRESIDING OFFICER (Mr. MATHEWS). Who yields time?

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I am very sympathetic and empathetic with the effort of the Senator from New York. As a matter of fact, it was in 1988 the first drug kingpin law was passed. I wrote that law. It is now law, on the books; a drug kingpin death penalty law that is on the books, different than this. There is one on the books now.

To be honest with you, when I first wrote the law and I sought the help of constitutional scholarship available, I wanted to extend it to do exactly what the Senator from New York is doing.

But after consulting with liberal and conservative constitutional scholars and Federal judges, the overwhelming consensus was that under the present rulings of the Supreme Court, unless there is an intent directly related to and able to trace the cause of death to the action of a drug kingpin, a death penalty would, in fact, in that circumstance be viewed as unconstitutional.

The Senator pointed out, I think he used the figure 1,300 assassinations ordered. All of those are covered now by the present law. In the Biden drug kingpin law that is now law, any drug kingpin who, in fact, directly orders and/or commits a murder by either standing there and administering an overdose of a drug and/or in a drug war, shooting, killing, or ordering the assassination of someone else, they are able to receive the death penalty under Federal law now.

The big difference with the proposal of the Senator from New York is, a drug kingpin who, in fact, does not directly, immediately identify the subject of the murder and his actions would still be covered. The theory being—I cannot improve on the explanation—but the theory being that any reasonable person would have to know that they are engaged in the business of running a criminal enterprise the size that is required to be a drug kingpin and/or distributing the tens, if not hundreds of pounds of potentially lethal controlled substances; that it is reasonable to assume someone will die as a consequence of that.

So the nexus the Senator from New York finds under the Constitution to make it constitutional to put someone to death for an action is that any—my words not his—any reasonable person would have to know that death would result. The analogy I made in 1988, but I could not get the consensus of the constitutional scholars, was anyone who takes out a loaded gun and indiscriminately, but nonetheless, fires into a crowd of individuals without the intent to kill anyone or anyone in particular, they should have reasonably known that death would likely result, ergo, when death results, they should be able to be held accountable for that by whatever penalty was on the books.

The same theory is proffered here. I think, unfortunately, it is a bit of a constitutional stretch. So I have in the past not moved to extend the present drug kingpin law to include what the Senator would argue are the reasonably anticipated deaths that would follow, as opposed to specifically intended damage done—death—that follows from an order of an assassination, for example.

So because I am still not convinced of its constitutionality, I will tomorrow at the appropriate time move to table the amendment. But I must say, of all the amendments being offered to-

night—and my staff is not real crazy about me acknowledging this—my knowledge, my instinct about whether or not this is constitutional is that at least it is an even shot it is constitutional. My advice from people who are much more learned in the Constitution, notwithstanding I have the dubious distinction of being an adjunct professor of constitutional law in a law school these days, I know that does not qualify me as a constitutional expert. So I am going to continue, until I can make the case more strongly, to yield to the majority body of opinion among constitutional scholars that this is unconstitutional. That is why I will move to table it.

But quite frankly, I must acknowledge that I think it is a close call. Some of the other things that are up here from my perspective that I am arguing against I do not even think are close calls. This one I acknowledge is a close call. But I have made it a practice for this Senator, when I have been in doubt about the constitutionality of an action of the Senate, I have voted against that action when I have been in doubt, because I have erred on the side of not stretching the limits of the Constitution, notwithstanding it is perfectly within our rights as a body to decide we believe it is constitutional and then leave it to the courts to resolve in debate. It has been my practice for 21 years not to proceed that way, although I am in no way criticizing those who would otherwise proceed.

This is what you call tabling with faint praise. I think it is a close call. It would be more appropriate for someone who felt very strongly about it being unconstitutional to make the case. But I do think, on balance, it is probably unconstitutional. Therefore, I will move to table it tomorrow.

I am prepared—I see the Senator is on his feet—when he finishes his comments, when he yields back time, to yield back the remainder of my time as well.

I compliment the Senator. Believe me, emotionally, politically and close to substantively, I find it very hard to move to table this, but I will for the reasons I have stated.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I certainly appreciate Chairman BIDEN's feelings. I want to thank him for the graciousness of his remarks. I understand where he is coming from. We had this discussion in the past. Indeed, we worked together to develop the drug kingpin bill back in 1988.

I am not going to repeat the arguments. We know them. I think that the area of contention is one that reasonable people can disagree and, indeed, it may take the Supreme Court to set down a standard and to rule on this case as to whether or not we have the

ability to say that if you traffic in such large amounts of drugs that you risk the death penalty being imposed. I think that we send them a case or an opportunity of a case and we send a message out that says we are serious and will do everything possible to deter those who are engaged in this kind of activity because certainly they are sapping the strength and vitality and it does result in the death of so many. Whether or not we can prove directly and whether that cause and effect must be of necessity proof of the kind of directness that some might contend, I think that is a matter for the courts to decide. So I thank the distinguished chairman.

Mr. BIDEN. Before the Senator yields back his time, because I do not want to see him be put in a spot where he has no time left, if the Senator will yield to me just a moment on my time.

The PRESIDING OFFICER. Will the Senator yield?

Mr. D'AMATO. Certainly.

Mr. BIDEN. Mr. President, if we had a more flexible unanimous-consent agreement, what I would have done at this point, but I did not attempt to get an agreement because I respect the Senator's position—and quite frankly, because I respect the Senator has the votes on this, I have no doubt that a proposal that I entertain amending this amendment with, which would be minimum mandatory life in prison, no probation, no parole, is constitutional. I do not oppose the death penalty. The underlying Biden bill to which we are attaching all these things has 47 death penalties in it. I support the death penalty.

But I think the proper way to go here, so that we do not run the risk of it being ruled unconstitutional, would be to have minimum mandatory life imprisonment, no probation, no parole for a drug kingpin where you are not able to directly show the action taken by the kingpin resulted in the specific death of a specific person. I have no doubt that is constitutional, and I would prefer—and I am not asking the Senator to amend his amendment. I know he cannot do that this way.

But if in fact this passes and becomes law, it is declared unconstitutional, then I would invite the Senator to join me in taking the exact same language he has and changing the penalty to minimum mandatory life in prison, no probation, no parole, which means if you are sentenced you are there for the rest of your natural life, no matter what happens, unless you can be proven innocent at a later date as a consequence of evidence that was not available at the trial.

That is how strongly I feel about it. I just think constitutionally we are on very thin ice, and I would rather not skate on that ice.

So when the Senator from New York is prepared to yield back his time, I

will yield back what remaining time I have.

Mr. HATCH. Mr. President, will the Senator yield a few minutes to me?

Mr. D'AMATO. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I agree with the Senator from New York. I think this is a good amendment. I think it is a constitutional amendment.

The activities of drug kingpins pose perhaps the gravest risk that we face today to our health and well-being, both as individuals and as a nation. In my home State of Utah, the spread of drugs and its attendant violence is a growing problem. Death by violence and disease, destruction of minds and bodies, follow in the wake of these unseen crime barons.

Mr. President, the time has come that we punish these evil purveyors of death and destruction as they deserve to be punished, and no longer let them hide behind the hired guns who pull the triggers for them. This was the position of the prior Republican administration. The Clinton administration, however, has retreated from this position in the crime war, apparently on the view that the death penalty is unconstitutional as applied to these major drug dealers. As I will explain in a few minutes, the case for the constitutionality of this provision is very, very strong. Significantly, an amendment on the side of the American people and the victims of drug kingpins would support this provision and defend it in the Court. The drug kingpins will have high-priced lawyers—legal hired guns—arguing for them. That the Clinton administration feels it has to take the side of drug kingpins in this matter is a disturbing development.

In 1988, Congress passed legislation to provide the death penalty for murders by drug kingpins and for drug-related murders of law enforcement officers. By passing this important legislation as part of the Anti-Drug Abuse Act of 1988, Congress acknowledged that capital punishment is a needed and proper weapon in our Nation's effort to fight the drug war. This action on the part of the 100th Congress was a valuable first step.

However, we did not go far enough. Drug kingpins are currently not subject to the Federal death penalty where they themselves are not directly involved in committing murder. But their nefarious traffic in drugs causes untold deaths and, even if they are not directly involved, untold murderous violence attendant on drug trafficking. The death penalty for these drug kingpins contained in the Dole-Hatch Neighborhood Security Act (S. 1356) sends a signal that our Nation is prepared to punish appropriately those who cause so many deaths—major drug

kingpins. These drug kingpins are responsible for untold deaths and are, in a real sense, responsible for many drug-related murders which occur on our streets every day.

S. 1356, the Dole-Hatch crime bill, provides that major drug traffickers—organizers, leaders, or administrators of continuing criminal enterprises—may be subject to the death penalty if the enterprise traffics in twice the amount of drugs which would qualify them for mandatory life imprisonment; that is, 300 kilograms of cocaine; 60 kilograms of heroin; or 70,000 kilograms of marijuana, or if the enterprise makes \$20 million or more in gross receipts during any 12-month period. Additionally, kingpins who, in order to obstruct justice, attempt to kill any public officer, juror, witness, or member of the family or household of such person shall be eligible for the death penalty.

S. 1356 also limits the application of the death penalty in these cases by requiring the jury to find that at least one or more additional aggravating factors exist and that such aggravating factor outweighs mitigating factors, if any are found. Specifically, the defendant must have: a previous conviction or offense for which a sentence of death or life imprisonment was authorized; or two or more prior felony convictions; or a previous felony drug conviction; or used a firearm; or sold drugs to persons under 21 years of age, near a school, or used minors in selling drugs; or mixed the drugs with a lethal adulterant.

The imposition of the death penalty is constitutional for drug kingpins—even for those who do not themselves pull the trigger and in those cases where no death can be directly attributed to them. Opponents of this legislation will claim that it is unconstitutional to execute an individual where death has not resulted or where no particular death can be attributed to an individual kingpin. Mr. President, such critics are wrong for two reasons. First, Anglo-American law has a long tradition of imposing the ultimate sanction against those who pose an extremely grave risk to society, even where no death directly results. A few examples are treason, certain types of espionage, and airliner hijacking.

Second, because of the enormous magnitude of the public harm drug trafficking and related violence causes, applying the death penalty to these cases is wholly consistent with the proportionality requirement of eighth amendment's cruel and unusual punishment clause.

The eighth amendment's rule of proportionality requires that the severity of punishment be proportionate to: First, the gravity of the injury caused by the offense; and second, the moral culpability, or blameworthiness, of the offender. [See, *Tison v. Arizona*, 481 U.S. 137, 148-49 (1987); *Coker v. Georgia*, 433

U.S. 584, 598 (1977); *Gregg v. Georgia*, 428 U.S. 153, 173 (1976).] The death penalty for certain cases of large scale drug trafficking meets this burden.

As stated by former Assistant Attorney General Ed Dennis at a Senate Judiciary Committee hearing in 1989 on the death penalty, "Not since the dawn of the nuclear age, have we faced a threat more pernicious, more dangerous to the security and welfare of the Nation than the current crisis involving the large-scale importation and sale of narcotics." The cost of drug abuse to America in terms of lost lives, lost productivity, crime, and health care services is immeasurable.

In addition to the pernicious effects on the individual who takes illegal drugs, drugs relate to crime in at least three ways: First, a drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; second, a drug user may commit crime in order to obtain money to buy drugs; and third, a violent crime may occur as part of the drug business or culture. [See Goldstein, *Drugs and Violent Crime, in Pathways to Criminal Violence* 16, 24-36 (N. Weiner, M. Wolfgang eds., 1989).] Studies bear out these possibilities, and demonstrate a direct nexus between illegal drugs and crimes of violence. [See generally *id.*, at 16-48.]

The connection between crime and drugs is unquestionable. For example, 57 percent of a national sample of males arrested in 1989 for homicide tested positive for illegal drugs. [National Institute of Justice, 1989 Drug Use Forecasting Annual Report 9 (June 1990).] The comparable statistics for assault, robbery, and weapons arrests were 55, 73 and 63 percent, respectively. [Ibid.]

In New York City, in 1988, 90 percent of all male arrestees tested positive for drug use. During the last administration, the budget requests for drug related funding increased to \$12.7 billion—a \$6.1 billion—93 percent—over four years. A National Institute on Drug Abuse and Drug Abuse Warning Network, DAWN, study found that between the second quarter of 1990 and the third quarter of 1991, the number of cocaine overdoses increased dramatically from below 20,000 per quarter to over 28,000. This was cited in *The President's Drug Strategy, Has it Worked?*, Senate Judiciary Committee Study, Sept. 1992, p. xxi. During this same period, heroin overdoses increased. Senator BIDEN estimates that there are 6 million hard-core drug addicts. The DAWN and Emergency Room surveys show that hard-core use has become increasingly concentrated in inner-city and monthly neighborhoods. These figures reflect that the importation, manufacture, and abuse of illicit narcotics is indeed one of the greatest problems affecting the health, welfare, and security of our Nation.

Opponents of capital punishment may argue that *Coker v. Georgia*, 433 U.S. 584 (1976), applies to this legislation. In *Coker*, a plurality of the Supreme Court, ruled that the death penalty for rape is forbidden by the eighth amendment as cruel and unusual since it was grossly disproportionate and excessive punishment. The Court defined punishment as excessive if it: First, makes no reasonable contribution to acceptable goals to punishment and hence has nothing more than the purposeless and needless imposition of pain and suffering; or second, is grossly disproportionate to the severity of the crime. In determining proportionality, the Court in *Coker* noted society's failure to re-endorse legislatively the death penalty for rape in response to *Furman v. Georgia*, 408 U.S. 238 (1972). Prior to *Furman* 18 States authorized the death penalty for rape. Afterwards only three States attempted to provide the death penalty for rape.

Significantly, the *Coker* plurality opinion stated that "the rapist, as such, does not take human life." In a real sense, a drug kingpin does take human life and causes untold violence, and the American people know it. Moreover, the enactment of this law by Congress, by representatives from among all the States, would signify the broad national consensus that was lacking in *Coker*.

That is why the amendment by the distinguished Senator from New York is so important. And I hope our colleagues will vote overwhelmingly for this amendment because it sends a message that there is a broad national consensus, something that the justices did not find in the case of rape defined in the *Coker* case.

In *Tison v. Arizona*, 481 U.S. 137 (1987), the Supreme Court found that reckless indifference to the value of human life may be every bit as shocking to the moral sense as any specific intent to kill. The Court held "that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment. * * * [481 U.S. at 157-58.] A specific intent to kill is not required in imposing a death sentence on an individual. The class of drug kingpins covered by S. 1356 do act with reckless disregard for human life and should be subject to the death penalty.

I agree with the Senator from New York.

Large scale drug traffickers threaten millions of people. They engage in this destructive behavior purely for pecuniary gain. The Supreme Court in *Gregg* versus *Georgia* determined that the issue of whether the defendant acted for pecuniary gain is a factor to be considered relevant in determining

blameworthiness and the appropriate punishment. These cases support the argument that the death penalty is constitutional for major drug traffickers, even when they do not directly cause a death themselves.

Although the Supreme Court has not directly addressed this issue, in the context of upholding a sentence of life without parole for drug possession, a majority of the Court has recently expressed the opinion that the evils associated with drugs warranted the legislative imposition of "the second most severe penalty permitted by law." [*Harmelin v. Michigan*, 111 S. Ct. 2680 (1991) (opinion of Scalia, J., 2702) (opinion of Kennedy, J., 2705).] *Harmelin*, the defendant, was sentenced to life without parole for mere possession of 650 grams of cocaine. A plurality of the Court explained that possession, use, and distribution of illegal drugs represents "one of the greatest problems affecting the health and welfare of our population." *Treasury Employees v. Von Raab*, 489 U.S. 656, 668 (1989). Petitioner's suggestion that his crime was non-violent and victimless * * * is false to the point of absurdity. To the contrary, petitioner's crime threatened to cause grave harm to society. *Id.* at 2705-06 (opinion of Kennedy, J.).

Mr. President, the death penalty is wholly proportional to the enormous danger drug kingpins pose to our society. As Justice Powell noted in *Rummel* versus *Estelle*, "A professional seller of addictive drugs may inflict greater bodily harm upon members of society than the person who commits a single assault." *Rummel*, 445 U.S. 263, 296, n. 12 (1980) (Powell, J., dissenting). I agree with Judge Gee of the fifth circuit that whereas most killers have a desecrated and limited number of victims, drug kingpins are a cancer killing people across our entire country.

Writing for an en banc court, Judge Gee said that:

Except in rare cases, the murderer's red hand falls on one victim only, however grim the blow; but the foul hand of the drug dealer blights life after life and, like the vampire of fable, creates others in its owner's evil image—others who create others still, across our land and down our generations sparing not even the unborn. *Terebonne v. Butler*, 848 F.2d 500, 504 (5th Cir. 1988), cert. denied, 109 S. Ct. 1140 (1989).

The link between the activities of large-scale drug enterprises and death is unquestionable. Rates of drug related murder continue to rise in cities across our Nation. Reports of bystander deaths due to drug related gun fights and drive-by shootings continue to climb. Intravenous drug use is a major source of HIV infections. Congress can and should broaden the category of offenses for which the death penalty can be applied to include those individuals who pose the greatest threat to our Nation's health and safety—drug kingpins.

I do strongly support the amendment of the distinguished Senator from New York.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from New York.

Mr. D'AMATO. Mr. President, I very simply thank my ranking member, Senator HATCH, for making these observations on the constitutional basis.

I also ask unanimous consent that Senator DECONCINI be added as an original cosponsor.

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

The Chair would note that the time of the Senator from New York has expired.

The Senator from Delaware.

Mr. BIDEN. Mr. President, one of the reasons why I think the amendment of the Senator from New York is arguably constitutional is that one of the things I teach in law school is the eighth amendment, and I think that the analogy to *Tison v. Arizona* is much more analogous and more controlling than the counter-arguments.

As I said I have, I have doubt about the wisdom of the body of constitutional scholarship to suggest that the principle stated in *Tison* would not in fact render his amendment constitutional as opposed to unconstitutional. But I am nonetheless going to engage in the futile exercise of attempting to table it tomorrow, knowing full well what the outcome is likely to be.

Mr. President, I also understand the Senator from New York is attempting to accommodate the unanimous-consent agreement which was not to alter the death penalty procedures in the underlying bill has sent to the desk an amendment that may in fact not be in order. Because he acted in good faith, I wish to make sure that we get the proper unanimous-consent language which I will proffer in a moment to make his amendment in order under the existing unanimous-consent agreement.

I do that now. I ask unanimous consent that the D'Amato amendment be in order notwithstanding the fact it amends the language already amended.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BIDEN. If the Senator from New York is, I am prepared to yield back the remainder of the time.

Mr. D'AMATO. I believe our time has expired.

Mr. President, if I might state, I would like to thank again our distinguished chairman for his graciousness and his courtesy in dealing with this matter.

The PRESIDING OFFICER. All time having been yielded back, the question is on the amendment. The vote will occur in sequence tomorrow morning.

Mr. HATCH. Are the yeas and nays ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. BIDEN. Mr. President, for the information of our colleagues, I will tell them that the vote that will be in order tomorrow, I will move to table tomorrow at the appropriate time.

The PRESIDING OFFICER. The Senator has indicated he plans to offer that motion.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent for the yeas and nays to be ordered on the Smith amendment No. 1160.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. And that we place that in the appropriate order of the votes.

The PRESIDING OFFICER. Is there objection? Hearing none, it will be placed following the D'Amato amendment.

Mr. HATCH. Mr. KEMPTHORNE and I were permitted under the unanimous-consent agreement to offer an amendment at this time. However, we have worked out our differences on the community policing title. For this reason, Senator KEMPTHORNE and I—as I understand it, we have worked it out—will not offer that.

Mr. BIDEN. I believe that is correct, that has been worked out.

If the Senator will withhold for just a moment, I will check with my staff to see if that has been cleared.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to.

Mr. GRAHAM. Would the Senator indicate what has been the alteration again on the amendment?

Mr. HATCH. As I understand it, the Kempthorne amendment, the funding percentage, was not acceptable to the majority side of the floor. We had to work it out.

Mr. GRAHAM. As I understand, the underlying formula currently in the bill provides for 0.5 percent to be allocated to each State, and the balance to be allocated to States on a competitive basis. The effect of the original amendment was an increase in the State set-aside of 0.75 percent. I wonder if the Senator will indicate what is the alteration?

Mr. HATCH. The balance as I understand was 0.5 percent and it now goes up to 0.8 percent.

Mr. GRAHAM. I thought the original amendment was to raise it from 0.5 to 0.75.

Mr. HATCH. It may have been. I think we are now at 0.8.

Mr. GRAHAM. That means that 0.8 percent is allocated to every State and the balance is on a competitive basis.

Mr. HATCH. That is correct. That is my understanding.

Mr. GRAHAM. That means as between the underlying formula and this amendment there will be an additional three-tenths of 1 percent allocated to each State.

Mr. HATCH. That is my understanding.

Mr. GRAHAM. That will be 15 percent. What is the rationale of tabling 15 percent which otherwise would be distributed on a competitive basis and allocating it per State?

Mr. HATCH. The rationale is really that the House has a very low level, around 0.25, and this gives us some flexibility in working on it.

Mr. GRAHAM. We are already twice the House in the underlying bill, 0.5.

Mr. HATCH. That is right. But it gives us some ability to work with them. I have a feeling it will be worked out with a reasonable percentage.

Mr. GRAHAM. Frankly, Mr. President, at some point I would like to make some comments on the general movement that is occurring here in the formulas. That is the part of this bill that has not gotten much discussion. But I am concerned that this is a widening gap between the purpose of allocating these funds—that is, to fight crime—and how the money in fact is being allocated.

If you take 15 percent of the money beyond what is currently in the law and apparently we will now be some 30 to 40 percent above what the House level is in terms of allocation to individual States without having any competition or demonstration of need for the community policing dollar, we are going to be substantially diluting the capacity of that centerpiece program to have an impact that it is purported to have in terms of dealing with our most serious crime issue in our most serious sites afflicted by crime.

Mr. HATCH. If I could answer the Senator, we are trying to make sure that each State gets some allocation, especially some of the smaller States and some of the more rural States. But this is 15 percent of the \$18.9 billion that is provided in grants by the attorney general to the various States. There is no question that what we are trying to do is handle this in the best way we can across the whole 50 States.

Mr. GRAHAM. Could the Senator provide for us before we take final action on this, some analysis based on reported crimes or other indicators of criminal activity, and dollars that would be allocated for community policing under the bill as reported by the committee, and under the amendment that is now being considered?

Mr. HATCH. I am not sure we can provide that kind of analysis. All I can say is that this is something that has been agreed upon. It is an effort to protect all States. It is an effort to be able to negotiate with the House, and it

makes a lot of sense in our eyes. Frankly, we are trying to get these matters resolved. This we think is the appropriate way to do it.

But I do not know that I can put my hands on those kind of statistics at this particular time or even by tomorrow. But we will try to do so between now and the time that we meet with the House in conference, should there be a conference on this matter.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, has the Senator from Utah yielded?

Mr. HATCH. Yes. I do. I yield the floor.

Mr. GRAHAM. What is the matter before the Senate at this time?

The PRESIDING OFFICER. Under the agreed order the Kempthorne-Hatch amendment is the next amendment in order to be offered.

Mr. HATCH. As I understand the distinguished Senator from Delaware is checking his side to make sure that what we have agreed to has been agreed to. Otherwise, we will have to have a vote on the amendment.

Mr. GRAHAM. Mr. President, if I could while we are waiting, I would like to make a few comments not about this specific amendment because it appears to be an amendment in flux and therefore we do not have the statistics. I hope we will have the statistical impact.

But I have been concerned about a general drift in this bill, and that is a drift toward allocating money in a way that seems to be towering to where the problem is.

As an example, in the juvenile drug trafficking and gang prevention grants, one of the grants in this legislation, there are 17 States which had last year 71.1 percent of the crime in the country. They have 68.9 percent of the juvenile population. Under the formula that is currently in the bill, they would get 50.8 percent of the Federal money. The remaining three States and the District of Columbia, which have 28.9 percent of the total crime, 31.1 percent of the population, would get 49.2 percent of the Federal money. There seems to be a mismatch as between where the people and the crime is, and where we are directing the resources.

To put this in more specific context, and admittedly somewhat of a parochial context, unfortunately, I am sad to say that my State of Florida last year had the dubious distinction of leading the Nation in its crime index. The crime index is the number of crimes per 100,000 people in the population. Florida had 8,358 of those crimes. California had 6,679. Texas had 7,057. There are relatively high rates of crime in those three big States. We picked three other States which had a relatively low rate of crime—Wyoming with 4,575; Idaho had 3,996; North Dakota, one of the safest States in the Nation, 2,903.

If we have a formula distributing money to assist States in dealing with their juvenile drug trafficking and gang activities, you would think you would want to relay the resources from the Federal level to where the problem was. Is that in fact what our formula has done?

We have distributed to Florida for each crime 77 cents. We have distributed to North Dakota for each crime \$4.77 cents. California got 62 cents per crime. It has been the State which probably, particularly in terms of gang-related violence, has been one of the most high profile and a driving force behind this legislation. In contrast, Wyoming gets \$5.44 cents.

I am concerned that this is not peculiar to the juvenile drug trafficking and gang-prevention grants, but is a recurring theme. And we have arrived at another chapter of that theme with the proposal that in the area of community policing dollars, which are by far the largest pool of funds that will actually put people out on the streets to deal with both preventing crime and effectively investigating and making arrests for crimes that have been committed, that we are now, in a relatively casual manner, about to take 15 percent of the money that otherwise would have been distributed by some standard and distribute it to each of the 50 States on an equal-share basis.

There may be a rationale in that, but I do not think that it is very persuasive to say that the only rationale is that the House is at 0.25, the Senate now is at 0.5, and the Senate needs to be at 0.8, so there will be the maximum difference between the Senate and House when they go to conference. That is not a compelling policy rationale for what we are about to do. I think that at least the Senate ought to know what are the similar statistics relative to community policing in terms of incidents of criminality and how funds will be allocated in order to deal with that criminality. I hope that at some point, before we complete action on this bill, we will have this type of an analysis of all of the formulas.

I am going to be using, for the purposes of an amendment that I will be offering later this evening, a letter from the Governor of Texas, Ms. Ann Richards, who, after discussing the amendment I am going to be offering, goes on to raise her concern relative to the formulas in this legislation. Mr. President, I will read and offer for the RECORD a letter from Governor Richards, dated November 9, 1993, to the Honorable JOSEPH R. BIDEN, chairman of the Judiciary Committee of the U.S. Senate, in which Governor Richards States:

I am particularly concerned with the formulas that are being considered in crime legislation to allocate funds to States. These formulas, as currently written, do not allow for equity in the distribution of funds. For

example, under the current formula for substance abuse, treatment funds, in State prisons, Texas will receive \$114 per inmate, while States with smaller prison populations will receive over \$200 per inmate, with the greatest allocation \$852 per inmate going to North Dakota. This disparity in funding will further the States' reliance on Federal Government assistance in the future.

I suggest that this is an important policy issue. It goes to the credibility of our utilization of scarce Federal dollars in order to impact on a nationwide problem, which is crime, a problem that is distributed disparately among the States. North Dakota ought to take great pride in the fact that it has such a relatively low incidence of crime. But our distribution of the funds for substance abuse treatment in State prisons would indicate that the relatively few people that commit crimes in North Dakota are excessively drug addicted, because we are going to be spending approximately seven times more money to treat the prisoner in North Dakota than we do the prisoner in Texas.

There may be some rationale that the prisoner in North Dakota requires that much more substance abuse treatment than the prisoner in Texas, but that is not an obvious or intuitive conclusion one would reach. I think at least the Senate ought to have a basis for the rationale that led to the discrepancy in the distribution under the juvenile drug trafficking and gang prevention grants and now the funds Governor Richards discusses for substance abuse treatment in State prisons and the proposed amendment relative to community policing.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, since there is a lull and they are waiting on another Senator to come to the floor, I would like to speak briefly on an unrelated subject in morning business.

Mr. BIDEN. Mr. President, I ask the Senator to withhold. We have people who have amendments on the bill who are here. What is the next order of business?

Mr. HATCH. Senator GRAHAM's amendment.

Mr. GRAHAM. Are we still on the Kempthorne-Hatch amendment?

Mr. BIDEN. The Kempthorne amendment has not been offered, but I can tell the Senator that it is the intention of the managers to accept that amendment in the managers' package.

Mr. GRAHAM. Mr. President, will the chairman of the committee yield for a question?

Mr. BIDEN. Surely.

Mr. GRAHAM. If we are going to accept it, could we have some statement of the rationale why we are proposing to move from what is currently in the

bill, which is one-half of 1 percent of the funds going to each State up to now what will be eight-tenths of 1 percent, which is more than the original amendment which was offered at 0.75? The effect of that is going to be, for instance—to give an example of what this formula at the 0.75 level is—and I would like to know what the number is at 0.8—but as I understand the basic formula, it is that after the minimum allocation is distributed, then the balance of the money is distributed on an arrest-based allocation, the number of arrests per State; is that correct?

Mr. HATCH. That is not correct. If I could just answer the Senator. I acknowledge what my colleague from Florida is saying. Let me just compare it to my State of Utah. Gang violence is on the rise. Drug trafficking is on the rise. It is becoming a drug transshipment State. While the rate of crime has decreased in cities like New York, Los Angeles, and the District of Columbia, the violent crime rate increased 3.7 percent last year. Utah had 6,673 drug-related arrests, and 20 percent of those were juveniles. Although Utah's population is three times greater than the District of Columbia, Utah has less police officers. We have 2,979 versus 5,212 in the District of Columbia.

The point I am making is that statistics do not make a lot of difference here. We are concerned about some of these smaller States being overrun, and we are concerned about making sure they have enough money and enough of these police officers to be able to stop this crime.

That is one reason that we went up to 0.8, in addition to the fact that we want to be able to make it clear to the House that we feel this has to be done.

So, I do not think the Senator's State is going to be harmed at all. We have taken that into consideration in the grants process and in the whole raft of other provisions in this bill. But there are small States like mine, just to use my State which I know more about, that clearly are having serious problems, and we are trying to solve those problems.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I say to my friend from Florida I am not crazy about this. Let me begin by saying that. Let me tell you how it came about as far as the original Kempthorne amendment would be reduced from the ability to apply under a certain set of circumstances from populations of 150,000 down to 100,000.

The end result of that original Kempthorne amendment would have been that 70 percent of the people who live in areas of 100,000 or above population centers would be competing for only 40 percent of the money, which I think is outrageous, notwithstanding I come from a rural State. The largest

city in my State has 88,000 people. The next largest city has about 30,000 people. So I do not come from a State with large population centers. But I think it would be totally inequitable.

My concern was very bluntly that might pass. So, the Senator from Utah came along with a proposal that had two purposes—to move from a minimum formulation of 0.5 percent per State to 0.8 percent for two very basic reasons.

One, to get rid of the other Kempthorne amendment. He might not characterize it that way, but that is the way I characterize it.

And, two, to strengthen our negotiating position in the House when we got to the House. The House Members have a different view than we have as Senators representing entire States.

So those are the two purposes. I believe that moving from 0.5 minimum allocation to 0.8 minimum allocation, notwithstanding that I come from the fifth smallest State in the Union in actual population, it was not motivated by that. It was motivated by the desire to make sure that the intention of the underlying Biden bill was not thwarted by having 70 percent of the population compete for 40 percent of the dollars. That is how we got to this point. That is why the Senator from Delaware is prepared to yield to the suggestion of the Senator from Utah to accept this amendment.

Mr. HEFLIN. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. HEFLIN. I just wanted to get that straight.

The Senator asked me if I would withhold, and then we would get into another situation. I will be glad to withhold. What is the next amendment after Kempthorne?

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. What amendment is in order?

The PRESIDING OFFICER. The next amendment is the Kempthorne-Hatch amendment.

Mr. HEFLIN. What is after that if that has been accepted?

The PRESIDING OFFICER. The Graham amendment is in order after the Kempthorne amendment.

Mr. HEFLIN. I yield the floor.

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. Is the Kempthorne-Hatch amendment one of the amendments that is contained in the unanimous-consent order for which there is going to be, unless otherwise arranged, a vote on that amendment if the yeas and nays are asked for on the amendment.

The PRESIDING OFFICER. The Chair will state that if the amendment

is offered and the yeas and nays are requested it will be in order to vote tomorrow.

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. If the amendment is not offered, it is not before the Senate; is that correct?

The PRESIDING OFFICER. The Senator is correct. If the amendment is not offered, it is not before the Senate.

Mr. BIDEN. And the Kempthorne-Hatch amendment has not been offered; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BIDEN. I ask for the regular order, that we move to the next item on the agenda if that is in order.

The PRESIDING OFFICER. If that be true, that amendment will no longer be in order.

Mr. BIDEN. All right. That is fine by me.

The PRESIDING OFFICER. Without objection, we will move to the next amendment.

The Senator from Florida is recognized.

Mr. GRAHAM. Thank you, Mr. President.

AMENDMENT NO. 1200

(Purpose: To make certain amendments relating to criminal aliens)

Mr. GRAHAM. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows: The Senator from Florida [Mr. GRAHAM] for himself, Mr. D'AMATO, and Mr. MACK, proposes an amendment numbered 1200.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows: At the appropriate place insert the following:

Subtitle —Criminal Aliens

SECTION . TRANSFER OF CERTAIN ALIEN CRIMINALS TO FEDERAL FACILITIES.

(a) DEFINITION.—In this section, "criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility" means an alien who—

(1)(A) is in the United States in violation of the Immigration laws; or

(B) is deportable or excludable under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et. seq.); and

(2) has been convicted of a felony under State or local law and incarcerated in a correctional facility of the State or a subdivision of the State.

(b) FEDERAL CUSTODY.—Subject to the availability of appropriations, at the request of a State or political subdivision of a State, the Attorney General may—

(1)(A) take custody of a criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility; and

(B) provide for the imprisonment of the criminal alien in a Federal prison in accordance with the sentence of the State court; or
 (2) enter into a contractual arrangement with the State or local government to compensate the State or local government for incarcerating alien criminals for the duration of their sentences.

Mr. GRAHAM. Mr. President, I thank the Senator from Delaware for allowing me the time to offer this amendment to the crime bill and Senators D'AMATO and MACK for their support on its behalf.

This amendment would authorize the Attorney General to take Federal custody of and imprison criminal aliens or to provide payment to State or local correctional facilities for criminal aliens. The legislation is very similar to the provision in the Immigration Reform and Control Act of 1986 that allowed for reimbursement to states of incarcerated aliens and Marielito Cubans. This amendment would, subject to appropriations, also allow reimbursement to localities.

While discussions of responsibility, federalism and unfunded mandates may not be as enthralling as many of the other amendments we have voted on in the last week, it is critical for the Federal Government to appropriately bear its responsibility and help improve its partnership with State and local governments to address the issue of crime as a partner and not a shifter of costs. This amendment would be an important signal and substantive help to State and local government in that effort.

Immigration policy is the sole responsibility of the Federal Government. However, while its strengths with respect to diversity are shared by the Nation, its costs in terms of impact of social, health and educational services are borne primarily by just a few States and localities.

FEDERAL RESPONSIBILITY

On January 31, 1993, the Governors of the States of Florida, California, Texas, New York and Illinois wrote President Clinton, just days after his inauguration, requesting that the Federal Government renew its partnership with States on the issue of immigration by honoring its responsibility and commitment to States for the unreimbursed costs associated with legalization, health and education programs and for prisons.

"This partnership," wrote the governors, "has broken down * * * because the Federal Government has failed to honor its commitment to provide reimbursement to which the States are entitled. States cannot be expected to pay the costs of policies which are fundamentally the responsibility of the Federal Government." They are right.

With respect to prison costs, they estimated the costs of incarcerating illegal alien felons in their State prisons at \$524.2 million. This should be an expense borne by the Federal Govern-

ment and we should be responsible and not continue to pass that buck on to them.

PRESENT LEGISLATION

Why? There has been a great deal of state bashing for their inability to keep prisoners behind bars and much questioning of their commitment to law and order. The Federal Government, despite lacking a national police force and being responsible for only a small percentage of arrests nationwide, seem to want to argue that we can do it better and will rush in to take over.

STATE SUPPORT FOR AMENDMENT

Governors and mayors across our Nation are probably quite cynical with a great deal of this debate on the crime bill. They can point to the Federal Government's inept attempts to control our nation's borders and the impact it has had on their communities. Texas Governor Ann Richards has written a letter to Senator Biden on criminal aliens. She writes, " * * * the Texas prison system houses some 2,000 criminal aliens who illegally crossed the United States border with Mexico permitted by weak efforts of the Federal Government to control its border. Certainly the States should not be expected to assume that responsibility abdicated by the Federal Government, although we do."

New York Governor Mario Cuomo adds, "It is the responsibility of the Federal Government to prevent illegal immigration. When the Federal Government fails at this task, the ensuing costs remain a Federal responsibility. In particular, the financial burden of incarcerating illegal alien felons have been borne exclusively by States, straining our criminal justice budgets and prison systems." Governor Cuomo estimates that 2,600 criminal aliens are housed in New York State prisons.

REGIONAL PRISONS

What has been the Federal Government's response? Aspects of the crime bill, unfortunately, have it all wrong. Despite the hard and good work put into this legislation by my colleagues, the provision relating to regional prisons concern me a great deal.

According to the Florida Department of Corrections, violent offenders have served less than 50 percent of their time on average in Florida this year. We must do something about that within our State and in the nation immediately.

In response, the Senate is preparing to pass in this bill a provision that would establish 10 regional prisons, after over 4 years of waiting, to which States can transfer prisoners, including criminal aliens, only if they meet sentencing guidelines and have served at least 85 percent of their time.

We have it backward. Rather than bearing our burden and responsibility for criminal aliens immediately and putting our own house in order by ade-

quately controlling our Nation's borders, we promise to take a few small steps to bear our responsibility by taking some criminal aliens but only after at least 4 years and only when we feel the States are doing precisely what the Federal Government determines what it thinks they should do.

In Florida's circumstance, they would get a lot further along the road toward keeping prisoners behind bars and off the streets if the Federal Government would take responsibility for its criminal aliens in the State's prison system—approximately 6 to 7 percent of the prison population. More importantly, this could happen rather quickly and not 4 to 5 years from Now.

In fact, State and local government could potentially see some relief within the next year if the Congress would pass this amendment.

Consequently, this legislation is supported by the National Conference of State Legislators, the National Association of Counties and many of our Nation's Governors, mayors, State corrections officials and law enforcement personnel.

I urge its support and passage.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. GRAHAM. I yield.

Mr. HATCH. We have looked at the Senator's amendment. I am prepared to take the amendment on this side. I believe the distinguished Senator from Delaware would take it.

Mr. BIDEN. Mr. President, the Senator from Florida knows I was prepared to take his amendment awhile ago. I am glad to see we have agreement on it, and I congratulate the Senator on the passage of his amendment momentarily and I thank him for if he is inclined to yielding back the time and we are ready to move on.

Mr. GRAHAM. Mr. President, I appreciate the generous consideration of the managers of this legislation.

I ask unanimous consent to print in the RECORD letters from the Governor of Texas, the Governor of New York, the National Conference of State legislators, the attorney general of Florida, and a letter jointly signed by the Governors of California, New York, Florida, Texas, and Illinois to the President of the United States all in support of the concept of this amendment.

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

STATE OF TEXAS,

Austin, TX, November 9, 1993.

Hon. JOSEPH R. BIDEN,
 Chairman, Judiciary Committee, U.S. Senate,
 Washington, DC.

DEAR SENATOR BIDEN: You are undoubtedly better informed than I about what all other states are doing but you are wrong about this Governor and the state of Texas.

Last week, the Texas taxpayers voted to pass a bond issue that provides an additional \$1 billion for prison construction. Last session, Texas legislators appropriated \$93 million of state funds for the largest incarcerated substance abuse treatment initiative in

the nation. All of these funds are in addition to the \$1 billion bond issue for increased prisons construction that the Texas taxpayers passed two years ago.

Texas elected officials and taxpayers alike have assumed responsibility for the crime problem in this state and are requesting assistance from the federal government for a problem that is often beyond our control. For example, the Texas state prison system houses some 2,000 criminal aliens who illegally crossed the United States border with Mexico permitted by weak efforts of the federal government to control its border. Certainly the states should not be expected to assume that responsibility abdicated by the federal government, although we do.

I am particularly concerned with the formulas that are being considered in crime legislation to allocate funds to states. These formulas, as currently written, do not allow for equity in the distribution of funds. For example, under the current formula for substance abuse treatment funds in state prisons, Texas will receive \$114 per inmate while states with smaller prison populations will receive over \$200 per inmate with the greatest allocation of \$852 per inmate going to North Dakota. This disparity in funding will only further states' reliance on the federal government for assistance in the future.

Senator Bob Graham will be introducing an amendment to the Violent Crime Control and Law Enforcement Act of 1993 that would allocate funds to states based on a formula that better represents the ratio of crime across the nation.

I urge you to consider these changes to the formulas in the crime legislation currently being considered.

If I may be of any assistance, please do not hesitate to contact me.

Sincerely,

ANN W. RICHARDS,
Governor.

STATE OF NEW YORK,
Albany, NY, November 16, 1993.

Hon. BOB GRAHAM,
SH-524, Washington, DC.

DEAR SENATOR GRAHAM: I strongly support your amendment to the Violent Crime Control and Law Enforcement Act of 1993 to offset the fiscal impact of illegal alien criminals on state and local governments. Such assistance is sorely needed in New York and other states that are bearing the tremendous costs of incarcerating these aliens.

It is the responsibility of the federal government to prevent illegal immigration. When the federal government fails at this task, the ensuing costs remain a federal responsibility. In particular, the financial burdens of incarcerating illegal alien felons have been borne exclusively by states, straining our criminal justice budgets and prison systems.

The Congress recognized this responsibility when it enacted Section 501 of the Immigration Reform and Control Act of 1986: "Subject to the amounts provided in advance in appropriations Acts, the Attorney General shall reimburse a State for costs incurred by the State for the imprisonment of any undocumented alien . . . who is convicted of a felony by such state."

Unfortunately, for states such as New York, Texas, Illinois, California, and Florida that are disproportionately affected by this problem, no funds have ever been appropriated to fulfill the mandate of Section 501.

State prisons are presently facing unprecedented challenges posed by the rapid rise in their criminal alien populations. New York,

for example, is now housing an estimated 2,600 individuals who entered the U.S. illegally and then committed some other crime for which they were convicted and incarcerated. Because it costs an average of \$24,000 a year to house an inmate, New York is paying approximately \$63 million annually in incarceration costs, not including the related costs of added prison construction and an overburdened judicial system.

The cost to state governments nationwide of incarcerating illegal alien criminals is close to a billion dollars annually.

Like many of my fellow governors, I believe it is patently unfair to impose this hardship on states when the problem is not one of their own making.

Federal immigration policy governs entry into this country, and often the initial destination of immigrants. In addition, the federal government is ultimately responsible for the flow of illegal immigrants as well. New York State and others are proud to serve as gateways for the nation, but we cannot shoulder the resultant burdens alone. The costs of undocumented alien felons are of particular concern, especially as they drain precious state resources from other crime-fighting efforts and beneficial programs for our residents.

I believe that your amendment to the 1993 crime bill helps to address the negative impacts of undocumented aliens on our communities. Although this amendment is "subject to the availability of appropriations," and does not guarantee funding to states for housing these prisoners, it is a step in the right direction by affirming that the responsibility for incarcerating illegal alien criminals belongs to the federal government.

I am grateful for your leadership on this important issue. I look forward to working with you and others in the future to restore an equitable balance of responsibilities between the federal government and the states with regard to illegal alien criminals.

Sincerely,

MARIO M. CUOMO,
Governor.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC, November 4, 1993.

DEAR SENATOR: I am on behalf of the National Conference of State Legislatures to register our concerns about sections of S. 1607, "The Violent Crime Control and Law Enforcement Act of 1993."

The purported purpose of habeas corpus reform is to streamline litigation. It is ironic that Section 310 is added as an enforcement mechanism subjecting states to suits in Federal court for failure to abide by new standards set by Congress with respect to the appointment of counsel. The abrogation of sovereign immunity should not be approached lightly. There has been no consideration of the potential harm to states by this section. We strongly object to using the threat of lawsuit to accomplish these congressional goals.

With respect to provisions relating to background checks for child care providers, Title VIII, we are most concerned that sufficient funds be authorized and appropriated in order for states to adequately meet the mandates of the act for disposition and automation. It is also important that states retain the flexibility to determine how the background checks may be used. Title VIII makes participation voluntary, but the restrictions binding participants may have the unintended consequence of limiting state participation in the program. We concur in

the need for improving criminal history records, but see it as only a small part of providing a safer environment in day care settings. If the federal government has a different opinion about the priority for spending to improve the records, then it must undertake the primary responsibility for funding.

Because the states have no responsibility for the control of federal immigration policy, NCSL opposes all federal attempts to shift the cost of resettling newcomers to state budgets. NCSL supports an amendment to be offered by Senator Graham respecting criminal aliens because it requires the federal government to take responsibility for the fiscal consequences of its immigration policy—here, the cost of imprisoning undocumented alien felons. NCSL further opposes efforts to curtail federal funding for mandated programs for newcomers. States should not be solely responsible for the fiscal impact of court-driven mandates such as education for undocumented alien children.

Finally, I must reiterate NCSL's strong opposition to Senator Biden's amendment for a so-called "police officers' bill of rights," a provision that would federalize noncriminal police disciplinary procedures. This amendment would remove from localities issues related to personnel administration and implicitly community relations. I can think of no other issue that is so intensely local or beyond Washington's competence.

Sincerely,

WILLIAM T. POUND,
Executive Director, NCSL

STATE OF FLORIDA,
November 15, 1993.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: I was very pleased to receive a copy of the amendments to crime bills that are on the Senate floor and you have agreed to sponsor.

Your amendment to Senate Bill 1607 which allows for the transfer of convicted aliens to federal custody is long overdue. Illegal aliens who commit crimes should be the responsibility of federal authorities and not the responsibility of overburdened state governments. The amendments that you and others have proposed for prison overcrowding suits is another long overdue reform. States have been periodically victimized by federal judges who have been much too indulgent with prison overcrowding complaints. Congress should set forth very clearly that the eighth amendment standard is what is enforceable by federal courts and no more.

Therefore, I am happy to land our strong support to your efforts this week on the crime bills.

Sincerely,

ROBERT A. BUTTERWORTH,
Attorney General.

JANUARY 31, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The United States was founded by immigrants seeking a better life for themselves and their families. America continues to offer a home to immigrants, as well as a safe harbor for those refugees fleeing oppression and persecution. If the federal government wishes to sustain a humanitarian foreign policy which fosters immigration and refugee admissions, then it must allocate the financial resources required to support this population once it has arrived.

Some immigrants and refugees have special needs which require government assistance in order to facilitate rapid assimilation. In setting immigration and refugee policy, the federal government has acknowledged these needs by mandating that both documented and undocumented immigrants be provided with medical, education, and other services. The federal government has formed a partnership with the states to deliver these services to the immigrant population. In forming this partnership the federal government recognized its responsibility to reimburse states for the costs of providing these federally mandated services.

This partnership has broken down, however, because the federal government has failed to honor its commitment to provide the reimbursement to which the states are entitled. States cannot be expected to pay the costs of policies which are fundamentally the responsibility of the federal government. This especially is the case at a time when so many states are struggling with long-term budget problems and are being forced to reassess state programs and expenditures.

We look to your Administration and the Congress to renew the federal-state immigration partnership—one that recognizes the financial strain imposed by federal mandates which are unaccompanied by fair compensation. Several steps should be taken to achieve this objective:

(1) The federal government must take immediate action to provide all reimbursement owed to the states for the provision of services to documented and undocumented immigrants and refugees.

(2) The federal government must recognize that its decisions to admit immigrants and refugees is strictly a federal one and therefore carries with it a firm federal commitment to provide full reimbursement to the states for services provided to the immigrant and refugee population.

(3) The federal government must work with the states to develop an effective federal mass immigration emergency plan.

We look forward to working with you to meet these objectives and to renewing the federal-state relationship in this vital policy area.

Sincerely,

PETE WILSON,
Governor of California.

MARIO M. CUOMO,
Governor of New York.

LAWTON CHILES,
Governor of Florida.

ANN W. RICHARDS,
Governor of Texas.

JIM EDGAR,
Governor of Illinois.

The PRESIDING OFFICER. Does the Senator urge adoption of the amendment.

Mr. GRAHAM. I do.

Mr. BIDEN. I second that.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1200) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, am I next?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mrs. BOXER. It is my understanding we had unanimous consent that we go down the order of amendments. As the Senator knows, I have been here since the very beginning and I am wondering if we can just stick with the order that was agreed to so I can dispose of this amendment as was requested in the unanimous-consent agreement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I think unfortunately for the Senator, my friend from California, we are going in order and the next amendment in order in the Heflin amendment on funding for State judges and prosecutors.

Mrs. BOXER. I say to the chairman I will happily await my turn.

Mr. BIDEN. I truly do admire the patience and loyalty of my friend from California. She is the only one who has stayed here the entire time that we have been discussing this. I am flattered. Only my sister, mother, and father would be willing to do that. I thank her for her willingness to do it as well.

Let me say, as I understand it, the order in which the remaining amendments will be considered will be Heflin, Kerry of Massachusetts, and I believe there is a strong possibility that we may accept that, although I am not certain, and then the Boxer amendment.

I can say, Mr. President, that the managers are going to accept the Kerry amendment. So after Heflin, we will go to the Boxer amendment, with a brief interlude of accepting the Kerry amendment, and then we will go to the Levin amendment, which was a 1-hour time for debate, which I sincerely hope we will not use.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, as I understand it, the Heflin amendment is pending.

The PRESIDING OFFICER. It has not been offered.

Mr. HATCH. Well, when it is offered, it will be pending.

As I understand it, the distinguished Senator from Alabama is offering an amendment to try to solve the problem that will naturally arise when 100,000 new police are placed in the field that will create millions of cases. He wants to make sure that State courts will be able to handle those cases, so he would like some money to go to the State courts. But, as I understand his amendment, it is subject to appropriations, not to exceed a half billion dollars.

Mr. HEFLIN. Over 5 years.

Mr. HATCH. Over 5 years. So you are not really asking for a half a billion dollars, just subject to whatever the Appropriations Committee decides to give you in the appropriations process, not to exceed one-half billion dollars.

Mr. BIDEN. Mr. President, I do not like this amendment. I love my friend from Alabama. I do not like this amendment.

I am so tired of paying for the States on things that they should be paying for.

I must tell you how strongly I feel. The rationale for this amendment is that we are doing what the States have asked us to do, and that is provide them 100,000 new cops; and we are doing what the States have asked us to do, providing them \$6 billion in new money for State prisons; and we are doing what they asked us to do, and then the reward is, because we have done what they have asked us to do, they now are entitled for us to pay for additional State prosecutors and judges because we have given them more cops to arrest more State violators—not Federal violators, State violators—and now they say, but now, because of what you have done to us, giving us what we have asked for, we demand more money to hire more State judges.

I will accept the amendment. I think it is ridiculous, but I will accept it in a sincere hope that we do not ever have to pass it.

Mr. HEFLIN. I did not have any State people ask me for it. You have a situation where 100,000 new cops are created. If they make two arrests a day, that is 50 million new cases on a yearly basis, 5 days a week, 52 weeks a year.

Mr. HATCH. Will the Senator yield?

Mr. HEFLIN. Yes.

Mr. HATCH. I do not feel quite the same way as the distinguished chairman does.

I have to say, I do not think that the Federal Government can afford a half billion dollars, if that is what really is appropriated. But it has to be appropriated and the Senator from Alabama will have to make his case to the appropriators. If the appropriators decide that they could do it, I am prepared to accept it. I am prepared to accept the amendment. I think it is an intelligent amendment. I think it is a thoughtful one.

There is no question the distinguished Senator from Alabama is one of the most distinguished judges—justice, in fact—to ever serve in this body. He has been the chief justice of the Alabama Supreme Court and naturally is concerned about these matters.

So I am prepared to accept the amendment, if the Senator is willing to put his statement in the Record.

Mr. HEFLIN. I would like to have some legislative history behind it.

Mr. HATCH. Well, your statement will make that legislative history, plus

the fact we are going to accept your amendment.

Mr. BIDEN. Mr. President, if the Senator will yield, it is now an even clearer picture to me. Not only is the Senator from Alabama all that the Senator from Utah said, he is probably the most effective Senator in the body for his State. He gets more into Alabama than could fit into the entire State of Delaware. I admire the way he takes care of his State. I admire the fact that he is such an effective advocate for his State. All of our States should have someone as successful, although we might be bankrupt if we were all as successful as he is in helping his State and his constituency.

He says this will add 50 million new cases. There are only 14 million arrests made in all of America now with 600,000 police. We add one-sixth more and I will argue that maybe we will have one-sixth more arrests. Right now, there are 14 million arrests made with 600,000 cops. How we get, God bless us, from 14 million with 600,000 cops to 50 million with 700,000 cops is beyond me.

But I have known two things in my dealings with the Senator from Alabama. One, he almost always wins and, two, his State almost always gets the better of anything he tries to do.

And so, since this is on an authorization and I will have a chance to fight it out on an appropriations front, I am prepared to accept it, because there are some good aspects of the amendment.

But the principle of the Federal Government getting the money to pay for State court judges I think is going a little far.

But, like I said, I know if the Senator will put his statement in the RECORD, I will accept it. If he does not put it in the RECORD, I will debate it, although I know the effectiveness of the former chief justice on matters like this. Sometimes when you debate with him on things that affect the State of Alabama, you would think he was still the chief justice, because he is able to rule as autocratically as he did then. His State always seems to win when he is making the case for them. But I will yield if he will yield, and I will accept if he will cease.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. I appreciate the kind remarks, but I think the Senator is really misplacing it. He is talking about the Senator from Delaware on what he acquires for his State, rather than myself.

AMENDMENT NO. 1201

(Purpose: To authorize Federal assistance to ease the increased burdens on State court systems resulting from enactment of this act)

Mr. HEFLIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Alabama [Mr. HEFLIN] proposes an amendment numbered 1201.

Mr. HATCH. 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 insert the following:

SEC. . FEDERAL ASSISTANCE TO EASE THE INCREASED BURDENS ON STATE COURT SYSTEMS RESULTING FROM ENACTMENT OF THIS ACT.

(a) IN GENERAL.—The Attorney General, acting through the Director of the Bureau of Justice Assistance (the Director), shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) APPLICATIONS.—In carrying out this section, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in this section. The Director shall have final authority over all funds awarded under this section.

(c) RECORDS.—Each recipient that receives a grant under this section shall keep such records as the Director may require to facilitate an effective audit.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, to remain available for obligation until expended.

(2) USE OF TRUST FUND.—Funds authorized to be appropriated under paragraph (1) may be appropriated from the trust fund established by section 1321C.

Mr. HEFLIN. Mr. President, I have offered an amendment that creates a grant program through which the Department of Justice may award State and local governments funds to assist in effectively handling the increased judicial activities which will result from enactment of this bill.

Given the vote by this Senate last week to increase by 100,000 the number of police officers on the street, coupled with a dramatic increase in the amount of prison space available to those convicted, my amendment will make grants available to participants in the justice system. I fully support the authorization of new police officers as well as new prisons, but I believe the entire crime bill will be greatly enhanced by the adoption of my amendment. The post-arrest, preconviction aspect of the fight against crime should not be overlooked.

It is a matter of fact that 100,000 new police officers and new prisons will result in more arrests. Consequently, prosecutors, public defenders, State and local court systems, along with every other facet of the due process afforded those charged with a crime,

should have adequate resources to properly dispose of these new cases.

Mr. President, if you conservatively assume that these 100,000 new police officers arrest one person per day while working a 5 day work-week, 50 weeks per year, then our criminal justice system will have to handle 25 million new cases. In reality, if each new officer arrests five people per shift, the already over-burdened court system will have an additional 125 million cases in need of disposition. More cops on the streets is a great idea, but we must follow effectively through. I believe it is prudent to ensure that once the arrest takes place, proper adjudication follows as quickly as possible.

We have all heard stories of violent criminals being returned to the streets because the criminal justice system lacks the necessary resources to operate effectively. If my amendment is not agreed to, the Senate will be passing a huge unfunded Federal mandate with devastating consequences for State and local judicial systems. There is no doubt many more violent criminals will be arrested, but without more resources, many of these defendants will simply be free on bond, possibly committing more violent offenses, or else be in jail for long periods of time awaiting trial.

Mr. President, the current crime bill is structured like an hour glass. It is very large at the top with the addition of 100,000 new police officers. The measure is also well rounded at the bottom with the creation of many new prisons and boot camps. Yet, there is a dire need to expand the middle. Given that only a limited number of defendants can proceed through the judicial system at one time, this amendment can only strengthen the existing crime bill. I urge its immediate adoption.

Mr. HATCH. I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment (No. 1201) was agreed to.

Mr. HEFLIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I believe that the order that was agreed on by the managers is that the Senator from California would proceed. I have joined her as a principal cosponsors, so I yield the floor.

The PRESIDING OFFICER. The Senator will suspend for one moment.

I believe that the regular order calls for the amendment by the Senator from Massachusetts, Mr. KERRY.

Mr. BIDEN. Mr. President, parliamentary inquiry. Is my distinguished friend from California the next order of business?

The PRESIDING OFFICER. According to the unanimous-consent agreement, the amendment of the Senator from Massachusetts is the next amendment.

Mr. BIDEN. Mr. President, I was about to inform the Senate that we are prepared to accept the Senator's amendment, as long as he does not talk about it. And if he has come to talk about it, then we will reconsider accepting the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. That is the best deal I have ever been offered, so I yield the floor.

Mr. HATCH. We are happy on this side to accept the amendment.

Mr. BIDEN. Why does the Senator not send the amendment to the desk? We will accept it right now.

AMENDMENT NO. 1202

(Purpose: To provide an additional authorization of \$150,000,000 for fiscal year 1996 for the police corps)

Mr. KERRY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY] proposes an amendment numbered 1202.

Mr. KERRY. 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 page 249, line 6 of the bill delete "each of fiscal years 1995 and 1996;" and insert the following: "fiscal year 1995 and \$250,000,000 for fiscal year 1996;".

Mr. KERRY. Mr. President, I was intending to send an amendment tonight to the desk concerning the police corps, and to ask for its consideration under Order No. 260, and call for the yeas and nays under that order, as set forth in the Unanimous Consent agreement entered into tonight. But I have just been informed that my amendment will be accepted by unanimous consent. I am grateful for the support the amendment concerning the police corps has received from my colleagues on both sides of the aisle.

Let me briefly summarize the substance of the amendment that has been accepted.

This crime bill authorizes a police corps program at the level of \$100 million for 1995, \$100 million for 1996, and such sums as are necessary for future years. This is the same level for this program as we started with at the beginning of this process. It is inadequate for the program. The inadequacy was acknowledged from the beginning by many.

This amendment changes the crime bill to increase the authorized level for the police corps from \$100 million in

the second year of the program, 1996, to \$250 million, subject to the decisions of the appropriators. The increase would permit an immediate increase in 1996 from 5,000 Americans graduating from the police corps to serve in police departments around the country to 10,000. The amendment would simultaneously allow an increase from 5,000 to 10,000 in the number of students receiving scholarship assistance and preparing to serve after graduation.

As conceived, a fully funded national police corps could ultimately put as many as 80,000 additional officers into local police departments. The police corps is modeled after the ROTC program, which awards college scholarships in exchange for a commitment of military service.

In the police corps program, students who accepted police corps scholarships would be obligated to spend 4 years working, for pay, in their local police departments. The students would benefit. The police departments would benefit. And law-abiding citizens would benefit.

As the New York Times editorialized last August:

At a time when there is bipartisan agreement on the need to put more cops on the beat, such a promising plan for adding to community policing strength surely deserves a much more ambitious launch. Beyond offering localities a well-educated pool of recruits—many of them minorities, which are still greatly underrepresented on many urban police forces—the Police Corps would also save money. Departments would pay Police Corps officers standard entry pay, but would be spared the costly pension and fringe benefits they pay their regular officers.

But even that is probably not as important as the less tangible value of engaging the energy and ideas of young citizens not traditionally involved in law enforcement. While many law enforcement officials support the idea, some police chiefs would prefer to stick with the kind of recruits they're used to. But by now it's also clear that the old way of doing things isn't working very well, especially in urban areas. The Senate Republican leader, BOB DOLE, says he favors spending \$250 million over the next three years on the Police Corps, with a bigger buildup in the future. That's far more than President Clinton requests, though still less than what's desirable. But money is tight, and it's hard to say where the additional funds might come from. Mr. DOLE to his credit seems willing to help Mr. Clinton and Senate Democrats find it.

It is the credit of many Senators, including Senators BIDEN and HATCH, Senator SASSER, Senator DOLE, the minority leader, Senator SPECTER, Senator MITCHELL, the majority leader, Senator KENNEDY, Senator HEFLIN, Senator SIMON, and Senator FEINSTEIN, among others, that the police corps concept is finally on the road to becoming a reality. I thank my colleagues for their support of this amendment.

Mr. BIDEN. I urge adoption of the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1202) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. KERRY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. I congratulate the Senator and thank him for his cooperation.

Now I believe our patient and capable colleague from California is next.

Mr. KERRY. I just want to ask the Senator from Delaware if he thinks that was the most eloquent statement I ever made.

Mr. BIDEN. It was not, because I have heard the Senator from Massachusetts speak. If I could speak from prepared remarks as well as he can extemporaneously, I probably would not be chairman of this committee now but be able to be chairman of the Foreign Relations Committee because I would have been able to talk Senator PELL into taking the Education Committee forcing Senator KENNEDY back to the Judiciary Committee.

I yield the floor.

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from California.

AMENDMENT NO. 1203

(Purpose: To add a title to the bill relating to driver's privacy)

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mr. WARNER, Mr. DECONCINI, Mrs. FEINSTEIN, Mr. WOFFORD, Ms. MOSELEY-BRAUN, Mr. METZENBAUM, Mr. DODD, Mr. CONRAD, Mrs. MURRAY, Mr. SIMON, Mr. REID, Mr. BUMPERS, Mr. ROBB, Mr. HARKIN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DASCHLE, Mr. INOUE, Mr. AKAKA, Mr. CAMPBELL, Mr. PELL, Mr. KENNEDY, Mr. KERREY, Mr. BRYAN, Mr. RIEGLE, Mr. BINGAMAN, and Mr. EXON, proposes an amendment numbered 1203.

Mrs. BOXER. 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, insert the following title:

TITLE —DRIVER'S PRIVACY PROTECTION ACT

SEC. . SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the "Driver's Privacy Protection Act of 1993".

(b) PURPOSE.—The purpose of this title is to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government.

SEC. . AMENDMENT TO TITLE 18, UNITED STATES CODE.

Title 18 of the United States Code is amended by inserting immediately after chapter 121, the following new chapter:

"CHAPTER 122—PROHIBITION ON RELEASE OF CERTAIN PERSONAL INFORMATION

"Sec. 2720. Prohibition on release and use of certain personal information by States, organizations and persons.

"Sec. 2721. Definitions.

"Sec. 2722. Penalties.

"Sec. 2723. Effect on State and local laws.

"§ 2720. Prohibition on release and use of certain personal information by States, organizations and persons

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), no department of motor vehicles of any State, or any officer or employee thereof, shall disclose or otherwise make available to any person or organization personal information about any individual obtained by the department in connection with a motor vehicle operator's permit, motor vehicle title, identification card, or motor vehicle registration (issued by the department to that individual) unless such disclosure is authorized by the individual.

"(2) A department of motor vehicles of a State, or officer or employee thereof, may disclose or otherwise make available personal information referred to in paragraph (1) for any of the following routine uses:

"(A) For the use of any Federal, State or local court in carrying out its functions.

"(B) For the use of any Federal, State or local agency in carrying out its functions, including a law enforcement agency.

"(C) For the use in connection with matters of automobile safety, driver safety, and manufacturers of motor vehicles issuing notification for purposes of any recall or product alteration.

"(D) For the use in any civil criminal proceeding in any Federal, State, or local court, if the case involves a motor vehicle, or if the request is pursuant to an order of a court of competent jurisdiction.

"(E) For use in research activities, if such information will not be used to contact the individual and the individual is not identified or associated with the requested personal information.

"(F) For use in marketing activities if—

"(i) the motor vehicle department has provided the individual with regard to whom the information is requested with the opportunity, in a clear and conspicuous manner, to prohibit a disclosure of such information for marketing activities;

"(ii) the information will be used, rented, or sold solely for a permissible use under this chapter, including marketing activities; and

"(iii) any person obtaining such information from a motor vehicle department for marketing purposes keeps complete records identifying any person to whom, and the permissible purpose for which, they sell or rent the information and provides such records to the motor vehicle department upon request.

"(G) For use by any insurer or insurance support organization, or their employees, agents, and contractors, in connection with claims investigation activities and antifraud activities.

"(H) For use by any organization, or its agent, in connection with a business transaction, when the purpose is to verify the accuracy of personal information submitted to that business or agent by the person to whom such information pertains, or, if the information submitted is not accurate, to obtain correct information for the purpose of pursuing remedies against a person who presented a check or similar item that was not honored.

"(I) For use by any organization, if such organization certifies, upon penalty of per-

jury, that it has obtained a statement from the person to whom the information pertains authorizing the disclosure of such information under this chapter.

"(J) For use by an employer or the agent of an employer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2701 et seq.).

"(b) UNLAWFUL CONDUCT BY ANY PERSON OR ORGANIZATION.—No person or organization shall—

"(1) use any personal information, about an individual referred to in subsection (a), obtained from a motor vehicle department of any State, or any officer or employee thereof, or other person for any purpose other than the purpose for which such personal information was initially disclosed or otherwise made available by the department of motor vehicles of the affected State, or any officer or employee thereof, or other person, unless authorized by that individual; or

"(2) make any false representation to obtain personal information, about an individual referred to in subsection (a), from a department of motor vehicles of any State, or officer or employee thereof, or from any other person.

"§ 2721. Definitions

"As used in this chapter:

"(1) The term 'personal information' is information that identifies an individual, including an individual's photograph, driver's identification number, name, address, telephone number, social security number, and medical and disability information. Such term does not include information on vehicular accidents, driving violations, and driver's status.

"(2) The term 'person' means any individual.

"(3) The term 'State' means each of the several States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) The term 'organization' means any person other than an individual, including but not limited to, a corporation, association, institution, a car rental agency, employer, and insurers, insurance support organization, and their employees, agents, or contractors. Such term does not include a Federal, State or local agency or entity thereof.

"§ 2722. Penalties

"(a) WILLFUL VIOLATIONS.—

"(1) Any person who willfully violates this chapter shall be fined under this title, or imprisoned for a period not exceeding 12 months, or both.

"(2) Any organization who willfully violates this chapter shall be fined under this title.

"(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.—Any State department of motor vehicles which willfully violates this chapter shall be subject to a civil penalty imposed by the Attorney General in the amount of \$5,000. Each day of continued non-compliance shall constitute a separate violation.

"§ 2723. Effect on State and local laws

"The provisions of this chapter shall supersede only those provisions of law of any State or local government which would require or permit the disclosure or use of personal information which is otherwise prohibited by this chapter."

SEC. . EFFECTIVE DATE.

The amendments made by this title shall take effect upon the expiration of the 270-day period following the date of its enactment.

Mrs. BOXER. Mr. President, today I join the Senator from Virginia [Mr. WARNER] and 26 other cosponsors, to offer an amendment to protect the privacy of all Americans.

In California, actress Rebecca Schaeffer was brutally murdered in the doorway of her Los Angeles apartment by a man who had obtained her home address from my State's DMV.

In Iowa, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners from the Department of Transportation, and then robbed them at night.

In Tempe, AZ, a woman was murdered by a man who had obtained her home address from that State's DMV.

And, in California, a 31-year-old man copied down the license plate numbers of five women in their early twenties, obtained their home address from the DMV and then sent them threatening letters at home. I want to briefly read from two of those letters.

I'm lonely and so I thought of you. I'll give you one week to respond or I will come looking for you.

Another one read:

I looked for you though all I knew about you was your license plate. Now I know more and yet nothing. I know you're a Libra, but I don't know what it's like to smell your hair while I'm kissing your neck and holding you in my arms.

When they apprehended him, they found in his possession a book entitled "You Can Find Anyone" which spelled out how to do just that using someone's license plate.

In 34 States, someone can walk into a State Motor Vehicle Department with your license plate number and a few dollars and walk out with your name and home address. Think about this. You might have an unlisted phone number and address. But, someone can find your name or see your car, go to the DMV and obtain the very personal information that you may have taken painful steps to restrict.

Mr. President, the American people think that this is wrong. In a recent Lou Harris survey, 80 percent of the people were uncomfortable with one person obtaining this type of information about another.

Can we afford to wait until every State has their own tragedy? That is not the way to legislate. Our Representatives are elected to lead, to think ahead and—at every turn—to find ways to protect the people they represent. In many States, police officers, public figures and other victims of these privacy abuses have been allowed to request that the DMV keep their home addresses confidential. Of course, these people deserve privacy and protection. But, so do all of our people.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. I will be delighted to yield.

Mr. HATCH. Mr. President, I appreciate my colleague from California's effort to control the disclosure of State department of motor vehicle [DMV] information. We need to comprehensively review the means by which government agencies disclose personal information to the public.

Stalking is a problem which is beginning to receive the attention of legislators at both the State and Federal level. I too share the concerns of my colleagues. Last Congress, I supported legislation authored by Senator COHEN which directed the Department of Justice to develop model anti-stalking legislation for the States. As well, I coauthored the Violence Against Women Act which provides \$1.89 billion to fight violence perpetrated against women. The Senate passed this measure as an amendment to the crime bill. As well, I coauthored the Chafee-Hatch amendment to the crime bill which adds another category of offenders—stalkers—to the list of persons banned from purchasing firearms.

I believe the crime bill already does much to combat stalking. I commend my colleague for wanting to do more. However, concerns have been raised by the National Governors Association, the American Association of Motor Vehicle Administrators, the American Society of Newspaper Editors, and the Newspaper Association of America. These organizations raise legitimate points:

The bill from which this amendment is taken was introduced less than 1 month ago and there has not been an adequate amount of time to assess its impact and cost;

It places unfunded mandates on the States which may result in the States prohibiting all uses of DMV information for any purpose, including legitimate business and press purposes;

It subjects the DMV's to civil penalties for wrongful disclosure of drivers license information; and

While I support the goals of the Boxer amendment, I believe it warrants careful and studious review.

We are prepared to take the Senator's amendment but I do have to add this caveat. We are prepared to take the amendment on both sides but I have had a number of people very, very concerned about it. I would like to take it under the condition that we work on it together and see if we can perfect it somewhat between now and conference. Because I have received letters, for instance, this one from the Society of Professional Journalists, Utah Headliners Chapter, which I ask unanimous consent be printed in the RECORD at this point.

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

SOCIETY OF PROFESSIONAL JOURNALISTS, UTAH HEADLINERS CHAPTER,
Salt Lake City, UT, November 16, 1993.

Hon. ORRIN G. HATCH,
Committee on the Judiciary, U.S. Senate Washington, DC.

DEAR SENATOR HATCH; the Utah Headliners Chapter of the Society of Professional Journalists has learned that there may be a vote on proposed amendments to the Crime Bill this afternoon. Among those amendments to be considered is the Boxer/Moran Driver's Privacy Protection Act of 1993. Our organization is concerned and strongly opposed to the incorporation of the measure into the Crime Bill without appropriate public hearings.

Our organization represents journalists throughout Utah and has been active in protecting the public's access to government proceedings and records. Nationally, the Society is the nation's oldest and largest journalism organization.

While we are sympathetic to the concerns about privacy connected with the proposed legislation, we believe there may be other approaches to the problem that would ensure the public's right to know while protecting against abuse of these records. For example, government could enact tough stalking laws rather than closing off records because of isolated violence associated with information gained from public records.

Consider the valuable ways journalists use driver and motor vehicle records to further the public interest. News organizations have discovered pilots, bus drivers and police officers who have DUI convictions but were still operating vehicles. In New Mexico, a series of articles based on these records, helped change the state's DUI laws and the court system's leniency with DUI convictions. Other stories have shown how dealers illegally rebuilt and resold automobile wrecks. Any Utah journalist could provide you with a list of ways reporters use these records in the public's behalf.

We also believe that this issue is better addressed on a state-by-state basis. For example, government officials, journalists and citizens recently spent five years debating Utah's new Government Records Access and Management Act. The act provides for balancing tests between the public interest and the interests of privacy. This is a much more reasonable approach than the wholesale closure of public documents. We are concerned that the Boxer/Moran legislation could be only the beginning of an unbalanced closure of records that creates double standards.

We ask for a full debate on these issues. There is a great deal of experience in Utah's government, legal and media community regarding these issues. We would be happy to use our resources to give you and your staff further information regarding this bill.

Best regards,

JOEL CAMPBELL,
for the Utah Headliners Chapter
Board of Directors.

Mr. HATCH. They are expressing a great deal of concern about the amendment of the distinguished Senator. I understand what the distinguished Senator from California is trying to do. I will personally work with her to try to make sure we can accomplish what she wants while still giving consideration to these professional journalists and others who feel her amendment might be damaging to the information-gathering process.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. HATCH. I will be delighted to.

Mr. WARNER. This is a joint effort on behalf of the Senators from California and Virginia, and so I hope my colleague will address us jointly in terms of this somewhat unusual procedure. I urge the distinguished Senator from California be permitted to complete her opening remarks and the Senator from Virginia can provide his remarks and then we should discuss with the managers such procedures as they think appropriate to work on this amendment. Because it is my clear understanding the amendment was accepted and this is the first knowledge I had there was some contingency to that acceptance.

Mr. HATCH. If I can just remark, I apologize to the distinguished Senator from Virginia. In my zeal to accept the amendment, I failed to mention that this is the Boxer and Warner amendment and we feel very deeply about that.

Frankly, what we are trying to do is finish the bill tonight. I think the distinguished Senator from California has made an eloquent statement on this matter thus far. I will be happy to listen to the rest of it, but I think if we are willing to accept the amendment, if the Senators can summarize their statements, it would help.

Mr. WARNER. Mr. President, if the Senator will yield, we will be happy to do that. But I must tell you, I express great admiration for the Senator from California, for her diligence and months of hard work, together with her staff member, Laura Schiller, working with my staff member, George Cartagena. A lot of hard work has been put into this. I was absolutely astonished that this situation existed across the United States.

I urge the managers of the bill to provide the distinguished Senator from California a few more minutes and I will be happy to curtail my remarks to just a bare few minutes response.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from California.

Mrs. BOXER. If I may ask, is the time currently my time?

The PRESIDING OFFICER. The Senator from California controls 10 minutes 57 seconds.

Mrs. BOXER. I would say to my friends it would be my intention to finish my remarks in less than 5 minutes and yield the remainder of the time to my distinguished coauthor, the Senator from Virginia, Senator WARNER, and I would like to proceed.

I am very pleased that this amendment will be accepted. It has been 7 months of work. In 5 minutes I think I can complete my remarks. I thank the Senator from Virginia for his tremendous courtesy and assistance in this effort.

With this amendment we have an opportunity to protect the privacy and

safety of all Americans—not just the VIP's with special clout.

This area is clearly within Congress' authority to regulate. First, this is a fundamental issue of privacy. The Supreme Court has found that people have a right to be safe in their homes, that they have a right not to have the Government make public their personal data and that Congress can use its powers—section 5 of the 14th amendment—provide remedies for violations to constitutional rights.

What's more, with mail, cars, and harassment involved, this issue clearly has an impact on interstate commerce. As such—under article 1, section 8—this area is well within Congress' authority to regulate. We all understand that interstate commerce is severely threatened when mail is used, when people are scared to drive in their cars, when their civil rights are violated, and when they live in fear of being harassed and stalked.

The amendment that I am offering today strikes a critical balance between the legitimate governmental and business needs for this information, and the fundamental right of our people to privacy and safety. Under this amendment, personal information is defined as including a driver's name, address, phone number, and social security number. It does not include information on a driver's accidents, violations or status. Let me repeat that. Nothing in this bill will stop the press, insurance companies, employers, or anyone else from obtaining information about an individual's driving record.

This amendment allows access for all governmental agencies, courts, and law enforcement personnel. It allows full access for all automobile and driver safety purposes, including manufacturers of motor vehicles conducting a recall for any purpose. It sets up fair standards for insurance companies, employers, banks, researchers, and other organizations who routinely use this information. And, that is why we have the support from so many organizations, including the American Insurance Association, a trade organization representing more than 250 major insurance companies.

Currently, most States sell personal information to direct marketers. Our bill does not stop this. It simply says that if a State chooses to sell this information to marketers, they need to give people the opportunity to opt out and say no. This policy is fair. It is consistent with the Direct Marketing Association's own ethical guidelines and with the recommendations of the landmark 1977 Privacy Commission Report.

This amendment sets up clear guidelines and fair penalties. Under this amendment, only those people and individuals who willfully violate this chapter are subject to penalties. Under

this amendment, aggrieved individuals and groups do not have a cause of action and cannot file suit. And, under this amendment, States are not liable for criminal penalties.

If you want to own or operate a car, you must register with the DMV. This amendment simply gives people more control over the disclosure of their personal information, especially for those reasons that are totally incompatible with the purpose for which the information was collected. States are free to be more restrictive with this information. This bill simply takes a national problem and gives the States broad latitude and 9 months to enact a national solution.

Mr. President, we have more than 20 business, consumer, police, physician and victims groups who have given their support to this amendment, from the Fraternal Order of Police, to the Consumer Federation of America, to the American Medical Association.

Finally, I want to again thank Senator WARNER for his strong support on this legislation, and Congressman MORAN, of Virginia, for his leadership on this issue; and my constituent from Los Angeles, Joyce Shorr, who brought this critical problem to my attention; again, the many groups that have endorsed the legislation, our 27 cosponsors.

Finally, I would like to address a couple remarks to the chairman of the Judiciary Committee, who I do not see on the floor right now but I want to pay tribute to him because he knows that I am new in the U.S. Senate. He knows how much this particular piece of legislation meant to me. Even when it looked like it was going to be controversial, he encouraged me to continue, to line up the votes and the support. We did it, and I am extremely pleased that the Senator from Virginia and I tonight will have our amendment agreed to. Of course, we will work to see that it survives the conference in a way that meets the very clear objectives: We want to protect the privacy and the safety of the people of America, and I think we will achieve that.

At this time, I yield the remainder of my time to the good Senator from Virginia, Senator WARNER.

The PRESIDING OFFICER. The Senator from Virginia has 6 minutes 56 seconds.

Mr. WARNER. Mr. President, I thank my distinguished colleague and friend, the Senator from California. I have to confess that the Senator from California and I came to the body with a somewhat different approach and philosophy. I thought to myself when I discovered this piece of legislation, largely through her efforts and the efforts of my distinguished colleague from Virginia, Congressman MORAN, who pioneered this legislation in the Congress for some several years, I thought the likelihood of a Boxer-War-

ner bill was impossible. But here we are. Impossible things do happen.

I thank my colleague for her kind remarks and for the opportunity for me and my staff to work as diligently as we could to perfect this piece of legislation.

Mr. President, I was absolutely astonished to learn that in some 30-plus States and, indeed, my own State, which has a provision that gives some restriction but people who demonstrate good reason can acquire this information. It applies to auto titles, to car registrations, to driver's licenses, auto tags—all this is open. There is a war in this country to fight for privacy. People are now fighting, and this is coming to their assistance to provide the privacy, which I and many others thought existed.

I had no idea when I went into my State to get licensed that all this information that I provided was going to be made public. Those in public life expect much of our factual data to be public but, indeed, others who are not in public life have a need to protect their privacy, and particularly women.

I shall not go into the specifics. My distinguished colleague from California cited some actual cases, but this legislation is to protect a wide range of individuals, protect them from the State agencies often for a price, a profit to the State, to release lists. Not only will the agency give out individual names and sponsors will call with an inquiry, but they give out the whole list, everybody in the State, if you want to buy it. It is somewhat expensive but you can get it. This legislation provides that, henceforth—the State is given 270 days within which to implement it—henceforth, individuals who go in to register cars, acquire permits, so forth, can clearly indicate their lack of willingness, their desire not to have that information released to marketers primarily. There are specific exceptions of course for law enforcement individuals and other areas where proven experience shows that this information should flow. But in those instances we have to presume it is somewhat protected.

The Boxer-Warner bill incorporates both the intent of the 1974 Privacy Act, which deals with the collection of personal information by Federal agencies as well as the recommendations of the landmark 1977 Privacy Protection Study Commission report. Registering with the DMV is mandatory. The Boxer bill will provide individuals with knowledge of and control over the disclosure of their personal information for uses unrelated to the purpose(s) for which it was collected.

Mr. President, the legislation will also:

Provide unlimited access for courts, law enforcement, governmental agencies, insurance companies involved in

claims investigation and antifraud activities, and for other driver and automobile safety purposes;

Allow businesses to verify information provided by the licensee and to access personal information as long as the individual has waived his or her right to confidentiality. These businesses can enter into contracts with the DMV's to facilitate this process;

Not prohibit the disclosure of information on vehicular accidents or driving violations;

Provide access to this information for marketing purposes if the licensees have been given the opportunity to prohibit such disclosure. This policy is consistent with the Privacy Commission report and with the ethical guidelines of the Direct Marketing Association;

Allow States to enact tougher restrictions and gives them room to craft their own specific responses to the regulations;

Allow the DMV's to price their sale of services to fully recover any initial costs associated with implementing this legislation—most DMV's already sell this information, and costs for implementing the additional security provisions are estimated to be negligible; and

Only penalize the States when the Attorney General has found that a State's failure to comply with these regulations was willful.

This is a superb piece of legislation badly needed to protect individuals in their fight to retain privacy.

I thank the Chair and I thank my colleague.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are prepared to accept the amendment.

Mrs. BOXER. I am very pleased. I have no further remarks.

I understand the Senator from Virginia, Senator ROBB, has come over to lend support. I would appreciate a moment or two. How much time remains?

The PRESIDING OFFICER. The Senator from California controls 3 minutes 7 seconds.

The PRESIDING OFFICER. The Senator from Virginia is recognized with 2 minutes 45 seconds remaining.

Mr. ROBB. Mr. President, I am very pleased to join my senior colleague and the Senator from California in cosponsoring this amendment.

The right to privacy, without which the Americans are not secure in their own homes, is seriously threatened. It is easy for anyone anywhere to access information as personal as your address and phone number, even if they are not listed in the telephone directory. Even your Social Security number is available, and the chief agent giving out this kind of information is the very government that is supposed to protect its citizens.

Many Americans are infuriated and, more importantly, they are vulnerable to these violations of privacy which happen in 34 States in this country every day, my own included.

Recently, a woman in Virginia was shocked to discover black balloons and antiabortion literature on her doorstep days after she had visited a health clinic that performs abortions. Apparently, someone used her license plate number to track down personal information which was used to stalk her.

In another case in Georgia, an obsessive fan obtained the home address of a fashion model from the State Department of Motor Vehicles and assaulted her in front of her apartment.

These are but two examples of how simple it is to submit a driver's license number, pay a nominal fee to the DMV and receive a person's name and address. This is no mere loophole in a system, it is a visible gap that needs to be plugged.

Luckily, we have the opportunity to close that hole by the amendment offered by the Senator from California and my distinguished senior colleague, Senator WARNER. This amendment would place safeguards on the privacy of the driver and vehicle owners by prohibiting release of personal information to anyone without a specific business-related or government-related reason for obtaining the information.

While this bill alone will not stop people from stalking, it will inhibit States from unknowingly aiding and abetting this type of crime. Easy access to personal information makes every driver in this Nation vulnerable and infringes on their right to privacy. Government's duty is to keep citizens safe and it should not, therefore, be contributing to insecurity.

I hope that our colleagues will help to restrict easy, unlimited access to personal information by supporting this amendment.

I commend the Senator from California, my senior colleague and our colleague in the House for offering it.

I yield the floor.

Mr. WARNER. Mr. President, I ask unanimous consent I may proceed for another minute-and-a-half.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia is recognized for 90 seconds.

Mr. WARNER. Mr. President, I pose a question to my distinguished colleague. In his former capacity as a very distinguished Governor of the Commonwealth of Virginia, it is very interesting, listening to his remarks, that this was a situation that apparently was not recognized by the Governors as being so compelling as it is today during the period when he was Governor.

I wonder if the Senator might have a recollection of how the history of the need of this legislation has evolved in the intervening years since he was

Governor of the Commonwealth of Virginia.

Mr. ROBB. Mr. President, I can respond to my senior colleague by telling him, indeed, this is a problem, like many others, that has simply evolved. In recent years, it has become increasingly evident that this information was accessible and it was being used for purposes that were certainly not intended by the framers of the actual legislation that permitted its release.

This legislation is simply designed to close an important loophole that at this point restricts the privacy that I think most of our citizens believe they have but in some cases subjects them to stalking, abuse or other improper utilization of information which simply should not be in their hands.

Mr. WARNER. Mr. President, I thank my distinguished colleague. I think this is a very important part of the legislative history that we are making tonight. It has been a relatively short period of time that the urgency for such legislation as this be adopted by the Congress. It is my fervent hope and wish that it will be.

The PRESIDING OFFICER. Who yields time?

The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise to not only support but compliment my friend from California. She came early on with this amendment when it did not look like anybody was likely to support it at all. And because she always cooperates, she indicated she did not want to get in the way of the passage of the bill she supports, but she felt strongly about it.

One of the things I am learning is that she is a freshman Senator, but she is no freshman like I have ever seen. She has walked into this place with significant experience in the House and is frighteningly effective. I compliment her on her pushing this amendment along. It is a very important amendment. I for one would like to compliment her and the Senator from Virginia for their calling this concern and need to the attention of the Senate and the people of the country. I think it is a good amendment.

I support the amendment of the Senator from California. This amendment would make it unlawful for States to disseminate personal information about any person or organization simply because the person seeking the information can recite a driver's or motor vehicle license number.

Too often we read, or hear on television, stories about women who suffer serious injury or death after being stalked by estranged and violent husbands and boyfriends. Stalking is a crime of terror and fear, plaguing thousands of Americans every year.

By protecting the privacy of addresses and telephone numbers—which would otherwise be available at the mere mention of a license plate or driver's license number—the amendment is another weapon against this violence.

This amendment closes a loophole in the law that permits stalkers to obtain—on demand—private, personal information about their potential victims.

Under the law in over 30 States, it is permissible to give out to any person the name, telephone number, and address of any other person if a drivers' license or vehicle plate number is provided to a State agency.

Thus, potential criminals are able to obtain private, personal information about their victims simply by making a request. These open-record policies in many States are open invitations to would-be stalkers.

In my view, this amendment makes common sense. Americans do not believe they should relinquish their legitimate expectations of privacy simply by obtaining drivers' licenses or registering their cars. Yet the laws of some States do just that by routinely providing this identifying information to all who request it.

The States should not provide the mechanism for the terror that can be unleashed through the indiscriminate release of this kind of information. Some restrictions on the dissemination of private information such as an address or telephone number are reasonable and appropriate.

This amendment is narrowly tailored in that it carefully preserves the right of States to disseminate this private information for legitimate purposes such as law enforcement, automobile safety activities, and insurance investigations.

I applaud the Senator from California for her work in this regard. She provides a reasoned and measured approach to the protection of private information and the placement of yet another roadblock in the way of would-be criminals.

When time is yielded back, I am prepared to accept the amendment and again congratulate the sponsors for their persistence and insight into this problem.

THE PRESIDING OFFICER. Is there further debate?

MR. HARKIN. Mr. President, I rise in strong support of this amendment, which will ensure that the private information that drivers provide to their State licensing authorities will not be improperly disclosed to violate those drivers' right to privacy. The Drivers Privacy Protection Act, of which I am an original cosponsor, strikes a fair balance between reasonable interests of the State and the public in this information, and the rights of private citizens to be left alone.

I became aware of this issue through the plight of one of my constituents, Karen Stewart. Karen was a patient of Dr. Herbert Remer, a physician who specializes in obstetrics and gynecological care in the Des Moines area. Because Dr. Remer performs abortions,

his clinic has been the site of repeated protests by those who oppose women's right to choose.

But Karen was going to Dr. Remer to save her pregnancy, not to terminate it. She was experiencing complications, and went to Dr. Remer for treatment. Unfortunately, a few days after the visit, Karen suffered a miscarriage.

And then she received the letter. Extremists from Operation Rescue sent a venomous letter apparently intended to traumatize Dr. Remer's patients. The letter spoke of "God's curses for the shedding of innocent blood," and "the guilt of having killed one's own child." They got her name and address from department of transportation records, after they spotted her car parked near Dr. Remer's clinic.

This is one example of the potential for abuse of these public records, but it is far from the only one. According to the Des Moines Register of October 10, 1992, a gang of teens used State records to help them carry out their crimes. They would find cars with expensive stereos in parking lots and on the streets, take down their license numbers, and find the owners' home address through DOT records.

Most tragically, these records are used by stalkers to track down their victims. Rebecca Shaeffer, a promising young actress from California, was brutally murdered by an obsessed fan. That fan obtained her address from department of motor vehicles records through a private investigator.

I strongly believe that this legislation will provide important protection to every American's privacy. I want to congratulate Senator BOXER on her amendment, which is a well-balanced proposal that strongly protects privacy, yet accommodates a variety of important interests. I urge its adoption.

MR. WARNER. Mr. President, I wish to join with my distinguished colleague from California in thanking the managers of this bill. It has been a somewhat difficult task to work it through, and that has been successfully done tonight with the cooperation of the managers and their excellent staffs.

So at this point in time I believe the Senator from California would urge adoption of the amendment.

MRS. BOXER. I urge adoption of the amendment.

THE PRESIDING OFFICER. The Senator from California has urged adoption of the amendment. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1203) was agreed to.

MR. WARNER. Mr. President, I move to reconsider the vote.

MRS. BOXER. 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 Michigan under the unani-

mous-consent agreement is authorized to offer an amendment upon which there will be 1 hour of debate.

AMENDMENT NO. 1204

(Purpose: To provide for imposition of the penalty of life imprisonment without the possibility of release rather than imposition of the death penalty)

MR. LEVIN. Mr. President, I send an 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 Michigan [Mr. LEVIN], for himself, Mr. SIMON, Mr. HATFIELD, Mr. DURENBERGER, and Mr. PELL, proposes an amendment numbered 1204:

At the end of the bill add the following:
SEC. . MANDATORY LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

In lieu of any amendment made by this Act or any other provision of this Act that authorizes the imposition of a sentence of death, such amendment or provision shall authorize the imposition of a sentence of mandatory life imprisonment without the possibility of release.

MR. LEVIN. Mr. President, this amendment is introduced on behalf of Senators SIMON, HATFIELD, DURENBERGER, PELL, and myself. It would replace the death penalty in this legislation with a sentence of mandatory life imprisonment without the possibility of release.

I doubt that my position comes as a surprise to anybody who has watched the Senate year after year consider legislation to impose the death penalty.

For me, the bottom line is that the history of the death penalty is filled with examples in which innocent people have been executed or almost executed.

I cannot support a means of punishment with the finality of the death penalty when our judicial system cannot avoid making errors and mistakes. We are human. Our system of justice reflects our own fallibility as human beings.

My colleagues have seen me in the past hold up case after case after case in which people have been sentenced to death only later to be found innocent and released. Since this last debate in the Senate, the staff of the House Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee has issued a report entitled "Innocence in the Death Penalty: Assessing the Danger of Mistaken Executions."

This report briefly and concisely describes 48 cases in the past 20 years where a convicted person has been released from death row either because their innocence was proven or because there was a reasonable doubt that was raised as to their guilt. This report also examines some of the reasons why innocent people were convicted and sentenced to death. Those factors included prejudice, inadequate counsel, initial misconduct, and pressure to prosecute.

Mr. President, I ask unanimous consent at this time that the 48 cases that were identified by the Judiciary Subcommittee of the House be inserted in the RECORD in full.

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

RECENT CASES INVOLVING INNOCENT PERSONS
SENTENCED TO DEATH

The most conclusive evidence that innocent people are condemned to death under modern death sentencing procedures comes from the surprisingly large number of people whose convictions have been overturned and who have been freed from death row. Four former death row inmates have been released from prison just this year after their innocence became apparent: Kirk Bloodsworth, Federico Macias, Walter McMillian, and Gregory Wilhoit.

At least 48 people have been released from prison after serving time on death row since 1973 with significant evidence of their innocence.¹ In 43 of these cases, the defendant was subsequently acquitted, pardoned, or charges were dropped. In three of the cases, a compromise was reached and the defendants were immediately released upon pleading to a lesser offense. In the remaining two cases, one defendant was released when the parole board became convinced of his innocence, and the other was acquitted at a retrial of the capital charge but convicted of lesser related charges. These five cases are indicated with an asterisk (*).

1973: David Keaton, Florida; conviction 1971. Sentenced to death for murdering an off-duty deputy sheriff during a robbery. Charges were dropped and Keaton was released after the actual killer was convicted.

1975: Wilber Lee, Florida; conviction 1963; Freddie Pitts, Florida; conviction: 1963. Lee and Pitts were convicted of a double murder and sentenced to death. They were released when they received a full pardon from Governor Askew because of their innocence. Another man had confessed to the killings.

1976: Thomas Gladish, New Mexico; conviction: 1974; Richard Greer, New Mexico; conviction: 1974; Ronald Keine, New Mexico; conviction: 1974; Clarence Smith, New Mexico; conviction: 1974. The four were convicted of murder, kidnaping, sodomy, and rape and were sentenced to death. They were released after a drifter admitted to the killings and a newspaper investigation uncovered lies by the prosecution's star witness.

1977: Delbert Tibbs, Florida; conviction: 1974. Sentenced to death for the rape of a sixteen-year-old and the murder of her companion. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning.

1978: Earl Charles, Georgia; conviction: 1975. Convicted on two counts of murder and sentenced to death. Charles was released when evidence was found that substantiated his alibi. After an investigation, the district attorney announced that he would not retry the case. Charles won a substantial settlement from city officials for misconduct in the original investigation.

¹The principal sources for this information are news articles, M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* (1992), H. Bedau & M. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 *Stanford L. Rev.* 21 (1987), and the files of the National Coalition to Abolish the Death Penalty.

Jonathan Treadway, Arizona; conviction: 1975. Convicted of sodomy and first degree murder of a six-year-old and sentenced to death. He was acquitted of all charges at retrial by the jury after 5 pathologists testified that the victim probably died of natural causes and that there was no evidence of sodomy.

1979: Gary Beeman, Ohio; conviction: 1976. Convicted of aggravated murder and sentenced to death. Acquitted at the retrial when evidence showed that the true killer was the main prosecution witness at the first trial.

1980: Jerry Banks, Georgia; conviction: 1975. Sentenced to death for two counts of murder. The conviction was overturned because the prosecution knowingly withheld exculpatory evidence. Banks committed suicide after his wife divorced him. His estate won a settlement from the county for the benefit of his children.

Larry Hicks, Indiana; conviction: 1978. Convicted on two counts of murder and sentenced to death, Hicks was acquitted at the retrial when witnesses confirmed his alibi and when the eyewitness testimony at the first trial was proved to have been perjured. The Playboy Foundation supplied funds for the reinvestigation.

1981: Charles Ray Giddens, Oklahoma; conviction: 1978. Conviction and death sentence reversed by the Oklahoma Court of Criminal Appeals on the grounds of insufficient evidence. Thereafter, the charges were dropped.

Michael Linder, South Carolina; conviction: 1979. Linder was acquitted at retrial on the grounds of self-defense.

Johnny Ross, Louisiana; conviction: 1975. Sentenced to death for rape, Ross was released when his blood type was found to be inconsistent with that of the rapist's.

1982: Anibal Jaramillo, Florida; conviction: 1981. Sentenced to death for two counts of first degree murder; released when the Florida Supreme Court ruled the evidence did not sustain the conviction.

Lawyer Johnson, Massachusetts; conviction: 1971. Sentenced to death for first degree murder. The charges were dropped when a previously silent eyewitness came forward and implicated the state's chief witness as the actual killer.

1986: Anthony Brown, Florida; conviction: 1983. Convicted of first degree murder and sentenced to death. At the retrial, the state's chief witness admitted that his testimony at the first trial had been perjured and Brown was acquitted.

Neil Ferber, Pennsylvania; conviction: 1982. Convicted of first degree murder and sentenced to death. He was released at the request of the state's attorney when new evidence showed that the conviction was based on the perjured testimony of a jail-house informant.

1987: Joseph Green Brown (Shabaka Waglini), Florida; conviction: 1974. Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. At one point, Brown came within 13 hours of execution.

Perry Cobb, Illinois; conviction: 1979; Darby Williams, Illinois; conviction: 1979. Cobb and Williams were convicted and sentenced to death for a double murder. They were acquitted at retrial when an assistant state attorney came forward and destroyed the credibility of the state's chief witness.

Henry Drake,* Georgia; conviction: 1977. Drake was resentenced to a life sentence at his second trial. Six months later, the parole board freed him, convinced he was exoner-

ated by his alleged accomplice and by testimony from the medical examiner.

John Henry Knapp,* Arizona; conviction: 1974. Knapp was originally sentenced to death for the arson murder of his two children. He was released in 1987 after new evidence about the cause of the fire prompted a judge to order a new trial. In 1991, his third trial resulted in a hung jury. Knapp was again released in 1992 after an agreement with the prosecutors in which he pleaded no contest to second degree murder. He has steadfastly maintained his innocence.

Vernon McManus, Texas; conviction: 1977. After a new trial was ordered, the prosecution dropped the charges when a key prosecution witness refused to testify.

Anthony Ray Peek, Florida; conviction: 1978. Convicted of murder and sentenced to death. His conviction was overturned when expert testimony was shown to be false. He was acquitted at his second retrial.

Juan Ramos, Florida; conviction: 1983. Sentenced to death for rape and murder. The decision was vacated by the Florida Supreme Court because of improper use of evidence. At his retrial, he was acquitted.

Robert Wallace, Georgia; conviction: 1980. Sentenced to death for the slaying of a police officer. The 11th Circuit ordered a retrial because Wallace had not been competent to stand trial. He was acquitted at the retrial because it was found that the shooting was accidental.

1988: Jerry Bigelow, California; conviction: 1980. Convicted of murder and sentenced to death after acting as his own attorney. His conviction was overturned by the California Supreme Court and he was acquitted at the retrial.

Willie Brown, Florida; conviction: 1983; Larry Troy, Florida; conviction: 1983. Originally sentenced to death after being accused of stabbing a fellow prisoner, Brown and Troy were released when the evidence showed that the main witness at the trial had perjured himself.

William Jent,* Florida; conviction: 1980; Earnest Miller,* Florida; conviction: 1980. A federal district court ordered a new trial because of suppression of exculpatory evidence. Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Dept. because of official errors.

1989: Randall Dale Adams, Texas; conviction: 1977. Adams was ordered to be released pending a new trial by the Texas Court of Appeals. The prosecutors did not seek a new trial due to substantial evidence of Adam's innocence. Subject of the movie, *The Thin Blue Line*.

Jesse Keith Brown,* South Carolina; conviction: 1983. The conviction was reversed twice by the state Supreme Court. At the third trial, Brown was acquitted of the capital charge but convicted of related robbery charges.

Robert Cox, Florida; conviction: 1988. Released by a unanimous decision of the Florida Supreme Court on the basis of insufficient evidence.

Timothy Hennis, North Carolina; conviction: 1986. Convicted of three counts of murder and sentenced to death. The State Supreme Court granted a retrial because of the use of inflammatory evidence. At the retrial, Hennis was acquitted.

James Richardson, Florida; conviction: 1968. Released after reexamination of the case by prosecutor Janet Reno, who concluded Richardson was innocent.

1990: Clarence Brandley, Texas; conviction: 1980. Awarded a new trial when evidence showed prosecutorial suppression of exculpatory evidence and perjury by prosecution witnesses. All charges were dropped. Brandley is the subject of the book *White Lies* by Nick Davies.

Patrick Croy, California; conviction: 1979. Conviction overturned by state Supreme Court because of improper jury instructions. Acquitted at retrial after arguing self-defense.

John C. Skelton, Texas; conviction: 1982. Convicted of killing a man by exploding dynamite in his pickup truck. The conviction was overturned by the Texas Court of Criminal Appeals due to insufficient evidence.

1991: Gary Nelson, Georgia; conviction: 1980. Nelson was released after a review of the prosecutor's files revealed that material information had been improperly withheld from the defense. The district attorney acknowledged: "There is no material element of the state's case in the original trial which has not subsequently been determined to be impeached or contradicted."

Bradley P. Scott, Florida; conviction: 1988. Convicted of murder ten years after the crime. On appeal, he was released by the Florida Supreme Court because of insufficiency of the evidence.

1993: Kirk Bloodsworth, Maryland; conviction: 1984. Convicted and sentenced to death for the rape and murder of a young girl. Bloodsworth was granted a new trial and given a life sentence. He was released after subsequent DNA testing confirmed his innocence.

Federico M. Macias, Texas; conviction: 1984. Convicted of murder, Macias was granted a federal writ of habeas corpus because of ineffective assistance of counsel and possible innocence. A grand jury refused to indict because of lack of evidence.

Walter McMillian, Alabama; conviction: 1988. McMillian's conviction was overturned by the Alabama Court of Criminal Appeals and he was freed after three witnesses recanted their testimony and prosecutors agreed case had been mishandled.

Gregory R. Wilhoit, Oklahoma; conviction: 1987. Wilhoit was convicted of killing his estranged wife while she slept. He was acquitted at a retrial after 11 forensic experts testified that a bite mark found on his dead wife did not belong to him.

Mr. LEVIN. Mr. President, that last point, pressure to prosecute, is well reflected in the case of Kirk Bloodsworth. This is a very recent example of a mistaken conviction of a capital offense. Kirk Bloodsworth was convicted of first-degree murder twice. The first time he was sentenced to death. The second time he was sentenced to life in prison. He was convicted of the rape and the murder of a young girl. It was a horrendous crime.

He was innocent. This was later proven, and I am going to get into that in a moment. Had he been executed instead of being given a life term for the murder of which he was convicted, the mistake that I will read about in a moment could not have been corrected.

That mistake was set forth in a CBS TV program called "Eye to Eye with Connie Chung." The name of the program was "A Free Man." It was aired on October 28, just a few weeks ago. These are some of the excerpts from this TV program.

The reporter said that:

It was the summer of 1984 in Baltimore County, Maryland. A 9-year-old girl, Dawn Hamilton, was tortured, sodomized and murdered in the woods near her home. It was one of the most horrifying crimes ever committed in the area. There was tremendous pressure to solve the case. Sixteen days and hundreds of possible suspects later, the police closed in on one 23-year-old Kirk Bloodsworth.

And the reporter then said that Robert Lazzaro was the lead prosecutor of the case, and Mr. Lazzaro is interviewed here a number of times in this transcript.

LAZZARO. We didn't have a confession. We didn't have any physical evidence.

MAGNUS. What the State did was to have two witnesses putting Bloodsworth near the murder scene, two boys ages 10 and 7. They were fishing when they saw a man walk with Dawn—

That is the little girl.

into the woods shortly before she was murdered.

LAZZARO. The crux of the case really was putting him at the scene with the girl, the two young boys.

MAGNUS. And they pegged him at 6 foot 5 and Kirk was only about 6 feet.

LAZZARO. Well, that's not unusual.

MAGNUS. They said he had blond hair. Kirk had red hair. I mean they weren't necessarily describing Kirk Bloodsworth.

LAZZARO. I understand that. But the bottom line is that they selected him independently of each other, as absolutely being the one, the person that they saw.

Lazzaro said:

Yes, I was absolutely convinced that he did it.

MAGNUS. It fit for the jury. They took only 2 hours to find Bloodsworth guilty of Dawn Hamilton's murder.

And then Bloodsworth speaking:

I was standing there. And the judge sentenced me to death for something I didn't do. And here I am and the people are applauding. I was alone. I was labeled something that's not even close to me as a person and a human being.

MAGNUS. Bloodsworth was sent to the Maryland State Penitentiary for 2 years and spent 23 hours a day in a cell just above the gas chamber.

Magnus: What Bloodsworth didn't know was that three days after his conviction, the police and prosecutors learned about a compelling possible suspect. Someone who, just after Dawn's murder, had shown up at a nearby mental health clinic * * * with, according to one witness, fresh scratches on his face. Someone who told a therapist he was in trouble with a little girl. Someone who looked like the composite. But with Bloodsworth behind bars * * * the police seemed in no rush to check out the tip.

The Baltimore County Police refused to talk to me eye to eye about the case. But we obtained the detectives' report on their only meeting with the potential suspect—David Rehill. They wrote that although he resembled the composite, Rehill was smaller than the man the little boys described. They never checked his alibi; never put him in a line-up.

What do you say to the criticism that the system closed in on one guy, with some evidence, and that everybody just stopped looking at other things that didn't fit.

Lazzaro: I would say that unfortunately that is not all that rare of an occurrence in our criminal justice system.

Since those are the words of the detective in charge of the case, I am going to repeat them.

They ought to give us a little pause.

Lazzaro: I would say that unfortunately that is not all that rare of an occurrence in our criminal justice system.

Magnus: After two years under a death sentence, Bloodsworth finally seemed to catch a break. He got a new trial on a legal technicality * * * not because of the possible suspect. In fact, although the state had known about Rehill for two years, the information was withheld from the defense until just days before the second trial. Bloodsworth's lawyers didn't have time to investigate and didn't ask for a postponement, so the second jury never heard about this potential suspect. Bloodsworth was convicted again. When evidence about Rehill finally did get to the court, it was too late. Bloodsworth was sentenced to life.

Magnus: Kirk Bloodsworth would be in prison today were it not for his persistence and the help of a lawyer of last resort. In 1989, his fifth year in prison, Bloodsworth met Bob Morin.

Morin: I walked out of the prison. And I said—this is a little scary. This kid is innocent.

Magnus: But how to prove it? Morin re-investigated and rechecked everything. Three more years went by. It looked hopeless. And then Bloodsworth heard about sophisticated new DNA tests that weren't available when he was on trial.

Magnus: A private lab analyzed the tiny semen sample. In April of this year the result came back. Bloodsworth was completely eliminated as the source of the semen. Morin called him with the news.

Magnus: On June 28, almost 9 years after he was locked up, Kirk Bloodsworth's conviction was set aside. He was free at last.

What this story seems to indicate is that it is eerily easy with a weak case to convict an innocent man.

Lazzaro: Yes. In retrospect, it is.

Let me repeat that.

Magnus: What this story seems to indicate is that it is eerily easy with a weak case to convict an innocent man.

Lazzaro: Yes. In retrospect, it is.

Not only is it possible in retrospect, it is possible prospectively too because our system of justice is fallible, because we, as human beings, are fallible.

Some proponents of the death penalty might have just heard what I read and said, well, that is terrible and tragic, but mistakes are made. Mistakes, they might say, are a cost of doing business. When trying to operate a criminal justice system in which some very bad people must be punished very harshly, I can respect that response as a response in the abstract. But I do question whether those who offer that response would make it confidently at all if Kirk Bloodsworth were not a figure in a TV program, but also their father or their brother or their uncle.

I have to believe that if they thought a member of their family was innocent, but was nevertheless sentenced to death, they would question how a justice system worthy of that name could

presume the infallibility to impose a penalty with the finality of death. I find it hard to believe that rhetoric would be as demanding or as loudly uncompromising if they thought that a member of their own family risked being executed, even though innocent, by the Government. Would a mistake then just be a cost of doing business?

Some people say, well, what about a case that absolutely—I mean how about somebody who pleads guilty to murder? I mean, you cannot make a mistake if somebody pleads guilty to murder, can you? Oh, yes, you can. You can make a mistake even then. Recently, too.

The Commonwealth of Virginia versus David Vasquez. Vasquez pled guilty to murder. Vasquez was innocent, acknowledged later by the Commonwealth to be innocent and released after serving many years in prison.

The transcript of his plea of guilty is a fascinating document. I am going to read just a portion of it.

He entered a plea of guilty with a fixed term because he was afraid that he would be found guilty and sentenced to death and did not want to take that risk. In this case, the death penalty promoted the false plea. That is one interesting part of it. That is one impact of the death penalty which is not often discussed.

But what is even more intriguing about this plea of guilty is what the officers in charge of this case testified to at the time of the taking of the plea.

Mind you, they are talking about somebody who, by the acknowledgment of the Commonwealth of Virginia recently, is totally innocent of this crime. Somebody else committed the crime. But here is what the detective in charge said at the plea of guilty, if we want to talk about fallibility and worse. Listen to this one.

The detective: Eventually he told us about a dream that he had where he described this horrible dream. Based on the information that he gave us about those dreams it lined up exactly with the murder based on the information that we had.

Question: Now, Detective Shelton, in the course of your investigation of this case, have you had occasion to consult with any physicians about the medical significance of these dreams and their contents?

Answer: Yes.

Question: What did you learn from these physicians?

Answer: That the dreams are a way to repress a crime, explain away a criminal intent, and that is a very common way of repressing this memory.

Question: OK. During the course of your discussions with him about his dreams, did he reveal to you a number of facts concerning their content?

Answer: Yes. There were facts that came up in his dream that no one on the outside knew.

Question: Would you outline very briefly, Detective Shelton, what he stated?

Answer: Yes. One of the things he talked about was the victim's hands, and he described how he put her down and in his

dreams he put her down. In fact her body was found in that position. He indicated at one point prior to her hands being tied that she was assaulted in the middle of the living room. He indicated to us that after the break in he went to the living room. That was confirmed by the position of the rope and the pubic hairs found on the rope.

Question: The position of the rope was discussed. Is that correct?

Answer: Exactly. The rope was discussed in terms of the rope lying in the middle of the living room floor. He indicated that when he came in through the window, he stepped on a hose that extended to the dryer. There are also many things discussed that were not known to anyone but us. For instance he made reference to jewelry and where it was left and that information was known only to us. He also indicated that in his dream that there were also two or three Venetian blind cords cut. That information was also known only to us.

Question: Were there three Venetian blind cords cut?

Answer: Yes.

Question: What else did he tell you with respect to rope?

Answer: He also told us in his dreams that he took the cord and wrapped the victim's hands 10 times, and that was exactly how many times her hands had been wrapped. He told us that in his dream he stood there in front of the house for several minutes prior to banging on the window. This turned out to be a fact from the information given to us.

Question: What did he indicate with respect to the purse?

Answer: He indicated that he discovered the purse at the top of the steps and he indicated to us that in his dream he emptied it out, and it was already known to us that the purse had in fact been emptied out at the top of the steps. Finally, he indicated to us that he saw something in his dream on the kitchen table. He stated what he saw was a camera. Again, this information was only available to the authorities.

That is the testimony of the detectives introduced at the time of the plea of guilty of a man who was innocent at the time he pled guilty. That was the testimony which helped persuade a court to accept a plea of guilty. That is the testimony which could not have been accurate, and was not accurate.

Yes, even people who are entering a plea of guilty can be innocent of the offense. That was a plea to murder.

This amendment which I offer on behalf of a number of our colleagues and myself recognizes our own fallibility. It imposes a harsh penalty, yet allows the criminal justice system to correct for its mistakes.

Finally, a few words on deterrence and the death penalty. Some of the people who would be subject to the death penalty under this bill face a much greater chance of death from involvement in a drug deal or a terrorist act than an imposition of the death penalty. If a greater certainty of death does not deter, how will a lesser certainty have that effect?

Second, what statistical evidence there is indicates that the death penalty does not deter on a statewide basis. As this chart indicates, the States that have a death penalty have

a higher murder rate than the States where life imprisonment is the most severe penalty that can be imposed.

In 1990, the murder rates in the States with a death penalty was 9.5. In the States without a death penalty it was 8.4. In 1992, the murder rate in the States with a death penalty had remained at 9.5. The murder rate in States without the death penalty actually declined somewhat to 7.9. But this pattern is the same as it has been for decades. The murder rate in States that have a death penalty is higher than the murder rate in the States that have life in prison as the harshest penalty that can be imposed.

Within the last couple of weeks, the district attorney in Texas, named Patrick Batchelor, raised some questions on a network news program about the deterrent value of the death penalty, as compared to life imprisonment without the possibility of release. And then we asked him if he would put his thoughts in a letter.

He wrote me the following:

Senator LEVIN, * * * I want you to understand that I firmly want the harshest punishment available to be handed out to the worst of criminals who commit these terrible murders. Having this belief and having prosecuted many capital murder cases where the death penalty was handed down, I inevitably have come to some conclusions concerning the death penalty as a punishment and as a deterrent to crime.

Then, skipping down, he said:

I feel that locking a person in a cage for the rest of his natural life with no hope of parole or ever getting out of that cage, would be a far more harsh punishment than simply putting him to sleep.

I ask unanimous consent that this letter from the district attorney of Navarro County, Patrick Batchelor, be printed in the RECORD.

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

NOVEMBER 3, 1993.

Senator CARL LEVIN,
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: I am writing in response to my conversation with Ms. Jackie Parker concerning my appearance in a report on capital punishment televised on the CBS Evening News a week or so ago. To clarify my position on capital punishment and the death penalty, I want you to understand that I firmly want the harshest punishment available to be handed out to the worst of criminals who commit these terrible murders. Having this belief and having prosecuted many capital murder cases where the death penalty was handed down, I inevitably have come to some conclusions concerning the death penalty as a punishment and as a deterrent to crime.

I personally feel that considering the procedure and method used presently to inflict the death penalty, it has become no different than checking into the hospital to have your appendix taken out and just not waking up from the anesthesia. I feel that locking a person in a cage for the rest of his natural life with no hope of parole or ever getting out of that cage, would be a far more harsh punishment than simply putting him to sleep.

As far as a deterrent to crime, I think most anyone looking at the crime statistics simply has to concede that the death penalty has not deterred capital murders. I say this full well knowing that there is no absolute way we can gage whether potential criminals consciously decide not to commit murder when they engage in criminal activities because of fear of the death penalty. I also can not say that a sentence of life without parole would deter capital murderers either, but I think it may be time to consider it.

If I can be of further assistance to you, please let me know.

Sincerely,

PATRICK C. BATCHELOR.

Mr. LEVIN. Mr. President, the amendment we offer imposes a very harsh penalty: Life imprisonment without the possibility of release. It imposes it for the very awful crimes that are described in the bill before us, but it does not run the risk of adding to those human tragedies where we have executed by mistake innocent persons. Until our system of justice is infallible—and it is far from that—our system will make mistakes. A death penalty mistakenly inflicted cannot be cured, unlike other mistakes in our justice system.

Life without the possibility of release, in the words of District Attorney Batchelor, is a "far more harsh punishment than simply putting a defendant to sleep." It also has the advantage of allowing our mistakes to be corrected. I yield the floor.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Utah controls 30 minutes. The Senator from Michigan controls 9 minutes 27 seconds.

Mr. BIDEN. Mr. President, last week I introduced an amendment to reauthorize the Court Appointed Special Advocate Programs, the Child Abuse Training Programs for Judicial Personnel and Practitioners, and the grants for televised testimony under the Victims of Child Abuse Act, a measure on which I worked with Senator REID to pass as part of the Crime Control Act of 1990. I commend both Senator REID and Senator HATCH for cosponsoring this measure.

In the past, children who were victims of abuse were often victimized a second time by our criminal justice system. The Victims of Child Abuse Act supported programs to reduce the trauma of child victims.

Through the Court-Appointed Special Advocate Program, children are assured that their interests will be adequately represented. Advocates provide for the immediate reporting of abuse, facilitate the prompt review of cases, and make recommendations for the child's best interests.

Through the Child Abuse Training Program, judicial personnel and practitioners are trained to improve the system's handling of child abuse cases. One of the main objectives is to avoid the unnecessary placement of children in foster care or institutional care.

Finally, through televised testimony, children are given a voice. Closed circuit televising and the video taping of testimony alleviate the terror that has, in the past, silenced too many of our children when forced to face their assailants in court.

These programs have gone a long way in making the system of justice more sensitive to children's needs. I am honored to have played a role in their development.

Mr. HATCH. Mr. President, I oppose the amendment offered by my colleague from Michigan. This amendment would require that capital defendants be given a sentence of mandatory life rather than a possible death sentence. It is intended to abolish capital punishment in the Federal system.

Mr. President, the proponents of this provision imply that this bill creates a Federal death penalty where none had existed before. This is not the case. There has always been a Federal death penalty. What we have lacked since the 1972 Supreme Court decision in *Furman versus Georgia*, is the constitutional procedures to allow the death penalties already on the books to be constitutionally imposed and carried out.

This bill puts in place the necessary procedures for 47 separate statutory offenses. These offenses all require murder to occur with the exception of cases involving treason, espionage, and attempted assassination.

I respect those of my colleagues who oppose the death penalty. But the people of America have spoken on the question of the death penalty. Although the death penalty statutes of 37 States were invalidated in 1972 as a result of the Supreme Court's decision in *Furman versus Georgia*, in the years that have followed 40 State legislatures have voted to adopt the death penalty. Today, 36 States have the death penalty on the books. The overwhelming margins by which the death penalties have been adopted by referendum in States like California and Illinois are also testament to the Nation's sense that this ultimate form of punishment is needed in appropriate cases.

The death penalty can be justified on several basis. First, there is retribution. Retribution embodies society's view that the most serious of crimes warrant the most severe punishment. That is also my personal view. Although I would personally use the death penalty in limited cases—and our bill prevents unfettered imposition of the death penalty—there are some crimes so brutal, so depraved, and unconscionable that justice dictates imposition of the death penalty. Some will assert that retribution should play no role in our system of justice. In response, I would note that the role of retribution in justifying the death penalty has been recognized by the Supreme Court in *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

Another justification for the death penalty is its deterrent value, both as a general deterrent and specific deterrent. No one can question its effectiveness as a specific deterrent. Murderers who are executed will clearly never kill again. Yet, there are convicted murderers who were not sentenced to death who have, either in prison or out on the streets, killed again. Had these murderers been given the death penalty, it is an undeniable fact that their second victims would still be alive.

The death penalty is also a general deterrent to crime. For some offenses this is undeniable. Consider treason, espionage, murder for hire—it is clear that the likelihood of such a crime being committed will be significantly diminished if the potential punishment includes the death penalty. This is a price some criminals will not want to risk. Finally, I believe the mere existence of the death penalty deters the commission of capital crimes generally. By associating the penalty with the crimes for which it is inflicted, society is made more aware of the horror of those crimes, and there is instilled in the citizens a need to avoid such conduct and appropriately punish those who do not.

Mr. President, more attention is given to the establishment of truth in death penalty cases than ever before. Most death penalty cases involve no claim of innocence on the part of the criminal—many confess their criminal actions and never withdraw or dispute their confession. Take, for example, the just completed trail in Virginia of Lonnie Weeks, who fatally shot Virginia State Trooper Jose Cavazos. He does not deny his guilt. In fact, he confessed to the murder and took the stand at his own sentencing and admitted guilt. His defense strategy, as in so many other cases, was to avoid imposition of the death penalty. Would those who say they oppose the death penalty because of the possibility of error, not oppose the death penalty in those cases where the defendant admits to the crimes? I doubt it.

Further, no one should be misled by the claims that the death penalty is carried out on innocent persons. I want to be abundantly clear that I do not condone the execution of an innocent person. Nor would I defend a system that does not provide appropriate safeguards against such an execution—safeguards aimed at freeing the innocent, not ending the death penalty for the guilty. It is claimed by death penalty opponents that 23 innocent people were executed in the United States. This is not true. Utah law professor and former Assistant U.S. Attorney Paul Cassell conclusively demonstrated at a recent Judiciary Committee hearing that no alleged instance of an alleged innocent person being executed has ever been proved. Mr. Cassell and former U.S. Attorney Stephen Markman authored the leading

study in this area which refutes each alleged instance of mistaken execution.

For example, take the often cited example of Joe Hill, the celebrated union organizer who, it is alleged, was wrongly executed by the State of Utah. Whatever his accomplishments as a union organizer, he was eventually convicted of a sordid murder that was not motivated by any high purpose whatsoever. He robbed a grocery store on West Temple Street in Salt Lake City, leaving the store owner and his son dead. For that reason, and no other, he was tried, convicted of murder, sentenced to death and executed.

Death penalty opponents have asserted that Joe Hill was innocent and wrongfully executed. What is the authority for this assertion? The principal source they cite to establish Hill's innocence is a book by Wallace Stegner entitled "Joe Hill: A Biographical Novel." Mr. Stegner is an author who I respect, but he is a novelist, not a historian. Even Mr. Stegner admits this in the forward of his book. He writes that the book "is fiction, with fiction's prerogatives and none of history's limiting obligations. Joe Hill, as he appears here—is an act of the imagination." This is what social scientists opposed to the death penalty cite as research? A novel.

Others will argue that the risk of executing an innocent person have been increased as a result of the Supreme Court's 1993 decision in the case of *Herrera v. Collins*, 113 S. Ct. 853 (1993). I want to remind my colleagues that the evidence in the Herrera case was overwhelming. Mr. Herrera is not an innocent man under the law. He was found guilty beyond a reasonable doubt and convicted of murdering a Texas police officer. As Justice O'Connor noted in her concurrence, "not even the dissent expresses a belief that [Herrera] might possibly be innocent." [113 S.Ct. at 871]. The case against Herrera included a deathbed declaration by his victim identifying him as the killer; a lengthy handwritten letter found on Herrera's person at the time of his arrest in which he stated that he was "terribly sorry" for crimes "that brought grief to the lives" of his victims. He even pled guilty to the murder of a second police officer.

The underlying issue before the Court in Herrera was whether the current capital sentencing schemes of the States have a sufficient array of safeguards to prevent the execution of an innocent person. The Court correctly recognized that they do. Furthermore, the Court in Herrera did leave the door open for consideration of future cases where the evidence of innocence is great and the State fails to provide a process for considering such claims after a person has been convicted.

Before I yield the floor, I want to discuss a few specific cases where the

death penalty is clearly warranted. For every misleading case cited by death penalty opponents, like the Hill or Herrera cases, there are numerous undisputed cases of depraved, heartless murders which warrant imposition of the death penalty. I believe a discussion of a few examples will demonstrate to those of my colleagues who oppose the death penalty why I, and a majority of Americans, support capital punishment.

In Ogden, UT, Pierre Selby and William Andrews robbed a hi-fi shop and in the course of their armed robbery, forced five bound victims—three of whom were teenagers—to drink cups of poisonous liquid drain cleaner. Selby also tried to force Orrin Walker, the father of one of the teenagers, to pour the drain cleaner down his own son's throat. When Walker refused, Selby attempted to strangle him to death with an electrical cord and then repeatedly kicked a ballpoint pen deep into his ear. Selby then proceeded to shoot each one of his victims in the head. Both Selby and Andrews were convicted for their crimes and received the death penalty.

In Illinois, there is the case of Henry Brisbon, the I-57 murderer. He was let off death row on a technicality. Then he turned around and murdered a prison guard. That was after having kidnapped, tortured and murdered numerous women on I-57 in Illinois.

The case of Hernando Williams who kidnapped a woman teacher off the streets of Chicago. He drove around with her in the trunk of his car for 3 days. He drove to his bail hearing for an unrelated rape charge with the still live body of his victim pounding on the inside of his car trunk. Then after forcing her to call home to say goodbye forever to her husband and children, he murdered her in cold blood.

Finally, the case of Robert Alton Harris should be mentioned. We must not forget the heinous crime Harris committed. On July 5, 1978, just 6 months after he completed a 2½ year prison term for beating a man to death, Harris decided to rob a bank in San Diego. Looking first for a getaway car, he spotted two teenage boys parked at a fast-food restaurant. Harris forced the youths at gunpoint to drive to a nearby reservoir, where he shot and killed them as they begged God to save them. Later, he ate their unfinished hamburgers.

I ask all of my colleagues, what kind of punishment is fitting for these crimes? I respect the beliefs of those who oppose capital punishment but I must admit that it is difficult for me to understand how anybody could oppose capital punishment in these cases.

These cases truly provide examples of individuals who should face imposition of the death penalty. Under current Federal law, were the Federal Government to have jurisdiction over the un-

derlying offense, the death penalty could not even be considered.

In closing, this amendment would prohibit juries from even considering the death penalty for the types of crimes I outlined above. Instead, it would provide for a mandatory life sentence. The law abiding citizens of this Nation demand action on Federal death penalty legislation, not life imprisonment legislation. They deserve to have a death penalty which will deter violent action against them and will provide swift, appropriate punishment for individuals who choose to commit heinous crimes.

For these reasons, I oppose this amendment.

Mr. HATCH. We are prepared to yield the remainder of our time.

The PRESIDING OFFICER. The Senator from Utah has indicated a willingness to yield back the remaining time of the 29 minutes 40 seconds.

Mr. LEVIN. Mr. President, I know of no one coming to the floor at this time that wants to speak on the issue. In the absence of such folks, I will yield the remainder of my time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back.

The vote on the Levin amendment will occur immediately after the vote on the Smith amendment tomorrow, November 17.

Mr. HATCH. I ask the chair how many votes are lined up now starting at 9:30?

The PRESIDING OFFICER. Including the amendment that was just ordered, there will be total of 7 votes tomorrow morning.

Mr. HATCH. If my understanding is correct, this completes the work on the crime bill, subject to those statements in the morning and those particular amendments.

Mr. BIDEN. Mr. President, I think there is one potential outstanding amendment that remains.

Mr. HATCH. Other than Senator DOLE's amendment. Is that correct?

The PRESIDING OFFICER. Under the unanimous-consent agreement, the only amendment which is available to be offered is an amendment by Senator DOLE.

Mr. HATCH. And as I understand it, the manager's package.

Mr. BIDEN. Yes. Is that correct, Mr. President?

The PRESIDING OFFICER. Yes; that is correct.

RAPID DEVELOPMENT FORCE AMENDMENT

Mr. LIEBERMAN. Mr. President, it is time for us to recognize that the Federal Government must send more than money to our State and local officials to help them fight crime. Our State

and local police are simply overwhelmed. Criminals have the upper hand in too many cities, neighborhoods and communities across the country. The recent appeal by the Mayor of our Nation's Capital to send the National Guard, as well as the actual deployment of the Guard in Puerto Rico, are evidence enough of the extent to which local officials are desperate for Federal action.

Last week, the Senate adopted my amendment to provide the President with the authority to respond to such calls for help from local officials by declaring areas that have been particularly hard-hit by crime as violent crime and drug emergency areas. The President, with the assistance of the Attorney General, will be able to direct agencies to respond with personnel, equipment, technical, financial, managerial and other assistance, much as he is able to respond to natural disasters. I am very appreciative of the support I received from the chairman and ranking member of the committee on the amendment. I had hoped to offer a supplemental amendment that would have provided the President with a powerful additional tool with which to lead that response. Given the large number of proposed amendments to the bill and the justifiably set time agreement, my amendment has been withheld. However I am encouraged by my colleagues' interest in this issue and would like to especially thank my colleague from Massachusetts, Senator JOHN KERRY, who planned to cosponsor the amendment. Because I hope to offer the amendment at a later date, I wanted to take this opportunity to review it with my colleagues.

The amendment would have authorized the creation of a Federal rapid deployment force of 2,500 highly trained, equipped, and motivated crime fighters that would be specially designed to restore order and assist local police on a temporary basis to combat crime and violence. The rapid deployment force is a cavalry of sorts that could be dispatched, under the direction of the Attorney General, into any community in the country at the request of local authorities to provide for short-term backup for the local police force when it is confronted with a crime emergency. The unit is intended not only to assist in investigations, arrests, and prosecutions, but to participate in the patrolling of particularly hard-hit areas. The members of the unit could be drawn from existing Federal law enforcement agencies such as FBI, DEA, BATF, and the Marshals Service.

In order to ensure that this assistance is not misdirected or misused, State and local law enforcement officials would have to demonstrate that their existing resources are being organized and coordinated as effectively as possible. Local communities would be required to submit plans demonstrat-

ing the localities will take the necessary steps to prevent a rebound in the crime levels following departure of the rapid deployment force. Through these provisions, the force can be used to leverage improvements in local law enforcement.

The deployment force is designed to help a locality restore order and buy it time to organize and beef up its own anticrime and antiviolence efforts. The deployments of the force will be for limited duration to allow regrouping of local efforts. Deployment force members will be experience and highly trained, ready not only to back up local police but also to train them in the latest techniques of combating drug crime, gangs, and juvenile violence. This training role would be particularly helpful to the small and midsized cities that do not yet have sophisticated forces and are now being hit for the first time by a tidal wave of violence and crime they are not fully equipped to handle.

The case for this special unit is reinforced by recent events in my own State. Facing a particularly violent rash of gang activity in Hartford, city government and law enforcement officials launched Operation Liberty—an aggressive State and local effort to reduce violence in a number of targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in dealing with this emergency, the State has provided additional police officers and other forms of tactical support sorely needed in certain areas of the city.

As a result of these coordinated efforts, citizens in affected areas are regaining a sense of security that was stripped from them by these gangs. Hartford Police Department's statistics reveal that during the first 35 days of Operation Liberty crimes against persons went down 51 percent and 38 percent in the two communities that were the focus of the patrols, as compared to the 5 weeks prior to the operation. Reported incidents involving firearms went down 64.8 percent and 61.8 percent in those two communities and 40 percent across the city.

While there will be critics of this admittedly strong medicine I am prescribing, the history of the Federal Government's role in law enforcement has been one of responding to constantly changing local needs, not—as some suggested in explaining their concerns about my amendment—a static division of authority between Federal authorities and State or local authorities. A review of the history of American law enforcement reveals what I mean.

The American law enforcement system, much like so much else in the new republic, was modeled on the system of local law enforcement in England at the time of our independence. England's system was entirely local, with a

constabulary drawn from local communities and controlled by local communities. America adopted that approach at the time it was founded. With the passage of the U.S. Constitution, a system of Federal courts and U.S. attorneys evolved for the enforcement of Federal laws. But this was a modest initial step.

Meanwhile, the pressures of industrialization and the Foreclosure Acts, which blocked access to agricultural lands, created a large, poor underclass in England with an exploding level of violence and crime. Sir Robert Peel, twice England's Prime Minister in the first half of the 19th century, saw, while serving as Home Secretary in 1829, the need for a national effort to combat what was increasingly a national problem, and so he invented Scotland Yard and the first modern police force, nicknamed the "Bobbies" from Peel's name. These new institutions evolved into a central, national force to combat crime.

America missed this step in England's movement toward national law enforcement, and the experience here with industrialization was far less painful. With a vast area to farm and occupy, and a corresponding expanding economy, America avoided England's problems of crime and violence for most of the 19th century. However, violence and crime in the Nation's huge frontier areas called for national law enforcement, with the cavalry and U.S. marshals playing a central role.

The first major step in national law enforcement in the United States came with the end of the Civil War and the early civil rights laws. To enforce these laws, the Federal Government found it necessary to establish a centralized law enforcement system dealing with what had previously been considered local issues, including voting rights, civil rights, and related violence over enforcement of these laws. The Federal Government at the time asserted the authority to establish national law enforcement and there was major growth in the Justice Department, shifting it toward a national law enforcement body. This effort was in direct response to a local problem.

With the Hayes-Tilden election and the withdrawal of Federal troops from the South, national law enforcement efforts were put on hold. However, with the post-World War I prohibition laws and the corresponding growth in organized crime, the Federal Government again asserted, in response to local needs, a national law enforcement role. The FBI was organized and expanded to combat these problems. It also took on a role fighting interstate crimes, such as bank robbery and kidnapping, that locally organized law enforcement officials could not handle.

Since this post-World War I period, the growth of national law enforcement has been steady. The Federal

Government is now deeply involved in combating drug traffic, organized crime, and the myriad of Federal crimes that come out of these areas. The FBI, DEA, AFT, and U.S. attorneys' offices are now elements in a long-established national crime effort, run centrally by the Federal Government but in cooperation with local officials.

The issue before us is not whether there is going to be a national law enforcement effort; there are many precedents for it and major elements have long been in place. The Federal Government has played an increasing role in supporting local efforts and has long been available in criminal areas for back-up and support. The Federal response to crime has always been pragmatic and flexible; one of the Nation's law enforcement strengths has been that we have avoided becoming locked into rhetoric over local or Federal control but instead have cooperated to meet local needs as they came up. The very effective Federal-State-local crime task forces continue that tradition today in numerous American cities. The amendment I would have proposed simply would have continued this ongoing historical process by making a Federal backup force available to help with local law enforcement.

More and more crime today involves drugs and weapons that are transported over State lines. Gangs are increasingly national in scope. There is substantial historical precedent for Federal action when local law enforcement needs to call on its broad Federal authority over law enforcement to help meet local needs and local crises where local officials are overwhelmed.

I note that there is very substantial protection under this proposed amendment for local law enforcement jurisdiction. First, the rapid deployment force can be used only if the chief executives of both State and local governments requested it. Second, the force would be deputized into the local enforcement agency. Third, the force would serve under overall local control, subject to a detailed command and operational deployment agreement acceptable to both State and Federal authorities. So the amendment carefully protects local law enforcement prerogatives and authority.

Mr. President, I believe that the provisions of this amendment must be enacted into law in the future if we are to send an effective signal to lawbreakers that we take their crimes seriously and are willing to fight back. The infusion of added manpower and other logistical assistance into a crime-plagued region, quickly bolsters the limited scope of local police, giving the law enforcers the force they need to use against lawbreakers. We need to adopt what we have learned from our military forces—that nothing short of overwhelming force should be brought to bear in a

battle against an enemy. That concept worked in the gulf war, and it can work in our streets if we commit ourselves to devoting the resources necessary to get the job done right.

I recognize that this amendment would have called for a significant investment of Federal resources. However, such funds as are necessary to implement this amendment could be drawn from the crime bill trust fund established by this act. We are creating in this bill some 100,000 new police positions for local communities. It seems to me that we could appropriately reserve a small percentage of these slots for a backup force which would be available as reinforcement to local law enforcement.

I believe this amendment would have been an important crime-fighting initiative. Its adoption would have gone a long way in helping to restore the public's trust and faith in government's ability to provide the security and protection to which they are entitled and deserve. I look forward to continuing the discussion concerning this amendment with my colleagues and to its inclusion in future crime control and prevention legislation.

I ask unanimous consent that the draft amendment be printed in the RECORD following my remarks.

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

At the appropriate place insert the following:

Subtitle —Rapid Deployment Strike Force
SEC. __. ESTABLISHMENT.

(a) IN GENERAL.—The Attorney General shall establish in the Federal Bureau of Investigation a unit, to be known as the Rapid Deployment Force, which shall be made available to assist units of local government in combatting crime in accordance with this subtitle.

(b) ASSISTANT DIRECTOR.—The Rapid Deployment Force shall be headed by a Deputy Assistant Director of the Federal Bureau of Investigation (referred to as "Deputy Assistant Director").

(c) PERSONNEL.—

(1) IN GENERAL.—The Rapid Deployment Force shall be comprised of approximately 2,500 Federal law enforcement officers with training and experience in—

(A) investigation of violent crime, drug-related crime, criminal gangs, and juvenile delinquency; and

(B) community action to prevent crime.

(2) REPLACEMENT.—To the extent that the Rapid Deployment Force is staffed through the transfer of personnel from other entities in the Department of Justice or any other Federal agency, such personnel of that entity or agency shall be replaced through the hiring of additional law enforcement officers.

SEC. __. DEPLOYMENT.

(a) IN GENERAL.—On application of the Governor of a State and the chief executive officer of the affected local government or governments (or, in the case of the District of Columbia, the mayor) and upon finding that the occurrence of criminal activity in a particular jurisdiction is being exacerbated by the interstate flow of drugs, guns, and

criminals, the Deputy Assistant Director may deploy on a temporary basis a unit of the Rapid Deployment Force of an appropriate number of law enforcement officers to the jurisdiction to assist State and local law enforcement agencies in the investigation of criminal activity. For the purposes of this subtitle, the term "State" shall be deemed to include the District of Columbia and any United States territory or possession.

(b) APPLICATION.—An application for assistance under this section shall—

(1) describe the nature of the crime problem that a local jurisdiction is experiencing;

(2) describe, in quantitative and qualitative terms, the State and local law enforcement forces that are available and will be made available to combat the crime problem;

(3) demonstrate that such State and local law enforcement forces have been organized and coordinated so as to make the most effective use of the resources that are available to them, and of the assistance of the Rapid Deployment Force, to combat crime;

(4) demonstrate a willingness to assist in providing temporary housing facilities for members of the Rapid Deployment Force;

(5) delineate opportunities for training and education of local law enforcement and community representatives in anticrime strategies by the Rapid Deployment Force;

(6) include a plan by which the local jurisdiction will prevent a rebound in the crime level following departure of the Rapid Deployment Force from the jurisdiction; and

(7) such other information as the Deputy Assistant Director may reasonably require.

(c) CONDITIONS OF DEPLOYMENT.—The Deputy Assistant Director, upon consultation with the Attorney General, may agree to deploy a unit of the Rapid Deployment Force to a State or local jurisdiction on such conditions as the Deputy Assistant Director considers to be appropriate, including a condition that more State or local law enforcement officers or other resources be committed to dealing with the crime problem. The unit shall serve under the overall control of the senior state or local law enforcement authority in the deployment area, pursuant to a clearly delineated command and operational deployment agreement reached prior to the deployment of the Deputy Assistant Director and such senior state or local authority.

(d) DEPUTIZATION.—Members of the Rapid Deployment Force who are deployed to a jurisdiction shall be deputized in accordance with State law so as to empower such officers to make arrests and participate in the prosecution of criminal offenses under State law.

SEC. __. LEAVE SYSTEM.

Notwithstanding the provisions of subchapter I of chapter 63 of title 5, United States Code, the Attorney General of the United States shall, after consultation with the Director of the Office of Personnel Management, establish, and administer an annual leave system applicable to the Federal law enforcement officers serving in the Rapid Deployment Force.

SEC. __. LOCATION OF UNITS AND FUNCTIONS WHEN NOT DEPLOYED.

(a) LOCATION.—Units of the Rapid Deployment Force shall be based in the nation's major regions at locations and in facilities determined by the Attorney General. Members of the Rapid Deployment Force shall receive training and education in the regional crime problems of the region where they are based. The Deputy Assistant Director whenever possible shall deploy units in the region where they are based.

(b) NON-DEPLOYMENT FUNCTIONS.—When not deployed pursuant to a deployment agreement to a locality, the Deputy Assistant Director shall use members of a unit to provide special training and education to local law enforcement agencies. To the extent Rapid Deployment Force units are not needed for deployment or training, members of such units shall be available to support ongoing regional Federal Bureau of Investigation efforts and programs, and, as appropriate, other federal law enforcement efforts, until required for deployment and training.

SEC. — AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

Mr. DASCHLE. Mr. President, I am pleased to be a cosponsor of Senator DECONCINI's amendment to facilitate tribal government participation in the Cops on the Beat Program. This amendment will go a long way toward ensuring that tribal law enforcement agencies have the resources needed to address the serious crime problems facing our reservations today. As such, it is a significant addition to the crime bill.

This amendment enhances an already strong crime fighting tool. The Cops on the Beat Program is an innovative means to restore safety and a sense of security to our streets, and I commend the administration for its commitment to community-oriented policing. This concept holds special potential for Indian communities. Community policing is an idea that, given the chance, should flourish and would have a notable effect on the crime rate on Indian reservations. This amendment will help ensure that tribes have an opportunity to participate fully in this program.

The amendment will do four things. First, it will ensure that funding received by tribes under the Cops on the Beat Program does not in any way supplant or jeopardize funding received from the Bureau of Indian Affairs. Second, it will allow tribes to use federally appropriated money to satisfy the 25 percent non-federal funds requirement. This is important because tribes, like the District of Columbia—which is already covered under this provision—receive most of their law enforcement funding from Federal appropriations. Third, it will allow a tribe to submit grant proposals directly to the Attorney General, instead of submitting them first to the State. This will allow tribes to bypass the ranking process that most grant applications must undergo at the State level. Finally, this amendment expresses the sense of the Senate that tribes should receive an appropriate amount of funds under the Cops on the Beat Program.

Mr. President, it is clear that crime is reaching into the farthest corners and pockets of our society like never before. One need only listen to the statements and the stories—and even the personal testimony—given on the Senate floor in the past 2 weeks to realize that crime is touching not only

those in metropolitan areas, but residents of small towns and rural communities as well. We would be hard-pressed to find a person in America who is not touched in some way by the violence pervading our communities. This includes communities on our Nation's Indian reservations.

As a Senator who represents a number of Indian tribes, I am particularly sensitive to the need for additional law enforcement funding on reservations. I would like to briefly tell you about the law enforcement situation on one of South Dakota's reservations. The Pine Ridge Indian Reservation is located in the southwest corner of South Dakota. Pine Ridge is our Nation's second largest Indian reservation, covering an area of about 100 square miles. It has a population of over 20,000. It is also home to some of our Nation's poorest communities—it encompasses all of Shannon County, which has been listed as the poorest county in the United States in the last two national censuses. I am told that the unemployment rate on Pine Ridge is 60 to 70 percent or higher.

And yet, Pine Ridge's police force is only 100 persons strong. And this is not just police who are out on the street—it includes dispatchers, investigators, and others whose tasks are an integral part of the overall effort to combat crime. Pine Ridge is divided into nine districts, each of which has at least one community. As in so many other communities, the number of cops on the beat on Pine Ridge is not high enough. Our reservations, and Pine Ridge is only one example, are in direct need of more police on the street. The Cops on the Beat Program is an innovative attempt at addressing this need, and the community policing idea in general is one that promises to work well on reservations.

We are devoting serious effort and a significant amount of time to addressing the issue of crime. And that is as it should be. It is one of the most pressing issues facing our Nation today. The crime bill we are considering is a comprehensive and far-reaching effort to address this problem. As we debate its provision, we must ensure that no one is left out of our solution. Funding for tribal law enforcement is severely deficient, and adoption of this amendment constitutes a long-overdue step toward ensuring that the needs of tribal law enforcement agencies are not overlooked any longer. Indian communities should be given every appropriate chance to participate in this program. This amendment contributes to that objective.

Mrs. FEINSTEIN. Mr. President, I rise today as a member of the Senate Judiciary Committee to address the issue of habeas corpus reform and my strong conviction that no such reform should be effected by this Congress without complete public hearings on

the matter. There is, I believe, strong bipartisan agreement on that point.

Abuse of the writ of habeas corpus—most egregiously by death-row inmates who file petition after groundless petition—has imposed substantial burdens on already overtaxed courts and delayed properly ordered executions in case after case.

I want to see true reform achieved in this area. There are legitimate questions, however, about whether title III of S. 1607 and Senator SPECTER's legislation, neither of which have been subject to public hearings, are the best vehicles to achieve such reform. I, and many other Senators, have concluded that they are not.

I did not come to that decision lightly. This is a highly complicated issue; one that puzzles many lawyers. And habeas reform is even more difficult for a non-lawyer, like me.

Legal experts from throughout the country, and particularly from my own State of California, object strenuously to the habeas corpus reform provision in this crime bill and in S. 1657. Rather than repair a system that is now abused, they tell me that the so-called reform efforts now before the Senate will only result in more baseless appeals and more delays.

The input of these experts, Democrat and Republican alike, has been very persuasive. Before detailing what they have had to say, let me take a minute to describe one case that figures prominently in this debate and which has impacted my views on the issue.

ROBERT ALTON HARRIS CASE

On July 5, 1978, Robert Alton Harris murdered two teenage boys near San Diego, CA. Following a jury trial, he received a death sentence on March 6, 1979. His conviction became final in October 1981. Yet, Harris was able to delay the enforcement of California's capital sentence until April 21, 1992—almost 14 years later.

Over that time, Harris filed no fewer than six Federal habeas petitions, and another 10 such petitions in State court. Five execution dates were set during the pendency of his case. In all, Harris and his attorneys engineered almost 14 years of unresolved grief for the survivors of his young victims.

Against this backdrop, one of the most persuasive arguments that I have heard for striking title III of this crime bill was made in a letter to me dated October 12 from Dan Lungren, attorney general of the State of California. He wrote:

[If] Title III were in effect at the time of the Harris case, my department would likely still be litigating this case in federal court!

As Mr. Lungren underscores, the Senate must approach this issue very carefully and, indeed, guarantee that true reform is achieved.

Let me now outline what senior law enforcement officials in my State and in every corner of the country have had

to say about the proposed habeas corpus reforms in the crime bill and in Senator SPECTER's independent legislation, S. 1657.

ATTORNEYS GENERAL OPPOSED

A majority of attorneys general in the ninth circuit—the court system with 25 percent more habeas corpus reforms than the next most burdened circuit—oppose title III of the omnibus crime bill.

The attorneys general of seven jurisdictions in the ninth circuit—of 11 total—support striking title III from this crime bill. Those seven regions are: Arizona, Alaska, my home State of California, Idaho, Montana, Nevada, and the Northern Mariana Islands.

They are joined in opposition to title III by 11 other attorneys general throughout the country in: Alabama, Colorado, Florida, Georgia, Nebraska, North Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming.

In total, 18 State attorneys general agree that this Congress should strike the habeas corpus provisions of the crime bill now before the Senate.

In a joint and bipartisan letter of October 29, 1993, 14 of these attorneys general wrote:

Significantly, many of the provisions contained in * * * Title III have never been debated in the Congress * * *. The legislation would also overturn or modify key U.S. Supreme Court precedent which promotes finality in our criminal justice process, including the Teague doctrine, which is essential for capital and non-capital cases. In addition, concerns have been noted over the impact of the legislation on the deterrent objective of the death penalty. All of these consequences should be carefully studied before Congress embarks down this legislative path.

I ask unanimous consent that the joint letter from which I've quoted, and similar correspondence from individual attorneys general that I have received, be printed in the RECORD at the conclusion of my remarks.

Obviously, these chief law enforcement officials want reform, but they want real reform.

DISTRICT ATTORNEYS OPPOSED

In addition to the opinions of State attorneys general, I also sought and received the advice of district attorneys, chiefs of police, and sheriffs throughout California.

Virtually every one of California's 58 district attorneys—and a unanimous board of directors of the California District Attorneys Association—oppose the habeas provisions of S. 1607.

Let me quote from the Association's Resolution of October 26, 1993:

The California District Attorneys Association Board of Directors strongly supports any motions to strike the habeas corpus provisions from the omnibus crime bill. * * * The merits of any habeas reform bill should be considered independently of other crime reform issues. The habeas provisions contained in Title III of the omnibus crime bill should not delay consideration of other anti-crime measures.]

CHIEFS OF POLICE/SHERIFFS OPPOSED

California's district attorneys are in good company. The chiefs of police or sheriffs of 24 California cities and counties spread across the State also have written to me directly to share their conviction that title III should be deleted from the bill now before the Senate. They wrote on behalf of: Baldwin Park, Costa Mesa, El Monte, Foster City, Fullerton, Glendale, Glendora, Hawthorne, Huntington Beach, Irvine, Laguna Beach, Lassen County, Long Beach, Manhattan Beach, Marysville, Montebello, Monterey Park, Pomona, Sacramento, San Carlos, San Luis Obispo, Santa Ana, Santa Barbara, and Walnut Creek.

The reason for this deep and broad concern is clear: this so-called reform will actually create exceptions and loopholes that permit endless, protracted litigation.

Although drafted with the best of intentions and care by Chairman BIDEN and Senator SPECTER, there is serious and educated doubt that title III of S. 1607 will advance the current state of the law with regard to habeas corpus.

Let me highlight three specific problems with the reforms proposed in S. 1607.

First, there is currently a one bite of the apple rule for habeas corpus petitions, according to California's attorney general.

In order for a defendant to file a second petition based on a new evidence, for example, he or she must show cause as to why the claim was not previously raised and that prejudice resulted. Alternatively, the petitioner may demonstrate that there has been a miscarriage of justice—for instance, that he or she is factually innocent or factually ineligible for the death penalty.

Under title III, however, petitioners would for the first time, have been able to present evidence related to mitigating factors in sentencing that would not have been deemed relevant or admissible when they were first sentenced, such as whether they were exposed to fetal alcohol syndrome, or parental abuse.

Thus, while the claim is made that title III would preserve the one bite rule, it actually expands the exceptions to the rule in a manner that would have allowed prisoners to file habeas petition after successive habeas petition had it become law. The exceptions would, in effect, have swallowed the one bite rule.

Second, the proposed reforms will undermine an important doctrine in habeas cases articulated by the U.S. Supreme Court in *Teague v. Lane* and refined in subsequent cases.

Today, once a judgment becomes final, the *Teague* doctrine prevents Federal courts from applying new rules of law not in effect when the defendant was convicted except in very narrow and well-understood circumstances.

Title III, as written, would expand the opportunities to apply newly announced rules to reverse State death penalty convictions. This provision also could result in prolonged habeas appeals.

Although S. 1607 is said to incorporate the *Teague* ruling, I am advised that it actually opens wide the door for newly-announced decisions to be applied retroactively.

Third, title III sets specific standards for court-appointed attorneys who must be provided to convicted felons. These standards are so strict, in fact, that fewer than 1 in 400 of California's 125,000 lawyers would meet them. As a result, this reform sets States up for inevitable lawsuits based on their failure to comply with mandated counsel qualifications standards.

Moreover, at present, there is no constitutional right or entitlement to any minimum level of counsel performance in habeas proceedings. Can Congress simply create such standards out of whole cloth? This very question will invite complicated and protracted litigation over constitutional issues and standards.

Finally in this regard, in order to meet title III's counsel requirements, California—and many other States—will be forced to spend huge sums of money to train, monitor, and provide attorneys in capital cases. Although title III provides for grants to partially defray the significant increase in the cost of capital litigation that it mandates, States must come up with at least 25 percent of the funds needed in 1994, 1995, and 1996. What's worse, the States' share of such costs will at least double to 50 percent in 1997 and remain at that minimum level every year thereafter.

Although different in several respects from title III of S. 1607, Senator SPECTER's legislation also is unlikely to reduce abuse of the Federal habeas process, according to the legal advisers that I have consulted. Let me make four key points.

First, eliminating the requirement that State prisoners must exhaust all State rights of appeal before filing a Federal habeas petition could shorten the habeas process incrementally. In so doing, however, Senator SPECTER's proposal would radically reconfigure the traditional balance of State and Federal courts' respective responsibilities.

Second, by allowing successive habeas petitions in cases in which the Supreme Court establishes new fundamental constitutional rights, S. 1657 would invite protracted litigation over the meaning of those terms and undermine the all-important *Teague* doctrine. It would be necessary to litigate, for example, what rights are fundamental, and when the Supreme Court has established such a right—rather than merely discussed, proposed, clarified, or refined an existing one.

Third, S. 1657 would require Federal courts of appeals to review second and subsequent habeas petitions before such petitions may be filed in appropriate Federal district courts. Appellate courts could permit district courts to accept such a petition only if probable cause existed that the petition satisfied the limit on successive petitions detailed in title III of S. 1607 as now written.

Interposing this additional layer of review, it has been suggested, will unnecessarily burden already overtaxed courts of appeal. Moreover, it will require courts of appeals to engage in fact-finding—an activity ordinarily reserved for trial courts at the district level.

Fourth, and finally, S. 1657 imposes time limits on district courts for ruling on habeas petitions. While that time is short on its face, the loopholes left in the provision for delay could swallow the rule. The provision thus, I fear, will not accomplish its objective.

Clearly, I have strong technical objections to the habeas corpus provisions of S. 1607 and S. 1657, based on extensive consultation with law enforcement officials throughout California and the Nation.

Before concluding, however, I also want to stress that we also must not ignore the human cost of abuse of the habeas corpus process, particularly by death row inmates. Each time there is a new petition filed in such cases, the families of the victims of brutal crimes must relive the tragedy that put the petitioner behind bars often years before. Many organizations, formed to support the victims of violent crimes, have spoken out strongly against the habeas corpus reform contained in S. 1607. Let me name a number of them:

Citizens for Law and Order, Oakland.
California Correctional Peace Office Association, Sacramento.

Justice for Murder Victims, San Francisco.

Memory of Victims Everywhere, San Juan Capistrano.

Crime Victims United, Sacramento.
Victims and Friends United, Sacramento.

Leagues of Victims and Empathizes (LOVE), Tarpon Springs, FL.

VIGIL, Round Rock, TX.
Organized Victims of Violent Crime, Madison, TN.

The Joey Fournier Anti-Crime Committee, Boston.

Citizens for a Responsible Judiciary, Apopka, FL.

Survivors of Crime, Essex, VT.
Victims of Crime and Leniency, Montgomery, AL.

Survival, Inc., Saultillo, MS.
Citizens Against Violent Crime

(CAVE), Charleston, SC.

Speak Out for Stephanie Overland, KS.

Citizens for Truth in Punishment, Willis, TX.

Justice for Surviving Victims, Denver, CO.

Advocates for Survivor of Victims of Homicide, Walls, MS.

Clearly, then, there is a strong body of thought—among attorneys general, district attorneys, chiefs of police, sheriffs, and victims rights organizations—that the habeas corpus reforms contained in the crime bill and in S. 1657 present substantial and real impediments to the States, would not truncate successive habeas appeals, and would create substantial confusion and litigation.

By moving precipitously, and without benefit of further public hearings, the Senate risks unsettling hundreds of final judgments reached in criminal cases across the country. With 376 prisoners on death row in California, and 99 of the 105 pending ninth circuit habeas petitions in my State, that is simply not a risk that I am willing to take.

In conclusion, that is why I am grateful for my colleagues' unanimous consent to strike title III of the crime bill and urge them to oppose the pending legislation.

Mr. BIDEN. Mr. President, I thank everyone for their cooperation. I realize the hour is late. As the Senator from Utah has indicated, there is only one potential remaining amendment, the amendment of the Senator from Kansas, the Republican leader. Other than that, there is only final passage.

I thank everybody for their cooperation.

Mr. HATCH. Mr. President, I thank everybody for their cooperation. It has been an ordeal for everybody. But it also is turning out to be the finest anticrime bill in history. We hope we can complete it tomorrow.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

RECENT VIOLENCE IN KASHMIR

Mr. LEAHY. Mr. President, I want to speak today about recent events in the Indian State of Kashmir along the India-Pakistan border. Since 1989, Moslem separatists there have fought a bloody war for independence from the Hindu-dominated Indian Government. Since the Indian Government first sent troops to the area in an attempt to defeat the rebels and restore order, there have been persistent reports of widespread human rights violations by both sides.

In recent weeks, a serious conflict with possible international ramifications has developed in the city of Srinagar in Kashmir. Reports indicate that separatist leaders were dem-

onstrating outside of the Hazratbal Mosque, the holiest mosque in Kashmir, when Government troops fired on them. More than 200 men, women, and children are trapped in the mosque with little food and few medical supplies.

The Indian Government says its troops originally surrounded the mosque to capture armed militants who were inside. The Government also says that it is attempting to negotiate a settlement and that the separatists in the mosque have threatened to blow it up if the Government forces do not leave. The Kashmiris say that the mosque is occupied by civilians who sought shelter on the way back from their pilgrimages. Some journalists in the area report that there are few, if any, militants inside.

Demonstrations against the Government siege have also turned bloody. When people in the nearby town of Bijbehara organized a march to the mosque to protest the Government's actions, Indian troops reportedly attacked them, firing indiscriminately on the crowd. The massacre left nearly 40 dead and 200 wounded.

The events in Kashmir have elevated tensions between India and Pakistan. The Indian Government holds the Pakistani Government accountable for supporting Kashmiri terrorists, while the Pakistanis accuse their neighbors of anti-Moslem actions.

Mr. President, while neither India nor Pakistan has threatened the other directly, the potential for this recent violence to escalate cannot be ignored. I urge the State Department to do everything possible to help bring about a peaceful end to this latest dispute.

NOTABLE QUOTABLES

Mr. HELMS. Mr. President, from time to time I offer for the RECORD a biweekly compilation of the latest outrageous, sometimes humorous, quotes from the liberal media. That description is not original with me, it is how the Media Research Center in Alexander describes its biweekly publication, Notable Quotables.

I ask unanimous consent that the November 8, 1993, issue of Notable Quotables (Vol. Six, No. 23) be printed in the RECORD at the conclusion of my remarks.

Mr. President, this publication serves the much-needed and very important purpose of puncturing the two-legged hot-air balloons who dominate much of the major media in Washington. These are journalists, broadcasters, and others who quote each other's impeccable wisdom, as they see themselves, and all of them busily and viciously attack every public figure with whom they disagree. They falsely blame all of America's problems on Ronald Reagan and George Bush; they ridicule every conservative in sight—and they never

worry about falsely accusing any of their philosophical adversaries.

A couple of examples: Bryant Gumbel of NBC's "Today" show, has a reputation for being unable to keep his roving hands off women with whom he comes in contact. Yet he presents himself as a defender of women and made slurring remarks about Senate votes in the Packwood matter.

Then there is a young woman on one of the Saturday night talk shows who has locked jaws—open. She outshouts anybody else on the show's panel—especially anyone who takes a position contrary to her various leftwing fixations.

Anyway, Mr. President, I believe a great many Senators and others may enjoy the November 8 issue of Notable Quotables.

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

NOTABLE QUOTABLES, NOV. 8, 1993

NEWSWEEK PUNDITS ON THE ELECTION: WHOOPS

"Florio will win substantially. Whitman's offer of a 30 percent tax cut, she lost all credibility. Last year's hustle doesn't work. Supply-side economics is dead."—Newsweek reporter Eleanor Clift, October 16 McLaughlin Group.

"Whitman tried a Ronald Reagan rerun and proposed a 30 percent tax cut. The lost revenue could be made up by cost-saving devices, such as no longer giving free Adidas sneakers to prison inmates. A decade after Reagan, New Jersey's voters aren't buying government by apocryphal anecdote."—Clift in Newsweek, October 25.

"I think actually there's a big national consensus developing on a lot of things. People are for some limited gun control* * * to the point where in Jim Brady, the former White House press secretary, went up to New Jersey, he's a Republican, he went to New Jersey this week to campaign for the Democrat, Jim Florio, because he's for gun control. Florio's gotten on the right side of the issue."—Newsweek Washington reporter Howard Fineman on CNN's Late Edition, October 24.

L.A. FIRES REFLECT SOCIETY'S NEGLECT

"One of the fires was started by a homeless man trying to keep warm. It represents the strains in our society, from neglect to the nihilism, the 'burn, baby' nihilism of people who actually go and start fires like this."—Eleanor Clift, October 30 McLaughlin Group.

ECONOMIC GLORY YEARS OF THE '70S?

"Adjusted for inflation, average hourly earnings show a startling picture. Income growth has been trending down for more than a decade* * * it wasn't always like this. There were glory years for the American paycheck, from 1947-1979, with the peak hitting in 1973* * * The U.S. economy shows some signs it may be perking up. Experts say, though, that it would have to continue for at least 2 or 3 years before the American paycheck could start returning to the glory years of the 1970s."—Ray Brady, October 29 CBS Evening News.

DUMB KIDS: REAGAN'S FAULT

"Ronald Reagan began the push for a constitutional amendment limiting taxes; Proposition 13 succeeded in 1978, slashing property taxes 57 percent. The state's schools have never recovered."—U.S. News 7 World

Report Senior Editor Miriam Horn in the 60th anniversary section, October 25.

CONNIE: FOR MORE THAN ONE HILLARY

"If each person is unique, do we really want to make copies? And whom would we make copies of? It's horrifying to think of anyone having that kind of power. But since we're on the subject, here goes. Howard Stern? We think one is more than enough. Paul Newman? He's clone-able. Ross Perot? He seems to be everywhere as it is. Hillary Rodham Clinton? Mmm, year."—Connie Chung discussing cloning on Eye to Eye, October 28.

CLINTON'S FREE MARKET HEALTH PLAN

"Woven through the 1,300-page health plan is a liberal's passion to help the needy, a conservative's faith in free markets and a politician's focus on the middle class."—Washington Post Reporters Steven Pearlstein and Dana Priest, October 28.

VALIANTLY DEFENDING HER MISCONCEPTION

Julie Johnson, Time Washington reporter: "I live in the Maryland suburbs, but I've been working in the city for eight years. I've never heard that gun ownership is illegal in the District of Columbia."

Cragg Hines, Houston Chronicle: "It is."
Bil Eaton, Los Angeles Times: "Except by permit."

Johnson: "By permit—but that's owning. I mean you can own a gun that's permitted."

Hines: "But I believe D.C. has one of the toughest gun control laws . . ."

Johnson: "Well, but that is not the same. I think we should be clear as saying it is illegal to own a gun in the District of Columbia—that is not a true statement."—C-SPAN's Journalists' Roundtable, October 22. (Since 1977 it has been illegal for anyone but a law enforcement officer to obtain a handgun in D.C.)

WHY NO COVERAGE OF CLINTON'S VIEWS ON GAYS IN '92?

"We're liberal. When Clinton says he'll fight for gay rights or rescind the ban (on gays in the military), we're hearing something that doesn't sound outlandish to us at all. In fact, it sounded reasonable. It sounded fair."—Knight-Ridder Washington bureau editor Vicki Gowler, quoted by former Knight-Ridder reporter Carl Cannon in the premiere issue of Forbes Media Critic.

TIME: STILL PLUGGING GAS TAX HIKES

"When Clinton's 'Climate Change Action Plan' finally debuted last week, environmentalists could muster only faint praise . . . there were two major omissions: the plan does nothing to raise auto fuel-economy standards, and it contains no energy-tax hikes to boost conservation."—Time Associate Editor Michael D. Lemonick, November 1.

SPEAKING OF "USUAL SUSPECTS" . . .

"The usual suspects lined up with Packwood—Alan Simpson, Jesse Helms, Arlen Specter, et cetera. Will they be hurt by a vote Patty Murray tried to characterize as a with-us-or-agin-us women's rights vote?"—Today co-host Bryant Gumbel on the Packwood diaries vote, Nov 3. (In her book inside today, former Today producer Judy Kessler charged Gumbel with feeling for women's bras and making cruel remarks.)

NEVER MIND CHINA, NORTH KOREA, VIETNAM . . .

"No. 3-rated CBS This Morning said Monday that its sending rising star Giselle Fernandez to Cuba to broadcast live Nov. 3 through Nov. 5. Fernandez . . . will report on conditions from the world's only communist

state."—USA Today's Inside TV" section by writer Peter Johnson, October 26.

A JONESTOWN IN EACH OF US?

"But on Law and Order they do have inner cerebral lives of the richest complexity. Their scars glow in the dark. Watch Chris Noth at the shocking end of Wednesday's episode. Look at Moriarty's face. It's not just that all the craziness in the world can't be blamed on fundamentalist Muslims or Shining Path or Khmer Rouge. But Jonestown and My Lai are everywhere. It's also that there's a Jonestown in each of us."—CBS Sunday Morning TV critic John Leonard, October 31.

RATHER'S WEATHER

"Unlike the Santa Ana winds fueling the flames in California, look what the wind blew in here today in Texas. It may not be much, but the first snow of the season, and record cold dropping into Texas panhandle. Down here we call it a blue northern, nothing between Houston and a barbed white fence—the North Pole."—Dan Rather on the October 29, CBS Evening News.

JOHN MEDLIN: BANKING'S PROBLEMS CAUSED LARGELY BY SOCIALIZED PUBLIC POLICIES

Mr. HELMS. Mr. President, it is scarcely necessary for anyone to emphasize the obvious fact that bankers of North Carolina have proved to be national and international leaders. I have heretofore discussed some of them in terms of their achievements. Today I invite Senators who will take note of a significant address by John G. Medlin, Jr., at the U.S. Bankers Forum 1993 meeting in Chicago on October 20.

John Medlin is chief executive officer of the Wachovia Corp. in Winston-Salem. I have watched his splendid career beginning years ago when he first became an officer of Wachovia Bank & Trust Co.

Mr. President, John Medlin has always espoused sound, conservative economic policies. His speech in Chicago was another instance of his preaching the sound economic doctrine. For example, note this comment:

The fortunes of banks are determined over time largely by a combination of public policies, economic conditions, and management capabilities. The convergence of shortcomings in all of those areas during the past decade caused extraordinary strains and failures in the financial system of the nation.

The genesis of these problems can be found to a great extent in socialized public policies which weakened private enterprise disciplines.

Mr. President, John Medlin's Chicago speech was filled with sound advice and legitimate warnings. As always, the text of his remarks is well worth reading and I therefore ask unanimous consent that the entire text be printed in the RECORD at the conclusion of my remarks.

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

REMARKS BY JOHN G. MEDLIN, JR.

It is an honor to address this conference at the initiation of my good friend, Bob Bennett. He asked me to speak about the secrets

behind the steady profitability and growth of Wachovia. I have some discomfort with that assignment.

Success in banking is very perishable. The experiences of the past two decades suggest that in our profession it is best to avoid bragging when things have gone well. Disquietingly often, yesterday's heroes become today's has-beens.

Also, I must confess there are no particular secrets to Wachovia's success. If so, we probably would reveal them to our competitors. We simply try to excel in the practice of sound fundamentals. Frankly, it's pretty dull stuff which does not make an exciting presentation at banking conferences.

Therefore, I would like to broaden my comments to include some observations about the underlying nature and the environmental challenges of banking. Then, I will review the basic philosophies and strategies of Wachovia.

The fortunes of banks are determined over time largely by a combination of public policies, economic conditions, and management capabilities. The conference of shortcomings in all of those areas during the past decade caused extraordinary strains and failures in the financial system of the nation.

The genesis of these problems can be found to a great extent in socialized public policies which weakened private enterprise disciplines. Federal deposit insurance was both a blessing and a curse. It prevented financial panic, but also permitted unsound and uneconomic institutions to develop and grow rapidly without adequate management, capital, or regulatory supervision.

Economic conditions also caused problems for banking. Two decades of runaway federal spending and deficits destabilized the financial system and debilitated the economy. Much prosperity was borrowed from the future as an explosion of debt enabled American to spend much more than they earned and consume much more than they produced. Repayment began as higher risk loan portfolios encountered a stagnating economy, and credit problems accelerated.

The managements of banks and thrifts can't blame all their problems on bad public policy or poor economic conditions. They failed to exercise sufficient private sector restraints and disciplines to protect against the excesses of government. Sound principles were ignored in the pursuit of growth. Competition in laxity permeated the marketplace. We often let our weakest and most reckless competitors set the prevailing standards for credit and pricing practices.

Nevertheless, most banks were able to survive even while the thrift system failed. Those which maintained sound credit standards and strong capital ratios did well even while meeting liberal terms to keep good customers. However, the reemergence in recent months of unsound credit practices and uneconomic pricing suggests that some bankers still have not learned their lesson.

It is important to remind ourselves occasionally that banking serves a vital, public-utility-like function in our economic system. A banking charter gives special privileges and imposes sacred responsibilities. We must not forget that it is granted by the people who expect us to safeguard their deposits and to lend them money for worthy purposes. This places both limits and demands on the risks which can or should be taken with the public's savings.

By nature, banking operates on thin margins and modest capital which afford little cushion for asset risks. For most institutions, credit losses of two to three percent

will eliminate profits and shake confidence, and problem loans of six to seven percent can wipe out equity capital and cause insolvency. This illustrates the critical importance of careful and skilled risk management.

Banks are supposed to be a source of strength and comfort and not a cause of anxiety and weakness in times of adversity. Their function is to buffer credit, funding, and settlement risks in financial transactions rather than to increase such exposures. In order to serve as a profitable intermediary, a bank must be able to obtain funds at lower rates than its borrowers. Today, some borrowers can get money at cheaper rates than their banks.

Banking is more a qualitative art than a quantitative science. Despite many technological advances and financial innovations, it still is a highly personal process of people serving and trusting people. Rapid growth in banking often leads to trouble. Long-term success is more likely to be achieved by expanding at a manageable pace and maintaining high quality standards.

Banks should be managed as if there were no discount window for liquidity, no regulators for examination, and no deposit insurance for bailout. These are not intended to be substitutes for proper management and adequate capital. It is amusing that some of the most passionate advocates of free enterprise are so dependent on the financial safety net of government.

Financial institutions can't expect much help from the economy in the foreseeable future. Our nation still is in the throes of adjustment from the excesses of times past. The favorable effects of lower inflation and interest rates are being moderated by the enlarged debt burden, layoffs from restructuring, a decline in young adult population, and stifling regulation. These factors are restraining growth in employment, income, spending, and credit.

Despite these obstacles, the economy appears likely to continue growing moderately for the near term. However, the outlook is clouded by the enactment of large tax increases, the relentless growth in federal spending, the persistence of large budget deficits, and the prospect of even more government.

Meaningful and sustained improvement cannot be expected in the fragile American economy as long as the role of government grows and taxes rise as a percent of GDP. Federal spending is on a collision course with financial reality. Our nation needs to turn back toward an economic system motivated and disciplined more by market forces and less by government. Otherwise, our living standard and social order are likely to deteriorate further in the years ahead.

In this decade, the success of banks will depend as much on control of operating expenses, reduction of credit losses, and improvement of risk compensation as on business growth. There will not be a strong economy or a willing Congress to bail out careless management, liberal lending, or excessive costs.

While the credit losses of the financial system have declined, the level of problem assets and weakened institutions remains high by historical standards. The worst should be over until the next episode of economic and financial distress which probably will come within the next three to four years. Meanwhile, lingering credit problems will continue to haunt some banks and thrifts.

The sharply sloped yield curve of recent times is a mixed blessing for banking. It has

widened interest spreads but also is causing an outflow of consumer savings seeking better returns. This could lead eventually to increased money costs and funding problems for lesser quality institutions without strong credit ratings and ready access to wholesale financial markets. The inevitable rise in short-term rates will narrow margins for the week and the strong.

Other banking challenges include more stringent laws and regulations which make it more difficult and expensive to serve customers. This is a cost of protection by the federal safety net which also protects weak competitors, breeds excess capacity, and encourages uneconomic credit and pricing practices.

Also, there is a growing need for banks to offer a wider variety of more sophisticated services for customers such as corporate finance and consumer investment alternatives like mutual funds. In addition, more complex and expensive technology is essential to be competitive and efficient. Getting behind in these areas can make survival as difficult as having a bad loan portfolio.

Thus, the climate for financial institutions in the nineties is dramatically different from the seventies and eighties when exceptional business growth spawned extensive branch networks to provide convenient customer service. Consumer savings flooded into banks and thrifts because of rate deregulation, a relatively flat yield curve, and a big jump in deposit insurance coverage. Rapid expansion of debt created abundant loan and investment opportunities.

The expensive branch-oriented service infrastructure of most banks may not be affordable or appropriate to meeting many needs and preferences of customers in the nineties. In a sluggish economy with anemic loan and deposit growth, different business strategies are required for banks to compete successfully with other intermediaries which have much lower costs and broader services.

An example of those other financial intermediaries is Merrill Lynch, which has over \$500 billion of customer "deposits" in various forms. It offers banking services like checking accounts and loans as well as a wide variety of investment alternatives. But, it has relatively few convenient offices, does business mainly by telephone, fax, and mail, and doesn't have to worry about FDICIA, FIRREA, CRA, bank examiners, or the cost of deposit insurance.

Bank branches are not needed now for many services which traditionally have been provided there. For example, automobile, credit card, or home mortgage loans, which comprise the vast majority of consumer debt, can be originated and processed more efficiently and effectively in large volume at central locations. Also, branches are not essential to make deposits or get cash, which can be handled by automated clearing houses or teller machines, nor for most commercial banking, corporate finance, or investment services.

Strategically located branch offices will remain a vital element of the banking service delivery system, but they must do more than take deposits, cash checks, and make an occasional loan to justify their costs. I suspect the years ahead will bring a steady decline in the number of banks and retail branches as excess and unprofitable capacity is rationalized and eliminated.

To summarize the tough challenges faced by bankers: They must clean up the problems from the past and cope with increasing competition in a slow economy and a business with overcapacity; they must become

more efficient and reduce costs while providing broader services and investing in technology; and they must maintain credit quality and interest margins in a marketplace where lending practices and risk compensation already are deteriorating again.

How does the management of banking overcome those challenges? That question must be answered based on individual circumstances, but I will share with you some thoughts on the approach of our organization.

Wachovia strives to be a banking company which is prepared for all seasons. Its guiding principles and basic strategies remain the same in difficult or easier times. Our steadfast approach is to pursue progressive business strategies but within the disciplines of sound financial principles. The emphasis always, in order of priority, is on soundness, profitability, and growth.

Equal importance is placed on business development, risk management, and cost control. This requires maintaining careful balance among the marketing, credit administration, funding management, and operations functions. Our goal is to have above-average loan growth and fee income, at least average net interest margins, and below-average credit losses and operating costs. Mixed with capable and caring people, that is the basic recipe for excellence in banking.

Our top priority emphasis on soundness causes some to characterize us as conservative. In reality, we are creative but disciplined entrepreneurs who have good loan growth as well as excellent credit quality. It is possible for us to sell more aggressively and lend more safely because our bankers are better trained and more skilled in evaluating and managing risk. That is especially important in a slower growing economy which requires more determined business development efforts but is less forgiving of marginal credit judgments.

Other key strategies are to provide superior customer service, to develop broad and enduring relationships, and to avoid excessive concentrations of business and risk. Technological and operational excellence and financial strength and flexibility also are top priorities. Our ultimate goal is to maximize shareholder value by building steadily an annuity-like stream of higher quality and more dependable profits which deserve a premium price-earnings ratio.

Wachovia has long experience in operating banks across a wide geographic area. Our first offices outside Winston-Salem were established in 1902. By the 1970's our branch network had been expanded gradually to cover most of North Carolina from the mountains to the seashore. Statewide branching has been good for the state and has bred a strong and highly competitive banking system.

Since the advent of interstate banking in the Southeast during the mid-eighties, Wachovia has acquired leading banks with branches across neighboring Georgia and South Carolina. That has enabled us to stay big enough to afford modern technology and to compete effectively with larger institutions while being small enough to maintain Wachovia's special character and qualities.

Modern and uniform systems are absolutely essential today to realize the economies and provide the services needed to have a competitive and profitable interstate banking network. The South Carolina branch automation system was converted recently, and when the integration is completed there early next year, Wachovia will have common systems across its entire interstate banking network.

Wachovia will consider additional acquisitions of banks in other southeastern states whenever they can enhance per-share earnings and market value. This must take into account the cost to bring an acquiree up to our high standards of personnel professionalism, operational excellence, and credit quality as well as possible synergies and expense savings. Also, are must be taken not to pay too much for branch banking networks supported heavily in the past by lower cost consumer deposits which today are migrating to higher yield media.

Wachovia started twenty years ago adjusting its retail banking strategies to evolving changes in technology, demographics, and financial services. In 1973, we launched our Personal Banker program to build broader and closer relationships with customers as automated systems and nonbank competition began emerging. Personal Bankers are well trained in handling general banking and credit needs and sufficiently knowledgeable of other services to make prospect solicitations and referrals to specialized businesses of the company.

Simultaneously, a comprehensive retail accounts information system was developed to provide Personal Bankers with the full relationship data and profile needed to serve customers and solicit new business. Shortly afterward, automated banking machines were installed to handle routine transactions. Later, a computerized telephone capability was added for customers to obtain account information and effect routine transactions like account transfers and stop payments. Also, there has been heavy emphasis over the years on getting large employers to use automatic deposit of payroll to reduce branch traffic and costs.

Our objective has been to achieve the best possible combination of high-tech and high-touch to enable customers to use more cost-effective and convenient self-service electronic banking for routine needs but to have someone for them to contact when they require or desire personal assistance. That has necessitated a substantial investment in personnel training and systems development.

Most of our Personal Bankers still are located in full services branches, but increasingly they operate out of other less expensive offices convenient to customers without the traditional teller line and cash vault. The branch office remains important, but it is less critical to our retail banking strategy as more business is done by telephone, banking machine, or computer terminal.

Major specialized business lines such as automobile finance, credit card, discount brokerage, home mortgages, and investment services are marketed and provided centrally. Substantial referrals also are generated for these areas through the relationship management and development efforts of Personal Bankers.

Recent initiatives have materially enhanced the competitiveness and efficiency of key consumer credit services. A reassessment three years ago of credit card pricing suggested that the days of high fixed rates were numbered. A lower prime plus 2.9 percent variable rate option was introduced in 1991 and since then has been an effective generator of new accounts and loan outstandings from more creditworthy cardholders while competitors lost market share.

Consolidation last May of the sales contract-buying branches of our automobile finance group into one center quadrupled from twelve to fifty the number of loans a dealer credit officer could decision each day. Since then, the volume of loans generated has

grown nicely with considerably fewer people. Concentration of home mortgage origination into one center also has produced better efficiency, service, and volume. Most of our nine percent growth in loans compared to last year has come from the credit card, auto, and home mortgage areas.

For individuals wanting a better return on their savings, Wachovia offers a full array of direct investments in federal, state, and local government securities through its Bond and Money Market Group which is the largest underwriter and distributor of North Carolina tax-exempt issues. We also advise and market a variety of debt and equity mutual funds. More personalized investment management is provided through Trust Services. The Personal Bankers who quarter-back customer relationships hand off many referrals to those areas.

Wachovia is well advanced in making the transition from a retail banking network dominated by branches to a more efficient and effective marketing and delivery system which offers customers multiple options. The combination of our Personal Bankers, specialized businesses, modern systems, and branch offices gives us a powerful capability for selling and providing competitive and quality service.

These are a few examples of Wachovia's efforts to maintain profitability and growth in consumer financial services. Similar illustrations can be provided for corporate banking and other areas of the company. Complacency is not one of our vulnerabilities. The winds of change blow freely across our company, but we also have a good record of resisting risky fads and passing fancies.

The years ahead will even more severely test the skills of bank managements. The marketplace will be unkind to those who forsake sound principles or fail to adjust to the profound changes under way in their business. I appreciate the chance to share these thoughts and welcome any questions you may have.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at \$4,459,587,095,853.55 as of the close of business yesterday, November 15. Averaged out, every man, woman, and child in America owes a part of this massive debt, and that per capita share is exactly \$17,362.

WESTERN RESOURCES WRAP-UP

Mr. CAMPBELL. Mr. President, I ask unanimous consent that an important story by a dedicated reporter from my state be included in the RECORD immediately following my statement.

Western Resources Wrap-Up provides many Colorado citizens, decision makers and opinion-leaders with the information they need to do their jobs well and contribute knowledgeably to their communities. The article, by veteran reporter Helene C. Monberg, details the problems a small community high in the Colorado Rockies has encountered in trying to get action on long-standing environmental dangers resulting from sloppy mining practices and abuses of the past 100 years and more.

It is not only the environmental problems that worry Leadville citizens,

however, but bureaucratic headaches they're experiencing getting them cleaned up.

Recently, I worked with Chairman JOHNSTON of the Energy and Natural Resources Committee to make sure appropriations legislation expressly includes language ensuring that funds are available to move forward on clean-up efforts in Leadville.

The Superfund site in Leadville deserves the full attention of the Environmental Protection Agency and other agencies of the Federal Government to finally move this thing along. Like my friend, Helene Monberg, I want assurances that real, concrete action is being taken and that we can soon expect noticeable progress and cooperation with the community on cleaning up this site. Both of us will be following the case closely to ensure that finally, the people of this mountain community see a resolution to this problem.

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

WESTERN RESOURCES WRAP-UP
(By Helene C. Monberg)

WASHINGTON.—Mayor Robert J. Zaitz of Leadville, Colo., (pop. 3200; elevation 10,152 feet above sea level) is fed to the teeth with the way the Environmental Protection Agency (EPA) is handling the Superfund site in Leadville. "It's a scandal," he charged.

After 11 years, he told Western Resources Wrap-up (WRW) in telephone interviews on Sept. 16 and Sept. 21, "EPA is still studying the health problems here. EPA hasn't even been able to determine whether the mine dumps in the area pose a health risk," said the exasperated Leadville native, whose family name is synonymous with Leadville.

Currently EPA is completing research under the direction of a University of Michigan researcher to determine whether lead in cookie dough is "biodegradable," which means whether it poses a health hazard to children, Zaitz said. According to EPA studies, about one out of every five children in Leadville has lead levels above normal in his/her blood. By law that is a concern to EPA.

So EPA and its research team conceived of the idea of feeding cookie dough with various levels of lead in it to baby pigs to determine whether lead entered their bloodstream. "Just because kids are exposed to lead doesn't mean it's a problem. It must enter their bloodstream to be harmful. That's what this swine study is all about. By feeding small doses of lead to these animals EPA hopes to learn how much is being absorbed by the young children in Leadville," Paul Day, an environmental specialist, told Channel 4 in Denver on Sept. 6. Too much lead in one's bloodstream puts kids at risk of developing learning disabilities and may cause reduced hand-to-eye coordination and diminished IQ, according to the Centers for Disease Control. Why use pigs, as uncommon Leadville product? "We felt they would be a good animal model for young children," according to Professor Bob Peppenga, who is working on the study. This study has now moved into the brain-dissecting stage to find whether the piglets were damaged by the lead fed to them in their food, Zaitz told WRW.

Kids in Leadville, like kids everywhere, eat dirt from time to time. Zaitz and other

Leadville residents claim they know no kids who ever developed disabilities due to being exposed to lead in Leadville. Tammy Everett told Channel 4, "My grandparents used to live in California Gulch," in the heart of the Leadville Superfund site. As children, "they played in the tailings and stuff . . . and there's been . . . no problem. They haven't had any poisoning," she observed. Zaitz said that blood levels in kids in Leadville have gone down recently because many Leadville mothers have made eating dirt a no-no for their kids, have insisted on them washing their hands after playing outside, and no longer feed their kids locally grown root vegetables. "I still eat locally grown vegetables, and I'm 63, but that probably doesn't prove anything," Zaitz told WRW.

Along with EPA's piglet-lead study, Zaitz questions a lot of the other actions that EPA has taken (or has not taken) in the name of clean-up. He told WRW:

All 23 miles of Leadville have been put in the Superfund site, but it excluded the Leadville drainage tunnel on federal land.

The U.S. Government doesn't want to be stuck with any clean-up costs itself, although it directly generated much of the mine waste. He recalled that the feds cracked the whip during World War II. Uncle Sam insisted that the mines and mills in the Leadville mining district work overtime to produce vitally needed ore for the war effort. Miners were exempt from the draft. But the feds now have a lapse of memory on that count, he said.

EPA tries to push clean-up costs on "anyone with deep pockets." It does so regardless of their degree of liability, he charged. So the mining companies and others have gone to court or are trying to negotiate settlements with the feds to limit their liability.

Very little on-the-ground clean-up has taken place, but lawyers have cleaned up personally in handling the legal disputes that have arisen over the Leadville Superfund site. "Superfund is a lawyer's paradise. It's a Garden of Eden for lawyers," Zaitz charged. "They (both EPA and industry) use lawyers to try to intimidate us up here in Leadville, but they don't," he claimed.

EPA is considering a proposal to have all landowners in town remove 18 inches of top soil from their yards because of its potential lead and other metal content. Such an operation would not only be costly but "where would you put the dug-up soil?" Zaitz asked.

EPA officials, lawyers and other professionals dealing with Superfund speak in gobbdygook, and Leadville officials and residents don't know what they are talking about. Their reports are written in technical terms and go unread because they are so difficult to read. "Then EPA complains because their reports go unread," he said.

EPA uses only soil samples to establish the health hazards at Leadville. "They don't consider lead paint or lead pipes," he said. "They expect the soil to be clean enough to eat," Zaitz noted.

Because of Leadville's designation as a Superfund site, real property values in the town have dropped sharply. For example, his house in the prime residential area in town is only valued at \$50,000 in the current market, even though its true value sans Superfund site designation would be well over \$100,000, Zaitz said.

EPA expects the town and county to maintain any work done in the area under Superfund even though Leadville is just holding its own financially, and Lake County is "nearly broke," as mining is minimal in

the area now. EPA has insisted on fencing part of the area. This has prompted the local residents to call EPA "Eco-Nazis." They have put up a sign on the fence reading "East Berlin Wall-EPA." About that time Zaitz asked this WRW writer, a Leadville native, to check why it has taken so long for EPA to move ahead on this Superfund site.

Denise Link in EPA's Denver office told WRW on Sept. 16 she agreed with Zaitz that progress has been painfully slow in Leadville. "It is frustrating," she said. But she did note, and Zaitz agreed, that EPA had successfully gotten ASARCO Mining Company to build a filter plant at a cost of \$13 million and the Bureau of Reclamation has built a filter plant at the Leadville drainage tunnel at a cost of about \$6 million. The Bu/Rec plant would be more effective if it also received water from Stray Horse Gulch, a heavily mined area, but EPA hasn't suggested that because of its cost to the feds, Zaitz said. EPA's Eleanor Dwight told WRW on Sept. 21 she was writing a letter to Zaitz detailing that an "agreement in principle" had been reached.

She said it was arrived at on July 16 between EPA, and ASARCO, Newmont, Resurrection, and Hecla mining companies and D&RGW Railroad regarding their liability under Superfund, under the supervision of the U.S. District Court in Denver. She said EPA hoped the details could be worked out in a couple of months.

OPPORTUNITIES FOR PARENTS

Mr. HATFIELD. Mr. President, on June 16th of this year I introduced Senate bill 1118, legislation calling for increased participation of families in the education of their children as one of the national goals for education. I know my colleagues share my view that not only are parents critical to improving our national education system, they are the key to ensuring their children's success in school. I was impressed recently to read in the Washington Post of specific programs in place in Fairfax County where moms and dads are back in class voluntarily learning how to improve their children's education skills. These kinds of programs represent the vision embodied my legislation and thus, I ask unanimous consent that the article of November 10 entitled, "For Parents, an 'Itsy-Bitsy' Problem" be placed in the RECORD following my remarks.

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

FOR PARENTS, AN "ITSY-BITSY" PROBLEM
(By Jane Seaberry)

The dozen or so students listened intently as Fairfax County librarian Yvette Kolstrom read a story about an elephant that liked smashing cars. Then, as some of them giggled, they learned how to make paper train conductor hats and yellow and black school buses.

When the class on songs, rhymes and stories about cars, trains and planes ended, student Jerry Marterella was ready to rush out and buy the book, "The Little Engine That Could." Marterella, of Centreville, is a computer company executive and 44 years old.

In fact, everyone in Kolstrom's recent Fairfax County class was an adult, most of

them parents over 30 eager to have someone tell them the right songs, games and books to use to teach their young children.

Marterella's wife, Katherine, said she needed ideas to help her organize time with their daughter, Kristen, 23 months, so that during the day "at least I'm focusing on something and not ignoring her."

"I'm just trying to get her ready for school," added Katherine Marterella. "I think it's a lot more competitive world today."

Parents in the Washington area increasingly are signing up for classes on songs, books and crafts for young children being offered by public agencies and private day-care centers, a reflection of what specialists say is an intense search for parenting skills.

At a time when many adults have delayed starting families—older parents increased by nearly 70 percent nationally in the last decade, according to census figures—the classes help parents remember long-forgotten tales and jingles.

Many parents are too busy with careers to think creatively about how to play, so the classes provide an easy and organized way to be imaginative, child-care providers say.

"It's a quest for knowledge, this thing of the '80s and '90s. Parents want to be better prepared than they are," said Sandy Booth, a program specialist with the Parenting Education Center in Fairfax. "I doubt my parents ever read a book on parenting. I've read them. I want to be a better parent."

In Fairfax, classes at the public library teach parents to help children do art projects and sing songs and rhymes about trains, trucks, dinosaurs, clothes and other subjects. Many parents are as serious about correctly reciting "Itsy-Bitsy Spider" as they are about their careers.

At some sessions, parents with clip-boards and expensive leather briefcases stuffed with craft ideas studied finger-painting. Others in business suits sat cross-legged in a circle on the floor learning to sing, "If you're happy and you know it clap your hands."

Some private day-care centers, such as Cheska's Creative Children's Centers Inc., in Reston, have their own parents programs.

Sessions in which parents were taught songs and rhymes were second in popularity only to classes at the center on "How to Discipline Your Child," said Cheska Gosnell, the center's owner.

In Bethesda, the Bethesda Country Day School doesn't offer classes, but songs that children learn sometimes are sent home to parents along with a monthly newsletter describing other rhymes and stories.

Last month, the "Five Little Pumpkins" song was sent home "so the parent will know the words the child is singing," teacher Cindi Dixon said. "The parents really enjoy having the words to the songs."

Nursery rhymes and games are important, child specialists said, because they help children develop language, math skills and motor skills.

"You want children to be able to be good thinkers, high thinkers," said Azalee Harrison, owner of the Child Care Institute in Silver Spring, which trains teachers for day care centers.

"It's being playful and singing and being connected," said Sandra Stith, director of the Marriage and Family Therapy program at Virginia Tech, Falls Church campus. "Nursery rhymes are a way throughout history parents have connected with kids."

Springfield mother Alexandra Masterson, 37, said she attends classes regularly because she has forgotten some crafts and songs her

mother taught her. In addition, she said, she doesn't think she is as imaginative as her mother.

"A lot of this is handed down" generation to generation, Masterson said. "But I have no family here. I don't know how to do these things."

Gosnell said that many parents at her day-care center told her "they don't remember how to really get down and play anymore. They get down in the corporate world and they don't know what's appropriate to play."

So four years ago, she started father's night.

"They do the activities the preschoolers do," Gosnell said. "I had dads jumping on the trampolines, doing kids aerobics, making chocolate pudding look like it was dirt . . . but it was edible."

At other sessions, Gosnell said, parents "sit around like [at] a campfire and sing songs."

She said old-fashioned ditties are still popular, but some songs from yesteryear, such as "Row, row, row your boat" are considered boring by children today. Older parents particularly go to Gosnell for help because they feel they are out of step and don't know the newer songs that children prefer, she said.

In the Fairfax library program, parents recently learned to make collages and block prints, and to do fingerprinting and sponge printing.

Kolstrom demonstrated how to make a construction paper frame to highlight children's art. The group of about 50 women "oohed" and "aahed" in approval.

Then she began painting red, blue and yellow splashes with a roller on paper. "It was really a lot of fun to do and it wasn't hard," Kolstrom told the mothers. "It will make [children] feel they were really painting."

A popular exercise was making an elephant using patchwork squares to complement a book titled "Elmer," about a multi-pigmented pachyderm.

"Yesterday I wanted to do something and I was in slump. I couldn't think of anything," said Gale Minnich, a medical technologist from Annandale in her thirties who has a 4-year-old daughter. "Tomorrow I'm joint to cut out lots of squares and get 'Elmer.'"

IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990

Mr. LIEBERMAN. Mr. President, I have had the privilege of serving during this Congress as Chairman of the Environment Committee's Subcommittee on Clean Air and Nuclear Regulation. We held four hearings on specific issues relating to implementation of the Clean Air Act, including the non-attainment provisions, small business assistance, clean cars and the acid rain trading program. The full committee also held a broad oversight hearing. The report released yesterday by Senators BAUCUS, CHAFEE, and myself, "Three Years Later: Report Card on the 1990 Clean Air Act Amendments," summarizes the conclusions and recommendations from those hearings.

When fully implemented, the Clean Air Act Amendments of 1990 will bring about a reduction of approximately 57 billion pounds annually of air pollution. But whether this number will be achieved hinges on faithful implementation of the law.

The report raises serious questions about whether the law's promise to provide healthy air as expeditiously as practicable to all Americans will be fulfilled. It gives EPA some low grades for its implementation of the act and offers some constructive criticism of the States. The principal problem areas are in the timely adoption, review and approval of State implementation plans, the advancement of the low emission vehicle, and the abatement of air toxics. Despite some of the strong warning signals raised by this report, I am optimistic that EPA Administrator Browner will review our recommendations in the report and, together with the States, will act on them.

In order to achieve the promise of the act, EPA must effectively manage the SIP review and approval process. Yesterday, November 15, 1993, our Nation's most polluted areas—including the State of Connecticut—were required to submit plans to EPA demonstrating that they will achieve a 15-percent reduction in emissions of volatile organic compounds, one of the major contributors to ozone, by 1996 from 1990 levels. These plans are the single most important requirement in title I of the act dealing with nonattainment and one of the most important requirements in the entire law. In the past, without firm interim requirements, deadlines for meeting health-based standards were simply not met.

The report calls on EPA to assign the highest priority to reviewing today's submittals and to working with the States to correct any deficiencies in these SIP submittals. Unfortunately, EPA does not have management systems in place to assure that this will occur. Our report calls on EPA to adopt and implement such systems immediately.

The automobile is the most significant contributor to smog and carbon monoxide pollution. The emission reductions that can be achieved from cleaner cars are critical to the efforts of States to reduce pollution. Instead of developing and promoting these cars, U.S. automakers have been spending their time in court fighting the efforts of States to adopt cleaner cars. Until recently, as addressed in this report, EPA had failed to provide adequate assistance to States—particularly those in the Northeast—seeking to adopt California's clean car programs.

The report recommends that EPA play a leadership role in supporting State efforts to adopt the California car and gives EPA very low marks for its failure to do so over the last three years. Last week, EPA took an important step forward by filing a brief in support of New York State's efforts to adopt the California program. I was encouraged by this positive action.

The air toxics program is stalled. The administrator should make fundamental decisions on the approach to setting

the technology-based standards and the staff should carry out the broad directions expeditiously.

As the report indicates, in the areas of acid rain and stratospheric ozone depletion, EPA has done an excellent job. At a hearing the Subcommittee held last month on acid rain, I was particularly pleased to learn that the market-based program is achieving reductions in an earlier timeframe and at a lower cost than anticipated. We need to harness the forces of the market to improve environmental protection wherever appropriate.

EPA has the talent and leadership—and the support of the President—which should enable it to perform well in ALL areas of the Act.

The cause of many of the problems with implementation of the act does not rest with Administrator Browner. The last Administration's Council on Competitiveness and OMB delayed issuing many regulations or pressured EPA to issue inadequate regulations. Congressman HENRY WAXMAN, chairman of the Subcommittee on Health and Environment of the House Energy and Commerce Committee and one of the principal authors of the amendments, filed a lawsuit in June 1992 (amended in November 1992) against EPA for missed statutory deadlines under the last administration. He cited 86 areas missed statutory deadlines. In the Subcommittee's hearing on implementation of Title I, State and local officials sharply criticized both the timeliness and adequacy of a number of key Bush administration regulations or proposed regulations.

The work recommended in the report is important and urgent. When I came to the Senate 5 years ago, one of my top priorities was to be involved in enacting a strong new Clean Air Act. Connecticut has the unfortunate distinction of being the only state where the air quality in the entire State is designated as being in noncompliance with the health-based standard for ozone. The State is a victim of emissions from nearby states and acid rain transported from other parts of the country. Tests taken several years ago show that the rainfall in the State is among the most acidic in the Nation.

Air pollution is an insidious threat to human health. It invades our lungs, and it does so from the day we're born until we die. And more and more evidence points out that a lot of people are dying a lot sooner than they should because of the air they breathe. I have visited St. Francis Hospital in Hartford and heard about the pain, suffering and heartache caused by air pollution directly from Dr. Thomas Godar, former president of the American Lung Association, who threatens the victims of air pollution.

Since enactment of the law in 1990, the scientific evidence on health effects from air pollution has shown it to

be even worse than originally thought. At one hearing the Subcommittee held, we learned that recent studies show that 50,000 to 60,000 premature deaths a year are caused by pollution from small, respirable airborne particles known as particulate matter which are emitted without violating the current standard. We also heard strong evidence that the current ozone standard is not adequate to protect the public health.

The Committee also has heard disturbing testimony about the adverse health effects from toxic chemicals released into the environment, particularly effects in the offspring of the generation exposed to the chemicals.

Pollution controls will cost American businesses and consumers some money, to be sure. But the States are working hard to develop the most cost-effective strategies, and they need greater assistance from EPA in this effort. The law requires EPA and States to implement a special program to assist smaller businesses in carrying out the requirements in the most cost-effective manner possible and in adopting pollution prevention approaches so they can avoid regulation altogether. The Report contains recommendations on how EPA can do a better job in this program. The Clean Air Act and the 1991 transportation legislation also provide sources of funding for the States to implement many of these programs. The report finds that the States are not using some of this funding in the manner intended by Congress—to implement Clean Air Act programs. EPA and the Department of Transportation need to provide greater direction to the States.

But those who cite the economic costs associated with implementing the Clean Air amendments need to be reminded that failure to implement the act effectively also costs money—some estimates are as high as hundreds of billions of dollars in health care costs each year. The report recommends that EPA actively work with the States in educating the public about the consequences of failure to implement various control measures. Everyone needs to be reminded about the suffering behind the doors of St. Francis Hospital.

It is not exaggeration to say that in the next year the Nation will have a good sense of whether the law's promise of healthy air will be fulfilled. Twenty-three years ago, the law first required that States and EPA meet national ambient air quality standards and regulate emissions of air toxics. The American public deserves to have the law's requirements finally fulfilled.

As chairman of the Clean Air Act and Nuclear Regulation Subcommittee, I will be continuing the in-depth oversight of the implementation process we started this year.

LAW DAY SALUTE TO AMERICA'S LAW ENFORCEMENT PROFESSIONALS

Mr. HOLLINGS. Mr. President, late on the evening of November 10, the Senate by unanimous consent adopted my amendment to S. 1607, the anticrime bill, to officially designate May 1, 1994 as Law Day, U.S.A., with an express emphasis on saluting the work of America's law enforcement personnel. This amendment stands on its inherent merit. However, it is all the more pertinent given the extraordinary reliance the anticrime bill places on the cop on the beat. The bill will contribute to fielding some 100,000 new police officers in communities across this nation, and it will build 10 new regional Federal prisons to keep criminals off the street. It is only appropriate, therefore, that we designate May 1, 1994 as a special day to salute the front-line service of these professionals in America's war on crime.

Heretofore, Mr. President, the purpose of Law Day has been defined somewhat vaguely as a day to celebrate justice under the law, to advance equality, and to encourage respect for law. My amendment preserves this tradition, but seeks to sharpen the focus of Law Day as a day of salute to our Nation's law enforcement personnel—the men and women who protect our lives and property, patrol our roadways, and staff our correctional facilities.

Bear in mind, Mr. President, the law's presence is perhaps most immediate and profound on the police officer's beat and in the jailhouse. This amendment gives special recognition to America's constables, sheriff's deputies, police officers, detectives, wardens and correctional officers. Truly, these men and women stand as the first-line defense of our laws and of our civil order. They are devoted to their jobs, tireless in their efforts, and often underpaid for their efforts. Moreover, their jobs are inherently dangerous. Even on seemingly routine assignments, these public servants put at risk their own safety in order to guarantee the safety of others.

Of course, we all honor those who have fallen in the line of duty as law enforcement officers. But let me be clear: First and foremost, my amendment seeks to salute the living. America owes these men and women an incalculable debt—a debt not of dollars, but of gratitude and deep respect. It was an honor to sponsor this amendment. I appreciate my colleagues' strong, bipartisan support in writing it into law.

THE ASYLUM PROBLEM

Mrs. KASSEBAUM. Mr. President, I offered with Senator SIMPSON an amendment to the crime bill (S. 1607) to stem the flow of aliens seeking political asylum and to return to the

original intent of the asylum law. I appreciate my colleagues' adoption of this amendment and their future support of these reforms. The flood of asylum claims has swamped the system. The backlog of asylum cases is increasing at the average rate of 10,000 to 12,000 per month. Last March, the total backlog of cases was close to 200,000. Today, only 7 months later, the total is an astounding 340,000.

Who are the people that are seeking asylum? In about 14,000 cases last year, asylum was sought immediately upon arrival at airports and other ports of entry. However, this compares to over 100,000 applications last year from persons who had lived and worked in the United States for some time. Often, they were here illegally and sought asylum only to avoid deportation.

In fact, political asylum is the magic phrase for hundreds of thousands of aliens whose claims are simply not meritorious. Yet, these aliens are given a work permit and, due to the backlog of cases and the many layers of appeal, they can plan on years of residency in the United States. This practice distorts the original intent of the asylum law and is unfair to American workers and taxpayers. It is difficult to explain to constituents why this abuse is allowed to continue.

My amendment, which was the result of discussions with the Department of Justice, the Department of State, Senator SIMPSON, and other members of the Judiciary Committee, declared that our asylum policy today should be what the law originally intended. When the Refugee Act of 1980 was written, the intent was to protect aliens who, because of events occurring after their arrival here, could not safely return home. The amendment declared further that persons outside their country of nationality who have a well-founded fear of persecution if they return should apply for refugee status at one of our refugee processing offices abroad. Finally, the amendment called for reform of our immigration, refugee, and asylum laws to correct the current problems.

We are faced with an enormous backlog of cases and a whole process that is in disarray. The current abuse mocks and perverts the intent of the Refugee Act of 1980. Returning to the original intent of the law is the logical way to address this problem.

THE NAFTA DEBATE

Mr. DASCHLE. Mr. President, the debate on the North American Free-Trade Agreement, or NAFTA, has been a hot one, to say the least. It has been characterized by deeply-held feelings and strong rhetoric—on both sides of the argument. And throughout this process it has often been difficult to separate fact from emotion.

I noted a headline in this morning's newspaper that proclaimed, "Ameri-

cans Are Split on Trade Accord, Poll Finds." What struck me about the ensuing story was not so much that this nationwide poll found Americans in a statistical dead heat over the merits of NAFTA, but rather what it says about the depth of public understanding of the nature and implications of the agreement.

The article relates that:

If the measure is described as one that would create jobs in the United States, most of those who say they are opposed switch sides. Similarly, when NAFTA is described as a pact that would result in a loss of jobs, most supporters become opponents. Such a change in information can shift the responses to 85 percent either in favor of, or opposed to, the agreement.

This poll reinforces my sense that this is largely an interest group debate. And that is not, by definition, bad.

What it does mean, however, is that it is particularly important for individual Members of Congress to independently evaluate the arguments and information presented by interest groups, including the administration, and reach an independent judgment as to what is best for their constituents and the country.

That is what I have tried to do.

I have asked questions of those who are experts and are deemed impartial. On most issues, I have obtained satisfactory answers—not iron-clad assurances, but satisfactory and thoughtful responses.

I have also learned that we will never know all the facts about NAFTA until it takes effect. That is not a reason to vote against the agreement. It is just a fact.

I understand the concerns of those who fear the agreement could hurt U.S. workers, and I do not discount those concerns. However, most economic studies conclude the nation will gain more jobs than it loses from trade with Mexico under NAFTA.

I have also heard eloquent arguments and reviewed statistical data that indicate that NAFTA makes economic sense for our country and presents a strategic opportunity to strengthen America's economic and political base in our own hemisphere.

In the final analysis, NAFTA will provide a definite and comprehensive schedule for eliminating Mexico's barriers to trade. When NAFTA is fully implemented, U.S. producers of commodities and other products and services will be able to sell freely in the Mexican market—and will be able to do so without having to locate there. With some 90 million consumers in Mexico, NAFTA will provide a boost that our economy needs. That can only have a positive effect on employment and wages in our country.

There are also several aspects of NAFTA that I would like to change. None is so fundamental that it would cause me to alter my general sense of what is the right thing to do. There are

probably as many desired changes to the agreement as there are members of Congress—maybe more.

Again, that is not a reason to vote against the agreement. It is just a function of negotiating and finalizing a trade pact among nations.

I hope that, when all is said and done, the American people will realize that NAFTA is an issue over which reasonable and thoughtful men and women—those who truly wish to do what's right for their country—can differ.

Many of my concerns about NAFTA have been shared by others, including the impact of the agreement on U.S. workers and on the environment. The Administration has not only made a good faith effort to provide assurances on these issues, it has taken concrete action on them.

I have concluded that NAFTA will increase employment in our country, not decrease it. This is a real opportunity for job growth that we should not miss.

To be sure, there will be some job losses, and the Administration's proposal for worker retraining will help alleviate the pain that some U.S. workers undoubtedly will experience due to NAFTA. While that pain is no small consideration, the job losses from NAFTA are expected to be only a small fraction of the dislocation currently experienced annually through corporate down-sizing and other factors.

I have also looked more deeply into the question of whether a significant number of companies will decide to move to Mexico as a result of NAFTA. In light of the lack of infrastructure, delivery systems, supplies, educated workers and the like in Mexico, I simply cannot agree with those who envision a mass exodus of United States corporations.

In fact, there is evidence that the lowering of Mexican tariffs and other import restrictions will enhance the ability of U.S. businesses—especially small businesses, which do not have the capital to move south—to remain in the United States while selling their products in the Mexican market.

On the environment, I am convinced that NAFTA not only will enable the United States to maintain its strict standards, but also will provide leverage for encouraging Mexico to enforce its environmental laws more forcefully.

In the course of the debate on NAFTA, I have also raised specific concerns about the agreement. Specifically, I have been concerned that approval of NAFTA might lock in unfair Canadian practices with respect to wheat. These practices have enabled Canada to gain 75 percent of the Mexican market in wheat and have increased concerns about Canadian wheat entering United States export programs.

I have also sought assurances that NAFTA's rules of origin will be strictly

enforced. These rules are designed to clearly identify the origin of goods and ensure that countries that are not parties to NAFTA are not able to illegally avail themselves of its benefits.

Finally, I have raised questions about our ability to maintain and enforce sanitary and phytosanitary standards for animals, plants, and other food products crossing our borders.

I and a number of my colleagues have negotiated with the White House on these matters. Those negotiations are complete and, I am pleased to say, have been successful.

In a letter released today, the President has committed to requesting the International Trade Commission to initiate in 60 days an investigation under section 22 of the Agricultural Adjustment Act as to whether Canadian imports are threatening our wheat program. This investigation is required before sanctions can be imposed. Unless the Canadians agree to make concessions before that time, the section 22 investigation will begin.

The legislation that will implement NAFTA under U.S. law, which Congress will begin voting on tomorrow, already contains a provision that will require end-use certificates on wheat entering the United States. The President has further committed to instructing the Secretary of Agriculture to act quickly on this requirement and to make certain that it is effectively administered. This should ensure that foreign agricultural commodities do not benefit from U.S. export programs.

With respect to enforcement of NAFTA's rules of origin, U.S. Trade Representative Mickey Kantor has committed in writing to working closely with members of Congress to ensure vigorous enforcement of those rules, so that illegal transshipments do not occur. The incidence of illegal transshipments, as well as the adequacy of food inspection under NAFTA, will be monitored as a result of an amendment I sponsored to the NAFTA implementing legislation.

That amendment requires the Secretary of Agriculture to report to Congress annually on these matters, so that Congress can respond quickly and appropriately if problems arise over the 10-year period during which most NAFTA benefits are phased in.

We are at a critical turning point in the post-cold war period. The United States like many other countries, is facing serious economic problems. We can turn inward, or we can seek to take the next, albeit risky, step of swimming with the tide of global trade.

We cannot ignore the fact that Mexico is our third-largest trading partner. We must continue to break down the sea walls of trade restrictions, as other have done and as we have been a leader in doing in the past.

NAFTA is also the right thing to do. This is not a case of United States

opening its markets in hopes that others will follow suit. The United States barriers to trade are already low, while Mexico's average tariff is several times higher than ours. We are saying that we are willing to eliminate what little barriers we have for a wide-ranging commitment on the part of our neighbor to the south to completely open its markets.

It is with all of these points in mind that I will vote for the North American Free-Trade Agreement.

HON. DAMON J. KEITH

Mr. RIEGLE. Mr. President, today I rise to pay tribute to the Honorable Damon J. Keith, an extraordinary individual and one of the great jurists in our Nation's history.

A native Detroit, Judge Keith was appointed to the United States Court of Appeals for the Sixth Circuit in 1977 with my enthusiastic support. He had earlier served on the U.S. District Court for the Eastern district of Michigan—as a U.S. District Judge for 40 years, and later as Chief Justice of that court.

Throughout his career, Judge Keith has distinguished himself by single-minded devotion to public service, outstanding civic leadership, a passionate commitment to the principles of equality and civil rights, and a rock-solid, unwavering defense of the Constitution of the United States.

In recognition of Judge Keith's dedication to upholding the United States Constitution, Chief Justice Warren Burger appointed him Sixth Circuit Chairman of the Committee of the Bicentennial of the Constitution in 1985. Two years later, Chief Justice William Rehnquist named him national chairman of the Judicial Conference Committee on the Bicentennial. In 1990, President George Bush appointed him to the Committee on the Bicentennial of the United States Constitution. Judge Keith's leadership in planning the celebration of this milestone in U.S. history earned him richly deserved national recognition and acclaim.

In 1992, the National Bar Association honored Judge Keith with its highest distinction, the C. Francis Stratford Award. The State Bar of Michigan has also recognized his accomplishments. In 1991, the Association honored him with its Champion of Justice Award. The Michigan State Bar also declared his decision in *United States versus Sinclair*,¹ which involved wiretapping, as Michigan's Fifteenth legal milestone. Judge Keith has also been awarded the Martin Luther King, Jr. Freedom Award from The Progressive National Baptist convention, and the Thurgood Marshall Award from the

Wolverine Bar Association among many other awards.

Earlier this month, Wayne State University announced the establishment of the Damon J. Keith Law Collection. The first of its kind, the Keith Collection will house historical documents, personal papers, photographs, and memorabilia of African-American lawyers and judges, as well as important legal records. It will be a priceless archive for students and scholars now and in the future.

Judge Keith is a graduate of the Wayne State University School of Law and Howard University Law School. He holds more than 20 honorary doctorate degrees from prestigious colleges and universities throughout this Nation.

Judge Keith is a courageous, compassionate champion of justice who has earned the respect and admiration of all who know him.

On November 20, 1993, the Detroit Chapter of the National Lawyers' Guild will hold a tribute dinner to honor Judge Damon Keith.

I am very proud to add my voice to those honoring this distinguished jurist, tireless public servant, and true fighter for justice, the Honorable Damon J. Keith.

A TRIBUTE TO LT. GEN. JEAN E. ENGLER

Mr. WARNER. Mr. President, I rise today to pay tribute to an outstanding Army officer, Lt. Gen. Jean E. Engler, who passed away on November 10, 1993, at the age of 84.

General Engler began his military career as an enlisted soldier in 1928. Ten years later he was appointed to the U.S. Military Academy and began his career as a bright, young military officer.

During the 41 years General Engler served his country, he proved to be a valiant and able soldier. He rose to the position of Commanding General of the U.S. Army in Japan and served in that position from 1961-63. From 1966-67, he was the Deputy Army Commanding General of Logistics in Vietnam. His decorations included four Distinguished Service Medals, two Legions of Merit, a Bronze Star, and an Air Medal.

After retiring from the Army, General Engler continued to serve the military community by becoming involved with several military organizations. He was the executive vice president of the American Ordnance Association and the Defense Preparedness Association. He also was the Chief of Staff of the Military Order of the World Wars.

General Engler was a dedicated officer who was committed to the mission of our military. He will be sorely missed by those who were privileged to serve with him.

¹ *United States v. Sinclair*, 321 F. Supp. 1074 (E.D. Mich. 1971).

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

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

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of January 5, 1993, the Secretary of the Senate on November 15, 1993, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 142. Joint resolution designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week."

MESSAGES FROM THE HOUSE

At 3:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 881. An act to prohibit smoking in Federal buildings.

H.R. 1137. An act to amend the Geothermal Steam Act of 1970, and for other purposes.

H.R. 2559. An act to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building."

H.R. 2620. An act to authorize the Secretary of the Interior to acquire certain lands in California through an exchange pursuant to the Federal Land Policy and Management Act of 1976.

H.R. 2868. An act to designate the Federal building located at 600 Camp Street, in New Orleans, LA, as the "John Minor Wisdom United States Courthouse."

H.R. 3186. An act to designate the United States courthouse located at Houma, LA as the "George Arceneaux, Jr., United States Courthouse."

H.R. 3286. An act to amend the act establishing Golden Gate National Recreation Area to provide for the management of the Presidio by the Secretary of the Interior, and for other purposes.

H.R. 3318. An act to amend title 5, United States Code, to provide for the establishment of programs to encourage Federal employees to commute by means other than single occupancy motor vehicles.

H.R. 3321. An act to provide increased flexibility to States in carrying out the Low-Income Home Energy Assistance Program.

H.R. 3356. An act to designate the United States courthouse under construction at 611

Broad Street in Lake Charles, LA, as the "Edwin Ford Hunter, Jr., United States Courthouse."

H.R. 3445. An act to improve hazard mitigation and relocation assistance in connection with flooding, to provide comprehensive review and assessment of the adequacy of current flood control policies and measures, and for other purposes.

H.R. 3485. An act to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1994, 1995 and 1996.

S.J. Res. 129. Joint resolution to authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, VA, to honor the 270 victims of the terrorists bombing of Pan Am Flight 103.

The message also announced that the House has passed the bill (S. 433) to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, LA, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 654. An act to amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations.

S. 1490. An act to amend the United States Grain Standards Act to extend authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, to extend the authorization of appropriations for such act, and to improve administration of such act, and for other purposes.

S.J. Res. 19. Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

H.J. Res. 79. Joint resolution to authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week."

The enrolled bills and joint resolutions were subsequently signed by the President Pro Tempore (Mr. BYRD).

MEASURES REFERRED

The following bills were read and referred, as follows:

H.R. 2559. An act to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building"; to the Committee on Environment and Public Works

H.R. 2868. An act to designate the Federal building located at 600 Camp Street, in New Orleans, LA, as the "John Minor Wisdom United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3186. An act to designate the United States courthouse located at Houma, LA, as the "George Arceneaux, Jr., United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3356. An act to designate the United States courthouse under construction at 611

Broad Street in Lake Charles, LA, as the "Edwin Ford Hunter, Jr., United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3445. An act to improve hazard mitigation and relocation assistance in connection with flooding, to provide comprehensive review and assessment of the adequacy of current flood control policies and measures, and for other purposes; to the Committee on Environment and Public Works; and

H.R. 3485. An act to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1994, 1995, and 1996; to the Committee on Commerce, Science, and Transportation.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, November 16, 1993, he had presented to the President of the United States the following enrolled bill:

S.J. Res. 142. Joint resolution designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week."

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-1753. A communication from the Secretary of the Senate transmitting, pursuant to law, a full and complete statement of the receipts and expenditures of the Senate showing in detail the items of expense under proper appropriations, the aggregate thereof, and exhibiting the exact condition of all public moneys received, paid out, and remaining in his possession from April 1, 1993 through September 30, 1993; ordered to lie on the table.

EC-1754. A communication from the President of the United States, transmitting, pursuant to law, a notice of extension of the national emergency with respect to the proliferation of chemical and biological weapons; to the Committee on Banking, Housing and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 286. A bill to reauthorize funding for the Office of Educational Research and Improvement, to provide for miscellaneous education improvement programs, and for other purposes (Rept. No. 103-183).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

H.R. 856. A bill to improve education in the United States by promoting excellence in research, development, and the dissemination of information.

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. MOYNIHAN:

S. 1659. A bill to amend the Law Enforcement Officers Protection Act of 1985; to the Committee on the Judiciary.

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

S. 1660. A bill to establish the Great Falls Historic District, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURENBERGER (for himself and Mr. PELL):

S. 1661. A bill to amend the Occupational Safety and Health Act of 1970 to provide for uniform warnings on personal protective equipment for occupational use, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. WOFFORD:

S. 1662. A bill to amend the Housing and Community Development Act of 1974 to increase the maximum amount of community development assistance that may be used for public service activities; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN (for himself, Mr. BRADLEY, Mr. D'AMATO, Mr. DODD, Mr. COHEN, Mr. CHAFEE, Mr. COATS, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. INOUE, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SASSER, Mr. SHELBY, Mr. WARNER, Mr. WELLSTONE, Mr. METZENBAUM, Mr. JOHNSTON, Mr. WOFFORD, Mr. SIMON, Mr. DURENBERGER, and Mr. HATCH):

S.J. Res. 151. A joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week"; 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. KENNEDY (for himself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. HELMS, Mr. LAUTENBERG, Mr. DODD, Mr. WOFFORD, Mr. BRADLEY, Mr. MITCHELL, Mr. SASSER, Mr. FORD, Mr. LIEBERMAN, Mr. LEVIN, Mr. PELL, and Mr. KERRY):

S. Res. 165. A resolution to state the sense of the Senate with respect to the compliance of Libya with United Nations Security Council Resolutions; to the Committee on Foreign Relations.

By Mr. BROWN:

S. Res. 166. A resolution to express the sense of the Senate that all able-bodied Federal prison inmates should work and that the Attorney General shall submit to Congress a report describing a strategy for employing more Federal prison inmates; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN:

S. 1659. A bill to amend the Law Enforcement Officers Protection Act of 1985; to the Committee on the Judiciary.

LAW ENFORCEMENT OFFICERS PROTECTION ACT
• Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that would

amend the Law Enforcement Officers Protection Act of 1985. In 1986, the Senate passed that legislation by a vote of 97-1. The act made it unlawful to manufacture or import armor-piercing ammunition. President Reagan signed the bill into law on August 8, 1986.

As I said in 1986, cop-killer bullets have no place in the arsenal of any sportsman or law-abiding citizen. They have only one purpose—to injure or kill police officers, Federal law enforcement officers, or even Presidents when they are wearing bullet-proof vests. The Senate has the responsibility to protect the Nation's law enforcement officers.

We did this in 1986, and must do so again now. It has recently come to our attention that a Swedish-made bullet, the M39B, does not fall under the 1986 prohibition because of its composition. The M39B is a 9mm round capable of piercing the soft body armor worn by police because it has a thick steel jacket surrounding a lead core—rather than the hard projectile core in other armor-piercing rounds.

The Bureau of Alcohol, Tobacco, and Firearms [BATF] supports a ban on the M39B, which would be limited to this kind of ammunition only. The Fraternal Order of Police and the Federal Law Enforcement Officers Association have also endorsed this legislation.

We need this bill to protect our police officers. We cannot stand idly by, waiting for the day when M39B bullets fall into the hands of criminals. That day has not arrived yet, but it will if we fail to act. We must ban the M39B now.

Mr. President, I ask unanimous consent that the text of the bill and letters from BATF, the Fraternal Order of Police, and the Federal Law Enforcement Officers Association be printed in the RECORD at the conclusion of my remarks.

I urge my colleagues to support this vitally important legislation.

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

S. 1659

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Law Enforcement Officers Protection Act of 1985, Amendment."

SEC. 101. ARMOR-PIERCING AMMUNITION DEFINITION.

Section 921 (a)(17) of Title 18, United States Code, is amended by revising subparagraph (B) and adding a new subparagraph (C) to read as follows:

"(B) The term 'armor piercing ammunition' means—

"(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

"(ii) a jacketed projectile which may be used in a handgun and whose jacket has a

weight of more than 25 percent of the total weight of the projectile.

"(C) The term 'armor piercing ammunition' does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device."

DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,

Washington, DC, November 4, 1993.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: As the Senate takes up the issue of controlling handgun ammunition, I would like to take this opportunity to make you aware of a particularly dangerous type of ammunition now coming into circulation.

The M39B is a 9mm Parabellum caliber cartridge which defeats police soft body armor, but which is not subject to current law governing armor piercing handgun ammunition. As you know, current law controls handgun ammunition when the projectile or projectile core is made entirely of one or more defined metals.

The M39B escapes being covered because it utilizes an overly thick steel bullet jacket. The core of the bullet is lead.

Clearly as 9mm handguns continue to expand their market share, we in law enforcement are faced with the threat of offenders armed with high capacity, rapid firing handguns filled with ammunition, each round of which will punch through a policeman's body armor.

I know you appreciate the seriousness of this issue, and I hope you find the information about this ammunition informative. Please be assured of our interest in working with you on this issue and of our willingness to answer any questions you may have.

Sincerely yours,

JOHN W. MAGAW,
Director.

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Columbus, OH, November 4, 1993.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the Fraternal Order of Police, I applaud your efforts to address the increasing violence in this country by introducing legislation aimed at controlling the distribution of ammunition. I now request that you take your proposed legislation an extra step by banning the sale of the M39B bullet.

The M39B bullet is a 9mm Parabellum caliber cartridge that is able to penetrate soft body armor used by police departments. As you know, armor piercing ammunition is tightly regulated by the Gun Control Act. This particular bullet is not currently controlled by those regulations.

It is imperative that M39B ammunition be banned from use, for the protection of the men and women in law enforcement who are charged with protecting the citizens of the United States.

Your continued support of the law enforcement community is appreciated by the members of the Fraternal Order of Police.

Sincerely,

DEWEY R. STOKES,
National President.

FEDERAL LAW ENFORCEMENT
OFFICERS ASSOCIATION,
Amityville, NY, November 4, 1993.

HON. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the Federal Law Enforcement Officers Association, I am writing to thank you for attention to the terrible threat gun violence has become to our Nation's health.

I also want to take this opportunity to ask you to examine what can be done to stop the sale of the M39B 9mm Parabellum round of ammunition.

The M39B effectively penetrates soft body armor; but because its steel jacket, rather than the bullet or core of the projectile, gives it this ability it is untouched by existing law.

This is a round of ammunition that has found its way through a loophole in the law and is aimed at the heart of police officers everywhere.

We thank you as always for your interest in the public safety and urge you to act to stop the spread of this new "cop killer" ammunition.

Sincerely,

VICTOR OBOYSKI, Jr.,
Executive Vice President. •

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

S. 1660. A bill to establish the Great Falls Historic District, and for other purposes; to the Committee on Energy and Natural Resources.

GREAT FALLS PRESERVATION AND
REDEVELOPMENT ACT OF 1993

• Mr. LAUTENBERG. Mr. President, I'm pleased to have Senator BILL BRADLEY join me in introducing the Great Falls Preservation and Redevelopment Act of 1993, legislation that recognizes the historic significance of the Great Falls area of Paterson, NJ.

I'm proud to say that I was born in Paterson. My father worked in the mills, and I experienced first-hand the historic importance of industry in the city.

Paterson is known as America's first industrialized city. Alexander Hamilton played a role here when, in 1791 he chose the area around the Great Falls for his laboratory and to establish the Society for the Establishment of Useful Manufactures. Textiles held special significance; Paterson was once called "Silk City" as the center of the textile industry.

While rich in history, the area is also blessed by great natural beauty and splendor. It is an oasis of beauty in an urban environment. Its resources offer not just educational and cultural opportunities, but economic and recreational ones as well.

The Federal government acknowledged all this by designating the area a national historic landmark, a formal

recognition by the National Park Service.

The roots and contributions of this area run deep. New industries were responsible for thriving businesses, tight-knit families and for many of the residents, the first homes of immigrants, who arrived in the United States through nearby Ellis Island.

Many of the industries from Great Falls have moved elsewhere. But we are left with an area whose significance is great for people like me.

I find a source of inspiration in remembering my father in those thriving mills of Paterson, so I look at Paterson, and the Great Falls area, as a reminder of who I am. We must value our personal and collective histories, because they connect us to our families and to each other.

Paterson is not alone in this story. New Jersey is rich in industrial, urban history. New Jersey played a major role in the industrial revolution.

I sought to highlight this role when I secured funds in the fiscal year 1992 Interior appropriations bill to establish the Urban History Initiative in three cities in New Jersey. Paterson is one of those cities.

Paterson's urban history program is in its early stages. The cooperative agreement was recently signed and things are moving. This infusion of funds has succeeded in initiating Paterson's historic revitalization.

But this bill formalizes the current partnership among the city, its residents, and the Federal Government. It establishes the Great Falls Historic District and provides a long-term Federal presence in the area. The resources of Great Falls are just beginning to be tapped—we need this bill to give the resources the focus they deserve.

Such historical recognition provides important educational, economic, and cultural benefits. Its value is immeasurable.

The Secretary of the Interior will enter into cooperative agreements with nonprofits, property owners, State and local government to assist in interpreting and preserving the historical significance and contributions of the Great Falls to the city, to industry, and to our heritage.

This bill does not impose Federal Government's heavy hand on the residents and businesses. The city doesn't want that, and neither does the Park Service.

Instead, the bill initiates and facilitates cooperative agreements among interested parties. The Secretary will determine properties of historical or cultural significance, and provide technical assistance, interpret, restore or improve these properties. This historic and cultural recognition leads to economic revitalization in the area.

This bill, when enacted, will play an important part in advancing the historic revival of Paterson and of the

Great Falls. In turn, it will boost the economic vitality of the region while restoring the importance of our industrial heritage for our children. I look forward to watching this bill become reality.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 1660

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Great Falls Preservation and Redevelopment Act of 1993".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "District" means the Great Falls Historic District established under section 4; and

(2) the term "Secretary" means the Secretary of the Interior.

SEC. 3. PURPOSE.

The purpose of this Act is to preserve and interpret the educational and inspirational benefit of the unique and distinguished contribution to our national heritage of certain historic and cultural lands, waterways, and edifices of the Great Falls Historic District. Such purpose shall be carried out with an emphasis on harnessing this unique urban environment for its educational and recreational value, and enhancing economic and cultural redevelopment within the District.

SEC. 4. GREAT FALLS HISTORIC DISTRICT.

(a) ESTABLISHMENT.—There is established in the city of Paterson in the county of Passaic in the State of New Jersey the Great Falls Historic District.

(b) BOUNDARIES.—The boundaries of the District shall be the boundaries as specified for the Great Falls Historic District listed on the National Register of Historic Places.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the District through cooperative agreements in accordance with this Act.

(b) GRANTS; COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In expending sums made available pursuant to this Act, the Secretary may make grants to, and enter into cooperative agreements with, nonprofit entities for—

(A) the purchase of property or easements;

(B) emergency stabilization; and

(C) the establishment of a coordinated fund.

(2) PURPOSE.—Grants and cooperative agreements entered into under this subsection shall be used to carry out this Act, including the following activities:

(A) An evaluation of—

(i) the condition of historic and architectural resources existing on the date of enactment of this Act; and

(ii) the environmental and flood hazard conditions within the District.

(B) Recommendations for—

(i) rehabilitating, reconstructing, and adaptively reusing such historic and architectural resources;

(ii) preserving viewsheds, focal points, and streetscapes;

(iii) establishing gateways to the District;

(iv) establishing and maintaining parks and public spaces;

(v) restoring, improving, and developing raceways and adjacent areas;
 (vi) developing public parking areas;
 (vii) improving pedestrian and vehicular circulation within the District;
 (viii) improving security within the District, with an emphasis on preserving historically significant structures from arson; and
 (ix) establishing a visitor's center.

(c) RESTORATION, MAINTENANCE, AND INTERPRETATION.—

(1) IN GENERAL.—The Secretary may enter into cooperative agreements with the owners of properties within the District of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties.

(2) REQUIREMENTS.—Each agreement entered into pursuant to paragraph (1) shall contain provisions ensuring that—

(A) the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes; and

(B) no changes or alterations shall be made in the property except by mutual agreement.

(d) COOPERATIVE AGREEMENTS WITH STATE.—In administering the District, the Secretary may enter into cooperative agreements with the State of New Jersey, or any political subdivision thereof, for rendering, on a reimbursable basis, rescue, firefighting, and law enforcement services, cooperative assistance by nearby law enforcement and fire preventive agencies, and for other appropriate purposes.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this Act.●

Mr. BRADLEY. Mr. President, I am pleased today to join Senator LAUTENBERG in introducing the Great Falls Preservation and Redevelopment Act. Senator LAUTENBERG has been for a number of years a true leader for the preservation of Paterson's historic Great Falls in New Jersey. I would note especially his efforts to create a New Jersey Urban History Initiative. This National Park Service program, which was initiated in the summer of 1992, is allowing the Park Service to work directly with the local citizens to preserve the Great Falls Historic District.

This is truly the broadest support for this legislation in my State. Congressman KLEIN is to be commended for his work in the House of Representatives. He has introduced this legislation in the House. Mayor Pascrell is strongly supportive of this effort and has today come down from New Jersey to testify before a House subcommittee to that effect. Former Congressman Roe also sought to protect and celebrate the Great Falls of Paterson. Many others in the community are enthusiastic and active in this effort.

The city of Paterson and the Great Falls have a long and rich history. In the early days of the Nation, when water power was the engine for industrial growth, Alexander Hamilton handpicked the Great Falls as a center

for American industry. With \$8,000 in seed money, Hamilton and his Society for Useful Manufacturers purchased 700 acres and hired Pierre L'Enfant to design the town. From this auspicious beginning in 1792, Paterson developed into a national industrial power. Its textile factories made cotton cloth and sails that were the best available. Along the river were invented the Colt revolver, the Rogers steam locomotive, and the Curtiss-Wright aircraft engines.

In 1976, the Secretary of the Interior designated the Great Falls National Historic Landmark District. As a result of this declaration and the Urban History Initiative, the Park Service has been directly involved in the ongoing preservation effort. With this new bill, we validate this assistance and pledge our own enthusiasm, commitment and personal involvement.

From my work with the New Jersey Coastal Heritage Trail and the shore communities, from the work on various wild and scenic rivers in New Jersey, and from a variety of other preservation projects, I've seen how crucial it is to have professional guidance and recognition. The very difficult job of preserving the Great Falls District falls ultimately on the local citizens. The Federal Government cannot do the job for them. But we owe them our support. Don't underestimate the power of a little help and a little recognition. This bill will not mandate the preservation of this important area. However, I believe it will achieve that end. I urge my colleagues to support this bill.

By Mr. DURENBERGER (for himself and Mr. PELL):

S. 1661. A bill to amend the Occupational Safety and Health Act of 1970 to provide for uniform warnings on personal protective equipment for occupational use, and for other purposes; to the Committee on Labor and Human Resources.

WORKER PROTECTION WARNINGS ACT OF 1993

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Worker Protection Warning Act of 1993. I am proud to join Senator PELL in cosponsoring this important legislation.

The Worker Protection Warning Act directs the Occupational Safety and Health Administration [OSHA] to develop and mandate uniform warnings and instructions for equipment designed to protect workers from workplace hazards. OSHA will develop these warnings in cooperation with workers, employers, human factors experts, manufacturers of safety equipment, and other experts in the field.

Companies who manufacture protective equipment, as well as employers and employees who use these products will benefit from this legislation. Current manufacturers' warnings and instructions are not uniform, even those

on similar personal protective equipment. Consequently, workers have to be retrained every time they use new brands of equipment or when they are hired by new employers.

To add to this confusion, warning and instruction methods are determined on a State by State basis. Therefore, the system tends to be inconsistent and confusing to all involved—workers, employers, safety directors, and equipment manufacturers.

Uniform Federal warnings will greatly reduce the difficulty many manufacturers face in attempting to comply with multiple State guidelines. In addition, uniform warnings will simplify instructions, limit training and retraining time, and—ultimately—help protect workers.

More effective warnings will mean fewer accidents caused by protective equipment misuse.

The warnings required by this bill must go beyond notifying employers and employees of the risks of bodily injury. In addition, the warnings must also detail a product's limitations, its proper uses, and common misuses.

OSHA will also define the means by which equipment manufacturers will convey the warnings, and will require employers to communicate the warnings to their workers, train them in the proper use of equipment, and warn them of the safety consequences if they do not follow these instructions.

Mr. President, under this legislation, manufacturers of personal protection equipment will remain liable for workers' injuries resulting from design and manufacturing defects, and for failing to supply necessary warnings. However, a national standard should result in fewer court proceedings.

I look forward to working with my colleagues on the Senate Labor and Human Resources Committee to ensure passage of this important legislation.●

By Mr. LIEBERMAN (for himself, Mr. BRADLEY, Mr. D'AMATO, Mr. DODD, Mr. COHEN, Mr. CHAFEE, Mr. COATS, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. INOUE, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SASSER, Mr. SHELBY, Mr. WARNER, Mr. WELLSTONE, Mr. METZENBAUM, Mr. JOHNSTON, Mr. WOFFORD, Mr. SIMON, Mr. DURENBERGER, and Mr. HATCH):

S.J. Res. 151. A joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week"; to the Committee on the Judiciary.

PRIMARY IMMUNE DEFICIENCY AWARENESS WEEK

● Mr. LIEBERMAN. Mr. President, I rise today to introduce a joint resolution to declare the week beginning April 10, 1994, as Primary Immune Deficiency Awareness Week. Primary immune deficiency is a genetic defect to

the immune system that presently affects 1 in 500 persons, most of them children, in the United States. This condition often provokes a lifetime of serious illnesses and sometimes results in death, yet many doctors and families know little about the disease. Primary immune deficiency is frequently misdiagnosed and not properly treated. Therapy and medicines which can significantly improve the health of those suffering from primary immune deficiency, protect their vital organs, and save their lives, do exist, but many families and patients suffer alone with little medical or psychological support.

The Modell family of the State of Connecticut has suffered through the tragedy of losing a loved one to primary immune deficiency. Jeffrey Modell struggled bravely with this disease until it took his life at the age of 15. Fred and Vicky Modell experienced the enormous medical, emotional, and financial difficulties of dealing with the primary immune deficiency on their own. After the ordeal was over, they realized the need for an organization which would provide families who are struggling to overcome PID with a place to turn for help. They founded the Jeffrey Modell Foundation, a national, nonprofit research foundation which operates a 24-hour information and referral hotline and helps fund and coordinate the struggle against primary immune deficiency through work in three areas; research, physician and patient education, and patient support.

The Modell Foundation has done an extraordinary job toward realizing all three goals, but we must expand our efforts to increase public awareness. Some 500,000 Americans are known to be affected by this disease. We need to ensure that parents and health care professionals are aware of the symptoms of primary immune deficiency, that they know where to turn for assistance, and that we are supporting research efforts to increase the medical community's understanding of this condition.

I urge my colleagues to join me in declaring the week April 10 through April 16, 1994 as National Primary Immune Deficiency Awareness Week. I ask unanimous consent that the text of the resolution be printed in the RECORD following my remarks.

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

S.J. RES. 151

Whereas primary immune deficiency is a congenital defect in the immune system such that the body cannot adequately defend itself from infection;

Whereas primary immune deficiency is most often diagnosed in children and affects more children than leukemia and lymphoma combined;

Whereas primary immune deficiency is believed to affect 500,000 Americans and possibly more because the defect is often undiagnosed and misdiagnosed;

Whereas many forms of primary immune deficiency are inherited;

Whereas there are currently considered to be 70 forms of primary immune deficiency ranging from severe combined immune deficiency (which is fatal if untreated) to chronic recurring infections and allergies that cannot be managed with prophylactic antibiotics;

Whereas the earliest symptoms of primary immune deficiency are easily confused with a number of common illnesses or infections so that physicians often fail to diagnose and treat the underlying problem;

Whereas once suspected, primary immune deficiency can be diagnosed through a series of blood screenings that test immune function;

Whereas early intervention and treatment can save lives and prevent permanent damage to lungs and other organs;

Whereas many forms of treatment are available once a specific diagnosis is made;

Whereas procedures such as bone marrow transplants may result in complete cure, and other treatments like monthly infusions of gamma globulin dramatically reduce a patient's risk of infections and enable the patient to lead a normal life;

Whereas patients may have long periods of normal health then suddenly be stuck by severe fevers and infections;

Whereas lack of public awareness can lead to anxiety and leave families isolated and confused; and

Whereas education is essential to make the general public, health care professionals, employers, and insurers more knowledgeable about primary immune deficiency: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of April 10 through 16, 1994, is designated as "Primary Immune Deficiency Awareness Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.●

By Mr. WOFFORD:

S. 1662. A bill to amend the Housing and Community Development Act of 1974 to increase the maximum amount of community development assistance that may be used for public service activities; to the Committee on Banking, Housing, and Urban Affairs.

COMMUNITY DEVELOPMENT FLEXIBILITY ACT

● Mr. WOFFORD. Mr. President, today I am introducing the Community Development Flexibility Act to help communities deal with pressing social problems.

The Community Development Block Grant Program has enabled communities to improve upon their housing and infrastructure stock. It also permits communities to spend up to 15 percent of their CDBG funds on public service activities such as crime prevention. The time has come to enable communities to commit more of their CDBG resources to these public service activities. The Community Development Flexibility Act would increase the public service cap from 15 to 20 percent.

My hope is that communities would use these additional resources for

crime prevention—especially for community policing efforts. The issue of crime touches every neighborhood in every city and town in every State of this Nation. No one is immune from the ravages of random violent acts that have increased in number beyond our ability to control them with traditional policing methods.

If success in fighting crime could be measured accurately by the number of people we put behind bars, then we would not have the problems we face today. The United States has the highest incarceration rate of any industrialized nation. Yet the United States has a rate of violent crime 5 times that of Canada and 10 times that of England.

In my own State of Pennsylvania violence is on the rise. In the city of Pittsburgh drug and gang violence have taken over the streets of many of the cities' poorest neighborhoods. In Philadelphia like other major cities across the country, the increased incident of crime has crippled local police resources and held captive law abiding citizens.

Our communities and our local law enforcement agencies are demanding that we provide them with the resources they need to take innovative steps to stem the growth in crime.

This legislation will help us get there. I have heard from the city of Pittsburgh, which has told me that the 15 percent cap is creating a serious burden on its ability to pursue a coherent local strategy for making its neighborhoods safe. I agree with Pittsburgh Mayor Sophie Masloff who wrote me to say that crime prevention goes hand in hand with housing and economic development activities, so ardently pursued by the CDBG program.

And while many may hope would be that communities would use the resources to create safe neighborhoods—this legislation does not tie the hands of local officials to respond to their community's needs. Communities could use these resources for the variety of purposes permitted under the CDBG program. Washington should be cautious in dictating to local governments and this legislation will increase their flexibility to deal with the problems they face.

I ask unanimous consent that the full text of the Community Development Flexibility Act appear following my remarks.

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

S. 1662

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

SECTION 1. SHORT TITLE.

This Act may be known as the "Community Development Flexibility Act."

SEC. 2. CDBG ASSISTANCE FOR PUBLIC SERVICE ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

- (1) by striking "15 per centum" each place it appears and inserting "20 percent"; and
 (2) by striking "15 percent" and inserting "20 percent".

ADDITIONAL COSPONSORS

S. 81

At the request of Mr. NICKLES, the names of the Senator from Wyoming [Mr. WALLOP] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 81, a bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes.

S. 455

At the request of Mr. HATFIELD, the names of the Senator from California [Mrs. BOXER] and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 455, a bill to amend title 31, United States Code, to increase Federal payments to units of general local government for entitlement lands, and for other purposes.

S. 465

At the request of Mr. DASCHLE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 465, a bill to amend the Internal Revenue Code of 1986 to encourage the production of biodiesel and certain ethanol fuels, and for other purposes.

S. 549

At the request of Mr. DOMENICI, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 549, a bill to provide for the minting and circulation of one-dollar coins.

S. 1037

At the request of Mrs. MURRAY, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 1037, a bill to amend the Civil Rights Act of 1991 with respect to the application of such Act.

S. 1082

At the request of Mr. COCHRAN, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 1082, a bill to amend the Public Health Service Act to revise and extend the program of making grants to the States for the operation of offices of rural health, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the names of the Senator from Georgia [Mr. NUNN], the Senator from New Jersey [Mr. BRADLEY], the Senator from New Hampshire [Mr. GREGG], the Senator from Massachusetts [Mr. KERRY], and the Senator from Hawaii [Mr. INOUE] were added as cosponsors of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

S. 1428

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 1428, a bill to amend the Public Health Service Act to provide for programs regarding women and the human immunodeficiency virus, and for other purposes.

S. 1429

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 1429, a bill to amend the Public Health Service Act to establish programs of research with respect to women and cases of information with the human immunodeficiency virus, and for other purposes.

S. 1432

At the request of Mr. HOLLINGS, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 1432, a bill to amend the Merchant Marine Act, 1936, to establish a National Commission to Ensure a Strong and Competitive United States Maritime Industry.

S. 1437

At the request of Mr. DOLE, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 1437, a bill to amend section 1562 of title 38, United States Code, to increase the rate of pension for persons on the Medal of Honor roll.

S. 1478

At the request of Mr. PRYOR, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1478, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that pesticide tolerances adequately safeguard the health of infants and children, and for other purposes.

S. 1503

At the request of Mr. WELLSTONE, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1503, a bill to expand services provided by the Department of Veterans' Affairs for veterans suffering from post-traumatic stress disorder (PTSD).

S. 1552

At the request of Mr. WARNER, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Illinois [Mr. SIMON], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1552, a bill to extend for an additional two years the authorization of the Black Revolutionary War Patriots Foundation to establish a memorial.

S. 1575

At the request of Ms. MIKULSKI, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 1575, a bill to amend title 5, United States Code, to provide for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.

S. 1605

At the request of Ms. MIKULSKI, the names of the Senator from California [Mrs. BOXER] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 1605, a bill to authorize the Secretary of Transportation to convey vessels in the National Defense Reserve Fleet to certain nonprofit organizations.

S. 1651

At the request of Mr. D'AMATO, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1651, a bill to authorize the minting of coins to commemorate the 200th anniversary of the founding of the United States Military Academy at West Point, New York.

S. 1657

At the request of Mr. SPECTER, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Virginia [Mr. WARNER], the Senator from New York [Mr. D'AMATO], the Senator from Washington [Mr. GORTON], the Senator from Colorado [Mr. BROWN], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 1657, a bill to reform habeas corpus procedures.

SENATE JOINT RESOLUTION 141

At the request of Mr. SARBANES, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Joint Resolution 141, a joint resolution designating October 29, 1993, as "National Firefighters Day".

SENATE CONCURRENT RESOLUTION 31

At the request of Mr. DODD, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Concurrent Resolution 31, a concurrent resolution concerning the emancipation of the Iranian Baha'i community.

SENATE CONCURRENT RESOLUTION 36

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of Senate Concurrent Resolution 36, a concurrent resolution expressing the sense of the Congress that United States truck safety standards are of paramount importance to the implementation of the North American Free Trade Agreement.

SENATE CONCURRENT RESOLUTION 50

At the request of Mr. LAUTENBERG, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Concurrent Resolution 50, a concurrent resolution concerning the Arab boycott of Israel.

SENATE RESOLUTION 148

At the request of Mr. SIMON, the names of the Senator from Idaho [Mr. CRAIG], the Senator from Texas [Mr. GRAMM], the Senator from Nevada [Mr. REID], the Senator from Colorado [Mr. BROWN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Resolution 148, a

resolution expressing the sense of the Senate that the United Nations should be encouraged to permit representatives of Taiwan to participate fully in its activities, and for other purposes.

SENATE RESOLUTION 155

At the request of Mr. HATCH, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of Senate Resolution 155, a resolution commending the Government of Italy for its commitment to halting software piracy.

SENATE RESOLUTION 164

At the request of Mr. MOYNIHAN, the names of the Senator from Wisconsin [Mr. KOHL], the Senator from Illinois [Mr. SIMON], the Senator from Arizona [Mr. DECONCINI], the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], the Senator from Indiana [Mr. LUGAR], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maryland [Ms. MIKULSKI], the Senator from New Hampshire [Mr. GREGG], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Resolution 164, a resolution expressing the sense of the Senate commemorating the bombing of Pan Am Flight 103.

AMENDMENT NO. 1158

At the request of Mr. PRESSLER, his name was added as a cosponsor of amendment No. 1158 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1159

At the request of Mr. HELMS, the names of the Senator from Florida [Mr. MACK], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Kansas [Mr. DOLE], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Montana [Mr. BURNS], the Senator from Arizona [Mr. MCCAIN], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of amendment No. 1159 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1175

At the request of Mr. LIEBERMAN his name was added as a cosponsor of amendment No. 1175 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1181

At the request of Mr. DECONCINI the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from Nevada [Mr. REID], the Senator from Hawaii [Mr. INOUE], the Senator from Colorado [Mr. CAMPBELL], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of amendment No. 1181 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1189

At the request of Mr. DODD, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of amendment No. 1189 proposed to S. 1607, a bill to control and prevent crime.

SENATE RESOLUTION 165—RELATING TO LIBYA'S COMPLIANCE WITH U.N. SECURITY COUNCIL RESOLUTION

Mr. KENNEDY (for himself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. HELMS, Mr. LAUTENBERG, Mr. DODD, Mr. WOFFORD, Mr. BRADLEY, Mr. MITCHELL, Mr. SASSER, Mr. FORD, Mr. LIEBERMAN, Mr. LEVIN, Mr. PELL, and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 165

Whereas Pan American Airways Flight 103 was destroyed by a terrorist bomb over Lockerbie, Scotland, on December 21, 1988; Whereas the bombing killed 270 people, and 189 of those killed were citizens of the United States, including the following citizens from 21 States, the District of Columbia, and United States citizens living abroad:

(1) ARKANSAS.—Frederick Sanford Phillips.
(2) CALIFORNIA.—Jerry Don Avritt, Surinder Mohan Bhatia, Stacie Denise Franklin, Matthew Kevin Gannon, Paul Isaac Garrett, Barry Joseph Valentino, Jonathan White.

(3) COLORADO.—Steven Lee Butler.
(4) CONNECTICUT.—Scott Marsh Cory, Patricia Mary Coyle, Shannon Davis, Turhan Ergin, Thomas Britton Schultz, Amy Elizabeth Shapiro.

(5) DISTRICT OF COLUMBIA.—Nicholas Andreas Vrenios.

(6) FLORIDA.—John Binning Cummock.

(7) ILLINOIS.—Janina Jozefa Waido.

(8) KANSAS.—Lloyd David Ludlow.

(9) MARYLAND.—Michael Stuart Bernstein, Jay Joseph Kingham, Karen Elizabeth Noonan, Anne Lindsey Otenasek, Anita Lynn Reeves, Louise Ann Rogers, George Watterson Williams, Miriam Luby Wolfe.

(10) MASSACHUSETTS.—Julian MacBain Benello, Nicole Elise Boulanger, Nicholas Bright, Gary Leonard Colasanti, Joseph Patrick Curry, Mary Lincoln Johnson, Julianne Frances Kelly, Wendy Anne Lincoln, Daniel Emmett O'Connor, Sarah Susannah Buchanan Philipps, James Andrew Campbell Pitt, Cynthia Joan Smith, Thomas Edwin Walker.

(11) MICHIGAN.—Lawrence Ray Bennett, Diane Boatman-Fuller, James Ralph Fuller, Kenneth James Gibson, Pamela Elaine Herbert, Khalid Nazir Jaafar, Gregory Kosmowski, Louis Anthony Marengo, Anmol Rattan, Garima Rattan, Suruchi Rattan, Mary Edna Smith, Arva Anthony Thomas, Jonathan Ryan Thomas, Lawanda Thomas.

(12) MINNESOTA.—Philip Vernon Bergstrom.

(13) NEW HAMPSHIRE.—Stephen John Boland, James Bruce MacQuarrie.

(14) NEW JERSEY.—Thomas Joseph Ammerman, Michael Warren Buser, Warren Max Buser, Frank Ciulla, Eric Michael Coker, Jason Michael Coker, William Allan Daniels, Gretchen Joyce Dater, Michael Joseph Doyle, John Patrick Flynn, Kenneth Raymond Garczynski, William David Giebler, Roger Elwood Hurst, Robert Van

Houten Jeck, Timothy Baron Johnson, Patricia Ann Klein, Robert Milton Leckburg, Alexander Lowenstein, Richard Paul Monetti, Martha Owens, Sarah Rebecca Owens, Laura Abigail Owens, Robert Plack Owens, William Pugh, Diane Marie Rencevicz, Saul Mark Rosen, Irving Stanley Sigal, Elia Stratis, Alexia Kathryn Tsairis, Raymond Ronald Wagner, Deder Lynn Woods, Chelsea Marie Woods, Joe Nathan Woods, Joe Nathan Woods, Jr.

(15) NEW YORK.—John Michael Gerard Ahern, Rachel Maria Asresky, Harry Michael Bainbridge, Kenneth John Bissett, Paula Marie Bouckley, Colleen Renee Brunner, Gregory Capasso, Richard Anthony Cawley, Theodora Eugenia Cohen, Joyce Christine Dimauero, Edgar Howard Eggleston III, Arthur Fondler, Robert Gerard Fortune, Amy Beth Gallagher, Andre Nikolai Guevorgian, Lorraine Buser Halsch, Lynne Carol Hartunian, Katherine Augusta Hollister, Melina Kristina Hudson, Karen Lee Hunt, Kathleen Mary Jermyn, Christopher Andrew Jones, William Chase Leyrer, William Edward Mack, Elizabeth Lillian Marek, Daniel Emmet McCarthy, Suzanne Marie Miazga, Joseph Kenneth Miller, Jewell Courtney Mitchell, Eva Ingeborg Morson, John Mulroy, Mary Denise O'Neill, Robert Italo Pagnucco, Christos Michael Papadopoulos, David Platt, Walter Leonard Porter, Pamela Lynn Posen, Mark Alan Rein, Andrea Victoria Rosenthal, Daniel Peter Rosenthal, Joan Sheanshang, Martin Bernard Carruthers Simpson, James Alvin Smith, James Ralph Stow, Mark Lawrence Tobin, David William Trimmer-Smith, Asaad Eidi Vejdani, Kesha Weedon, Jerome Lee Weston, Bonnie Leigh Williams, Brittany Leigh Williams, Eric Jon Williams, Stephanie Leigh Williams, Mark James Zwynenburg.

(16) NORTH DAKOTA.—Steven Russell Berrell.

(17) OHIO.—John David Akerstrom, Shanti Dixit, Douglas Eugene Mallicote, Wendy Gay Mallicote, Peter Raymond Peirce, Michael Pescatore, Peter Vulcu.

(18) PENNSYLVANIA.—Martin Lewis Apfelbaum, Timothy Michael Cardwell, David Scott Dornstein, Anne Madelene Gorgacz, Linda Susan Gordon-Gorgacz, Loretta Anne Gorgacz, David J. Gould, Rodney Peter Hilbert, Beth Ann Johnson, Robert Eugene McCollum, Elyse Jeanne Saraceni, Scott Christopher Saunders.

(19) RHODE ISLAND.—Bernard Joseph McLaughlin, Robert Thomas Schlageter.

(20) TEXAS.—Willis Larry Coursey, Michael Gary Stinnett, Charlotte Ann Stinnett, Stacey Leanne Stinnett.

(21) VIRGINIA.—Ronald Albert Lariviere, Charles Dennis McKee.

(22) WEST VIRGINIA.—Valerie Canady.

(23) UNITED STATES CITIZENS LIVING ABROAD.—Sarah Margaret Aicher, Judith Bernstein Atkinson, William Garretson Atkinson III, Noelle Lydie Berti, Charles Thomas Fisher IV, Lilibeth Tobila Macalooloo, Diane Marie Maslowski, Jane Susan Melber, Jane Ann Morgan, Sean Kevin Mulroy, Jocelyn Reina, Myra Josephine Royal, Irja Synhove Skabo, Milutin Velimirovich.

Whereas on November 14, 1991, the United States Government and the Government of the United Kingdom indicted two intelligence agents of the Government of Libya, Abdel Basset Ali Al-Megrahi and Lamen Khalifa Fhimah, in the bombing of Pan American Airways Flight 103;

Whereas on November 27, 1991, the Government of the United Kingdom and the United

States Government jointly declared that the Government of Libya must—

(1) surrender for trial all persons in Libya charged with criminal acts relating to the bombing, and accept responsibility for any such acts of officials of such government;

(2) disclose all information in the possession of such government with respect to the bombing, including the names of the persons responsible, and allow full access to any witnesses, documents, and other material evidence (including any bomb detonation timers similar to those used in the bombing) under the jurisdiction of such government; and

(3) pay appropriate compensation to the victims of the bombing;

Whereas on January 21, 1992, the United Nations Security Council adopted Resolution 731 which called on the Government of Libya to comply with the demands referred to in paragraph (4);

Whereas on March 31, 1992, in response to the noncompliance of the Government of Libya with Resolution 731, the United Nations Security Council adopted Resolution 748 which imposed limited economic sanctions on Libya;

Whereas on November 11, 1993, in response to the continued noncompliance of the Government of Libya with Resolution 731, the United Nations Security Council adopted Resolution 883 which imposed further economic sanctions on Libya; and

Whereas the Government of Libya continues to refuse to comply with United Nations Security Council Resolutions: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should take all appropriate actions necessary to secure the compliance of the Government of Libya with United Nations Security Council Resolution 731, including, if necessary, the imposition of an embargo on oil produced in Libya.

SENATE RESOLUTION 166—RELATING TO THE EMPLOYMENT OF FEDERAL PRISON INMATES

Mr. BROWN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 166

Resolved,

SECTION 1. SENSE OF THE SENATE THAT ABLE-BODIED CONVICTED FELONS IN THE FEDERAL PRISON SYSTEM SHOULD WORK AND THAT THE ATTORNEY GENERAL SHALL SUBMIT TO CONGRESS A REPORT DESCRIBING A STRATEGY FOR EMPLOYING MORE FEDERAL PRISON INMATES.

(a) FINDINGS.—The Senate finds that—

(1) Federal Prison Industries was created by Congress in 1934 as a wholly owned, non-profit government corporation directed to train and employ Federal prisoners;

(2) traditionally, one-half of the Federal prison inmates had meaningful prison jobs; now, with the increasing prison population, less than one-quarter are employed in prison industry positions; and

(3) expansion of the product lines and services of Federal Prison Industries beyond its traditional lines of business will enable more Federal prison inmates to work, and such expansion must occur so as to minimize any adverse impact on the private sector and labor.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) all able-bodied Federal prison inmates should work;

(2) in an effort to achieve the goal of full Federal prison inmate employment, the Attorney General, in consultation with the Director of the Bureau of Prisons, the Secretary of Labor, the Secretary of Defense, the Administrator of the General Services Administration, and the private sector and labor, shall submit a report to Congress not later than March 31, 1994, that describes a strategy for employing more Federal prison inmates;

(3) the report shall—

(A) contain a review of existing lines of business of Federal Prison Industries;

(B) consider the findings and recommendations of the final report of the Summit on Federal Prison Industries (June 1992–July 1993); and

(C) make recommendations for legislation and changes in existing law that may be necessary for the Federal Prison Industries to employ more Federal prison inmates; and

(4) the report shall focus on—

(A) the creation of new job opportunities for Federal prison inmates;

(B) the degree to which any expansion of lines of business of Federal Prison Industries may adversely affect the private sector or displace domestic labor; and

(C) the degree to which opportunities for partnership between Federal Prison Industries and small business can be fostered.

AMENDMENTS SUBMITTED

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

HATCH AMENDMENT NO. 1190

Mr. HATCH proposed an amendment to the bill (S. 636) to amend the Public Health Service Act to permit freedom of access to certain medical clinics and facilities, and for other purposes, as follows:

On page 6, between lines 2 and 3, insert the following as new section 2715(a)(2): "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the first amendment right of religious freedom at a place of worship; or"

Re-number current section 2715(a)(2) as 2715(a)(3), and add the following at the end of line 7 on page 6: "or intentionally damages or destroys the property of a place of religious worship,"

On page 11, line 15, add "or to or from a place of religious worship" after "services" and before the comma, and add "or place of religious worship" after "facility" on line 16 of page 11.

SMITH AMENDMENT NO. 1191

Mr. SMITH proposed an amendment to the bill S. 636, supra; as follows:

Strike page 6, line 14 through the end of page 9 and insert the following:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United

States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days for the first offense and 60 days for the second and subsequent offenses.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services. Any person aggrieved by reason of conduct prohibited by subsection (a) and not involving force or the threat of force may commence a civil action for temporary, preliminary, or permanent injunctive relief not to exceed 60 days against the individual or individuals who engage in the prohibited conduct. Such injunctive relief shall apply only to the site where the prohibited conduct occurred.

"(B) RELIEF.—In any action under subparagraph (A) involving force or the threat of force, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgement, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons in being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

KENNEDY AMENDMENT NO. 1192

Mr. KENNEDY proposed an amendment to amendment No. 1191 proposed by Mr. SMITH to the bill S. 636, *supra*; as follows:

On page 1 of the amendment, line 1, strike out "page 6" and all that follows through the end thereof and insert in lieu thereof the following: "page 7, line 6, insert after 'that,' the following: 'for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than 6 months for the first offense and not more than 18 months for a subsequent offense.'"

SMITH AMENDMENT NO. 1193

Mr. SMITH proposed an amendment to amendment No. 1191 to the bill S. 636, *supra*; as follows:

Strike all after "PENALTIES" and insert in lieu thereof the following:

"Whoever violates this section shall—
 "(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and
 "(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as *parens patriae* on behalf of natural persons residing in such State, in appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

The provisions of this amendment shall take effect one day following the enactment of this Act.

COATS AMENDMENT NO. 1194

Mr. COATS proposed an amendment to the bill S. 636, *supra*; as follows:

At the appropriate place, insert the following:

"Notwithstanding any other provision in this Act add the following:

The language on page 6, between lines 7 and 8 is deemed to have inserted the following:

"(3) by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding lawful reproductive health services at or near a medical facility (as defined in this section)."

KENNEDY (AND OTHERS) AMENDMENT NO. 1195

Mr. KENNEDY (for himself and Mrs. BOXER) proposed an amendment to the bill S. 636, *supra*; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

HATCH AMENDMENT NO. 1196

Mr. HATCH proposed an amendment to the bill, S. 636, *supra*; as follows:

On page 6, lines 1 and 6, amend proposed sections 2715(a) (1) and (2) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

On page 10, line 8, change "and" to "or".
 On page 11, line 7, add the following new subsection 2715(e)(3):

"(3) LAWFUL.—The term 'lawful' means in compliance with applicable laws and regulations relating to pregnancy or abortion-related services."

Renumber the remaining provisions of subsection 2715(e).

KENNEDY (AND OTHERS) AMENDMENT NO. 1197

Mr. KENNEDY (for himself and Mrs. BOXER) proposed an amendment to the amendment No. 1196, proposed by Mr. HATCH, to the bill S. 636, *supra*; as follows:

In lieu of the matter to be inserted insert the following: "pregnancy or abortion-related services: *Provided, however,* That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of.

HATCH AMENDMENT NO. 1198

Mr. HATCH proposed an amendment to the bill, S. 636, *supra*; as follows:

On page 1 of the amendment, strike out line 1 and all that follows through the end thereof and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. PURPOSE.

It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide reproductive health services (including protecting the rights of those engaged in speech or peaceful assembly that is protected by the First Amendment to the Constitution), and the destruction of property of facilities providing reproductive health services, and to establish the right of private parties injured by such conduct, as well as the Attorney General of the United States, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by

adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—
"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person who is or has been seeking to obtain or provide lawful reproductive health services;

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides lawful reproductive health services; or

"(3) by force or threat of force intentionally injures, intimidates or interferes with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding reproductive health services, shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c). Nothing in this subsection shall be construed to subject a parent or legal guardian of a minor to any penalties or civil remedies under this section for activities of the type described in this subsection that are directed at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1)(A) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(B) in the case of a second or subsequent offense involving force or threat of force after a prior conviction for an offense involving force or threat of force under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both; except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life; or

"(2) in the case of an offense not involving force or the threat of force, be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) involving force or threat of force may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as de-

scribed in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding \$15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding \$25,000 for any subsequent violation involving force or the threat of force.

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section or that are violations of State or local law;

"(3) provides exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) unreasonably interfere with the right to participate lawfully in speech or peaceful assembly.

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

"(1) INTERFERE WITH.—The term 'interfere with' means to intentionally and physically prevent a person from accessing reproductive health service or exercising lawful speech or peaceful assembly.

"(2) INTIMIDATE.—The term 'intimidate' means intentionally placing a person in reasonable apprehension of immediate bodily harm to him- or herself or to a family member.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a facility that provides reproductive health services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(5) REPRODUCTIVE HEALTH SERVICES.—The term 'reproductive health services' includes medical, surgical, counselling or referral services relating to pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

THE CRIME BILL

D'AMATO AMENDMENT NO. 1199

Mr. D'AMATO (for himself, Mr. HATCH, Mr. DOMENICI, and Mr. WARNER) proposed an amendment to the bill, S. 1607, to control and prevent crime; as follows:

On page 30, after line 6, insert the following sections, (b) and (c):

"(b) a defendant who has been found guilty of—

"(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(3) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation;

shall be sentenced to death if, after consideration of the factors set forth in section 3592, including the aggravating factors set forth at (c) below, in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"(C) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section (b) above, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist: 3

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or

knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

GRAHAM (AND OTHERS) AMENDMENT NO. 1200

Mr. GRAHAM (for himself, Mr. D'AMATO and Mr. MACK) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place insert the following:

Subtitle —Criminal Aliens

SECTION . TRANSFER OF CERTAIN ALIEN CRIMINALS TO FEDERAL FACILITIES.

(a) DEFINITION.—In this section, "criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility" means an alien who—

(1)(A) is in the United States in violation of the Immigration laws; or

(B) is deportable or excludable under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.); and

(2) has been convicted of a felony under State or local law and incarcerated in a correctional facility of the State or a subdivision of the State.

(b) FEDERAL CUSTODY.—Subject to the availability of appropriations, at the request of a State or political subdivision of a State, the Attorney General may—

(1)(A) take custody of a criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility; and

(B) provide for the imprisonment of the criminal alien in a Federal prison in accordance with the sentence of the State court; or

(2) enter into a contractual arrangement with the State or local government to compensate the State or local government for incarcerating alien criminals for the duration of their sentences.

HEFLIN AMENDMENT NO. 1201

Mr. HEFLIN proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place insert the following:

SEC. . FEDERAL ASSISTANCE TO EASE THE INCREASED BURDENS ON STATE COURT SYSTEMS RESULTING FROM ENACTMENT OF THIS ACT.

(a) IN GENERAL.—The Attorney General, acting through the Director of the Bureau of Justice Assistance (the Director), shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) APPLICATIONS.—In carrying out this section, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in this section. The Director shall have final authority over all funds awarded under this section.

(c) RECORDS.—Each recipient that receives a grant under this section shall keep such records as the Director may require to facilitate an effective audit.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, to remain available for obligation until expended.

(2) USE OF TRUST FUND.—Funds authorized to be appropriated under paragraph (1) may be appropriated from the trust fund established by section 1321C.

KERRY AMENDMENT NO. 1202

Mr. KERRY proposed an amendment to the bill S. 1607, supra; as follows:

At page 249, line 6 of the bill delete "each of fiscal years 1995 and 1996;" and insert the following: "fiscal year 1995 and \$250,000,000 for fiscal year 1996;"

BOXER (AND OTHERS) AMENDMENT NO. 1203

Mrs. BOXER (for herself, Mr. WARNER, Mr. DECONCINI, Mrs. FEINSTEIN, Mr. WOFFORD, Ms. MOSELEY-BRAUN, Mr. METZENBAUM, Mr. DODD, Mr. CONRAD, Mrs. MURRAY, Mr. SIMON, Mr. REID, Mr. BUMPERS, Mr. ROBB, Mr. HARKIN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DASCHLE, Mr. INOUE, Mr. AKAKA, Mr. CAMPBELL, Mr. PELL, Mr. KENNEDY, Mr. KERREY, Mr. BRYAN, Mr. RIEGLE, Mr. BINGAMAN, and Mr. EXON) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place, insert the following title:

TITLE —DRIVER'S PRIVACY PROTECTION ACT

SEC. . SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the "Driver's Privacy Protection Act of 1993".

(b) PURPOSE.—The purpose of this title is to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government.

SEC. . AMENDMENT TO TITLE 18, UNITED STATES CODE.

Title 18 of the United States Code is amended by inserting immediately after chapter 121, the following new chapter:

"CHAPTER 122—PROHIBITION ON RELEASE OF CERTAIN PERSONAL INFORMATION

"Sec. 2720. Prohibition on release and use of certain personal information by States, organizations and persons.

"Sec. 2721. Definitions.

"Sec. 2722. Penalties.

"Sec. 2723. Effect on State and local laws.

"§ 2720. Prohibition on release and use of certain personal information by States, organizations and persons3

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), no department of motor vehicles of any State, or any officer or employee thereof, shall disclose or otherwise make available to any person or organization personal information about any individual obtained by the department in connection with a motor vehicle operator's permit, motor vehicle title, identification card, or motor vehicle registration (issued by the department to that individual) unless such disclosure is authorized by that individual.

"(2) A department of motor vehicles of a State, or officer or employee thereof, may disclose or otherwise make available personal information referred to in paragraph (1) for any of the following routine uses:

"(A) For the use of any Federal, State or local court in carrying out its functions.

"(B) For the use of any Federal, State or local agency in carrying out its functions, including a law enforcement agency.

"(C) For the use in connection with matters of automobile safety, driver safety, and manufacturers of motor vehicles issuing notification for purposes of any recall or product alteration.

"(D) For the use in any civil criminal proceeding in any Federal, State, or local court, if the case involves a motor vehicle, or if the request is pursuant to an order of a court of competent jurisdiction.

"(E) For use in research activities, if such information will not be used to contact the individual and the individual is not identified or associated with the requested personal information.

"(F) For use in marketing activities if—

"(i) the motor vehicle department has provided the individual with regard to whom the information is requested with the opportunity, in a clear and conspicuous manner, to prohibit a disclosure of such information for marketing activities;

"(ii) the information will be used, rented, or sold solely for a permissible use under this chapter, including marketing activities; and

"(iii) any person obtaining such information from a motor vehicle department for marketing purposes keeps complete records identifying any person to whom, and the permissible purpose for which, they sell or rent the information and provides such records to the motor vehicle department upon request.

"(G) For use by any insurer or insurance support organization, or their employees, agents, and contractors, in connection with claims investigation activities and antifraud activities.

"(H) For use by any organization, or its agent, in connection with a business transaction, when the purpose is to verify the accuracy of personal information submitted to that business or agent by the person to whom such information pertains, or, if the information submitted is not accurate, to obtain correct information for the purpose of pursuing remedies against a person who presented a check or similar item that was not honored.

"(I) For use by any organization, if such organization certifies, upon penalty of perjury, that it has obtained a statement from

the person to whom the information pertains authorizing the disclosure of such information under this chapter.

"(J) For use by an employer or the agent of an employer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2701 et seq.).

"(b) UNLAWFUL CONDUCT BY ANY PERSON OR ORGANIZATION.—No person or organization shall—

"(1) use any personal information, about an individual referred to in subsection (9), obtained from a motor vehicle department of any State, or any officer or employee thereof, or other person for any purpose other than the purpose for which such personal information was initially disclosed or otherwise made available by the department of motor vehicles of the affected State, or any officer or employee thereof, or other person, unless authorized by that individual; or

"(2) make any false representation to obtain personal information, about an individual referred to in subsection (a), from a department of motor vehicles of any State, or officer or employee thereof, or from any other person.

§ 2721. Definitions

"As used in this chapter:

"(1) The term 'personal information' is information that identifies an individual, including an individual's photograph, driver's identification number, name, address, telephone number, social security number, and medical and disability information. Such term does not include information on vehicular accidents, driving violations, and driver's status.

"(2) The term 'person' means any individual.

"(3) The term 'State' means each of the several States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) The term 'organization' means any person other than an individual, including but not limited to, a corporation, association, institution, a car rental agency, employer, and insurers, insurance support organization, and their employees, agents, or contractors. Such term does not include a Federal, State or local agency or entity thereof.

§ 2722. Penalties

"(a) WILLFUL VIOLATIONS.—

"(1) Any person who willfully violates this chapter shall be fined under this title, or imprisoned for a period not exceeding 12 months, or both.

"(2) Any organization who willfully violates this chapter shall be fined under this title.

"(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.—Any State department of motor vehicles which willfully violates this chapter shall be subject to a civil penalty imposed by the Attorney General in the amount of \$5,000. Each day of continued non-compliance shall constitute a separate violation.

§ 2723. Effect on State and local laws

"The provisions of this chapter shall supersede only those provisions of law of any State or local government which would require or permit the disclosure or use of personal information which is otherwise prohibited by this chapter."

SEC. .EFFECTIVE DATE.

The amendments made by this title shall take effect upon the expiration of the 270-day period following the date of its enactment.

LEVIN AMENDMENT NO. 1204

Mr. LEVIN (for himself, Mr. SIMON, Mr. HATFIELD, Mr. DURENBERGER, and Mr. PELL) proposed an amendment to the bill, S. 1607, supra; as follows:

At the end of the bill add the following:
SEC. . MANDATORY LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

In lieu of any amendment made by this Act or any other provision of this Act that authorizes the imposition of a sentence of death, such amendment or provision shall authorize the imposition of a sentence of mandatory life imprisonment without the possibility of release.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for my colleagues and the public that a field hearing has been scheduled before the Subcommittee on Renewable Energy, Energy Efficiency and Competitiveness of the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on technology transfer to the oil and gas industry.

The hearing will take place on Tuesday, November 30, 1993, at 9 a.m., at the Oil Field Training Center at Eastern New Mexico State University in Roswell, NM.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Shirley Neff.

For further information, please contact Shirley Neff of the committee staff at (202) 224-4971.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Committee on Indian Affairs will be holding a hearing on Friday, November 19, 1993, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 1526, Indian Fish and Wildlife Resources Management Act of 1993.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Committee on Indian Affairs will be holding a markup on Thursday, November 18, 1993, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 1618, tribal self-governance; H.R. 1425, American Indian Agriculture Act of 1993; S. 1654, technical amendments; S. 1501, to repeal certain provisions of law relating to trading with Indians; and for other purposes, to be followed immediately by a hearing on S. 1345, the Equity in Educational Land-Grant Status Act of 1993.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON INDIAN AFFAIRS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, November 16, 1993, beginning at 9:30 a.m. in 485 Russell Senate Office Building on S. 1146, the Yavapai-Prescott Water Rights Settlement Act of 1993.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "Meeting Maternal and Child Health Needs Under the Health Security Act," during the session of the Senate on November 16, 1993, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, to hold a hearing on the nominations of Henry Lee Adams to be U.S. district judge for the middle district of Florida, Donetta W. Ambrose to be U.S. district judge for the western district of Pennsylvania, Susan C. Bucklew to be U.S. district judge for the middle district of Florida, Wilkie D. Ferguson to be United States district judge for the southern district of Florida, Theodore Klein to be U.S. district judge for the southern district of Florida, and Gary L. Lancaster to be U.S. district judge for the western district of Pennsylvania.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. BIDEN. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on Persian Gulf war illnesses at 10 a.m. on Tuesday, November 16, 1993. The hearing will be held in room 418 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., November 16, 1993, to receive testimony on S. 1637, the Department of the Interior Reform and Savings Act of 1993, and S. 1638, the Department of Energy Reform and Savings Act of 1993.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 8:30 a.m. to hold a nomination hearing on Sidney Williams, to be Ambassador to the Commonwealth of the Bahamas.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday November 16, 1993, at 2:15 p.m. to hold a closed conference with the House Intelligence Committee on the Intelligence Authorization Bill for fiscal year 1994.

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

SPECIAL COMMITTEE ON AGING

Mr. BIDEN. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 9:30 a.m. to hold a hearing entitled "Pharmaceutical Marketplace Reform: Is Competition the Right Prescription?"

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

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND BUSINESS RIGHTS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 10 a.m., to hold a hearing on "Will Telecommunication Mega-Mergers Chill Competition and Inflate Prices? Part II?"

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, to hold a hearing on the INS Criminal Alien Program.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Science, Technology and Space Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on November 16, 1993, at 2:30 p.m. on effects of potential restructuring in NASA.

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

ADDITIONAL STATEMENTS

NUCLEAR ENERGY REFORMS

• Mr. JOHNSTON. Mr. President, the third annual update to the Nuclear Power Oversight Committee's "Strategic Plan for Building New Nuclear Power Plants," announced today by the nuclear industry, is a welcome initiative in the national interest and one which should receive thoughtful and serious consideration by Congress.

I applaud the oversight committee for its efforts toward creating the conditions under which electric power companies may order new advanced nuclear powerplants during the mid-1990's.

This is an ambitious objective, but an attainable one if the industry maintains its resolve and builds on the constructive foundation that has been reaffirmed today.

The 102d Congress, through passage of the National Energy Policy Act of 1992 and provisions of the fiscal year 1993 energy and water appropriations bill, made 1992 a watershed year for the nuclear industry. In the Energy Policy Act alone, Congress included provisions for nuclear plant licensing reform, high-level waste management, uranium enrichment, and research and development of advanced technologies.

Although much was accomplished during the last Congress, it is clear that other nuclear energy reforms are needed if we are going to pave the way for another generation of nuclear plants and realize the full potential of nuclear energy in environmental protection, economic growth, and energy self-sufficiency.

I hope the updated plan announced today will help provide a framework for meeting that important objective. •

TRIBUTE TO VILLA MADONNA ACADEMY, HEAVEN ON THE OHIO

• Mr. MCCONNELL. Mr. President, at a time when many of our Nation's students are fearful of being shot at school, I rise to pay tribute to an institution that has served as a model for over 90 years. The Villa Madonna Academy, in Villa Hills, KY, is a shining example of quality education.

Established in 1904, Villa Madonna is operated by the Benedictine Sisters, many of whom live on the grounds. The school is located on land originally known as Bromley Heights in northern Kentucky on the banks of the Ohio River. The academy later moved further down the river to the Collins family estate.

This property boasts spectacular vistas from the hills and peaceful meadows. The Collins house still serves as the home to offices, classrooms, and the sisters' dormitory. The beauty of the locale is but one of the unique qualities that contribute to the supe-

rior learning experience Villa Madonna's young people enjoy.

Students have access to living institutions like Sister Callista Flanagan. Sister Callista has been associated with the school for 77 years. Since she was the academy's 100th boarder in 1916 she has dedicated her life to the land and people which make Villa Madonna so wonderful.

Mr. President, at a time when we are struggling to decide how to best educate our children, Villa Madonna leads by example. Over 95 percent of its graduates attend college; 65 percent of those with some form of scholarship money. One graduate describes the experience: "The education is fantastic, and the kids are exposed to the Christian spirit that gives them the attitude and temperament to be considerate of other people."

But, it is the beauty of the grounds that everyone remembers. I know full well how much splendor and charm Kentucky has to offer throughout the Commonwealth. However, you would be hard pressed to find a more tranquil setting. Just walk along one of the tree-lined trails, perhaps you will find one of the Sisters sitting, gazing at the river. If you do I hope you will sit and talk with her, listen to the history of the academy, and learn of the love that inspires it.

Mr. President, I ask my colleagues to join me in paying tribute to the Villa Madonna Academy and the people who help make it so special. In addition, I ask that an article from the Cincinnati Enquirer be included in the RECORD.

The article follows:

SCHOOLED IN TRADITION

(By Patrick Crowley)

Callista Flanagan was a 16-year-old Villa Madonna Academy sophomore when she planted a young pin oak on the school's northern rim, a sweeping vista on the Kentucky hills that overlooks the Ohio River as it snakes west into Indiana.

The tree was a gift from Bishop Ferdinand Brossart. He gave it to her because she was the young school's 100th boarder. Moved by the gesture, Flanagan knew of no better place to plant it than on the Villa grounds.

She wanted to leave something to the school in Villa Hills, Ky.

PLACE OF PEACE

In the 77 years since, all three—tree, student and school—have put in deep roots on that panoramic hillside.

The sapling has blossomed and grown into a majestic tree, shading the buildings it once seemed lost among.

Callista Flanagan, now 95, became Sr. Callista and dedicated her life to the Benedictine Sisters, the order that founded and continues to operate Villa Madonna. She will live on the school's grounds and enjoys nothing more than sitting quietly and admiring the beauty of her tree.

And Villa Madonna has grown from a Catholic boarding school of four sisters and 17 students to a sprawling institution of education, religion, retirement, preschool, convalescent care and, possibly above all, one of those rare places where people go to bask in the natural beauty and reflect on the divine presence.

"So many people just come up here to get away, if only for a few hours," says Sister Teresa Wolking, 74, also a Villa Madonna graduate (class of '37) who spent her life as a teacher and school principal before retiring to one of the sisters' residences at Villa.

Visitors sitting on benches watch the Anderson Ferry glide across the river or barges meandering by. They pray. Some sit in silence. Others talk to the sisters.

"This is a place people come to find inner peace," Wolking says.

FIRST STUDENTS IN 1904

Ninety years ago, the Benedictine Sisters of St. Walburg Monastery in Covington purchased an 86-acre tract in hills above the Ohio River, a place then known as Bromley Heights.

After months of searching other Northern Kentucky locations, the sisters settled on the estate of the Collins family, wealthy from growing tobacco and anxious to pursue new dreams in a dynamic and emerging place called California.

The sisters had outgrown their 12th and Greenup streets convent. They longed for a country setting to establish a new convent and boarding school. The Collins property—with its stunning views, vast fields and tranquil setting—was heaven sent.

To honor the Blessed Mother, the estate was named "Villa Madonna."

In 1904, the first students arrived, an elementary-age class of 17 boarding students, most from affluent families. The Collins house served as classroom, chapel and living quarters until construction of the academy was completed and the first high school students were accepted three years later.

BREATH-TAKING BEAUTY

The sisters bought surrounding parcels to more than triple the size of the campus. Buildings were added.

But the Collins homestead—built around 1870—and the academy remain in service as offices, classroom and a sisters' dormitory.

Wolking, who grew up in Covington in a family of six daughters—all of whom entered the convent—lived in the Collins house while a boarder at the school.

Giving a tour of the three-story house, whose many windows provide a breath-taking view of the river valley, Wolking is torn between showing off the charm and character of the home and reminiscing about her days under its roof.

"This was my room," she says, her eyes locked in a memory as she slides her tiny, wrinkled hand across an antique desk. "I would sit right here at night and do my homework and read."

"Was it that long ago?" she asks rhetorically.

"WONDERFUL" EDUCATION

The hills rising from the river are awash in orange, yellow and crimson. A gentle breeze—making it just chilly enough for a sweater—carries cottonlike clouds across a light blue sky. Browned leaves dance across a green lawn as bright-faced children dash from a door after a day of learning.

These are days Patti Love remembers.

"The education was wonderful; the people were splendid, and I couldn't really imagine every going to school anywhere else. But, my God, the beauty of that place. It is such a peaceful setting," she says.

"So often I'm in the car and I just find myself back here, looking out over the river or walking along the grounds."

The Loves are typical of many Villa families. Love's mother was a 1945 graduate. Love graduated in 1975, and now her son, Matthew, attends first grade here.

"The education is fantastic, and the kids are exposed to the Christian spirit that gives them the attitude and temperament to be considerate of other people," says Love, a Lakeside Park resident and a supervisor in the chemistry department at St. Elizabeth Medical Center.

Harry and Nadine Hellings of Lakeside Park have had two daughters graduate from Villa Madonna; a third is a freshman.

"Nadine graduated from there, and we really never considered sending the girls anywhere else," says Harry Hellings, a defense attorney. "There's good discipline, a good cross-section of students and an excellent college-prep curriculum."

HALF-CAPACITY

Ninety-five percent of the graduates go on to college, with 65% of them receiving some type of scholarship, according to the school's development office.

Villa's curriculum features a nationally recognized computer program, opportunities for foreign travel and a language program featuring Spanish for first-graders and Latin in the sixth grade.

Enrollment is at 400, about half of what Villa could handle, says Sr. Victoria Eisenman, executive director of Villa Madonna Academy and elementary school principal.

"We've really started recruiting in the past few years, and it's something we want to increase," says Eisenman, a Villa graduate but one of few sisters on the staff.

Some fungus has grown on the east side of Sister Callista's tree, and she's not happy about it. A specialist is scheduled to look at it.

"My mother had just died when I came here as a teen-ager, and my little sister was already here," Flanagan says. Her father was a draftsman who traveled.

"He just couldn't leave us kids at home alone. I was wary at first, coming from my house to this boarding school. But, oh, I loved it so I didn't want to leave."

"So when I graduated, I decided to enter the convent and return * * * It was as if I came home."

VILLA FACTS

Located on 239 acres overlooking the Ohio River along Amsterdam Road in Villa Hills, Ky.

Operated by the Benedictine Sisters, a Catholic order of nuns, and an independent board of directors.

This year marks the 90th anniversary of the sisters buying the property. A grade school opened in 1904 and Villa Madonna Academy opened in 1906.

Since opening, there have been 2,492 graduates from the high school, mainly girls (boys weren't admitted to the elementary school until 1977 and not to the high school until 1985).

Current enrollment is about 400 students in grades 1-12. Tuition is about \$3,000 for elementary school, slightly higher for high school.

About half the students are from Villa Hills—the community around the school—and Fort Mitchell. The remainder are from throughout Northern Kentucky and some from out of state.

The Villa Madonna campus includes St. Walburg Monastery, home for many of the 127 sisters on the grounds. Other sisters live in houses and cottages on the grounds. There also is a Montessori school and day-care center; a religious retreat center; and Madonna Manor Nursing Home. •

IF NAFTA LOSES

• Mr. SIMON. Mr. President, one of the more thoughtful journalists on the American scene today is Anthony Lewis, who writes a regular column for the New York Times from Boston.

He had a column the other day pointing out how tragic it would be for this country if NAFTA should not carry.

I concur in the sentiments expressed in his eloquent column.

I ask to insert his column into the RECORD at this point, and I urge my colleagues to read what he has to say.

IF NAFTA LOSES

BOSTON.—It is a symbol that the North American Free Trade Agreement really matters. The economic effects of the agreement on this country would be marginal. But if Congress turns Nafta down, the political consequences would be enormous.

No matter how the opponents tried to disguise it, the world would see defeat as a message that America has gone protectionist. That would encourage the protectionism already rising in France and elsewhere in Europe.

The effort to complete the Uruguay Round of GATT negotiations would collapse, I am convinced. Why should the French Government, whose fear of farm voters now blocks agreement, show political courage on trade when the United States has abandoned its most important trade venture in years?

From the collapse of the Uruguay Round there could follow a worldwide retreat from free trade. Political leaders might well continue to profess loyalty to the principle, but they would give way to local pressures for barriers here, there, everywhere.

Would such a surge of protectionism matter? It could—I think it would—mean the end of nearly 50 years of rising world prosperity. That's all.

Since World War II the world has experienced extraordinary economic growth. The engine for that growth has been international trade: vastly increased trade in an age of more and more rapid transportation and communication.

Successive rounds of tariff reduction have fueled the rise of international trade. The United States has been the leader in efforts to cut not only tariffs but quotas and other non-tariff barriers. And now the leader would be seen to have turned away: turned inward.

The arguments made against Nafta by such significant opponents as the United Auto Workers seem to me to come down to fear of change and fear of foreigners. Change can indeed be painful, certainly so in our accelerating technological world. But the alternative to change is stagnation.

One great American economic asset, historically, has been mobility. The secret of our prosperity has been mobility. The secret of our prosperity has been the mobility of both capital and labor in a huge market, the readiness to seize new opportunities: to move.

The need for mobility is the greater in an age when new technological products can work economic revolutions—when computer software becomes a vital industry overnight. Yet the opponents of Nafta want us to put our faith in keeping things as they are, resisting change.

The irony is that the jobs they want to protect, many of them, are low-wage jobs. But the future prosperity of the United States depends on moving people and capital into new enterprises, high-paying ones, not in telling us that we need learn nothing new.

I have heard it said that Bill Clinton acted against his own political interest in pressing for approval of Nafta because he alienated the labor unions that are the core of Democratic Party support. I think that gets the politics exactly backward.

Unions in this country, sad to say, are looking more and more like the British unions that have become such a millstone around the neck of the Labor party: backward, unenlightened. Bill Clinton cannot build a new Democratic Party on that base. The crude threatening tactics used by unions to make Democratic members of the House vote against Nafta underline the point.

The consequences of Nafta's defeat would be particularly bad in Latin America. It would, as Bernard Aronson, former Assistant Secretary of State, said, "strengthen traditional economic cliques, which have grown rich by manipulating and sometimes corrupting their political systems to shut out competition at the expense of ordinary citizens."

Given the growing economic clout of Asia, a rational United States would be doing all it can to increase trade in its own hemisphere. Mexico is already our third-largest export customer—despite Mexican barriers to U.S. products that would be removed by Nafta. Defeat of the agreement would be a good way to tell Mexico we do not care about that market.

The opponents are really saying: Stop the world, I want to get off. But we cannot do that. All we can do is impoverish ourselves in the attempt.●

SUPPORT FOR NAFTA

● Mr. DURENBERGER. Mr. President, I rise today to go on record as a strong supporter of the North American Free-Trade Agreement.

The NAFTA is a significant opportunity for the United States as a whole, and for Minnesota in particular. Our State's economy has long been dependent upon exports, and we have continually expanded our economic benefits by expanding our access to new markets.

Mexico is a rapidly growing market for Minnesota exports including high-tech equipment, medical devices, food, and agricultural products. Minnesota is competitive in Mexico right now, and a reduction of the 20 percent and higher tariffs on many of our exports will open the door for even more exports. Since 1987 when Mexico was first persuaded to reduce its tariffs, Minnesota exports to Mexico have increased almost 200 percent.

NAFTA means more Minnesota exports, more Minnesota business, and more Minnesota jobs. We cannot afford to pass up this one-time opportunity to improve our State's economy, and to send a message to the world that the United States is committed to the principles of free trade.●

ALL LOVERS OF FREEDOM SHOULD HONOR LOVEJOY

● Mr. SIMON. Mr. President, Vernon Jarrett, the longtime columnist for the Chicago Sun-Times and a champion of

civil rights and civil liberties, recently wrote a column about someone most people have never heard of, Elijah P. Lovejoy.

Lovejoy was an Abolitionist, who championed the cause of free speech and freedom for those who were then held in bondage in our country.

Vernon Jarrett concludes his column after reciting the history of Elijah Lovejoy in noting: "I'm still wondering why the media haven't made him one of our national icons."

More than anything until the publication of "Uncle Tom's Cabin", no single incident gave as much impetus to the antislavery cause as the mob-slaying of Lovejoy.

Vernon Jarrett is right to note the anniversary of the murder of Elijah Lovejoy, and I ask to insert his column in the RECORD at this point.

The column follows:

[From the Chicago Sun-Times, Nov. 4, 1993]

ALL LOVERS OF FREEDOM SHOULD HONOR LOVEJOY

(By Vernon Jarrett)

If there ever were an anniversary that deserves special reverence in the history of American journalism, it is that of an act of martyrdom that occurred on Nov. 7, 1837, in Downstate Alton.

Sunday will be the 156th anniversary of the murder of Elijah P. Lovejoy, the crusading young editor of the Alton Observer who refused to remain quiet about the horrors of slavery.

Lovejoy, 35, was not surprised when shortly after 10 p.m. a mob gathered outside his newspaper office and printing press. He had faced mob violence before.

When it became impossible for him to state his views in St. Louis, Mo., he in 1836 decided to move across the Mississippi River into Illinois, a presumed "free state."

At Alton, the young Presbyterian minister-editor continued to expose the moral contradictions in slavery being practiced under the banner of Christianity and democracy. When a mob climate began to burgeon, some of his early supporters, who were powers in the community, advised him to ignore slavery.

Desertion by friends was not exactly a new experience for Lovejoy. In October of 1835, he published his support of the American Antislavery Society's rejection of the gag rule on slavery that pro-slavery forces had initiated in the U.S. Congress and in public discussions. He saw the gag as a denial of the sacred freedoms of the press, assembly and speech.

One group of Lovejoy's so-called supporters published an open letter urging him to "pass over in silence everything connected with the subject of slavery." Even though freedom of the press is guaranteed by the Constitution, they argued, to publicly discuss slavery would contribute to the disunity of "our prosperous Union."

Lovejoy was sorely disappointed by the cowardice of some of his supporters. After a month of reflection, a lonely Lovejoy issued this memorable response:

"I cannot surrender my principles, though the whole world besides should vote them down—I can make no compromise between truth and error, even though my life be the alternative."

Lovejoy held his ground even though the owners of the Observer had urged him to resign.

During three previous threats to his life, his press had been destroyed and in one instance dropped into the Mississippi River, while the citizens of goodwill did nothing.

So around 10 p.m. on Nov. 7, 1837, Lovejoy and a small band of abolitionists tried to defend their press against destruction. Five bullets were fired into the body of the remarkable young man, who would be memorialized by the Rev. Edward Beecher, brother of novelist Harriet Beecher Stowe, as "the first martyr in America to the great principles of freedom of speech and to the press."

Interesting question: How many journalists know anything about Elijah P. Lovejoy?

Sen. Paul Simon (D-Ill.) wrote a book for children in 1964 titled *Lovejoy: Martyr to Freedom* and is completing a new book titled *Elijah Lovejoy, Champion of Freedom*.

For the past 15 days, I have paused at some time during Nov. 7 to remember one of the true heroes of my profession. And I'm still wondering why the media haven't made him one of our national icons.●

TRIBUTE TO DAVID A. WIBBELS

● Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a notable Kentuckian, whose company is taking the business world by storm in Louisville and expanding around the world. David Wibbels founded Electronic Systems USA, Inc., with Darrell Newton in 1979, and the company has not stopped growing.

This is a perfect example of a success story. Mr. Wibbels started quickly making his way up the ladder with Honeywell, Inc., straight out of college. After about 4 years, he realized that he had gone as high as he could without getting involved in sales, so he set out with a coworker to start his own business.

David Wibbels and Darrell Newton created Electronic Systems, Inc., to service Honeywell computers. Until that time, only manufacturers of the electronics system maintained them. Today, the company designs and manufactures computer consoles and software that control heating, air-conditioning, security, fire-safety, and other electronic systems in skyscrapers across the country.

Mr. President, that Louisville-based business reached \$10 million in annual sales in the late 1980's, and sales have only increased since.

Mr. Newton left the company, and Mr. Wibbels, believing that employee-owned businesses are more productive, arranged for each employee to get a piece of Electronic Systems. He also believes in hiring the best people and encouraging them to be creative. It seems he is right.

Electronic Systems is serving such big names as Sears, Ashland Oil Co., and the Federal Aviation Administration. Ironically, even though it has remained fairly small, the company often finds itself in competition with Mr. Wibbels' former employer, Honeywell.

Kentucky's Electronic Systems has offices scattered throughout the country and are reaching across the world.

They recently signed a contract with an Australian company that will represent their business in Pacific rim countries.

Mr. President, David Wibbels is truly an entrepreneur, discovering a niche in the business community and filling it. I want to congratulate him and his employees on their many accomplishments and wish them continued success. Their efforts are a testimony to dedication, ambition, and hard work.

Mr. President, I ask that this tribute and a recent article from *Business First* be submitted in today's CONGRESSIONAL RECORD.

The material follows:

HOT AND COLD: WIBBELS CONTROLS THE THERMOSTAT

(By Roger Harris)

David A. Wibbels used to hate selling.

Not anymore. He can't get enough of it.

The adrenaline starts to pump when Wibbels, 42, president and majority owner of Electronic Systems USA Inc., sits down with a prospective client.

Electronic Systems, which maintains sales offices in New York, Chicago, San Francisco and a dozen other major cities, designs and manufactures computer consoles and software that control the heating, air-conditioning, security, fire-safety and other electronic systems in skyscrapers across the country.

The company's products are manufactured in Louisville at its headquarters at 9410 Bunsen Parkway.

"One of the ironies about what I'm doing is that I love sales," Wibbels says. "When I meet with a client and make a presentation I gain confidence as I go."

It wasn't always that way.

When he graduated from Eastern Kentucky University in 1975 and went to work as a technician for Honeywell Inc. in Louisville, Wibbels was confident in his electronics skills but less than enthusiastic about his interpersonal skills.

For four years Wibbels labored for Honeywell, moving up quickly and taking on greater responsibilities. By 1979 he was a branch supervisor.

"By then, I had gotten as far as I could go unless I moved into sales," Wibbels says. "To become branch manager you had to be in sales, and there was no way I could do that because I was so shy."

When a new branch manager was appointed in 1979, Wibbels decided to strike out on his own.

"The new branch manager and I didn't get along," he says.

So Wibbels and Darrell Newton, another Honeywell employee, decided to start a company to service Honeywell computers.

At that time, the only companies that repaired or upgraded the electronics controlling building-automation systems were the manufacturers of the equipment.

Wibbels was confident the new company would succeed because he had the electronics know-how to do the work, but not the overhead of a large corporation.

"I knew we could create our own niche because I was out there when I worked for Honeywell, and I heard complaints about the high prices," Wibbels says.

Buildings that have automated systems made by different manufacturers are especially interested in upgrading their control systems so that all systems can be monitored by a single computer, Wibbels says.

Manufacturing control consoles that integrate automation systems made by different manufacturers is one of Electronic Systems' specialties.

Electronic Systems' software and computer consoles can save a building owner money by closely monitoring such things as the use of heating and lighting on a floor-by-floor basis.

For example, when a building is closed in the evening, the heating level can be automatically reduced. A few hours before the building reopens the next morning, the heating system is automatically cranked back up.

Electronic Systems' software also is capable of such things allowing an operator to lock a specific door.

In some cases, after Electronic Systems installs its control systems, Electronic Systems employees maintain the equipment. In other cases, Electronic Systems will train the client's employees to maintain the systems.

Newton, Wibbels' original partner, has since left the company. Wibbels bought out his former partner five years ago and arranged for each of Electronic Systems' 125 employees to get a piece of the company.

A few weeks ago, the firm paid off the bank loan that financed the employee stock ownership plan.

Wibbels declined to discuss financial details of the ESOP.

"I believe an employee-owned business is a more productive business," says Wibbels, who owns 51 percent of the ESOP stock.

Honeywell's loss proved to be good news for corporate America's building owners, says Debbi Cole, sales manager for Barber Colman Co., a manufacturer of temperature controls and building-automation systems.

Cole and Wibbels used to work together in Honeywell's Louisville office. Although Electronic Systems and Barber Colman are in the same business, Cole describes the two companies as "complimentary competitors" that occasionally team up on projects.

"I think he would still be working for Honeywell if they had realized what they had," Cole says. "But Honeywell is not exactly a people-oriented type of corporation. It never realized David's full potential. I thought he was the best person they had."

"Even after David started Electronic Systems I don't think Honeywell considered him a threat, but millions of dollars later they have taken notice."

Perhaps so. Honeywell officials did not return a reporter's phone calls for comments on their former employee and his company.

Wibbels won't say what his company's current revenues are, but by the late 1980s annual sales had reached \$10 million and sales have grown every year since, he says.

Wibbels says he harbors no ill-will toward Honeywell, but he admits to enjoying head-to-head competition with his former employer when the two companies battle for contracts to upgrade Honeywell control systems.

Electronic Systems isn't about to drive Honeywell or Johnson Controls Inc.—another billion-dollar-a-year building control system manufacturer—out of business, Wibbels says.

But his company can compete with the big boys, he adds.

Although soft-spoken and shy, Wibbels is supremely competitive, say friends and business associates.

"He loves competing with larger companies," says Ken Palmgreen, executive vice president for Electronic Systems. "Actually,

he's extremely competitive about everything. I used to play tennis with him until I tore up my knee, and when we'd play he was extremely competitive. He wants to win."

Tennis is a perfect example of Wibbels' competitive streak, Cole says.

"He's the only guy I know who sits down after a tennis lesson and takes notes, and then spends hours reviewing them," Cole says.

Wibbels says he likes the one-on-one nature of tennis.

"I enjoy looking over the net and knowing that one of us is going to come out the winner" he says.

Self-confidence, an inborn passion for electronics and an insatiable desire to learn are the cornerstones on which Electronic Systems was built, say Cole and John Hamilton, Electronic Systems' accountant and a friend of Wibbels.

"He's certainly very entrepreneurial, Palmgreen says. "He's a risk taker and very optimistic."

The business success that has resulted from Wibbels' competitive nature won him a regional Entrepreneur of the Year Award in 1992. The annual competition is sponsored nationally by The Entrepreneur Society, Ernst & Young CPAs, Merrill Lynch and Inc. magazine.

Wibbels' interest in electronics must be in the genes.

"My dad was the ultimate machinist," Wibbels says. "He was a very, very hard-working fellow and I miss him very much."

His father, Lester Wibbels, died three years ago.

While growing up in the Iroquois Park area as a young child and later in Valley Station, where he graduated from Valley High School, Wibbels said he often took apart TV sets and radios just to see what was inside.

He often would spend hours working on lawn mowers or cars.

"One of the most important things learned from my dad was something he said: 'You have to seek out knowledge because it can't seek you out.'"

Although always interested in gadgets and electronics, Wibbels said he went to Eastern Kentucky University uncertain about what he wanted to study.

"After two years they told me it was time to decide," he says.

He took some courses in the engineering department, and his interest in technical things hit home.

"It became obvious that's what I wanted to do," he says.

In 1975, he graduated with a bachelor's degree in industrial technology.

Starting his own business was the furthest thing from his mind when he got out of college. Simply getting a job and starting his career was the priority, he says.

"I didn't think about owning a business at all. And there was no way I could have planned where I am today, because I didn't know this industry existed."

Planning, however, is one of Wibbels' business strengths, Hamilton says.

"For a company this size, they do a lot of planning," says Hamilton, managing partner of Eskew & Gresham. "He sets a lot of goals. He's extremely organized. Everything he does is planned."

"I do feel bogged down in meetings sometimes, but planning is what makes you successful," Wibbels says.

Planning is one thing, but executing a plan is another.

Wibbels' success in bringing a plan to fruition is attributable to his belief in allowing

employees to do their jobs without him leaning over their shoulders, Palmgreen says.

"David very much believes in the team concept," Palmgreen notes.

But Wibbels is definitely captain of the Electronic Systems team, adds Hamilton.

"He's extremely bright and a very good listener," Hamilton says. "He makes the decisions, but he makes sure to listen to people."

Hiring the best people possible and encouraging them to be creative requires no great insight, Wibbels says. It just makes sense.

Electronic Systems is well-known to building owners across the country, but it is one of Louisville's lowest-profile companies.

The firm does have some local contracts, but almost all of its clients are out of state, Wibbels says.

He would like to do more work in Louisville, but the market for Electronic Systems' products is small in Wibbels' hometown.

But despite the company's far-flung business interests, Wibbels says he will never move Electronic Systems' headquarters out of Louisville.

"This is where I was born and where I'm staying forever," Wibbels says. "I get to travel to all of the big cities on business, but then I get to come to a place where you can afford to live."

Besides, operating out of Louisville gives his company quick and easy access to United Parcel Service Inc.'s national air hub—an important matter when a client needs a computer part fast.

Making enough money to live well wasn't always a sure thing in the early years of the company.

It was tough to convince building owners to hire a small, upstart company, Wibbels says. "There was some reluctance to turn over million-dollar electronic systems to a company with no track record."

With the private sector waiting for Electronic Systems to prove itself, the young company turned to the federal government.

For the first two years virtually all of Electronic Systems' work was with the government. Its first contract was to maintain a Honeywell building-automation computer at Fort Bragg, N.C.

Wibbels' first contract with the private sector came in 1981, when John Deere Co. "took a chance" and hired Electronic Systems to repair circuit boards, Wibbels says.

By 1983 the company started to take off, Wibbels says. During that year, Electronic Systems snared a major, multiyear contract maintaining the building-automation systems in the Sears Tower in Chicago.

Wibbels was so determined to meet or exceed the demands of the Sears contract that he promised the building manager that he would stay in Chicago "until (the building manager) was satisfied."

"It took 15 weeks for me to get out of Chicago. But we've had an excellent relationship and just recently renewed our contract for the 10th year."

Sears is Electronic Systems' largest client. The purchase and installation of an Electronic Controls computer system can cost from a few thousand dollars to more than \$50,000. Service contracts to maintain a building's automated control system range from a few thousand dollars a year to more than \$250,000, depending on the scope and sophistication of the systems.

In a large office building, Electronic Systems could be responsible for maintaining, upgrading or operating a building-automation system that controls thousands of lights, elevators, escalators, sprinkler systems, electronic access-control, as well as heating and cooling systems for each floor.

Electronic Systems also has contracts with the owners of other well-known office buildings to maintain control systems his company installed. Some of the more well-known clients are the TransAmerica building in San Francisco, American Telephone & Telegraph Co.'s headquarters in New Jersey, and the Renaissance Center in Detroit.

Another major client is the Federal Aviation Administration, which contracted Electronic Systems to upgrade the energy-management systems at 26 air-traffic control centers throughout the country.

Electronic Systems still does a significant amount of government work, but for years it has had little trouble grabbing private contracts.

One of its larger private customers is Ashland Oil Co., headquartered in Ashland, Ky.

We've been working with David for about 10 years," says Harold Tussey, manager of building systems for Ashland Oil.

Electronic Systems upgrades and maintains automated-control systems in Ashland Oil buildings in Kentucky and elsewhere. The firm's building systems have saved the oil company significant money by ensuring efficient energy use, Tussey said.

He declined to estimate how much the savings has been.

"They have saved us money because they have given us systems that work properly," Tussey says.

One reason Ashland Oil signed up with Electronic Systems is because Wibbels' company is small enough to be flexible and still large enough to meet Ashland Oil's needs, Tussey says.

"They're not so large that you can't call Dave and talk about a problem," Tussey says. "Dave always takes time himself when we need him. I can call down there at any time and get a hold of Dave, and he will get to the bottom of a problem."

Ashland Oil is currently working with Electronic Systems and Texas Instruments Inc. to develop a new access-control system that would allow employees to move through a building without taking their control card out of their wallet, Tussey says.

That convenience would be especially beneficial for employee safety, he adds.

"With that kind of system if we had a fire in a building, we would automatically know whether an employee was inside a building or not," Tussey says.

Developing new products and customizing services for individual clients is important to the future growth of Electronic Systems, Wibbels says.

"We're constantly evaluating what product lines we need to develop," he says.

Wibbels hasn't limited his sights to just the United States. He recently signed a contract with an Australian company that will distribute Electronic Systems' products and represent his company in Pacific Rim countries.

Running a business that has customers scattered in major cities from coast to coast demands a lot of time and travel. But Wibbels says he has learned in the past few years to ease up when he feels the need to get away from business.

Before, he rarely took vacations; now he regularly takes a weekend or a week off.

He and his girlfriend regularly play doubles tennis at the Louisville Tennis Center, and he enjoys reading and playing the guitar.

One of his favorite recreational pursuits is horse racing. At least twice a year he and Hamilton will travel to Florida or New York to watch the thoroughbreds.

"He's not a workaholic," says Hamilton. "He knows how to have fun."

He isn't one to just waltz up to the betting window and put down money on the horse with the cutest name, however, says Cole.

"He's obsessive about learning," Cole says. "Before he made his first real bet, he studied the newspaper every day for a year and made (pretend) bets."

Wibbels says his intense desire for information goes back to what his father said about seeking out knowledge.

Although by any measure Wibbels would be considered a successful businessman, he is not satisfied with his knowledge or understanding of the business world.

To buttress his business knowledge, Wibbels is studying for his master's degree in business administration at the University of Louisville.

"I love to know things," he says. ●

TAKE IT FROM INSIDERS: GET SMARTER, NOT TOUGHER

● Mr. SIMON, Mr. President, I read an op-ed piece in the Los Angeles Times by Father Gregory J. Boyle, who serves as an assistant chaplain at the California State Prison at Folsom.

He asked his class at the prison what would stop crime, and the first thing they mention is jobs.

They do not believe that more prisons will solve the problem, nor longer sentences, nor treating juveniles as adults. What do they believe will help: "Address the pervasive hopelessness among the inner-city poor. Money spent on jobs for the unemployed will make the streets safer than all the prisons in California."

This makes sense, not only for fighting crime but in terms of welfare reform.

Another suggestions they have: "Get all the guns off the street."

For some years now, I have been trying to get this Nation to adopt a program to guarantee a job opportunity to everyone who is out of work 5 weeks or more. That is real welfare reform. That is a real fight against crime.

Much of the rest of what we call crime fighting deals only at the edges of the problem. Yes, there are some good things in the crime bill, such as placing more police on the streets; but overall, we are only dealing at the edges of the problem rather than the heart of the problem.

I ask to insert Father Boyle's article in the CONGRESSIONAL RECORD at this point.

The article follows:

TAKE IT FROM INSIDERS: GET SMARTER, NOT TOUGHER

(By Gregory J. Boyle)

My "Theological Issues in Short Fiction" class at Folsom prison took a detour the other day. We got sidetracked by a discussion of the various crime bills coming out of the nation's capital. My students, virtually all life-termers, many without the possibility of parole, were amazingly informed about the bills.

They were aware of the Senate's huge five-year, \$22.2 billion "crime-fighting" package

that included regional prisons for violent offenders and 100,000 more police. They knew also of President Clinton's hope to extend the death penalty to include 50 more offenses and to cut back on the number of appeals of those sentences. I was impressed by how well-versed they were on the impetus to try more juveniles, charged with violent crimes, as adults. They were up to speed, as well, on the recent passage of the "three strikes and you're out" measures in Washington state.

These inmates know the issue of crime better than just about anybody. As disparate as they are in their opinions on most things, they were of one voice on the current "get-tough" urge that grips the land to them, it is all absolutely meaningless and insignificant in reducing crime.

Not a single one thought that longer sentences stop crime. Not one juvenile, they insisted, will be deterred by the fear of being tried as an adult. We could triple the number of prisons in this state (already a growth industry in California) and not one of my 40 students believes that it would make a criminal think twice.

The men at Folsom know what the Senate doesn't. These aren't "crime" bills—they are "punishment" bills. They don't seek to make prisons obsolete by reducing crime, they merely address how we'll deal with criminals when they're caught. Does anyone feel safer now than they did before?

My students know that there exists in this country no real will to stop crime. Legislators herniate themselves to be seen as "tough" on crime while sidestepping every conceivable approach that would be "smart" on crime.

Most inmates I know accept full responsibility for what they've done. In fact, they bristle if they think you're apt to blame society or the economy or their upbringing for their crimes. And yet, ask them to brainstorm on a crime bill and this is what they say:

Address the pervasive hopelessness among the inner-city poor. Money spent on jobs for the unemployed will make the streets safer than all the prisons in California.

Promote mentoring programs to tackle the issue of so many fatherless sons (70% of all juveniles detained in the United States know no father).

Convert prisons from punishment warehouses to rehabilitation centers, for one day, these inmates will walk free.

Actively support entrepreneurship in urban areas.

Get all the guns off the street.

Conceive ways to offer meaning to inner-city poor youth who have lost the ability to imagine a future.

Sen. Joseph R. Biden Jr. (D-Del.) called the \$22.2-billion crime bill "the most significant effort to deal with violent crime in America even undertaken by the U.S. Senate." It is not just this hyperbole that strikes my class at Folsom as profoundly sad. This country and its legislators, for its lack of will to deal with crime, has missed yet another opportunity.●

TRIBUTE TO PLEASANT GREEN BAPTIST CHURCH

● Mr. McCONNELL. Mr. President, I rise today to pay tribute to the oldest African-American church west of the Allegheny Mountains. The historic Pleasant Green Missionary Baptist Church of Lexington, KY, is celebrating its 203d anniversary.

In an era when values seem too often forgotten, I am pleased to recognize the role of this institution. From its beginning as a church for slaves, Pleasant Green has grown into a thriving community, contributing to humanitarian causes and promoting citizenship.

Their history is fascinating. In 1790, Peter Duerett, who was a slave known as Brother Captain, and his owner John Maxwell erected the African Baptist Church as a place for slaves to worship. In 1829, the name was changed to Pleasant Green Baptist Church, and the current building was constructed in 1931.

Other interesting details of their history include the church's buying the freedom of one of their pastors, George W. Dupee. Pleasant Green also housed Lexington's first Black school to be funded and established by the Government, and they reached out to other communities by organizing a mission that resulted in the establishment of the parish, Evergreen Baptist Church.

Pleasant Green has flourished since its formation. Recently, their distinguished past was recognized with an official State historical marker. Founder Brother Captain was also honored by the dedication of Brother Captain's Garden, which features a marble stone beneath a fountain.

The church community continues to grow. Plans for their future include new facilities, including a doctor and lawyer's office, gym with a health spa, pharmacy, housing units, conference rooms, underground parking and more. Observing their past expansion and success, I have no doubt that these plans will soon be realized.

Mr. President, on their 203d anniversary, I would like to recognize the impact of the historic Pleasant Green Baptist Church and offer them my congratulations.●

BOWDOIN COLLEGE ALUMNA'S L.A. PUBLIC SCHOOL EXPERIENCE

● Mr. SIMON. Mr. President, recently, Bill Farley, chairman of the board of Fruit of the Loom, sent me an article from the Bowdoin College alumni newspaper, which contains a letter from his stepdaughter about her teaching experience in Los Angeles.

It should be of more than casual interest, that she is able to contribute as much as she is, in part, because she majored in Spanish at Bowdoin College and later received her master's degree in Spanish from Middlebury College.

Our general failure to pay attention to languages is costing us in many ways, and too many teachers simply don't have the language skills to equip them to help in many areas. That is true of too many people in business, in journalism, in government, and in many other areas.

I was interested in noting that she was recruited through the Teach for

America Program. This endeavor has made a real contribution to our country.

I ask that the letter of Natalie Rollhaus, a graduate of Bowdoin College in the class of 1990, be inserted in the RECORD at this point.

The letter follows:

ALUMNA'S L.A. PUBLIC SCHOOL EXPERIENCE

Dear Bowdoin College students, alumni, professors, administrators and friends:

In the past two years I have realized more than ever how lucky I am to have received such excellent elementary school education. Francis Parker provided me with all the support and encouragement I needed to excel and pursue my interests. My teachers were brilliant and enthusiastic. The small classes, excellent resources, challenging academic environment and caring teachers ensured me that I had everything I needed to succeed academically. Yet I took my whole private school education for granted because it was the only system that I knew. I continued to take my education for granted as I graduated from Bowdoin College with an A.B. in Spanish and Latin American Studies, and then from Middlebury College with an M.A. in Spanish. Yes, I took it for granted until two years ago, when I began teaching in the inner city public schools of Los Angeles, through the Teach For America program. Teach For America is a highly selective national teaching corps of outstanding recent college graduates who commit a minimum of two years to teach in under-resourced urban and rural public schools.

In August, 1991, I immersed myself in the Inglewood School District for what I thought would be only a two-year commitment. As I walked into my temporary mobile trailer with boarded-up windows and thirty-three students at Highland Elementary School, I never would have believed that in July, 1993, I would enthusiastically and confidently be starting my third year of teaching in Inglewood.

My trailer was dark and depressing, with nothing on the walls and few books. I was told there were no reading books for my bilingual class. Soon, a tie-dyed sheet would act as a divider between my class and another class of thirty-three fifth graders in the same trailer. My students were hardly surprised to see another teacher walk in, since they had already been through four different teachers in the first month of the school year. Many of them slept in their living rooms with their parents, upon mattresses that covered the floor. More importantly, I realized that all of my students, of either Latino or African-American descent, were the victims of our failing national public education system.

I stopped looking around the room and began to look into the eyes of these children. I decided right then that the daunting limitations of the school system would not prevent me from giving my thirty-three fifth graders the quality education to which they were all entitled to and all deserved. I would empower these students and help them take charge of and value their education. This is what I have strived for and achieved with the two fifth grade classes I have taught for the last two years.

My class was equally divided between Spanish-only speakers, English-only speakers, and those who could manage somewhat in both. To further complicate things, I had no teaching aide. A Chinese proverb states that even a journey of a thousand miles must begin with but one step; so undaunted,

I set about tackling the enormous tasks before me. I went to public libraries and checked out over thirty books at a time in order to implement an effective bilingual reading program. I asked corporations for basic supplies and a computer for my classroom, and all were donated to me with enthusiasm. I organized the first bilingual coalition of parents to involve them in and educate them about their children's education and the system which operates it. After translating parts into Spanish, my class put on bilingual theatrical performance of Dr. Seuss' "How the Grinch Stole Christmas" for our school's holiday show. They memorized and performed Maya Angelou's inaugural poem for the school and made posters illustrating their interpretations of the poem that were displayed in the windows of the book store, Children's Book World. I devised an entire three-week curriculum on modern art, which consisted of mapping out seven rooms of the Anderson Gallery in the Los Angeles County Museum of Art, and which culminated with a field trip of interactive and reflective activities at the museum. The docents started in amazement they watched my students independently tour the gallery, creating and responding to questions on the different activity sheets I had developed for each of the rooms. I was so proud as I observed my students starting up conversations with people at the museum about Cubism.

I am currently a co-chair of the first Teach For America Community Outreach Committee. We are in the process of establishing a Speakers' Bureau—a list of leaders from diverse cultural and ethnic heritages in the Los Angeles community who would be willing to come into TFA corps members' classrooms and give lessons, and/or speak about their careers or fields of interest. Our students are in great need of positive and inspiring role models who can open their eyes to a variety of careers. They need to see tangible reasons to stay in school and make their education a priority. The Speakers' Bureau shows the importance and excitement of the learning process in all aspects of life.

These past two years have been by far the most challenging frustrating and rewarding years of my life. The fact that I have decided to teach in Inglewood for a third year is not because I have grown accustomed to an inept system, or numb to the real needs of all students. I am continuing to teach because I saw my students grow confident, responsible for their own education, become intrigued by knowledge and turned on to learning. I saw my students develop pride in themselves and their accomplishments, and work hard to reach their potential.

These children must have a quality education even if the public school system does not directly deliver that to them now. Although I may not be a teacher my whole life, I know that my experience as a Teach For America corps member has made me a true advocate for a better and more equitable education for all students. The infuriating realities I have seen in our under resourced schools combined with the desire and potential in all of my students, is what will lead me to pursue systemic educational and policy reform, establishing charter schools, and community development. We cannot afford to ignore the fundamental needs of our nation's children.

"Still, there is this longing, this persistent hunger. People look for beauty even in the midst of ugliness. 'It rains on my city,' said an eight-year-old 'but I see rainbows in the puddles.' But you have to ask yourself: How

long will this child look for rainbows?" (From Jonathan Kozol's "Savage Inequalities.")

I ask all of you to think about the crisis confronting our country today, and to think about what ideas you have towards its salvation. No matter where your interests lie or where your college major or career takes you, I ask that you consider this reality. I see no greater injustice, no greater threat to our nation's future than our country's failure to provide a quality education to its children.

I have included for you two unedited autobiographical poems that my students wrote. Their voices are much more powerful than any of my words could ever be.

I am Superman.
I wonder if anyone hates me.
I hear things from miles around.
I see through walls.
I want a challenge.
I am Superman.
I pretend I'm not.
I feel nothing.
I touch villains.
I worry about victims.
I cry at night.
I am Superman.
I understand any language.
I say this looks like a job for superman.
I dream about going home.
I try to stop.
I hope I can.
I am Superman.
I am colorful.
I wonder about the most wonderful things in the world.
I hear the shadows whisper back.
I see beauty in everything.
I want to know why the seven wonders of the world are wonders.

I pretend to be a model or movie star.
I feel exotic.
I touch the untouchable.
I worry for no reason.
I understand what others don't.
I say what I mean.
I dream the most exotic dreams.
I try to do what others can't.
I hope that my spirits keep high.
I am colorful.

Sincerely,

Natalie Rollhaus '90.●

WEST SIDE SCHOOL GETS DOWN TO BUSINESS

● Mr. SIMON. Mr. President, Ray Coffey, a columnist for the Chicago Sun-Times, recently had a column about a school in Chicago that really does work.

It was the dream of Joe Kellman.

Joe Kellman had this dream and talked to me and many others about it, and he followed through and really built on his dream.

I am not suggesting that what he has done can be duplicated easily everywhere, but I believe that we can learn from the school that Kellman has started.

Among other things, he was able to get people genuinely interested in this school, people who ordinarily were not interested in public education. There was a kind of vague feeling that public education was a disaster and no motivation to do anything constructive.

Joe Kellman, to his great credit, said we can do better, and he followed through.

I ask to insert the Raymond Coffey column into the RECORD at this point.

The column follows:

[From the Chicago Sun-Times, Nov. 7, 1993]
WEST SIDE SCHOOL GETS DOWN TO BUSINESS

(By Raymond R. Coffey)

This school works. And it works in North Lawndale, one of the toughest, poorest, most gang- and drug-ravaged neighborhoods in Chicago.

You can see it works almost the minute you walk in the front door of what used to be a Catholic school at Polk and Sacramento.

You see it in all those cheerful looking kids in their blue-and-white uniforms, in their sparkly clean, crisply organized classrooms, paying attention, working away at reading, writing and arithmetic.

No messing around here. As they take turns reading their compositions aloud in class, each kid is politely applauded by classmates. When a teacher tells them to line up to go to lunch, they line up. In straight lines.

This is not a public school. It is the Corporate/Community School of America. And it is Joe Kellman's dream of what all public schools could be.

Kellman grew up in North Lawndale. As the years went by and he became a successful businessman, Kellman, now 74, wanted to give something back to the old neighborhood that nourished him.

More than 30 years ago, he founded the Better Boys Foundation to offer kids more recreation opportunity. Later he became increasingly concerned that the schools were failing to deliver on education, especially to inner-city kids.

And he became convinced, fervently so, that the only way to straighten them out was to wipe away bureaucracy and run the schools like a business.

Finally, five years ago, he and co-founder Vernon Loucks Jr., chairman and CEO of Baxter International Inc., with financial support from major corporations and donors like Oprah Winfrey, opened the doors of SSCA.

It is a nonprofit private institution. The kids pay no tuition. The school operates on basically the same per-student cost, roughly \$5,000, as the Chicago public schools.

The 300 students, all from the North Lawndale area, are chosen randomly—with no regard to family income or background and "no cherry picking" or skimming from the top of the best or the brightest.

There is no tenure for teachers. You don't produce, you're gone. The classroom day runs more than seven hours. The school is open from 7 a.m. to 7 p.m. with staff attendants on duty so that kids have a safe place to be and something to do when their parents are at work.

SSCA is also convinced that giving kids an early start is crucial. Along with grades 1-8, it takes in preschoolers at age 2.

"The bottom line here is accountability, which is almost totally lacking in public school systems," SSCA Project Director Primus Mootry, who also grew up in North Lawndale, says bluntly.

"We don't blame these kids' parents, their social environment, their poverty. We take responsibility. What drives this place is the conviction that these kids are worthy of the very best education we can give them."

"Motivation" is an essential requirement for SSCA teachers, says Principal Maxine Duster, a former Chicago public schools

teacher. Giving up on a kid, any kid, is not allowed. SSCA teachers "have to love children, they have to believe that all children can learn," says Duster.

Kellman sees SSCA as a laboratory, a model for big city schools to learn from. "We now have a multibillion-dollar enterprise that is going bankrupt" and is being run by amateurs, he says.

For a start, he proposes, Chicago should have a full-time, well-paid (in six figures), skilled, professional Board of Education instead of unpaid, part-time, often inexperienced citizen volunteers serving in what has to be the most thankless job in town.

When you see what is being accomplished at SSCA, you can't help but wonder why people concerned with the sorry condition of Chicago's public school system don't at least take a closer look at Kellman's vision.

"There is not one major-city public school system in the country that is working for more than 50 percent of its children," says Mootry. "We believe [the SSCA approach] could turn the Chicago system around and give the taxpayers reason to have some confidence in it."•

CANADIANS COME DOWN HARD ON TELEVISION VIOLENCE

• Mr. SIMON. Mr. President, the United States is not the only nation that is concerned about television violence.

While violence on Canadian television has not been as much a problem as it is in the United States, it is interesting to note that they have taken action against television violence there.

I ask to insert into the CONGRESSIONAL RECORD an article titled, "Canadians Come Down Hard on Television Violence" published in the November 8, 1993, issue of *Broadcasting & Cable*.

The article follows:

CANADIANS COME DOWN HARD ON TELEVISION VIOLENCE

(By Sean Scully)

While U.S. legislators debate TV violence south of the border, Canadian regulators are taking a firm stand.

In late October, the Canadian Radio-Television and Telecommunications Commission (CRTC), the equivalent of the FCC, passed a tough new anti-violence code for broadcasters, banning any depiction of gratuitous violence. The code was developed by the Canadian Association of Broadcasters in response to pressure from the CRTC following a 1989 shooting at Montreal Polytechnique.

Canadian broadcasters accept the code but have some concerns, says Doug Hoover, national vice president of programming, CanWest Global systems, a Canadian group TV owner. Since U.S. stations are available over the air or on cable throughout Canada, domestic stations are at a competitive disadvantage against the unregulated U.S. stations.

In unveiling the code, CRTC Chairman Ken Spicer said the commission will watch closely to see that the CAB's system works and "would not rule out more coercive legislative or regulatory action."

In its broadest form, the code bans depictions of gratuitous violence, defined as any violence not playing "an integral role in developing the plot, character or theme of the material as a whole." Adult-oriented violence, or any ad or promotion that contains violence, is restricted to 9 p.m.-6 a.m.

The rules for children's programming are much more specific, prohibiting broadcasts

from showing violence in a way that would minimize its effects, encourage violence or invite dangerous imitation.

The CRTC will eventually add a ratings classification system, now under development by the Action Group on Violence and Television, a broadcast industry association, and has called on other Canadian programmers, including cable and satellite operators, to submit anti-violence proposals by Dec. 6.●

THE ELECTRONIC PARENT

• Mr. SIMON. Mr. President, I ask to insert into the RECORD at the end of my remarks an article that appeared in the *New Yorker* by Ken Auletta.

It is a commentary on television violence.

In one of the longer sentences near the beginning of his story, he writes:

While it is true that rap music that refers to women as _____ and Arnold Schwarzenegger movies in which people are casually killed ("Hasta la vista, baby"), and video games that invite players to gain points by slaying an opponent, and made-for-TV Amy Fisher movies, and tabloid-TV and blood-and-guts print journalism have less impact on violent behavior than poverty, drugs, guns, and broken homes, as Hollywood claims, it is also beyond doubt that media images can affect the way people act.

We know that is true for buying a bar of soap or buying a pair of shoes, and when television glamorizes violence, the American people, and children in particular, buy violence both as a means of solving problems and as something that gives pleasure.

In his article, he tells a remarkable story about a program that is carried by station KMEL, a radio station in San Francisco. I commend the station and its management for its positive contribution.

Mr. Auletta also points out one of the major roles that Congress has to play in all of this:

Though Congress and the Attorney General may not recognize it as such, consciousness-raising is at the heart of what they are now doing to save the media from their herd instinct.

He also has an insightful paragraph, which shows why pressure has to continue to be exerted on both network and cable television, as well as the movies that go into television:

The motive for much of the violence in movies elsewhere according to Richard D. Heffner, the chairman of the motion-picture industry's Classification and Rating Administration, is not mindless but purposeful. Violence and sex sell, he told me in an interview in his office on Sixth Avenue. "They know exactly what they're doing," he said. "The major factor is the bottom line. And the bottom line is not a good society, a society that nurtures the rules we more or less live by, but one where you maximize your profits today."

After nineteen years as chairman of the motion-picture-ratings board, Heffner barely disguised his disgust at what the movie-makers have kept churning out. His committee screened and rated six hundred and forty-six films last year, and despite the growing

public distaste for violence and the consequent desire of Hollywood producers for PG ratings, he declared, he had so far seen no evidence of a lessening of violence in R-rated films. Television and studio executives, he suggested, are more interested in labels than they are in controlling the content of the program or movie that is labelled. Instead of voluntary agreements to label, he would like to see entertainment executives agree to limit violence and sex. "I'm talking about limiting," he said. "We're talking about wretched excess. If you and I sat in front of a television, we'd agree on what is wretched excess. Just as we could tell the difference on the screen between _____ and making love."

I urge my colleagues to read the article by Ken Auletta.

The article follows:

THE ELECTRONIC PARENT

(By Ken Auletta)

Attorney General Janet Reno and certain members of Congress admit they do not watch much of the television programming they have been attacking of late, and they probably haven't given a lot of thought to the constitutional consequences of their proposals for taming TV violence, but their criticism has nonetheless struck a nerve. Official Washington has caught up with public sentiment, and the loudest cries for action are now coming from liberals, such as Senator Paul Simon, of Illinois, Representative Edward Markey, of Massachusetts, and the Reverend Jesse Jackson, in addition to Reno; meanwhile, the radical right and former Vice-President Dan Quayle no longer serve as convenient bogeymen, allowing Hollywood to equate criticism with censorship. While it is true that rap music that refers to women as "bitches," and Arnold Schwarzenegger movies in which people are casually killed ("Hasta la vista, baby"), and video games that invite players to gain points by slaying an opponent, and made-for-TV Amy Fisher movies, and tabloid-TV and blood-and-guts print journalism have less impact on violent behavior than poverty, drugs, guns, and broken homes, as Hollywood claims, it is also beyond doubt that media images can affect the way people act. It is clear that the current Touchstone film "The Program" influenced the behavior of the handful of teen-agers who recently sought to prove their manhood by lying in the middle of a highway at night: they were aping the macho stunt of the film's college football players. After two young men were killed and two others were injured, Touchstone, which is owned by Disney, ordered the scene removed from the film.

Privately, entertainment executives are predicting that Touchstone's action will be followed by attempts on the part of other media executives to demonstrate that they are responsible citizens. In a conversation I had recently with Jeffrey Sagansky, the president of CBS Entertainment, he said, "Do we have a responsibility to help kids deal with violence? I think we do. There is a separation of our public responsibility and our job responsibility, and we have to make them coincide more closely. It's not enough to say, 'I won't let my kid watch it, but it's going to make money.'" Sagansky's observations suggest a couple of questions: What might citizens say or do that would further induce media executives to think twice about the impact of violence, just as they now think twice about glamorizing alcohol, drugs, and smoking? And what positive steps might the media initiate to help staunch an epidemic of violence?

At a time when a lot of talk radio has become little more than shouting, KMEL's "Street Soldiers" offers a tantalizing media model. Each Monday night, from 10 P.M. to 2 A.M., KMEL, San Francisco's No. 1 music station, uses this call-in show to discourage violence and serve as a kind of electronic parent for violence-prone young people. On a fairly typical Monday night not long ago, an eleven-year-old girl phoned to say, "My father is drunk and he beats me," and to complain that her parents took drugs. "I really want them to quit, but I don't know how to tell them," she said. She was speaking to Joseph E. Marshall, Jr., and Margaret Norris, the program's hosts. A black teen-ager phoned to complain about white folks who glared at him as if he were a predator. "The madness builds up inside you," he said. Another young caller described an argument he had witnessed in which a ten-year-old had announced, "I'm going to get my gun."

When Marshall asked what had happened next, the boy said he had heard that someone had been shot, but homicides were so commonplace that he wasn't sure. A girl with a sweet voice called and said that, at the age of fourteen, she was both a recovering alcoholic and a former gang member. She got out of the gang because seven friends of hers had died in one year, she said, but she didn't know how to get out of her home, where she lived with an abusive father and a drug-addicted mother.

These kids tell their troubles to Marshall and Norris because they want adult advice. Joe Marshall, who is black (as is Norris), is a lanky, forty-six-year-old high-school teacher who sometimes dresses as casually as many of his listeners do—in a T-shirt, jeans, and sneakers. He has short hair and an incandescent smile. The call-in show he presides over was launched in November of 1991 by the rap performer Hammer, who took the title "Street Soldiers" from one of his songs. A couple of months later, the station recruited Marshall, who is the nonsalaried executive director of San Francisco's Omega Boys Club, as the show's permanent host. Despite a voice that can become squeaky and high-pitched, and despite the fact that he is three decades older than most of his listeners, Marshall commands the attention of up to two hundred thousand people every Monday night.

Margaret Norris is a regal forty-one-year-old high-school English teacher with intricately braided hair. She attended the University of San Francisco, as Marshall did, and now serves as the academic director of the Omega Boys Club. The notion of family is at the core of the club, where young people between the ages of twelve and twenty-five are befriended and given academic, employment, and violence-prevention training; many of the club's members receive college scholarships.

Norris and Marshall do not shy away from dispensing parental advice. Both at the Boys Club and on "Street Soldiers," they behave the way Janet Reno and some members of Congress seem to want the media to: like surrogate parents. To the boy who heard the ten-year-old say he was going to get a gun, Norris said, "What were you doing out so late?"

When a teen-age girl called and mentioned a friend whose boyfriend beat her, Marshall responded sternly, "If the sister don't say nothing" the brother thinks he's supposed to do that."

Unquestionably, the show has helped avert violence. When a Samoan teenager was slain, apparently by Filipino gang members, in a

drive-by shooting, the phones lit up with calls from Samoans wanting to tell Marshall they would not rest until they had exacted revenge. Threats filled the air for a couple of weeks. Then the dead Samoan's father called in, and, in a poignant exchange, the father said he couldn't tolerate the thought of more young men senselessly slaughtered. There would be no retaliation, he vowed. And there was none.

Marshall believes that the young men and women who make up this radio audience, like the hundreds of inner-city youths his six-year-old organization is currently working with, feel orphaned by all institutions—their families, their communities, the government, the media. Thinking that no one cares "has the effect of making you not care about yourself," Marshall says. "That's what we hear from a lot of our callers. They say, 'The larger world doesn't care about me, so I don't care about me.' We're saying on the show, 'We care about you.' We've got to become their family. That's the model."

I first encountered Marshall a few months ago, at a two-day conference in Washington, D.C., on "Safeguarding Our Youth: Violence Prevention for Our Nation's Children," which was attended by community organizers, educators, editors and broadcasters, and law-enforcement and other government officials from across the country. Participants received reams of statistics from the Attorney General and others testifying to the national epidemic of violence, which annually claims more than fifty-five thousand lives, killing as many young men as car accidents, cancer, and heart disease combined. Yet the most intense anger displayed at the conference was not against violence in the streets but against violence in the media.

There is ample evidence, of course, that violence in the media has an impact, but there is also ample disagreement over how much of an impact. Whatever the precise effect may be, Marshall says, the felons and gang members he works with get partly "programmed by the negative images from the media." The goods advertised, the clothes worn, the words spat out, the random violence—all help seduce young people, and particularly young people with few positive role models, he says. Marshall is well aware that he is not alone in his concern. There are indications that the public is fed up. A recent Times Mirror poll shows that seven out of ten Americans are unhappy about the negative images that the media are conjuring up, and call them excessively violent. At the conference, several of the participants became so agitated as they swapped tales of how the media polluted young minds with violence that they seemed to be flirting with notions of censorship, just as Congress and the Attorney General seem to have been doing ever since. A few people said that they intended to storm their local TV stations and demand, on behalf of the people, that the media present more positive news.

If a program like "Street Soldiers" constitutes one successful attempt to curb violence, what else might unhappy citizens do that would stop short of censorship yet help protect their kids? Over the years, various types of protest have swayed the entertainment industry. In 1989, for instance, a letter-writing campaign by private citizens and nurses' organizations caused advertisers to shun NBC's "Nightingales"—a salacious series about student nurses, produced by Aaron Spelling—to the point where the network ignored the show's ratings, which were respectable, and cancelled it. In 1990, Congress passed the Television Violence Act, which

this summer had the belated effect of causing the four broadcast networks and fifteen of the cable networks to agree to voluntarily affix a label to any program they deemed violent. These pressures raised the consciousness of programmers.

Though Congress and the Attorney General may not recognize it as such, consciousness-raising is at the heart of what they are now doing to save the media from their herd instinct. Some cooperative, and confrontational, steps that community groups and parents might take without doing harm to the Bill of Rights could be patterned after "Street Soldiers." The show came into being when a private citizen, Hammer, approached KMEL and insisted, in the face of skepticism, that a talk show about violence would attract not only youthful listeners but also advertisers; as he predicted, the show has been commercially successful.

Joe Marshall had another experience in San Francisco that could be duplicated elsewhere. In early 1988, after the San Francisco TV stations repeatedly broadcast footage of black youths heaving stones at buses, there was an outpouring of citizen complaint. In response, Harry Fuller, then the news director at the local ABC affiliate, KGO, sent a reporter to do a series on the Omega Boys Club. Marshall guesses that the series resulted in thirty thousand dollars in individual donations. (The club's annual budget is four hundred and seventy thousand dollars, from private and corporate donors—none of it from the government—and two-thirds of it is earmarked for college scholarships.)

Fuller also invited Marshall in for a visit to begin a dialogue on press coverage of the city's minority communities. Marshall came, and, rather than berating the news media, he quietly suggested that by reporting on black people only when there was an uprising or a crime, news organizations were not presenting a full or fair picture of the community. Marshall was bumping into a truth about local-TV newsrooms: news directors and producers are generally young, inexperienced, wedded to familiar stories that take place within easy traveling distance of the studio, fearful for their job security if their ratings should fall, and often ignorant about the cities in which they work. Most producers do not aspire to blood-and-guts journalism. What they want is predictable stories: the latest crisis at City Hall, the newest murder, the fate of the local team, and, of course, the weather. Few news directors have intimate knowledge of community-based organizations, or of good things done in their cities which are not announced at City Hall. Fuller assured Marshall that KGO would try to get beyond stereotypical reporting.

Another useful tool to restrain violence in the media relies on peer pressure, which is a potent weapon in all groups: editors might suggest that their writers—especially their TV and movie and press critics—focus on pointing out unnecessary violence in all media. Dennis A. Britton, the editor of the Chicago Sun-Times, said at the Washington conference on violence that he met weekly with gang members, and added that he had come to the conference because, as editor-in-chief of a major urban daily, he had to have a broad understanding of an issue that confronted him every day. Britton has the power to issue orders, to enforce a code of ethics among his employees, and also to create peer pressure.

An innovative approach to violence is already being taken by the San Antonio branch of Fighting Back, a national drug-

abuse-prevention program sponsored by the Robert Wood Johnson Foundation. Under the leadership of Beverly Watts Davis, a charismatic black woman, who described its efforts at the conference in Washington, San Antonio Fighting Back has organized "freedom fighters" for safe neighborhoods. Armed only with video cameras, community teams have filmed drug dealers and turned the videotaped evidence over to the police, and the result has been the closing of what Davis said was a ten-year-old open-air drug market.

Another potentially potent approach is being championed by Jesse Jackson, who has recruited Bill Cosby to lead what Jackson calls a national crusade aimed at both the media and the callous behavior of young people. More blacks under the age of twenty-one have been killed in New York City this year, Jackson told the New York Post—three hundred and sixty-two—"than all those who were lynched this century."

The courts also offer citizens a forum. In France, for instance, a mother has filed suit against the head of the state-run TV channel that carried the American TV series "MacGyver." She claims that her son was accidentally killed in 1992 as a result of copying MacGyver's recipe for making a bomb. In the litigious culture of the United States, similar lawsuits are bound to become a weapon against violence, though they may also constitute a threat to free speech. Boycotts of advertisers are another aggressive, and potentially dangerous, form of public pressure. This weapon seems to be viewed kindly by Attorney General Reno; in her speech at the Washington conference, she said, "Let's start sending clear messages to the television networks. Let's tell advertisers that we're not going to buy their products if they continue to support violence on television."

One thing parents can do to control what their children watch on television is to install devices called V-chips in all sets, as Representative Markey has proposed. Such chips would allow parents to block the signal of any show rated violent.

Further legislative action is possible, too, including three Senate bills that would apply to cable as well as broadcast outlets: one would limit the hours during which programs deemed violent may air; a second would require the F.C.C. to issue a "report card" four times a year for all broadcast and cable outlets, rating each as to its violent content; and a third would require that violence warnings be posted at the beginning of and during each show rated violent. "The regulation of violence is constitutionally permissible," Reno testified before the Senate Commerce Committee, on October 20th, during a hearing on the three bills. If the entertainment industry didn't reduce the violent content of its products, she said, legislative action would be "imperative." Reno, like Marshall and others who want to change the way the media deal with violence, bases her argument on two assumptions: that the media are a public trust, and that this trust includes being responsible for more than just entertaining consumers.

"We have to hold the media responsible for being educators, whether they want to be or not," Ronald G. Slaby, a senior scientist at the Educational Development Center, in Newton, Massachusetts, told me. "Let's use television the right way—to send the message that problems need to be understood and dealt with, not 'solved' or 'glorified' with further violence," Reno said at the Washington conference.

Of course, it is easier to exhort than to bring about change. Is it realistic to assume, as Reno does, that there is one "right way" to use television? Should the media think of themselves as local or national parents? Should government compel them to? Would legislation or strictures that are meant to prod the media end up suffocating independence and creativity? Will pressure panic cautious advertisers into abandoning innovative but controversial shows, such as Steven Bochco's "NYPD Blue"? If the public is dead set against violence and prurience, how is it that people clamor to see the Amy Fisher TV movies or manage to propel Howard Stern's book to the top of the best-seller list? Because the networks are such large and agreeable targets, Washington often treats them as the chief culprits. With the exception of their own stations' local newscasts and racier magazine shows, there is actually less violence on broadcast TV today than there was, say, a decade ago. Which begs this question: Will the proliferation of channel choices result in more violence, more "blue programs," an anything-goes climate in a medium no longer dependent on mass audiences and therefore freed from any need to meet the community-standards test that has traditionally satisfied advertisers?

The conflict between commerce and politics also raises questions. One reason that voluntary agreements have not worked in the past is that the commercial interests of broadcasters have vied with their political interests. The motive for much of the violence in movies, on television, and elsewhere, according to Richard D. Heffner, the chairman of the motion-picture industry's Classification and Rating Administration, is not mindless but purposeful. Violence and sex sell, he told me in an interview in his office on Sixth Avenue. "They know exactly what they're doing," he said. "The major factor is the bottom line. And the bottom line is not a good society, a society that nurtures the rules we more or less live by, but one where you maximize your profits today."

After nineteen years as chairman of the motion-picture-ratings board, Heffner barely disguised his disgust at what the movie-makers have kept churning out. His committee screened and rated six hundred and forty-six films last year, and despite the growing public distaste for violence and the consequent desire of Hollywood producers for PG ratings, he declared, he had so far seen no evidence of a lessening of violence in R-rated films. Television and studio executives, he suggested, are more interested in labels than they are in controlling the content of the program or movie that is labeled. Instead of voluntary agreements to label, he would like to see entertainment executives agree to limit violence and sex. "I'm talking about limiting," he said. "We're talking about wretched excess. If you and I sat in front of a television, we'd agree on what is wretched excess. Just as we could tell the difference on the screen between f...ing and making love."

There is a school of optimists who believe that the interests of commerce and politics are moving closer. Mark Canton, the chairman of Columbia Pictures, said in a speech last winter, "A movie rated PG is almost three times more likely to reach a hundred million dollars than a film rated R. And yet, as an industry, we are making more R-rated films than ever: fifty-eight per cent of all movies. At the same time, the number of PG-rated films has been dropping." The smart thing to do, he added, is to make more PG films.

Heffner, who is sixty-eight and plans to step down when his contract expires, next June, is pessimistic. He knows that the studios and the directors he battles with daily do not always agree on what is wretched excess, and that they want to convert an R to a PG-13 rating without toning down the violence. Unfortunately, while PG ratings may make good business sense domestically, a different business logic applies worldwide, where movies with violence or sexual themes travel better.

These are not uncomplicated matters; they are accompanied by real doubts and dangers. But what often gets lost in the tumult of questions raised by those in the media who want to focus only on the perils of censorship is the fundamental question asked by the voluntary movie-ratings system: Is this something that a child of eight—or thirteen—should see? "Why do civilized human beings have to get into a debate about whether garbage is garbage or not?" Heffner asks. "It doesn't matter if you as an adult think it's gratuitous. The question is: What about your child?"

In a culture increasingly cluttered with entertainment choices, the aim of those in the media—ranging from Madonna to Bochco, from producers to editors—is to do things that stand out. This aim collides with the public's aim, which is to protect impressionable children. At a time when parents and others are agitated by an onslaught of media violence, much of what stands out, as Congress and Janet Reno now remind us, makes an inviting target. ●

WORKING IN THE SCHOOLS

● Mr. SIMON. Mr. President: I want to let my colleagues know about an exciting program, the Working in the Schools [WITS] Program, that is up and running in three schools in Chicago housing projects.

The program is entitled "Working in the Schools." It involves over 50 men and women volunteers, most retired business persons and professionals over the age of 60, assisting in classrooms. The roles of these volunteers vary, from reading to small groups of children to working with the children on computers.

What this program indicates is that there are people in the community committed to improving the lives of children, particularly children with fewer opportunities. As the principal of one of the Chicago schools, the Byrd Academy, stated, "The children need nurturing, emotional support and feelings of self-worth. Quality one-on-one time is so rare and so important."

This is an inspirational message that I believe other communities should explore. Chicago is lucky to have such a program. We owe the volunteers and staff of the WITS Program our gratitude and our support. ●

UNANIMOUS-CONSENT AGREEMENT—THE DEPARTMENT OF DEFENSE AUTHORIZATION BILL—CONFERENCE REPORT

Mr. BIDEN. Mr. President, I ask unanimous consent that when the Senate considers the conference report accompanying H.R. 2401, the Department

of Defense authorization; that there be 2 hours and 30 minutes for debate on the conference report, with the time controlled as follows: 80 minutes equally divided and controlled between Senators NUNN and THURMOND, 30 minutes under the control of Senator MCCAIN, 15 minutes each under the control of Senators WARNER and GLENN, and 5 minutes each under the control of Senators LEVIN and EXON; that when the time is used or yielded back, and without intervening action or debate, the Senate proceed to vote on adoption of the conference report.

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

Mr. BIDEN. I ask unanimous consent that it be in order to request the yeas and nays on the adoption of the conference report.

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

Mr. BIDEN. Mr. President, I now 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.

WEST COURT OF THE NATIONAL MUSEUM OF NATURAL HISTORY

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 274, H.R. 2677, the West Court of the National Museum of Natural History Building bill; that the bill be deemed read the third time, passed, and the motion to reconsider laid upon the table, and that any statements relating to this measure appear in the RECORD at the appropriate place.

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

So the bill (H.R. 2677) was deemed read the third time, and passed.

OLDER AMERICANS ACT AMENDMENTS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3161, a bill to amend the Older Americans Act; that the bill be deemed read a third time and passed; the motion to reconsider laid upon the table; and any statements thereon appear at the appropriate place in the RECORD as though read.

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

So the bill (H.R. 3161) was deemed read a third time and passed.

CONSERVATION OF ATLANTIC BLUEFIN TUNA

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 169, a concurrent resolution relating to Atlantic bluefin tuna, just received from the House; that the concurrent resolution be agreed to, the preamble agreed to, and the motion to reconsider laid upon the table.

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

So, the concurrent resolution (H. Con. Res. 169) was agreed to.

The preamble was agreed to.

ORDERS FOR WEDNESDAY, NOVEMBER 17, 1993

Mr. BIDEN. 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, November 17; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that immediately following the announcement of the Chair, the Senate resume consideration of S. 1657, the habeas corpus bill.

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

RECESS UNTIL WEDNESDAY, NOVEMBER 17, 1993, AT 9 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 11:50 p.m., recessed until Wednesday, November 17, 1993, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate November 16, 1993:

DEPARTMENT OF AGRICULTURE

MICHAEL V. DUNN, OF IOWA, TO BE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION, VICE LA VERNE G. AUSMAN, RESIGNED.

DEPARTMENT OF JUSTICE

JAMES MARION HUGHES, JR., OF OKLAHOMA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS VICE DONALD E. CROWL.

ALFRED E. MADRID, OF ARIZONA, TO BE U.S. MARSHAL FOR THE DISTRICT OF ARIZONA FOR THE TERM OF 4 YEARS VICE DONALD W. TUCKER.

JOHN STEVEN SANCHEZ, OF NEW MEXICO, TO BE U.S. MARSHAL FOR THE DISTRICT OF NEW MEXICO FOR THE TERM OF 4 YEARS VICE ALFONSO SOLIS.

JAMES V. SERIO, JR., OF LOUISIANA, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA FOR THE TERM OF 4 YEARS. (REAPPOINTMENT)

WESLEY JOE WOOD, OF TENNESSEE, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF TENNESSEE FOR THE TERM OF 4 YEARS VICE JOHN T. CALLERY.

CHARLES LESTER ZACHARIAS, OF MINNESOTA, TO BE U.S. MARSHAL FOR THE DISTRICT OF MINNESOTA FOR THE TERM OF 4 YEARS VICE ANTHONY L. BENNETT.

STEPHEN SIMPSON GREGG, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS VICE RICHARD W. CAMERON.

CONRAD S. PATILLO, OF ARKANSAS, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF 4 YEARS VICE DONALD R. MELTON.

DEPARTMENT OF VETERANS AFFAIRS

RAYMOND JOHN VOGEL, OF WEST VIRGINIA, TO BE UNDER SECRETARY FOR BENEFITS OF THE DEPARTMENT OF VETERANS AFFAIRS, FOR A TERM OF 4 YEARS, VICE D'WAYNE GRAY.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

JAMES A. JOSEPH, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 5 YEARS. (NEW POSITION)

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JEANNE HURLEY SIMON, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1997, VICE J. MICHAEL FARRELL, TERM EXPIRED.

INTERNATIONAL MONETARY FUND

KARIN LISSAKERS, OF NEW YORK, TO BE EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF 2 YEARS, VICE THOMAS C. DAWSON II, RESIGNED.

AFRICAN DEVELOPMENT BANK

ALICE MARIE DEAR, OF NEW YORK, TO BE UNITED STATES DIRECTOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS. (NEW POSITION)

U.S. INFORMATION AGENCY

HENRY HOWARD, JR., OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE U.S. INFORMATION AGENCY, VICE JOHN CONDAYAN, RESIGNED.

DEPARTMENT OF STATE

WESLEY WILLIAM EGAN, JR., OF NORTH CAROLINA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HASHEMITE KINGDOM OF JORDAN.

DEPARTMENT OF THE TREASURY

JOAN LOGUE-KINDER, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE JACK R. DEVORE, JR., RESIGNED.

DEPARTMENT OF COMMERCE

CHARLES F. MEISSNER, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE THOMAS J. DUESTERBERG, RESIGNED.

FEDERAL DEPOSIT INSURANCE CORPORATION

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 6 YEARS, VICE WILLIAM TAYLOR.

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 5 YEARS, VICE WILLIAM TAYLOR.

CONSUMER PRODUCT SAFETY COMMISSION

ANN BROWN, OF FLORIDA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF 1 YEARS FROM OCTOBER 27, 1992, VICE CAROL GENE DAWSON, TERM EXPIRED.

ANN BROWN, OF FLORIDA, TO BE CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION, VICE JACQUELINE JONES SMITH.

EXTENSIONS OF REMARKS

THE INTERNATIONAL PEACEKEEPING POLICY ACT OF 1993: A NEW DOCTRINE TO PROTECT AMERICAN INTERESTS

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Ms. SNOWE. Mr. Speaker, last week I introduced legislation, the International Peacekeeping Policy Act of 1993, to establish a comprehensive and coherent policy toward United Nations peacekeeping activities. In my role as ranking Republican on the Foreign Affairs Subcommittee on International Operations, which has jurisdiction over international peacekeeping operations, I took this action to address the dangerously confused state of American foreign policy.

Like all Americans, my constituents, the people of Maine's Second District, were appalled at the carnage brought about by the Clinton administration's early attempts to establish a naive U.N.-based foreign policy. The people of Maine were even more incredulous that after the death in Somalia of 18 United States troops, two of them from my own district, President Clinton tried to send unarmed American troops to Haiti under United Nations command. Furthermore, he still has not ruled out making an open-ended commitment in Bosnia of 25,000 American peacekeepers in an extraordinarily dangerous environment. I understand the President is also considering deploying lightly armed American U.N. peacekeepers to Liberia and Mozambique, and that the State Department is studying the feasibility of sending U.N. peacekeepers to three other notorious quagmires—Afghanistan, Sudan, and Tajikistan.

Mr. Speaker, the American people have had enough. This administration has traded America's hard-fought international credibility for fuzzy minded internationalism. Recent events show the administration's current U.N.-centered foreign policy to be short-sighted and unworkable. We need a new doctrine that protects U.S. interests and does not place the lives of American soldiers at unnecessary risk. After consulting with a range of foreign policy experts and after considering the widely-reported flaws of PRD-13, the Clinton administration's draft blueprint for its U.N.-based foreign policy, I am today presenting what I believe should be the basis of this new doctrine.

Before discussing the contents of my legislation, I would like to emphasize that ultimately, foreign policy can only be implemented by the President. Congress has the constitutional power over peace and war, Congress can block ill-conceived initiatives through law or by cutting off funds, and Congress is a critical avenue for building broad public support for any policy initiative. But only the President can articulate and implement a coherent American foreign policy.

The President must also ultimately take responsibility for the actions and advice of those who serve him in senior foreign policy positions. It is the President who must decide the extent to which those senior foreign policy advisors responsible for his failed U.N.-based foreign policy continue to serve him and the Nation well. The President must decide whether they can turn aside from that approach and implement a new policy that focuses instead upon core U.S. national interests. The International Peacekeeping Policy Act is neither an infringement upon the President's authority as Commander-in-Chief nor his constitutional authority to conduct American foreign policy. It is also no substitute for the kind of foreign policy leadership that has proved to be so lacking in this administration. The bill does, however, use the Congress' fundamental responsibility over the appropriate use of U.S. Government funds to establish prudent criteria for United States financial support for United Nations peacekeeping activities.

The United States must adopt realistic perceptions of what peacekeeping is, what it can accomplish and when—if ever—American troops should participate in United Nations peacekeeping operations. To make these determinations, we must learn from history and 30 years of experience in peacekeeping operations which have been attempted to date.

1. RECOGNIZE THE LIMITATIONS OF U.N. PEACEKEEPING

First, we must realize that U.N. peacekeeping is a limited conflict resolution mechanism that will only succeed in a small number of international disputes. History shows that peacekeeping operations only work when they are noncoercive efforts to resolve an international—rather than internal—dispute. Peacekeeping forces cannot compel warring parties to abide by peace accords, and can only be prudently deployed with the full consent of all parties to a conflict. Peacekeeping will thus usually fail in civil and ethnic conflicts, a fact that was amply demonstrated in the Congo in the mid-1960's, Lebanon in the mid-1980's, Somalia in 1993, Haiti in 1993, and Yugoslavia over the past 2 years.

My legislation will return U.N. peacekeeping to its original purpose by establishing strict conditions under which U.S. peacekeeping funds may be used. If an international emergency endangers U.S. national interests, the President remains able to take quick action through his powers as Commander-in-Chief. If the situation is less time critical and the President wants to pay the United Nations for a peacekeeping operation that does not qualify under this law, he may always seek a specific authorization from Congress. The bill would also control the explosive growth in the cost of U.N. peacekeeping by ending the United Nation's practice of overbilling the United States for this function and to require prior congressional notification for the establishment of any new peacekeeping operation.

2. U.S. TROOPS MUST NOT SERVE UNDER U.N. COMMAND

The United States must recognize that American combat troops should normally not participate in peacekeeping operations. The issue is not, as President Clinton would have us believe, that U.N. command and control procedures must be improved before Americans are permitted to serve under U.N. commanders. We should not even think of placing American servicemen and women under its control. The real lesson the President should have learned from his Somalia debacle and prior U.N. operations is that United Nations peacekeeping missions achieved some measure of success during the cold war only when they were seen as neutral and nonthreatening. For this reason in 1956 the United Nations began a wise policy of excluding United States and Soviet troops from peacekeeping operations because the United Nations believed American and Soviet troops would never be seen as neutral in peacekeeping situations.

The appalling pictures we saw on television last month of Somalis desecrating the bodies of American soldiers in the back alleys of Mogadishu teaches a hard lesson most United States military officers already knew: Americans, when they serve as peacekeepers, stand out. They are not seen as neutral, idealistic international civil servants. They are seen as representatives of the world's sole remaining superpower. Thus, when deployed as lightly armed U.N. peacekeepers, American troops are frequently in a bind. They are at great risk of falling victim to terrorism and violence while their military skills are often wasted.

American troops must be reserved for real military situations where they can best utilize their superior military training and technology. Most Americans did not oppose using large numbers of well-armed American troops in situations such as in Panama in 1990, Grenada in 1985, or Kuwait in 1991. The critical consideration must be whether such an operation serves American national and security interests and whether such operations have the full support of the American people, have identifiable goals and are "winnable." Traditional peacekeeping missions are most effective when staffed by the states that can do them best—countries without our kind of global foreign policy interests which only complicates the mission. The International Peacekeeping Policy Act would prohibit United States combat forces from serving under formal United Nations command.

3. PROTECT AMERICAN INTELLIGENCE INFORMATION

If it is necessary to provide intelligence to the United Nations for peacekeeping, such intelligence should be provided only if sensitive sources and methods of intelligence gathering are protected, and only on a case-by-case basis. At the urging of this administration, last summer the United Nations established its own intelligence service. We are currently giving computer terminals and fax machines to

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

U.N. headquarters in New York and to U.N. peacekeeping operations abroad to facilitate passing sensitive American intelligence to the United Nations. At U.N. headquarters alone, hundreds of officials from over 50 countries have access to the information we are providing. The results of this effort have been predictable. Reports have surfaced that the United Nations, an organization which retains strong anti-American currents and continues to suffer from corruption and inefficiency, has leaked some of the crucial intelligence we have provided, possibly seriously compromising American national security and human lives. My bill would restrict intelligence sharing with the United Nations.

Mr. Speaker, we still live in a dangerous world. Make no mistake, the world's thugs have taken solace in our country's recent foreign policy fiascoes. If the ineptitude of American foreign policy continues, small problems will continue to escalate into major foreign policy disasters and serious security concerns will grow to threaten global stability. Just last month, the Bosnian Serbs resumed their shelling of Sarajevo. Iran and North Korea have serious aspirations of becoming nuclear weapons states. And who knows what Pol Pot or Mommar Qaddafi are planning. My proposed new doctrine on international peacekeeping will help to salvage American foreign policy, protect U.S. interests abroad, and prevent American soldiers from continuing to risk their lives on questionable U.N. missions.

A TRIBUTE TO DANIEL "BUD"
MCKENNEY

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. PAYNE of New Jersey. Mr. Speaker, I am saddened to share with my colleagues in the U.S. House of Representatives the passing of Daniel "Bud" McKenney. A fellow citizen concerned about the youth of our community, Mr. McKenney helped to establish the Delaware Head Start and Foster Grandparents Programs. Realizing that young people are our most precious resource, he worked tirelessly to ensure that all of their needs were met. The Head Start Program provided hot meals and early education for needy children and the Foster Grandparents Program matched senior citizens and residents of an institution of mentally retarded adults for interaction and understanding. He served as a volunteer counselor with the Girls Club of Delaware, currently called Girls, Inc.

Early in his career, Mr. McKenney served as press secretary to then Delaware Governor, Elbert Carvel and was a part of the historic Delaware delegation that met with President John F. Kennedy in the Oval Office of the White House to discuss economic development in the Delaware region. Mr. McKenney was later appointed by the Governor as the first director of the State office of economic opportunity. He opened the department without an office or an operating budget.

Mr. McKenney was an Army veteran of World War II and the founder and first com-

mander of the Charles E. Durney American Legion Post 27 in Wilmington. He enjoyed numerous activities, among them reading, thoroughbred racing, and University of Delaware football. Daniel "Bud" McKenney was a family man as well. He was devoted to his wife, of 46 years, Kathryn, their 7 children, Thomas, Kerry, Christopher, Daniel, Matthew, Kevin, and Kelly and 7 grandchildren, Claire, Steven, Kate, Erin, Tierney, Amy, and Caroline. He also cherished his relationship with his two surviving sisters, Mary Turner and Ann Krauss.

It is with regret that we mark his passing, but we know that his life's works continue in the programs he started and his spirit lives on in the good works of his loving family. Mr. Speaker, please let all who knew him know that when you live a good life no one truly dies, you simply live on in the lives of those you have touched with love.

TRIBUTE TO SIGMUND
STROCHLITZ

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. GEJDENSON. Mr. Speaker, I wish to submit for reprinting in the CONGRESSIONAL RECORD a copy of an editorial paying tribute to Sigmund Strochlitz of New London, CT, on the occasion of his receiving an honorary doctor of humane letters degree from Connecticut College.

Sigmund Strochlitz is a gentleman in the finest sense, who has served his community and neighbors well, and as a Holocaust survivor, has never forgotten his past. Sigmund Strochlitz has traveled the world, dedicated to preserving the memory of those who perished during that time and preventing the spread of hatred.

SIGMUND STROCHLITZ DAY

Sigmund Strochlitz, who received an honorary doctor of humane letters degree last Monday night from Connecticut College, is very much a citizen of the world, but one who has not forgotten the importance of doing good works at home.

Born in Bendzin, Poland nearly 77 years ago, Mr. Strochlitz experienced the barbarism of the Nazi death machinery first hand in World War II.

Mr. Strochlitz, who moved to New London in the mid-1950s, is a Holocaust survivor. Because of that experience, his memory will never fully escape the horrors he witnessed almost daily in several Nazi concentration camps.

Call it good fortune, the luck of the draw, whatever. It is a mere accident of history that he, a concentration camp prisoner, is alive today. He understands this profoundly, and that is why he regularly travels the globe to keep alive the memory of that consummate evil Nazi Germany committed decades ago.

Sigmund Strochlitz has visited Pope John Paul II to appeal for support to participate in a conference dealing with the anatomy of hate. He also sought to persuade the pope to support the establishment of Days of Remembrance in Germany and France.

In Israel, he has worked for many institutions, including the Friends of Haifa University.

For four years, Mr. Strochlitz headed the Days of Remembrance effort of the United States Holocaust Memorial Council. He also was chairman of the council's committee that developed the Holocaust Memorial in Washington, DC. Presidents Jimmy Carter and Ronald Reagan appointed and reappointed him to this work.

In New London, Mr. Strochlitz has been generous in support of various causes.

Mr. Strochlitz is a man whose efforts on behalf of others stand in sharp contrast to the evils he experienced as a prisoner in the Nazi camps. The sadness and tragedy of those days is forever with him. He speaks often of how many potential writers, scientists, musicians and doctors were among the six million individuals destroyed by the Nazis.

Like his friend, Elie Wiesel, the Nobel laureate, Mr. Strochlitz commits himself to repudiating evil where he sees it. More than that, he shares with Prof. Wiesel a commitment to exalting goodness. They know that the failure to affirm what is good or neglecting to loudly denounce what is bad, allows evil the opportunity to hatch its plots.

These two concepts from the crucible of the work done by these friends: speak out against evil, bigotry, racism, and inhumanity. Praise those who go the extra distance to help others, to speak truthfully and in behalf of what is just and honorable.

That is the splendor and joy of humanity at its best.

KEY DOCUMENTS PROVE INNOCENCE OF JOSEPH OCCHIPINTI

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. TRAFICANT. Mr. Speaker, as part of my continuing efforts to bring to light all the facts in the case of former Immigration and Naturalization Service agent Joseph Occhipinti, I submit into the RECORD additional key evidence in this case.

EXHIBIT L—AFFIDAVIT

Tony Reyes, being duly sworn, deposes and states:

(1) I am a native and citizen of the Dominican Republic presently incarcerated at the Federal Medical Center at Rochester, Minnesota for Federal drug violations.

(2) I recently learned from a reliable Dominican source that former Federal Agent Joseph Occhipinti convicted for civil rights violations was intentionally set-up by Dominican bodega owners, among others, after he refused to accept bribes during Project Bodega and instead increased his enforcement activities. These bodega owners were involved in criminal activity being investigated by Agent Occhipinti. In addition, it is reported that there was a corrupt official in Agent Occhipinti's department involved in the conspiracy.

(3) I have also developed evidence that Dominican lawyers Aranda and Gutlein are involved in ongoing drug trafficking activity, official corruption, and the conspiracy against Agent Occhipinti.

(4) I am willing to reveal the source and additional information regarding this conspiracy to appropriate law enforcement agencies.

EXHIBIT M—AFFIDAVIT

Hilda Navarro, being duly sworn, deposes and says:

1. I reside at 5510 97th Street, Corona, New York 11368.

2. In November 1992, I accompanied my father, Peter Navarro, on a tour in Costa Rica. Also on the tour was Alfredo Placeras, who is known to me as an attorney with the Federation of Dominican Merchants and Industrialists of New York in the Washington Heights area.

3. Mr. Placeras and my father started talking about the Joseph Occhipinti case. Mr. Placeras stated, in my presence, that he was one of the individuals in Washington Heights who organized the merchants in Washington Heights to set up the case against Mr. Occhipinti.

4. Mr. Placeras further stated that it was their desire to "finish" Mr. Occhipinti.

5. Mr. Placeras further stated that he knew people "high up" in Government.

6. There was no question in my mind that Mr. Placeras' comments indicated that Mr. Occhipinti was unfairly set up by the Federation as well as other certain elements in Washington Heights.

EXHIBIT N

Apparently this particular witness learned some information, I think when you read the transcript, he couldn't have learned as an everyday citizen of the inner workings of the court system. Apparently he was given some insight as to certain things.

If you read it at your convenience, you will see certain things that may come to, that you may want to look at and pursue yourself.

Mr. JOHNSON: That's not an official translation, first of all.

Mr. OCCHIPINTI: I have no problem if you get an official one.

Mr. MORDKOFKY: This document was translated by an organization called Language Lab.

Mr. OCCHIPINTI: I think they are court certified.

Mr. MORDKOFKY: That was translated at great expense.

Mr. JOHNSON: I don't know what the relevance of this is now with this witness.

THE COURT: What does it say?

Mr. OCCHIPINTI: It basically says, your Honor, that judges have been changed in this case for special reasons and that certain information was given regarding the manner in which judges were changed. I think rather than mesynopsizing it, your Honor, I think it's three or four pages and if you read it it may be of interest to you. I'd like to make it on the record.

THE COURT: What does it have to do with this witness?

Mr. OCCHIPINTI: I believe there is a very close relationship with this particular interpreter and the complainants involved. And I think—

THE COURT: Do you have any proof of that?

Mr. OCCHIPINTI: Just what the tape says, your Honor, and if you read the English translation there are a few things there that I don't think a normal, everyday Spanish bodega owner would know about the inner workings of the—

Mr. JOHNSON: That's just an argument. He's trying to suggest there forever that Ms. Fernandez told the witness which he is now repeating on tape. There's no evidence of that.

THE COURT: Let's proceed.

Mr. OCCHIPINTI: Could your Honor take a look at this?

THE COURT: No. Unless there's an official transcript of that.

Mr. OCCHIPINTI: Would the government be able to provide that for you, your Honor?

THE COURT: For what purpose? What would be the purpose? First of all, I'll say on the record that this case came directly to me, I don't know that it was before any other judge ever.

Mr. OCCHIPINTI: Whatever your Honor thinks is appropriate.

THE COURT: If you have some proof that there was tampering with the wheel, I'll hear that. But other than that, we're not going into it. Let's proceed.

Mr. OCCHIPINTI: Yes, your Honor.

HONORING THE YONKERS PUBLIC LIBRARY

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. ENGEL. Mr. Speaker, the entire community of Yonkers is proud to be celebrating the 100th anniversary of the Yonkers Public Library, which received its charter and began serving local residents in 1893.

What started as a small operation serving a city of 4,000 residents has grown into a large service organization meeting the needs of the fourth largest city in New York State. The library operates two branches, in Getty Square and on Central Avenue, which provide a broad range of services to the community.

Several years ago, when the Internal Revenue Service threatened to pull its tax advisory services out of Yonkers, I worked with the leadership of the Yonkers Public Library on an innovative proposal. It involved making public space at the library available to the IRS so that the people of Yonkers could receive free guidance in completing their tax forms. This was the first such arrangement of its kind in the country, and it has proven to be a great success.

It is this kind of innovative thinking that has made the Yonkers Public Library such a valuable asset to the community. The library director, Jacqueline Miller, and the entire board of trustees are to be especially commended for their efforts. I congratulate all those who have contributed to the success of the Yonkers Public Library and pledge my continued support as they embark on a second century of service.

SUPPORT PEACE IN THE MIDDLE EAST: SUPPORT CSCME

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. HOYER. Mr. Speaker, I rise today to introduce a resolution which seeks to promote the peace process in the Middle East by supporting creation of a Conference on Security and Cooperation in the Middle East [CSCME]. The resolution expresses the sense of the Congress that leaders in the region should seriously consider the CSCME model as they proceed to address critical issues which continue to pose threats to peace and stability. This

resolution demonstrates our commitment to finding long-term solutions to the problems that have violently divided the Middle East for generations.

Mr. Speaker, the mutual recognition agreement reached between Israel and the Palestine Liberation Organization has fundamentally altered the politics of the region. Never before have the chances for peace in the region been so promising. The recent electoral victory of Jordanians who support the recent peace initiative, and the first visit of a Turkish Foreign Minister to Israel have given the process another boost. In this climate of heightened optimism, the creation of a CSCE-like process can help build upon these critical initial steps. A CSCME framework would bring strength in its persistence, in its determination to foster continued political will among its participating States and, just as important, among their citizens. The critical aspects of the CSCE process—political dialog and public participation—are also most critical in the Middle Eastern context.

I believe we are at a point where Middle Eastern nations could create such a framework for constructive dialog through which barriers to trade, travel, and communication can be removed and through which regional cooperation and stability could be established. A Middle East security framework could encourage regional security through arms control, verification, confidence building, and respect for human rights. A multilateral forum for discussion would provide an outlet for grievances and a framework for conflict resolution. States would need only be assured that participation would not prejudice their individual interests and that each State's security would be enhanced through participation in region-wide talks.

I harbor no illusions about the serious obstacles which block the road to peace in the Middle East. There are no guarantees that a CSCME could solve the complex and explosive issues in the region. I realize that the CSCE process is not without its own flaws. But we now stand at a historic juncture where long-absent political will may suddenly exist, and for the first time, nations in that region seem at least willing to engage in dialog. In such a climate, a regional negotiating framework could help foster confidence-building measures needed to develop the trust that will encourage progress on the toughest issues in the future.

Mr. Speaker, I want to reiterate the importance of confidence building measures as a tool of reconciliation and conflict resolution. Israel's release of hundreds of Palestinian detainees offers one such example of a good faith gesture which has helped maintain the momentum of the recent peace agreement. A reciprocal step on the part of Arab governments should be the immediate removal of the economic boycott on Israel. Today, this anachronistic policy remains a stark reminder of Arab hatred toward Israel and a major obstacle to further economic development and cooperation in the region. As this Congress continues to demonstrate its support for the peace process, we should press Arab nations to remove the boycott and give the process a much needed boost.

Mr. Speaker, the United States has an important stake in seeing the development of

peace and respect for human rights in the Middle East. In the long run, formation of a CSCME process could help encourage democratic developments, diminish the threats of radical Islamic fundamentalism, stem terrorism, curb arms proliferation, and stimulate trade relations. By supporting such a process, we also support our own vital national interests and clearly demonstrate the importance we place on securing peace and security in a region badly in need of both. I therefore urge my colleagues to support this measure which demonstrates our support for peace in the Middle East.

**CONGRESS MUST TAKE ACTION ON
TAINTED BLOOD-CLOTTING FAC-
TOR**

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. NADLER. Mr. Speaker, I rise today to bring the attention of this House to a tragedy that may well have been preventable.

By the mid-1980's, more than 10,000 hemophiliacs had become HIV-positive through treatment with infected blood-clotting factors. These clotting factors were used to help hemophiliacs control bleeding, as hemophiliacs suffer from internal bleeding that does not clot normally.

Yet, ironically, the clotting factors that were designed to make hemophiliacs' lives more liveable may have instead cost the lives of many hemophiliacs who are now dying of AIDS. In 1982, a manufacturer of one of the clotting factors suggested that those using the factor should be made aware of the possible risk that clotting factors could be tainted with the HIV virus. Yet doctors and other manufacturers continued to disperse the clotting factors, without warning the users of the possible risk. By 1985, 70 percent of the hemophilic population was found to be HIV-positive. As of last May, according to the New York Times, 1,709 hemophiliacs had died from AIDS.

The set of facts in this case raises a number of troubling questions. Could the infection of thousands of hemophiliacs with the HIV virus have been prevented if the risks of treatment with the clotting factor had been made public. Why were steps not taken earlier to purify the clotting factor if it was apparent that a risk existed?

I am pleased that Secretary Shalala has asked the National Academy of Sciences to investigate this matter. Yet Congress has investigative authority, and this certainly seems to be a case in which we have a mandate to investigate. I urge this House to take action on this issue.

**PROTECTIVE MILITARY
INTERVENTION IN HAITI**

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. OWENS. Mr. Speaker, as the first year of the 103d Congress draws to a close, it is

of utmost importance to remember that the fate of democracy in Haiti is of vital interest to the United States. Congress should stand behind the President to send a bipartisan message throughout the Western Hemisphere and the world. Americans care about democracy everywhere; however, we recognize that in Haiti the reinstatement of the constitutionally elected leader, President Aristide, will solve several additional critical problems.

The return of Aristide and full democracy to Haiti means that Haiti will no longer be a major depot for cocaine on its way into the neighborhoods of America. The oppression and domination of that nation by criminals in military uniforms will cease. The second largest drug transshipment point in the hemisphere will be closed down by a government which respects the rule of law.

The return of Aristide will end the desperate flight from Haiti of people fleeing terror and genocide. The United States will be set free from its policy of unprecedented cruelty to refugees. The U.S. Coast Guard will no longer be ordered to return escapees to their persecutors. During Aristide's 7 months in office, prior to the bloody coup, the number of citizens seeking to leave Haiti went down to zero. When we return democracy to Haiti we will return decency to our own refugee policy.

Support for democracy in Haiti will also send a strong message to the rest of the world that the United States is still willing to stand up for its principles and use force if necessary. North Korea and Iraq must be given a clear warning, a highly visible example demonstrating that America will not waffle in the face of threats from shabby dictators. As a party to the Governors Island Agreement the United States must now do whatever is necessary to enforce this agreement. Protective military intervention is needed to safeguard the constitutional government in Haiti. We must provide the forces necessary, not to invade or to conquer, but to protect the legal government.

Now is not the time to waffle. Haiti has a President elected by 70 percent of the people. Haiti has a Prime Minister with a cabinet. Haiti has an elected legislative body. Haiti has a constitution approved by a vote of the people. Haiti is not Somalia. Haiti is an opportunity to express the very best of the American spirit and resolve. Without further waiting the United States must do whatever is necessary to support the majority of the people of Haiti. Democracy in Haiti is definitely a vital interest of the United States.

WIMPS WAFFLING ON HAITI

Mr. President don't waffle
Haiti yearns to breathe free
For decades of oppression
We owe Haiti this fee
Don't waffle
Like the Congress wimps
Remember you won
While the big ego boys
Waited til '96 to run
Bullies against change
Towards without compassion
Remember Mr. President
The vision resides
Not in their obsolete
Star wars skies
Vision lives clearer
Behind your fresh eyes
Mr. President, don't waffle

Haiti yearns to breathe free
Remember Lincoln
On the morning
Of the Emancipation
That President closed his ears
Only the scratch of his pen
And the slide of his tears
Were heard that hallowed day
But the drums of history
For Lincoln still beat
In the pantheon of eternity
Angels reserve his seat
In the beginning
God created everything
In 1993 one courageous act
Can give birth
To a new Haiti
Mr. President don't waffle
Like the loud heartless wimps
Remember you won
While misguided Congress sages
Waited til '96 to run

**IN HONOR OF ZACHARY AND
ELIZABETH FISHER**

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. HYDE. Mr. Speaker, I rise today to honor two extraordinary people, Zachary and Elizabeth Fisher. The Fishers are unparalleled American patriots whose devotion to country and to those who have sacrificed all for America is nothing short of extraordinary.

The Fishers began their dedication to the military when they saved the historic aircraft carrier *Intrepid* from the scrapheap. Twenty million dollars later, the *Intrepid* became the heart of the now famous Intrepid Sea-Air-Space Museum which also includes the destroyer *Edson*, the first missile firing submarine *Growler*, and the historic Nantucket lightship—wartime beacon in the Battle of the Atlantic. The *Intrepid* was the anchorage for five annual "Fleet Weeks" in New York/New Jersey Harbor, a homecoming for the victors of Desert Storm and part of the celebration of the 500th Anniversary of Columbus' discovery of America. It welcomed the first Russian warship in New York harbor since World War I.

The Fishers, recognizing that patriotism is hard to stimulate and sustain in peacetime, continue to demonstrate their feelings that patriotism is gratitude, that we owe our own security to the sacrifice, the readiness, the vigilance of our Armed Forces, who are always in harm's way.

Their continuing generosity to the Armed Forces has built a succession of "Fisher Houses" family "comfort homes" at military hospitals, 12 so far. Gen. Colin Powell sent them this salute for the opening of the Fisher House at the Eisenhower Medical Center, Fort Gordon, GA.

DEAR ZACH AND ELIZABETH, Alma and I are delighted to send our greetings as the Fisher House is dedicated at the Eisenhower Medical Center. And I understand plans are underway to build more. For years, you have taken the lead in a quiet and lastingly effective way to personally thank and support the Armed Forces for their labors. Whether it be college scholarships for military dependents or financial aid for families who have lost

loved ones in the line of duty, you have always been there to help ease the burden.

Nothing, however, speaks more eloquently to the compassion, generosity and commitment of Zachary and Elizabeth Fisher to our men and women in uniform and their families than the Fisher Houses. Week after week, and from coast to coast, the Fisher Houses are there to help families with medical emergencies at a time when that help is needed the most. The letters of love you receive from those family members who have stayed at a Fisher House are the greatest reward you can ever receive.

Alma and I send our love and good wishes on this special occasion. Zach and Elizabeth Fisher, you are special members of the military family.

Sincerely,

COLIN L. POWELL,
Chairman of the
Joint Chiefs of Staff.

General Powell called them "members of the military family," a kinship they treasure. They have been always keenly sensitive to critical emergency needs—too often forgotten in peacetime. Example: Their response to the tragic massacre of the Marine peace-keeping force in Beirut, followed by the U.S.S. *Stark* missile attack incidents in the Persian Gulf. Both disasters were heart breaking news to the Fishers, but out of their sorrow emerged the Zachary and Elizabeth Fisher Armed Services Foundation, pledged to help service men and women and their families in specific times of need.

Never was the need more apparent than after the 1989 turret explosion aboard the U.S.S. *Iowa*. Just a year earlier, the battleship had visited New York during Fleet Week. The Fishers had been aboard the *Iowa* and had met some of the crewmen who were later killed. The battleship had saved the *Intrepid* from being sunk during a massive kamikaze attack 44 years earlier in World War II.

The scores of crewmen killed aboard the *Iowa* were a very personal loss to the Fishers. Each of the 47 families received a \$25,000 check and letter explaining that while nothing could compensate for the loss of their loved ones, it was hoped that they could take some comfort in knowing that "two total strangers cared enough about the family's grief to send a token of their remorse."

The Fisher Armed Services Foundation also provides scholarship funds to eligible college students, provided they either are or were in the Armed Forces or are the offspring of service members. The Fishers will be sending over 100 youths to college this coming year.

In 1990, the Fishers first devoted foundation resources to constructing and donating comfort homes for the Armed Forces. Each would be named "The Zachary and Elizabeth Fisher House" and would be located on the grounds of various military hospitals around the country. The homes would be capable of housing up to 16 members of families who otherwise would have no place to stay while their military father or husband was undergoing a serious operation or treatment. It was the Fishers' intention to be able to keep service families together during a medical emergency or crisis, when the service member especially needed the support and comfort of all his or her family members.

The first comfort home location chosen was the National Naval Medical Center at Be-

thesda, MD. It was officially opened on June 23, 1991, by the President and Mrs. Bush, Secretary of the Navy Garrett, and Mr. and Mrs. Fisher. At the same time the mortgage was assumed by the Fishers for the hostel at the Portsmouth Naval Hospital at Portsmouth, VA.

The second house was donated to the U.S. Army. The Chief of Staff of the Army, General Sullivan, dedicated the structure at the Walter Reed Army Medical Center, Washington, DC, on July 25, 1991.

The Fishers have committed to build a total of 22 houses for the U.S. Armed Forces, the last scheduled to be completed by the end of 1993. The first Fisher House for the Air Force was dedicated at the Wilford Hall U.S.A.F. Medical Center at Lackland Air Force Base, San Antonio, TX, on April 1, 1992. On that same day they broke ground for a Fisher House at the Brooke Army Medical Center at Fort Sam Houston, also in San Antonio.

All of the buildings are of the same basic design. The Fishers construct and furnish the structures, then donate them to the respective service branches.

Each military community maintains its house through donations, appropriations or nominal charges.

The home-like setting of the Fisher Houses has proved to be outstandingly successful. Besides keeping individual families together, the common purpose of all of the resident families brings them all together to support each other during particularly critical times. The result is that families from military bases around the world make new and close friends who understand their pain and fears and help them while staying at a Fisher House.

As the honorary chairman of Fleet Week, Fisher has been involved in some very fulfilling and satisfying experiences. This annual event in New York Harbor is one of the highlights of the year for both of the Fishers and has been very successful in all aspects of the Navy and Coast Guard. What Zachary cares most about is that the visiting sailors, marines and coast guardsmen have a great time in New York before they head out to sea. He personally funds a series of events which include large crew parties aboard the *Intrepid*.

As chairman of the *Intrepid* Museum's "Year of Columbus" commemoration in 1992, the fifth annual Fleet Week was expanded into International Fleet Week. It recognized the pioneering explorations of the seven European funding father nations which led to the establishment of the United States. Several sent warships, all seven sent commemorative exhibits and representatives.

The Fishers sponsored the Age of Exploration exhibition aboard the *Intrepid* and hosted the prolonged visit of the three Columbus ships, the *Nina*, *Pinta*, and *Santa Maria*. As such, the *Intrepid* hosted the largest and most significant 500th anniversary commemoration of the discovery of the New World.

On November 12, 1992, Zachary donated the Fisher Sports Center building to the United States Coast Guard on Governors Island, in New York harbor.

Zachary Fisher's civic and patriotic contributions are both national and international: For 3 consecutive years, he served as an adviser to the U.S. delegation on the Housing Committee

of the Economic Commission for Europe conference held in Geneva, Switzerland. With his wife at his side, he became a director of Honor America, a member of the board of advisers of the Veteran's Bedside Network and a director of the Ellis Island Restoration Committee.

Most recently, Zachary and Elizabeth have created through their foundation the Chairman's Award for Military Medical Leadership. The winners, selected by the Surgeons General of the Army, Navy, and Air Force, represent the very best in medical scholarship, research, practice, and leadership. Each winner receives a medal and a \$50,000 grant for the medical research program that he or she chooses.

Throughout his new career of service to the Armed Forces, Fisher has been recognized for his contributions by many organizations:

The then Chief of Naval Operations, Adm. James D. Watkins, bestowed the rank of honorary admiral upon him because of his outstanding service to the U.S. Navy. Not to be outdone by the Navy, the then Commandant of the Marine Corps, Gen. Alfred Gray, gave him the honorary rank of sergeant major.

Saint Michael's College, Norwich University, and the Massachusetts Maritime Academy have all recognized Fisher by awarding him honorary doctorate degrees.

He was the first civilian to receive the Navy League's SEC-NAV Award for having excelled in the cause of national defense.

The Coast Guard has presented Mr. Fisher with both the Distinguished Public Service Award and the Meritorious Public Service Award.

On May 1, 1989, he received the Department of the Navy's Distinguished Public Service Award from the Secretary of the Navy for his support of the Navy and the Marine Corps.

On May 5, 1989, the Chairman of the Joint Chief of Staff presented him with the Department of Defense's Distinguished Public Service Award for his contributions and service to the Armed Forces.

On September 1, 1989, the Government of Poland awarded him their highest civilian decoration, the Order of Merit, for the commemorative special exhibit at the *Intrepid* about the 50th anniversary of the beginning of World War II.

On April 5, 1990, Countess Maria Fede Caproni and the Italian Government presented him with the Cenquantesimo Record Mondiale D'ulterza for his efforts to promote better Italian-United States relations.

On May 18, 1990, he was inducted into the select ranks of the members of the Horatio Alger Association of Distinguished Americans.

On June 12, 1990, New York City Schools' Chancellor Joseph Fernandez saluted Zachary for furthering education in space exploration and for promoting international understanding.

In October 1990, the Association of the United States Army presented the Fishers with the Statue of Liberty Award in appreciation of their outstanding patriotism and support of those who serve in the Armed Forces.

On October 7, 1991, the Secretary of the Army, Michael Stone, landed aboard the *Intrepid* and presented both of the Fishers with the Decoration for Distinguished Civilian Service and the Order of Medical Merit.

On February 7, 1992, Mr. and Mrs. Fisher received the highest award presented by the Catholic Youth Organization [CYO], the Champions Gold Medal Award for their commitment to military families and young people.

On February 12, 1992, the American Legion recognized the Fishers for their dedication of American's military personnel and for the Fisher House on military installations by awarding them the 1992 Commander's Award.

On March 14, 1992, Zachary received a special award from the Navy Medical Corps at the Uniformed Service University of the Health Sciences at the Naval Medical Center.

On June 30, 1992, Mr. Fisher was guest of honor and recipient of the Semper Fidelis Award from the Marine Corps Scholarship Foundation in Washington, DC.

September 18, 1992, was proclaimed as Zachary Fisher Day in the tidewater area cities of Virginia Beach, Newport News, and Portsmouth, VA. in recognition of his support of the Armed Forces.

Zachary Fisher's devotion to his country is best summed up in the inscription on the prestigious President's Plaque presented to him by President Reagan. It stated: "To the tireless, dedicated work of many Americans, the *Intrepid* will serve as an inspiration. One man deserves special tribute—Zachary Fisher, a patriotic American who never forgot and cares so much."

The flag rank, the title that best characterize Zachary and his Elizabeth, is the salute from sailors and soldiers to, "The Admirable Fishers."

WYOMING YELLOWSTONE NATIONAL PARK 125TH ANNIVERSARY COMMEMORATE COIN ACT

HON. CRAIG THOMAS

OF WYOMING

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. THOMAS of Wyoming. Mr. Speaker, the people of America are rightfully proud of their system of national parks. The crown jewel of that system is situated mostly within my home State of Wyoming. I'm speaking, of course, of Yellowstone National Park.

On March 1, 1872, Yellowstone became America's first national park, and with an area of over 3,400 square miles it is to this day our largest. Literally millions of Americans have visited this national treasure, sharing with their families the wonder of the world-famous geyser basins, hot springs, and mud pots. Rivers, lakes, canyons, waterfalls, and a vast selection of viewable wildlife—found in their natural environment—add to the mystique of Yellowstone.

There's another side to Yellowstone, as well. As visitation has increased, the wear and tear on the over 500 miles of roads, 1,000 miles of trails, and countless public facilities has taken its toll. Despite increases in funding, the National Park Service has been unable to keep pace. Congress has, at times, made things worse by adding more land and responsibilities to the national system without addressing the needs of our existing parks.

It is this backlog of maintenance needs, coupled with the proud history of our first na-

tional park, which has led me to introduce today the Yellowstone National Park 125th Anniversary Commemorative Coin Act.

This bill will direct the Secretary of the Treasury to mint and issue coins to commemorate the 125th anniversary of Yellowstone National Park, which will fall on March 1, 1997. This bill is budget neutral and, in fact, will help reduce the national debt.

The surcharges from the sale of the coins will be divided three ways—25 percent will be paid to the Secretary of the Interior to be used for Yellowstone National Park, 25 percent will be paid to the Secretary of the Interior for use by the National Park Service, and 50 percent will be transferred to the general fund of the Treasury for the sole purpose of reducing the national debt.

This is a commonsense approach which allows everyone to win. There isn't a down side to this bill—we can reduce the national debt, give needed additional resources to Yellowstone National Park and the National Park Service, and we can properly honor our oldest national park. I invite all my colleagues to join me in this effort.

NAFTA

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. ANDREWS of Texas. Mr. Speaker, the following articles underscore the importance of the North American Free-Trade Agreement, not only to my home State of Texas, but to the Nation as a whole. NAFTA brings unprecedented opportunity to America and American workers, providing an export market eager for American products and services. Its vision is of the future, a future of free and open global markets, a future where America retains its stature as the world's only superpower. I hope that each Member will take the time to read these articles, and I urge them to vote for this historic agreement.

[From the Houston Chronicle, Sept. 15, 1993]

SOLID FRAMEWORK

NAFTA OBJECTIONS DO NOT SQUARE WITH THE FACTS

President Bill Clinton has bent over backward to accommodate environmental and organized labor objections to the North American Free Trade Agreement. Concessions to labor and environmentalists by Clinton are the sum and substance of the so-called "side agreements" signed by the President in a White House ceremony Tuesday.

With the signing of the side agreements there is no good reason for ratification of NAFTA to be held up by Congress. Opposition to NAFTA based on environmental or labor concerns is disingenuous. It simply does not stand under factual examination.

Environmentalists who persist in an all-or-nothing position on NAFTA ignore the fact that pollution along the U.S.-Mexico border has been a growing problem since long before the free-trade agreement was developed. The side agreements provide a solid framework for beginning to deal with such issues.

Hard-liners also overlook the point that environmental responsibility is an expensive proposition, one which thriving economies

are best able to afford. Helping Mexico improve its economy is a sure way to encourage environmental improvement. The economic growth derived from NAFTA will give Mexico the resources to beef up its enforcement. This promises not only to help our border environment, but also to give U.S. companies who lead the world in environmental technology the opportunity to provide many of the goods and services needed for these purposes.

With regard to jobs, the Congressional Budget Office has reported that in the short run, U.S. employment would increase by between 5,000 and 170,000 jobs. Although there are likely to be some job losses as companies relocate in Mexico, most studies suggest that these will amount to less than 200,000 over a decade.

The CBO has said: "Even if the number of workers displaced because of NAFTA were twice the high end of the range of job losses . . . that would still be less than 400,000 job losses in any economy with nearly 120 million jobs." It is worth noting that, in normal times total U.S. employment grows at more than four times this figure annually.

The facts speak for themselves. They argue persuasively for ratification of the North American Free Trade Agreement.

[From The Washington Post, Oct. 4, 1993]

WHAT NAFTA WON'T DO

As people think about NAFTA, President Clinton recently observed, they will see that an important part of the argument has been reversed. Opponents attribute to this future agreement many dangers that actually are part of the present situation—which the agreement is, in reality, designed to remedy. Mr. Clinton was probably thinking of the squalid working conditions and the environmental pollution that can be found along the Mexican border. It wasn't the North American Free Trade Agreement that created them. They already exist. The agreement, by requiring better enforcement of environmental laws, would be a powerful force for improvement.

Some of the environmental advocacy organizations sound as though they thought the defeat of NAFTA would somehow roll back industrialization in Mexico and return the country to a pristine pre-industrial state. Hardly. What in fact would happen is further rapid industrial development with none of the rules and constraints that the agreement provides.

Mr. Clinton made that comment as he went into a persuasion session on NAFTA with a dozen congressmen. He apparently wasn't entirely successful. One, John Conyers (D-Mich.), came out saying, "I still believe it's a job loser." Much of the opposition to the agreement arises from the fears that American factories will go south to seek low-wage labor. Coming from Detroit, Mr. Conyers is particularly sensitive to the anxieties of automobile workers.

He might want to consider the two major German automobile manufacturers that have chosen to locate new plants in the United States rather than in Mexico. BMW is putting a large assembly operation into South Carolina, and Mercedes-Benz has just announced that it will build in Alabama. Mr. Conyers would doubtless prefer that they had gone to Michigan, but BMW says that within a couple of years its wages will be up to Detroit levels. It's not that wages are irrelevant to these companies. One of their reasons for coming to the United States is that industrial compensation—wages plus fringe benefits—is 60 percent higher in Germany than here. By northern European

standards, the United States is a low-wage country.

But why didn't the Germans go to Mexico for still lower wages? The answer is evidently the quality of labor here, the access to suppliers and the reliability of the transportation system. If that logic brings the makers of German cars to this country, why wouldn't the same logic keep Ford, Chrysler and General Motors plants here?

[From the Washington Post, Oct. 11, 1993]

MESSAGE FROM MEXICO

Mexico's President Carlos Salinas de Gortari was absolutely right to tell the U.S. Congress that if it fails to vote on NAFTA before the end of the year, the deal's off. The two countries have pledged to put NAFTA—the North American Free Trade Agreement—into effect on Jan. 1. There's no reason for further delay. The people in Congress who want to postpone the vote are the ones that want to kill the whole agreement.

President Clinton has never favored delay. Two weeks ago, calling the agreement "a good deal for the United States," he wrote to the congressional leaders urging enactment promptly before the end of this year's session.

Why President Salinas's firm and explicit public statement now? You can discern two purposes—one addressed to American politicians, the other to Mexicans.

Here in Washington most of the loudest opposition to NAFTA is coming from Democrats. Some of them, uneasy about opposing their own president on a major vote, are trying hard to float the idea that if they succeed in defeating the agreement, he can sit down later and work out a more favorable version. That's a fantasy. Mr. Salinas wants to ensure that nobody misunderstands the realities. The present agreement is the kind of opportunity, he said, that "only presents itself once in a generation." If the United States refuses it, they won't be another chance for a long, long time.

As for his Mexican audience—1994 is an election year there as well as here—Mr. Salinas is already under attack from the nationalists for having given the Americans too much. The deal offers more to American exporters than to Mexicans. The reason is that the border is, with minor exceptions, already open to goods moving northward. It's Mexico that's now in the process of opening long-closed markets. Mr. Salinas isn't doing it to please Americans. He's doing it for Mexico, whose economy is already responding with strong growth and rising incomes. But he's in no mood to offer more concessions. Instead, he's saying: Take it or leave it—but if you leave it, we'll give Japanese and European exporters and investors the benefits first offered you.

Any congressman who wants to refuse would be wise first to talk to this Democratic administration's economists. They will point out that increasing exports are now Americans' best hope for more and better jobs.

[From the Washington Post, Oct. 25, 1993]

WHY TRADE MATTERS

One way or the other, for better or much worse, American policy on foreign trade is likely to be changed dramatically before the end of this year. Three major negotiations and agreements are moving toward deadlines in the next couple of months. Since they involve somewhat different constituencies, they are commonly discussed one at a time. But the connections are crucial.

President Clinton's trade negotiator, Mickey Kantor, threatened Japan the other day with sanctions if there's no agreement by Nov. 1 in a quarrel over foreign companies' access to Japanese construction work. Why the unilateral deadline? Perhaps Mr. Kantor wishes to demonstrate this administration's firmness at a time when Congress is moving toward a vote on the North American Free Trade Agreement. NAFTA, which involves only the three countries on this continent, is entirely distinct from the Uruguay Round of negotiations, a massively complex attempt to rewrite and modernize the worldwide rules of trade. More than 100 countries are taking part in it, but at present it's hung up on a vehement dispute between the United States and the European Community, particularly France, over farm subsidies.

The deadline in the Japanese talks comes in hardly more than a week. A deeply divided House of Representatives is to vote on NAFTA in mid-November. If the Uruguay Round doesn't produce a general agreement by Dec. 15, the whole effort will collapse. C. Fred Bergsten of the Institute for International Economics points out the ugly possibility that all of these processes could go sour, with the effects of each disaster compounding the next. The U.S.-Japan talks seem to be headed toward tit-for-tat retaliation, the House could well defeat NAFTA, and the farm subsidy dispute may torpedo the whole Uruguay Round. Such a series of breakdowns in the trading system could tip the world—as Mr. Bergsten observes—into a severe recession.

It's not clear that the governments of the world's half-dozen dominant countries have the political will to rescue themselves. Perhaps over these next two crucial months they will merely cave in to their clamorous special interests—Japanese construction contractors, American labor leaders, French farmers. Yet each of these governments knows that widening access to foreign markets has been a crucial element in the economic magic that, over the past four decades, has doubled incomes here in the United States, tripled them in Western Europe and sextupled them in Japan. The question is whether the industrial democracies, becoming rich, have now begun to grow careless and drift away from the discipline that brought them their unprecedented wealth.

[From the Washington Post, Nov. 2, 1993]

WHY VOTE FOR NAFTA?

So why should a congressman vote for NAFTA? The Mexican economy is one-twentieth the size of this country's, and neither President Clinton nor any other supporters promise any large immediate benefits. The opposition is vociferous. As Mr. Clinton said yesterday, several large unions have chosen NAFTA as the receptacle into which to pour "all the resentments and fears and insecurities" of the recent years with their stagnant wages and plant closings. Why go to the trouble and risk of voting for it?

If you think that jobs in manufacturing are important, you'd better back NAFTA. Mr. Clinton pointed out that, as in farming, productivity in manufacturing has been rising rapidly. A steadily declining work force can produce as much as this country needs or will buy. To create and retain additional manufacturing jobs is going to require access to foreign markets, guaranteed by trade agreements like this one that would tie the three countries of North America more closely together. If it fails, there will be a real danger that the whole process of trade expansion, pressed slowly forward ever since

World War II, falls into retreat with dire effects on wages and employment in all the rich countries.

Many congressmen are deeply interested in labor standards and deplore the poor conditions along the Mexican border. Defeating NAFTA won't improve those conditions. But enacting it can make a difference. Similarly, congressmen with an interest in the environment need to remember that there are substantial environmental protections in the agreement. Voting against it won't reduce the toxic pollution in the border areas. But NAFTA can. NAFTA is the first trade agreement to address labor standards and environmental quality and—if it goes into effect—will establish an important precedent for action. Congressmen who genuinely want to see improvements are going to have to vote for the agreement. It's the instrument for change.

The greatest gains in American employment will come, Mr. Clinton argues, when NAFTA is extended to other Latin countries in the years ahead. He sees it—correctly—as an enormous opportunity, like the European Community, not only to promote economic prosperity but democracy, freedom and political stability.

In this century these values have traveled in close association with open trade, and when one has been in retreat the others have also been in jeopardy. No one originally intended it to turn out this way, but the battle over a regional trade agreement has now reached a pitch at which it has become a fundamental vote on American hopes and goals as the world's strongest leader.

TRIBUTE TO EDWARD O. BUCKBEE

HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. CRAMER. Mr. Speaker, I rise today to pay tribute to Edward O. Buckbee, who has announced his retirement as Director of the U.S. Space and Rocket Center in Huntsville, AL.

Mr. Buckbee has devoted his life to the advancement and enrichment of our Nation's space program. His tireless efforts for the U.S. Space and Rocket Center have attracted millions of visitors from all over the world. He is one of our community's most dedicated ambassadors, helping build an international reputation of excellence for north Alabama.

Mr. Buckbee served as a NASA public relations specialist at the Marshall Space Flight Center in Huntsville from 1961 to 1968. Buckbee joined Dr. Wehrner von Braun in his quest to establish a public program for space science education. Their labors were realized in 1965 with the establishment of the Space and Rocket Center, now known as the U.S. Space and Rocket Center. The Alabama Space Science Exhibit Commission appointed Buckbee director of the center in 1968.

The U.S. Space and Rocket Center has expanded dramatically since opening to the public in 1970. The hands-on space science museum boasts the world's largest rocket and spacecraft collection. Highlights of the Space Center include U.S. Space Camp, U.S. Space Academy, Aviation Challenge, Rocket Park, Shuttle Park, the NASA Visitor Center and bus

tour, the Spacedome Theater, and numerous expansion and enhancement projects.

Inspired by Dr. von Braun, Mr. Buckbee envisioned the Space Center as the birthplace of a new kind of learning experience for young people. The program would offer students keener insight into the U.S. Space Program, and it would serve as a catalyst for the study of math and science curricula. In 1982 Buckbee's vision became reality as the Space Center played host to 747 young trainees during the inaugural season of U.S. Space Camp. Over the last decade, the U.S. Space Camp has experienced phenomenal growth, graduating over 170,000 people.

To meet the overwhelming public demand for this unique space science orientation, Mr. Buckbee coordinated the creation of four new educational programs. U.S. Space Academy opened in 1984 and academy level II was established in 1987. U.S. Space Academy for Educators opened in 1987 for elementary and middle school teachers of math and science. Aviation Challenge began in 1990, offering jet-pilot-style training to middle school and high school students, as well as adults. Buckbee met another public request in 1991 with the creation of parent-child sessions.

Recognizing the widespread interest in U.S. Space Camp programs, Mr. Buckbee organized the formation of the U.S. Space Camp Foundation in 1987. This action permitted the operation of space camps outside Alabama. In 1988 the U.S. Space Camp opened a sister campus in Titusville, FL, near NASA's Kennedy Space Center. As executive director of the foundation, Buckbee oversees the operation of the Florida, campus. He also acts as liaison with the Florida project partner, the Mercury Seven Foundation, headed by America's first astronaut, Alan Shepard.

In 1988 the United States Space Camp Foundation granted a licensing agreement to Nippon Steel to build Space Camp Japan. The operation opened in 1990. Euro Space Camp opened in 1991 near Brussels, Belgium. Agreements have been signed for upcoming Space Camp operations in Canada and Italy.

To promote international cooperation in space, Mr. Buckbee has participated in numerous efforts aimed at joining American Space Camp trainees with their counterparts in Europe, Russia, Japan, and Canada. International Space Camp was initiated in 1990 with participation in Huntsville by students and teachers from 20 countries. In 1993 International Space played host to 25 countries and 40 of America's teachers of the year.

Among Mr. Buckbee's many honors are the National Institute of Public Affairs Fellowship by NASA, the Yuri Gagarin Cosmonaut Medal from the Soviet Union, and the NASA Distinguished Public Service Medal. He is the recipient of the Jimmy Doolittle Fellow, awarded by the Aerospace Education Foundation of the Air Force Association. Buckbee has also received the Army's Decoration for Distinguished Civilian Service.

I would like to pay tribute to Mr. Buckbee on my own behalf and on behalf of my district coordinator, Lynne Berry Lowery, who currently serves as a member of the Alabama Space Science Exhibit Commission.

It is an honor to recognize Mr. Buckbee for his distinguished contributions to the U.S.

Space Program and north Alabama. I congratulate him on his profound accomplishments and I wish him the very best in his upcoming retirement. Although his presence will be sorely missed, Ed Buckbee will leave behind a legacy of achievement that will fascinate and inspire countless future generations.

NAFTA

HON. ERIC FINGERHUT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. FINGERHUT. Mr. Speaker, the rhetoric over NAFTA has reached a fever pitch in these last few days, but I am frustrated that the debate has degenerated into such "he said-she said" arguments that no one has focused on what an alternative trade policy might look like.

Let me clearly state—I oppose NAFTA and will vote against it. Unlike others who argue against the treaty, though, I believe this must be the beginning—not the end—of our national debate regarding free trade and the future of our businesses and workers.

Over the years, we have lost thousands of manufacturing jobs to Southeast Asia, Mexico, and other low-wage economies. NAFTA would only make that trend worse. No matter what the supporters say, we will lose jobs under NAFTA—especially the good manufacturing jobs that are critical to the Greater Cleveland economy.

But NAFTA's defeat will not make our trade problems go away. We will continue to lose jobs abroad until we design an aggressive export strategy and encourage our businesses to stay home and invest here. That is the positive alternative to NAFTA that has to be raised now, in the final stages of the NAFTA debate, and that is the alternative we must put into place in the future.

The heart of any trade policy should be its emphasis on increasing our export of goods. Increased exports mean economic growth, more jobs, higher wages and a better standard of living. But while the United States has traditionally pursued this goal solely through a strategy of low tariffs, other major industrial countries have used aggressive export promotion programs to penetrate our markets and clearly defined industrial policies to protect their own.

How can we be smarter and more aggressive? Last November, I proposed the creation of a Department of International Trade to coordinate our efforts and offer one-stop Federal assistance to export companies. Currently, 19 different agencies oversee 100 different trade promotion programs, an alphabet of assistance that puzzles the shrewdest business owner.

We must also reexamine what products we support with our trade promotion dollar. Agriculture products, for example, amount to only 10 percent of our total exports, yet they get 74 percent of our trade promotion funding.

Government can also help boost exports by getting out of the way when it is hurting private trade efforts. Export controls leftover from

the cold war, for example, cost us an estimated \$10 to \$20 billion a year in lost trade.

As a member of the House Foreign Affairs Committee panel on trade, I am helping to craft an export promotion strategy that would go a long way toward helping American businesses penetrate other markets. The plan we are devising would make our trade promotion programs more user-friendly for businesses and would target the markets where American goods have the most chance of finding buyers. Also, it would clear the thicket of antiquated export controls that are an albatross around the neck of American exporters.

To complement such aggressive trade promotion efforts, we must also develop an industrial policy to help U.S. companies who compete with foreign countries. Such an industrial policy would include support for manufacturers who are producing break-through export goods. The Northeast-Midwest Coalition's Manufacturing Task Force in Congress is designing such support in the form of a package of tax incentives. I am a member of the task force, and I have invited the group to the 19th District to hold hearings in the near future. We plan to announce a legislative program by the beginning of the year, and then work on a bipartisan basis to have it enacted.

The budget approved in August included a good start in providing incentives to manufacturers by cutting the capital gains tax for long-term investments in many small businesses. Why not expand that cut to apply to long-term investments in all domestic manufacturing? And why not allow investors to roll over capital gains into these new investments without paying new taxes? We do the same thing for people who sell and buy homes within a year. That way we encourage job growth and job retention in industries here at home—rather than export our jobs abroad.

Under such an aggressive trade and industrial policy, Ohio and the 19th Congressional District that I represent would fare well. Recently, I held an official hearing of the House Space Subcommittee in my district to discuss technology transfer between NASA Lewis and local small businesses. The Federal officials who participated were impressed at the high-tech talent in this area and the Federal/private sector technology sharing already taking place. Also, in the award-winning Great Lakes Technology Center and the Cleveland Advanced Manufacturing Program, the Greater Cleveland area has the framework in place to capitalize on a new, post-NAFTA, export-related industrial policy.

Contrary to what you may hear over the next few days, there is not only life after NAFTA, but our industries can again become the leaders in innovative and technology-based exports. For Ohio, a future without NAFTA seems particularly bright.

NAFTA TAX CUT

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. PACKARD. Mr. Speaker, NAFTA's critics are whipping up yet another flimsy argument against passage of the agreement.

They charge that passage of NAFTA will somehow erode American sovereignty. They point to the international commissions created to mitigate labor and environmental disputes among the three countries.

Mr. Speaker, anyone who has studied this agreement will recognize this as a transparent appeal to fear.

Under NAFTA, no international body has any legal authority over American domestic affairs. Furthermore, NAFTA does not allow any private individual or party to bring suit against a sovereign nation.

The bottom line is that sovereignty means autonomy. Is the United States able to export its goods to Mexico without artificial obstructions such as tariffs? Not currently.

However, with passage of NAFTA our economic autonomy will be strengthened by the elimination of barriers to trade and investment in Mexico.

The United States will regain the power to make its economic decisions based upon the freedom to trade with Mexico. It will no longer be forced to play by somebody else's economic rules. When we have an even playing field on which to compete, America is virtually unbeatable. This is what NAFTA will provide, thus giving America more economic sovereignty.

This brings us to American's tax sovereignty. Americans pay too many taxes. That is why I support NAFTA. The centerpiece of NAFTA will amount to a \$1.8 billion tax cut for American consumers over the next 5 years.

When two Americans trade goods on the marketplace, the Government takes a cut—this is a tax. But, when an American and a Mexican trade goods in the marketplace, the Governments of both countries tax us twice. Not only is the product slapped with a tax in the production process, but it's taxed again at the border in the form of a tariff. What's even worse, American products are taxed at 2½ times the rate of Mexican goods.

When taxes are raised or lowered, economic activity responds accordingly. When taxes are low, the market is more active since buyers and sellers exchange more goods. The same principle applies for tariffs. When tariffs drop, international economic activity increases since buyers and sellers find it makes sense to trade more goods.

Not only do lower tariffs mean we can trade more goods, we can trade more types of goods. A product that was not tradeable at a high tariff because of the marginal rate of return, may suddenly be able to enter the market because the after-tax return becomes profitable.

On the average, American consumers pay a 4-percent tax on goods that come into our country from Mexico. NAFTA would eliminate that tax. Anyone who votes against NAFTA is voting against a tax cut for consumers in this country.

TRIBUTE TO ROBERT SETH KELLEY

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. REED. Mr. Speaker, I rise today to salute a distinguished young man from Rhode Island who has attained the rank of Eagle Scout in the Boy Scouts of America. He is Robert Seth Kelley of Troop 42 in Hope, RI, and he is honored this week for his noteworthy achievement.

Not every young American who joins the Boy Scouts earns the prestigious Eagle Scout Award. In fact, only 2.5 percent of all Boy Scouts do. To earn the award, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. He must earn 21 merit badges, 11 of which are required from areas such as citizenship in the community, citizenship in the Nation, citizenship in the world, safety, environmental science, and first aid.

As he progresses through the Boy Scout ranks, a Scout must demonstrate participation in increasingly more responsible service projects. He must also demonstrate leadership skills by holding one or more specific youth leadership positions in his patrol and/or troop. This young man has distinguished himself in accordance with these criteria.

For his Eagle Scout project, Robert organized and supervised extensive cleaning of the exterior and surrounding area of the West Warwick Post Office.

Mr. Speaker, I ask you and my colleagues to join me in saluting Eagle Scout Robert Seth Kelley. In turn, we must duly recognize the Boy Scouts of America for establishing the Eagle Scout Award and the strenuous criteria its aspirants must meet. This program has through its 80 years honed and enhanced the leadership skills and commitment to public service of many outstanding Americans, two dozen of whom now serve in the House.

It is my sincere belief that Robert Seth Kelley will continue his public service and in so doing will further distinguish himself and consequently better his community. I join friends, colleagues, and family who this week salute him.

RECOGNIZE LESBIAN, GAY, AND BISEXUAL RIGHTS IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. NADLER. Mr. Speaker, I rise today to express my support for the inclusion of protections for the human rights of lesbians, gay men, and bisexuals in the United Nations Declaration of Human Rights. I would also like to recognize the work of Stonewall 25, a group that has formed to organize a march and rally at the United Nations to commemorate the 25th anniversary of the Stonewall Rebellion,

and to call for recognition of lesbians, gay men, and bisexuals in the Universal Declaration of Human Rights.

While we have certainly begun to make strides toward the recognition of the rights of lesbians and gay men in this country, we still have a long way to go. Although it has been 25 years since the Stonewall Rebellion in Greenwich Village, in which lesbians and gay men asserted their rights publicly at a time when such assertions were rare, we still have not established in law the rights of lesbians and gay men.

The Civil Rights Act of 1993, of which I am an original cosponsor, still languishes in committee, and there is little chance that it will be brought to a vote this year. Lesbians and gay men cannot divulge their sexual orientation openly if they want to serve in the armed services. And lesbians and gay men still must live in fear that they may be assaulted, hurt, or killed at any time simply because of who they are.

While we, as a nation, have made progress, we have a long way to go. We have always been proud of our tradition of tolerance. Yet, if we do not act soon to codify the rights of lesbians, gay men, and bisexuals, our faithfulness to our tradition of tolerance will be put to a test. The international community is being asked to add lesbians, gay men, and bisexuals to the list of those protected by the Universal Declaration of Human Rights. Let us not be left behind as a nation while the rest of the world makes progress in the fight for equal rights for all people.

TOUGH TALK ISN'T ENOUGH IN DRUG WAR

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. OXLEY. Mr. Speaker, I recommend the following article by our colleague BENJAMIN A. GILMAN, ranking Republican on the Committee on Foreign Affairs, to the attention of the House. The gentleman's insights are food for thought for drug-control policymakers.

[From Long Island Newsday, Nov. 10, 1993]

TOUGH TALK ISN'T ENOUGH IN WAR ON DRUGS
(By Benjamin A. Gilman)

If the Cali and Medellin drug cartels were listed on the New York Stock Exchange, Wall Street would be issuing a strong "buy" signal for them after reading the new strategy paper released by Lee Brown, director of the White House Office of National Drug Control Policy.

Nine months after taking office, Bill Clinton's administration has labored mightily and given birth to a mouse of a statement that roars on rhetoric but squeaks on substance.

Instead of a coherent, forceful plan to attack a scourge that is devastating our cities, the American people have been handed a litany of platitudes and high-minded remarks. Regrettably, beautifully crafted phrases cannot make up for crippling budget cuts the administration has permitted in drug enforcement and interdiction programs that are vital in our efforts to defeat the cartels that prey upon our people.

The new interim strategy speaks of focusing on rehabilitation and the treatment of hard-core users at the expense of eradication, interdiction and enforcement. It ignores the relationship between drug availability and use. The administration fails to say just what new resources will be put behind this new focus.

It is another signal that, behind a screen of strong rhetoric, the president is shedding the initiatives launched under the Ronald Reagan and George Bush administrations just as they seemed to be bearing fruit. The record shows:

At the same time that he appointed Brown to his post with great fanfare and promoted the former New York City police commissioner to cabinet rank, the president quietly slashed the budget and staff of the White House Office of National Drug Control Policy by 80 percent.

The president has declared strong support for international drug efforts, stating that "where we have governments with leaders who are willing to put their lives on the line . . . we ought to be supporting them, and I expect to do that."

But, when the House moved to cut by 32 percent the principal U.S. program aimed at wiping out cocaine production in Colombia, Peru and Bolivia, the White House did nothing to stop it.

Between 1987 and 1991, 552 metric tons of cocaine were seized in Latin America alone. At the same time, the percentage of cocaine users in the United States dropped by more than half.

If interdiction and enforcement is allowed to lag, the result inevitably will be more and cheaper drugs on the streets. This will undercut the very treatment programs on which the administration wants to focus because today's casual user is tomorrow's hard-core abuser. It is like allowing plenty of candy in a house full of kids and expecting the dentist to ward off any new cavities. Winning the war on drugs requires effective, simultaneous action against both supply and demand.

Failing to maintain effective anti-narcotics operations overseas will signal that our nation has lost the will to carry the battle against illegal drugs to their source.

Lee Brown, a founder of the National Organization of Black Law Enforcement Executives, is well known in his profession, but more than a high-profile White House appointment is needed; there must be a coherent anti-drug policy and adequate resources to implement it.

To be effective, that policy must go beyond the treatment of hard-core users and abusers to stopping the pushers and the producers. The president's new policy is like a beautiful new car without an engine under the hood or gas in the tank. It will take us nowhere, and the crime and health-related costs of drugs will continue to mount.

UNITED NATIONS MUST OPEN ITS DOORS TO TAIWAN

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. SMITH of Texas. Mr. Speaker, I would like to bring to my colleagues' attention this guest editorial written by a constituent of mine, Prof. Thomas J. Bellows of the University of Texas at San Antonio. His article in support of

admitting Taiwan to the United Nations was published on October 17, 1993, in my hometown newspaper, the San Antonio Express-News.

IT'S TIME FOR U.N. TO OPEN DOORS TO TAIWAN

(By Thomas J. Bellows)

Seven Central American countries, all of whom recognize the Republic of China on Taiwan, have sent a joint letter to the United Nations Secretary General urging that Taiwan be added to the roster of 184 countries that are U.N. members. The People's Republic of China vigorously opposed this proposal in an August White Paper, forcefully asserting that, since both Taipei and Beijing acknowledge but one China, having two entities represent different parts of China in the United Nations is unacceptable.

Political realism suggests that an entity of 21 million people, a major exporter and importer of goods, with foreign reserves nearing \$100 billion (the highest in the world) and a per-person income higher than that of Greece, Ireland, Saudi Arabia or Portugal should not be excluded. The reality is also that Beijing will veto Taiwan's bid for admission.

The obvious and immediate solution is to approve Taiwan's becoming a permanent non-member state. This requires only the approval of the General Assembly and does not involve a Security Council vote or the probability of Peoples Republic veto. This designation routinely allows members to speak at all meetings (by invitation that is always extended) and to participate fully and extensively in informal discussions. Historically, permanent non-member states are assessed percentage contributions to the U.N. activities in which they participate.

There is an institutional history of divided nations represented by two governments invited as permanent non-member states, prior to full admission. East and West Germany and North and South Korea are examples that became full members in a few years. Other countries, such as Austria and Italy, were permanent non-member states before the Soviet Union agreed not to veto their membership applications, and they were admitted to full membership. Permanent non-member organizations have included such disparate groups as the Organization of American States, the Palestine Liberation Organization, the Provisional Revolutionary Government of Vietnam (in 1974), and the Asian-African Legal Consultative Committee. General Assembly votes on all permanent non-member representation since 1948 have inevitably garnered minimally a two-thirds affirmative vote. Taiwan is a formidable global economic presence. How can it be isolated from the premier comprehensive international organization dedicated to world peace and economic development?

The slogan of Chinese communism today is "to get rich is glorious." As part of the pathway to glory, private Taiwanese citizens have been permitted to invest nearly \$10 billion on the mainland. The functional dynamics of growing trade and visits and unofficial talks between the mainland and Taiwan offers a realistic hope of future, official political talks. What better place for quiet dialogue than a secluded room at the United Nations, but only if Taiwan can at least be associated with the United Nations as a permanent non-member state?

The U.S. administration quietly bemoans the mucking up of U.S.-China relations. Official administration press guidance is based on three earlier joint U.S.-China commu-

niques and the fact that both Beijing and Taipei acknowledge there is only one China. Consequently, there is no place for Taiwan at the United Nations. It is forgotten that in 1968 at the height of the Cold War, when the United States still recognized the Republic of China as the only China, the U.S. Ambassador to the United Nations, Arthur Goldberg, proposed that People's Republic should be admitted to the United Nations while Taiwan retained its seat.

This is an opportunity for the United States, not an irritating distraction. The viability and global importance of Taiwan will not go away through an international variation of tribal shunning. The need for status, and a sense of self-respect and self-worth are as present in countries as in individuals. International second class or non-status is a growing concern to all those on Taiwan, whether pro-government or sympathetic to the opposition. All political groups on Taiwan support Taipei's desire for U.N. membership. Shunning Taiwan will inevitably lead to more numerous, strident calls for a formal declaration of independence. The People's Republic threatens force if independence is proclaimed. The seeds of a first-class international crisis will be nurtured unless the United Nations makes some positive response to Taipei.

The stairway to political reconciliation and closer linkages between Taiwan and the mainland must be taken a step at a time. Taiwan's affiliation with the United Nations will as a permanent non-member state be a major positive step. The Clinton administration's benign neutrality on the issue would contribute more to world harmony and prosperity than the current, quiet U.S. opposition to Taiwan's desire for U.N. affiliation.

THE NEED FOR HEALTH CARE REFORM

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mrs. COLLINS of Illinois. Mr. Speaker, as we all know, if there is one issue that most Americans can agree upon today it is that something must be done soon to comprehensively reform the U.S. health care system. In the face of mounting rhetoric beginning to cloud the facts on this pressing issue, I would like to take this opportunity to share with my colleagues some of the genuine concerns my constituents have repeatedly expressed.

A short while ago, my office conducted a representative survey of nearly 5,000 residents of Illinois' Seventh Congressional District, asking them their opinions about health care administration and delivery in the United States. An astounding 4 out of 5 of those surveyed said they feel that there are problems inherent in this country's health care network and that fundamental changes are needed.

Almost 76 percent of those questioned said that, over the past 5 years, their out-of-pocket expenses for health care have increased. The irony of this situation is that at the same time that these expenses have increased for Seventh District residents, health insurance benefits for those lucky enough to have them seem to be stagnating, Mr. Speaker.

Two out of three individuals responding stated that their benefits have either remained unchanged or have decreased in the last 5

years. Also, close to half of all respondents believe it is harder to apply for and receive payment for health insurance claims from their health insurance provider.

The combination of rising costs and significant cutbacks in benefits are a signal to many that the Government must play a strong role in reforming America's health care system. An overwhelming 85 percent of my constituents surveyed answered with a resounding "yes" when asked whether the Federal Government should have a role in containing the mounting cost of health care.

Mr. Speaker, the views of my constituents echo the need for Congress to work swiftly and effectively toward comprehensive health care reform. It is clear that the current system continues to degenerate every day, with increasing costs and additional individuals and families who are denied coverage. We must remember to listen to the American people at every step of the health care reform process and not allow special interests to obfuscate the facts in this debate.

There has got to be a better way Mr. Speaker—a better way to provide health care to all Americans than the way it is done today—or, for 37 million uninsured Americans, not done.

TRIBUTE TO GARY HART

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. BERMAN. Mr. Speaker, I am honored to pay tribute to Gary Hart, one of my closest friends. I treasured working with Gary in the assembly: His passionate commitment to the environment, education, and civil rights along with his basic goodness and sense of fair play defined him as someone special. I was indeed fortunate to meet him at the outset of my career.

It is not for nothing that Gary is one of the best-known and admired politicians in California. He is a creative thinker and a tireless worker; two attributes that are invaluable in the world of politics. Gary is a man of action, and not mere words. His reputation rests on his accomplishments. He is also one of those rare elected representatives who is more than willing to take risks.

An example is Senate bill 813, one of the few pieces of legislation that is known by its number. S. 813, passed during Gary's first term in the Senate in 1983, improved school funding and strengthened academic standards. It is one of the few bits of good news that public education received in California during the past few years. Imagine how much worse shape the schools would be in today if Gary had not fought hard for passage of S. 813.

Gary's education agenda also included legislation requiring statewide, performance-based testing of students and efforts to reduce the cost of higher education. In addition, he was the author of a bill that created charter schools.

Gary is as good on the environment as he is on education. In 1989, he sponsored a bill

that enabled California consumers to receive a nickel for every two cans they recycle, and a nickel for each of the large two-liter soft drink containers. He also fought for tougher controls on the handling and transportation of toxic materials.

Finally, Gary has, in recent years, made the fight against AIDS one of his top priorities. He helped pass legislation mandating AIDS education in junior and senior high schools. In recognition of his efforts, Stop Aids Now has named Gary as the recipient of its first community service award.

I have indeed been privileged to have maintained a close personal and professional relationship with Gary for nearly two decades. I ask my colleagues to join me in saluting Gary Hart, who brings his own profound sense of dignity and purpose to politics.

THE PRESIDENTIAL ELECTION OF 1992 IN OHIO

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. TRAFICANT. Mr. Speaker, I submit, for the RECORD, a paper written by Philip A. Grant, a professor of history at Pace University in New York City. The paper, entitled "The Presidential Election of 1992 in Ohio," offers insight into the political landscape of my home State. I believe every American can learn from Professor Grant's work because Ohio has long been one of the Nation's political bellwethers.

I commend the professor and I commend Dr. William Binning, a Professor at Youngstown State University in my 17th Congressional District, for their efforts in bringing the paper to my attention.

In 1988 Vice President George Bush, the Republican presidential candidate, easily defeated his Democratic opponent, Governor Michael Dukakis of Massachusetts, in Ohio. Recording a plurality of 476,920 and a winning proportion of 55.5%, Bush accomplished the feat of carrying fifteen of Ohio's twenty-one congressional districts and seventy-five of the Buckeye State's eighty-eight counties.

In 1992 the presidential contest was admittedly complicated by the well-publicized independent candidacy of Ross Perot. In sharp contrast to 1988 President Bush encountered serious political difficulty in Ohio. Bush's Democratic challenger, Governor Bill Clinton of Arkansas, emerged victorious in Ohio, and Perot, reflecting his nationwide performance, attracted a respectable share of the popular vote. While the President carried sixty-one of Ohio's eighty-eight counties, Clinton prevailed in ten of the state's newly created congressional districts. The official results in Ohio were as follows:

Clinton	1,964,842	(40.4%)
Bush	1,876,445	(38.6%)
Perot	1,024,270	(21.0%)

In purely numerical terms Clinton received 25,013 more votes than the number accumulated by Dukakis in 1988, while Bush secured 540,104 less than the total he attracted in 1988. Even more noteworthy was the distribution of the major party presidential vote. The respective figures for 1988 and 1992 were:

	Percent	
	1988	1992
Republican	55.5	38.6
Democratic	44.5	40.4

Between 1988 and 1992 the Democratic share of the overall vote declined by a modest 4.1%, while the Republican share declined by an ominous 16.9%.

In 1988 Bush fared remarkably well in five of Ohio's major population centers, Hamilton, Franklin, Montgomery, Stark, and Butler Counties. These counties in 1988 actually provided Bush with more than sixty percent of his statewide plurality over Dukakis. The 1988 statistics were:

	Bush	Dukakis
Hamilton	227,904	140,354
Franklin	226,265	147,585
Montgomery	131,596	95,737
Stark	87,087	59,639
Butler	75,723	33,729
Total	767,677 (61.1%)	486,962 (38.9%)

In 1992 Bush managed to carry four of the five populous counties. In each of these political units, however, the President experienced considerable political erosion. The 1992 figures were:

	Bush	Clinton	Perot
Hamilton	189,224	145,027	57,161
Franklin	184,402	174,809	78,398
Montgomery	103,998	107,174	47,489
Stark	61,376	59,610	42,005
Butler	62,525	39,156	27,029
Total	601,562 (43.6%)	525,886 (36.6%)	254,033 (19.8%)

Between 1988 and 1992 Bush's aggregate plurality in the five counties dropped from 280,715 to 75,676. Of paramount importance was the distribution of the vote in the five counties. The statistics were:

	Percent	
	1988	1992
Republican	61.1	43.6
Democratic	39.9	37.6

While the Democratic vote went down by only 2.3%, the G.O.P. presidential vote fell by 17.5%.

In 1988 Dukakis was overwhelmed by Bush in southern and central Ohio and lost nearly all of the dozens of rural counties scattered throughout the state. Dukakis did succeed in carrying Cuyahoga, Summit, Lucas, Mahoning, and Trumbull Counties, all of which were essential urban in character. These five counties produced nearly forty percent of the statewide Democratic vote. The 1988 electoral statistics were:

	Dukakis	Bush
Cuyahoga	358,401	242,439
Summitt	112,612	101,155
Lucas	99,755	83,788
Mahoning	76,524	43,722
Trumbull	58,674	38,815
Total	694,967 (57.4%)	510,519 (42.6%)

In 1992 Clinton surpassed Dukakis' performance in the five counties, thereby assuring that he would carry Ohio. The 1992 results were:

	Clinton	Bush	Perot
Cuyahoga	333,700	184,996	111,217
Summitt	107,061	70,915	59,694
Lucas	98,771	62,659	17,453

	Clinton	Bush	Perot
Mahoning	64,144	30,863	29,124
Trumbull	54,142	25,618	25,503
Total	627,713 (49.5%)	385,050 (30.7%)	247,999 (19.8%)

Clinton in 1992 carried Ohio's First and Third Congressional Districts by very narrow margins, while Bush won the Sixth, Twelfth, and Sixteenth Congressional Districts by slim pluralities. Of obvious relevance to the outcome of the 1988 presidential contests in Ohio were the results in six densely populated congressional districts clustered in the northeastern corner of the state. Four of these districts were located in Cuyahoga County, while the other two were centered in Akron and Youngstown. The 1992 electoral figures were:

	Clinton	Bush	Perot
Tenth district	107,460	92,849	58,095
Eleventh district	167,877	37,880	23,423
Thirteenth district	101,184	94,651	70,624
Fourteenth district	119,144	81,803	60,338
Seventeenth district	133,213	68,417	64,936
Nineteenth district	114,307	106,950	60,429
Total	755,165	502,559	345,845

THE NEGOTIATED RATES ACT OF 1993

HON. DAN GLICKMAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. GLICKMAN. Mr. Speaker, yesterday the House passed H.R. 2121, the Negotiated Rates Act of 1993, under suspension of the rules. I am a cosponsor of this legislation because I believe that action must be taken to correct the freight undercharge problem. Bankruptcy trustees are suing for undercharge claims years after the fact, hurting many businesses in my district and across the country. If the bankrupt carriers failed to report the correct rates they had been charging, the customers should not be held at fault.

However, I voted against H.R. 2121 because I felt that this issue was too controversial to be considered under the Suspension Calendar. Some of my colleagues had expressed strong opposition to H.R. 2121, and I believed that the bill should have been given full consideration under the rules of the House before a vote was taken. Members of the House who do not serve on the Public Works and Transportation Committee were never given the opportunity to offer amendments to the bill. While I am glad that H.R. 2121 passed, I am disappointed that it was taken up under an expedited procedure that did not permit a well deserved debate.

DR. NAEEM RATHORE HONORED FOR THREE DECADES OF SERVICE

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mrs. MALONEY. Mr. Speaker, I rise today to bring to the attention of my colleagues an

important event which will take place in my district on November 19. On that date, a number of foreign dignitaries, U.N. executives, and other important members of the international relations community will gather to honor Dr. Naem Rathore on the occasion of his 62d birthday for his long and illustrious service.

Dr. Rathore serves as advisor to the Executive Committee, Coordinating Committee of International Staff Unions and Associates, United Nations system of organizations. In this capacity, and over his entire career spanning three decades with the United Nations, Dr. Rathore has advised U.N. Secretary Generals and U.N. Ambassadors. His vision and leadership have made the world a better place for peoples across the globe.

A Pakistani citizen, Dr. Rathore has spent his life here in the United States. He graduated from the University of Michigan and won graduate fellowships from Columbia University, where he earned his masters and Ph.D. Since 1963, he has served in the United Nations in many different capacities. He has published a number of important articles, and is respected throughout the world as a voice for responsible peace. He is currently involved as coordinator of the Planning Committee of Pakistan Expatriates in the United Nations System.

Because of his tremendous work on behalf of the people of the world, I hope my colleagues will take this opportunity to recognize Dr. Rathore for his achievements and wish him a very happy 62d birthday.

NAFTA AND INTELLECTUALS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. GILMAN. Mr. Speaker, I rise today to bring to the attention of my colleagues an article in today's New York Times by A.M. Rosenthal entitled, "Nafta Hits Intellectuals." Mr. Rosenthal makes an impressive point that the academics and journalists supporting the North American Free-Trade Agreement have shown little compassion or any real understanding about the fears of working people who might lose their jobs under this agreement.

If the shoe were on the other foot and it was their jobs at risk, Mr. Rosenthal notes, they would have an altogether different attitude in their editorial pages and on the talk shows. He argues for some humility for the genuine fears of frightened workers and I strongly concur in his observations.

Mr. Speaker, for my colleagues' information I request that this New York Times article be inserted in the RECORD at this point.

No need to worry. Nafta will not cost the job of a single American factory or agricultural worker. No plant or farm will be put out of business.

However, because of various complicated Nafta tax and anti-subsidy provisions, some other Americans will experience inconvenience.

Jobs will be lost by several hundred thousand editorial writers, columnists and other journalists, plus publishing executives, uni-

versity professors, Wall Street specialists and members of state and Federal legislative staffs. A few dozen think tanks will close down altogether.

But unemployment insurance will be available, often, for these newly unemployed intellectuals. And many may be retrained for jobs as newsroom receptionists, school custodians or clerks in automated warehouses.

Of course they must be flexible—willing to sell their homes, pull their children out of school and hunt for new jobs in other cities around the country. Many will find employment above the minimum wage, probably, if they take care not to be too old to compete with high school dropouts.

But being educated people they will also understand that contrasted to the possibility of a better balance of trade with Mexico their problems are entirely minor and not whine about it.

Anyway, perhaps things will pick up for them toward the end of the 90's.

Ah—all this has been my evil little fantasy these past couple of weeks. Ah—how they would howl, those journalistic and academic supporters of Nafta who have shown so little care, compassion or understanding about the fears of working people who might lose their jobs, how they would howl if their own jobs were in danger.

I can hear them already, because I have heard them so often before. If a newspaper is in danger of closing, or Wall Street brokers have a bad year, or if professors face loss of tenure for anything but murder, we fill pages of printed and hours of air time with sheer poignancy.

But we really do expect workers who lose their jobs after years at a craft or assembly line to be sweet and humble, because some day some other workers in some other factory may pick up jobs.

I was in favor of Nafta, though I never did think the Republic would collapse, America be driven from the company of decent nations and extra-terrestrials take over if it did not pass. But now the Administration and the intelligentsia have converted me to opposition to the current version of Nafta.

The genuine fears of frightened workers are dismissed contemptuously by the Clinton Administration, press and academia. If that is true now, while workers are still fighting, what care will be shown them or their thoughts if they are defeated and find themselves out of work in the name of grander interest?

I am a company man; any union that threatens my paper, watch out. But that does not turn me into some kook union-hater, spilling over with rage at unions exercising their right to lobby.

The Administration's attack on the whole A.F.L.-C.I.O. and its leaders is not only unjust, but damaging to freedom movements everywhere.

When it was not at all fashionable, the A.F.L.-C.I.O. and Lane Kirkland, its president, came to the quiet assistance of freedom fighters, dissidents and political prisoners throughout Eastern Europe and the Soviet Union. The U.S. will need Kirklands again.

But Mr. Kirkland is suddenly painted Mussolini and his members a bunch of know-nothing boobs.

Workers fear that Nafta would preserve child labor, abysmal wages and government-police union-busting in Mexico. All of these are brutally unfair to Mexicans and to competing U.S. workers. And in case anybody cares about such niceties, Mr. Kirkland argues they also run counter to provisions in U.S. free-trade laws.

But if this version of Nafta is defeated, American business, labor and government still have a chance to try to negotiate a Nafta that would open Mexico not only to free trade but to free unions and halfway decent pay.

President Clinton says he needs Nafta as a message of support to the Asian summit meeting in Seattle. If he loses, maybe the message will be even stronger: In Asia as in the U.S. and Mexico, Americans are against slave wages, forced labor, child labor and government union-smashing.

Aren't we supposed to be?

CHILDREN OF SPANISH HARLEM DISCOVERY DAY

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. SERRANO. Mr. Speaker, this Friday, November 19, Community School District 4 in Spanish Harlem, in conjunction with the U.S. Postal Service will celebrate "Children of Spanish Harlem Discovery Day" with special activities commemorating the 500th anniversary of Puerto Rico.

The event will take place as part of the Columbus Pageant held at P.S. 101, the Andrew Draper Academy, where over 10,000 letters to future generations written by the district's third to sixth grade pupils will be sealed in a time capsule. On the following day copies of these letters bearing the new Christopher Columbus commemorative stamp will be hand canceled and sent to grade school children in San Juan, PR.

Mayor Dinkins and Mayor-Elect Giuliani, who will officiate over this marvelous ceremony, will themselves write letters for the time capsule, as will Puerto Rican community leaders and celebrities. And the letters sent to the school children of San Juan are only the first in what is expected to be a longstanding pen pal exchange between the children of Spanish Harlem and their Puerto Rican counterparts.

Mr. Speaker, I would like to express my appreciation to all who were involved in this visionary undertaking. In particular, I would like to acknowledge Dr. Veronica O. Collazo, U.S. Postal Service Vice President for Diversity Development; Marcelino Rodriguez, superintendent of Community School District 4; Alexander Castillo, principal of P.S. 101; Assistant Principal Iris Denizac; and Iris Molina, president of the Andrew Draper Academy Parent Teacher Association. In this quincentennial of Puerto Rico, they and all of the students, staff, and friends of Community School District 4 have helped launch a new age of discovery for the children of Spanish Harlem.

THE 55TH ANNIVERSARY OF KRISTALNACHT

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. GEJDENSON. Mr. Speaker, I would like to take this opportunity to observe the 55th

anniversary of Kristalnacht, the "Night of Broken Glass," which preceded the Holocaust. The black moment in history signaled to the world the evil determination of Adolf Hitler and Nazi Germany's systematic destruction of the Jewish people. As the world stood by, this abomination took place.

The tide of anti-Semitism was given impetus when Herschel Grynszpan shot a young diplomat, Ernst vom Rath, at the German Embassy in Paris. Herschel's father was one of the many families driven out of Germany by Hitler's forces. On November 7, 1938, the young Herschel Grynszpan, in despair, went to the German Embassy in Paris to shoot the Ambassador. But instead, Herschel shot the young diplomat. Hitler's response was what now stands in history as Kristalnacht.

On the afternoon of November 9, Rath died. Anti-Jewish riots in the district of Kurhessen and Magdeburg-Anhalt broke out. Adolf Hitler secretly sanctioned the riots and purportedly discouraged any official interference when the riots spread throughout Germany.

Kristalnacht was a night of despair for the Jews in Germany, with police standing by as witnesses of the death, destruction and beatings which took place throughout Germany. Official count of the destruction included 814 shops, 171 homes and 191 synagogues torched; 36 Jews were killed and another 36 seriously injured. The horror continued and by November 12, an estimated 20,000 Jews had been shipped to concentration camps.

These numbers may seem small indeed when compared to the historical figures of 11 million people, of whom 6 million were Jews, that perished under Hitler's reign of terror. Nazism sought not only to exterminate all the Jews in the world, but to eradicate even the memory of their existence.

Kristalnacht marked the introduction of Hitler's governmentwide strategy to answer the Jewish question. The Holocaust was Adolph Hitler's final solution.

The Holocaust was not merely a continuation of traditional patterns of anti-Semitism, differing in scope and scale from that which Jewish people experienced for centuries. The Holocaust represented a specific type of evil, a systematic and bureaucratically organized evil, sponsored by the state and using all of the power and mechanisms available to a modern government to identify, concentrate and ultimately annihilate the Jewish people.

As we take pause to reflect upon this event, we must remember that anti-Semitism rears its ugly head even today.

At a time when we all should be jubilant at the prospect of real peace in the Middle East, racist outbreaks of hatred and violence appear to be on the rise in the United States and abroad. My own home State of Connecticut recorded 58 anti-Semitic incidents in 1992, up from 47 in 1991. These deplorable acts underscore the fact that anti-Semitism is alive and well far into the 20th century and did not end with the Holocaust.

As a nation founded on the premise that all men are created equal, we must be vigilant. We must not ignore or tolerate acts of hatred. To do so creates an environment where such actions are legitimized and accepted. We have to strengthen our commitment to fight the persecution of all peoples and to intensify our ef-

forts in creating an atmosphere where freedom and tolerance prevail.

On this day of remembrance, we must all make a solemn vow to destroy this evil which continues to weave itself throughout the history of humanity.

COMMENDING SENATOR SIDNEY LEE ON HIS SELECTION FOR THE GALLERY OF DISTINGUISHED ENGINEERING ALUMNI

HON. RON de LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. DE LUGO. Mr. Speaker, I rise to commend former Virgin Islands Senator Sidney P. Lee on his selection by the University of Pennsylvania's School of Engineering and Applied Science to be honored in the Gallery of Distinguished Engineering Alumni.

Senator Lee was chosen for this prestigious honor because of the many contributions he has made to his profession and to his community, particularly the Virgin Islands.

After a dedication ceremony on October 19, 1993 in Philadelphia, Senator Lee's photograph will hang in the gallery where his accomplishments will serve as an example for today's graduate students.

The following biography appeared in the program honoring Senator Lee:

SIDNEY P. LEE, BACHELOR OF SCIENCE IN ENGINEERING (CHEMICAL ENGINEERING), SCHOOL OF ENGINEERING AND APPLIED SCIENCE 1939

Sidney P. Lee is a four-term U.S. Virgin Islands Senator, civic and civil rights leader, environmental entrepreneur, businessman, philanthropist and educator. He graduated first in his class in chemical engineering in 1939 and earned an M.S. degree in chemical engineering from Cornell University in 1940. Following employment at ARCO Chemical, he founded Associated Dallas Laboratories (ADL), a pioneer in the field of environmental testing, certification of architectural materials, and transistor analysis. Among his numerous professional affiliations, he is a fellow of the American Institute of Chemists. Senator Lee pursued his passion for politics and community development in Texas, serving as President of the Dallas Chamber of Commerce and President of the Texas Junior Chamber of Commerce. In 1945, he was selected by the Jaycee's as one of the five Outstanding Young Men in the United States. Transferring his business acumen and political savvy to the U.S. Virgin Islands in the 1960's, Senator Lee led the fight to eradicate discrimination against under-represented minorities. As President of the Virgin Islands Board of Realtors, he was instrumental in eliminating discriminatory deed restrictions which prevented the purchase of homesites by African-Americans and Hispanics. Senator Lee held a number of prominent positions in the U.S. Virgin Islands Senate, including Vice President of the Senate; Chairman of the Committee on Government Operations, Home Rule, and Interstate Cooperation; Vice Chairman of the Committee on Finance; and Chairman of the Committee on Housing and Planning. He reorganized the government employees retirement system and the labor-management system and was an effective advocate for major

industrial investment in the region's economy. As first Chairman of the Board of Education for the U.S. Virgin Islands, and later as President of the Governor's Advisory Council of Vocational Education, Senator Lee championed universal access to higher education. Creator and financier of the DREAM Foundation, Senator Lee has personally guaranteed a class of 29 underprivileged children their college tuition at an institution of their choice.

TRIBUTE TO THOMAS F. WALLER

HON. JOHN JOSEPH MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. MOAKLEY. Mr. Speaker, I rise today to pay tribute to Thomas F. Waller, publisher of the Daily Gazette of Taunton, MA, and a prominent community leader, who passed away after a short illness on October 31.

Mr. Waller became publisher of the Daily Gazette in 1989, but had ties to Taunton since 1985 through his work as an editorial consultant in the Boston division of Thomson Newspapers, the parent company of the Daily Gazette. His distinguished career in journalism also included stints as managing editor of the Sturbridge Herald Star in Ohio from 1979 to 1985 and as news editor of the Fairmont Times in West Virginia from 1970 to 1979.

Despite more than 20 years in journalism, Mr. Waller never allowed the often cruel realities of life that reporters face daily to jade his optimistic view of the world. This optimistic view was evidenced by his professional and personal actions to better the community his newspaper served. As publisher of the Daily Gazette, he expanded the newspaper's involvement in the community, not only in its editorial capacity, but also by encouraging newspaper employees to get involved in the community they served. In the latter area, he led by example. He served as president-elect of the Heart of Taunton Inc., which worked to revitalize the downtown area, played an integral part in forming the Taunton Literacy Council in 1991, an organization which helps adults learn to read, and lent his talents to the United Way of Greater Taunton, serving on its board of directors.

Mr. Waller leaves his wife, Sandy, and their three children, Jennifer, Brian and Becky. They have lost a loving husband and father. The entire city of Taunton has lost a dedicated and caring community leader.

TRIBUTE TO REV. FRANK WHITE

HON. DAN HAMBURG

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. HAMBURG. Mr. Speaker, it gives me great pleasure to bring to the attention of my colleagues an outstanding community activist from the First District of California, Rev. Frank White of the First Presbyterian Church in Napa.

Frank White is well known to local elected officials and the community as a tireless advo-

cate for the most vulnerable members of the community.

Observing the increasing number of homeless single adults in the community, he opened the doors of his church gymnasium to provide emergency shelter. He then worked with a homeless coalition and the Napa County Board of Supervisors to develop a temporary shelter.

When an additional shelter was needed for women and children, Frank was right there seeking the necessary funding and community support. He also coordinates a homeless prevention fund, a source of emergency money to keep people from becoming homeless.

Frank began the hot meal program in Napa known as The Table which serves a hot meal 6 days a week at the church, providing food to anyone in need—no questions asked.

Frank was one of the leaders who established the community counseling center to assist those who were falling through the cracks of private and public mental health programs.

When budget cuts lead to the loss of the county crisis center Frank assisted in the development of a mental health drop-in center.

When a community crisis was created by the unanticipated arrival of skinheads, Frank's response was to assist in the founding of Napans for Unity, a group dedicated to emphasizing the multicultural values in the community.

Frank never limits his expectations of support to the members of his church; consequently, he has involved vast numbers of people in the community in the above projects. His ecumenical expectations have led to community involvement even in his annual Holocaust Memorial and his Easter morning service in the park.

Rev. Frank White exemplifies leadership and community spirit. Hard work has never deterred him. He initiates major new programs with faith that the funding and the people will be found to make them succeed. He has been one of those essential leaders who function as the social conscience of a community, giving hope for a better future.

I join the citizens of the first congressional district in profound gratitude for Reverend White's service and leadership.

IN TRIBUTE TO HARRY KUBO

HON. RICHARD H. LEHMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. LEHMAN. Mr. Speaker, I rise before my colleagues today to honor the achievements of Harry Kubo, whom I have known for more than two decades and who is recognized in my area as the champion of the agricultural industry.

For his achievements, Harry is rightfully being recognized as the 1993 Agriculturalist of the Year sponsored by the Fresno Chamber of Commerce.

Harry is president of the Nisei Farmers League, and he has been its only president since it was organized with his help 20 years ago during the farm labor strife in California's San Joaquin Valley. It was under his guidance

and leadership that the Nisei Farmers League has grown to become an organization of more than 1,000 members of all nationalities and cultural backgrounds who farm from Merced County to Tulare and Kern Counties.

It was through his guidance that the Nisei Farmers League has gained a prominent role in providing leadership in many areas that affect growers and farmworkers in their daily lives.

Harry was born in Sacramento in 1922. He was raised in Loomis and attended schools in the Placer area. Harry graduated from Placer Union High School, and attended Placer Junior College, now known as Sierra Junior College.

Harry and his wife, Mary, have five children and now reside in Parlier where he is in partnership with his son, Larry, and brother, George, in farming 120 acres of grapes, trees, and row crops.

He has been active in several agricultural organizations, including president of the Agricultural Action Committee and as a commissioner representing the United States in the Commission of the Californias. Harry is currently president of the Farm Labor Alliance, Inc., and the California Fresh Fruit Growers, a board member representing agriculture in the Fresno City and County Chamber of Commerce, as well as chief operating officer of the Agricultural Exports of California.

Harry served for 18 years as a member of the board of trustees of the Parlier Unified School District and currently is a board member of the Selective Service System and the board of directors of the State Center Community College Foundation.

TRIBUTE TO MARGARET McCORD

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. SCHUMER. Mr. Speaker, one of the pleasures of serving in this legislative body is the opportunity we occasionally get to publicly acknowledge outstanding citizens of our Nation.

I rise today to recognize one such individual, Margaret McCord, on the occasion of her 90th birthday, November 20, 1993. She immigrated to this country from Scotland, and has been a hard worker all her life and an active member of the community for more than 60 years. She is a founder of the Plumb Beach Civic Association and a deacon of the Homecrest Presbyterian Church. Through years of service to Plumb Beach Civic, Margaret has demonstrated her true commitment to the community. Her generosity of time and energy embody the qualities of a good citizen; Margaret McCord has touched the lives of so many people in Brooklyn with her kindness and goodwill.

Her work has been an inspiration to me. She approaches challenges with a dogged determination that makes her a pleasure to know. I am sure I speak on behalf of many members of the community who have experienced the benefits of Margaret's hard work when I thank this remarkable individual on this special occasion.

ROUND TWO: A KINDER GENTLER
DARWINISM

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. OBEY. Mr. Speaker, my favorite philosopher is Archy the Cockroach. He was a character invented by Don Marquis in the 1920's. Archy was a poet who died and came back in the body of a cockroach. He would crawl out of the woodwork at night, climb up on the typewriter and type little messages which would then be published in the newspaper the next day. One of the messages he left was: "There is always a comforting thought in time of trouble when it is not our trouble."

That is the message that the comfortable economists and the comfortable columnists are sending today to comfort those in this society who will be left high and dry in America.

Russell Baker in the New York Times wrote the following column on Saturday which has some thoughtful observations about those who will be left behind on NAFTA and our obligations to them.

[From the New York Times, Nov. 13, 1993]
THE SHORT-RUN AMERICA
(By Russell Baker)

The bleak side of capitalism is the ruin it leaves behind after, having worked its magic, it moves on. Backers of the North American Free Trade Agreement are naturally reluctant to dwell on this gritty historical fact, yet there is something cruel, offensive and faintly dishonest in their argument that any pain felt by the working classes will be only a "short-run" experience.

The argument comes easily to people with the financial security required to live in the "long run." Corporate America and the Washington establishment, both ardent for this agreement, consist of people who can afford to wait for the year of Jubilee.

For working stiffs, however, life is lived in the "short run." The rent is due at the end of the month, the grocery money every Friday. Politicians, tycoons and media stars exhorting such people to ponder the comforts to come in the "long-run" can only sound like hypocrites or visitors from another planet.

The truth most likely is that the agreement will indeed bring benefits in the long run to something called "society," which will include the comfortable people now hot for free trade. History, both modern and antique, suggests that it will also bring a great deal of ruin to the people who now fear losing their jobs.

Besides trying to sell the empty notion that everything will work out in a long run that is meaningless to many working people, advocates of the agreement should also be thinking of ways to deal with some of the ruin inescapable for short-run people.

An unpleasant characteristic of capitalism is the ruination it periodically creates: ruined landscapes, ruined societies, ruined people. Since capitalism is the national dish, we ought to be aware of this dark side of its nature so we can be ready to soften its nastiest results as it rollicks from place to place, first doing out money prodigiously, then suddenly skipping town and leaving a wasteland behind.

In this fashion it made England rich with the Industrial Revolution and introduced a

century of human misery. In America it has left ruined New England mill towns, a "rust belt" of ruined steel towns, ruined railroad towns from one end of the continent to the other and, most recently with more to come, ruined auto towns like Flint, Mich.

Mining has left the ruined landscapes of West Virginia and Kentucky, the real-estate boom has left the ruined farmlands of the lush Piedmont, the miraculous chemical industry has left ruined flora and fauna, and the auto industry has left a ruined sky and a junkyard ruin in every other town in America.

State capitalism is now showing that it too can turn boom to ruin. For details, see Joan Didion's recent New Yorker article about the ruin of the California town that lived high and fat until military-spending cuts shut off the Pentagon's money to McDonnell Douglas that had made it boom.

The problems created when capitalism visits these periodic ruins upon us include despair, anger, misery, hatreds, social upheaval and the rise of new political ideas, some dangerously crackpot, others as dangerously intellectual as Karl Marx's Communism, one result of the ruins of the industrial revolution.

Some sort of dangerous economic disturbance is obviously in progress. American labor is being priced out of jobs by East Asian workers who will do the same work for less. American retailers now fill their racks with low-priced clothing made by sweated child labor in South Asia.

Even more alarming is the recent trend in industry's extensive firings: first, blue-collar workers, then white-collar people, then lower-level technicians, and now middle- and upper-management people. Some say this is the work of the computer, which enables industry to keep production high while drastically cutting employment.

In brief, the people who say it's a new world and we'd better face it quickly have a point. Unfortunately, they are not being honest about the price many people will have to pay. In this computerized world they don't even talk much about maybe retraining old-timers who are potential losers to use computers. This isn't surprising; our schools don't even prepare many young people to qualify for employment in this new cybernetic America.

CLARIFICATION OF REA OVERSIGHT WITH RESPECT TO CERTAIN BORROWERS

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. E DE LA GARZA. Mr. Speaker, I am today introducing legislation to clarify the regulatory authority the Rural Electrification Administration is to exercise with respect to a borrower whose net worth exceeds 110 percent of the outstanding principal balance of all loans made or guaranteed to the borrower by REA.

The legislation would amend section 306E, which was added to the Rural Electrification Act by Public Law 103-129, approved November 1, 1993.

The intent of new section 306E is to ensure the elimination of outdated and burdensome requirements and controls imposed on any

REA borrower whose net worth exceeds 110 percent of the borrower's outstanding loan balance.

The legislation I am introducing would amend section 306E to make it clear that REA is to minimize the imposition of such controls and requirements.

At the same time, the legislation would amend section 306E to make it clear that the Administrator of REA is to be a prudent administrator and ensure that the security for any loan made or guaranteed by REA is adequate. Section 306E would be further amended by the legislation to specifically state that nothing in the section limits the authority of the Administrator to establish terms and conditions with respect to the use by borrowers of the proceeds of loans made or guaranteed by REA or to take any other action authorized by law.

HONORING SAMUEL AND
ANGELINA MARTINO

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. ENGEL. Mr. Speaker, it is with great pleasure that I recognize today the golden anniversary of my constituents, Samuel and Angelina Martino, which falls on December 23, 1993.

Fifty years ago, these two New York City natives were married during Sam's army leave just prior to his assignment overseas during World War II. Their three children have planned a festive affair to compensate for the formal wedding and honeymoon the couple never had the chance to take due to Sam's service responsibilities.

Sam and Angelina have lived a full and productive life together. They worked hard for many years—Sam at the Brooklyn Navy Yard and for New York Telephone, and Angelina as a medical secretary—in order to provide for their family. They have been active in the community, with the Boy and Girl Scouts of America, the St. Gabriel's School PTA and the Organization for Italian Migration. Most of all, they are proud of their children and the five grandchildren they have been blessed with.

I know of many people like Sam and Angelina, in my district and throughout the city of New York, who have built solid families and contributed to their communities. It is always a pleasure to have an opportunity to congratulate and thank them. I wish Sam and Angelina Martino a happy 50th anniversary and hope they have many more years of happiness and good health together.

CONGRATULATING RICHARD
MILBOURNE, SR., 60 YEARS IN
BUSINESS

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. HOYER. Mr. Speaker, it gives me great pleasure to congratulate Mr. Richard

Milbourne, Sr., who recently celebrated the 60th anniversary of his business, the Acme Iron Works, located in Prince Georges County.

Mr. Milbourne, who resides in College Park, in the Fifth Congressional District of Maryland, is 83 years old and is generally the first of his 30 employees to arrive and the last to leave at Acme Iron Works.

The Acme Iron Works has performed work on the U.S. Capitol, as well as the National Gallery of Art, the University of Maryland, and the NASA Goddard Space Flight Center. Recently a story appeared in the Prince George's Journal which told of the remarkable career of Richard Milbourne, Sr.

I urge my colleagues to join me in recognizing the outstanding career of the owner of Acme Iron Works, Richard Milbourne, Sr.

[From the Prince George's Journal Nov. 4, 1993]

IN BUSINESS 60 YEARS: HARD-WORKING OWNER MAKES ACME IRON WORKS GO

(By Katherine Greet)

Richard G. Milbourne arrives at Acme Iron works in Tuxedo every work day at 7:30 a.m., and he's often the last person to leave at night. Just like it's been for six decades.

The 83-year-old College Park resident recently celebrated the 60th anniversary of his business, which did its first job Sept. 18, 1933—a door replacement at the National University Law School in Washington that netted \$16.60.

The firm now employs 30 people and earns about \$1.5 million a year—although, Milbourne notes, it "goes up and down." Its client list has grown to include some of the region's most prominent institutions, from universities to retail chains to government agencies.

"The further I follow, the bigger his footsteps get," said Richard P. Milbourne, who joined his father's firm as a summer employee at the age of 14.

The younger Milbourne called his father "the socio-economic glue that holds Acme together. He knew everyone in this county and still does. He is the grand old man of Prince George's County."

"Not many area small businesses of that nature manage to survive with the same person at the helm, not with the same person as the president of the company for that many years," said Chuck Leak, sales representative for the Posner Steel Co., Acme's main supplier for a quarter-century. "It's the typical American Dream."

More than most people, Milbourne understands the risk of entrepreneurship. After several years of apprenticeship. After several years of apprenticeship in the iron trade—during which he went from earning the then princely sum of \$13.20 a week to being laid off—he started Acme with \$900 in savings in the midst of the Great Depression. He attributes his initial success to a slow and steady flow of work.

"You had to move along slowly. I was able to procurework and add one man and then another and another," he recalled. "I did a lot of the fabricating myself back then, worked day and night, started off in a small place until it was built up and could move to a larger warehouse." He chose the name Acme to represent the company as "the tops"—and because he "wanted it to be the first one in the phone book."

Since then, Acme has performed work ranging from repairs at cemeteries to renovations at the Capitol and the National Gallery of Art to installing an ornamental

staircase at the home of then Sen. Lyndon Johnson. Milbourne moved the firm to its present Frolich Lane location in 1966, buying 3½ acres and building four warehouses, three of which are rented out.

Variety has remained a staple of the Acme, whose current client list includes the University of Maryland and Howard University; Peoples Drug; Rosecroft Raceway; NASA's Goddard Space Flight Center; and several churches, schools, businesses and government agencies. Most of its work today comes through bidding for jobs from contractors and real estate developers, but it isn't limited to the building trades—Acme-designed golf bag storage racks are sold at pro shops throughout the United States, Japan and Europe.

"Acme does excellent work and is not the type of company to take short cuts," said Leak, who described the elder Milbourne as "honest as the day is long, dedicated and hard-working."

Milbourne now runs the firm with his son, a University of Maryland engineering graduate, and two son-in-laws, Jack Heniecke and Rod Easterling. He attributes his continued success to "having dedicated people that have stayed with us. * * * We've had two retirees over the past 10 years."

He said Acme managed to stay strong during the recession, despite the slump in the real estate and construction industries that provide much of its work.

"We felt some recession, but kept busy, managed to get through with no layoffs," Milbourne said. "And business is increasing."

CONGRATULATIONS, VIVIAN SANKS KING

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. PAYNE of New Jersey. Mr. Speaker, I ask my colleagues to join me in congratulating Vivian Sanks King, Esq. on her appointment as vice president of legal management at the University of Medicine and Dentistry of New Jersey [UMDNJ]—New Jersey's health sciences university. This weekend a distinguished group of leaders will gather at a reception in her honor.

In her capacity as vice president, she manages the university's legal office which provides services to four campuses throughout the State. The university is composed of seven schools which include three medical schools, a dental school, a school of health related professions, a school of graduate biomedical sciences, and a recently established school of nursing, as well as the university's two community mental health centers. Ms. King also teaches a health law class for university and hospital faculty/staff, and legal writing to young people at the summer institute for pre-legal studies sponsored by Rutgers University and Seton Hall Law School.

The vice presidency position she now holds is not the first relationship Ms. King has had with UMDNJ. Prior to attending Seton Hall Law School, Ms. King was coordinator and then director of media relations at UMDNJ—University Hospital. Immediately preceding her present appointment she was associate di-

rector of UMDNJ. She has risen through the ranks at UMDNJ and therefore knows the structure, the problems and solution avenues, and can hit the ground running in her new capacity.

Ms. King, a lifelong resident of Newark, NJ, has always been an active member of our community. She is a role model and a mentor, she serves on numerous boards in the community. Ms. King is a frequent lecturer at hospitals, universities, and professional associations on the legal aspects of AIDS and other health care issues. She is a committed community activist.

Mr. Speaker, I am pleased that this staunch community minded attorney lives in the 10th Congressional District of New Jersey. It is a testament to her dedication to her community that she has stayed involved and worked to make our community better. She deserves the accolades that we bestow on her this week. I ask my colleagues to join me as I thank Ms. King for her good works.

NAFTA WILL PROMOTE ENVIRONMENTAL PRESERVATION

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. ANDREWS of Texas. Mr. Speaker, the North American Free-Trade Agreement is the most important measure that Congress will debate this year. By bringing down trade barriers among Canada, Mexico, and the United States, NAFTA promises a bright future of economic expansion, job growth, and prosperity for what will be the world's single largest trading block. It is already apparent that NAFTA signatories will be the envy of the world, the leaders in what is quickly becoming a global economy.

But, NAFTA will not only be an economic boon for North America; it will also help us focus our resources and address environmental concerns. It is hard to believe that those who call themselves environmentalists would oppose this agreement, the greenest trade agreement ever negotiated. Will a defeat of NAFTA help address environmental concerns that will accompany future industrial expansion? Will the defeat of NAFTA make Canada and Mexico more responsible for environmental preservation? Will the defeat of NAFTA help clean up the notorious United States-Mexico border area? The answer to all three of these questions is a resounding "No."

However, the passage of NAFTA will advance these causes. In the future, companies will take into account the adverse effects that expansion could have on the environment, and they will work to mitigate these effects. NAFTA's environmental side agreement will give participants recourse in the case of one party's environmental misconduct. And, the agreement will lead to a much heightened awareness and concentration of funding on the environmental problems of our border with Mexico.

The issue is a clear one: The way we move forward with our efforts to improve the environment is to pass NAFTA. Mr. Speaker, I request that the following article be submitted into the record after my statement.

[From the Washington Post, Nov. 11, 1993]

GREEN SMOKE SCREEN
(By Jessica Mathews)

There is no green curtain to hide behind on NAFTA.

If the question were whether the agreement could have been greener, the answer would be yes. That isn't the issue now, and claims to support "a NAFTA" but not "this one" are disingenuous at best.

The question is whether the environment will be better off with this NAFTA or without it. And to that the answer is simple. The environment in Mexico and the United States and—because of the agreement's wider implications for world trade—in the world as a whole, will benefit if NAFTA passes.

Environmental complaints against NAFTA fall into three groups: complaints about what it doesn't do, complaints about what it does and a closet argument against growth per se. The first is the easiest to dispose of.

NAFTA has been criticized for not tilting Mexico's energy policies away from fossil fuels and toward energy efficiency, for not dealing with toxic dumping, for not addressing agricultural policy. You name it. These arguments mistake the purpose of a trade agreement. It is not an all-purpose vehicle for remaking other countries' environmental policies as we might like them to be. These critics in effect condemn NAFTA for failing to secure Mexican and Canadian agreement to policies that have been and remain the subject of fierce debate in the United States.

Objections to what the agreement does do are a mixed bag of scare tactics, wild exaggerations and valid concerns. No matter how many times you've read it, don't worry about your food safety: It's fully protected. Discard the argument that funding for border cleanup is inadequate: It's vastly more than there is now or than there would be if NAFTA were defeated.

Ignore the trumpeted claim that NAFTA threatens American environmental sovereignty and is "a major step toward ending democracy in this country." This one—there is no polite way to put this—is pure nonsense. American laws will still be made and amended by Congress and the states. The criteria by which they may be challenged under the agreement are reasonably drawn. The Constitution stands.

Though it misses, this claim does glance off one of NAFTA's environmental defects: a country's right to set process (as opposed to product) standards. Process standards deal with how a product is made, grown or harvested. It was an American process standard—namely, the Marine Mammal Protection Act—that was struck down in the infamous GATT tuna-dolphin decision, which held that all tuna must be treated alike, whether it is harvested carefully or in a way that indiscriminately kills dolphins.

NAFTA recognizes governments' right to use such measures to protect the environment—the first trade agreement to do so.

However, in practice these standards are tricky to interpret: whether they are a disguised restriction on trade; whether they are scientifically based; whether they are non-discriminatory. It is in the procedure by which such disputes are to be resolved that NAFTA falls down. Though NAFTA's rules are more open than GATT's—a small step forward—they do not remotely meet American standards of due process, fairness and transparency, and they rightly merit criticism.

The agreement's other weakness lies in how it treats global treaties that use trade

sanctions to protect the environment. Even though sanctions are sometimes the only way to give such treaties teeth, their legitimacy under trade law is still in question. NAFTA accepts the three existing environmental treaties that use trade sanctions—global agreements on endangered wildlife, ozone depletion and hazardous waste—but only these. It would have been far better if the agreement had instead established the general principle.

The most pernicious arguments against NAFTA use any of the foregoing to disguise the fear that NAFTA will accelerate growth, and therefore environmental degradation, in Mexico. Looking at the atrocity that rapid industrialization has wrought on the border, it is easy to see where this view comes from.

But to buy into it, even subconsciously, is to reject everything environmentalists have been fighting to make people understand for the past decade. The world's choice cannot be between growth and no-growth. It's the kind of growth that matters, and making sure that it's the kind that brings long-term benefits is as important as securing the growth itself.

That's why trade negotiators have to learn to be environmentalists and why the environmental mainstream is solidly behind this treaty. NAFTA's defeat would mean less immediate cleanup in Mexico, less growth, less environmental technology transferred through U.S. investment and less Mexican demand and capacity for environmental improvement (both of which rise with income). It would wipe out the precedents this agreement sets for other trade talks. And it could lay the base for a dangerous and retrograde environmental/protectionist alliance. If NAFTA goes down, the environment loses—now and later.

We don't have to like all of Mexico's or Canada's environmental or any other policies to recognize the value in what has been achieved. We're not getting married—just signing a trade agreement.

REBUKE OF POLICY OF DISCRIMINATION AGAINST LESBIANS AND GAYS IN THE MILITARY

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. NADLER. Mr. Speaker, today's decision by the Circuit Court of Appeals for the District of Columbia ordering the Navy to grant Midshipman Joseph Steffan a Naval Academy diploma and an officer's commission represents a second consecutive judicial rebuke to the policy of discrimination against lesbians and gay men in our military services. Taken together with the decision of U.S. District Court Judge Terry Hatter of California in the Keith Meinhold case, this decision represents a vindication of the prediction by President Clinton that the military ban would not survive constitutional scrutiny by the courts.

By overturning the Navy's dismissal of Midshipman Steffan—6 weeks before his graduation from the Naval Academy—for the crime of admitting that he was gay, the appeals court has struck a powerful blow against the so-called don't ask, don't tell policy, under which such admission remains grounds for ouster from the military.

It is hard to state the case any better than Judge Abner Mikva did in his unanimous decision: "America's hallmark has been to judge people by what they do, and not by who they are." It is a principle we have accepted with respect to race, sex, religion and national origin. It is a principle President Clinton has articulated with respect to sexual preference. I can only hope that the President will be able to take "Yes" for an answer, accept this vindication of his position, and instruct the Justice Department not to appeal this decision and to drop its appeal of the Meinhold case.

FACES OF HEALTH CARE

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. FAZIO. Mr. Speaker, if anyone doubts that Americans are calling for full-scale health reform, I invite them to visit the Third Congressional District of California. At townhalls, Fourth of July picnics, chamber of commerce meetings I hear a resounding call for the need to solve the crisis in our health care system, to give Americans the peace of mind that they will have access to affordable health care.

The people that have sent me to Washington are giving a strong and sure message. People are becoming increasingly insecure about whether our health care system will work during the times they need it most. To many of my constituents, health care is often a game of chance, a game where they believe the rules are often stacked against them.

Here are some of the current rules of the game. You can work your hardest to ensure that your family has health insurance, pay every premium in full—but in the terrible event that a family member is struck with a devastating illness, many people have no guarantees that their insurance company won't drop them.

But I do not want to merely list facts and statistics about the need for health reform. I want to tell the story of a family that I met earlier this year that is just one of the many examples of the desperate need for health care reform in this Nation.

At a community hour in my district in Dixon, CA, I met the Drake family. For years this family of four received their health coverage through Mr. Drake's employment at a local drug store. However, the annual premium increases to keep this policy up were more than the Drake's could handle on their modest budget. Thus, the family was forced to switch to another policy so that they could afford their insurance.

It was shortly after this switch that the family was hit with some terrible news. Their 5-year-old son, Michael, was diagnosed with leukemia. Watching a child fighting for his life has to be the most painful and trying experience a parent faces. But regrettably, this was not the only fight the family had on their hands.

The family has to fight a battle with our health insurance system as well. You see, when the Drake family changed insurance policies, the new policy would only cover a tiny fraction of their son's leukemia treatment.

Under the loopholes of the insurance policy, the family had to be under this plan for 3

years before they would receive the full benefits of their insurance. When this family was most in need of health insurance, it simply was not there.

The Drakes worked hard, played by the rules, but in this case, the rules were stacked against them. With no insurance to help pay for medical expenses which currently total \$120,000, this Dixon family depleted their life savings to be eligible for Medicaid.

This is just one of the many sad stories I have heard in my district. And, unfortunately, there are many more stories like the Drake's. We must remember that the health care debate we have embarked on is not going to be conducted in a nameless, faceless fashion.

This debate will dramatically affect each and every one of the people who sent me here. This debate will determine if we will finally stand and deliver a health reform plan that will make the health care system in this country play by rules that are decent and fair. I am supporting President Clinton's health plan, because I have a responsibility to this family in Dixon.

I have a responsibility to let this body know that there are thousands of families in similar binds throughout my district. Although the details will vary, these families all are without the sense of security that the health care system is going to play fair.

I am resolved to go back to Dixon and tell this family that the time for health reform is now. I want to work for health reform that will allow a family to help their child fight for his life, instead of fighting a system where the rules are stacked against them.

CONGRESSIONAL REFORM

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. SOLOMON. Mr. Speaker, today the House-half of the Joint Committee on the Organization of Congress finally began to consider what kind of recommendations it will make to the Congress before the end of the year.

While we got off to a rocky start this morning over disappointments with the less-than-bold chairman's mark put before us and over proposed procedural arrangements for voting on amendments, I am still hopeful we can strengthen the bill within the Joint Committee and on the House floor. I am pleased that Chairman HAMILTON has committed to a generous amendment procedure when this reaches the floor sometime early next year.

At this point in the RECORD, Mr. Speaker, I include excerpts from the excellent opening statement today of our House vice-chairman, the gentleman from California [Mr. DREIER], as well as my own opening statement:

EXCERPTS FROM STATEMENT OF HON. DAVID DREIER—JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

IN GENERAL

Unlike the document marked up by our counterparts in the Senate, this bill is neither bipartisan nor comprehensive. This is something I profoundly regret.

The Joint Committee was created to study Congress and make recommendations for reform. The culmination of seven months of hearings and two months of negotiations is a document that, on the most pressing issues, recommends more studies and nonbinding Sense of the House resolutions. We're back to ground zero.

A PRETENSE FOR DOING NOTHING

The mark calls for achieving a 12 percent reduction in the number of full-time staff, but it chooses Sept. 30, 1992, as the base. Consequently, few if any staff cuts would be achieved. According to the Legislative Appropriations Subcommittee, from fiscal year 1992 to fiscal year 1994, outlay reductions have fallen 6 percent in each year. According to Vic Fazio: "We are well on our way, halfway, to a 25 percent reduction." In terms of personnel, Mr. Fazio tells us that legislative staff have been reduced 8.2 percent over the same period. Under this scenario, the staff reductions have already been met.

The bill calls for biennial budgeting, yet the most important function of budgeting—the appropriations process—will remain annual. There is no rational reason for this. At our first hearing, Majority Leader Gephardt said in response to a question by Sen. Domenici about whether we should include appropriations in the biennial budget:

I don't see why we couldn't. We have a lot of Members around here who feel their service on an authorization committee is not a meaningful experience. It is in part because they never get to the authorization process; appropriations takes much of it over."

The committee mark calls for the elimination of any standing committee if the Membership falls below 50 percent of the number serving at the end of the 103rd Congress. Yet there is no requirement that the Rules Committee report a resolution to achieve this.

ON PROXY VOTING

We were told by numerous witnesses that if we reduced the number of committee and subcommittee assignments, there would be less need for proxy voting. One of the few meaningful reforms in the committee mark is that it reduces assignments. In addition, subcommittees would not be permitted to meet when full committees are meeting, so there is very little problem with overlap. Yet there are no restrictions on proxy voting. Even our freshman Democrat colleagues have proposed the elimination of proxy voting at subcommittee level. This is not a minority rights issue. It is an issue of accountability.

ON PROCEDURAL REFORMS

We in the minority are not asking for more rights. We're only asking that the standing rules of the House, as proposed and approved by the Democrat caucus, be adhered to.

IN CONCLUSION

Mr. Chairman, you said at our very first hearing: "Expectations for this committee are very high, and in a sense we are all on the spot." That is still true today. The majority of our colleagues, both Republican and Democrat, are counting on us to produce a bipartisan, comprehensive package of reforms. Comprehensive means committee realignment, a reduction in bureaucracy, and fair and open debate. We have a number of amendments that if adopted, would accomplish this objective. The only things standing in the way of a bipartisan bill are the will and the desire to achieve it.

STATEMENT OF CONGRESSMAN GERALD B. SOLOMON—JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

Mr. Chairman, while I have the greatest personal respect for you, I must express how deeply saddened I am that we have waited so long to consider so little.

When this Joint Committee on the Organization of Congress was created in 1992, I had great hopes for its potential to truly reform this institution from top to bottom. And, that optimism was further bolstered by the seemingly unanimous opinion of our membership in the early days about the need to be bold.

When we had our retreat last summer, I thought we were all agreed that we would proceed to mark-up a bill in September. But that kept slipping until here we are, in the middle of November, in the last hectic week for the session, only beginning to mark-up what can most charitably be termed a minimalist approach to tinkering.

We are making a mockery of our own name. We are no longer joint and we are no longer organized. And we certainly are not demonstrating by this chairman's mark that we have a clue about how to properly organize the Congress.

In short, we have become the problem we were created to solve. We have become the very model of what is wrong with the legislative process in this House—procrastination without deliberation or representation.

By ceding our bipartisan and independent judgment to the majority leadership you have produced a document that may be acceptable to the Leadership Lions and Committee Bulls, but does not begin to address the concern of most Members, let alone of the American people.

In summary, unless this bill is substantially altered to restructure and revitalize the clogged heart of the Congress, our committee system, then we should save ourselves the embarrassment of reporting to the House this band-aid cover-up of our real problems.

A HEMISPHERIC DIALOG: NATIONAL LEADERS SPEAK OUT ON THE BROADER MEANING OF NAFTA

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. HAMILTON. Mr. Speaker, on November 10, 1993, leaders from throughout the Western Hemisphere and regional experts delivered comments in support of the North American Free-Trade Agreement at "A Hemispheric Dialogue: National Leaders Speak on the Broader Meaning of NAFTA," sponsored by the Inter-American Development Bank.

The following text includes comments by Gonzalo Sanchez de Lozada, President of Bolivia; Cesar Gaviria Trujillo, President of Colombia; Rafael Leonardo Callejas R., President of Honduras; P.J. Patterson, Prime Minister of Jamaica; Luis Alberto La Calle, President of the Republic of Uruguay; and Peter Hakim, President of the Inter-American Dialog: GONZALO SANCHEZ DE LOZADA, PRESIDENT OF BOLIVIA

NAFTA is of vital importance for the world, for our hemisphere, and for my country, Bolivia. By uniting the economies of

Canada, the United States, and Mexico. NAFTA creates the world's largest trading bloc. It will be like a sun, and the rest of the economies of our hemisphere will be like planets in orbit around it, bringing down trade barriers that exist between our nations and having, eventually, access to this wonderful system of free trade, standardization of democratic practices, labor laws and environmental sensitivity.

We can't underestimate how important NAFTA is as a symbolic message of inclusion and not of exclusion. For the first time in history, the countries of the developed world invite the underdeveloped world to join in the great project which will be a project to create wealth, to bring social justice and more equality in the framework of freedom.

We think that the dynamics of this market will be so important that it will oblige other trading blocs around the world to start to bring down the walls which they are building in preparation for trade wars. We think it will be what will lead the world into a truly world economy. And in this way, it will bring hope to the underdeveloped part of the world with work, with dedication to education and health, and care toward the environment. And with justice, we can export not just violence and drugs, but products, creativity, and value-added.

We must understand that without NAFTA things will be very dark indeed. With it, it will be a beacon of hope, although we know that time will go by before we're reincluded in that trading market. But we know that eventually, as we achieve certain standards and as we achieve levels of growth and maturity and development in our economies, we have the possibility of having trade and not only looking for aid.

As the Cold War has finished, there is no longer the incentive for the developed world to bring aid to our countries. And this means that we must look for trade. A country like Bolivia that stopped hyperinflation in democracy, the first country in Latin America to do so, and opened up its markets, and has achieved stability, not only economic but democratic stability—we know that we must have trade if we want to continue and if we want to have a future. And it is for this reason that we're so devoted to and so interested in seeing that NAFTA takes place, and we can look forward with confidence to the future, not with preoccupation and uncertainty.

**CESAR GAVIRIA TRUJILLO, PRESIDENT OF
COLOMBIA**

Throughout *** history, Latin America and the United States have striven to create a real partnership for the Americas, a relationship based on mutual benefit and equal opportunity. For years, we talked about the importance of having trade and not just receiving aid from the United States. But it was just talk, nothing else. In the past, foreign assistance was the predominant means by which the United States helped emerging nations to develop their economies. Until now, Latin American nations raised protectionist walls around themselves while the United States looked towards other markets to expand its trade.

Two developments have significantly altered that scenario: the North American Free Trade Agreement and the silent economic and democratic revolution undergone by Latin America. NAFTA is a watershed in our history. We view this initiative as a critical step towards the creation of a hemispheric free trade zone of democratic nations. NAFTA is a means to achieve greater

prosperity for all the Americas, north and south of the Rio Grande. It's also a tool for political change as well as for strengthening democracy and respect for human rights throughout the region.

My own country, Colombia, is an example of how economic integration and the opening of markets within a democratic framework can bring about progress and prosperity for its citizens. The Colombian government is deeply committed to trade reform and reduced tariff rates from an average of 48% in 1987 to 11.4% today. As a result of this policy change, U.S. exports to Colombia increased a dramatic 68% last year, creating an estimated 45,000 new jobs for American workers. Members of the U.S. Congress who are uncertain as to whether NAFTA will be good for their constituencies have only to look at the example of the dynamic rise of U.S.-Colombian trade since its liberalization. Hasn't Colombia taken important steps to promote the kind of economy envisioned by NAFTA? As a result of these actions, our trade with a country like Venezuela increased from \$500 million in 1990 to \$1 billion in 1992, and they reached approximately \$1.5 billion at the end of the current year.

You may ask yourself, What does all this have to do with NAFTA? A great deal. NAFTA is a continuation of the trade liberalization process under way throughout Latin America, including negotiations of MERCOSUR, the Andean Pact, the G3 (Colombia, Venezuela and Mexico) as well as the talks to reduce Central American and Caribbean tariffs. Colombia and its South American neighbors support NAFTA because we believe it's a critical step to the economic integration of the Americas.

Given our successful experience, we are startled by the growing calls for isolationism and protectionism ignited by the NAFTA debate in some quarters of the United States. After all, the United States has benefited from developing successful trade relations around the world, and rising exports are driving the U.S. economic recovery. This demonstrates that free trade produces concrete economic benefits for everyone who has the courage to overcome initial fears.

As the U.S. Congress prepares to cast its historic vote on NAFTA, its members should be aware that it represents much more than just signing a trade treaty. Its passage or its defeat will have lasting effects on the entire continent. Moreover, NAFTA's defeat may stifle further progress, a loss for both industrialized and developing nations.

As President Clinton stated recently, the real job gains from NAFTA will come when we take the agreement and take it to Chile, to Argentina, to Columbia, to Venezuela, to other market-oriented democracies in Latin America and create a consumer market of 700 million people—soon to be over a billion people in the next century.

**RAFAEL LEONARDO CALLEJAS R., PRESIDENT
OF HONDURAS**

Barely one week ago in Guatemala, the presidents of six Central American countries, including mine, Honduras, unanimously approved absolute support of the North American Free Trade Agreement, NAFTA. In spite of the uncertainties it generates in our own societies and economies, we understand that the free trade agreement between the United States, Canada, and Mexico opens a unique opportunity to generate increases in trade, and consequently, gains in economic growth, and therefore higher benefits for our people. All that we request is that NAFTA open the alternative for the six Central American

countries; that once we constitute ourselves into a free trade zone, we have access to NAFTA under conditions that make us competitive with the other partners, especially Mexico.

We don't fear this type of association because we believe—and I personally—that free trade is the alternative for economic development and growth. So why fear? Obviously in this new world there are winners and losers. Those who lose are the groups, the persons, the societies and countries that persist on a protectionist alternative. We believe, I believe, that competition is clearly associated with free trade; and therefore, I can stress that we hope that you support the NAFTA free trade agreement. And that once it is approved—which we hope it will be—then you will support us, the Central American countries, in order that jointly we can proceed to adapt ourselves and incorporate ourselves to the biggest market of the world.

The decision will change the realities of the whole Western Hemisphere, and it's most probable that when NAFTA is signed, other countries in the continent will be clearly adapted to this mentality. Let's go ahead, let's support NAFTA. Let's request that the Congress of the United States, the Senate of the United States, that they too understand the realities of globalization of this new world. And push forward. Obviously there are risks involved. But the biggest risk of all is not taking the right decisions with respect to NAFTA.

P.J. PATTERSON, PRIME MINISTER OF JAMAICA

The end of the Cold War that for so long dominated the world provided leaders and governments with a welcome opportunity to end their preoccupation with destruction and to concentrate their energies and resources on human development on this planet which we all inhabit.

Experience has shown that the free market system provides the best method by which to achieve economic growth and social development. For this system to be effective, there must be the opening of world markets and an end to protectionism. Tariff barriers must be removed. The world economy will be increasingly globalized, market driven and technologically oriented.

Here in Jamaica, we have taken the tough decisions to transform our economy into one that is market driven. My administration has, with unwavering determination, taken the road toward full transformation of our economy. We have begun the process of simplifying and improving the effectiveness of our tax and incentive systems. We are pursuing a policy of privatization. Our private sector is now taking up the challenge to move our economy into the 21st century of free trade, where competition is intense and protectionism is no more.

We in the Western Hemisphere must ensure that we are not left behind as other countries around the world develop regional trading blocs, large in size and of great market potential.

Within the Caribbean and Latin American region we have strengthened our economic and trading associations through CARICOM, the planned association of Caribbean states, and through new trading initiatives with the countries of Latin America.

We firmly believe that the North American Free Trade Agreement (NAFTA) offers a unique opportunity to build mutually beneficial relationships between the three nations involved. We view NAFTA as the first important step towards a hemispheric free trade area that has the potential to lift the

standard of living of the people of this hemisphere, thereby ensuring the spread of democracy and the maintenance of political stability.

We believe the coming into being of NAFTA would mark a historic moment for the people of the hemisphere and the people of the world. As with every new experience, there will be moments of initial apprehension. There will be the need for adequate transitional provisions. But it is indeed a bold step in the direction that we all must take.

LUIS ALBERTO LACALLE, PRESIDENT OF THE
REPUBLIC OF URUGUAY

The people and government of Uruguay are following with great interest these final stages of negotiation of the treaty amongst the governments of Canada, Mexico and the United States. We see it as a very important milestone in the history of the end of the 20th century. We see it as a natural tendency of uniting markets, of creating wider economic zones. That is a tendency we see the world over. But in this case, as Mexico belongs to Latin America, we see it as a historical step toward renewed and more fruitful relationship between North America and its southern neighbor Mexico. And of course, we see it as a signal that perhaps in the future we will be able to widen that kind of cooperation.

It is true the history of the United States tells us very loudly that trade and prosperity through the opening of markets is a reality. That everybody benefits when there is more trade. That jobs will be created. That opportunities will be also created. So we do think that it is in the best philosophy and interest of the concerned parties in the first place. But it is also in the best interest of a more developed and deep relationship with the rest of Latin America that this treaty be approved. These days, when we see that trade is the central issue of politics, when people are demanding more than anything to be able to trade more freely and to generate opportunities, we do think that this is a step in a very positive direction.

My colleagues here in South America, we recently had a meeting in Santiago de Chile, and it was in the center of our discussions: the final decision on the NAFTA treaty. So if I could convey to the people of Congress in the United States, to the people in business, to the labor unions, some kind of message, I would say that the rest of America is looking very keenly at this decision because it can be a signal of better days for everybody. We are thinking not in terms of one administration, of one government, but in terms of creating more stable economic relationships, and of course through that, more stable institutions, and stronger democracy all over America.

We are no longer as Latin Americans part of a problem; we are part of the solution. Many millions of jobs in the United States depend on trade with Latin America. I would almost say all of our imports—80% of them—come from the United States. So all kinds of cooperation, all kinds of opening of opportunities will be seen as a very positive sign, not only by governments, not only by presidents, but by the people that work and live in my country.

So, on behalf of the present but especially on behalf of the future, I would very strongly say that this decision—a positive decision on the NAFTA treaty—will be a historical decision and a very positive one. We will be waiting then, full of hope, for the final decision and thinking that it is for the good of the

countries involved, but especially for the whole of Latin America, for the whole of America in the future years.

REMARKS BY PETER HAKIM, PRESIDENT,
INTER-AMERICAN DIALOG

I want to thank Enrique Iglesias for his invitation to participate in this important forum. I am pleased to have this opportunity to share my views with you about the North American Free Trade Agreement and its significance for the future of United States' relations with the nations of Latin America and the Caribbean. I am not speaking today for the 100 members of the Inter-American Dialogue, but I believe that nearly all of them would express similar thoughts if they had the chance to be here.

I have been involved in inter-American affairs for the past 25 years. But it is only during the past few years that I have become encouraged about the opportunities for building a productive and enduring relationship between the U.S. and the nations of Latin America. For the first time, I can envision a relationship based on mutual respect and shared values—a relationship that will allow all Americans together to address our many shared problems and pursue our common aspirations. This is a goal for which many of us have worked hard over the years, and it may now, finally, be within our reach.

It is the United States that is now facing a moment of truth. The decision taken by Congress next week on NAFTA will critically shape the future of our relations with Latin America. Mexico—along with almost every other Latin American country—is calling for a new economic partnership with the United States. Congress must now choose whether to accept that offer of partnership or whether, as we have done too often in the past—to turn our backs on Latin America.

The members of Congress must understand that NAFTA is not a one-way street. The nations of Latin America are not seeking special privileges. They are not today asking for more aid or calling for debt relief. They are instead challenging us to accept an equal exchange. They are asking for the right to compete freely in U.S. markets, and offering us the reciprocal right to compete freely in their markets. This is a good deal for everyone. And it will allow all of us to compete more effectively in the global marketplace.

NAFTA is about far more than economics. Over the past several years, it has been heartening to see the emergence of democratic rule in country after country of Latin America. It has also been encouraging to witness the growing convergence of interests and values between the United States and Latin America. The main objectives of U.S. foreign policy—the building of democratic societies, the fostering of economic growth through competitive markets and the extension of social justice—are today the principal objectives of Latin America as well. With the approval of NAFTA we can lay an effective groundwork for the United States and Latin America jointly to pursue these fundamental human goals. Beyond its economic benefits, NAFTA symbolizes the common stake that we all share in the future of the hemisphere.

Some 15 years ago, the United States faced another decision crucially affecting its relations in the hemisphere: whether or not to restore Panama's sovereignty over the Panama Canal. After a long and difficult struggle, the U.S. chose the right path, a path befitting a great nation. The decision confronting Congress next week is even more momentous. The Panama Canal treaties put an end

to a historic wrong. NAFTA, in its turn, promises the beginning of a new relationship between the United States and the nations of Latin America—a relationship founded on common interests and sustained by growing economic and political cooperation.

The U.S. decision about NAFTA will say a great deal about the kind of nation we are and the kind of nation we want to be. It will answer a very basic question: Do we want to stand apart, isolating ourselves at a crucial point in a world of extraordinary changes—or do we want to assume leadership in the building of more satisfactory global arrangements. Only by grasping the opportunity presented by NAFTA to forge a sound and constructive relationship with our nearest neighbor, Mexico, can we set the stage for exercising responsible global leadership.

NORTH AMERICAN FREE-TRADE AGREEMENT [NAFTA]

HON. PETER W. BARCA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Mr. BARCA of Wisconsin. Mr. Speaker, the goal of any trade agreement, including this NAFTA, must be to expand economic growth, enhance the export opportunities of American businesses, and promote a higher standard of living so that businesses can create more family-supporting jobs for American workers. Generally, providing free and fair trade throughout the world has helped to accomplish these goals. However, this NAFTA does not provide meaningful assurances that these goals can be accomplished. Therefore, I will oppose this NAFTA and work toward developing a better approach to meeting these goals.

It is imperative that we do not pass a flawed NAFTA because once Congress goes down this path, we set the standard for future free-trade agreements which will certainly be forthcoming. Most importantly, this NAFTA would lock the United States into a long-term agreement that would affect generations of Americans. The stakes are very high due to the fact that this agreement threatens American businesses' ability to provide family-supporting jobs for Americans. It has been a strong domestic economy which has propelled this Nation to be the leader of world economic growth since World War II.

This will undoubtedly be one of the most important votes I cast in this Congress.

As occurs with any important vote, I have been heavily lobbied by both the proponents and opponents of NAFTA, and have received at least 1,000 letters, postcards, and calls from my constituents. Given the gravity of this vote, I have spent many hours discussing and studying detailed summaries and analyses of the NAFTA text, the side agreements, as well as papers on issues related to NAFTA.

My final consideration on this issue came with a response to a letter I wrote to Trade Ambassador Mickey Kantor, in which I outlined my concerns and summarized many of the issues that the people of Wisconsin have relayed to me. These points include the impact of NAFTA on American businesses and workers, on the environment, on States' rights, and the costs of implementing the agreement.

I have thoroughly reviewed Mr. Kantor's response, and believe that the administration still has not accomplished the goals that had been set when the side agreement negotiations began.

There are three fundamental problems with this NAFTA which were not adequately addressed through the side agreements, problems that lead me to believe that this NAFTA is not in the best interest of our country.

First, the NAFTA was not negotiated on the most favorable terms to the United States. One of the problems is that current policies governing trade between Mexico and the United States are so badly slanted against this country. Mexican tariffs on United States goods are in many cases two or three times—and in some cases eight times—higher than United States tariffs on Mexican goods. NAFTA does not eliminate this imbalance in a timely manner.

For example, the Mexican tariff on United States automobiles, which is currently at 20 percent, will only be completely removed by the year 2009. The U.S. tariff, currently at a low rate of 2.5 percent, is eliminated immediately. That means that United States automobile manufacturers will have to wait for 15 years to gain comparable access to the Mexican market.

The Mexican trucking industry currently has access to border States without having to comply fully with United States regulations governing transportation. The United States trucking industry currently has very limited access to the Mexican market. NAFTA would increase this access for the U.S. trucking industry, but only over the course of many years.

Furthermore, the benefits of opening the Mexican market over time will not likely accrue to Wisconsin dairy farmers. If there are any gains to be made by the dairy industry by opening the Mexican market, it is in the Southwest United States. Dairy prices for farmers in Wisconsin are not likely to be significantly boosted, but NAFTA could reignite consumer fears regarding food safety in the United States which could ultimately hurt our farmers. Mexican agriculture uses at least 17 different pesticides that are banned in the United States, according to the General Accounting Office.

Our record in negotiating trade agreements since 1974 has been less than positive—it approaches being abysmal. The cumulative trade deficit since 1974 is more than \$1 trillion. Any gains the United States has made into foreign markets have come at a substantial cost.

The second fundamental problem with this NAFTA is that most of the benefits for our country will not accrue for a number of years, and then only if there is a growing standard of living for Mexican workers in order to provide them with more purchasing power to buy American goods.

There is also the question of the outflow of investment and capital that has not been fully considered in this debate, which could mitigate any tariff advantages that the United States may gain. Because of investment shifts as a result of this NAFTA, several economists including Donald Ratajczak of Georgia State University, conclude that NAFTA would displace \$2.5 billion of investment from the United States to Mexico annually, which could

mean 375,000 potential new jobs lost over 5 years.

Through the United States-Canada Free-Trade Agreement, we have already created one of the largest and most competitive free trade zones in the world. Adding Mexico to this equation will only add approximately 5 percent to the size of this free trade zone. However, it is the promise of 90 million Mexican consumers whose purchasing power is increased substantially that would provide the greatest benefits to the United States. However, that is not likely to occur under the terms of this NAFTA.

Wages and purchasing power generally increase with productivity in the industrialized world. In Mexico, gains in productivity have not been accompanied by the expected gains in wages. Productivity in Mexico has risen by more than 30 percent in real terms since 1980. But real wages have declined by 32 percent over the same period. While some progress on wages has been made in Mexico over the last few years, the minimum wage in Mexico still stands at 58 cents per hour. The Mexican Government continues to monopolize business associations and labor organizations, thereby commanding the economy and its workers in a manner that could work to a significant competitive disadvantage for the United States over the long term.

The third fundamental problem with NAFTA is that the side agreements lack real enforcement mechanisms to ensure the enforcement of national environmental and labor laws, which is the stated goal of the side agreements.

The side agreements do not allow for trade sanctions to be imposed if Mexico does not enforce its domestic labor laws with regard to the right of Mexican workers to seek better wages through the right to strike or collectively bargain.

The side agreements do not ensure a growing wage and added purchasing power for Mexican workers, nor do they adequately address more than one of the six major environmental issues that have been raised.

The likelihood that trade sanctions will ever be implemented is very low. The General Accounting Office prepared a report that indicated that Mexico lacks the staff, funds, and systems to fully identify new companies, much less enforce their laws. Furthermore, the process established through the side agreements for sanctioning the failure to enforce domestic laws related to trade, the environment and competitiveness is overly bureaucratic—even the proponents of NAFTA acknowledge that the process is not really workable.

Businesses in the United States need somewhat of a level playing field to compete in the global market, including Mexico. But the side agreements do not bring us closer to that goal. Without adequate enforcement mechanisms in Mexico, over time the problems that currently exist in our trade relationship will grow worse.

In addition to these three fundamental problems with this NAFTA text itself, I have further concerns about how the agreement could affect our country.

NAFTA will serve as a dangerous pattern for negotiating trade agreements with other Latin American nations. Chile and the Carib-

bean nations are already waiting in line to gain the benefits of NAFTA. I am concerned that unless we negotiate the best possible terms under this NAFTA, we will end up creating a precedent that will be repeated again and again.

Also, and equally important is attempting to finance the costs of implementing NAFTA, especially when the priority at the Federal level has been reducing the budget deficit. The administration must find a minimum of \$2.5 billion in revenues or spending cuts up front to pay for the lower tariff revenues as a result of NAFTA and a bare bones worker retraining program. The total costs of NAFTA could exceed \$30 billion, with funds earmarked for border cleanup and development and dislocated worker retraining. Regrettably, the proposal to raise more than \$1 billion through increasing international airline passenger fees by 20 percent is not even directly related to NAFTA. There are not too many other revenue sources to finance NAFTA without hindering deficit reduction efforts.

Furthermore, this NAFTA comes at a time when our economy is still fragile. It would contribute to the loss of several hundred thousand American jobs based on credible estimates, with millions of related jobs made vulnerable. Our manufacturing jobs support a large number of related jobs in the community. That's why we can ill-afford to further erode our job-supporting manufacturing base.

Workers who lose their jobs as a consequence of NAFTA may find help for retraining, but what jobs will they be retrained for?

Experience with dislocated workers shows that they tend to move down—rather than up—the economic ladder to lower-wage jobs. A Congressional Budget Office report concludes that for every 100 U.S. workers who lost their jobs in the 1980's at least 61 had not attained the same standard of living they had in their previous employment. A trade agreement should contribute to enabling U.S. business to create more family-supporting jobs in this country, however, this NAFTA may end up costing more business than it creates.

Rejecting this NAFTA does not mean that we turn our backs on Mexico. It means we begin negotiating a better agreement—one that will help American workers and businesses and also one that will help Mexico. I will encourage my colleagues to call on President Clinton to renegotiate the NAFTA with the new Canadian Government and with President Salinas or his democratically elected successor in Mexico.

We must avoid repeating the same mistakes that we made in negotiating this NAFTA.

We should examine what the European Community did to integrate the economies and lower tariffs among its member nations. Since World War II, Europe has been gradually integrating its economies but has put in safeguards to ensure that the integration results in higher standards of living in all the member nations. For instance, Portugal, Greece, and Spain, which had average wages around one-third the level of average wages in the industrialized countries of France, Germany, and Great Britain, were allowed to join the EC only after they initiated reasonable political and economic reforms.

This year alone the EC will spend almost \$25 billion on transition needs. Since 1986 Europe has spent more than \$120 billion on integration. This has been the cost of constructing free trade with countries in which the standard of living is much closer than the differences between the United States and Mexico. It has taken many years and hundreds of billions of dollars to integrate relatively similar economies in Europe.

The North American Free-Trade Agreement also comes with a cost. The people of the United States must decide what level of commitment is necessary to attain similar economic integration to that of the European Common Market. Can we expect Mexico and the United States—with widely differing economies—to integrate literally on January 1 without any real commitment to dealing with the costs associated with this agreement?

That's why my decision will probably not be a big surprise because I stated throughout my campaign that I was opposed to the NAFTA as previously negotiated and was skeptical that the side agreements would adequately address the aforementioned concerns. Furthermore, I believe that very few Members of Congress who take the time to read the side agreements would believe this NAFTA accomplishes all the goals for which they were intended.

A vote against this NAFTA should not be interpreted as a vote to reject increased trade with Mexico and Canada. We already have a free-trade agreement with Canada which I publicly supported as a member of the State legislature. I strongly support free and fair trade, especially among industrialized countries and with the further goal of increasing trade throughout the Americas.

I feel it is important to point out that the issue is not between business and labor as many would lead us to believe, rather, it is an issue of ensuring the manufacturing base, which enables us to create jobs that provide our present standard of living in this country, has somewhat of a level playing field in the future.

We can do better than this NAFTA. To those that say that opposing the present agreement will simply leave us with the status quo, I say that the status quo is completely unacceptable but that this NAFTA does not adequately improve it. Mexico wants and needs a trade agreement, President Clinton possesses the skills to negotiate a more favorable agreement to our interests, and the new Government in Canada has indicated an interest in forging ahead with a renegotiated agreement.

That is the course that I hope we will follow. The first step is to set aside this NAFTA. So I will be voting "no" when this NAFTA is presented to Congress and calling for an agreement that adequately addresses the concerns of the people of Wisconsin and accomplishes the goals of free and fair trade.

NAFTA

HON. ELIZABETH FURSE

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 1993

Ms. FURSE, Mr. Speaker, the following article is for Members' information and provides compelling material on the NAFTA agreement written by William Greider and published in the October 28 issue of Rolling Stone magazine.

[From the Rolling Stone, Oct. 28, 1993]

CONGRESS: KILL NAFTA

[By William Greider]

Facing a civil war within its own party ranks, the White House is peddling a fatalistic argument on behalf of NAFTA, the proposed free-trade agreement with Mexico and Canada. Congress might as well go ahead and ratify the treaty, according to the administration's informal sales pitch, because the economic trends won't be altered much in any case. Even if NAFTA loses, American factories and jobs will still keep moving to Mexico or to other low-wage nations around the world. The reality of global economic integration can't be repealed by Congress any more than King Canute could command the tides.

This line of argument is a familiar sophistry in Washington legislative debates, one usually advanced by the side that fears it's losing. In technical terms, NAFTA would simply phase out most U.S. tariffs on Mexican goods and relax various restrictions that Mexico imposes on American producers. The substantive impact, however, would be enormous. In effect, the trade preferences that created the maquiladora zone, where thousands of U.S. plants have located just inside the Mexican border, would be extended to cover the entire country. Anyone who has seen the rank pollution, labor exploitation and industrial slums of the maquiladoras understands why environmentalists, American labor unions and human-rights activists oppose NAFTA. Having seen this brutal scene for myself, I can't get it out of my mind. I've asked many NAFTA supporters why we should not expect the same exploitation to be spread across all of Mexico if NAFTA is adopted, and none of them have given me a good answer.

The White House's defensiveness begs an obvious question: If NAFTA really won't change much, why are the Fortune 500 companies, the National Association of Manufacturers and the army of lobbyists hired by the Mexican government working so hard for its passage? The question almost answers itself.

Actually, the best argument for adopting NAFTA is a cynical view of global Realpolitik that's widely shared among policy-makers but awkward for administration officials to enunciate because it contradicts their free-trade rhetoric. It goes like this: The industrial world is dividing up into potentially hostile regional trading blocs, and the United States needs to organize its own hemisphere in self-defense against the European Economic Community and the Pacific Rim economies tied to Japan. The widespread fear is that the global trading system is producing so much social and economic strain in so many countries, including the United States, that it is threatened with breakdown. The new trading blocs are promoted in the name of tariff reduction, but it is suspected they will sooner or later be employed for protectionist purposes.

Toward that end, NAFTA has much larger implications than the current debate sug-

gests. Three other trade alliances are already forming in the Western Hemisphere—Argentina, Brazil, Paraguay and Uruguay; the Andean Pact nations; and Central America—and NAFTA includes a clause for rapidly including these other groups in one huge all-American free-trade zone. Thus, if Congress approves NAFTA, the general rules will be set for integrating a dauntingly diverse collection of rich and poor societies, even more different than the economies of Canada, the United States and Mexico. No one in the world has ever attempted something like this before, much less succeeded.

That might be the best argument for defeating the treaty: It's too much to swallow in one gulp and ill-designed to cope with the consequences. The Clinton administration, like the Bush administration before it, has utterly failed to develop a plausible set of rules for bridging the vast social and economic gulf between countries as different as Mexico and the U.S. The nations of Western Europe have devoted nearly 40 years to working out the complex guarantees required for economic union, but the proposition is still mired in controversy and public resistance. It may or may not go forward. Yet European union would integrate national economies with much smaller disparities in wages, working conditions and economic development.

American negotiators tried to solve a much larger problem in a couple of months. The wage gap between Germany and Portugal is about 3-to-1, while the gap between the U.S. and Mexico is at least 8-to-1. The European Community developed "social charter" provisions designed to ensure that low-wage workers in the poorer countries would not be exploited by runaway industries and that, over time, the bottom could be pulled up. Aside from rhetorical flourishes, NAFTA is a system designed to pull the top down. The flight of American factories—and the threat of flight—would apply permanent downward pressure on American industrial wages.

In that sense, the free-trade treaty is a missed opportunity—for both supporters and critics—because it could have been a chance to generate real change in the global economy. The administration is right about the global economy—it's an irreversible force—but NAFTA could have provided the model for a third way between free trade and old-style protectionism: new trade rules that begin to reconcile the gross difference between the haves and the have-nots. A reformed global economy would impose trading rules on nations and multi-national corporations that pull the bottom up—by guaranteeing workers the right to organize in their own behalf, by requiring that wages be tied to rising productivity, by penalizing exports that violate the basic human rights of modern societies. The Clinton administration talked about doing this when it negotiated new side agreements this summer on labor rights and environmental protection, but, in the end, it ducked the hard questions and settled for empty words.

As it stands now, the main contribution of NAFTA, win or lose, will be the way the issue has opened many people's eyes to the larger dimensions of the global economic problem: The prosperity of the haves is now tied inextricably to the fate of the have-nots. The future well-being of Ohio or Illinois may be decided ultimately by what happens to workers in places like Cuautitlán or Puebla.

Since he was elected President of debt-burdened Mexico in 1988, Carlos Salinas de Gortari has been justly celebrated in the

world financial markets as a great reformer. Salinas swiftly opened the protectionist and largely state-owned Mexican economy to the world. He deregulated and decentralized and sold huge chunks of Mexican enterprises to private investors. He codified investment protections, stabilized the peso and invited foreign capital to finance a vast industrial modernization. The Bolsa de Valores, Mexico's stock market, entered a giddy boom as American investment houses sent mucho dollars.

But there is one other "reform" that the Wall Street cheerleaders seldom mention: Salinas also smashed labor. Across key industrial sectors, from oil to autos, from beer to mining, the Salinas government crushed unions pushing for higher wages and smothered workers who tried to form their own independent trade unions. Numerous uprisings of workers were thwarted by Mexico's byzantine labor laws, designed to give the ruling political party full control. When the law proved insufficient, the workers were put down by organized violence—bloody attacks by the police or labor goons that resembled American labor conflicts of a half century ago.

At the Volkswagen plant in Puebla, the company unilaterally reduced wages and benefits and changed work rules in the summer of 1992. When the workers went on strike, the company fired the entire work force of 14,000, then imposed the new contract and rehired all but those who refused to accept the lower wages. VW "almost certainly acted with the tacit approval of the government," the *Financial Times* reported. A meeting of 8,000 VW workers voted unanimously to remove their union head, claiming he had been bribed with a payment of \$160,000. Government regulators refused to accept the decision.

At Ford's plant in Cuautitlán, where Mercury Cougars are assembled, long-running conflicts between workers and the company led to bloody confrontations in early 1990. A group of 30 thugs, many reported to be out-of-uniform police officers, attacked and beat several local leaders. Six workers were either kidnapped or arrested, then released. Three days later, workers found 200 or 300 armed men inside the plant. In the battle that ensued, 12 workers were wounded by gunfire. One later died. The police did not appear.

The workers claimed the goons were from CTM, the national labor federation that is closely allied with Salinas and the PRI, the political party that has held uninterrupted power in Mexico since the 1920s. CTM helps the government and the companies enforce labor peace. Ford won a ruling that the workers' action was illegal and fired 2,300 workers. By government edict, the rebellious labor leaders were subsequently replaced with new leaders loyal to the PRI. Ford expressed regret at the violence in its factory and disclaimed any responsibility.

These facts are drawn from official protest petitions filed by the International Labor Rights Education and Research Fund (ILRERF) and from Dan La Botz's chilling book on labor suppression in Mexico, *Mask of Democracy*. Such episodes have been commonplace in the Salinas years at both domestic and foreign-owned industries.

When Salinas staged an early showdown with the powerful Petroleum Workers Union in early 1989, it ended with police and military troops raiding the union boss's home and arresting him. A bazooka rocket launcher was used to blow the door off his house. Between 3,000 and 5,000 soldiers of the Mexi-

can army seized the Cananea copper mine to break a labor protest there. A 1990 strike at the Modelo Brewery in Mexico City (where Corona beer is made) led to beatings by riot police and firefighters. When workers tried to change their union affiliation at Tornel Rubber Company, some protest leaders were kidnapped, and workers were attacked and beaten by goons wearing CTM shirts. The victims filed complaints with Salinas' new Commission on Human Rights, but mass firings and physical intimidation continued.

This pattern of labor suppression has an obvious purpose. "The Salinas administration is grabbing control of the workers' lives in a way different from any of its predecessors," La Botz reported. "The difference . . . is in the government's attitude toward foreign capital and its willingness to destroy or suppress organized labor for the sake of currying favor with foreign capital."

Salinas' labor strategy is directly connected to NAFTA, according to the international labor-rights fund. "The prospect of NAFTA has led the Mexican government to implement a more restrictive labor policy to attract foreign investment, offering in return political stability, domesticated trade unions, easy labor regulations and, especially, low wages," the ILRERF complained to the U.S. trade representative.

Aside from the moral implications, why should Americans care? Because the promised benefits of free trade with Mexico will never materialize as long as Mexican labor is denied the ability to organize and bargain collectively for higher wages. The textbook economic theory holds that unfettered trade will benefit Americans, even if many U.S. factories and jobs migrate to Mexico, because new consumer demand will be created in Mexico to buy other American goods. But industrial workers who earn \$2.35 an hour on average cannot even buy the products they are making themselves, much less buy imported goods from the United States.

This is an unfashionable argument, I know, but the enduring truth about industrial societies is that strong unions, pushing wage rates upward, are a necessary ingredient for widely shared prosperity. As organized labor has atrophied in the U.S., and American wages have declined over the last 20 years, the effects have been felt by both union and non-union workers. Ultimately, prosperity in the global economy will require workers to organize in newly developing countries and across national boundaries, both to defend themselves from exploitation and to promote economic equity for everyone.

Rep. George E. Brown of California is among those who have pointed out this connection to the president. "Linking trade to respect for basic labor rights and standards is a crucial ingredient for boosting global purchasing power," Brown told Clinton in a letter earlier this year. Richard Rothstein of the Economic Policy Institute explained: "An international competitive environment based on low wages acts as a permanent brake on income growth in developing nations and denies American exporters the consumer markets which growth of industrial working classes in developing nations would otherwise bring."

Despite rhetorical promises, the new side agreements negotiated by the Clinton administration fail to confront this. The labor agreement provides a tortuous five-step mechanism for dealing with complaints about child-labor abuses, health-and-safety problems and minimum-wage violations—procedures so mushy it will take years before anything happens. "If there is a child-

labor case, the kid is going to reach retirement age before any action is taken," says Bill Goold, a congressional trade expert.

But more important, the agreement dodges the central question of labor rights and industrial relations—freedom of association. If Mexican workers are not able to form their own independent unions, free of the PRI's political manipulation and the government's use of force, they are not much better off than the Polish workers who founded Solidarity in the 1970s to escape control of the Communist Party unions in Poland.

The exclusion of labor rights was not an accident—Mexico insisted on it, and the U.S. negotiators did not press the point. Commerce Minister Jaime Serra Puche, Mexico's lead negotiator, reportedly told one meeting of North American Free Trade Agreement negotiators, "There will be no sunshine on industrial relations." Given the complexities of the complaint procedures, Serra Puche has publicly reassured business interests: "The time frame of the process makes it very improbable that the stage of sanctions could be reached."

Jerome I. Levinson, former general counsel to the Inter-American Development Bank, has analyzed the labor agreement and concluded: "By taking the violation of these rights, no matter how persistent they may be, out of the jurisdiction of the grievance procedure, the Clinton administration has implicitly endorsed the abuses inherent in the Mexican labor-relations system."

Furthermore, notwithstanding Clinton's recent claims, the agreement contains nothing to ensure that Mexico's pitiful wage level will rise in step with increased productivity. Thus, multinational corporations (Japanese and European as well as American) can use Mexico as a cheap-labor export platform for reaching the American market duty-free. Levinson noted that Mexican productivity rose by 41 percent between 1980 and 1992—yet wages and benefits fell by more than 30 percent over those years.

"To maintain this low-wage, high-productivity policy," Levinson wrote, "the Mexican government has made it virtually impossible to organize trade unions independent of its control."

Why did the Clinton administration cave in? Partly because it was under intense counterpressure from American business interests not to do anything to encourage labor reform in Mexico. Partly because it did not want to disrupt its own diplomacy by interfering with the domestic political control of Mexico's one-party state. Partly, perhaps, because the Clinton team is itself ambivalent about the role of organized labor in fostering economic prosperity through rising wages and consumer demand.

Labor Secretary Robert Reich, who is busy promoting new schemes for cooperative relations in offices and factories, recently told the *New York Times*, "The jury is still out on whether the traditional union is necessary for the new workplace." Commerce Secretary Ron Brown was also lukewarm. "Unions are OK where they are," Brown said. "And where they are not, it is not clear yet what sort of organization should represent workers."

There is one other good reason why neither the United States government nor American companies wish to introduce the subject of internationally recognized labor standards into the terms of trade. Sooner or later, that would come back to haunt them. Canadians and Mexicans could find much to criticize in America's own system of labor regulation—laws that also blunt the ability of workers to organize for collective bargaining.

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EXTENSIONS OF REMARKS

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Win or lose, NAFTA is only the first round in what promises to be a long and historic fight over this question. It won't go away because, just as the White House says, economic integration is proceeding everywhere, bringing low-wage nations into global production but giving workers little or no means to demand a fair share of the rewards. If not this time, the trade debate will return again and again to the economic dilemma

that low-wage exploitation produces for the world: too many goods chasing too few consumers with not enough money to buy them. The first step to genuine reform is to kill NAFTA now. Then President Clinton should start over again, negotiating new trading rules, not just for Mexico and Latin America but for the global system at large.

"The Clinton administration could have done something truly historic in writing new

trade agreements and they blew it," says Goold. "But NAFTA is the first awakening for many people. The way we talk about investment and trade and foreign economic assistance doesn't match the reality out there. The multinational corporations understand this. The governments don't. At least our government doesn't."